

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

Town Office, 2nd floor meeting room
6 Pinnacle Hill Road, New Hampton, NH

December 4, 2024

MEMBERS PRESENT

Regular members: Mr. Newman, Mr. Akers, Mr. Heckman and Ms. Gattermann.

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 act as a regular member.

PUBLIC HEARING

Carl Jr. & Camille

Knowlton, 152 West Shore Road, Tax Map U-14, Lot 29, for a Variance –Article VI, Section A.4.v. of the New Hampton Zoning Ordinance.

Mr. and Mrs. Knowlton were present.

Mrs. Vose advised that the applicants, Carl Knowlton, Jr. and Camille Knowlton, have requested a Public Hearing in accordance with RSA 676:7, for a Variance. The Variance request is under Article IV, Section A.4(v) of the New Hampton Zoning Ordinance. The applicants' proposal is to increase the maximum lot coverage of 22.3% of impermeable area, to 23.9% of impermeable area, based on surveyed "as-built" plans submitted, which had been a requirement of a Variance approved on April 14, 2021. The property is located at 152 West Shore Road, Tax Map U-14, Lot #29, in the General Residential, Agricultural and Rural District and the Waukewan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified and that abutters Jay Buckley and C. Robert & Emily Emerson, sent emails, which were read into record, lending their support to the Knowltons.

The Board advised they had read the application and agreed this application did not have a regional impact.

Mr. Knowlton said the notice stated it was 23.9% impermeable area and he had gotten a new "as-built" plan, part of his submittal, which shows it being 23.5%, though he filed his application stating 23.9% as the amount for the Variance as he had discussed with the Selectmen. In his most recent "as-built" plan showing 23.5%, the utilities are tucked under the stairway, while the "as-built" plan showing 23.9% is including these utilities where they should be located. Mr. Newman confirmed with Mr. Knowlton that there are no other outbuildings and that the driveway was made from permeable material.

Mr. Knowlton advised that the initial "proposed conditions" plan showing the impermeable area had been 22.3% but during construction, on the SE side of the building, there was a design for a staircase situated closer to the home, which saved impermeable space. Upon construction it was found to

be a risk for snow and ice falling onto the stairway so the stairs were moved further away from the home for safety purposes, which increased the impermeable area. He said the construction company built the home exactly to spec so this discrepancy with the surveyor's calculations was confusing. He said that the surveyor may not have calculated the original proposed structure roof overhang correctly. Mr. Knowlton said he has utilities (compressor, 2 heat pumps and a generator) which are not in the 23.5% calculation as they are currently moved under the stairway, but keeping them there will void their warranties. The Board expressed concern with considering the Variance at 23.5% because moving the utilities back out from under the stairway will increase the 23.5% to 23.9% as previously surveyed. After further review of the documents the original "as-built" plans at 23.9% was found, which shows the utilities where he needs them to be.

At 7:32 the Board recessed while the first "as-built" plan could be located to ensure the impermeable area calculation.

At 7:35 the recess ended. The document showing the impermeable area with the utilities where he needs them to be located was calculated at 23.9%, matching the public notice, and being the percentage the Board would use for the hearing.

Mr. Tierney noted that the difference was 1.6% more impermeable area than the initial proposed conditions had shown. Mr. Newman advised that the prior driveway was impermeable, but is now permeable. Being no further discussion Mr. Newman closed the public portion of the hearing to go into deliberations to review the criteria.

The variance will not be contrary to the public interest: The Board agreed to this criterion. Mr. Tierney expressed concern on whether this would hurt the quality of the lake, saying if more homes asked for variances for impermeable area percentages it could potentially be contrary to the public interest. Mr. Newman pointed out that 30% impermeable area is the percentage NHDES considers the point at which an engineer would need to create a mitigation plan under Shoreland Protection rules. Mr. Newman said the applicant has done everything they could to mitigate impermeable area. Ms. Gattermann pointed out that the applicants had also replaced an old septic system as part of their home rebuild, which is in the public interest.

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

Substantial justice is done: Mr. Newman stated the benefit to the applicant is much greater than any negative affect on public interest.

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

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because w\owing to the special conditions of the property that distinguish it from other properties in the area no

fair and substantial relationship exists between the general or public purposes of the ordinance's provision and the specific application of that provision to the property; and – the proposed use is a reasonable one: The Board agreed this was a difficult, sub-standard, narrow lot.

Mr. Tierney made a motion, seconded by Mr. Akers to approve this Variance at 23.9% of impermeable area. Vote was unanimous.

PUBLIC HEARING

Michael Arbogast, 89A & 89B Kelley Pond Road, Tax Map R-4, Lot 44, for Two Special Exceptions–Article VI, Section A.3 and A.5. of the New Hampton Zoning Ordinance.

Mr. Arbogast and Rene Rheault were present. Abutters Kyle and April Danahy and nearby neighbor Jack Cosselman were present.

Mrs. Vose advised that Michael Arbogast, has requested a Public Hearing in accordance with RSA 676:7, for a Special Exception request under Article IV, Sections A.3 & A.5 of the New Hampton Zoning Ordinance. The applicants' proposal is to operate short-term rentals, at two separate residences located on one lot, and must comply with Article XIV, for the definition of a Bed & Breakfast/ Tourist Home, which is a permitted use by Special Exception. The property belonging to 603 Contracting LLC is located at 89A and 89B Kelley Pond Road, Tax Map R-04, Lot #44, in the General Residential, Agricultural & Rural District.

Mrs. Vose said all abutters were notified and that there were a few present. Mr. Newman confirmed that all members had read the application and agreed this did not have a regional impact.

Mr. Arbogast said he did not know he couldn't rent the homes on Airbnb until he got a letter from the Town. He said he purchased homes for his family to use and wanted to offer them for short-term rentals when they weren't using them and that he's completely redone the homes.

Mr. Newman said his first concern is with the septic system as he cannot find any record of it. Mr. Arbogast said he engaged Mr. Rooter who came out and scoped 2 tanks, one for each house, saying they were just tanks, and noted their approximate locations. He said the person who performed the work said each tank was 1,000 gallons. It was noted the assessment cards show 2 bedrooms in the house (89A) and 3 bedrooms in the manufactured home (89B). Mr. Newman advised that the applications must be handled as two separate applications for Special Exceptions. Mrs. Vose confirmed that there was nothing on file relative to a septic system and that there was an abutting house that is on a lot so small in size it is possible it's septic system could be on the applicant's lot. Mr. Arbogast said that owner does have a tank next to that home. He said there is no leach field and they are closed tanks so Mr. Rooter suggested getting them pumped annually. Mr. Heckman asked if a closed tank could be installed currently and Mrs. Vose said she did not know. Mr. Heckman said based on his estimate of gallons use during a flush within a year the tank would be very full. Mr. Arbogast said if the houses were occupied year-round this would have a greater effect on the tanks than short-term rental usage. Mr. Newman pointed out that if these special exceptions are granted the allowance for short-term rentals with up to 6 persons each - would run with the land and are not connected to a particular home owner. He said the Board has to determine whether the property can support the potential use. Mr. Tierney advised that the Board must determine if there is

adequate area for safe and sanitary sewage disposal, being one of the criteria. Mr. Arbogast said he can rent out the homes for full-time usage with longer term rental contracts, which the Board agreed. Mr. Newman said this use is only permitted by Special Exception, and that has this criterion that must be met, for the Board to consider whether they can approve short-term rentals. Mr. Newman asked if there was a written record stating the tanks are 1,000 gallons. Mr. Arbogast asked if he could change his rules to restrict number of persons using each short-term rental. Mr. Newman said they can't begin that conversation without learning more about closed holding tanks. The Board pointed out that it is up to the buyer to determine what a property has for septic. Mr. Arbogast confirmed that these were closed holding tanks and were not connected at any leach field. Mr. Arbogast said he does have them on the market, but the short-term rental situation had been going well. Relative to heating systems Mr. Arbogast said the house has a new propane furnace the manufactured home is electric heat. He said the tanks were pumped before he purchased the property in December of 2023 and they are now less than ½ full. He said the people staying in the manufactured home had been there about 1 ½ months and the other home was used since the middle of September by mostly weekend visitors. Mr. Heckman asked if there was any indicator that shows when the tank is full and Mr. Arbogast said there is not.

Mr. Tierney suggested that the Board continue the application and ask the applicant to discuss the holding tank situation with NHDES.

Mr. Heckman said that a homeowner living in the home would pay better attention to whether the tank is full than a short-term renter might. Ms. Gattermann advised that in the invoice from Mr. Rooter, when the tanks were scoped, it was noted that the tanks were operating properly.

Mr. Newman asked if exterior cameras were being utilized on the property for monitoring purposes and Mr. Arbogast said there were and that they come up after each rental to clean the homes.

