



TOWN OF NEW IPSWICH

661 Turnpike Rd, New Ipswich, NH 03071

ZONING BOARD OF ADJUSTMENT



Meeting Minutes February 1, 2024

The Zoning Board of Adjustments (ZBA) held a meeting at the Town Office, 661 Turnpike Road, New Ipswich, New Hampshire, on Thursday, February 1, 2024 at 6:00 p.m.

1. Call to Order and Seating of Alternates

Chairman Walker Farrey called the meeting to order at 6:11 PM.

Present at the meeting were Chair Walker Farrey, Vice Chair Danielle Sikkila, Members David Lage, Jeff Muhonen, Lou Alvarez, Alternates Michelle Saari, Brett Kivela and Dwayne White. Staff present included Land Use Clerk Jennifer Worth.

2. Public Hearings

Walker Farrey, Jeff Muhonen, Lou Alvarez, Danielle Sikkila, and David Lage act as affirmative members.

- a. **Case ZBA-2023-13:** Special Exception from Benjamin Soderstrom, Map3/Lot99, 122 Lower Pratt Pond Road requested from Article 13, Section N of the Zoning Ordinance to permit the construction of a detached Accessory Dwelling Unit (ADU) on the parcel.

Mr. Soderstrom presents the board with documents of a lot plan and building plans for the detached ADU. In the past, the ZBA was concerned about the septic system. Applicant spoke to engineers at Monadnock Septic Design (MSD) and provided the ZBA with a letter from MSD stating a larger septic system could fit on the parcel.

Criteria #1: The specific site is an appropriate location for the proposed use because Gary Somero, Building Inspector has gone out to look at where the proposed ADU would be and had determined that the site meet all codes/ordinances. The proposed site for the ADU is 75 to 82 feet from the wetlands. Applicant measured himself.

Criteria #2: The proposed use will not adversely affect the adjacent area because the site is on private property. It is not visible from any road and does not impact any environmental concerns or require alterations of surrounding areas. Mr. Soderstorm states that he will not construct any new driveways to the property. There would be sufficient parking for those who would dwell in the ADU. The property is set back 250-300 feet from the road. The property is nestled with plenty of tree lines. There is a property that neighbors the parcel but it is unbuildable lot.

Criteria #3: There will be no nuisance or serious hazard to vehicles or pedestrians because the parcel is located on private property, set back from 250-300 feet from the road. Mr. Soderstrom does not foresee any issues.

Criteria #4: Adequate and appropriate facilities will be provided for the proper operation of the proposed use because the ADU will have all required amenities for living; heating, water, electricity, shower, toilet, sink, etc. Planning on tying into the existing water and septic for the ADU and planning to create a septic plan. For heating, it has been decided not to have a woodstove, but would swap out for heat pump which has not been approved by the Building Inspector yet, but felt it was safer solution for the property. The cabin is not higher than the septic, would have a pump system installed to combat this.

Criteria #5: Approval of the special exception is consistent with the Master Plan because Applicant feels that nothing stands out and the ADU does align with the Master Plan.

There being no public comment from abutters, David Lage motions to close the hearing for public comments. Jeff Muhonen seconds. The motion passes unanimously.

The board deliberates. The Finding of Facts are as follows:

Criteria # 1: The specific site is an appropriate location for the proposed use because the ADU would fit in the existing lot. The ADU would not be viewable from the road.

Criteria #2: The proposed use will not adversely affect the adjacent area because the parcel is remote and setback from the road by 250-300 feet. The ADU would not affect any abutters.

Criteria #3: There will be no nuisance or serious hazard to vehicles or pedestrians because there would not be any change to the neighborhood or abutters. Nor would there be a change in traffic patterns.

Criteria #4: Adequate and appropriate facilities will be provided for the proper operation of the proposed use because utilities will come from the existing dwelling and septic would meet state requirements. There is a sufficient parking area that is off street. Applicant has provided the board with a letter from Monadnock Septic Design indicating the larger proposed septic will fit on site.

Criteria #5: Approval of the Special Exception is consistent with the Master Plan because the Master Plan encourages ADUs and will provide more housing options in New Ipswich.

Conditions of Approval:

1. State approved septic plan to be filed with Town prior to building permit approval. Plan shall be designed to handle load of proposed ADU and existing dwelling. Plan to show ADU/structures meet 50 foot wetlands setback.

David Lage motions to grant the ADU with conditional approval as noted above. Danielle Sikkila seconds. The motion passes unanimously.

- b. **Case ZBA-2024-1:** Special exception from Graham Heagy, Map 8/ Lot 90-3, 40 Smithville Road, requesting from Article 13, Section N of Zoning Ordinance to permit existing construction of apartment above garage (ADU).

Mr. Heagy is currently constructing a home that also includes the construction of an apartment over a garage. Susan Mallett (Building Department Director) who was present at the hearing stated, Mr. Heagy has submitted a building permit request, which was approved for a single family dwelling, but when Mr. Heagy wanted to add the apartment a question was posed to the Building Inspector; “could the permit be changed from a one family dwelling to two?” It

was determined this could not be done so Mr. Heagy appealed to the ZBA for a Special Exception (ADU). The project was in progress then and has not been finalized as of to date.

Criteria 1: The specific site is an appropriate location for the proposed use because the ADU will be constructed on a large lot with adequate space. The parcel is a 9.5 acre lot.

Criteria 2: The proposed use will not adversely affect the adjacent area because the apartment will be small with one bedroom. The apartment is part of the existing house. By looking at the house, it does not look like there is an apartment there.

Criteria 3: There will be no nuisance or serious hazard to vehicles or pedestrians because the ADU will be on a 9.5 acre lot with a long driveway and plenty of space off the road. The house is 200 feet from road frontage. There will be two spots available for dwellers on existing driveway.

Criteria 4: Adequate and appropriate facilities will be provided for the proper operation of the proposed use because the original septic design was designed to accommodate the additional sewage. The parking will be provided to the left of the house.

Criteria 5: Approval of the special exception is consistent with the Master Plan because Applicant feels that the ADU would not deviate from the Master Plan.

The board opens the floor to public comments to abutters in attendance.

Sherri Friedman, 38 Smithville Road: Wants to know who would be the tenant of the apartment. Who would be coming in and out of the property? Where will the parking be located? Will there be any lighting?

Chair allows Mrs. Friedman to view the design plan that was submitted to the ZBA. Mr. Heagy answers and shows abutter where the driveway would be. Mr. Heagy says he would like to rent out the ADU to a stable long term renter and will be doing plenty of research on interested potential tenants. Will not be like an Air B&B where different tenants would be coming in and out. The two parking spots were pointed out to Mrs. Friedman to show the parking area will be to the left of the apartment off to the side.

Susan Mallett, 99 Smithville Road: Speaks as a neighbor and states that the construction is quiet and low key. The site is kept clean. The house is set far back from the road and not seen from the street so there would be no effect to pedestrians. As the Building Department Director and privy to the site plans, she does not see why this would not be granted.

Chair asks applicant how tenants will access the apartment. Mr. Heagy said the apartment will be accessed from an exterior stairwell on the left side of the house.

Lou Alvarez motions to close the hearing for public comments. Jeff Muhonen seconds. The motion passes unanimously.

The board deliberates. The Finding of Facts are as follows:

Criteria 1: The specific site is an appropriate location for the proposed use because the ADU will be constructed on 9.5 acres. It is not in the village district.

Criteria 2: The proposed use will not adversely affect the adjacent area because the one bedroom apartment will part of the house. There would be no sign of the dwelling from the outside. The house would look the same if there was or was not an apartment above the garage.

Criteria 3: There will be no nuisance or serious hazard to vehicles or pedestrians because the house is 250 feet of the road with off street parking provided.

Criteria 4: Adequate and appropriate facilities will be provided for the proper operation of the proposed use because there would be two off street parking spots that is provided for the ADU. State approved septic design has been submitted with application to the ZBA.

Criteria 5: Approval of the special exception is consistent with the Master Plan because the Master Plan encourages ADUs and will provide more housing options in New Ipswich.

David Lage motions to approve the Special Exception for the ADU according to documents submitted to the ZBA. Jeff Muhonen seconds. The motion passes unanimously.

3. Application Reviews

- a. **Case ZBA-2024-2:** Application for an appeal of administrative decision of the Board of Selectmen to be reviewed from Dean Pacheco, Map 3 Lot 92-2, 110 Lower Pratt Pond Road, requested from Article 2, Section IV of the Zoning Ordinance in question to appeal stop order per Board of Selectmen.

Lou Alvarez, Brett Kivela and Dwayne White recuse as affirmative members.

