

Applicant: Richard Heath  
42 High Street

Members Present: John Dold, Neil Rowe, Arol Charbonneau, Bruce Barker and Kirk Scamman

Also Present: Mike Smith and Jeff Karam, Alternates

The Board of Adjustment held a Public Hearing on Tuesday, December 8, 2009, at 7:30PM (continued from Tuesday, October 13, 2009) in the Municipal Center to consider the request of an Appeal From an Administrative Decision under the terms of Article 2.1.70 Section II of the Zoning Ordinance to permit a clear span fabric structure.

Secretary Arol Charbonneau read the notice. Chairman Dold stated, for the record, that today's site walk of the property was conducted at 3:00PM, not 3:30PM. Secretary Arol Charbonneau then read the minutes of the October 13, 2009 meeting.

Chairman Dold asked Mr. Heath to explain to the Board and for the record what he has done since October 13, 2009 on the property. Mr. Heath stated he has extended the fence from where it ended towards Ralph Scamman's property, over to his house, and put a gate in. He added he also extended it two sections further down the Scamman's side of the property. He added he also took down twenty plus trees, flattened it out, and organized the pool on the back side of the garage so it will be neater and he can install it in the spring.

Chairman Dold asked Mr. Heath what is kept at the off-site rental spot. Mr. Heath responded that's where he was keeping his equipment but he no longer rents the spot. He added he kept the mowers there but couldn't keep the trailers there. He now keeps three mowers under the back deck of his property and has others in a storage unit that he is renting.

Neil Rowe stated since 2006, when the Board granted the home occupation for the lawn care equipment, today there appears to be, in addition to the lawn care and snowplowing equipment, a lot of welding equipment. Mr. Heath responded he purchased a trailer to store the welding equipment, which usually stays on-site when he is welding and is only on the property between welding jobs. Neil Rowe asked if that is now an expansion of his home occupation. Mr. Heath responded he uses the welding equipment to fix his lawn care equipment also. Neil Rowe said during today's site walk there were snowplows, dump trucks and other items that he is assuming were stored on the rental property. Mr. Heath responded he couldn't use the rental property for the trucks and trailers, they were on the property all this time. Neil Rowe stated Mr. Heath has been out of compliance on the original home occupation, which was for just the mowing equipment, for a while. Mr. Heath responded they are all behind the fence and not visible from the road. He added when the gate is closed, the only things visible are the tops of the trailers and trucks.

Neil Rowe stated in the original minutes from 2006, he thought everything would be confined to the 24'x 20' original garage. Chairman Dold asked Mr. Heath how many people he

employs, to which Mr. Heath responded one right now and one or two in the summer depending on the workload. Chairman Dold asked if the clear span fabric structure is outside the scope of the 25% finished floor space. Bruce Barker said it depends on how it's going to be used. If Mr. Heath is using it solely for personal items then it is not part of the business. If he is going to be storing some business and personal items, then whatever he is using for the business counts towards the 25%. Mr. Heath stated he wants to put personal items from the garage into the tent to open up space in the garage for his lawn care equipment. Neil Rowe stated according to the minutes from the October 13, 2009 meeting, Mr. Heath is allowed 366 square feet for the home occupation. The garage is 24' x 20' which is 480 square feet and is over the 25% allowed. Arol Charbonneau then read from the minutes of the October 13, 2009 meeting, "Chairman Dold stated, based on the finished floor space of the house, Mr. Heath is allowed 366 square feet for the home occupation." Chairman Dold said the minutes from 2006 state there was discussion that Mr. Heath will be using the 24' x 20' garage for the business, with the condition that there will be no unsightly outdoor storage of equipment and the homeowner has until September 1, 2006 to provide whatever fencing necessary to conceal items such that the Code Enforcement Officer is satisfied. Chairman Dold said the minutes state that the business area shall be an area less than 25% of the total floor area of the finished floor space, but added that the Board did not put a square footage on it. Chairman Dold then read from the 2006 minutes, "Chairman Rowe asked the applicant to present his case. Richard Heath stated he wants to park his lawn care equipment on his property. Chairman Rowe asked if he is the only operator in the business. Mr. Heath responded his wife works for him and occasionally he has a part-time person working for him. The office work is done in the house and the maintenance is done in the garage. Everything else is off-site. Mr. Heath added he has had the business for the past two summer seasons. He also does plowing during the winter months. Mr. Heath stated the garage is 20' by 24' adding it will stay as is." Neil Rowe said in the past, the Board was pretty consistent about holding to the 25% square footage, even though it doesn't mention the 366 square feet in the minutes from 2006. He added when Mr. Heath came before the Board in 2006, the only equipment he was going to house were three pieces of lawn equipment and a ditch witch. Neil Rowe then read from the 2006 minutes, "Joe Derwiecki asked how many pieces of equipment he has behind the fence. Mr. Heath responded he has two lawn mowers, a ditch witch and a trailer. He added there will be nothing in view from the road or from his neighbors." Neil Rowe stated at that time it was much smaller and he thinks two lawn mowers, a ditch witch and a trailer would have left a lot of space vacant.

Chairman Dold stated during the site walk today, they saw a ditch witch, three mowers under the deck, two one-ton trucks with plows, a Ford F-250, one trailer behind the Ford F-250 and two trailers that are leaving the property, which are the lawn care trailer and the box trailer holding the welding equipment. Chairman Dold asked Mr. Heath how many trucks he had in 2006 to which Mr. Heath responded at least two. Chairman Dold said the difference between then and now is one more mower, one more truck and a welding box trailer. Terry Barnes, Code Enforcement Officer, presented photos taken today for the case file. Tammy Heath said they need to be able to move their personal vehicles from the garage into the clear span fabric structure so they can put their landscaping equipment in the garage. She asked if they have to come before the Board every time they add a new truck or a new piece of equipment. Mrs. Heath stated in the last few years she feels they have really improved the property. They put the fence up, have put a lot of money into the house and they have gotten lots of compliments from

their neighbors. She added it is still a work in progress and they are trying to make it better. Chairman Dold asked Mrs. Heath how much more they can grow. Mrs. Heath responded they had different resources they were using to store their equipment that they were told they can't use anymore. She added they don't plan on expanding, they are very comfortable where they are at. Mrs. Heath stated a lot of the stuff on the property are personal items and not part of the business. She said the welding trailer isn't normally on the property unless it is between jobs and is being replenished with supplies.

Mike Smith said the definition of a home occupation states any individual business or profession conducted entirely within a dwelling or accessory building. He added that everything on the property related to the business is, more or less, outside the dwelling. He stated he feels it goes against what the original permit was for. Mike Smith added that the nature of the business has changed overall and that the original home occupation permit was for a different type of business.

Chairman Dold asked if anyone would like to speak in favor of or in opposition to the applicant. Julius Sarosiek, 39 High Street, stated he has lived in Stratham for approximately five or six years. Mr. Sarosiek said Mr. Heath's property has improved a lot in the past year. Mr. Heath has done a lot of work to the house and has put the fence up. He added he has no problems with what Mr. Heath is doing.

Terry Barnes, Code Enforcement Officer, stated this property is residential, not commercial and with what's going on there, it is more commercial than residential. Mr. Barnes said there is a backhoe sitting up on blocks that has been there for quite a while. He said that Mr. Heath told him the backhoe would be gone by January. Mr. Barnes said the Board may want to give Mr. Heath more time to put up the fabric structure and to come into compliance. Kirk Scamman felt Mr. Heath is using the fabric structure for personal use and it should be approved.

Neil Rowe said in 2006 one of the conditions was that there would be no unsightly outside storage of equipment and the homeowner has until September 1, 2006, to provide whatever fencing is necessary to conceal items such that the Code Enforcement Officer is satisfied. Neil Rowe then asked Mr. Barnes, if the gate were closed, with the new sections of fence, would he be satisfied with the concealment of items and the outside storage of equipment or is there more that should be done. Mr. Barnes responded no, because the business has grown.

Chairman Dold stated an Appeal From an Administrative Decision from the Building Inspector or Code Enforcement Officer must be filed within seven days of the order. The Code Enforcement Officer's letter was dated September 14, 2009 and the ZBA application was received on September 29, 2009, which falls outside of the seven days allowed. Bruce Barker said by already hearing the case, essentially they have waived it. Kirk Scamman motioned to waive the seven-day filing period. Bruce Barker seconded, with all Board members voting in favor.

Kirk Scamman motioned to grant the appeal of Richard Heath, 42 High Street, Tax Map 17, Lot 12.1, to allow the building of a 22' x 24' x 12' high clear span fabric structure for personal use and; therefore, it is not considered an expansion of the business. Bruce Barker

seconded the motion, with all Board members voting in favor. Chairman Dold advised the applicant of the thirty-day appeal period and called Case # 543 closed.

Respectfully,

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Norma Corrow, ZBA Clerk

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