

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
December 1, 2022**

PRESENT: Walker Farrey, Vice Chairman; David Lage; Danielle Sikkila; Susan Mallett, Secretary

The meeting was called to order at the Town Office at 7:00 p.m.

SUBMISSION OF APPLICATIONS:

Joseph Edwards, 3 Peterson Rd, Map 16A Lot 19

Special Exception Application from Article VI, Section C.2 of the Zoning Ordinance to permit a general auto repair and welding fabrication business in the rural district.

Ed Rogers representing Mr. Edwards this evening. This is a resubmission of an application submitted and approved in 2017 that expired. He noted the Planning Board suggested they come back and resubmit the application. The application was reviewed for completeness, including the abutters list which contains abutters in both New Ipswich and Greenville because the lot is on the Greenville line. Payment was received in full with the application as well. The owner does not live on site, he lives in Townsend MA, and his son lives at Peterson Rd.

Mr. Lage motioned to accept Mr. Edwards Application for Special Exception, Ms. Sikkila seconded the motion, and all were in agreement.

Hearing will be January 5th, 2023 at 7:05pm

Nancy Clark representing Richard and Sharin Smeeth et al., re 99 River Road, Map 12/90

Appeal of Administrative Decision by the BOS to let Driveway permit stand.

Walker noted that this application is for an appeal of administrative decision by Richard and Sharin Smeeth, in regards to Driveway permit issued by the town and the Board of Selectmen upheld it. He noted that the Board members had copies of the minutes and town's legal advisement and asked if Ms. Clark had anything further to share beyond the application and these documents.

David questioned the address on the application, it shows Mill St. but the Smeeth's live on 124 River Road, the Smeeth's own property on Mill St. also the driveway in question is at 99 River Road. David makes request that the tax card get cleaned up.

UPDATE: post meeting, the tax card for 124 River Rd did in fact have mailing address for 124 River Rd. The Mill St parcels (2 of them) had 124 River Rd for mailing address as well. No changes to tax card are needed. **SM**

David asked that Nancy Clark make comments on behalf of her clients in lieu of each client speaking, since she is their representative. Ms. Clark says she planned on her clients to speak on their own behalf, and she did not feel it was appropriate for her to speak for them.

Ms. Clark then reviewed the application. She said there were two legal issues related to the attached letters with driveway regulations and scenic road regulations.

First she referred to New Ipswich Driveway regulations and noted that Section V (B) includes that the application for a Driveway permit must be accompanied either by evidence that the Driveway will not impact wetlands or wetlands buffer. Also noted was that a driveway permit may not be issued for an illegal purpose and the Board of Selectmen may not uphold a driveway permit to support an illegal business.

Ms. Clark then reviewed the Scenic Road Regulations, noting RSA 472.6 entitled "Removing or Altering Boundary Markers" applied to the alteration of the driveway opening in her opinion.

She notes her clients are seeking the following relief:

- Rescission of the driveway permit
- Requirement for Ms. Elwell to replace the stones and or repair the stonewall to its condition prior to her application for a driveway permit
- A fine for violation of NH RSA 472.6
- A stop work order for the driveway and the attached parking lot until the New Ipswich Zoning and Planning Boards have issued their respective approvals.

David made a motion to accept the application for an appeal of administrative decision upon payment of fees. Danielle seconded and all were in agreement.

Hearing will be January 5th, 2023 at 7:45pm

PUBLIC HEARINGS:

Jane Elwell (Silver Scone Tea Parties), 99 River Road, Map 11 Lot 128 – HEARING CONTINUANCE

Application for Variance to allow a limited catering food service.

Susan noted that for the record, more letters came in and they will be included in the book of other letters. This is in addition to the ones that were already forwarded to the Zoning Board members previously.

Walker noted we left off in October and this is a continuation of that meeting.

David noted we have a sign in list and Nancy is the legal representative for her clients, and he would like her to present their concerns in order to use the time wisely. Even if it meant she took time to convene with her clients. Ms. Clark noted that each of her clients has their own individual concerns and feelings and she is better to speak on the legal portion, but wants them to speak on their own. After further discussion it was agreed that her clients would speak on their behalf.

Mr. Hanselman spoke and said when he was a board member they let everyone speak, first the abutters then other interested parties and he planned to speak. David clarified that everyone will have a chance to speak.

Christopher O'Leary, says he wants each to express their personal concern, and let Ms. Clark speak for the legal portion.

Bentti Hoiska: was in support of Jane's business model, she elevates the experience with treats, setting, social setting, food, her home, the china, decorations and themes. Guests, friends and family come together to make friends with others in attendance. He notes her yard and home are kept meticulously, and it has interesting historical architecture. Bank Village is called that because a banker actually lived in the home at one point. Keeping the property maintained well is important to attract guests. He feels per the 5 criteria, this doesn't diminish value in the village, but rather increases the value because she is maintaining the property so well. He supports the use for tea parties.

Greg Caltabiano: spoke next and he is an abutter that is opposing granting of the variance. The air of conviviality, that he feels has changed since this application has been submitted. He feels it has become menacing atmosphere with numerous reports of drive-bys with obscene language and gestures. While Jane says she hosts small groups, she advertises that she can host 50 people at a time. There is no way of confirming that the restrictions are being followed. If and when the property is sold, there is no way to predict or control what type of business might be run. He said Bank Village hasn't had a business in nearly 50 years and to preserve the residential nature it doesn't need one now.

Anne Marie Fournier: Her and her husband restored their home that was vacant for many years, so they understand what is required to renovate and maintain a historic home in the village. She notes that it's listed as an event venue and a destination venue on many sites. Living next door to an event venue, will disrupt the nature of the neighborhood life. With a parking lot next door, she worries about the safety of her dog and increased traffic. It sets a dangerous precedent for this village and other two villages in Town.

Robert Fournier: is concerned that the place will grow. Not the teas so much but the growth is what he is concerned about. Initially it was a quiet business, then Mother's day 126 people showed up. He is concerned that this growth will continue. He thinks the state of NH will look at it as a restaurant. Noted that the headlights would shine on his house as they leave the parking lot.

Richard Smeeth: Customer throughput, 100 people a day according to the applicant. This volume is huge, 400 guests per month or over the course of a year 4800 guests. He went on to say that is more than the combined population of Greenville, Mason and Temple. The request diminishes the values in the village. The effluent is 12 gallons per person, 1200 gallons in a day, and 57,600 gallons in year. If you have hydraulic overloading it eventually makes it way to the rivers.

David Lage clarified that at the Sept 1st hearing the application was for 20 to 40 with a maximum of 50 per day.

Sharin Smeeth says her opposition is not due to animosity to anyone, rather it's a desire to maintain the integrity of Village District I. She has lived in other cities, towns, villages and even countries. They carefully weighed the options and chose this Village for their own home due to the conservation, preservation of rich history, and residential community. Missing from that list was a food services establishment. All 5 criteria must be met to approve. The proposed variance will have an

environmental effect and will scar the neighborhood forever. By petition 5 roads were designated scenic and one of those was Currier Road. It is in the public interest to uphold the spirit of the ordinance to promote the public health, safety and general welfare of the community. The proposed variance will have the opposite effect, she feels the atmosphere has changed. She asks each of the Board members to think long and hard. Wendy said minimal home occupation is conducted solely by homeowner, once you invite the public in it is no longer minimal.

David said the variance is approved specific to the applicant's submission, so business changing or growing requires further approval by the Zoning Board.

Judy Holmes: The tea parties went on just fine until Jane divorced her husband, and that's when the opposition started. Guests were parked in front of her house, Judy witnessed an abutter come up with clipboard and repeatedly told them they could not park there. That was embarrassing for the guests to be treated like that. She has an open area and driveway that has been there for a long time, Jane's ex-husband used it for 2 trailers and 3 vehicles and used the open area to cut and split wood. He left a mess of debris when he moved, Jane cleaned it up and thought she would use this area for parking. She moved two rocks on her own land, and they complained, they were not on a wall and removing them made the area safer. They are grasping at straws. For instance Mr. Smeeth complained about speeders, Judy agrees there are speeders on River Road, but the speeders are not the party goers, they are slowing down as they approach the house. She suggests that Mr. Smeeth ask the police to address speeding, not the Zoning Board. Another complaint was a family cookout celebrating family visit and birthday party, which resulted in a letter from Town saying to not do that again. She also notes, there have been several businesses in the Village, a bank, a cotton mill, and more recently Bill Currier had a small metal building for metal fabricating and a machine shop, in his home he had a ski shop as well. Nancy Clark's house was once an antique shop, and the Smeeth's house was an artist's studio. She feels it's a personal vendetta, and the tea party will be an asset.

Cheryl Glavey: is in support.

Liz Freeman: Owns property on Waterloom Pond, and this application has potential to affect her property. She also asked who the voting members were, it was noted Walker, Dave and Danielle. Concern with this application is that Board will set a precedent that will affect the Zoning Ordinance. She went on to cite other cases that previously came in front of the Boards. Nothing unique about this property that qualifies it for a variance. She gave multiple examples of what has or might set a precedent.

Robert Mason: Was told to address the board not audience. What's the big issue about tea parties? The house is beautiful, the Village is also beautiful. She's just doing this a couple times a month, he's never seen hundreds of people there. The taxes that the business brings in would help the town. He thinks she does a great job and it's good for the Town and he'd like to see more businesses come in.

Shawn Cook: Is in support.

Christopher O'Leary: Distributed copies of his statement. He wanted to point out what he felt were deficiencies in the conditions that have been proposed for operation at 99 River Road.

(Note on the bullets below, he did not have bullet 2 & 4 listed)

Bullet 1 He is looking for a clear definition of what constitutes one day of operation as well as what is the 30 day period, is it Calendar Month, any 30 day period?

Bullet 3 Operation hours from 9am to 9pm

Bullet 5 Septic plan is not sufficient

Bullet 6 Neighbors at 97 River Road have unobstructed view

Bullet 7 Noise ordinance in Town is not sufficient for this application

Kathleen Sheldon: Was at the first ZBA meeting for the Variance Application. She says there have been untrue allegations, accusations and generally ongoing and escalating confrontations series of events including private functions were illegal. Parking area was already in existence, was proposed to be used for parking, it is not a new area. Increased traffic concerns with a maximum of 50 guests, sharing rides, the volume is not large. This is so low impact, a casual person walking by would not even notice. She also noted she has statement from Robin Blackburn Ellis, which she read and will leave a copy for the record.

Greg Hanselman: Bought property 40 years ago at 71 Main St and it had plenty of protective covenants, and he also practiced real estate in New Ipswich. When he moved here there was no Zoning. He pays taxes like others in the room. This is about enforcing Zoning Ordinances and the precedent this would set. The businesses Ms. Holmes mentioned were before the Zoning Ordinances. The property has always been well maintained without making a nickel from it. Greg noted he was a realtor for years, and feels if zoning is not enforced it adversely affects property values.

Jane Elwell read her statement describing the atmosphere of a proper tea party, also other tea businesses and how hers is not at that volume. She described how she came to do these events and that it was requested that she do more. She addressed Mr. O'Leary's concern that the parties would be for 12 hours, and said they are 3 hours more or less. Ms. Elwell also noted all the letters of support she had for the business. Her variance would be so specific, that no other business would be able to expand. She notes someone mentioned a brewery could open up, but that it would not be profitable to open for 1 day a week, and a limited number of guests. She enjoys showing her home and telling them about the history, while sharing her culture. She often supports fund raising events for women. She also noted that she received a threatening letter and she is going to pursue this.

Mr. Fasanella noted that with the reduced scale of operations, they updated the conditions for the business. They also submitted the septic system plan from Monadnock Septic Design and parking area.

Jane walked through her plans with the Zoning Board Members. Discussion on if she needed to go to the Planning Board because of the size of the improvement.

Liz Freeman noted that the Board is reviewing items that the Planning Board will review, so in interest of time saving, let them review that information and move forward with this meeting.

Robert Fasanella provided photo of driveway that existed in the 1960's as proof that this is not a new driveway or parking lot. He submitted a copy of the photo from 1963 into the record. He noted that it is less than 800 sq. ft., Planning Board review is required for developments larger than 800 sq. ft.

Liz Freeman noted that a commercial business triggers a site plan review, Bob Fasanella disagreed.

The board reviewed site plan regulations, and David noted that the 800 sq. ft. was for an expedited review, and either way they need to go in front of the Planning Board. David said he wanted to be sure they understood the next step is to go to the Planning Board and Mr. Fasanella agreed this is the next step.

Mr. Fasanella stated they are proposing less than 20 spaces which doesn't trigger plan review. Jane noted the calculated 1 parking space for each 3 people attending, 17 spots for 51 guests, plus she has 5 other spots in her driveway if needed. Mr. Fasanella also discussed the septic system capacity, they have a preliminary plan in the event the current system fails. David asked them to get the finalized stamped full sized septic plan for the Zoning record. They said they could have in a week.

They then reviewed the differences between the old and new proposed conditions for variance.

- Removed Minimal Impact Home Occupation
- Maximum of 4 Days per every 30 days
- Occasional Food Service Establishment
- 9 am to 9 pm, most events last 2 to 3 hours. They won't have events for the full 12 hours, but this range accommodates brunch events as well as afternoon teas. Dave asked if they would narrow this down a bit. Jane agreed to 6 pm as the end time.
- Certified engineer plan to be submitted for the septic design to be filed with State and Zoning.
- Business will be primarily inside the residence, except during the summer months when tables and chairs will be set up in the back courtyard area behind the house
- The second powder room has been built and permitted so they removed it from the list

Walker asked theoretically what they will do if more cars show up than planned for. Jane noted they tend to come together because they come so far. But if overage, parking is not illegal on the streets.

Mr. Fasanella had a written rebuttal to all the comments made by abutters. He handed out copies for the record.

Walker made a motion to close the public portion of the hearing to allow the Zoning Board Members to discuss among themselves. The motion was seconded by David and all were in favor. The public is allowed to stay and listen to the deliberation if they so choose.

The 5 criteria were then reviewed.

1) The proposed use would not be contrary to the public interest because:

(Note: For reference the applicant's responses will be in Italics for each of the 5 criteria. The board members discussion will follow in regular text.)

The proposed part time use of a small portion of residential property which is mostly located within a Rural area, as well as Bank Village to hold tea parties for guests. The use is principally inside the residence and will be no more than 4 times a month, mostly on the weekend with limited use of the outside screened from the public. It will have off street parking and the existing parking area has an existing driveway and parking area outside of the conservation easement area.

David noted the public has interest for this service and he always goes back to the master plan goals which promotes small businesses. He did struggle that it was in a Village District, but can't deny someone the use of their property if it falls within the master plan. Because it's limited events (4 times a month) it should have a limited effect on the public. He understands about setting precedent, but the Zoning Board is always setting precedent. A bed & breakfast or daycare would be more disruptive with daily operation. Walker notes in Village District II that food establishments are allowed by special exception. Danielle agreed with both David and Walker's points. The Board agreed that the criteria has been met.

2) The use is not contrary to the spirit of the ordinance because:

The activity will be carried out by the residents of the premises and is mostly operated entirely within the dwelling and occasionally in the gardens outside. There will be no external evidence of the activity except for a non-illuminated sign, a sign directing guests to the parking area that will be removed when events are not in progress and parking will be buffered and not visible to residents on River Road. There will be no adverse effect of the activity or surrounding areas due to smoke, noise, dust, glare, soil, and water or air pollution. A slight increase of traffic occurs before and after each event and sufficient parking shall be off Currier Road and not visible from River Road. It was noted that Bed & Breakfast or Day Care would be allowed in Bank Village and that would create more frequent traffic and noise with people coming and going.

- David noted that the spirit of the ordinance appears to be met, since other similar businesses such as Inns, Bed & Breakfast establishments are allowed by special exception. He also discussed the septic capacity. They are not asking to be a restaurant or a commercial kitchen and if that were the case in future, they would need to come in front of the ZBA again. Walker and David discussed that there was not a chance to overdevelop in the use they are asking for as the dwelling is already there will be no expansion. The Board agreed that the criteria has been met.

3) Granting the variance would do substantial justice because:

Most residents and passerby will not even see or hear any activities which take place mostly inside the residence other than the parking. Use of the rear of the property for parking and events will be screened from the public view. Guests are well behaved, civil and served tea, other beverages, scones and some appetizers. The landscaping and grounds are maintained and designed, cared for and consistent with the neighborhood. This use would have no adverse impact on property values.

- The benefits to the applicant were discussed. David felt it is a unique business and people are attending, so it benefits the public, but also the flip side is if a business were more disruptive it would not fit in the area. Walker feels overall the public is generally served. The Board agreed that the criteria has been met.

4) The proposed use would not diminish property values because:

The use is mostly inside the home. The house and grounds will be maintained and consistent with the neighborhood. Signage and lighting will be discreet and not offensive in any way to the character of the neighborhood. The use is more discreet than a bed & breakfast or day care which are allowed by special exception. Also, the use will be no more than 4 times a month.

- David noted in Ms. Clark's packet there was a note from a real estate agent that felt it could have an effect. However, David noted, in the past there was a mess in the back, and now it is cleaned up which helps benefit property values. Walker felt, if you are having tea parties, there is an expectation that the property will be kept up. David agreed at first with someone's comment it should be in a different district, such as Village District II, but with further thought, he considered where he would want to go to a tea party, and it would be in a historic home like the applicants, where it is inviting. Walker feels the surrounding property values would be more affected if there were visible outdoor seating and lights like in the city, but what the applicant wants to do this would not diminish the home values. The noise ordinance was discussed and it is hard to enforce it, but the tea parties should not create a high noise level and the revised operational hours would not be affected by the local noise ordinance. David mentioned that the town will collect property taxes as they always have, however the state licensing may require rooms & meals taxes and the town benefits from a portion of that. It was felt that this would be status quo and not a diminishment to the property values. The Board agreed that the criteria has been met.

5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner because the following special conditions of the property distinguish it from other properties in the area.

The applicant's property is one of the largest parcels in Bank Village neighborhood (at 36 acres) however the parcel has a conservation restriction which limits the use of the parcel to agriculture and forestry and does not allow many commercial and industrial uses generally permitted in a Rural District. Most properties in Bank Village are smaller properties. The applicant's property offers great open space, wildlife, recreation, and natural benefits to the rest of the Bank Village. With these benefits and restrictions the proposed use will maintain the historic character of the house, the neighborhood and allow the owner to generate income to pay taxes and maintain the current use and maintenance of the property.

- Walker notes it is one of the larger properties in the area. David asked what does it have that would create unnecessary hardship? David noted what is allowed there, such as a Bed and Breakfast, is very similar but on a limited basis. David noted that Bed & Breakfasts have afternoon teas, so what is the difference except the applicant would have less frequent events. This property's historic building is unique to this area and is well suited for this type of venue. There is a hardship in the sense that she could have a B&B and serve tea, but she just wants to do the teas. The Board agreed that the criteria has been met.

AND

5a) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Most residents of Bank Village will not even see or hear activities which will take place mostly inside the residence other than parking. Use of the rear of the property for parking and events will be blocked from the public view.

The intent of the ordinance is to protect the historical and rural character of the Village Districts, and by utilizing this historic home for a very limited tea event business meets the intent of the ordinance.

The Board agreed that the criteria has been met.

5b) The proposed use is a reasonable one because:

The house, grounds and landscaping are and will be well maintained and are consistent with the neighborhood. The use is less noticeable than a daycare, bed & breakfast or nursing home all allowed by Special Exception. Also, the use will be only 4 days per month.

Additionally, adequate and appropriate facilities will be provided for the proper operation of the proposed use.

In addition to the parking area, walkways, limited signage and lights described already, the residential waste water system can adequately accommodate the expected number of guests. There are usually 20-30 guests and at most 40 at each tea event. The septic tank comprises of two 1250 gallon tanks, plus a 400 gallon pumping tank, for a total of 2900 gallon capacity, and an advanced environmental septic & leach field to process wastewater which was installed in 2014. It has more than double the capacity of wastewater expected to be generated from a 2-4 hour event, even assuming each guest generated 12 gallons of water per day and all 3 bedrooms were in use. The advanced leach field is more than 75 feet from private well and down gradient of the well. Well water is NOT used for public consumption as only bottled water is given to the guests. Adequate handicapped parking is available for up to 6 spaces in the residential driveway close to the house. Tea events mostly during the day, so lighting will not be necessary for those events.