Mr. Pacheco does not understand why the Stop Order was issued for his driveway. Applicant states the driveway was excavated in 2002. He has used the driveway ever since. Has graveled the existing driveway in August of 2022. He was told by a past Building Inspector that no permit was needed in order to gravel the driveway. In October of 2023, the Pratt Pond Association barricaded the driveway. Mr. Pacheco was served a stop order by the Board of Selectmen. Mr. Pacheco would like the ZBA to terminate the Stop Order by appealing an administrative decision to the ZBA.

ZBA Board members review the application and note that in order for the application to be complete, applicant will need to submit a surveyed plan to the Land Use Clerk to keep in the case file with application. ZBA adjusted the abutters list to add Pratt Pond Association. Making the final abutters list to have nine abutters. The fee determination was explained to applicant.

David Lage motions to accept application for an appeal of administrative decision based on receipt 7 days prior to the public hearing of a surveyed plan of the property and payment of fees. Danielle Sikkila seconds. The motion passes unanimously. The public hearing will be held Thursday, March 7, 2024 at 6:00P.

- b. **Case ZBA-2024-3:** Application review for Pilot Realty, LLC, Map 12 Lot 10-1, 151 Main Street for a variance requested from Article V, Section C of the Zoning Ordinance to permit a proposed use of allowing a group home on parcel.

Lou Alvarez, Brett Kivela and Dwayne White return and act as affirmative members.

This parcel was previously used for a nursing home, formally known as Friendship Manor. There are 30 individual bedrooms with common bathrooms (four full, four halves), common living room, and no kitchen. One room would be used for an on-site manager. There would be 34 onsite parking spots. There is on-site well and septic. The ZBA is concerned that the proposed plan would not have a kitchen for the dwellers. Dwelling units are required to have a place to eat with a kitchen. The Building Inspector would have to address this concern. Applicant proposes the dwelling would be a “group home”. Group home defined by applicant is a home with individual bedrooms with shared bathrooms and living space. Tenants of the group home would more than likely be a tenant at will month to month basis, but applicants have not determined this yet. Applicants have spoken with New Hampshire Housing Authority about the building, it was said to them that they have a long list of people looking in the area for a home like this. He spoke to them about there not being a kitchen on site. It was suggested that each individual room could have microwaves or hot plates. New Ipswich’s Fire Chief Deputy was in attendance in the audience and stated hot plates are a potential fire hazard and he would be concerned for tenants’ safety. Pilot Realty own the property. Applicant is contemplating on expanding the existing septic system to accommodate the tenants’ usage. Chair makes it aware to the applicant that if an expansion is needed, it may be necessary to appeal to the ZBA for a variance if proposed septic is near any wetlands. All supporting documents were received by the Land Use Clerk. The abutters list was verified.

Walker Farrey motions for the ZBA to plan a site visit on Saturday, March 2, 2024 at 8:30AM. David Lage seconds. Motion passes unanimously.

David Lage motions to accept the application as complete upon payment of fees. Danielle seconds. The public hearing will be held on Thursday, March 7, 2024 at 6:45PM. Motion passes unanimously.

- c. **Case ZBA-2024-4:** Application for a Request for Rehearing of a Zoning Board of Adjustments’ written decision to deny an application for a motion of rehearing of a Planning Board’s decision also known as, SP23-2 requested from Article XIV, Section C (3) of the Zoning Ordinance (rehearings) from Richard Craig and Sharin Smeeth.

Jeff Muhonen, Danielle Sikkila, Lou Alvarez and Dwayne White recuse as affirmative members.

Nancy Clark presents the application on behalf of Richard Craig and Sharin Smeeth as their representation. Nancy reviews the application to board members, explaining her purpose is to rehear the ZBA’s decision on December 7, 2023 to the appeal Case #: ZBA-2023-09(R). Nancy has submitted a letter to the ZBA that includes grounds for rehearing. **Please see full copy of letter, in file at the Town Office.**

Allegations presented by Nancy Clark:

Allegation #1: David Lage was not eligible to sit as a member of the ZBA to hear this case.

Allegation #2: Walker Farrey was not eligible to sit as a member of the ZBA to hear this case.

Allegation #3: ZBA Alternate, Jay Hopkins showed bias requiring recusal in the prior Silver Scone Teas ZBA Appeal and thus, his recusal is required in this case.

Allegations #4: ZBA Alternate, Brett Kivela showed bias requiring recusal in the prior Silver Scone Teas ZBA Appeal and his recusal is required in this case.

Allegation #5: David Lage engaged in a chronic pattern of behavior to intimidate several Petitioners requiring his recusal in the prior Silver Scone Teas ZBA Appeal and his recusal is required in this case.

Allegation #6: Walker Farrey made a public statement demonstrating bias requiring recusal in the prior Silver Scone Teas ZBA Appeal and his recusal is required in this case.

Allegation #7: The ZBA improperly denied the Appeal which is inconsistent with the findings of fact.

Allegation #8: The ZBA failed to find that the location for the handicapped parking space violated Article XIII, G (3) of the ordinance.

Allegation #9: The ZBA found that the location of at least one component of the stormwater structure was in violation of Article X, D(4)(b)(1) but failed to require the Applicant to get a variance.

Allegation #10: The ZBA failed to find that the location of the required walkway was in violation of Article X, D(4)(b)(1) of the Ordinance.

Allegation #11: The ZBA failed to find that the Planning Board and/or Town Engineer failed to make a finding as to the parking lot surface.

Allegation #12: The ZBA failed to review Petitioner's Appeal of the Planning Board's Decision de novo.

The board will decide if these allegations are accurate and merits an appeal. Before the Board was able to speak to this, a few hands were raised in the audience and allowed to speak.

Benjamin Hatcher: "When does this end? At what point is this harassment? I have listened to the allegations, it is picking at straws. As a taxpayer, this is not our Town. Our town is very welcoming and we have many small businesses. This is not how we want our town represented. As tax payers, how do we stop this? Enough is enough."

Joe Belanger: "Who pays for these court costs? It is the taxpayers correct? How many times will they be told no, before they stop?"

David Lage explains at this point that the ZBA is required to follow NH State Law and the process. "In order for them to appeal a decision, they can do that, it is within their right. The process is they appealed a planning board decision to the ZBA and the court. This board only sees and hears issues regarding New Ipswich Zoning Ordinance. The court hears their other appeals. Once the ZBA makes a decision on that, by law they can request a rehearing. They cannot go to a court before this process is done. If it passes we have a rehearing, if not it is denied and they can pursue whichever venue they would like. This answers the question on, how many times."

Walker Farrey: “Nancy Clark and Petitioners have every right to be here. Everyone in this Town has the same rights based on NH RSAs.”

The board reviews the allegations and deliberates if the appeal will be granted or denied. Nancy would waive a full board and would like to proceed. The Finding of the Facts are as follows:

Response to Allegation #1: David Lage’s Oath of Office is on file with the Town Clerk. Mr. Lage has been on the board since 2010. The ZBA has not had a full board since Mr. Lage has been on the board, not including alternates. Per RSA 673:5-III, members are entitled to remain in office until a successor has been appointed and qualified. This matter has been discussed and denied previously during other public hearings. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #2: Walker Farrey’s Oath of Office is on file with the Town Clerk. Mr. Farrey was appointed as a member by the Board of Selectmen on April 12, 2016. The ZBA has not had a full board since Mr. Farrey has been on the board, not including alternates. Per RSA 673:5-III, members are entitled to remain in office until a successor has been appointed and qualified. This matter has been discussed and denied previously during other public hearings. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #3 & #4: These comments were not deciding factors of the Board's decision when deliberating the variance application, and do not represent bias towards any party. This factor of the variance decision was ultimately based on the information that was heard at the public hearing, and has no effect on the Board’s decision to deny the Appeal of Administrative Decision. This matter has been discussed and denied previously during other public hearings. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #5: Mr. Lage disputes this as an inaccurate statement, and denies that he has engaged in a chronic pattern of behavior to intimidate any of the Petitioners. The referenced conversation with Mr. Fournier was regarding the building code. Mr. Lage sat for six years on the State Building Code Review Board. He is familiar with the code and worked construction management for 36 years. This matter has been discussed and denied previously during other public hearings. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #6: As discussed previously at other public hearings, the Chair disagrees and was merely stating procedural considerations. There was no bias towards any interested party. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #7: The ZBA is not limited to only approving or denying an appeal and was within its rights to modify the order. RSA 674:33-II states: *In exercising its powers under paragraph I, the Zoning Board of Adjustment may reverse or affirm, wholly or part, **or may modify the order**, requirement, decision, or determination appealed from and may make such order or decision or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.* As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #8: The ZBA did address the handicap parking spaces in the Finding of the Facts section of the Notice of Decision letter from December 14, 2023. ZBA was clear that the applicants had exceeded the number of parking spaces required by the Zoning

