

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

**Town Offices upstairs meeting room
6 Pinnacle Hill Road, New Hampton, NH 03256**

June 5, 2024

MEMBERS PRESENT Regular members: Mr. Newman, Ms. Gattermann, Mr. Heckman, Mr. Akers and Alternate member Mr. Tierney (7:14 pm).

OTHERS PRESENT Land Use Administrator Mrs. Vose & large group

CALL TO ORDER Mr. Newman called the meeting to order at 7:00 PM.

PUBLIC HEARING
Michael & Brandy Sharp, 90 NH Route 104, Tax Map R-12, Lot 28 for a Special Exception - Article IV, Section A (3&5), of the New Hampton Zoning Ordinance.

Mrs. Vose advised that the applicants, Michael & Brandy Sharp, have requested a Public Hearing in accordance with RSA 676:7, for a Special Exception request under Article IV, Sections F.2 & F.7 of the New Hampton Zoning Ordinance. The applicants' proposal is to construct a new home on a property which has an existing garage with a portion of it being a one-bedroom, 776 sq. ft. accessory dwelling unit. To create an accessory dwelling unit (ADU) the applicants shall meet the definition and provisions under Article V, Q. The property belonging to Michael & Brandy Sharp, is located at 90 NH Route 104, Tax Map R-12, Lot #28, a portion of it being in the General Residential, Agricultural, and Rural District (GR) and a portion being in the Village District (V).

Mrs. Vose advised that abutters had been notified but she had heard from none.

Mr. and Mrs. Sharp were present. He said they are doing this somewhat backwards as they have an existing garage with an ADU on a portion of the 2nd floor and now they want to construct a house. This allows them to live in the ADU while they construct their home. He said the garage is the Village District, but their home will be in the GR District.

Mr. Newman advised that without the full board of 5 members, that if the application were denied the lack of a full board would not be reason to appeal the decision. He asked they wanted to continue the hearing with 4 members and the Sharps agreed.

Mr. Newman asked if the Board members had reviewed the application, which they said they had, and if they had driven by the property, for which all but Ms. Gattermann had driven by. Mr. Newman asked the members if they felt this application would have a regional impact and they agreed it would not.

Mr. Sharp said they have a septic system for one-bedroom, which serves this ADU. Mrs. Vose confirmed that an Occupancy Permit has been approved for the ADU. Ms. Gattermann confirmed with Mr. Sharp that there would be a separate septic system for the new home to be constructed.

Mr. Newman asked if any abutters, or members of the public had any questions, and they did not.

Mr. Newman closed the public hearing so the Board could go into deliberations and read the definition of an Accessory Dwelling Unit.

The Board confirmed the following requirements for an ADU have been met:

- Only one ADU shall be permitted, either in a single-family dwelling or an accessory building.
- The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation.
- The ADU shall have an independent means of ingress and egress, which Mr. Newman advised has been shown by the Occupancy Permit approval.
- The ADU shall be attached to or within the principal dwelling unit or accessory building.
- Either the ADU or principal dwelling unit is the owner's principal residence and legal domicile. Mr. Newman confirmed this is where the Sharp reside, and will move into the house once finished.
- An ADU in an accessory building shall not exceed 45% of the square footage of the floor area of the accessory building, to a maximum of 800 sq. ft. The Board confirmed by referring to the property assessment card that the calculated square footage of habitable floor area is 616 sq. ft. and as the garage/barn is very large the 45% limitation has been met.
- The ADU shall have no more than two bedrooms.
- An ADU shall be provided a minimum of 2 off-street parking spaces, in addition to primary dwelling unit parking requirements.
- An ADU shall make provision for adequate water supply and sewage disposal service.

The board reviewed the Special Exception requirements:

The specific site is an appropriate location for such use: The Board agreed this was true.

There is adequate area for safe and sanitary sewage disposal: The Board agreed based on the Occupancy Permit approval.

The use will not adversely affect the adjacent area: The Board agreed.

There will be no nuisance or hazard created: The Board agreed this criterion was met.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use: The Board agreed.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: The Board agreed this was met.

The building, parking/or driveway area will not exceed the maximum percentage of lot coverage in the applicable zoning district: The board agreed based on the lot size.

Relative to the Agritourism criteria the board agreed this did not apply.

Ms. Gattermann made a motion, seconded by Mr. Akers to approve the Special Exception for the ADU at 90 NH Route 104. Vote was unanimous.

At 7:14 pm alternate member Mr. Tierney arrived. Mr. Newman appointed Mr. Tierney to act as a voting member.

PUBLIC HEARING

Matthew Ternullo, 42 Smoke Rise Road, Tax Map U-8, Lot 10 for a Special Exception - Article IV, Section A.3 & A.5, of the New Hampton Zoning Ordinance.

Mr. Ternullo was present.

Mrs. Vose advised that the applicant, Matthew Ternullo has requested a Public Hearing in accordance with RSA 676:7, for a Special Exception request under Article IV, Section A.3 & A.5 of the New Hampton Zoning Ordinance. The applicants' proposal is to operate a short-term rental, under the definition of a Bed & Breakfast/Tourist Home, which is a permitted use by Special Exception. The property belonging to Matthew Ternullo and James Edward Ternullo is located at 42 Smoke Rise Road, Tax Map U-08, Lot #10, in the General Residential, Agricultural & Rural District.

Mrs. Vose advised that abutters were notified and has received correspondence from both abutters and neighbors, many being present.

Mr. Ternullo advised he provided all members of the development of his intentions. He provided a history of his family's involvement with Pemigewasset Lake and that it is their intention to create a place on the lake for the family to continue to use at times, offsetting costs by offering the property for short-term rentals. He said the quality of the lake is very important to him. He said his family would use it some weekends and he'd use it some weekdays when he's in town for business. Mr. Ternullo said he has put in some restrictions relative to only renting to small families, not more than 6 persons, no parties allowed and that his family also owns property on a small, dirt, winding road in Meredith and don't experience problems with speeding on the roadway. He said that this property on Smoke Rise is wide enough to where his house is located, that 2 vehicles can pass each other, and that only 2 homes are passed on the way to the house. He said past his house the road is narrower and windier. He said his lot is more separated from abutting lots. Relative to the use of the association beach, it would be used by families, not much different than if he were to use it. Mr. Ternullo said he would be on another lake lot during periods of rental of this property, during a 3-month period. Relative to covenants/restrictions in the subdivision, he said it prohibits commercial use there is a NH Supreme Court ruling that it's not the owners use of the property that indicates the use of the property, but the people who are using said property and any renters using the property would be using it residentially, not commercially to run any business. He would not allow any dogs on the property and a family would not increase traffic for this

use.

Mr. Newman asked members if they read the application and visited the property, which they confirmed they had done both. Mr. Newman asked the Board if they felt this application had a regional impact and they agreed it did not.

Mr. Newman asked if members had any questions.

Mr. Heckman asked if Mr. Ternullo had received an Occupancy Permit and he said he had not, as the home is taking longer than expected. He confirmed he obtained a building permit and that a driveway permit was not required as it is on a private roadway. Relative to parking Mr. Ternullo explained that there was room for 4 vehicles, pulling up to the fence. Mr. Newman pointed out that any approval of short-term rental use would run with the land, therefore the restrictions and care Mr. Ternullo will put in place may not be the case with a future property owner, who may rent it only for-profit.

Mr. Newman asked for any other questions from the Board but they agreed to hear from the abutters and residents present – first. Mr. Newman asked for abutter’s input. Mrs. Vose said she has emails from abutters and residents and Mr. Newman said the Board could read them into record unless the author wishes to speak or read into record.

