

TOWN OF CONCORD PLANNING BOARD  
Town Hall Auditorium

September 1, 2020  
7:00 p.m.

**ITEM # 1:**

The meeting was called to order by Planning Board Chairman Lawrence J. Kelly, Jr., at 7:00 p.m.

**ITEM #2: Roll Call**

**Present:**

Lawrence J. Kelly, Jr., Chairman  
Bruce Luno  
James Jozwiak  
Joseph Edbauer  
Julie Zybert  
Karl R. Lux  
Raymond Hilliker

**Also Present:**

Darlene Schweikert  
Clyde Drake, Supervisor  
James & Laurie Croft  
Mark O'Hara  
Michael & Cynthia Orcutt

**ITEM #3: Citizen Participation**

There was no one for Citizen Participation

**ITEM #4: James Croft-Home Occupation Application: 12771 Transit Line Road**

Chairman Kelly asked James Croft to address the Board with regard to his Home Occupation Application. Mr. Croft had submitted the Home Occupation Permit at the residence at 12771 Transit Line Road.

K. Lux asked for the history from the change one place to the house. Mr. Croft's Concord Detail was located at West Main Street in the Village of Springville for the last 13 years. This past Spring, the landlord of the building had other tenants come into the building and Mr. Croft did not feel that the building was secure inside; it is completely open. Mr. Croft was not comfortable with the tenants and was uncomfortable with his equipment and the investment he had there and as a result decided to bring his business to his home.

K. Lux asked Mr. Croft if he considered it a business when he was located on Main Street. Mr. Croft answered that he had been in business for 13 years.

J. Edbauer asked how many employees there were. Mr. Croft answered no employees, just himself.

J. Edbauer asked how many cars did he process in a week. Mr. Croft answered one a day. He tries to do one a day but with COVID it has been about 4/week. If he was having a good week, it would be one a day with maybe one on Saturday which would be a half day.

J. Edbauer asked about how much water is used weekly for the business, not personal use. Mr. Croft answered 15-20 gallons.

K. Lux asked if he noticed any water from in front of the garage area running to the road. Mr. Croft answered no.

Chairman Kelly asked if the business was opened all year. Mr. Croft answered that it was a seasonal business. Depending on weather, starts in April/May and goes through October/November. By Thanksgiving it is shut down for the Winter.

R. Hilliker asked if this was being done inside the garage or outside. Mr. Croft answered that cars were washed outside the garage and then the rest of the detailing is done inside the garage.

K. Lux noted that one of the requirements is that the Home Occupation does not change the character of the house. Will there be any changes? Mr. Croft answered that there will be no additional buildings or changes to the house or building. K. Lux asked if it looked just like a house. Mr. Croft answered yes. J. Edbauer noted that he drives by this residence every day and did not notice any changes.

K. Lux asked if there were signs posted. Mr. Croft answered no. Since he was contacted by CEO Singleton, he has pursued signage or advertised; he was waiting for this to be settled.

Chairman Kelly advised that he went to the premises earlier in the day and took a picture of the property. He had to call Town Clerk Schweikert to verify the address since he did not see any activity. Mr. Croft noted that he did not have a car today.

J. Edbauer advised that the statute in the Town Code states that the Home Occupation shall be carried on wholly within the principal or secondary building. He asked Mr. Croft if he planned to wash the cars in the garage. Mr. Croft said that he can. If it is pouring, he already does and also if it is too cold. J. Edbauer noted that this does not apply to his personal cars.

K. Lux noted that another requirement of Home Occupation is that there is no exterior storage of materials used in the Home Occupation. Where are materials stored? Mr. Croft answered that supplies are stored inside.

B. Luno asked if cars were washed inside or outside when Concord Detail was in the Village. Mr. Croft answered that they were washed outside unless it was raining; weather.

R. Hilliker asked how long does the outside portion of the wash take; how long would he be outside. Mr. Croft answered 30 minutes at most.

J. Jozwiak asked if the cars were hand washed or power washed. Mr. Croft answered hand washed. He does have a pressure washer but barely uses it.

K. Lux asked if Mr. Croft thought that anything that was done outside would affect the neighbors. Mr. Croft answered no.

The members had no other questions for Mr. Croft at this time.

Chairman Kelly asked Mark O'Hara to address the Board. Mr. O'Hara advised that his concern as a neighbor is for several months now, probably since April, there has been a commercial business Concord Detail operating in an area zoned for R-AG (Residential Agricultural) zoning district. He purchased his home in the country for peace and quiet; if he wanted to live in a commercial area, he would've purchased a

home in the Village. He also owns a business with his wife and because it is a business, it is in the Village. He does not believe it is fair if something happened to his building that he could just move his business into his garage. He is not creating noise with power washers; he is not posing a threat with water and chemicals that are coming directly to his well. He would not even think about moving his business into his garage; he owns an antique business with low noise. His concerns: he does not know if chemicals are going into the water. They live on a slope as you can see by the pictures. Where the activity is taking place, he has several trees along the property line and those trees right behind the garage where the activity is taking place, there is something going on with those trees. They are dying, damaged. He is not sure what but every other tree, 20 other trees are doing just fine. He recently dug 10 more holes for trees to be put in and the holes right outside the garage area from the Crofts are all filled up with water. That water is coming from somewhere so his suspicion is that it is coming from the car washes. His concern is what chemicals are going into the car wash ground. Commercial businesses for car washes have drains in them; they have environmental requirements that they have to meet. What requirements are being met? How is his quality of water being affected? He does not know that. He put a call into the EPA and also the Bureau for Guidance on Action for Bureau of Water Supply Protection. He is waiting for their responses; he is not sure if they will come out and do water samples but he is concerned that his quality of drinking water is being comprised because of the business. Where is all this waste water from the car wash going? From a commercial business; he understands that for personal use that is fine but from commercial business, where is that water going? Right down the hill right into his well. J. Jozwiak asked the depth of the well? Mr. O'Hara answered that he thought it was about 100 feet. He doesn't know for sure because he did not have it drilled. He is assuming it's 100 feet. It is a drilled well; located approximately 100 feet directly downstream/downhill from the garage. B. Luno asked if he was saying his well was 100 feet deep. Mr. O'Hara answered that he assumed it was 100 feet deep but he does not know how deep it is but it is 100 feet from my well from where the garage is, downhill. The water flows right to his property and well. That is his concern.

Mr. O'Hara noted again he purchased his home in the country for peace and quiet, tranquility. Mr. O'Hara noted that he begs to differ with Mr. Croft with regard to the power washer. Due to COVID, Mr. O'Hara has been working from home since March every day. He is on the phone most of time and hears the power washer for days, and hours and hours. He hasn't heard it recently but he has heard it for weeks and weeks and weeks before I made the formal complaint. That is not ok and on top of that, he hears people coming in and out of his driveway looking for the car wash. Sometimes he is on the phone with employment conducting meetings and he has people coming up to his house knocking on the door at 7-7:30 a.m./ 9 o'clock in the morning looking for a car wash. That is not ok. He is on the phone with his customers conducting his employment and then his dogs are barking and he has to stop what he is doing. This happens every week. He has had more cars pull in his driveway in the last four months than he had in the 14 years he has lived there. It has come to his attention as well that just application was just submitted in the past few days yet the business has been running for months. That he doesn't understand. Mr. O'Hara noted that there are rules and regulations, zones and codes for a reason. He lives in a rural area, an agriculture residential area, because he doesn't want a commercial car wash next to his home. He is fine with Mr. Croft pursuing

his business elsewhere. He is happy for them; he wants them to thrive. Just not next to his house. He is concerned about his home value. He not so recently secured a loan to put an addition on his home and he also has a contractor on retainer and he is now concerned why he should drop any more money on his home if it is going to depreciate with a commercial business right next to it. Because it will depreciate. It will not be the same home value. He has invested hundreds of thousands of dollars into his home. You all have seen my home; you have taken pictures of the Croft home so you have seen it. He is not ok with the commercial business next door; any commercial business. So this is not a personal thing; he does not want a commercial business next door to his home. If he did, he would've bought a home somewhere where it was zoned commercial. He reserves the right to live peacefully in a residential neighborhood. He does not support permitting a commercial wash next door. Today a MAC truck pulled in. He does not know what kind of support a car wash detailing would need; that's mechanical work. He is not sure what mechanical work is needed as well. Again there are other vehicles coming in and out. He does not know if it is a shuttle service for people. There is all kinds of advertising and he heard Mr. Croft say earlier that there was no advertising; but there is advertising on Facebook with "same great service, new location" on Transit Line Road, there's valet parking, park lot available. So he is confused why there is no advertising; it's on Facebook. Mr. O'Hara respectfully requests the Board's decision to not approve the Home Occupation for the Crofts for their commercial business next door to his home. It is a lot of noise; it's a lot of traffic; it's a lot of excess water going into his well.

Chairman Kelly asked the Board if they had questions. J. Edbauer asked if there was any onsite advertisement and Mr. O'Hara said that he has not seen any. If there was a sign up, he probably would not have people in his driveway but again his home value would drop. If he decided to sell his home, the first thing that someone will come and do is ask if that a commercial business next door and then they wouldn't buy his home. There were no other questions at this time. Chairman Kelly thanked Mr. O'Hara.

Chairman Kelly asked Mr. and Mrs. Orcutt to address the Board. They live on the other side of Mr. Croft, on the left side, uphill. Mr. O'Hara lives on the right side of Croft. Mrs. Orcutt noted that their concerns are the same as Mr. O'Hara's with the noise and the fact that they live in the country for peace and quiet. Since Mr. Croft has started operating from home, there are tons of people pulling into their driveway looking for his business and with everything going on right now with COVID and protests, we don't need people coming to our house to steal. Their dogs bark when people are in the driveway. They are also concerned about their property value as well. They personally would not buy a house next to a car wash. They have lived there about 10 years now and Crofts about 20 years. Mr. Orcutt repeated that they would never would have bought a house next to a business. He lived in the City, in Hamburg. He now lives on the top of a mountain and now there is going to be a business right next to his house. He will be retiring in about 8 years and will be putting his house up for sale in 7.5 years. He knows Jim (Mr. Croft) and gets along with him and has drinks with him. Mrs. Orcutt noted that they are great neighbors. He doesn't want his business at their house. He knows how many cars he does in a day and how much he charges for a car. I've been to his shop. We're talking a one-bay garage. Mr. Croft had been there for 13 years. This is no reason

that he can't find a place in a commercial business. There are a ton of one-bay garages in the area. If he would need to, rent two. There is no reason he can't afford to do that. If he wants to live next to his home, move his home to a business area where it would be allowed. He does not want to live next to a business. He drives an hour from his job and Mr. Croft only drove a couple to his other location. Maybe he should find a place that is nearby where he can have a one-bay garage; it could be a storage unit. It does not have to be a business all day in his neighborhood. Mr. Orcutt knows that there are people who have signed lists for it but he guarantees that the houses right next door to Mr. Croft, on either side, are not. If someone is on the fence, please give him your garage for a month and you will see how much business he does and you will see that there is no reason why he can't rent a place where it would be allowed. There are pressure washers running. Mr. Orcutt advised that he just found out about the meeting last night; didn't know if he needed to come tonight or not; if he needed a lawyer. He questioned if this application passes, is there a way he can still fight and get it overturned. J. Jozwiak advised that the Planning Board is an advisory board. Once everyone leaves, the Board will talk amongst themselves and will give a recommendation to the Town Board. The Town Board will render a decision. Mr. Orcutt noted that he would have never purchased the home next to a business. There are five homes on that part of Transit Line Road and Mr. Croft is in the middle. Everyone has done nothing but raise the values of their houses. Having a business next door, he feels will take the values right down. Mr. Orcutt said that Mr. Croft could rent a one-bay garage even if it cost \$1,000/month. That is two cars and Mr. Croft does more than one car a day. J. Zybert asked if he could hear noise. Mr. Orcutt answered always. If it is really windy, it is worse. He can hear it from approximately 8 a.m. to about 7. R. Hilliker asked them to clarify where their home is; Mr. Orcutt answered on the north side of Croft, uphill. R. Hilliker asked how often he thought the pressure washer runs during the day. Mr. Orcutt is working days; Mrs. Orcutt answered that it is on and off during the day. She hears motors running. Mrs. Orcutt noted that it is not as quiet. Mr. Croft does have a lot of people coming to talk/see him. J. Zybert asked if they had trees like Mr. O'Hara? Mrs. Orcutt noted that they have smaller trees, not big trees.

Chairman Kelly asked if the Board had anything else. There were no more questions for Mr. and Mrs. Orcutt. Chairman Kelly thanked them and they thanked the Board.

Mr. O'Hara asked if he could approach the Board again. Mr. O'Hara advised that neighbor Don Hayden signed a letter on before of Mr. Croft. Mr. O'Hara noted that Mr. Hayden did not have all the information with regard to the water. Chairman Kelly asked if the Hayden letter was false. Mr. O'Hara answered that Mr. Hayden is considering rescinding his letter. Chairman Kelly advised that when Mr. Hayden shows up, he can rescind his letter; Chairman Kelly noted that he is sorry but it is just hearsay at this time. Chairman Kelly asked Mr. O'Hara if he had anything else and he did not.

Chairman Kelly then asked Mr. Croft to respond to the comments made tonight. Mr. Croft advised that he has not used his pressure washer since he moved up to the house. Period. He used his pressure washer today to pressure wash his deck before he stained it. Their wells are 125 feet deep. The chance of getting ground water to Mr.

O'Hara's well is ridiculous; Number One. Mr. Croft advised that Number Two he uses Dawn dish detergent; everything he uses in the shop is biodegradable and earth friendly. That is one of the things he advertises. Mr. O'Hara has a number of trees on that side of the house. Seven holes were dug on Saturday and Mr. Croft has not had a car in his shop since Saturday and Mr. O'Hara is saying that water is in the holes. The trees were planted like 3-4 years ago and are growing like weeds. He does not see damage to them. As far as people in and out, everyone is trying to identify where he is located. There are no signs up so, yes, people may miss the driveway and turn around next door in neighbor's driveway but he is hopeful that that will not continue. He has actually started to call his customers since he has moved, two days before they come up, to make sure they know where he is located; make sure they know the address and their time of arrival so he can be looking for the customer. The MAC tool truck delivers his windshield spray and some tools. He still buys tools from MAC tools; he will forever whether it is for his business or his own personal use.

R. Hilliker asked if Mr. Croft had a garage floor drain. Mr. Croft answered that he did not. R. Hilliker noted that the water from the garage runs out to the driveway. Mr. Croft answered yes, it is a stone driveway. It was just redone with 6-7 inches of stone.

K. Lux asked if he had any explanation of what the noise is that the neighbors could be hearing. Mr. Croft noted that the compressor runs for about 20 minutes a day. Outside of that, he did not have any idea. He can't wait to shut it down so that he can listen to the radio. J. Jozwiak asked Mr. Croft what tools the compressor runs. Mr. Croft answered that it runs his wax. He applies wax. K. Lux asked if it was done inside or outside the garage. Mr. Croft said inside. R. Hilliker asked Mr. Croft if he kept his garage doors open generally. Mr. Croft answered during the hot weather, yes. During the cold weather, they'd be shut down. K. Lux asked Mr. Croft if he thought his compressor was loud enough that it could be heard at your neighbor's house and Mr. Croft answered yes. Mr. Croft noted that he can hear noise from his neighbor's house too.

J. Zybert asked if the garage where he's working, is it in the middle of the property? Mr. Croft noted that it is on the south side of his property. The house is in the middle and the garage is on the south side. J. Zybert asked about how many feet is his garage to the closest property line. Mr. Croft answered 20 feet. Chairman Kelly showed J. Zybert and the rest of the Board the picture he had taken earlier of the Croft property.

B. Luno asked Mr. Croft if these were all done by appointments. Mr. Croft answered yes, they are appointment. He can't do more than one. He may have someone stop for an estimate and then they'd be on their way.

J. Jozwiak asked Mr. O'Hara where the trees are that he said were dying, where are they? Front by the road, middle of the property or towards the back. Mr. O'Hara answered that they are right outside Croft's garage. Three right in a row.

R. Hilliker asked Mr. Croft if it would be possible to install a drain tile to drain this water. Mr. Croft answered that he was not sure why necessary. He uses biodegradable materials. Everything he uses is biodegradable. K. Lux asked if that included the sprays and Mr. Croft said yes.

Chairman Kelly advised that there were two letters of support. Mr. O'Hara had noted that one is going to be rescinded but until Mr. Hayden personally rescinds it, there are two letters of support of Mr. Croft.

Chairman Kelly advised that there is one letter from a resident, but not the property owner. The property is across the street from Don Hayden. This resident has lived there a long time but is not the property owner. The Assessor's Map shows that parcel is owned by James Bond. This resident is not the property owner.

There was no further discussion. Chairman Kelly thanked Mr. Croft. Those in attendance thanked the Board and left the meeting.

Chairman Kelly asked the Board for motions, suggestions, conversation. Do you want to table this? Talk about it at the end of the meeting? J. Jozwiak said to talk about it later in the meeting.

**ITEM #5: Comments from Liaison Supervisor Drake**

Supervisor Drake that he was briefed by Code Enforcement Officer Singleton on what he has been doing on this situation. Initially the complainant noted that there were 5-7 cars a day were being washed. CEO Singleton discussed this with Mr. Croft and was informed that he is not doing that many. CEO Singleton has repeatedly asked Mr. and Mrs. O'Hara to take pictures to prove their accusations and nothing was ever done. Supervisor Drake understands the neighbors' arguments. J. Edbauer asked if there was any feedback from the Town Attorney. There has not been any. K. Lux questioned Mr. Croft's intent to relocate the business. J. Edbauer is somewhat concerned about asbestos from the brake pads, grease fittings. J. Zybert noted that he may be using biodegradable products but some of the things that he is removing may not be. Chairman Kelly noted that there is no asbestos in brake pads any more. J. Jozwiak noted that if you are degreasing a motor, there is a lot of stuff in the motor. Chairman Kelly noted that is also a lot of stuff on your deck when you wash that too. R. Hilliker sees no chance that it affects the well; it travels 100 feet, going through the Croft gravel first. The residual build up could. B. Luno questioned if they call for an appointment, why is there all that traffic and turning around in neighbor's driveway. That is just something that happens. You miss a driveway and turn around to go back. He's not buying that and that the pressure washer is running for a lot of hours a day for one car. J. Zybert asked if there was any documentation of how many cars he actually is putting through this business in a day? One person says one and neighbors are saying more. Chairman Kelly noted that we do not. When CEO Singleton talked to Mr. Croft, Mr. Croft noted that he is one person, and he is not able to do more than that in a day. B. Luno noted that he is not going to do 4-5 cars a car. J. Jozwiak noted that it might be cheaper and easier to just put up a wall in his old location. Chairman Kelly asked Supervisor Drake if he had any further input. Supervisor Drake advised that CEO Singleton was advised that O'Hara was refurbishing furniture in their garage at Transit Line Road. The original complaint was filed in June but CEO Singleton was waiting for pictures or more proof from the complainant and it was not received and Mrs. O'Hara was concerned that nothing had taken place. J.

Jozwiak noted that his opinion would be to allow him to do it with specific times; he feels that the ground water issue is not a big deal. The noise the neighbors are hearing is an air compressor; not a power washer. There could be ways to make the air compressor quieter. A shroud could be used to lessen the noise. Chairman Kelly noted that we already have a code. B. Luno asked if the Code would allow the Town to stipulate the times that they could do things. R. Hilliker noted that he would make a motion to approve the permit but Mr. Croft would have to follow the Code language. The CEO would then have to monitor Mr. Croft. B. Luno asked if Mr. Croft should get a sign; he could apply for a sign if the application is approved. The motion would be to approve the Home Occupation Permit as long as Mr. Croft meets all the requirements of the Code. Motion seconded by K. Lux. All in favor. Carried. CEO Singleton will be responsible for enforcement if something comes up in the future. If Mr. Croft is not 100% contained in the secondary structure, the Home Occupation could be revoked. The CEO would then have to cite Mr. Croft. Members discussed if this would require Mr. Croft to keep the doors shut. The Code says there shall be no exterior evidence of such secondary use. Mr. Croft had previously noted to Supervisor Drake and Town Clerk Schweikert that cars are normally brought in on the morning of the appointment and if a car came the night before, he would put their car in the garage and leave his personal car out in the yard. K. Lux noted that all he can hope is that Mr. Croft realizes that this is an inconvenience to his neighbors and now it is an inconvenience to him. J. Jozwiak noted that the ball is in his court now. Chairman Kelly noted that this is a neighbor dispute; nothing really to do with his business. The Code states that the Planning Board makes the decision to approve on Home Occupations. It does not go before the Town Board. Chairman Kelly signed off on the Home Occupation Permit; it is up to Supervisor Drake if he wants to bring it up to the Town Board.

**ITEM #6: Approval of Minutes**

a) August 4, 2020 – J. Edbauer made the motion, seconded by J. Jozwiak, to approve the Minutes as presented. All in favor. Carried.

**ITEM #7: Review of Zoning Districts**

Chairman Kelly asked the Board for further comments on zoning. Supervisor Drake thought that since it was already 8 p.m. the Board might not want to get into this matter tonight. Supervisor Drake brought to the Board's attention that the Town really doesn't have an area for commercial zoning; that is very limited space in town. There is Vaughn Street in East Concord. K. Lux noted that most commercial businesses are in the Village so that public utilities are available. There was some discussion as to possible areas where zoning could be changed to a commercial district: near the 219 Expressway on Genesee Road, Zoar Valley Road. A few years ago, the rezoning of Zoar Valley Road was discussed by the Planning Board. Annexation of that area to the Village of Springville was also discussed as a reason why someone may build a commercial business in that area. At that time the Board thought any zoning change should be requested by the property owners; not changed by the Town.

Chairman Kelly tabled this matter for further review and discussion.

**ITEM #7: Business from the Members**

There was no Business from the Members tonight.

**ITEM #8: Motion of Adjourn**

J. Edbauer made the motion, seconded by B. Luno, to adjourn the meeting at approximately 8:07 p.m. All in favor. Carried. Chairman Kelly advised that the next meeting is October 6<sup>th</sup>.



Darlene G. Schweikert  
Planning Board Secretary