Ordinance. The use of the driveway for a handicap parking space had no effect on the parking count since the garage was not included in the calculation for determining total parking spaces. The ordinance allows an applicant to count the garage or driveway as a space but not both. The plan approved by Planning Board did not count the garage as a space. The New Ipswich Zoning Ordinance states: *Each parking space shall contain not less than 162 square feet (9 x 18) exclusive of driveway and turning areas. A garage or carport qualifies as a parking space, but a driveway qualifies as a parking space only to the extent that the portion of the driveway used for parking does not block the garage or another vehicle parked in the driveway. Adequate snow storage area must be provided.* As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #9: The ZBA is not limited to only approving or denying an appeal and was within its rights to modify the order. RSA 674:33-II states: *In exercising its powers under paragraph I, the Zoning Board of Adjustment may reverse or affirm, wholly or part, **or may modify the order**, requirement, decision, or determination appealed from and may make such order or decision or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.* Further, the ZBA stated in its December 14, 2023 Notice of Decision that if the proposed plan is not revised to relocate interconnecting piping at the rain garden outside of the 50 foot wetlands setback while still achieving storm water treatment requirements, a variance is required. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #10: The ZBA discussed this previously during the hearing on the Appeal of Administrative Decision, and found the proposed new walkway was in violation of wetlands setbacks, however, the Planning Board had already previously recognized this issue and addressed it as a condition of approval during the site plan review. Item #14 on the PB conditions of approval list states: *“Relocate the walkway out of the wetland buffer on the Fieldstone Plans”*. The ZBA clarified the wetlands setback is 50’ and found that a revised site plan needs to be submitted to the Planning Board. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #11: The ZBA found the proposed surface of gravel used in this area was compliant with Article 13(G)(4) Surfacing. The approved plan shows proposed grading contours where all surface water would completely run off. Article 13, G4 SURFACING states: *All parking areas containing more than 4 spaces and driveways thereto shall be surfaced for year round use and must be graded so as to carry off all surface water.* The Master Plan states that the Town should work with developers and possibly eliminate paving and use gravel. As such, the ZBA finds no grounds to grant a rehearing.

Response to Allegation #12: The ZBA discussed each of the four (4) items in depth brought before it at the hearing on the Appeal of Administrative Decision, and arrived at its own determination for each. This was the first time it was heard by the ZBA. The ZBA considered, on its own, the presentations made at the hearing on the Appeal of Administrative Decision, and identified the information in the Finding of the Facts section of the Notice of Decision, with detailed reasons supporting its decision. As such, the ZBA finds no grounds to grant a rehearing.

David Lage motions to deny the application of a Request for Rehearing. Brett Kivela seconds. The motion passed unanimously.

After the denial of the application, a comment was made directed to the audience by Nancy Clark. She said, "You don't want the Town to spend money on lawyers then tell them to not fight it." The board asks the public to please be respectful as the audience vacates the Board Room.

4. **Approval of Minutes**

Dwayne White motions to approve and accept the January 4, 2024 meeting minutes as amended. Michelle Saari seconds. The motion passed unanimously.

5. **New Business**

Land Use Clerk requests an amendment to the Request for Rehearing application instructions from saying, "**The Zoning Board cannot consider a request for a rehearing unless it is received in the Town Office, complete, with all fees paid and abutter labels included, no later than the deadline date. A Zoning Board decision cannot be appealed in court if a proper rehearing request has not been submitted**" to say, "**The Zoning Board cannot consider a request for a rehearing unless it is received in the Town Office, complete with all fees paid and abutter list included, no later than the deadline date. A Zoning Board decision cannot be appealed in court if a proper rehearing request has not been submitted.**"

David Lage motions to amend the application instructions for a Request for Rehearing to delete the requirement of abutters' labels to be changed to abutter list. Dwayne White seconds. The motion passes unanimously.

6. **Adjournment**

There being no further business to come before the Zoning Board of Adjustments, Walker Farrey motioned to adjourn the meeting at 9:03p.m. Dwayne White seconded the motion. The motion passed unanimously.

Respectfully Submitted,
Jennifer Worth - Land Use Clerk