➤ Mrs. Vose read into record an email, dated 5/27 from James & Eileen Soukup (Smoke Rise resident) as Mr. Soukup was present but asked to have it read. They reviewed that another short-term rental (STR) in the neighborhood had previously been denied and felt this was no different. They pointed out that they had covenants/restrictions to prohibit this use, which Mr. Ternullo was aware of when he purchased the property. They do not want non-residents in their quiet, dead-end, residential community. The experienced problems with another home in the subdivision including speeding, trash tossed out of windows, excessive noise at all hours and trespassing on abutting lots. These problems happened even though that property owner tried to address issues and the enforcement was left to the neighborhood residents. The Soukups said there is limited parking for this property and renters typically have more vehicles coming and going than what is typical with residents. They expressed concern with the use of the small association beach by renters, which was not the case with the other denied property this use as it was lakefront, so there would be increased launching of watercraft, increased noise and trash, and possible negative affects to the beach and aquatic plants. The Soukups advised that Mr. Ternullo is a developer and owns other properties, used for short-term rentals, and is a developer and real estate agent. Mrs. Vose passed around to the Board a screen shot provided by the Soukups, from “Bigger Pockets”, which indicated that Mr. Ternullo wants to build a portfolio of STR’s.

At 7:37 pm ZBA member Mr. Heckman had to leave the meeting. At this point Mr. Newman advised that there is no longer a full board of 5 members and Mr. Ternullo agreed to continue the hearing with the 4 members present and understood lack of a full board was not a reason for appeal if the application were denied.

Mr. Soukup clarified that Mr. Ternullo said one only needs to drive by two houses to get to his house, but that there are 2 new homes being constructed prior to the applicant's house and directly across the street. He said the biggest problem is the impact to the residents on Smoke Rise, as they've dealt with it before, even given the best intentions of the property owner.

Mr. Ternullo said he would be managing the STR's himself as he would be renting on occasion, on weekends, and would be in Meredith, on the lakefront, where he could monitor the property, including exterior cameras.

- Read into record - an email dated 5/29, from Susan & Howard Horner, Smoke Rise residents, both present. The email stated concern with nuisances and hazards which adversely affect the community, based on experience, being reduced sense of security, inappropriate and dangerous behavior, and concerns for the private road and safety on the road. They pointed out that current residents feel comfortable leaving items on the beach but STR use disrupts the sense of security. They also state that Mr. Ternullo owns several lots in the neighborhood which could also be developed for STR's, is a developer, and creation of even more STR's if this was approved would forever change the neighborhood.
- Read into record, an email dated 5/31 from Michael Carlino (not present), which reviews recent votes taken over the period of 5/24-5/28 indicating that the voters did not want any change to the covenants on STR's, by a vote of 10-2, with a vote take by Mr. Ternullo, who was actually not an official voting member as he had not received an occupancy permit yet.
- Read into record - an email dated 6/4, from Doug & Philippa Bohl, Smoke Rise residents, both present. Emailed letter points out their recent purchase was based on the peace and quiet of the neighborhood and that an STR would change the neighborhood. They expressed concerns with vehicular and pedestrian traffic being increased on the dirt road and how it would be difficult for Mr. Ternullo to monitor his renters when he lives in MA. They spoke to any approval going to the land and any subsequent owner of this property.
- Read into record - an email dated 6/5, from Bill & Donna White, abutters, both present. They stated their opposition as they've already experienced the negative affect of an STR in the neighborhood and this STR would also be utilizing the association beach which the other STR did not do. They said they feel safe in leaving personal items on the beach because they know the others using the beach, where now there would be strangers. They pointed out the narrow, winding dirt road with a 15 MPH limit and that many residents walk the road, with renters speeding on the roadway and endangering the pedestrians. The Whites said the association members maintain the beach have a vested interest in its protection, whereas STR's would not. Though Mr. Ternullo said he will have monitoring devices in place, the other denied STR use also had them in place, but it didn't stop the bad behavior and the residents had to monitor the problems themselves and contact the property owner. They also expressed concerns with possible development of his other lots into STR's and that nothing requires Mr. Ternullo to follow his self-imposed restrictions, nor any future owner of that property.

Mr. Newman asked if anyone else would like to speak.

- Curtis Rodman, Smoke Rise resident, said he had been a direct abutter to STR that had been denied, which is now being used as a long-term rental with a young family living there. He said he also lives next to the association beach and expressed additional concern with the number of properties Mr. Ternullo owns (5) and possible development into STR's. He pointed out that the association maintains the cost of the road themselves.
- Doug Bohl said in living there for 2 years they purchased the home due to the peace, quiet and private aspect of the neighborhood.
- Ann-Marie Dunne, Smoke Rise resident, said they already experienced renters urinating in the bushes, even given the cameras installed and many times there were crowds at the house. She said renters tend to be in party mode, with more noise and drinking, and that he was aware of the association rules prior to moving in. She said Mr. Ternullo wants to change the atmosphere of the neighborhood for his own financial gain at the expense of the residents. Ms. Dunne said giving this approval to one would mean many other properties could get the same approval, changing the atmosphere of the street.
- Philippa Bohl said she would feel uncomfortable with strangers in the neighborhood, which makes them uneasy.
- Donna Girard, Smoke Rise resident, expressed comfort with knowing the neighbors, and did not want to lose the safety they all feel and that the neighborhood all chip in to take care of the shared beach.

Mr. Newman asked Mr. Ternullo if he would like to speak to any of the comments by the residents. Mr. Ternullo said he does own 5 lots, but is not a developer and is building this house for himself. The purchase of the other lots was based on the seller wanting them to all be sold together. He said he was a realtor for a short period of time, but is no longer. Mr. Ternullo said this situation is very different than the other property that was denied STR use, as he will be living in the home for a good percentage of the time and each Special Exception application should be deal with on its own.

Mr. Newman asked if the Board has any other questions. Mr. Tierney pointed out that Mr. Ternullo's letter to the association members advising them of his intentions, states that he would only sell the other lots to someone with no intention of creating an STR. Mr. Ternullo said he couldn't completely restrict it but would try to find out what a buyer's intention is. Mr. Tierney said that Chairman Newman advised him that the Special Exception runs with the property and not the owner and asked Mr. Ternullo was aware of that and he said he did not know that.

Mr. Newman closed the public hearing so the board could go into deliberations and thanked the residents for their input.

Mr. Akers asked Mr. Newman to reread the Definition for Bed & Breakfast/Tourist Home..." *Bed & Breakfast/Tourist Home - A single dwelling where transient accommodations for sleeping or living purposes for not more than six (6) persons are provided for a fee. As this is*

considered a rental unit the property owner must comply with State of New Hampshire statute 153:10-a as amended relative to compliance with NFPA Life Safety Code, the National Fire Alarm and Signaling Code, and the Standard for Installation of Carbon Monoxide (CO) Detection and Warning Equipment.”

The board reviewed the Special Exception requirements:

- **The specific site is an appropriate location for such use:** The Board agreed to discuss all other criteria first, then come back to this criterion.
- **There is adequate area for safe and sanitary sewage disposal:** The Board agreed that with the recent building permit for the new home the septic system was adequate.
- **The use will not adversely affect the adjacent area:** Mr. Newman said based on the letters and subsequent testimony by the abutters and neighbors it appears clear that the area is a small, tightknit neighborhood, a shared beach that this lot would have rights to utilize and see in some why this use would adversely affect the neighborhood. Mr. Tierney advised the road is narrow and this would create additional traffic. Mr. Newman pointed out that the road is already difficult for emergency vehicles and Mr. Tierney agreed this is a concern for the added use this would create to the private road and the shared beach lot especially if there needed to be a response to the beach area. Mr. Newman said there had been other properties that were permitted this use, but in this case this location would be adversely affected. Mr. Tierney said it has been proven that short-term renters adversely affect the ambience of the neighborhood. The other members agreed.
- **There will be no nuisance or hazard created:** The Board agreed this application fails this criteria and Ms. Gattermann pointed out that even with the best intentions of the person who is managing the property, actions by renters are not easy to control. Mr. Newman said even with rental contracts it is difficult to enforce restrictions placed on short-term renters, and with possible issues with the road and the shared beach, this application fails this criterion. The Board agreed.
- **Adequate and appropriate facilities will be provided for the proper operation of the proposed use:** There was some discussion on the number of parking spaces required with the ordinance stating 2 parking spaces for each dwelling unit, 200 sq. ft. each. Mr. Tierney said with 3 bedrooms, there could be 3 different family units renting the property, and though parking it tight it may be possible for 3 vehicles to park on the property. The Board agreed this property was adequate and appropriate. Mr. Newman said he feels this parcel does have appropriate facilities for this use and the Board agreed.
- **The use will not impair the aesthetic values exhibited by the surrounding neighborhood:** The Board agreed that the aesthetic values would not be impaired.
- **The building, parking/or driveway area will not exceed the maximum percentage of lot coverage in the applicable zoning district:** Based on the lot size of was 1.36 acres and the 20% limitation, it would be allowed to have 11,838 sq. ft. of impermeable area. In looking at the footprint of the structure at 952 sq ft. there is still sufficient allowance for additional impervious area. The Board

agreed that this criterion was met.

