

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES**

Town Office, 2nd floor meeting room
6 Pinnacle Hill Road, NEW HAMPTON, NH 03256

March 6, 2024

- MEMBERS PRESENT** Regular members: Mr. Newman, Mr. Heckman, Mr. Akers.
Alternate member: Mr. Tierney
- OTHERS PRESENT** Land Use Administrator Mrs. Vose
- CALL TO ORDER** Chair Mr. Newman called the meeting to order at 7:00 PM.
Mr. Newman appointed Mr. Tierney to vote on behalf of Ms. Gattermann.
- PUBLIC HEARING** Matthew Barnard and Jamie Emery were present.
- Matthew Barnard, for property belonging to Emery 2008 Rev. Trust, 74 Donkin Hill Road, Tax Map R20, Lot 48, for a Variance – Article V, Section C. of the New Hampton Zoning Ordinance.*
- Mrs. Vose advised that the applicant, Matthew Barnard, B.A. Barnard Ent., Inc., has requested a Public Hearing in accordance with RSA 676:7, for a Variance. The Variance request is under Article IV, Section C. of the New Hampton Zoning Ordinance. The applicant’s proposal is to construct a septic system within the 20-foot setback of the property line; the proposed location of the leach field being 18.6 feet from the front property line. The property belonging to the Melissa Emery 2008 Revocable Trust is located at 74 Donkin Hill Road, Tax Map R-20, Lot #48, in the General Residential, Agricultural and Rural District.
- Mrs. Vose said all abutters were notified but she has heard from none. Mr. Newman advised that the Board consists of 5 members, of which only 4 are present, stating that if the Board were to deny this application the fact there are not 5 members present would not be reason to appeal. He asked Mr. Barnard and Mr. Emery if they would like to continue with 4 members and they both agreed to move forward with the hearing.
- Mr. Newman asked if all members had a chance to review the application and they said they had. He asked members if they felt this application, if approved, would have a regional impact and they all agreed it did not.
- Mr. Emery stated that though the system is not in failure, due to its age (100 years) he thought it best to replace the system. Mr. Emery said there are difficulties on the property as it is on a wet, spring-fed mountainside. Mr. Barnard indicated on the plan where there was a brook with many rivulets and streams surrounding the house with a well in the middle of the lot that they want to maintain a 75’ radius from. The variance they are asking for is to the road and not next to any abutter, with the proposed septic system going is almost the same location as the existing and it will meet the 10’ setback for the state, to the property line. Mr. Barnard noted that the existing house is even closer to the road than the new septic system.

The members all said they drove by the property to see the conditions.

Mr. Newman advised the board would now go into deliberations, coming out of deliberations if any questions need to be asked of others present. Criteria was reviewed.

The variance will not be contrary to the public interest: The Board agreed to this criterion.

The spirit of the ordinance is observed: The Board agreed this was the case.

Substantial justice is done: The Board agreed.

The values of surrounding properties are not diminished: The Board agreed it would not.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area: Mr. Newman said he agreed due to the special conditions of the property based on the information provided about the land. All other members agreed and Mr. Heckman pointed out that the state setback is met.

Mr. Tierney made a motion, seconded by Mr. Akers to approve the variance as presented, for the septic system to be placed 18.6 feet from the front property line. Vote was unanimous.

PUBLIC HEARING

(cont.)

Christina Smith, 11 Pemi Point, Tax Map U-9, Lot 13, for 3 Variances – Article IV, Section A.4.iii. of the New Hampton Zoning Ordinance.

Mrs. Vose advised that on 3/4/24 Ms. Smith sent her an email, read into record, that stated she was withdrawing her building permit application. She said she was withdrawing her application as it was cost prohibitive. Mrs. Vose said she responded by asking if she was also withdrawing her application to the ZBA, but received no response. As it was unclear as to whether she was also withdrawing her application to the ZBA, though the email seemed to imply it, but the Board agreed to review all the criteria and vote, to be sure, agreeing that it would also provide guidance to Ms. Smith if she decided to appeal in the future.

