

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

**Town Office, 2<sup>nd</sup> floor meeting room  
6 Pinnacle Hill Road, NH 03256**

April 5, 2023

- MEMBERS PRESENT** Regular members: Mr. Livernois, Mr. Newman, and Mrs. Belanger (7:24 pm). Alternate member: Mr. Heckman.
- OTHERS PRESENT** Land Use Administrator Mrs. Vose, William Hodges & Ann Tarryk, and Atty Boldt.
- CALL TO ORDER** Acting Chair Mr. Livernois called the meeting to order at 7:00 PM.
- Mr. Livernois explained that there are 3 members present, which constitutes a quorum, but applicants can request the hearing be heard by the full board of 5, and that if they proceed with the hearing tonight and are not satisfied with the decision, the fact there is not a full board would not be reason enough to appeal a decision. Mr. Livernois advised that as they were aware that Mrs. Belanger could attend the meeting if Mr. Newman picked her up, he asked Atty. Boldt how he would like to proceed and Atty. Boldt said he would like to have her attend as a 4<sup>th</sup> member.
- RECESS** At 7:02 pm the Board recessed and Mr. Newman left the meeting.
- RECONVENE** At 7:24 pm Mr. Livernois reconvened the hearing and Mrs. Belanger and Mr. Newman were present. Mr. Livernois appointed Mr. Heckman to act on behalf of Mr. Tierney.
- PUBLIC HEARING (cont)** DTC Attorney Chris Boldt was present to represent the application. The property owners William Hodge & Ann Tarryk were present.
- William Hodges & Ann Tarryk, 102 Seminole Avenue, Tax Map U-10, Lot 11, for a Special Exception - Article V, Section D, and a Variance – Article IV, Section A.4(ii), (iii), and (v) of the New Hampton Zoning Ordinance.*
- Mrs. Vose advised that the applicants, William Hodges and Ann Tarryk, have requested a Public Hearing in accordance with RSA 676:7, for a Special Exception and a Variance.
- The Special Exception request is under Article V, Section C.1 of the New Hampton Zoning Ordinance. The applicants’ proposal is to construct a septic system within the 20-foot setback of the property line; the proposed location of the leach field being 10 feet from the side property line. A Special Exception may be granted by the Zoning Board of Adjustment for septic systems on substandard size lots with a setback no less than 10 feet from the property line, unless the NHDES grants a waiver to reduce the setback further, in which case the Zoning Board of Adjustment may consider reducing the setback to be consistent with NHDES allowable setbacks.
  - The Variance requests are under Article IV, Section A.4(ii) of the New Hampton Zoning Ordinance. The applicants’ proposal is to

replace an existing non-conforming home with a new house and attached garage on a different footprint, 23 feet from the front right-of-way, which would be within the 35-foot setback.

The property belonging to William Hodges and Ann Tarryk is located at 102 Seminole Avenue, Tax Map U-10, Lot #11, in the General Residential, Agricultural and Rural District and the Waukewan Watershed Overlay District.

Mrs. Vose advised that all abutters were notified but had heard from none.

Atty. Boldt reviewed Exhibit A which showed the current conditions and that the existing home is about halfway within the 50-foot (state) setback to the lake and has an old retaining wall made of tires. This project proposes the tires to be removed. The septic system is unknown as it is prior to licensing with the state. A new state approved system will be obtained. The proposal moves the houses approximately 10' further from the lake, which now encroaches the front right-of-way; the reason for the variance. The drip edge of the home will be no closer than 23'. This home is the last home on Seminole Avenue where it dead ends at this location. The proposed leach field will be not closer than 10' to the side property line. There is a very narrow building envelope due to the town's setbacks and the state's setback to the water, and an intermittent stream and well, further limits the building area. Atty. Boldt said the distance to the right-of-way would typically be for the purpose of road maintenance, safety, exiting purposes and safe sight distance or if the road needs widening. This is a private road that will never be widened and which dead ends at this house.

Atty. Boldt that this proposal will not change the character of the neighborhood or will threaten health, safety, or welfare in the granting of the variance. He said the proposal will not have a negative impact on the surrounding neighborhood as it will not affect the abutters. Special conditions of the property include the unique building envelope, that the house placement makes it more conforming to the lake, and the road dead ends at the house. Denying the variance would prevent the property owners from ½ of their proposed garage.