- **Relative to the Agritourism criterion the board agreed this did not apply.**
- **The specific site is an appropriate location for such use:** Mr. Newman said that their discussion on criterion 3 & 4 shows that the site is not appropriate for the same reasons it fails criteria # 3 & 4 where statements of fact showed why they fail. The nature of the neighborhood, very close-knit, small neighborhood, it's on a narrow, private road, which can be difficult for emergency vehicles especially with the shared beach use, Mr. Tierney agreed with these statements. Mr. Tierney said he agreed and said he is also concerned with this approval going with the property, therefore any future property owner offering short-term rentals may not take the care this applicant states he will take, including his statement about his response time, so with this location and everything associated this fails this criterion. For clarification purposes, Ms. Gattermann pointed out that in the Zoning Ordinance it states that the parking requirements for a B&B/Tourist Home is one space for each bedroom, and two spaces for the owner. The Board noted that the space for the owner would apply to the owner-occupied B&B and for this reason the Board felt the parking requirement would still be satisfied. The Board agreed that the application fails on three of the criterion.

Ms. Gattermann made a motion, seconded by Mr. Newman to deny the applicants' Special Exception request under Article IV, Section A(3) of the New Hampton Zoning Ordinance to allow for the use of 42 Smoke Rise Road as a short-term rental under the Bed & Breakfast/Tourist Home definition. Vote was unanimous. Mr. Newman advised that the applicants have 30 days from the date of the decision, to file a motion for a re-hearing and if denied, they can appeal to the NH Superior Court.

Mr. Ternullo said he will take this further based on a Town of Conway case #20220098, May 2, 2023; Town of Conway vs Scott Kudrick.

MINUTES

The Board discussed the minutes of 5/1/24 and 5/3/24. Mr. Newman said on the minutes of 5/3/24, under Call to Order it should have stated 9:00 "AM", where it says "PM". Mr. Tierney made a motion, seconded by Ms. Gattermann to approve the minutes of 5/1/24 as written. Mr. Tierney made a motion, seconded by Mr. Akers to approve the minutes of 5/1/24 as amended. Vote was unanimous.

OTHER BUSINESS

It was noted that with Mr. Heckman no longer present the Election of Officers would have to wait for another meeting. The Board agreed that if there were no applications for a July hearing on the 3rd, to hold off until 8/7/24 for Election of Officers.

Mrs. Vose advised the Board of a situation in town, which has unpermitted construction as there is no house, just two camping trailers and several outbuildings. An enforcement letter has been sent by the Selectmen to meet with them to discuss compliance. She advised of another situation where a deck was constructed without a permit so a letter was sent as there were concerns about it being within the setback of the side property line. Further review of that property file found that when the house was built it

(ZBA Minutes, June 5, 2024, cont.)

ended up being within the setback, as discovered by the mortgage company. This deck appears to be on the same side of the house and it remains in the same ownership as when the ZBA approved an Equitable Waiver of Dimensional Requirement in 1997. The deck is detached so it is movable.

Mrs. Vose said the Planning Board is still discussing a complete re-write of the Zoning Ordinance, but as the voters approved money for a Planning Consultant she is hoping that one is engaged and the Planning Board takes the time to review the Master Plan and it's guidance when revising performing a complete rewrite of the Ordinance not typically handled by laypeople. Mr. Newman said he recalled the meeting several months ago where this discussion took place and said that he thought the Selectmen had wanted to engage a consultant. The Board agreed a complete rewrite of the ordinance should not be done by laymen.

ADJOURNMENT

Ms. Gattermann made a motion, seconded by Mr. Newman, to adjourn at 8:45 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator