

**Town of Milford
Zoning Board of Adjustment
December 7, 2017
Case #2017-27
Donald Claxton
Special Exception**

Present: Steven Bonczar, Chair
J. Plourde, Vice Chair
Michael Thornton
Rob Costantino
Wade Scott Campbell, Alternate
Karin Lagro, Alternate
Robin Lunn, Zoning Administrator
Laura Dudziak, Board of Selectmen Representative (in audience)

Absent: Joan Dargie
Tracy Steel, Alternate

Secretary: Peg Ouellette

Case #2017-27

Donald Claxton, for property located at 32 Heritage Way, Milford, NH, Tax Map 53, Lot 48, in the Residential R district, is seeking a Special Exception of the Milford Zoning Ordinances per Article X, Section 10.02.3 to allow a Home Occupation in order to maintain the office for Champion Paving.

APPROVED April 19, 2018

Steve Bonczar, Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. M. Thornton moved that W. Scott Campbell be seated as a voting alternate for this case, seconded by J. Plourde. K. Lagro was present as a non-voting alternate; she could participate in the discussion but not vote. He read the notice of hearing.

D. Claxton and his daughter, Amanda Griffiths came forward.

D. Claxton said he had an office in his house (for Champion Paving) and his daughter was taking care of his mother and her (his daughter's) baby. Would be convenient to have a home-based office. No customers would visit the home office as it would be for record keeping and phone calls.

S. Bonczar asked him if there was anything in the application he wanted to highlight. The proposal was an office within a single-family home that would do bookkeeping, record keeping, scheduling, etc. out of that room. Anything else they wanted to highlight?

A. Griffiths said she used to work remotely in Worcester. Now she has a child and taking care of child and taking care of Donald's mother who has dementia. As far as office portion of the business, nobody coming in and out – just printing, filing, scheduling. They park four large equipment trucks at their gas station in Brookline, as mentioned in the application.

52 R. Costantino said he drove by Sunday and saw three large trailers. Could he explain their use?
 53 D. Claxton said they were snowmobile trailers, for recreational use.
 54 R. Costantino said it was a residence and noticed some of some of equipment was not for recreational use.
 55 D. Claxton said he was getting a new porch built and it was construction workers'. Other two were his.
 56 J. Plourde asked if trucks and equipment were from Jackson and Jackson Construction.
 57 D. Claxton agreed Jackson and Jackson was helping with home repairs and the and the bobcat and trailer
 58 were part of the porch construction.
 59 J. Plourde asked if renovations were to the porch, and nothing happening to the house.
 60 A. Griffiths said the porch was for the grandmother to have a place to sit because she had difficulty
 61 walking.
 62 A Griffiths said the trailer in the middle of the driveway was there only because D. Claxton had recently
 63 had his garage repaired . Personal snowmobile trailer in garage. Trailer in the middle of the driveway
 64 was there only because D. Claxton recently had his garage repaired. The trailer contains D. Claxton's
 65 tools and other equipment that would typically be stored in the garage. The snowmobile trailer is for D.
 66 Claxton's personal use.
 67 J. Plourde asked if there would be no signs outside.
 68 D. Claxton said none.
 69 J. Plourde asked if D. Claxton lived there. D. Claxton said he did.
 70 S. Bonczar read the specific definition of home occupation from the ordinance. Sec. 10.02.3 with the
 71 specific criteria dealing with home occupation, beyond the specific criteria for special exception in
 72 10.02.1. He read Sec. 10.02.3, Home Occupations, into the record.
 73 S. Bonczar then asked Robin Lunn, Zoning Administrator, if it did not exceed the 25% of combined gross
 74 floor area.
 75 R. Lunn said that was correct.
 76 S. Bonczar said it was within that parameter specified in 10.02.3 and asked for any questions from the
 77 Board.
 78 J. Plourde asked if A. Griffiths lives in the house.
 79 A. Griffiths said she did not.
 80 J. Plourde asked if she would be considered the non-resident employee as part of this home office special
 81 exception? A. Griffiths said that she would be.
 82 S. Bonczar opened the meeting for public comment. Since there were no microphones, he requested
 83 people to come to the table and speak into the phone recorder, state their name and address, and address
 84 any comments to the Chair.
 85 Karen Files of 28 Heritage Way, Mr. Claxton's next door neighbor had concerns. This business had been
 86 there for a long time. Heavy equipment was there, and then it wasn't. For whatever reason, it wasn't
 87 stored at the gas station in Brookline. Almost all of last summer it (the heavy trucks and equipment) was
 88 were parked next door to her. Employees would arrive at approximate 6:15 a.m., drive away with all
 89 heavy equipment. A noise concern being awoken by the trucks around 6:30 a.m. in their residential
 90 neighborhood. Definite concern that there would likely be another time when heavy equipment can't be
 91 stored at the gas station; It had happened in the past and since it has happened in the past and where else
 92 would the equipment go. That equipment probably will go right back next door (to D. Claxton's house)
 93 which is a huge concern. She provided pictures taken recently. She pointed out where her truck was, and
 94 where she believed D. Claxton's truck with open trailer was. A personal vehicle on the circle. Multiple
 95 times in the summer big equipment trailers parked on the circle, blocking traffic trying to get around the
 96 circle. They live on a cul-de-sac. Generally, cul-de-sacs are desirable to people with families.
 97 Equipment may not be there right now (because of the time of year) concerned big equipment would
 98 come back at some period. Picture was minimal of what happened this summer. This had been a good
 99 year because they were busy, but at expense of her and of other neighbors getting woken up. Possibly a
 100 pattern. If Don and his daughter could say that never, ever will this come back she might be a small
 101 percentage in agreeable to this. But she cannot believe this because there is a pattern of the heavy
 102 equipment being there and then it was gone and then back again. There was a covered trailer which they

103 said had personal equipment in it. K. Files saw this truck and the covered trailer being driven down Rte.
 104 101A and Don wasn't driving it. That driver didn't park in Don's driveway but actually in his yard.
 105 There are other non-residential people coming to this address, and this happened even as recently as
 106 today. What happens when equipment no longer stored in Brookline? Equipment repair takes place in
 107 the garage, which takes some serious pounding. If the garage doors were closed, would probably be
 108 quieter, but a paving company works summer to late fall and early winter. It is noisy. They have heard
 109 diesel engines starting, running, air brakes, backup signals, chains rattling, ramps being slammed down.
 110 Showing up 6 to 6:30, trucks parking on the grass, ruining the grassy area. Large tire tracks. Tar
 111 surrounding the circle very broken up because of heavy equipment parking there. On the other circle (at
 112 the other end of Heritage Way), not a lot of breakage. She was personally not in support of all this noise.
 113 This business will be there with the Board's approval or not. She bought her house in 2003 and it started
 114 in 2005. Tried to be a good neighbor and not complain. But this is a residential area. What recourse
 115 would she have when a decision is made and it is going to be there anyway? Don gave no indication of it
 116 ending; he is not going to retire soon. Covenants said this was a residential area.
 117 S. Bonczar said covenants would be a separate matter to be handled outside in a private forum. Board
 118 can't take that into consideration. He asked D. Claxton to respond to Ms. Files' comments
 119 D. Claxton said equipment was parked at gas station for 13 years. Occasionally they work on his property
 120 and big trucks are there. The pictures (shown by K. Files) showed the bobcat on his property because he
 121 had a water pipe burst that needed to be repaired last week. He had to take his guys off a job to find and
 122 fix the broken water gate. He does bring equipment home so he can work on his property. Generally, the
 123 mechanic works on site or at his home in Henniker. They do bring stuff home.
 124 A. Griffiths said there was a truck that broke down nearby and the mechanic needed to repair it at D.
 125 Claxton's house.
 126 D. Claxton said it was sitting in his driveway three days. Rare thing. Not happening constantly.
 127 A. Griffiths said they were paving at the house this year. Equipment would be used to load things in and
 128 out of the house.
 129 D. Claxton told Ms. Files he was driving the truck that day.
 130 A. Griffiths said it was his personal truck that was lettered. It was him driving that day.
 131 S. Bonczar asked about what would be Plan B if he couldn't park in Brookline.
 132 D. Claxton said he was looking at parking on Steve Trombly land.
 133 A. Griffiths said trucks would not fit on the property. There was a pickup truck. An estimate vehicle.
 134 And one ton dump truck.
 135 S. Bonczar asked if they had tri-axles coming.
 136 A. Griffiths said no.
 137 S. Bonczar understood what they were doing with the home office made sense. Idea is that with a home
 138 office in a residential area you can't have equipment that is for the business outside.
 139 M. Thornton quoted from 10.02.3 A.2. that there shall be no evidence outside the dwelling, except
 140 permitted signs and required off-street parking, that the dwelling contains a home occupation.
 141 A. Griffiths said that D. Claxton had a lot of – two or three personal trailers, 6 snowmobiles, and 3 or 4
 142 dirt bikes. Working on tidying it up and making things look nicer. This is why a lot of the equipment has
 143 been there recently. Office was separate issue that A. Griffiths is working on, while D. Claxton is
 144 working on cleaning up the outside.
 145 S. Bonczar agreed it was separate issue, but the same business. To have the home office legally, which
 146 was allowable by special exception, there were certain rules and criteria.
 147 A. Griffiths said equipment to put down driveways was at the gas station on trailer pulled by the tractor.
 148 S. Bonczar said he had a Kabota but he could have a Bobcat.
 149 J. Plourde said, based on the pictures (K. Files had presented), how often were they parking around the
 150 center of the oval?
 151 K. Files asked if he meant this summer.
 152 J. Plourde said in general.
 153 K. Files said, in summer, almost every day.

154 J. Plourde said, not just when trying to move a vehicle out of the driveway?
 155 K. Files didn't know what went on. Employees show up at 6:15 or 6:30 a.m., waking her up. Then all the
 156 noisy trucks would go. At end of the day she thought there was an order they had to go in (the driveway).
 157 At times they were there possibly for hours. She was not saying it was all day. Her husband witnessed a
 158 couple of situations where the vehicle crossed the road. You couldn't drive around the circle. Couldn't
 159 say how many days or times. She kept air conditioning on and windows down for it to be a little quieter.
 160 It happened fairly regularly.
 161 S. Bonczar asked if that was this past summer.
 162 K. Files said yes. In prior years trucks were parked in such a way. As business was growing, there was
 163 more equipment bought. Two were personal vehicles. Long trailer on one. Times there were things on
 164 that and ramps had to be dropped down; it was noisy.
 165 J. Plourde said this time of year there is no paving.
 166 K. Files said she is also not having windows open.
 167 S. Bonczar asked D. Claxton about this.
 168 D. Claxton didn't remember this summer being any busier than any other.
 169 A. Griffiths said they used to have employees park there (at D. Claxton's house). No employee cars
 170 parked in the circle or in the area any longer.
 171 K. Files said that was recent when they were parking elsewhere.
 172 A. Griffiths said it was the whole year.
 173 K. Files said no.
 174 A. Griffiths said they had a lot of personal cars.
 175 S. Bonczar said there was a fine line with what was business and what was for personal use. Anybody
 176 else?
 177 Peter Michaels of 41 Heritage Way said he had lived there since 1985. One of the attractions was it was a
 178 nice residential community off a main street. No trucks coming through. Safe for kids. Now his concern
 179 is with his grandkids. While trucks don't go on his side, he does see trucks coming in. He has retired and
 180 thinking of selling their house. Wondered about the value of his property with a lot of trucks coming
 181 around there. He was supportive of the home office but concerned with truck traffic. Board to make a
 182 decision that ensures these trucks don't happen again. Doesn't want to happen what happened this past
 183 summer again. If trucks not there it wouldn't be an issue as far as he was concerned.
 184 S. Bonczar said the Board could put a condition on an approval. Hoped Mr. Claxton wanted to be a good
 185 neighbor and wanted his business to grow; and as it grows, it is not an efficient place to have things
 186 (business trucks and equipment) at his house. A more permanent solution would need to be found as far
 187 as repairing & storing equipment etc. The office could be done in the home but it would seem, as they get
 188 busier and bigger, they would not want to have their trucks coming into the cul-de-sac.
 189 D. Claxton said he already didn't want the trucks and employees at his house and was working on it (a
 190 solution).
 191 S. Bonczar said part of it (issues being raised by neighbors) may be from past behavior reflected, but he
 192 wanted to keep it in mind but didn't want that to penalize the applicant. He asked for any other
 193 comments.
 194 Doug Sanborn of 47 Heritage Way said he lives at the other end and didn't see a lot of what was being
 195 discussed. However, seeing more (trucks) as time goes on. This summer several times getting from
 196 Colburn onto Heritage Way, he had to back up his vehicle because a tractor trailer was coming out. Road
 197 not equipped for big trucks. As far as Don is concerned, he has watched his company grow. He said Don
 198 was a good man and worked very hard to achieve that goal. But not at the expense of a residential road.
 199 When he talked to a prior selectman, and asked him if it was safe to live in that area as he was one of the
 200 first people to live on Heritage Way. Expansion in Milford is so large. Selectman said "you are safe
 201 there." It didn't appear so now. Big question with children in the road. With an office, there will be
 202 more traffic. It will not be just by phone. Don does an excellent job with paving, but it has to be
 203 someplace else. Hoping D. Claxton could rent or buy a plot of land large enough to store his equipment.
 204 D. Sanborn wished something could remedy this.

205 J. Plourde asked, for clarification, that D. Sanborn said if the office was in there, there would be more
 206 traffic. What was he basing that on? Considering customer traffic or trucks?
 207 D. Sanborn said both. Pickup trucks, some equipped with blades?
 208 D. Claxton said none of them.
 209 D. Sanborn said no plowing in and out. Could They say there would not be (customer?) traffic going
 210 into the office? If he were going to do something with asphalt, he would try to go in and see examples
 211 what he does. Potential customers would like to see pictures or samples of his work. After he gets big
 212 enough you would probably start seeing that – If you want to see sample, come to my house. It would
 213 eventually happen. Didn't want it to snowball any more.
 214 J. Plourde asked applicant when he was working with customers, was he was generally going to meet
 215 them on site or at their (customer's) home?
 216 D. Claxton said almost always. Never had a customer come to his house.
 217 J. Plourde asked if they provided pictures or samples for customers to see.
 218 D. Claxton said it was on-line for customers to see. Also provide phone numbers to ask questions
 219 A. Griffiths said there was a photo book and I-Pad.
 220 Natacha Decastro of 38 Heritage Way and Patricia Bravo of same address said they were the newest
 221 neighbors – moved in about 5 years ago. N. Decastro works overnight. Gets woken up by big trucks in
 222 early afternoon. When they first moved in it looked like the house across the street was remodeling
 223 because there were piles of gravel or whatever in the back yard. Moved in July of 2001. It has been
 224 getting more every year. This summer was pretty bad. A lot of activity. They bought their house to live
 225 in a quiet residential area. To move in and have a noisy business in the neighborhood was very disturbing.
 226 Last year they decided to put house on the market. It didn't go through. Problem with the buyer. Put it
 227 back on the market. One of the feedbacks was the business being right across the street (Champion
 228 Paving). House didn't sell. Took it off the market late August. As far as a home office she believed it
 229 would revert back to bringing back the trucks. Hasn't seen them the last couple of weeks but winter is
 230 coming and business not booming.
 231 P. Bravo said the last two weeks every morning trucks picking up something from the trailer. They have
 232 an easement (between their properties) and somebody parked in the easement and applicant had some
 233 type of plow or something in there. To access it, they have to go onto her property. Trucks line up around
 234 (the cull-de-sac) and many times she has to tell them to move so she can get out.
 235 S. Bonczar asked if they were pickup trucks.
 236 P. Bravo said the last two weeks it was pickup trucks, but before that he had trucks with trailers. They
 237 make a lot of noise. Sometimes they park in the circle. She has a child and won't let him play in the cul-
 238 de-sac (because of the trucks). Right now, D. Claxton is doing some remodeling. She hears trucks every
 239 morning getting her son to school. Now it is pickup trucks but it was big trucks.
 240 S. Bonczar asked applicant why any trucks needed to come to the house.
 241 D. Claxton said they do not.
 242 S. Bonczar wanted to say OK, but could that many people be wrong? Trying to understand why trucks
 243 would be there anyway. They should be going to the job site.
 244 A. Griffiths said they had a couple of jobs (at the house),, taking out concrete steps and other work, and
 245 had to bring trucks in. They hired contractors to come in and finish. A lot of this year's use had been for
 246 personal purposes. They hired a contractor to finish up some things. They don't have employees parking
 247 at the house or in the easement any more.
 248 K. Lagro asked if employees pick up material at the house.
 249 D. Claxton said no materials.
 250 K. Lagro asked if they came to the house at all.
 251 D. Claxton said sometimes in their pickup trucks.
 252 A. Griffiths said D. Claxton had a 28 ft. trailer. Right now it was in the yard because there are two trailers
 253 was in front for the remodeling. Probably most of the reason the big trucks are there. Next year they are
 254 residing the house and redoing the lawn and putting in irrigation.
 255 S. Bonczar asked if trucks and trailers had their name on it.

256 A. Griffiths said they have the name on it. They have complaints from people driving on Amherst St. that
257 they are driving too slow or don't put their blinkers on. This is how picky people are, not just at their
258 house but they follow them everywhere.

259 Just because you live next door you are going to check on our drivers? – that is how picky they are.

260 S Bonczar asked for further public comment. None.

261 S. Bonczar said the photo provided (by K. Files) would be Exhibit A for the file. He read a letter
262 dated 12/4/17 signed by Aileen Cormier, 57 Heritage Way saying she filed a complaint in the past about
263 this paving company relating to large business paving vehicles historically parking in the driveway and
264 yard. It was large equipment used in paving. In January 2016 she provided pictures of homes in the
265 neighborhood. Since A. Cormier didn't find it was in the zoning file she attached the original photos
266 again. She quoted from Sec. 10.02.3 re only one nonresident employee. She has seen multiple trucks and
267 employees waiting to go to a job from this residence, but there is only one employee who lives at this
268 residence. Doubtful only one nonresident working out of there. Thinks it was obvious the business
269 operated from there because of the presence of trucks with the business logo. Other photos in zoning
270 violation file by other residents. She attached photos of 12/3/17. The home business impairs residential
271 character of the residence. Negative impact on entire neighborhood, property values. When they bought
272 it was because the safety of the double cul-de-sac was appealing. It was a safe neighborhood for kids
273 because of limited number of vehicles. If she still had young kids she'd be concerned. Understands
274 owner wants to put a sign for his business. What is intent of this sign? Very little nonresidential traffic
275 on the street. Exasperating to other residents that this business exists. Is the intent to have customers
276 drive into the neighborhood and engage in business transactions? Would negate the reason they chose the
277 neighborhood. Business has been there many years with apparent disregard for Sec. C. They have
278 temporarily moved equipment away from the property but still gets unsightly nonresidential vehicles.
279 Concern that without consistent monitoring the paving equipment will return to previous state. Signed by
280 Aileen Cormier.

281 S. Bonczar said a lot of the points were addressed in the discussion. He read another letter dated 11/27/17
282 addressed to Robin Lunn from Brian LaSalle. Writer spoke to Robin on the phone re this case. He and
283 his wife would be away on 12/7/17 and wanted to voice approval of special exception for Champion
284 Paving. It was discussed at their annual meeting on 11/16/17 – he is one of three elected officers of the
285 homeowners' association. He wanted it known they had no specific issue with this special exception.
286 Signed by Brian J. Lasalle.

287 S. Bonczar asked the Board for any other questions for the applicant before closing public comment.

288 M. Thornton asked if applicant was sure that, except for work done on the property, The heavy
289 equipment for the paving business would not be there anymore.

290 A. Griffiths said yes, with the exception of personal Bobcat and trailers.

291 M. Thornton said they might be parked in back or on the side.

292 D. Claxton said on the side.

293 M. Thornton said there seemed to be no problem with the home office itself by neighbors. Only the heavy
294 equipment, trailers and trucks. Suggested a condition that there be no heavy equipment parked or stored
295 at his home.

296 D. Claxton said that would be fine.

297 S. Bonczar knew that would probably be necessary after looking at case, if the Board were to approve
298 this special exception.

299 K. Files said B. Lasalle did not speak for the association. He was just a member. He was a leader but had
300 no authority to speak on behalf of the entire organization.

301 D. Sanborn asked what constituted heavy equipment.

302 D. Claxton said tri- axle trucks and ten-wheelers, trailers with heavy equipment.

303 D. Sanborn said long trailers. It was mentioned when they take heavy equipment off and on it made a lot
304 of noise. Neighbors would even hear the banging with smaller pieces coming on and off trailers. In that
305 area larger trucks should only there temporarily if someone wanted a delivery– but to have them come in
306 and out all the time – no.

307 K. Lagro said in addition he was talking about a home occupation. Only one nonresident employee.
308 S. Bonczar said no, only one nonresident could occupy the office.
309 R. Lunn said not to move into deliberations.
310 Shirley Blase of 61 Heritage Way, one of the officers of the Heritage Way homeowner's
311 association – secretary of the homeowner's association spoke. President of the association not present.
312 Brian Lasalle was treasurer. She was at the meeting with other homeowners. There was a conflict. It
313 was brought up about concerns from a few of the neighbors not present at this meeting about their debate.
314 The association really only manages the water in the association. It was felt if they needed to complain
315 and needed to be at zoning. For clarification, there was no consent from neighbors at the meeting.
316 S. Bonczar said he read what was received from Brian LaSalle.
317 A. Griffiths thought the trailer everybody mentioned was on D. Claxton's daily truck, the 28 ft. trailer. It
318 was a personal trailer being used for business right now because they were looking at replacing the one
319 for the business that broke. It was Don's personal vehicle. If he worked for someone else, he would have
320 a truck and trailer he would need to bring to the job site every day.
321 N. Decastro said every single morning there are pickup trucks picking up trailers.
322 D. Claxton said not now.
323 N. Decastro said she hasn't seen workers or big trucks the last couple of weeks. But they make a lot of
324 noise when all three come together every morning. Didn't think pickup trucks should be there. What is
325 guarantee of that?
326 S. Bonczar said there were no guarantees in life.
327 N. Decastro asked why you (D. Claxton) needed to operate a business in a business neighborhood.
328 S. Bonczar said applicant was there for a home occupation which was allowable by special exception and
329 it was for Board to review whether those conditions were met for that home office. Kind of a unique
330 case. That is what they would be deliberating.
331 N. Decastro said she didn't know Brian Lasalle, but she spoke to him on the phone. He said he didn't
332 want to say anything because he was a friend of D. Claxton. He said "I help him out; he helps me out."
333 S. Bonczar said he couldn't comment on that but only read into the record the letter came into the office.
334 J. Plourde said to Ms. DeCastro being there to voice concerns was as important as a letter. Didn't want
335 her to think they were brushing it aside.
336 A. Griffiths said another time they had equipment in the neighborhood it was to grade the property to add
337 sand to the road to the pump house.
338 S. Bonczar said it sounded like they had a lot of trailers.
339 K. Files said B. Lasalle said the same thing to her, that D. Claxton helped him on a few occasions – the
340 same thing he said to N. Decastro. B. Lasalle said he leaves at 6 a.m. and doesn't hear the noise from the
341 employees. B. Lasalle is on Colburn Rd., further away from the noise. She was told by S. Blase that
342 B. LaSalle mentioned to her that in this meeting (of the association) there was some concern brought up
343 and that he was supposed to talk to D. Claxton about those concerns from the entire neighborhood. Based
344 on her (K.Files) conversation with B. Lasalle, it didn't seem that he was going to do that because D.
345 Claxton was a friend. He didn't want to alienate a friend by saying there were a lot of complaints at the
346 association meeting and he needed to do something about it. She supported what N. Decastro said, that
347 B. Lasalle was a little outside the circle.
348 J. Plourde said he didn't want this to come across the wrong way, but B. Lasalle wasn't there to defend
349 himself. The Board still had to keep an open mind.
350 S. Bonczar asked if there were any other comments.
351 R. Costantino asked the Chair, referring to someone mentioning they were going to sell their house but
352 the real estate agent or somebody said it wasn't so easy because of what was going on at the subject
353 property. He wanted to know if they (N. Decastro & P. Bravo) had something in writing supporting that.
354 Can he ask that?
355 S. Bonczar said he guessed so.
356 N. Decastro didn't have anything in writing. Can get it. The house is off the market. People didn't want
357 to live there with kids there because of the trucks.

358 S. Bonczar asked for anything further from the Board.
359 M. Thornton asked how many personal trailers applicant needed to use every day.
360 D. Claxton said one.
361 M. Thornton said there should be once a day coming and going in the morning and in the afternoon.
362 D. Claxton said yes. Would have it in Brookline (at his gas station property) but it had been broken into
363 before.
364 S. Bonczar asked if there was logo on it.
365 D. Claxton said no.
366 J. Plourde said he wouldn't want to have his tools stolen or trucks broken into if left at the Brookline
367 location.
368 D. Claxton said he had axe marks where locks were broken. The larger trucks that are still down there
369 have had their brakes tinkered with and cb radios stolen. They are looking to see if they can store their
370 vehicles and equipment at S. Trombly's property.
371 A. Griffiths & D. Claxton said they had had things broken into. D. Claxton said they were looking at
372 moving trucks to Trombly land. They have large truck parked there overnight. They don't start from the
373 house.
374 S. Bonczar asked for anything else.
375 J. Plourde said there was very limited chance of vandalism at Trombly, if that was considered, compared
376 to Brookline.
377 D. Claxton agreed. S. Trombly approached him a few weeks ago and offered that.
378 R. Lunn said Trombly Farm permit was not currently approved for this use.
379 J. Plourde asked not currently.?
380 R. Lunn said the site plan didn't allow for this proposal. Would have to get site plan approval to allow
381 somebody else's equipment to be stored there.
382 S. Bonczar closed public comment. Wanted to go over questions and get a feel of findings of fact for
383 specific home occupation criteria before going to the five questions for special exception.
384 **1. Does the person conducting the home occupation live in the dwelling unit?**
385 S. Bonczar thought they all agreed
386 J. Plourde said yes based on the application and testimony provided. But there no more than one
387 nonresident employee in connection with the home?
388 M. Thornton said that was correct.
389 S. Bonczar read from the ordinance Article X, Sec. 10.02.3 "there shall be no more than one (1)
390 non-resident person employed in connection with such occupation." He said basically that mean,
391 within the unit. That was the intent.
392 M. Thornton said the application stated the homeowner and one other person.
393 K. Lagro asked if you could divide a business into segments.
394 S. Bonczar said they were discussing the space itself.
395 K. Lagro said you could have employees coming in for checks and other things.
396 M. Thornton said it referred to working in the dwelling – not visiting.
397 S. Bonczar said that was the intent.
398 K. Lagro said if you are picking up and getting other information (from the home office), there
399 was more than one employee.
400 J. Plourde interpreted the second part, as the home occupation was a business and there was more
401 than one person that works for the business. The first part was fine with one person conducting
402 the home occupation being a resident in the dwelling. But this business has more than one
403 nonresident person working with the company.
404 M. Thornton said but not more than one nonresident works in the home office.
405 J. Plourde commented it said the ordinance stated in connection with the use.
406 S. Bonczar said it was poorly worded, but they were talking about office within the dwelling.
407 That is how he read it.
408 J. Plourde read it differently.

409 R. Costantino said they were talking about the office.

410 S. Bonczar said there couldn't be twenty people working in that home as part of the occupation.

411 J. Plourde said it came into play with what K. Lagro mentioned with people coming in to pick up
412 checks. It was a matter of controlling amount of traffic coming in and out. Intent was to have the
413 homeowner and one nonresident as the only traffic going in and out of the home occupation.

414 S. Bonczar said what if you had an accountant or a beauty salon. It fit in this. That was more
415 intense than the proposed use as far as coming and going. They don't have a clear definition of
416 types of business that can have home occupation and reside within a space within a dwelling. It
417 doesn't say you can only have a barber shop, etc. In the past they have had a beauty shop or dog
418 training. He looked at it that you are talking about whether you have a homeowner and one
419 single employee primarily in that office space.

420 J. Plourde under definition of home occupation it said "Any use conducted entirely within a
421 dwelling or an accessory building which is clearly incidental and secondary to the use of the
422 dwelling for dwelling purposes and does not change the character thereof" and it says "and in
423 connection with which there is no outside display or storage, nor emission of dust, noise, fumes,
424 vibration or smoke beyond the lot line." There was definitely outside storage. Different from a
425 beauty salon or something like that, it (this proposed use) could change the character of the
426 primary dwelling unit if you have trucks coming and going all day (to the home office). But he
427 would think people coming in to pick up checks or not changed the intent of the home
428 occupation.

429 M. Thornton read it as one other full time employee in the home office.

430 W. Campbell read it as homeowner/occupant plus one nonresident.

431 J. Plourde said if the comma wasn't there, he would agree.

432 **2. Is there no evidence outside the dwelling, except permitted signs and required off- street**
433 **parking, that the dwelling contains a home occupation?**

434 S. Bonczar said that was a little sticky in that prior behavior had been discussed, but he felt that
435 applicant had, in his opinion, addressed that.

436 M. Thornton wanted a condition that heavy equipment that is not working on the property, return
437 to a location other than his home.

438 S. Bonczar agreed. If they approve, part of the approval would be some type of condition so that
439 it was in the spirit of the ordinance re home occupation. There was testimony that prior behavior
440 hadn't reflected that, but wanted to give applicant the benefit of the doubt - based on what he said
441 - that he would follow through on plans and that there would not be anything other than personal
442 vehicles on his property, which could be a pickup truck and personal trailers; but no tri-axes and
443 rollers, etc. specifically related to the business.

444 K. Lagro said sometimes the best predictor of future behavior was past behavior. There was prior
445 violation and a week later the same violation. So, how do we make sure this will not continue to
446 happen?

447 S. Bonczar said if this moved forward they would put a condition on it. Hoped that the applicant,
448 like any other, would abide by that. Otherwise it would be up to the Building Inspector and
449 Planning Office to enforce.

450 R. Costantino said in this particular one, it seemed like confusion between their personal vehicles
451 and of the company vehicles. Applicant had a lot of big personal vehicles which most residents
452 don't have. In his opinion on this question, would give him benefit of the doubt as long as no
453 business vehicles were parked on the property.

454 J. Plourde said other than his own personal vehicles/

455 R. Costantino agreed, other than his own personal.

456 K. Lagro asked if his own vehicles would include trucks that come every day. Neighbors said
457 they come in the morning and pick up.

458 M. Thornton asked if that was re the 28 ft. trailer.

459 K. Lagro said

460 M. Thornton said applicant testified that won't happen anymore and any approval would be
461 conditioned upon that. If they bust the condition, the approval for the home office is eliminated.

462 J. Plourde said because that was part of the criteria for the home occupation. If the homeowner
463 moved out then the special exception would go away?

464 S. Bonczar said it would mean the town would have to enforce and probably there would be
465 litigation. It didn't necessarily mean the approval ended automatically. It is up to the Town to
466 enforce it. He commented it wasn't as simple as it suddenly being eliminated.

467 **3. The home occupation does not exceed 25% of the combined gross floor area.**

468 S. Bonczar said they heard it was within the requirement.

469 M. Thornton said it was 12 and change.

470 **4. Accessory finished good may be provided for sale in conjunction with the home**
471 **occupation, sold and stored in allowed home occupation space only.**

472 M. Thornton said there was ancillary equipment there.

473 S. Bonczar said it wasn't for sale. That would not apply.

474 **5. The home occupation and the conduct thereof shall not impair the residential character**
475 **of the premises nor impair the reasonable use, enjoyment and value of other residential**
476 **property in the neighborhood.**

477 S. Bonczar said this was what one of the residents mentioned. No issue with reason for home
478 occupation. But if the applicant continued to do things that have been done in the past, this was a
479 huge issue. Bringing heavy equipment in conjunction with the use of the home office. Applicant,
480 from what he could tell, said that action was diminishing and ending. But he was still concerned.

481 M. Thornton said one exception mentioned any work being done at his property by that
482 equipment. That would be allowable because any of the neighbors that wanted a driveway paved
483 or such, that would have a big truck, which would be understandable. But not on a continual
484 basis.

485 R. Costantino had a problem where it talked about home occupation not impairing the value of
486 other residential property in the neighborhood. There was mention that one person thought it did
487 impair their property in the neighborhood because what he heard was they were told by a real
488 estate agent that (the [paving business across the street] was a negative in trying to sell. Would
489 have liked to have that in writing.

490 J. Plourde asked if they were trying to separate the home occupation from the actual business, that
491 has been conducted on the property and has been discarding zoning violations. He thought the
492 home occupation by itself was okay to have it there. His issue was not having heavy equipment
493 for the business on the property. If they put in an office in that porch area, is that going to
494 diminish value of other property? Didn't think so. But other things going on could.
495 Other board members agreed.

496 J. Plourde said this was an opportunity to get control of it (zoning violations) with any decision
497 they made and being able to control the operation on that property.

498 S. Bonczar thought he was right. D. Claxton was bringing things into conformity. This was the
499 right thing to do.

500 M. Thornton said re the enforcement action, on the second page there was a picture - the right
501 hand photo in the middle to the right of the Bobcat it looked to be, in the next picture down, two
502 rollers for flattening. That was obviously business equipment. Didn't know if that was for work
503 on the property or not.

504 S. Bonczar pointed out that the picture was taken in 2015.

505 M. Thornton said he was talking about past behavior.

506 S. Bonczar said what J. Plourde brought up sort of covered it, some of the ancillary things he has
507 been doing (outside the home) clouded things.

508 K. Lagro said there had been justifiable claims that business had been running out of the home for
509 many years. Not sure what difference between that and asking for home office.

510 S. Bonczar said it brings it into conformity with zoning.

J. Plourde asked if what K. Lagro was saying was, what's the difference between yesterday and tomorrow. He agreed. But he (D. Claxton) was trying to make it legal as far as the home occupation.

K. Lagro said one of the neighbors said that this would kind of give them license to continue running the business out of the house.

W. Campbell said he would likely place conditions as part of the special exception.

S. Bonczar said it allowed them to continue it as a home occupation, yes.

J. Plourde expressed concern with past and continued truck activity with the impact on the neighborhood. They would want to word any decision and condition very carefully.

K. Lagro said they could come in for a home occupation. No problem. But if you repeatedly have multiple people coming in pre 6:30 a.m. does that impact the character of the neighborhood and their enjoyment of their property?

M. Thornton said he heard applicant say there would be one pickup and 28 ft. trailers coming in and back at night. That was his equipment for the work. And none of the other equipment would be on the property unless it was working on the property. Thought that was allowed.

S. Bonczar wanted to go to the higher level and get a feel for this case re the special exception criteria.

A. Is the proposed use similar to those permitted in the district?

R. Costantino - they were allowed a home occupation by special exception in the district.

S. Bonczar – when they say district, it is the zoning area. Not going down to the neighborhood, but that Res. R district of the town. It was an acceptable use by special exception in Res. R. He asked if any felt otherwise? None.

B. Is the specific site an appropriate location for the proposed use?

W. Campbell believed it was, but for what was entitled for the office use only. Not an appropriate location for heavy equipment, noise, truck traffic. If it was separates as just an office as what the applicant intends, he would say yes for an office. Not for construction vehicles or paving equipment..

J. Plourde agreed. As far as an office, it will be in a residence and one nonresident person. As far as other activities that have been taking place, that was not an appropriate location for them.

M. Thornton – he expressed his opinion with the conditions. That there would be no heavy equipment there unless it was working on the property, and not staying overnight.

W. Campbell – there was no heavy equipment and agrees if it was working on the property and leaving – not staying overnight.

J. Plourde asked if M. Thornton would consider furniture delivery to be considered heavy equipment. Wanted to make sure deliveries wouldn't be part of the condition.

M. Thornton said if you ordered concrete, that truck would be there awhile.

J. Plourde said they shouldn't have materials or equipment sitting or stored outside the home. Not the right location for that.

M. Thornton said the 28 ft trailer was what he had a problem with. Understood applicant's concern with safety when having it there until he can find a better place.

S. Bonczar said they needed to be very careful. Fine line between what is used for the business that should not be stored or parked there and what is considered personal. Didn't want to restrict applicant from being able to drive home with his personal truck he used for work and park it in the yard the same as a plumber being able to drive his plumbing vehicle and park it in the yard. But they don't want storage of heavy equipment, materials, dump trucks, paving machine or roller, etc. Those don't belong there. But if applicant goes from a job to his home and parks his trailer, S. Bonczar would not want a condition to exclude that ability to do that.

K. Lagro referred to neighbors mentioning additional employees coming and going.

561 S. Bonczar said it came down to a he said/ she said. If they set a condition they want to make
562 sure the intent is that this home occupation stays within the spirit of the ordinance and allows
563 home occupation but with respect to other homeowners adjacent and around the subject property.
564 Wanted to make sure it was fair to everyone – applicant and homeowners around the subject.
565 There is a balance there.
566

567 **C. Will the use as developed not adversely affect the adjacent area?**

568 S. Bonczar said this was similar as the site being an appropriate location.

569 J. Plourde asked if they were specifically talking about the office home occupation?

570 S. Bonczar said yes, based on how applicant intended to utilize that space and run his business
571 out of there.

572 M. Thornton said if they perform as the application stated, didn't think any adverse effect.

573 But not if trailer pulls up with two axles with heavy duty equipment and left there overnight. But
574 this would go against what they were trying to condition.

575 J. Plourde asked, (the truck) parked in the road or drive?

576 M. Thornton said both. Talking one truck and one 28 ft. trailer used in the business. that are D.
577 Claxton's.

578 J. Plourde said D. Claxton's daughter will also have a car. Want to make sure they are careful in
579 whatever they say in the condition.

580 R. Costantino said he was still struggling with it as far as adversely affecting the area. Certainly a
581 home office as discussed wouldn't be expected to. But five neighbors say it has already been used
582 as a business. Not sure how to enforce a condition on it.

583 M. Thornton said there were vigilant neighbors. If conditions not adhered to, there would be
584 complaints.

585 W. Campbell said with the amount of testimony from the surrounding neighbors they would be
586 vocal to the Town if not adhered to. Applicant will need to be in compliance.

587 M. Thornton – didn't hear neighbors say they would mind an office, with absence of the
588 equipment.

589 W. Campbell said one person did.
590

591 **D. Will there be no nuisance or serious hazard to vehicles or pedestrians?**

592 W. Campbell - didn't think so.

593 S. Bonczar – State of affairs today, maybe so. But for the proposed use.

594 J. Plourde – As long as there was long enough drive to accommodate his truck and personal
595 trailer and his daughter's car.

596 S. Bonczar said it sounded like it has been. Issue was with additional vehicles.

597 J. Plourde – as long as she didn't have to park in the street. Parking in the road, especially in the
598 winter, could be a nuisance and a hazard.
599

600 **E. Will adequate appropriate facilities be provided for the proper operation of the**
601 **proposed use?**

602 J. Plourde – for the home occupation, yes

603 M. Thornton – thought that was met

604 S. Bonczar – no problem there

605 W. Campbell – agreed
606

607 S. Bonczar said they would have to craft a condition. They all agreed there had to be so it doesn't slip
608 back into a bad situation. Sec. 10.02.3 said there should be no outside evidence that dwelling contains a
609 home occupation. Condition would be a little more explicit. Definition of home occupation stated that it
610 was secondary use, didn't change the character of neighborhood, no outside display or storage or
611 emission of dust, fumes, noise, etc. It was in the ordinance but thought that everybody had a concern

612 during the discussion, so as they vote on this, the vote needed to contain a condition re storage of vehicles
613 and materials. He would make a suggestion, and the rest of the Board could edit it.

614 S. Bonczar suggested “there shall be no outside storage of materials and/or equipment as well as no
615 parking of vehicles relating to the business on the property.” Thought there should be a notation added
616 because applicant testified he has used his truck primarily for personal but it had his logo on it. Didn’t
617 want that to be a violation.

618 J. Plourde suggested saying other than his primary vehicle.

619 M. Thornton said he will have a truck and trailer. He can’t have heavy equipment, hauler equipment, or
620 trucks stored overnight. But they could have it to work on the premises – then they have to go away.

621 J. Plourde said they don’t want storage of material.

622 S. Bonczar – what does he add? Except for.

623 M. Thornton – for the pickup truck and trailers.

624 J. Plourde – homeowner’s primary vehicle.

625 S. Bonczar – “there shall be no outside storage of materials and/or equipment as well as no parking of
626 vehicles related to the business on the property, except for a company business vehicle.

627 M. Thornton said on or adjacent to the premises – equipment on the street is adjacent to the property.

628 J. Plourde – there was also testimony about parking in the easement.

629 S. Bonczar – if this were a hired contractor to do work. (then vehicles might be stored on the property
630 until the work was done) Applicant has ability to use his own equipment to do his own work, whether it
631 be grading or digging a drainage trench. S. Bonczar said he put up a steel building a few years ago and
632 there were some things he didn’t do overnight. It took couple of months to get electrical trench done and
633 at times there was equipment in the yard. Didn’t want to have a situation where it looked like applicant
634 was violating the ordinance because he had equipment for his own personal needs there.

635 J. Plourde – to work on his own property.

636 S. Bonczar – right. They know the overall intent was that they don’t want heavy equipment there. Do
637 they want to get too specific?

638 W. Campbell – how do we know applicant won’t use that long term that every six months he is working
639 on the property?

640 J. Plourde – that was why they needed to be specific and as detailed as they can, only because of other
641 past violations and other uncertainties.

642 M. Thornton – even if he has heavy equipment working there, it shouldn’t be parked in the circle
643 overnight.

644 J. Plourde agreed.

645 K. Lagro – that is a timing issue. Should not be done ever. It is a safety issue.

646 M. Thornton, W. Campbell and J. Plourde agreed.

647 S. Bonczar – they were not lawyers. Their intent was good. They don’t want that heavy equipment
648 stored on the property.

649 J. Plourde –re the abutting property, suggested putting in “not on abutting properties, easements or public
650 rights of way.

651 M. Thornton – that was why he said adjacent. Meaning equipment in any immediate area.

652 J. Plourde – that is a gray area. Wanted to be specific with their condition to avoid confusion.

653 W. Campbell – If not nailed down.

654 S. Bonczar – suggested “on the property or easements or public rights of way.”

655 After brief discussion S. Bonczar suggested “There shall be no outside storage of materials and/or
656 equipment as well as no parking of vehicles related to the business on the property, abutting properties,
657 public rights of way or easements, except for a company vehicle used for his own primary use.”

658 K. Lagro said specifically there is a home occupation. It is not just general office. Not more than
659 applicant and one other person. Others didn’t want to do that.

660 M. Thornton thought it was already covered on the application.

661 K. Lagro – one of the complaints was that other employees come in at 6:30 in the morning.

662 R. Costantino didn’t think they were going to the office.

663 K. Lagro said they were going to the house. If you read it as strictly one non-resident employee, then
 664 other employees should not be there.
 665 M. Thornton believed they were going to the equipment to get it for that day. If equipment not stored
 666 there, they would have no reason to be there at 6:30 a.m.
 667 J. Plourde understood K. Lagro's point. That is why the condition on the home occupation didn't
 668 disregard activity outside the home. Don't want employees coming to the home. Trying to be specific
 669 and covering themselves and to help the neighbors.
 670 W. Campbell – any specific time for the office?
 671 J. Plourde – hours of operation for the office would matter (for the home office)? It would be more for
 672 the equipment. Which they were trying to remove from the property. Didn't see home office or
 673 occupation being an issue for the hours.
 674 M. Thornton – you have a pattern. He leaves about 6:30 and goes with vehicle and trailer and comes back
 675 at some time during the day and parks them. Not to and fro (with that truck & trailer). From the way
 676 applicant explained it, he goes to the customer to do estimates and sales. There is no traffic to the office
 677 except for every two weeks someone picks up a paycheck if the paycheck is delivered on site to
 678 employees. Didn't see that as an issue. He saw the issue as coming to get the equipment at 6:30 a.m. if
 679 it was located at the office site.
 680 S. Bonczar wanted to see if they agreed on the wording of the condition and then take a vote and have
 681 motion whether to include that in the approval or disapproval.
 682 M. Thornton said conditioned upon
 683 S. Bonczar suggested "there shall be no outside storage of materials and/or equipment as well as no
 684 parking of vehicles related to the business on the property, easements. or public rights of way except for a
 685 company vehicle used for the applicant's own primary use.
 686 R. Costantino said that made him think of the other person.
 687 J. Plourde said good thought. The other vehicle (A. Griffith's) wasn't a company vehicle. It was her own
 688 personal vehicle.
 689 S. Bonczar said it could be a pickup truck.
 690 S. Bonczar – they were talking about a work vehicle. But applicant uses a company vehicle to get around
 691 – like a plumber. Didn't want to deny that (ability to do his work). Just didn't want storage of all kinds
 692 of other things. Applicant had said he won't. Want to make sure (that it was clear they don't want it
 693 either)
 694 S. Bonczar asked for a **motion on the condition. Condition as follows: There shall be no outside**
 695 **storage of materials and/or equipment as well as no parking of vehicles related to the business on**
 696 **the property, easements, or public rights of way except for a company vehicle used for the**
 697 **applicant's own primary use.**
 698 M. Thornton moved to add the condition.
 699 R. Costantino seconded.
 700 **Vote on the Condition:**
 701 **M. Thornton - yes**
 702 **R. Costantino – yes**
 703 **J. Plourde – yes**
 704 **W. Campbell – yes**
 705 **S. Bonczar – yes**

706
 707
 708
 709 **VOTE: On Special Exception With the Condition:**

710
 711 **1. Is the Special Exception allowed by the ordinance?**

712
 713 **R. Costantino – yes**

714 **J. Plourde – yes**
715 **W. Campbell – yes**
716 **M. Thornton – yes**
717 **S. Bonczar – yes**
718
719 **2. Are all the specified conditions present under which the Special Exception may be**
720 **granted?**
721
722 **M. Thornton – yes**
723 **W. Campbell – yes**
724 **J. Plourde – yes**
725 **R. Costantino – yes**
726 **S. Bonczar - yes**
727
728 S. Bonczar said the criteria for Special Exception having been satisfied with the intent of the condition
729 previously voted on, the application was approved. He informed the applicant the application was
730 approved and reminded applicant of the 30-day appeal period.