

Official

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, October 14, 2014

HOOKSETT MUNICIPAL BUILDING

CALL TO ORDER

Chair Chris Pearson called the meeting to order at 6:34 pm.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Chris Pearson (Chairman), Roger Duhaime (Vice-Chairman) (arrived at 6:39pm), Michael Simoneau, Don Pare, Phil Denbow, and Richard Bairam.

EXCUSED: Gerald Hyde, Jackie Roy, and James Levesque, Council Rep.

STAFF: Matt Lavoie, Code Enforcement Officer

APPROVAL OF MINUTES

September 9, 2014 – *M. Simoneau motioned to approve the September 9, 2014 regular meeting minutes. Seconded by D. Pare. C. Pearson abstained due to not being in attendance at the September 9, 2014 meeting. Motion carried.*

CONTINUED PUBLIC HEARINGS

Gilles & Claudette Chalifoux

6 Phyllis Drive

MDR

Case #14-09

Map 20, Lot 18

Variance is requested from Article 5, Section C, Article 26, Section B.2.a and Article 3, Section J of the Zoning Ordinance to permit a single family house to be built without further improvements to Phyllis Drive.

M. Lavoie: I received an email today from Andrew Sullivan requesting to continue the public hearing.

M. Lavoie read an email from Andrew Sullivan, dated October 14, 2014, addressed to Matthew Lavoie, regarding Chalifoux, 6 Phyllis Drive, Docket No. 14 09, into the record.

C. Pearson: Was there any discussion as far as Phyllis Drive being a private road.

M. Lavoie: After consulting Town Counsel and the Town Administrator we came to the conclusion it was a lot of record. They could get a building permit for it as it was. Being that he wants to do a lot line adjustment, and have the variance go through with that lot line adjustment,

is a gray area. We did not get to hear from the Planning Board on this because the Town Counsel didn't get back to JoAnn or I in time. By continuing it, we allow them to go to Planning Board and get a recommendation as to where to go from here.

C. Pearson: So he has to go through the process of getting a lot line adjustment approved, or will he have to come back here?

M. Lavoie: He may have to come back here. My impression is the Planning Board would not allow a lot-line adjustment to make a non-conforming lot. There are still issues at hand and, until we get input from the Planning Board, I don't know where they stand on it.

P. Denbow: What would be the difference between changing the lot lines and making it non-conforming versus where it is at now?

M. Lavoie: Being a lot of record it is grandfathered in from any kind of zoning ordinances. As soon as you move the lot line it is supposed to conform to the new zoning ordinances. All of the variances he was asking for, he would have to comply with zoning ordinance in order to make that lot-line adjustment.

C. Pearson: Was Phyllis Drive deemed a town road?

M. Lavoie: No. The plan was to make it a town road. At one point, Phyllis Drive was cut out of the Desaulniers lot, and it doesn't say where that deed went. The lot line was changed in Desaulniers lot but there is no deed for the road. The town has figured that it meets the requirements as far as a private road with access to that lot making it a lot of record, meaning there is no variance needed for a building permit.

C. Pearson: They are asking for a continuance to when?

ML To the next meeting. The Planning Board meets on November 3. This Board meets on November 18.

R. Bairam motioned to continue Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18, MDR, variance request from Article 5, Section C, Article 26, Section B.2.a and Article 3, Section J of the Zoning Ordinance to permit a single family house to be built without further improvements to Phyllis Drive, until November 18. Seconded by P. Denbow. Motion carried unanimously.

1378 Realty Trust
1135 Hooksett Road
PZ

Case #14-10
Map 41, Lot 10

Variance is requested from Article 10-A, Section E of the Zoning Ordinance to permit the construction of eight (8) townhouse style multi-family housing units.

Peter Holden (Holden Engineering): I am here with Chris Mastriano, the owner of this property. Chris bought a piece of property in 2002. He is in the used car business. He creates dealerships

for people that cannot get one organized themselves and leases the dealership out to them. This property contains an old house that used to be a school called Animal Crackers. Chris's idea was to excavate this out, build a building and use it as a retaining wall, and build a parking lot. The elevation is steep so it causes it to be in a hole. Chris has been trying to market this for the last 10 years. He has found that no one is interested in it because of this valley that he would have to create. We graded this at the maximum for business use. At the time the zoning was part medium density residential and part commercial. Because this is so narrow Chris cannot regrade the site and make more frontage. Chris was going to build a duplex. When he went to apply for it he found that the zoning had changed and now it is all Performance Zone. He continued to market it and now he wants to do something with it. He was proposing to construct some townhouse style housing and rent the units. We are here to ask for relief from the Performance Zone ordinance that precludes residential development in the Performance Zone. The grade coming off Rt. 3 is steep enough that if you put a 10% grade on the driveway, you have used up a lot of the property just getting onto the flat part. We are proposing to come out onto Mammoth Road where we have some frontage. As part of the original site plan approval for the repair garage, we met with the lady next door who has a dug well and we committed to her that we would work with her and Manchester Water Works to provide water to her house. She was concerned we were undermining it so much we would dry out her well. At the last ZBA meeting we found that neighbors don't have sewer. When we got the approval for the garage, we met with Bruce Kudrick from the Sewer Department. There is a connection that goes to the house and he said we could hook onto it. I don't know if he would let us hook all the units onto it. If he makes us run a new line we would continue it onto Mammoth Road so those people could have sewer. There was a use of land issue and Chris gave the neighbors some land. The Board asked us to go to the Planning Board to get comments and that was supposed to be general comments on the driveway. They commented on frontage, the lot, and expressed their concern about residential uses in the Performance Zone. JoAnn brought up that there are two other projects in town where they have a variance to build residential in a Performance Zone, but they have not build yet. Dick Marshall pointed out the driveways are less than 40' apart, which is the spacing allowed in the Performance Zone. We would like to get a variance to allow us to apply to the Planning Board, and to meet with two landowners to try to figure out something to reconfigure this so it works for everyone. They back out onto Mammoth. Maybe we could make it so they could turn and drive out of our driveway.

C. Pearson read the comments from the Planning Board into the record.

C. Pearson: Can you clarify the point of “all three parties (applicant and two abutters) would need to sign off on an agreement concerning snow removal.”

P. Holden: We would not want to be in a position when someone has their hand on top of our project. We would not mind if it was a condition of our variance to work with the abutters. What we were thinking of doing is making a bigger driveway so a person could drive out into our driveway and head out instead of backing out and have some cooperation on the snowplowing. Maybe the people who plow our snow could plow theirs.

C. Pearson: Would these be two story townhouses?

P. Holden: Yes.

C. Pearson: What is the elevation versus those and the neighbors?

P. Holden: The ground is 12' lower. We are proposing some type of fencing and landscaping that would grow tall. We understand this is in someone's backyard and we would do whatever we have to do to make this work.

C. Pearson: Would you see it from Rt. 3 or will you put buffers there as well?

P. Holden: We are hoping to do something to dampen the noise. It will have to be something substantial.

C. Pearson: But absolutely no access from Rt. 3?

P. Holden: No. We thought that would be a positive thing.

R. Duhaime: I think the driveway is a good idea, is probably the only real issue on this property, and what I wanted the Planning Dept. to look at. What you are doing is putting it onto Mammoth Road, but I can see at the end what you are proposing would be good planning if you could come out with a shared driveway to corroborate together.

P. Holden: I think we could make it look nice as well.

R. Duhaime: The driveway was my only drawback.

P. Holden: The Planning Board has to approve this. You folks giving us the ability to apply to the Planning Board does not get us approval. I would not mind if you said we got a variance and we have to do our best to resolve this and work with the neighbors.

C. Pearson: Matt, does he need another variance for the driveway if this were to get approved?

M. Lavoie: No. That is a development regulation, not a zoning regulation. It would be a waiver from the Planning Board.

P. Holden: That is why if we leave here with a variance we have to go there and we have a lot of things to do.

M. Simoneau: Some of the comments we received last month had to do with the driveways and the access and speed limit on Mammoth Road. There was concern about people backing out of the driveway. I think the shared driveway idea is a positive alternative.

C. Pearson: From my perspective the biggest thing is this is Performance Zone. It is supposed to be commercial development. What is stopping you from taking those townhouses and making an office building?

P. Holden: People would have to go through Mammoth Road and go to an office building due to the steepness. It would be hard to market that because people would not know how to get there and there would be more traffic throughout the day. Smaller families tend to live in a townhouses so we thought that was the least traffic impact.

R. Bairam: How many bedrooms in each of the townhouses?

P. Holden: Either 2 or 3.

C. Pearson: What is the proposed square footage?

C. Mastriano: Between 1,700 and 2,000 sq. ft. per unit, including the basement.

C. Pearson: Would they be walk-out basements?

P. Holden: We might be able to do that in a couple of places, but not generally. They may be closer to 1,200 sq. ft.

Open to abutters.

No abutter comments.

Close to abutters.

Open public hearing.

No public comments.

Close public hearing.

R. Bairam: How long is the driveway?

P. Holden: The lot is 36' wide across the front and the driveway is 24' wide. We have 6' on each side of landscape.

R. Duhaime: The only issue is the driveway.

R. Bairam: That and it is in the Performance Zone.

R. Duhaime: Down the road is residential apartment buildings and condominiums.

C. Pearson: Performance Zone is there for commercial use, but I also understand Mr. Holden's point of not having access from Rt. 3 diminishing the value of commercial property in that location.

M. Simoneau: Would this require an exception to the Performance Zone requirement?

P. Denbow: The lot on the back end wasn't originally part of the Performance Zone. I like that they have been proactively working with the neighbors. They are getting something, but they are trying to work with the neighbors and give something back.

M. Simoneau: They are trying to make the best use of the property they have.

R. Duhaime: I don't see sewer on Mammoth Road but there is Manchester Water?

P. Holden: There is Manchester Water, but no sewer. The sewer is located on the east side.

R. Duhaime: You mentioned you would possibly bring in water. Could Mrs. Silkman get water from the highway?

P. Holden: Not that she can connect to. I think originally we were going to bring our water in and we would give her an easement, or something, and get her hooked up to the water system.

R. Duhaime: She is on a dug well.

P. Holden: She is and I don't blame her for being nervous about that. I told her years ago we would do it and Chris will still do it.

M. Simoneau: This still has to go in front of the Planning Board?

C. Pearson: Yes.

R. Duhaime motioned to approve the variance from Article 10-A, Section E of the Zoning Ordinance to permit the construction of eight (8) townhouse style multi-family housing units in the Performance Zone. Seconded by D. Pare. Motion carried unanimously.

NEW PUBLIC HEARINGS

Sharon Desrosiers

72 Chester Turnpike

LDR

Case #14-11

Map 15, Lot 55

Variance is requested from Article 4, Section A of the Zoning Ordinance to permit a two-family dwelling in a low density residential district.

C. Pearson: I understand you bought this property and it had an apartment when you bought it with some issues. Once code enforcement was made aware, he came in and realized it had an apartment and now you are looking to get a zoning ordinance to permit a two-family dwelling on the site.

S. Desrosiers: Yes.

C. Pearson: Could you please describe the history.

S. Desrosiers: When I purchased the property in April 2013, I wasn't aware it wasn't a legal two-family. We had someone in the apartment who needed fuel assistance. I met Matt and Steve Colburn from the Fire Department. They said the prior owners were supposed to take care of

things and they showed me the prior permits and inspections which I was unaware of. In order to make it a legal two-family we would have to put a sprinkler system into the 2nd unit. Supreme Fire on Londonderry Turnpike started the rough on it. We want to comply with what is asked to be done. I spoke with Kevin and they came and roughed in all the sprinkler systems in the 2nd and 3rd floor and the only other thing left was a carbon monoxide detector. It is a huge house and would help me immensely with the mortgage and other expenses.

C. Pearson: When you bought the house the tenant was there?

M. Lavoie: No. The prior owner pulled a permit to do the 2nd and 3rd floor renovation. He was told by Ken Andrews to not finish it and he could never occupy it. They finished it on their own after the rough inspections were done, made an apartment out of it, and never told the town. Two-family dwellings are not allowed in LDR and that is the main issue.

C. Pearson: How non-conforming is it now?

M. Lavoie: The only issues are the zoning and life safety and she is working on them.

S. Desrosiers: It just has to be approved by Steve Colburn and then they can finish it.

C. Pearson: Is there a tenant there now?

S. Desrosiers: My friend is staying on the 2nd floor.

C. Pearson: Is there a 2nd and 3rd floor apartment?

S. Desrosiers: There is mine, a 2nd, and on the 3rd floor there are 2 bedrooms. That was the main issue of having anybody sleep up there. I believe if you have closets it is a bedroom. She is just using the living room and room on the 2nd floor. We don't get any rent. She needed a place to stay for now and we are helping her out.

R. Duhaime: This is a 4,200 sq. ft. home?

S. Desrosiers: Yes and the parking is ample. The house is set back off the road. We had our wedding there. There were 80 people there and not one person was on the road. I just want to do the right thing.

C. Pearson: There are 4 bedrooms total?

S. Desrosiers: Yes.

M. Lavoie: The 2nd floor has a living room, kitchen, and dining area. The bedrooms are on the 3rd floor.

S. Desrosiers: There are 3 bedrooms including mine on the 1st floor.

R. Duhaime: We are just looking at a two-family. The 2nd unit would have two bedrooms.

C. Pearson: Is the septic adequate?

M. Lavoie: Yes.

M. Simoneau: My question was if the well and septic are adequate for a two-family.

D. Pare: Matt, was everything inspected on 2nd level.

M. Lavoie: Everything in the rough stage was inspected.

D. Pare: There is no Certificate of Occupancy?

M. Lavoie: No. That was also part of the conditions we have in place. The biggest issues were the life safety.

S. Desrosiers read the application into record.

Open to abutters.

No abutter comments.

Close to abutters.

Open public hearing.

No public comments.

Close public hearing.

R. Bairam: I don't have a problem with it. There is plenty of space.

R. Duhaime: You will have people living there whether it is one big family or two families. It is a big house. I don't think there is any impact.

R. Bairam: How big is that apartment?

M. Lavoie: Maybe 1,200 to 1,400 sq. ft.

C. Pearson: There is nothing above the garage?

M. Lavoie: No. The bathroom is really big in that apartment.

M. Simoneau motioned for approval of the variance in Case #14-11 for a request from Article 4, Section A of the Zoning Ordinance to permit a two-family dwelling in a low density residential district. Seconded by R. Duhaime.

*R. Bairam added, along with the motion, a stipulation to bring the apartment up to code and subject to a Certificate of Occupancy. **Motion carried unanimously.***

Gary Roy
163 Whitehall Road
LDR

Case #14-12
Map 20, Lot 31

Appeal from an administrative decision of the Code Enforcement Officer with regards to storage of equipment on the property.

Attorney Jonathan McPhee (Sweeney and Sweeney): Mr. Roy asked me to come here tonight to present his appeal. Mr. Roy has me here because he is frustrated and feels he has been let down by the town's government. This is a dispute among neighbors. When Mr. Roy and his wife purchased this property in 2001 it was significantly distressed and neglected. They found that Mr. Peracchi, who is the source of all of these complaints, has been encroaching on the property, had a dog run over the property, and had been throwing debris onto the property. In the interest of being a good neighbor, the Roy's tried to work with Mr. Peracchi and said that he could continue to use a portion of the yard he had been mowing, etc. What has happened over the years is Mr. Roy has significantly improved his property. I have photos to share to give you a sense of the improvements.

Gary Roy: There was an existing vintage mobile home on the property that was unfit to live in, so we took it down before we started construction.

J. McPhee: As time has gone on the property has been landscaped and there has been a tremendous amount of tree work and site work done. Every time Mr. Roy has gone to make a major improvement on his property, Mr. Peracchi has made a complaint to the town Code Enforcement Officer. It started in 2005 when major site work was being done that requires machinery. Mr. Roy is an excavation contractor by trade and he uses a piece of his equipment to complete various jobs on his property. Mr. Peracchi has been complaining that Mr. Roy is storing construction material and vehicles on his property for the purpose of his business. The construction equipment shows up when there is a job that needs to be done and when the job is over it goes back with Mr. Roy's other construction equipment. He has provided you an inventory of his equipment. It is heavy duty equipment and there is quite an inventory of it that lives at a site in Bow, NH. Mr. Roy has been making a tremendous effort to improve his property. For a person who uses nights and weekends to make his property better for his benefit, the benefit of his family, and arguably the benefit of the town, he does not want to look at his equipment in his yard. Every time one of these projects is completed, the equipment is removed. The assertion, as the cease and desist letters state, is to cease and desist using the property as a place to store materials for his business or where he is running his business. He is not storing materials and equipment for purposes of his business. He is making improvements to his house. To say he should have to remove his equipment when he is in the middle of a job would be like telling someone to take scaffolding down every night when putting siding on a house. These complaints have been ongoing and arguably this complaint about him storing equipment on the property is subject to estoppel at this point. This comes up every few years when there is a different Code Enforcement Officer and Town Administrator, but as you look at this narrative over and over again, the town has looked into this, one way or another, and found the use is okay. The equipment can stay because there is a project going on. There have been several visits to Mr. Roy from the Code Enforcement Officer and he was told he could continue with what he was

doing. Mr. Peracchi did not get satisfaction from the code enforcement officer so he called the Fire Department on Mr. Roy and complained about his burning activities. He was burning brush without a permit, but the fire department issued him one on the spot. More troubling is the incident of August 23, 2006, when Mr. Peracchi called the Hooksett Police Department and notified the officer that the Code Enforcement Officer needed a Police Officer to view that there were commercial vehicles parked on the property. The Police Officer later talked to the Code Enforcement Officer to find out that no such request was made. If you look in your packet at Exhibit 7, there is an actual police report. Mr. Peracchi was making misrepresentations to your emergency service personnel because he does not like what Mr. Roy is doing on his property. This cease and desist letter should be retracted. These issues have been dealt with again and again as described in Mr. Roy's narrative and verified by all of the official exhibits from the town. His latest job is done and the tractor is gone. He has continued to do what previous Code Enforcement and Town Administrators have told him, which is it lives there when the project is on-going and leaves when the project is finished. His business is not being operated at this property. He has a site in Bow, NH where his crew shows up every morning, gets their marching orders, and turns in their paperwork. Negotiations with customers are done on-site. He is not inviting any customers to his house. The only thing that gets done at his house is Mrs. Roy does his books for him. It is unfair, as part of this cease and desist letter, to say that the Roy's should be deprived of their right to balance the businesses check book in the evening at the house.

C. Pearson: Bring me up to the present. What does the current cease and desist encompass? I want the specifics of the here and now.

J. McPhee: The equipment is gone because the project is over. The issue is that Mr. Roy is tired of this and he shouldn't have to keep putting up with it. Mr. Roy still has two more major projects to do. He has spent money on my firm. He has answered to the town numerous times for the same things. We would like to see a retraction of the cease and desist order and some type of statement from the Board that clearly says when Mr. Roy is making improvements to his house that doesn't constitute a violation of the zoning or any other code the town may have. The cease and desist is irrelevant because he was never storing construction equipment or materials associated with his business at his home. He is borrowing a piece of equipment from his business. With respect to the 20 days after the date of this notice providing evidence to the Hooksett Community Development Department satisfactorily demonstrating the office use has ceased and appropriate changes and corporate records filed with the State of New Hampshire reflect the termination of the office at 163 Whitehall Road, that is a matter of semantics. To the extent that this is an office, it is Mrs. Roy doing accounts receivable in the evening. This should either be retracted or declared null and void. All of these conditions have essentially been met.

C. Pearson: Matt, from your standpoint, what do you feel your cease and desist encompasses so we know what we are looking at?

M. Lavoie: If you look at the zoning ordinance as it is read, a home office is considered a place of business. This particular home office would be considered illegitimate according to zoning regulations we have as they are now. That would include every contractor in Hooksett. Town Counsel got involved with this and found that was something that needed to be addressed along

with the fact that Mr. Roy is using his businesses equipment to make improvements to his house. The storing of that equipment at his house would not be legal according to our zoning ordinance.

C. Pearson: What constitutes storing?

M. Lavoie: When you think about storing, you are backing a dump truck up with a trailer on Whitehall Road to unload an excavator, etc.

C. Pearson: What constitutes storing versus doing work?

M. Lavoie: Storing a vehicle overnight, I would imagine. It is a piece of his business.

J. McPhee: If you were paying a contractor, would you reasonably expect the contractor to remove all of his tools and equipment during the project off of the property? He is lucky enough to have an excavation company and borrow the equipment. I think the ordinance is open to some level of interpretation. From a policy perspective, would it make more sense to put that excavator on a flatbed trailer and wheel it in at 6:00am and out at 6:00pm, each day. We are talking about 10 wheelers. To try and find a way to craft this so the neighborhood folk are going to benefit, it doesn't make sense.

D. Pare: Mr. Roy how long has their project been going on?

G. Roy: We purchased the property in 2001 and moved in, in 2002. It has been every other year that we have done a significant project. The property had become overgrown and neglected as far as the yard. When we purchased it I wanted to build a new house so I wanted some landscaping and upgrade of the property. I cut close to half an acre of trees in the back of the property.

D. Pare: Did he need a permit to do that type of work?

M. Lavoie: There is no permit needed for landscaping.

G. Roy: I think that is why the town might not have been aware of some of the things that were done. The strip in the back was about a half acre and was essentially virgin forest. That was all removed and the brush was burned on site. It was flattened off and we used it for an access area. Initially, the property had the driveway directly on the side of the foundation and you drove behind the property to park. I wanted to put an attached garage, but in order to do that I had to move the driveway over 40'. There was an existing single family garage. Where the garage was the dirt was as high as your desk so I pulled a permit, poured a slab and took the dirt and pushed it onto the side yard that dropped off. On the other side of the yard, when I moved the driveway, I cut those trees at another time. I did this all myself over the course of the last 10 years. Once the driveway was moved over I did the attached garage and foundation at the same time. I did the driveway and paved a portion of the driveway between the two garages. From where the gravel used to be to access the back area that driveway also got moved over. I have pictures to show you. In 2013, we pulled another permit to do our pool project. There was another 20' – 30' of trees that we moved. We needed the excavator for the trees, stumps, to grade the pool area, and to dig the electrical trench. That was all permitted and part of the exhibits. What bothered me was I

pulled the permit, the Code Enforcement Officer prior to Matt was notified, and then I got a business card in my door asking why there was an excavator in my yard. Part of the zoning ordinance states that between neighbors you can't have anything larger than a 6' fence but a fence would not work because the flat spot of my property is about 6' higher than the property line. I decided to create a buffer so I started bringing in stones and making a slope. I created a slope along the wetlands that are in the front of my property and along the edge of the property line and filled the entire yard up 6', hence the reason for dump trucks, the fill, the excavator, the stones, etc. As soon as I started that project, DES showed up because I was supposedly filling in wetlands. I was found to be in violation of the wetlands because I filled in the size of a sheet of plywood. The only reason I filled it in was because I was doing a temporary driveway and I didn't want that dirt to go over my newly paved driveway. When I was done I was going to clean it up and put it back to the way it was because that was a temporary road so my dump truck would not crack my driveway and now it is cracked.

R. Duhaim: You planted the arborvitaes on top of the wall?

G. Roy: Yes. There are \$1,800 worth of arborvitaes on top of the wall ranging from 4' to 6' so there is a substantial buffer to alleviate things, but apparently that did not suffice because Matt was called and the cease and desist letter came about. I told Matt I was not done with the project, had to spread the loam, and do some final grading so I needed the machine, and was told I had to move it.

D. Pare: Has the wetlands issue been addressed?

G. Roy: Yes. I hired a wetlands scientist, he did a report, we addressed it with DES, cleaned up the issues they had, they did a final inspection, and were satisfied.

M. Simoneau: This letter from August 1 of last year from DES is all set?

G. Roy: Yes.

C. Pearson: Matt your cease and desist, is it specific to them having their address listed as 163 Whitehall Road, now that his current construction is complete, or what is it specific to?

M. Lavoie: There are two parts to it. The first is the business address being at 163 Whitehall Road and the 2nd was the storing of equipment for his business at his house.

C. Pearson: Is any storing not complied with doing actual work on his site?

M. Lavoie: The main reason for the first letter in July was there was a dump truck there over the long weekend.

G. Roy: The reason the dump truck was there was it was a holiday weekend. I had taken 2 loads after hours on a Thursday afternoon. By the time I dumped the second load it was 7:30pm and I was going to camp, so I backed the dump truck up as far as I could for the weekend. On Monday

morning I got up and drove it way. When Matt witnessed it there were two piles of fresh fill directly to the right of the driveway.

R. Duhaime: Matt, you are saying in a home-based business one commercial vehicle is allowed?

M. Lavoie: No. In a recognized home occupation one commercial vehicle is allowed. This is not a recognized home occupation according to our zoning ordinance.

R. Duhaime: I remember about 20 years ago we were told you could not keep a commercial vehicle on your property. You could not fit people in that room when they tried to pass that ordinance so I don't believe that is correct. I am concerned about this because I thought that was addressed 20 years ago. We have more material hauling then any other town. I know where your equipment was stored in Bow and I know it wasn't on this property. Some equipment I don't understand. I can understand where it seems as if he is almost singled out. Matt, you are telling me he is not allowed to keep the dump truck in his driveway even if he just got home from a job?

M. Lavoie: No.

J. McPhee: We are looking for a conclusive determination by the Board.

C. Pearson: We can only act on the appeal. Whether or not that deters further complaints I have no idea?

J. McPhee: I think you could craft your decision in such a way that it stops any further complaints like these. Under RSA 676, Mr. Peracchi is entitled, as an abutter, to file an action in Superior Court instead of trying to get the town to fight his battles for him.

D. Pare: How big is this property?

G. Roy: Just under 3 acres.

D. Pare: Are you done with your projects? What else is going to happen on this property?

G. Roy: The left side is still wooded and I wanted to clean that out. Leave the larger trees but have a cleaner look. Mr. Peracchi said I stored construction materials and I have never stored anything I haven't used for my own house. I built a raised concrete patio out of block and filled it in. I intentionally bought 10 or 12 pallets of the blocks and I still have 6 or 7 of those stored in the woods and you cannot see it unless you are on my property. The intent was to buy that so the colors would match and I would have the same material to do some landscaping, retaining walls, and decorative stuff. I have to have an excavator to dig that, install the drainage, and put in the retaining walls.

D. Pare: Matt, would that require a permit?

M. Lavoie: It may just require approval from DOT because it is a state road. Removal of trees on private property doesn't require a permit.

G. Roy: To the best of my knowledge as far as retaining walls, anything over 6' would require engineering and that would require town approval, but these are 3' to 4' retaining walls at the maximum in the front.

Open to abutters.

Darlene Peracchi (159 Whitehall Road): My son-in-law David Durazzani will be my spokesperson.

David Durazzani (9 Heron View Drive): That was a lovely narrative and while some of it is true there are gaps. This has been going on for a good portion of 10 years. I was a property owner directly across the street at 164 Whitehall Road. I now reside around the corner on Heron View Drive so I have been a witness to this for 14 years. In addition to the work items he has had on the property there was a pine tree dropped on my in-laws house that punctured a hole in the roof of their home. My in-laws don't have a dispute with him doing yard work and projects. The problem is that over the course of time, he has stored multiple pieces of equipment, repeatedly. I don't know if he didn't have a storage facility over the course of the time he has owned Premium Builders along with his father who lives down the street. They also store equipment there from time to time. They would play a game with previous Code Enforcement Officers where they would move the equipment from one house to another so they weren't storing all of the equipment in one location. The location they have the majority of their equipment now in Bow is where it should be, but that is not the whole story. We were pleased that the town took the formal steps to issue a cease and desist based on the fact the residents have been collectively complaining for years. When he was in and out of the residence there would be the beeping of the back-up noise, trucks in and out, and traffic incidences on Rt. 27. That would be at least twice during one day. The excuse is he is doing projects for the good of the neighborhood and to beautify his property, but the projects he has been working on is at the detriment of having vehicles stored on the property for months at a time. The most recent project he did, the equipment was there for over 40 days. He is putting them there so he can claim he is doing yard but in many cases they are there because he doesn't want to move them, because there has been this on-going feud between neighbors. There has been some swearing and threatening and that has been part of the reason for some police activity. We have a petition that was signed by over 20 people as well as 9 abutters. The people who signed this were pleased the town took action after years of abuse. The abuse is noise disturbing, and a matter of Mr. Roy acting first and asking later for forgiveness, not approval.

D. Durazzani read the petition into record.

D. Durazzani showed photos of Mr. Roy backing in his dump truck into his property with nothing on it, as well as storage of the vehicles, and a video with sound of what the neighbors witness.

D. Durazzani: The issue with DES was Mr. Roy was doing work to move his driveway and continue another project. During that he apparently filled in wetlands and that was causing drainage issues with my in-laws driveway and front lawn. When DES came out they found

violation and required him to hire the right environmental scientists to reconfigure the front yard. The retaining wall he described and building up all the extra dirt was a result of DES. The retaining wall wasn't being created before. He was required to do that because he had been filling that piece of property in.

C. Pearson: Bring us to today. We are here to address an appeal that was submitted by our Code Enforcement Officer on September 5.

D. Durazzani: I think the today is that we would like the Board to uphold the actions of the Code Enforcement Officer.

C. Pearson: Is this something that is on-going to this day, where he doesn't have a project going on and there is equipment today?

D. Durazzani: There is none today because he knew he was coming today. Part of what I believe was the cease and desist was the fact that the address is listed in the yellow pages. He has been using the property to run the business and put equipment there for years. We just want the Board to uphold the zoning ordinances and laws of the town. On Wednesday, my in-laws submitted to the town the petition, and on Thursday, when Mr. Roy understood there had been a petition, he had gone to one of the neighbors, Mrs. Hathoway, and confronted her. She felt threatened and harassed and slammed the door on him. It seems odd as to why he would be confronting the abutters. Abutters should not feel threatened by signing something that is to their best interest.

Randall Hathoway (30 Franklin Street, Concord): I grew up at 168 Whitehall Road. I am in the construction trade myself and understand everyone takes equipment home to do things around their house. I visited my mom probably 10 times in the last couple of years and every time I visited there has been a piece of equipment in that yard. He has done a wonderful job with the house, but I always see construction equipment. Once you make that a commercial site, it opens the door for everything else. There are houses for sale in the neighborhood. One that is very close to his property and one across the street. If this is allowed, do we buy the place across the street and allow that to be commercial? I question the home office situation with the fact that if there is a location in Bow. I don't understand why the bookkeeping isn't done in Bow, as well as the address. I was very upset he went to my mother's house to confront her.

Mary Hathoway (168 Whitehall Road): I was upset he came to my house. It really bothered me.

R. Duhaime: You don't like the equipment coming and going?

M. Hathoway: No. I am also concerned with the children that take the bus and the high school kids that have to walk on the road.

Charlene Colpas (previous resident at 164 Whitehall Road, currently a Manchester resident): I lived across from this situation from 2006, and I recently moved into Manchester. This has been an on-going problem with John, his wife, and son-in-law. Within the first two weeks I moved into my house, John was already approaching us wanting us to turn against the Roy's. I have had my share of problems when I was living across from him, calling the town, and the Fire and

Police Departments, because we cut a limb off our tree in our front yard. This has been an on-going problem with him in the neighborhood. The years I lived across from Roy's they have had equipment there, but working on their own property. Never was there any type of business type transaction that I ever witnessed being in the neighborhood. He would unload equipment, do work on his yard, remove the equipment. I think there is bad blood and has been for years. I think this is more of not getting along. John has tried to start trouble with us. It bothers me that they are pulling the Roy's in when they are trying to improve their property and it is too bad that you can't have a piece of equipment on your property when you are in the trade and do your own work.

R. Duhaime: The property has improved over time?

C. Colpas: Yes. They have done a good job on it.

John Perachhi: Charlene and Gary Roy are good friends.

Jay Murphy (5 Laurel Road): I abut his property off of Laurel Road. This has become personal. That is their problem. My concern for Lisa Sprague, the owner of 5 Laurel Road, is that she maintains her property well, it is a residential area, and it is not fit for commercial use. I don't care that the man makes money. I am concerned about her property and what we have done with it. In my opinion, if it is zoned residential it should stay residential.

C. Pearson: Are you seeing work being done?

J. Murphy: I hear things being done, but it is through the woods. My point was if you allow it to happen now, it will keep happening and it won't just be him. You have children in that neighborhood and school buses. It is a busy road. My concern is the property, the kids, and the value of the properties.