There are numerous safe access and egress points from the house. The house maintains smoke, CO2 detectors and cameras inside and outside.

- David noted the home exists already, and no expansion is required. Walker said it's the same as a B&B but with less hours and frequency. David also reminded the Board that they also will reduce the initial hours and end at 6PM. David also discussed that they have proposed parking and on street parking should not be required. David would hope the Planning Board will addresses the parking area requirements. The Board agreed that the criteria has been met.

- David made a motion to approve the application for Variance to article IV section B of the Zoning Ordinance with the following conditions.
 - Include the applicant's voluntary conditions, with modification to bullet item 3 to provide operation hours to be 9AM to 6PM and bullet item 5 which can be deleted since we are requiring a proposed septic design.
 - The applicant provides stamped engineered septic plan to show septic design should their septic system need to be replaced in the future. It must be stamped and signed.
 - Also that the conditions of the Fire Chief and Code Enforcement be met.
 - The approval is for tea party events only.
 - The applicant receive Planning Board approval
 -
 - Operating hours will be 4 days per month.
 - When having exterior signage that the signage permit be applied for and approved, and temporary signage to guide parking to the rear lot only be for the duration of the event and should be removed immediately after.
 - Off road parking will be required and part of the Planning Boards determination.
 - No parking on the Monadnock Conservancy easement.

Walker asked if anything about the noise ordinance should be included, but it was determined that the noise ordinance starts at 7PM so with the reduced hours the event should be over and guests gone by then. Planning Board would spell out if gravel or paved parking lot would be required.

Danielle seconded this motion. All were in agreement.

Rachel Lenardson, Special Exception, 57 Hubbard Pond Road, Map 1 Lot 36 - Hearing

Special Exception to allow a food truck on property

Ms. Lenardson comes before the Board to request a commercial kitchen in a mobile food trailer to make soups to be sold offsite. She will be delivering to 3rd party businesses to sell on her behalf, so no customer traffic or employees.

Rachel described the business operation model, it will be a trailer painted like the house on her property on Hubbard Pond Road. She will make soups in the trailer kitchen.

Walker asked what her volume it, she will make 14 gallons in a few days.

David asked how the soup gets to customers, Rachel indicated she will deliver.

David also confirmed no employees, just Rachel making the soups.

The Board then discussed the application and determined this use is allowed in rural district as it is a permitted use as she met all the criteria. David reminded her if people come to pick up orders or she has employees she will need to come back to the ZBA as that changes things. David also suggested, she reach out to the neighbors to alleviate any concerns they have.

NEW/OLD BUSINESS:

There is a lot on Perry Road, that has a house that is uninhabitable the owner wants to build a new home on the lot and see if the old house can be turned into a barn or demolished all together.

David suggests he go in front of the Planning Board. Michael notes they do not intend to use the old house as livable building.

Make a plan for permanent residence and also show modifications to old residence to show changes like removing bedrooms and bathrooms, heating has failed, septic system will be capped to delineate as non-residence. Mike would like to save the old structure to be used as storage and reclassify as a barn.

Get Jim to take a look and give conditions to allow new home and prevent this old structure from being made into a home. David notes with this there should be no need to go in front of Planning Board.

Minutes were reviewed for the last few meetings:

July Meeting – Motion to approve by David, seconded by Walker, all approve

August Meeting – 1 minor change was made. Motion to approve by David, seconded by Walker, all approve

September Meeting – Motion to approve by David, seconded by Danielle, all approve

99 River Road site visit – Motion to approve by David, seconded by Walker, all approve

Ebby's site visit – Motion to approve by Walker, seconded by David, all approve

Also to note, there will be no meeting in February due to members' schedules conflicting.

A **MOTION** to adjourn was made by Mr. Lage, and Mrs. Sikkila **SECONDED** the motion, all were in favor.

Respectfully Submitted,
Susan Mallett