Mr. Newman noted that Ms. Smith, nor her abutter - were present, but that she was asked to provide further information for this meeting relative to the percentage of impervious area on her lot.

The Board confirmed that they had previously approved 2 of her 3 variance requests, but did not issue a final decision as the Board had not decided on the variance for the carport. It was noted that Ms. Smith was sent a letter (dated 2/8/24) advising her that at the meeting of 2/7/24, the Board voted to continue her application and agreed she needed to advise the Board by 2/20/24 that she would be presenting new information for tonight's meeting, otherwise they may have to decide on her application. The letter advised her that the information needed was relative to percentage of impervious area, and/or possible steps to mitigate that area. Mrs. Vose said Ms. Smith called by 2/20/24, and said she would be providing new information.

The Board went into deliberations.

The variance will not be contrary to the public interest: Mr. Heckman expressed concern with the fact that her impervious area impacts more than herself, as it impacts the water by way of Shoreland Protection rules and possibly other abutters. The other members agreed that based on the information from the applicant and the percentage of impervious area this was not in the public interest.

The spirit of the ordinance is observed: The Board agreed the variance for the carport would be contrary to the ordinance.

Substantial justice is done: The Board agreed that by denying the variance, substantial justice would be done.

The values of surrounding properties are not diminished: Mr. Newman said that without the impervious area information the Board cannot determine whether surrounding properties values could be diminished.

Mr. Newman said the carport seeking the variance is 12' by 20', 240 sq. ft., which being outside of the area of impervious surface area shown on a plan submitted to NHDES in 2013, the 20% limitation of impervious area would now be out of compliance. Mr. Newman pointed out that when the various members visited the property separately, additional gravel was noted in locations not shown on the 2013 plan, so that brought up the concern about how much impervious area there was on the property now. The Board noted that Ms. Smith said she did not add any impervious area after the 2013 plan was done, but that's not how it appears on the ground now, which is why the Board asked her to have the impermeable area calculated.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area: The Board agreed the fact that she cannot have a carport is not a hardship as she has done without a carport since purchasing the property in 2010. Though the carport was a reasonable use the current location and question about impermeable area percentage causes a failure on this criterion.

Mr. Heckman made a motion, seconded by Mr. Tierney to deny the application for the carport based upon the information provided and being unable to determine the actual area of impermeable area on Ms. Smith's lot. Vote was unanimous.

Mrs. Vose advised that she would advise the Selectmen of the denial and now it would become an enforcement issue. Mr. Newman advised that the applicant could file within 30 days, for a motion of rehearing.

CORRESPONDENCE

Copy of a letter to Thompson-Guyotte Rev Trust that their Special Exception approval for construction of an ADU over a garage to be built, would be lapsing in August of 2024 (2 years since its approval) as it had not been started.

(ZBA Minutes, March 6, 2024, cont.)

Mrs. Vose provided Mr. Heckman and Mr. Akers with letters from the Town Administrator asking them if they would like to be reappointed for another term. Both expressed the desire to continue serving on the Board.

MINUTES

Mr. Tierney made a motion, seconded by Mr. Akers to approve the minutes of 11/1/23 with the following correction:

- Pg. 1; under Public Hearing; 3rd paragraph – where the Board was asked whether they thought this application had a regional impact to add they determined there was none.

Vote passed with Mr. Heckman abstaining as he was not present.

Mr. Tierney made a motion, seconded by Mr. Akers to approve the minutes of 11/8/23 as written. Vote was unanimous.

Mr. Tierney made a motion, seconded by Mr. Akers to approve the minutes of 2/7/24 as written. Vote was unanimous.

ADJOURNMENT

Mr. Tierney made a motion, seconded by Mr. Heckman, to adjourn at 7:45 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator