

Applicant: Brian Daigle
128 Winnicutt Road

Members Present: John Dold, Neil Rowe, Mike Smith, David Short and Kirk Scamman

The Board of Adjustment held a Public Hearing on Tuesday, August 11, 2009 at 7:30PM in the Municipal Center to consider the request of a Special Exception to the terms of Section 2.1.27 of the Zoning Ordinance. Applicant asks that said terms be waived to permit a home occupation.

Secretary Kirk Scamman read the notice and the application.

Chairman Dold asked the applicant to present his case. Brian Daigle introduced himself and said Attorney John Simmons will be speaking on his behalf tonight.

Attorney Simmons stated the Daigles moved into the property in December of 2007. It was a distressed property and needed a lot of work. Attorney Simmons added the Daigles now have a lovely home that is an asset to the community. Attorney Simmons stated the applicant seeks a Special Exception for a home occupation. Mr. Daigle has a landscaping business that entails bringing certain vehicles and equipment onto the property. It is small scale and non-intrusive and meets all the requirements of the ordinance. Attorney Simmons stated the notice of the meeting states that his client seeks "that said terms be waived to permit a home occupation." They are not seeking a waiver, they are asking for an allowance of this under the permitted use of Special Exception and home occupation.

Attorney Simmons reviewed the standards for a home occupation. He explained this is an owner-operated business. It's clearly incidental to the main purpose. The neighborhood has several businesses of this kind, so in terms of its effect on the characteristics of the neighborhood, what Mr. Daigle is doing fits right in with other landowners in the neighborhood who have similar businesses. He added there is really no change to the character of the neighborhood. Mr. Daigle would eventually like to construct a building on the property to house his equipment.

Attorney Simmons stated with regard to 17.8.2 of the Zoning Ordinance, there are six criteria to be met. The first mentions standards provided by the ordinance for the particular use permitted by Special Exception which has already been discussed. The second is no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. Attorney Simmons stated that wouldn't apply, so the applicant meets that. The third criteria is not applicable in the applicant's situation. The fourth is there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. Attorney Simmons stated by definition there is some traffic increase, but the ordinance mentions substantial increase. The fifth is that there would be no excessive demand on municipal services. This business isn't

one that creates those types of increased demands on municipal services. Lastly, there will be no significant increase of storm water runoff onto adjacent property or streets. Attorney Simmons stated there will be nothing done to the lot itself that would cause that to occur. Attorney Simmons said what the applicant is proposing is entirely what the ordinance anticipates property owners would do.

Kirk Scamman asked how many trucks are anticipated with the business. Mr. Daigle responded he currently has three dump trucks, which are a Ford F350, an Isuzu one-ton dump truck, an older Chevy C60 which is a slightly larger truck and his private pickup truck. Kirk Scamman asked how many employees he has or plans to have in the future. Mr. Daigle responded that he currently has four employees and work will dictate what he will need in the future for staffing requirements. He added at roughly 7:30AM they head out with the trucks, mow for the day, and come back anywhere between 4:00PM to 6:00PM. Chairman Dold asked where he would park the vehicles. Mr. Daigle responded behind the house. There is a dirt access road that goes behind the house and the trucks are parked abutting the neighbors to the right of their property. He added the vehicles cannot be seen from the road. Neil Rowe asked Mr. Daigle about his four employees. Mr. Daigle responded his brother works for him occasionally, and he has three other employees that work for him on a full-time basis. Neil Rowe asked the applicant if he was aware that the definition of a home occupation states he cannot employ more than two persons outside the immediate family. Attorney Simmons responded the ordinance is designed for what's occurring on the property. He added that home occupations are designed to make sure that uses don't expand beyond a certain threshold. He said he doesn't think it should be read to say that off the premises no more than two people can work for someone. Neil Rowe stated if the business grew, at some point it would no longer be a home occupation, it would be more commercial. Neil Rowe added the two employees outside of the immediate family criteria is an attempt to maintain it as a small home occupation. Dave Short asked if he was limited to two employees coming on the property, presently there are three vehicles, so that means only two vehicles would be leaving the property. He asked if the fleet grows, how will the two permissible employees handle getting the fleet to the crews. Attorney Simmons responded not every piece of equipment needs to be used every day. He added the ordinance does not, in any way, attempt to address that Mr. Daigle can leave with one piece of equipment, come back later with his pickup truck or get dropped off and pull another vehicle off the property. Attorney Simmons stated he thought Mr. Daigle would be willing to designate, for the Code Enforcement Officer, which two employees at any given time are authorized on the property. Mr. Daigle explained the two trucks they use on a daily basis are the Ford dump and the Cab-over. The Chevy C60 is a larger truck and is designed for hauling heavier materials, such as stone dust and gravel and is not on the road every day. Mr. Daigle stated this is not a final solution for his business. He added in the next couple of years, the business will probably outgrow its ability to operate out of his house.

Mike Smith asked if there was a lot of activity at the site in terms of loading and unloading equipment, supplies and inventory. Mr. Daigle responded no, he has a 20' trailer that stays hooked up to the truck and the mowers stay on it. Mr. Daigle added he

is not licensed with the State to do fertilizing. He stated he does primarily condominium maintenance and they are all in three-year contracts.

Neil Rowe asked what the total finished square footage is of his home. Mr. Daigle responded it is roughly 1500 to 1600 square feet. Presently, he uses an 8ø by 10ø room as an office. Neil Rowe stated that will limit his garage or shed to only 320 square feet since he can utilize an area less than 25% of the total area of finished floor space of the dwelling including the basement. David Short suggested that maybe this case is a Planning Board issue.

Attorney Simmons stated Mr. Daigle eventually plans to finish off the driveway so that mud won't be tracked out. Improvements to come include more landscaping, finishing the driveway and a minimal amount of fencing. By the middle to end of September, Mr. Daigle anticipates being able to pave the driveway along the side of the house and out back to alleviate mud being tracked onto the street.

Chairman Dold asked if anyone would like to speak in favor of or in opposition to the applicant. David Jordan, 126 Winnicutt Road, stated that Mr. Daigle has been a great neighbor, and has been very helpful and considerate with construction on his home. Mr. Jordan added that Mr. Daigle's house was a fixer-upper and he has done a really good job with it. He added he is on his way to making the neighborhood better and they are very happy to have him as a neighbor. Mr. Jordan stated he is a stone's throw away from him and he has no complaints. Chairman Dold asked Mr. Jordan if the trucks have been an issue for him. Mr. Jordan responded that Winnicutt Road has increased traffic over the last several years, but he doesn't notice a big difference. He does see a truck pulling in or out during the course of a day but the noise issue isn't a factor and he doesn't see any significant traffic increase. Mr. Jordan added that his main concern about Winnicutt Road is the amount of speeding that occurs.

Jennie Jordan, 126 Winnicutt Road, stated she has lived in her home for eighteen years. Mr. Daigle is the third owner of his home during that time. Mrs. Jordan added that Mr. Daigle is very considerate and there is no problem with noise or trucks. She stated there are properties on Winnicutt Road with oil and propane tanks rotting in the ground and that concerns her more.

John Golter, 127 Winnicutt Road, stated they have resided there for 25 years. Their property is located directly across the road from the Daigle's property. He stated they are opposed to the application for the following concerns and reasons. The proposed use does not meet the definition of home occupation. Throughout Mr. Daigle's use of the property, commercial trucks and equipment have regularly used the property for ingress and egress, as well as parking. Mr. Golter stated all vehicles are stored in the open and he has observed maintenance of the commercial vehicles being done in the open as well. He added the business is not conducted entirely within a dwelling or accessory building as required by the definition of a home occupation. Mr. Golter said the use of the property has changed for the worse, both the character of the Daigle's property and the neighborhood. Mr. Golter mentioned the dirt road enabling Mr. Daigle to get his trucks

and equipment to the rear of his property. He added they have been subjected to a mud and dirt trail that gets dragged across the entrance to their property. With mud season passed, plumes of dust are being generated from the Daigle's property. Mr. Golter stated he feels the applicant has failed to make reasonable attempts to comply with existing ordinances. He added that the proposed use is not at all close to meeting the definition of "Home Occupation" and feels that the Special Exception must be denied. Mr. Golter presented photos of the road and driveway for the case file. Attorney Simmons stated perhaps in a drier year, the mud would be less of an issue. He added once the driveway is paved, that issue would go away. With regard to the vehicles being out in the open, Attorney Simmons stated his client did not want to spend the money and then face concerns if the Special Exception was not approved.

Attorney Simmons said this isn't a zero-tolerance ordinance. The ordinance anticipates there is going to be some effect on a neighborhood. We are here to discuss what reasonable effects there will be and how to minimize any negative impacts that he is having or might have.

Neil Rowe asked the applicant if he were to build a building that would shield the neighbor from seeing the equipment and that would allow him to perform maintenance on the vehicles and equipment, what would be the appropriate time period to build the building. Mr. Daigle responded depending upon what type of building he puts up, it could cost anywhere from \$5,000 to \$50,000 so that would be a consideration in the time period. With respect to trying to put a buffer up to hide some of the equipment, Mr. Daigle stated he is in the process of generating a landscape plan that will encompass the next two years of what they will be doing on site.

Orville Kellar, 129 Winnicutt Road, stated on the corner of Merles Lane there are two school bus stops every day for school and there is a daycare center about three houses down with up to thirty cars coming and going. Usually in the morning and the evening there are up to ten vehicles on the Daigle's property. Mr. Kellar added there are four workers and usually a maintenance person to maintain the equipment. Every morning and afternoon during the school year there is a line of people picking up their children from the bus. Mr. Kellar stated there is a considerable amount of work going on there and vehicles at all hours. The vehicles are not always parked out back, they are also parked out front by the street. He stated his biggest concern is the children at the bus stop. He has seen the trucks accelerate out of the yard. He also stated that the buffers between properties are not on Mr. Daigle's property, but are actually on his neighbors' properties.

Leonor Kellar, 129 Winnicutt Road, stated the area used to be very peaceful but now it is very noisy. She added the trucks speed and there is no consideration for the neighbors.

Paul Deschaine, Town Administrator, presented aerial views of the property for the Board to review.

Terry Barnes, Code Enforcement Officer, stated Mr. Daigle has multiple pieces of equipment on the property. He advised the Board to make a condition that operations cease at a certain time. Mr. Barnes mentioned the last time he talked to Mr. Daigle, they were power washing the lawnmowers on the front lawn and everything that was washed off goes downstream. Mr. Barnes stated that he has had multiple complaints about the property. Mr. Barnes stated it is up to the Board to determine whether it is a home occupation or a business.

Chairman Dold asked Mr. Daigle exactly what he has for equipment on the property. Mr. Daigle responded he has three trucks, one trailer that holds four lawnmowers, one bobcat and a tractor that he rents from MB Tractor but is not on the property all the time. He also has a pickup truck that is his personal vehicle.

Leonor Kellar, 129 Winnicutt Road, stated she sometimes sees eight people on the property. She added it is very dangerous with the bus stop in the neighborhood.

David Jordan, 126 Winnicutt Road, said the issue of traffic, children and safety is ludicrous because there is so much traffic and speeding on Winnicutt Road. He added he has seen Mr. Daigle's trucks when they take off and they are doing the speed limit. Mr. Jordan stated he doesn't see where Mr. Daigle is an issue as far as public safety.

Attorney Simmons, in referring to the comment about eight people on the front lawn, with all the renovations made to the home, it could possibly have been one of the crews working on the home. With regard to children and traffic, it was said tonight that there is a daycare in the vicinity that has about thirty vehicles on a daily basis.

Chairman Dold stated Dave Short suggested that maybe this is a Planning Board issue. Kirk Scamman said he thinks in ways it becomes a Planning Board issue because of the size of the project, the number of employees, and the square footage of the building the applicant wants to build. Kirk Scamman stated as presented tonight, he does not believe it meets the home occupation standards. Neil Rowe stated he doesn't know what the Planning Board can do to change the definition of a home occupation unless it is voted on in public forum. Attorney Simmons stated that the Planning Board is not the proper forum. The Planning Board site plan review trigger is defined in the site plan review regulations and this would not fall into it.

Chairman Dold stated in order to grant a Special Exception for a home occupation the following standards must be met: 1) The standards provided by this ordinance for the particular use permitted by Special Exception. All Board members agreed the standards have not been met. 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. All Board members agreed there is no evidence of a hazard to the public or adjacent property. 3) No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings or other structures, parking area, access ways, odor, smoke, gas, dust, other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials. All Board members

agreed there is a detriment to property values based on the existing conditions and potential large structures. 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. All Board members agreed there would be no traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. 5) No excessive demand on municipal services including, but not limited to, water, sewer, waste water, police and fire protection and schools. All Board members agreed there would be no excessive demand. 6) No significant increase in storm water runoff onto adjacent property or streets. Mike Smith, David Short and Kirk Scamman agreed there would be no significant increase in storm water runoff. Chairman Dold and Neil Rowe disagreed because there is evidence of heavy tracking of dirt onto Winnicutt Road although the applicant said he would attempt to fix it within a reasonable time, but as it currently exists, they believe there is a significant increase in storm water runoff onto adjacent property or streets.

Kirk Scamman motioned that the Special Exception for Case # 538 be denied due to the failure to meet all the standards in 17.8.2. David Short seconded the motion with all Board members voting in favor. Chairman Dold advised the applicants of the thirty-day appeal period and called Case # 538 closed.

Respectfully,

 Norma Corrow, ZBA Clerk

The tape of the meeting is available at the Town Office Building for review during regular business hours.