Ron Richards (3 Laurel Road): All of my property abuts the Roy property in the rear. I walk the property line a lot in the back of the woods and over the years I have seen a lot of equipment and construction materials. My property is open because of a drainage pond that goes to the side and I am out early in the morning walking my dog and I hear the backing up of the trucks. There is a sander there on a tri-pod during the winter and sometimes there are excavators and dump trucks. I don't know if he is using them for his property or not and that is not my concern. I only have concerns with my property valuation if you turn this into commercial. I think what is happening should stand as far as the cease and desist order because it is a residential neighborhood. We all keep our properties well-groomed and I don't see that property well-groomed in the back. When he backs dump trucks up to the back, I am not saying he does it all the time, but it is annoying to hear and see it. He stores it in the back close to my property.

Close to abutters.

Open public hearing.

No public comments.

Close public hearing.

C. Pearson: I want to concentrate on the here and now and what we are trying to accomplish from the town and the applicant's side. We have a cease and desist that is storage of construction vehicles. Matt, how do you determine storage versus working on a unit and how do you enforce that?

M. Lavoie: My impression would be storage overnight.

C. Pearson: How do you determine the difference between that and a contractor going to his house and doing work?

M. Lavoie: You can't.

C. Pearson: So he could effectively hire himself. How would you determine the difference?

M. Lavoie: He has agreed to change the address of his business. It is a matter of if he is or is not working which is a nightmare for me to enforce. I understand both aspects of this but that is the matter at hand. Will the Board allow him to do work in his own yard with his own equipment.

C. Pearson: You can't stop that. We can address the cease and desist of his occupation address being at 163 Whitehall Road which needs to be addressed in Hooksett on a larger scale. Mr. Hathoway said he doesn't understand why he would store something one place and have an address someplace else. This happens a lot. I can understand the heated history, but from your perspective, what are you looking to get? We can only act on the cease and desist. We can't give you anything more than that. We are acting on an appeal and we are not going to put in language to keep this from further happening. I don't know how we do that.

J. McPhee: I think the way you do that would be to say that he should enjoy the same rights as any other homeowner who is doing a project on their property. When the work is being done the equipment can stay on-site.

C. Pearson: We will act on the appeal in the positive or negative. Based on this letter it goes down to the address accompaniment with maybe some excessive equipment storage.

M. Lavoie: I agree with that.

C. Pearson: I don't know how we give either party what they are looking to get.

R. Duhaime: I would like to accuse myself from this vote. I drive a dump truck for a living. I make sure my neighbors don't have any issues and am very fortunate for the neighbors I have. I cannot vote on this and find it very unfortunate what I see in front of me. That is why there are zoning laws. I have been on this Board for a long time and have never had anything like this come in front of us. I am disappointed to see it.

R. Duhaime stepped down.

G. Roy: We are not looking to store equipment long term. We would like to keep the physical address there. It is a home office where we do our paperwork. We don't have customers or meetings there. In hearing what the abutters have said, I understand and sympathize with their concerns. I would not want to live in a construction zone either. However, we are not looking to park the equipment there long term or turn it into a contractor yard. What I am being told is when I do work on my yard I can't even keep the equipment there overnight. One of the concerns they kept addressing was the traffic and the safety of the children. I have a 12 and 13 year old and if there was any issue with the safety of the children I would be on top of that. I wouldn't want any children to be in jeopardy. I have been a coach for quite a few of the Hooksett sports for many years and have been involved in the Hooksett community and the last thing I would want to see is a kid getting hurt. This is my house, where I live, and I was told I can't keep the equipment overnight. If I have to move the equipment in and out every night, am I not exasperating the situation they are eluding to? If you can see loads of dirt and get an explanation of what I am doing, it is common sense. It is not a case where I am in and out of there 3 or 4 times a week with equipment. When I was moving 6' of soil and rocks yes, there were a lot of dump trucks going back and forth, but the large part of that work is done. The work coming up next is the excavator on site moving existing dirt around with some stone and drainage work. I just want to have piece of mind knowing if I want to put 8 pallets of retaining wall block in my yard, I won't get grief when I bring in an excavator to move the front of my yard and shape it the way I would like. I am looking for clarification on what is considered storage versus me being allowed to work on my property.

C. Pearson: I can't argue that. Matt, this goes back to your letter and what we can actually act on. Maybe the two things should not go together, but I can see why they did in this instance.

M. Lavoie: Legal counsel did help me draft this letter.

D. Pare: Can you put a time frame as to when you are going to be done?

C. Pearson: That is an arbitrary thing because he could want to do something down the road.

D. Pare: I am talking about what he has in his yard now.

C. Pearson: You have nothing in your yard now, correct?

G. Roy: No and there hasn't been for several weeks. I am just eluding to the projects I still would like to do.

C. Pearson: Matt, does your letter address any storage as it pertains to him doing work on his property?

M. Lavoie: Not directly. It is only about storage of his equipment pertaining to the business.

C. Pearson: The only way to monitor that is if you see the equipment?

M. Lavoie: If I see two dump trucks in his yard overnight, I would say he is storing equipment for his business.

C. Pearson: Is the cease and desist specifically to his business address being 163 Whitehall Road?

M. Lavoie: Yes.

C. Pearson: Which you have agreed to change.

G. Roy: It is common knowledge a lot of people in town have businesses listed at residential addresses that are non-conforming as an office.

C. Pearson: Matt, if we grant the appeal all we are granting is his address being 163 Whitehall Road?

M. Lavoie: That is incorrect. Indirectly, he could have an architects office for drainage if he was an engineer, to design something. In that sense, the July letter referenced that for that reason, but it also said he could only store one commercial vehicle there overnight.

D. Pare: Where is that defined?

M. Lavoie: This is according to Legal Counsel.

P. Denbow: Matt, are you referencing in the July letter that you are saying the office uses would be okay or no?

M. Lavoie: It depends on the use. If you open the zoning book it lists permitted uses. Anything that is not listed is not permitted.

C. Pearson: If we grant the appeal we are or are not granting his address?

M. Lavoie: You would be granting his address and you would be granting the use of the equipment for personal purposes on that property, but storage of that related equipment to his business would still be prohibited.

C. Pearson: Even if we grant the appeal, he can not store equipment?

M. Lavoie: The equipment used for personal use would be allowed to be stored overnight for the reason that you are granting the address at that location.

C. Pearson: If we don't grant it, how do we preclude him from keeping a mini-excavator overnight to do work around his house?

M. Lavoie: You really can't. It would be the same as someone renting a bobcat.

C. Pearson: I am trying to get the black and white angle?

M. Lavoie: The black and white is Premium Builders owns that equipment. Is he using that equipment on other job sites, what kind of equipment is it, and is he using it in support of that business.

P. Denbow: When you issued these letters what did that get you or get us from a standpoint of enforcement? What was the purpose of that? If things stay the way they are now what are we looking at and if we grant the appeal what are we looking at? The two scenarios.

M. Lavoie: I can't speak for Mr. Roy, but if you didn't grant the appeal, from the address standpoint, I would imagine he would have to get a post office box and that would be his address. If there were further violations, the town may take him to court over it and it is laid out in that way. The opposite side is, if things continue as they are, you would be granting him to use his home address for the purpose of the business.

C. Pearson: But he still can't store equipment?

M. Lavoie: He can't store all of the equipment he has listed but is he able to do work in his own yard being that the business owns that equipment?

C. Pearson: In either case he can whether we grant or don't grant.

M. Lavoie: That is up to the Board to decide.

R. Bairam: He just can't store it there.

C. Pearson: What is storing it versus working on his property? It is unenforceable.

R. Bairam: A day or two is reasonable.

D. Pare: If his neighbor decides to put a pool in next summer, there will be equipment there for 60 days.

R. Bairam: Whoever is putting the pool in doesn't have that as a business address. That is a sticking point.

C. Pearson: He could effectively have his business address there if it was something like a home architect, like the example you gave?

P. Denbow: An office occupancy is an office occupancy.

M. Lavoie: My take on the home occupation in Article 5 is it is a place of business where people are going to receive goods or services. Hair salons, day cares, architects, lawyers, and doctors are allowed as a home business. People are going to that location to receive services. In the construction world it is the opposite. You are only at home to pay the bills and everything else it

outside. Any of these articles under home occupation don't address that at all. If it is not written here it is not legal, so where do you draw the line.

P. Denbow: You are saying these terms are not defined. It is more of a judgment call by you?

C. Pearson: It is almost an unenforceable judgment call.

M. Lavoie: Exactly.

C. Pearson: I don't know what a cease and desist buys us or what taking it away buys us.

M. Lavoie: I would say the address is the main issue now. If he is found to be in violation of anything else down the road he can come back and appeal it. The address would not be part of it if you were to grant that tonight.

C. Pearson: Matt, is there any way to readdress this cease and desist with more of a pin point on what we can and cannot do. You are saying your cease and desist is not specific to the address.

M; Lavoie: It isn't because it references a previous letter. He was in violation by having more than one commercial vehicle at his property. It is making a single cease and desist out of two.

C. Pearson: Where does it state you can't have more than one?

M. Lavoie: Article 5 says that not more than one commercial vehicle in connection with such home occupation shall be stored on the premises. All commercial vehicle parking areas shall be effectively screened from abutting and facing residential property by either a 4' solid fence or planting of evergreens, etc. That is under an accepted home occupation. This not being an accepted home occupation, we would refer back to the address as the main issue and calling it a home occupation, generically.

C. Pearson: If we give him a cease and desist on his address, and that is no longer his commercial address, what is to keep him from putting several pieces of equipment on his property, since he no longer has an address there? You almost exacerbate the situation, because what is he in violation of if he is working?

M. Lavoie: That is why we are here.

C. Pearson: I don't know if I can think this through right now.

M. Simoneau: Is there a way to table it?

M. Lavoie: If you want to table it I could have Legal Counsel here for the next meeting to explain it better.

C. Pearson: We could have a closed meeting, to start, with Legal Counsel.

P. Denbow: Maybe he could define some of the terms from a legal standpoint.

C. Pearson: Sometimes those meetings add confusion, but I don't know what else to do at this point because there are so many variables.

M. Lavoie: There is always a “what if” scenario.

M. Simoneau: I would like to table it and get that advice.

M. Lavoie: The only problem is we are missing quite a few people here tonight. We will have to go over this whole thing for them.

C. Pearson: We can get them up to speed quickly.

P. Denbow: A lot of the history is not pertinent to today.

C. Pearson: I understand there is a lot of history, but it is really about what a cease and desist does, what does it open up, and what does a grant of appeal do and what does that open up. I think legal would help define that for us.

R. Bairam: I think we should hear from Legal Counsel.

C. Pearson: If we are going to hear from legal, we should table this until the next meeting. We can have a closed session from 6:00pm-6:30pm and then open it back up.

R. Bairam motioned to continue this to the November 18, 2015 Zoning Board of Adjustment meeting with a request to meet with Legal Counsel at 6:00pm. Seconded by M. Simoneau. Motion carried unanimously.

R. Duhaime returned.

R. Bairam motioned to adjourn. Seconded by R. Duhaime. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 9:02 pm.

Respectfully submitted by,

AnnMarie White
Recording Clerk