Mr. Newman asked if any abutters wanted to speak. Mrs. Danahy said she appreciated the work done on the homes, has owned the home across from this parcel for many years, but expressed concern with the septic tanks and said the well that serves that property may serve many other properties also. She said the neighborhood is quiet, the road dead ends, and would like to see the area remain quiet. Mr. Newman explained the definition of Bed & Breakfast/Tourist Home which is what applies in this case. Mrs. Danahy said there are a lot of wetlands in the area, which is concerning. Mr. Arbogast said his well serves the small house at the front of the property in addition to the 2 homes on his lot.

Mr. Newman closed the public portion of the meeting and said the Board would go into deliberations. Mrs. Vose confirmed that members had driven by the property.

The Board began to review criteria for 89A Kelley Pond Road, the 2-bedroom home.

The specific site is an appropriate location for such use: The Board agreed the site was appropriate, based on the road, parking and it being somewhat remote.

There is adequate area for safe and sanitary sewage disposal: The Board agreed they could not determine whether the 2 holding tanks were adequate. Mr. Tierney said with the tanks being pumped more often the system might be adequate, but once any approval is given it would be difficult to enforce that requirement. Mr. Newman noted that in the small amount of usage by short-term renters the tanks are almost ½ full already. Without further information on the suitability of the tanks the application would fail this criterion. Mr. Arbogast said he'll just rent it out – longer term, because he isn't going to provide any further information.

The Board agreed to look at the other criterion.

The use will not adversely affect the adjacent area: The Board agreed the use did not appear to be adversely affecting the adjacent area. Mr. Heckman said abutters have expressed concerns with the septic system but it appears there hasn't been problems with the short-term renters affecting the neighborhood.

There will be no nuisance or hazard created: The Board agreed this criterion was met. Mr. Heckman expressed concern with a future property owner and how well they would manage a short-term rental situation.

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

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: The Board agreed the applicant has put a lot of work in the improving the homes.

The development of any lot including any building or impermeable area will not exceed the maximum percentage of lot coverage in the applicable zoning district: The Board agreed this was met.

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

Going back to whether there was adequate area for safe and sanitary sewage disposal. After discussion the Board agreed that input from NHDES is needed to make any decision on the application. Mr. Newman suggested continuing the hearing to allow the applicant time to speak with NHDES and to something in writing from them stating the system was adequate.

Ms. Gattermann made a motion, seconded by Mr. Tierney to continue this hearing to January 8, 2025 at 7:00 pm to obtain written information from NHDES relative to the suitability of the tanks. Vote was unanimous.

Mr. Arbogast and Ms. Rheault left the meeting.

Nearby neighbor Jack Cosselman said the road will now have more traffic than usual, and in the spring, it becomes very muddy, making travel difficult. He expressed concern with people parking on the tanks.

OTHER BUSINESS

Mr. Akers reviewed the Planning and Zoning conference he attended.

Mrs. Vose reminded the members that if at any time they want to engage a professional to advise them on an application, the ZBA has the ability to do that, and the applicant could be asked to provide the money to cover the cost, with it being held in escrow by the Town until payment is made.

The Board reviewed dates in January that an applicant can be available, as the regularly scheduled meeting date of 1/8/25 is a conflict for the applicant. The Board agreed to January 14, 2025 at 7:00 pm.

Mrs. Vose advised that an applicant had previously received a Special Exception and a Variance for the location of a septic system and a new home, to be built after the demo of an existing camp. During review of the approval's 2-year limitation, Mrs. Vose had noticed that when the approvals were granted the ZBA added a condition that the impermeable area percentage, approved by NHDES at 17.6%, be maintained, and an "as-built" plan showing the impermeable area would need to be submitted to the Town once the project is complete. She pointed out that this was below the Town limitation of 20%. Recently the applicants had to engage a new contractor with the plans changing slightly in some lot development and a revised permit to NHDES increased the impermeable area to be more than 19.6%, still less than the Town's 20%. She was told by an NHMA attorney that the Town cannot impose a more stringent condition than what is allowed by the Town's Zoning Ordinance. The Board agreed Mrs. Vose should advise the applicants that their as-built plans need only show they meet the 20% limitation of impermeable area.

MINUTES

Mr. Tierney made a motion, seconded by Mr. Heckman to approve the minutes of 11/6/24 with the following change:

- Page 1, correct "variances" to "variance" in the left margin.

Vote was unanimous.

ADJOURNMENT

Mr. Heckman made a motion, seconded by Mr. Tierney, to adjourn at 9:19 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator