

BOARD OF ADJUSTMENT

OCTOBER 1, 2019

MEMORIAL BUILDING

7:00 P.M.

The following are to be considered draft minutes until approved by the Board.

The meeting was called to order at 7:00 p.m. Zoning Board members introduced themselves. Board.

ZBA members present: Chair, Susan Chiarella, Bryan O'Day, Justin Hastings, Cody Patten, Peter Abair and Alternate, Tanner Jacques.

Others present: Zoning Coordinator, Whit Smith; Selectman, George McCusker, Jason Patten, Mark Laughlin, Attorney, Stephen Girdwood, Valley News Correspondent, Jim Kenyan, Roxanne Smith, Wayne Smith, Scott Cote, and Nick Cote. Janet announced a tape would be running for transcription purposes.

Minutes of September 3, 2019: Motion made by Bryan to accept the minutes as written, seconded by Justin and unanimously approved.

Susan reported Alison and Kurt Conlon, via e-mail, have requested a continuation of their Special Exception Hearing. They are not quite ready with their re-design. Bryan made a motion to continue the Conlon hearing to November 5th. The motion was seconded by Justin and unanimously approved. Susan reported the Rules of Procedure do not address how many times an applicant can request a continuation. She suggested the Board may want to consider adding a limit at some time. The motion passed unanimously.

Request for Special Exception; Scott & Priscilla Cote, property owners, Nick Cote business operator to process firewood on site located at 2274 Bog Road. The Board reviewed the location of the subject property. Susan confirmed that abutters notices and legal notices had been sent. The Board was ready to move forward with the application. The hearing was opened at 7:12 p.m. Scott Cote, Nick's father and the property owner stated that he gives Nick his permission and support to operate a business at the property. Nick also lives at the property. Nick stated that he does firewood, tree work, logging and plowing. He has a tractor and a chipper and stump grinder. The chipper and stump grinder are usually operated off the property at other jobs. Wood processing with chainsaw(s) and a wood splitter happens on the property. It is not 7 days a week, or "hundreds of hours a day" He cuts wood when he doesn't have tree work somewhere else. Mark Laughlin, abutter at 44 Old Grantham Road, commented this is not what it says on the application. Mark stated they said they don't run all the time, but in the beginning, it was like two weeks straight from sunup to sundown. He came to town and made a complaint and then the Cote's put their application in for a business. Mark reported he has video and a speaker if the Board wants to view it. The noise it is very close to his house. They recently were running the chipper at their property. Mark commented that Nick has two brothers, plus Scott so it is possible that 4 chainsaws could be running all at once. Mark reported he was in a gas explosion about two years ago and suffers from a TBI and PTSD. He is very sensitive to noise. The noise is not very far away, and it is loud at his house and aggravates his condition. He has been at his

residence for 23 years and wants to be able to remain there. He commented that the Cote's have lived at their place for less than that.

Stephen Girdwood, Attorney representing Mr. Laughlin, provided the Board with a statement from Mr. Laughlin's doctors to collaborate his brain injury and the issues he has with the chainsaw noise. Attorney Girdwood pointed out that it is their understanding that this application came about because Mr. Cote does not meet the qualifications of a Home Business. Under a Home Business you are not allowed to do the kind of work they want to do outside it has to be inside. Bryan stated with a Commercial Business they can. Mr. Girdwood stated that is where the Special Exception comes in. He pointed out Section 11.42 the five criteria of A through E. Of those, it talks about a use not being detrimental to the character and enjoyment of the neighborhood. He pointed to the postings on the wall behind where the Board is seated and commented that it looks like to him that this is a description of the town. Two of the items are it is quiet and simple, and the other is the quietness. He stated the use may not be injurious or offensive or detrimental to the neighborhood. Mr. Laughlin can testify about the impact this use has on him. This is a noise issue. The issue is not storing equipment there, it is not that there is going to be increased traffic. The issue is quite simply an issue of the noise of the equipment running on the property. The criteria say the use may not be contrary to public health. In the situation of his client the use is injurious, as stated in the doctor's description. Mr. Girdwood cited the operations connected with the use shall not be more objectionable to nearby properties by reason of noise. Running a chainsaw or a chipper is objectionable. His client isn't trying to have bad neighborly relations, he isn't trying to keep these people from operating a business. It is very much a NH type of business, but noise in a residential area like this is a huge impact on the neighborhood and particularly to his client who suffers because of his injury. This noise is too loud to be going on in this location when running one or more chainsaws. As stated in the application, the operation could take place Monday through Saturday and sometimes on Sunday, during daylight which is a long time during certain times of the year. Their point is the regulation is trying to protect a neighborhood from this kind of noise and business.

Scott Cote stated, for the record, he hasn't been the "technical" owner, but his grandfather lived there since the 50's, and then it was owned by his dad and uncle, and then it became his. He moved there when he was little and grew up there. He hasn't just moved in. This is not a new thing. Firewood has been sold for years from there. He commented that this is a small rural town, and rural to him means there is always going to be noise from a chainsaw, or a dog, or a rooster crow. It is a different type of noise than you would hear in the city, but he doesn't believe you are ever going to get away from noise in general. Scott stated they have moved the location of the operation to the foot of the hill to try to make it less invasive. The wood is a byproduct and is something they do to stay busy. When there isn't enough work off the property, they will buy some wood to process. With a business, there are days with no work, and they are trying to supplement that with a little bit of firewood. They do not want to cause any issues with any of the neighbors. Scott stated Nicholas being a young entrepreneur is a great thing, and "kudos" to him and all he has done.

Susan asked if they have been cutting firewood all along and how many hours per day. Nick stated they have pretty much been cutting firewood. They have been cutting on and off over the years. Susan asked how many hours in a typical week would be spent running a chainsaw? Nick stated some weeks there could be 20 hours, and other times he is so busy doing tree work he is too busy for firewood. It fluctuates. Some weeks go by when there is no sawing on the property at all. This week they ran the chipper a little bit. Susan asked why they had to use a chipper for firewood? Scott stated they changed the blades on the chipper, and they started it up and put some brush through it to make sure it worked all right before they moved it to a job site. They typically do not run a chipper on the property. The only thing they would be running on the property would be a wood splitter and chainsaw.

Scott stated he is not upset with Mark or anybody else. They just want to do the right thing. He did not realize they were doing anything wrong since he has been doing this since he was a kid. He is glad that Whit came down to explain the process to them, and he is just wanting to do the right thing now and get everything legal.

Susan asked for Mark's perspective on what she is being told is the number of hours that equipment and chainsaws are typically being used on the property right now? Mark commented he only knows what he saw. Since this has been going on, they have been relatively quiet for the most part. In the beginning it was 7 days a week and he saw like 4 or 5 grapple loads go through and it was sunup to sundown. He thinks the initial application says 50 cord a year. 4 or 5 grapple loads is about 50 cord. That went by in about two weeks. The chipper is about as big as a full-sized pickup. He has some video. He commented that this is right around the marsh. A lot of people come to the marsh for peace and quiet, solitude and sanctuary, and this is what they are going to be hearing. Susan asked Mark the number of hours he is home during the week. She asked what would make him happy. Mark asked about the Cote's buying a piece of land in the middle of the woods with no one around. He spoke about the neighbors in the area. Mark stated this is threatening his home and his health because of his condition. If it is like it was for two weeks straight or all day long, then he wouldn't be able to continue to live there. He stated he has video if the Board wants to look at it.

Susan stated she would like to go and look at the property and hear for herself. Susan asked if anyone else in the audience that would like to speak. She stated that she knows that noise is a tender spot in this town.

Scott stated they have spoken to all the neighbors and asked them to come to the hearing. They want to be neighborly and stop the bickering. He wants to see his son succeed. Susan asked where they went to get their logs. Nick said sometimes he goes and harvests them, but he buys them in mainly. Scott stated after Mark made his complaint Whit came down and spoke to them and told them how to go about the process of getting the business approved. That is what they are trying to do now.

Susan stated she appreciates what they have done to bring this before the Board. She asked the Board for their comments. Justin stated he wouldn't mind taking a trip out there. Scott stated

perhaps the Board could come up with a solution to help everyone. Pete commented that it didn't sound like a solution was going to be found to keep everyone happy. Scott reported there are 6 acres. There is a brook and pond on the property that they try to keep away from. Pete stated it looks like wherever they try to set up on the property to process wood, Mark is going to hear it. Scott said they have tried to get down over the knoll to abate some of it as best they can. There is no perfect solution. This activity happens all throughout Springfield. People do firewood. Pete stated most people do it for themselves, there are only a few people that sell it. Susan stated there are others who have come before the Board to get Special Exceptions, but no one came forward with any complaints and there is definitely some history here between the neighbors which makes it difficult to determine how the Board will deal with this. It is very different when an activity is done throughout the day. Scott stated they wish they could give some sort of schedule as to the days they are going to work on wood, but the business isn't of that nature. Susan stated the Board, if they were to grant a Special Exception, can place conditions on the business only operating within certain hours. They have done this in the past.

Whit commented that if in fact a Special Exception were to be granted, this Commercial Activity would then have to be reviewed subject to a Site Plan by the Planning Board. They can impose very strict conditions on the business. If a Special Exception is not granted, then the process stops.

Mr. Girdwood commented that what is being described in the application is very different from the average person running a chainsaw to take care of a tree crossing their driveway or doing their own wood, for a very brief period before winter arrives. The application is asking for literally 7 days during daylight hours. They have an abutter here that has physical limitations and it takes it another step beyond. He encouraged the Board to go back and look at the criteria under Special Exceptions. They can try to come up with solutions, but they still must meet the criteria, and there are at least 3 or 4 items that don't meet the Special Exception. The reason why the ordinance and home business talk about activities indoors is to try to minimize that sort of impact. This by nature is an outdoor activity. The young man is commended for trying to be an entrepreneur. Sometimes in business you must find a different place to do your business for this reason. In this location, it is about the criteria.

Justin commented that he would like to go take a look. He stated that it is not up to the Board of Adjustment to find a resolution. When someone asks for something specific, the Board's job is to grant or deny the application as presented. Scott stated they are willing to amend the application to fit. The application was to show that they wanted to do this, but if needs to have guidelines they can try to make everyone happy.

Mark stated he is aware there are noise issues with the mill on the other side of town that have been going on for many years for residents over that way. Do we want to do it on another part of town? He commented, that personally, it would lower his resale value, and make his house not a sanctuary. His ears "scream" all the time because of his condition, and constant noise like that aggravates the condition.

Susan asked for comments from the audience:

Wayne Smith asked if abutters are solicited and was there a certain percentage of abutters that need to be heard from for the Board to make a decision. He would hate to see the concerns of one abutter be pushed aside because other abutters are not present. He has spoken to his abutters in the past, regarding noise issues and they do not want to get involved. Jason Patten commented this is tough, it sounds like 5 minutes of chainsaw noise would be bothersome. It is a shame a rambunctious young kid that wants to have a business and make some money is having difficulties. There are a lot of people in town that run chainsaws. George McCusker stated that a lot of the problems the town is having with noise is from businesses running 24 hours per day. A big factor of this operation is the hours they want to operate. It seems one of the few avenues to explore is reduced hours of operation. There are many home owners that cut wood year-round. Since this is not a 24-hour operation, he hopes the Board, as an alternative, would consider reduced hours of operation.

Whit commented there is just one other factor the Zoning Board or Planning Board might consider is that there is no place in town zoned to allow this type of activity, and therefore if Mr. Cote was going to pursue this activity anywhere in town, he would be required to have a Special Exception. If he is denied a SE in this case, he is being denied the right to pursue the living that he has chosen and may have to leave town. There is no place in this town he can conduct this business without a Special Exception. He is concerned one or two neighbors voicing an opinion based on the signs that are on the wall behind where the Board sits, creates a problematic situation. There is an opportunity to set a precedent here, because there will be other noise cases and established business coming before this board seeking a Special Exception. Whit agrees this is a real difficult situation.

Susan stated each case is an individual case and not one sets a precedent for anything else. The Board has approved this type of activity for other people. She wants to be fair but also understanding that noise is a real issue. Justin stated that he agrees that not one case sets precedent and just because someone was able to do something on the other side of town it is a totally different case. Susan stated each piece of property is unique.

The Board concluded they personally wanted to go out to the property to observe the noise for themselves. Mark questioned if the chipper would be run too. Susan stated her understanding is the chipper is not used as part of the operation at the site. Bryan stated usually when repairing or replacing blades in a chipper it would be started to make sure it was running before moving it off site. The same would be for the stump grinder.

A motion was made by Justin to visit the site on Saturday, October 5th at 3:30 p.m. at 2274 Bog Road. The motion was seconded by Cody and unanimously approved.

The meeting adjourned at 8:00 p.m.

Submitted by,

Janet Roberts,

Administrative Assistant