Mr. Livernois asked the members if they had a chance to review the complete application with Atty Boldt's documents, that were previously sent to members and they said they had. He asked members if they had an opportunity to drive by the site or if they felt a site visit was necessary, and they said they had all driven by and did not feel a need for a site visit. Mr. Livernois asked the members if they thought this application had any regional impact and they said it did not.

Atty Boldt reviewed exhibit "C", the septic design, which shows that it would be 10' from the side property line, and at .54 acres this lot is substandard, therefore the special exception criteria can be granted and Mr. Livernois pointed out all special exception criterion must also be met.

Mr. Livernois said the plan appears to use some pervious material and Atty Boldt said there are pervious pavers being used on a portion in front of the garage, though a section of existing impervious area will remain. The

calculations shown on the plan show the percentage of impervious area.

Mr. Livernois pointed out that the abutter's well radius to the applicant's septic area is met.

Mr. Newman asked for a better description of the driveway and where the road ends because when he visited the site there was too much snow on the ground to determine. Atty Boldt said it was where the road rose in elevation, prior to the stream. Ms. Tarryk said the driveway loops around the birch and the road ends about where the hemlock was located.

Mr. Boldt stated that impervious area calculation was originally 19.4% but after further adjustments to pervious pavers, revised it to 17.6%.

Mr. Livernois asked for questions from anyone else, noting no one else was present and advised the board would close the public hearing and go into deliberations for the variance.

**The variance will not be contrary to the public interest and the spirit of the ordinance is observed** – The Board agreed this was met.

**Substantial justice is done** – Mr. Livernois said the septic system will be improved and the house will be moved further from the water - a benefit for the lake. The private road that would likely not be widened, and that traffic will not continue past this house. The Board agreed.

**The values of surrounding properties are not diminished** –The Board agreed.

**Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because special conditions of the property distinguish it from other properties in the area; No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property; and the proposed use is a reasonable one** – The Board agreed this was met.

**There are special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore to enable a reasonable use of it** – The Board agreed, given the plateau, slopes, the orientation, the size, and the seasonal stream.

Mr. Heckman made a motion, seconded by Mrs. Belanger to approve the applicant's request for the variance as submitted. Vote was unanimous. Relative to conditions, Mr. Livernois made a motion, seconded by Mr. Heckman that the applicants file "as-built" plans upon completion of the project to confirm the impervious area on the lot, not to exceed the 17.6%. Vote was unanimous.

Mr. Livernois reviewed criteria relative to the Special Exception on septic system being within the front and side setback to the property line at 10 feet.

**The specific site is an appropriate location for such use:** The Board agreed based on the conditions of the property and since it will be an improvement.

**There is adequate area for safe and sanitary sewage disposal:** the Board agreed and Mr. Livernois pointed out that the 75' radius to the neighbor's well is met.

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

**There will be no nuisance or hazard created:** The Board agreed.

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

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

**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:** This was previously discussed, with 17.6 % being the calculation, so the Board agreed.

**Relative to the Agritourism criteria the Board agreed this did not apply.**

Mrs. Belanger made a motion, seconded by Mr. Newman to approve the Special Exception to construct the septic system within the setback distance to the side property line as requested, no closer than 10 feet, with the same condition requiring as-built plans when complete. Vote was unanimous.

## **OTHER BUSINESS**

Mrs. Vose confirmed with Mr. Livernois that he was willing to be re-appointed as a regular member for another term. Mrs. Vose asked Mrs. Belanger if she was willing to be re-appointed for another term and she advised the Board that due to time constraints she would need to step down as a member of the ZBA for the time-being. The Board expressed their appreciation of her service on the Board, with an invitation to return in the future, if she desires.

Copies of letters from the Selectmen to Kenneth & Amy Tarr & Irene Heinen and Kenneth & Jennifer Proulx who applied to the ZBA previously to operate short-term rentals, who subsequently redrew their applications after an abutter, submitting an application for the same use, was denied without prejudice. The letters were to Cease & Desist advertising their properties as short-term rentals.

## **MINUTES**

3/1/23 minutes were held for at least 3 members who were present, to vote.

## **ADJOURNMENT**

Mr. Newman made a motion, seconded by Mr. Heckman, to adjourn at 5:15 pm. Vote was unanimous.

Respectfully Submitted,  
Pam Vose, Land Use Administrator