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ZONING BOARD OF ADJUSTMENT MEETING

July 22, 2020

Meeting called to order by Chairman Joe O'Brien at 7:30 A.M.

Members present were: Joe O'Brien, Mike Harris, Mike Kelley and Joe Schifano. Chief Tim Honeycutt and Building Official, Angie Brown were also present.

The following request was presented:

Administrative Review: The City of Pelham has told Doug Archer he is not running a business and will not need a business license. Rodney Johnsey disagrees with Pelham's decision and thinks Mr. Archer is running a business out of his home

Applicant: Rodney Johnsey

Location: 109 Pintail Dr.

Attorney Frank Russo, representing Mr. Johnsey explained why they have come to the Zoning Board of Adjustments and to show his efforts to stop what they call a nuisance situation. Mr. Russo addressed that the property adjoiners letter that were sent from the City of Pelham has said that Mr. Archer is not running a business and will not need a business license. Mr. Russo went on to explain, the reason they are here today is they're not concerned with Mr. Archer having a business license. It is our position that Mr. Archer cannot have a business license with the business that he is running in an R-1 zoned neighborhood. Mr. Johnsey lives at 109 Pintail Drive, Mr. Archer his neighbor next door to him, lives at 111. Mr. Johnsey's bedroom abuts Mr. Archers driveway. Mr. Johnsey's bathroom also, abuts his driveway. Mr. Russo went on to explain further, Mr. Archer is in the business of making what are called green egg tables. According to my client, Mr. Archer has been making these tables for approximately two years in the driveway of his home, and in the shaded area of his home. Attorney Russo showed some pictures and videos of Mr. Archer working at his home making the green egg tables to the board members. Showing the evidence Mr. Russo explained, they're very close proximity to each other. Mr. Russo informed the member that Mr. Archer sells these tables and has been selling them for approximately the last two years, he sells them for \$330 to \$550 each. Mr. Archer also advertises on Craigslist, Facebook marketplace and a few other places. Mr. Russo went on to explain what

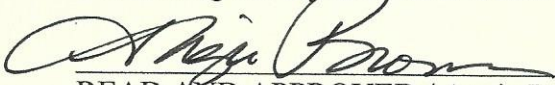
he has found on the internet by taking time and looking through these advertisements, they have gone on since 2019. He stated there are numerous tables that have been for sale during that period of time. Mr. Archer builds these tables in his driveway and next to his shed outside. If you look at the homes in Mallard Point, how they are situated, Mr. Johnsey's bedroom window faces his driveway, so he can hear everything that's being done. When you build these tables, the types of equipment that is used are miter saws, table saws, and nail guns. These building activities have taken place as early as 7AM and continued throughout the day, almost daily for two years. Attorney Frank Russo addressed the law in the way he reads Pelham's Zoning Ordinance Article 8, R-1 Single Family Residential Districts states section for prohibited uses; no accessory structures as defined as a shed, or other outbuilding like that are to be allowed in the front, or on the side yard of the principal residence'. Mr. Russo submitted to the members photos that show that this is not in the back of his house, it is on the side of the house directly in the view of Mr. Johnsey's bedroom window. Mr. Russo named a few violations. That's the first violation that we feel that you're going to see in the code section. The second violation under Section 4, which is under Prohibited Uses, Mr. Archer doesn't fit any of the exceptions to put up something like this so you have to read the definition then, of what is a industrial good and industrial goods are material used in the production of other goods, while consumer goods are finished products that are sold to and used by consumers. Attorney Russo went on, so it appears from my reading of the law that not only is Mr. Archer violating the industrial portion of the statute in that he's bringing raw material in to his house and storing it in his basement, and you will see plenty of photos that depict and also there is a thumb drive that depicts the amount of lumber, that he is storing in his house. Mr. Russo stated; he believes you can tell from that that this isn't a full fledge ongoing business. The violation and penalty section of this statute states for a first offense. It's a \$50 fine. Then it says, each day, any such violation continues shall constitute a separate event. Mr. Russo express they we're not out to ask the city to hit him for 200 days or anything like that, we're just asking that if the, if the thumbdrive of pictures and videos determines that this is a violation of section 8 of Pelham's ordinance and that Pelham will issue some type of cease and desist order to Mr. Archer and ask him to move his business to another location. Mr. Russo requested that his client, Mr. Johnsey, start videoing as much of these activities as he could. Mr. Russo asked the members to please review the thumb drive because there are some very interesting things on the thumb drive number one is the amount of lumber, that is that is used in making these tables, the amount of tables that you will see being made. In addition to that, Mr. Archer has a fire pit that he's taking all of this wood and building fires. The Pelham Fire Department was recently called out because one of the fires was pretty high, and dangerous. The other issues that are really not in the purview of the board, are things like whether or not he needs a business license. Again, we're not here for that. But I would like to point out that, according to my client, he feels that Mr. Archer has made anywhere between 400 and 500 tables in the last two years in an average table sells for \$400 that's a \$200,000 profit that he's making minus his material. Now, the end result, Mr. Johnsey has requested on numerous occasions that Mr. Archer cease and desist making these tables. Attorney Russo stated he sent Mr. Archer a letter by verbally requesting him to cease and desist and also called the Pelham Police Department. Lastly, Attorney Russo pleaded to the board members, this is a business, please issue some type of cease and desist order to stop this terrible nuisance. Mr. Archer then began to explain, he stated, he's 65 years old and has been living at 111 Pintail Dr. since 1990. Mr. Archer also stated he's been a traveling district manager for the past 21 years and that he understands what running a business is because he's done it very successfully for numerous years. Mr. Archer stated everybody has an extra job and he picked up

a hobby of doing a little bit of woodworking years ago, just as a fun stress reliever. Mr. Archer explained no building goes on inside the shed and when he gets ready to build a table it will be in the backyard but will do the final assembly in his driveway to have a flat surface. Mr. Archer went on to say because of the COVID-19 situation, people are not getting out, we're all sitting there wearing masks, not going to restaurants, etc. As a result of not going to restaurants what's happening is men are cooking more outside and want a better set up. Mr. Archer stated "if I was doing it for a profit for a business I'd be broke I can assure you that." Mr. Archer said, at one time period, he had four tables in his driveway, that were made and they were waiting for Father's Day for him to deliver. Code Enforcement Officer, David Tkacik, went over to Mr. Archer's residence and told him to make sure that he's not conducting a business at home that people are not coming there to get tables. Mr. Archer said he wasn't aware of the home occupation rules, however, there are a couple of occasions when somebody asks him to take the structure to a house. Mr. Archer stated he has an old model Ford truck that has a liftgate and he can lift the table and put it on his truck by himself and he can take it to the person's residence. Mr. Archer also stated when he sales and the purchaser needs delivery, he applies a charge for delivery. Again, Mr. Archer stated it's just a hobby. Mr. Archer also explained there is no possible way that he has time to run a business when he travels to five states as a district manager over the past 21 years. Mr. Archer explained to the board as far as the quantity alone, you can't go to Home Depot or Lowe's and buy red cedar lumber because they don't sell that. What he does when he needs materials, Mr. Archer explained, is go to a saw mill where the guy takes the cedar tree, cuts it up on the spot, gets it to the dimensions that he wants and usually buys large amounts in one time so he's not making a 100 mile trip one way to go get lumber for one person. There will be times that he has enough material for tables and it may sit there for three or four months, but it just saves him from going back and forth. Mr. Archer believes this meeting is all about him filing for a police report on June 26th, 2020. As far as the formalized arrest permission channels, because what happened at the time everybody wants to show results. Mr. Archer showed the glasses Mr. Johnsey knocked off his face. When Mr. Johnsey knocked them off they slid across the driveway or across the street. Mr. Archer said he went to Wal-Mart to repair them, however they were closed and have been closed for three months because of COVID-19, he'd have to go back when they reopen and get them fix. That is why he's wearing an old pair of glasses. Mr. Archer said he has a copy of a video he filmed of Mr. Johnsey's dog and Mr. Johnsey approached Mr. Archer very rapidly and told him to give him his phone and then proceeds to slap Mr. Archer knocking his glasses off crossing the street. Mr. Archer stated he believes Mr. Johnsey is mentally unstable in his opinion. Joe O'Brein stated to remind the members they are only here to determine if this is a business or not. Attorney Frank Russo began, I think you hit the nail on the head I would ask the board members to keep their eye on the ball. My client may be a devil. Mr. Archer may be a saint. The issue before the board today is whether or not he is running a business in violation of section eight so that's all I'm going to point out. Thank you. Mike Kelly asked if Officer David Tkacik would weigh in on the situation. Officer Tkacik stated that the shed that is being talked about is to be considered the back yard, not the side yard. The only pieces of wood he observed while he was there were the ones he was working on in his driveway. Officer Tkacik said that Mr. Archer did show him the burn pile and explained the Fire Department going out there. He also said they did discuss the dogs but that is not for this particular meeting. Mike Kelley asked Mr. Archer if he had kept record of total sales he's had and total dollars he's made over the years. Mr. Archer answered he has not kept record and normally he builds one or two a month. Mr. Archer went on to explain this has been a

this has been a seasonal job that it picks up during holidays; for example Father's Day. Officer Tkacik stated he started this call back in 2015 and all three calls that officers went on, were between the hours of 9AM. to midnight, which is covered under the noise ordinance, so he was not violated. Attorney Russo stated that this is an incorrect statement of Pelham's Ordinance as to operating and is a nuisance business working various hours of the day. Frank Russo went on to say people do lay down in the middle of the day to take a nap or what have you, and they do not want to hear a saw or pow, pow, pow with a nail gun coming through their bedroom window. Mr. Archer said they are exaggerating and he has only made 100 tables in his lifetime. Joe Schifano asked Mr. Archer is he is willing to take those advertisements down to become more in line with the hobby rather than something's advertised for sale. Mr. Archer answered it's not like walking into a retail store they've got 10 of these on the shelf and you can pick it up. Advertising is a way he can tell the people its custom, he will do it for you. Mr. Archer said he only builds on demand when someone has asked for it. Also Mr. Archer said no tables are kept there in stock. Joe Schifano clarified his question for Mr. Archer, he asked "After this meeting whatever the board decides are you going to still do the advertisements." Mr. Archer said on Monday June 22, 2020 he went down to the city offices to try and meet with Cathy Sweeney about it they said she wasn't in the office because of COVID-19. He called Mrs. Sweeney and explained what he was doing and talked about it for a few minutes then she determined he, Mr. Archer, didn't need a license because it's a hobby. Joe Schifano told Mr. Archer that Pelham could not issue a business license to do what he's doing in the zoning district, R-1. What the board is trying to determine here is if Mr. Archer is operating in the spirit of what a business would do, rather than a hobby. Mr. Schifano said they'll make a determination that it is a business because of the advertisements and because of offering for sale and delivery and all those things that would that would preclude you from being able to get a license. Mr. Schifano explained if you're operating it as a hobby where friends of friends are asking you to build a table that's something that's different. Mr. Schifano expressed that the reason for his questions here is to know what are you doing, how are you operating, and how do you continue, how do you plan to operate in the future if we determined that you are not a business.

Mr. Schifano explained the motion as how these tables are offered for sale and have been offered for sale for a continual period of time and Mr. Archer is operating a business out of his home because he is selling them for profit from what he has told the board members today, it exceeds what is done as a hobby. Mr. Schifano made the motion that Mr. Archer is operating a business out of his home. Mike Kelley seconded the motion and all approved. The request was 4 to 0, Mr. Archer is running a business out of his home. With no other business to come before the board Joe O'Brien asked for a motion to adjourn. Mike Kelley made the motion to adjourn. Mike Harris seconded the motion

The meeting was adjourned at 8:45 AM.



READ AND APPROVED / Angie Brown, Building Official

Respectfully submitted,

Kelsey Cunningham

Secretary