

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

**Town Offices upstairs meeting room, 6 Pinnacle Hill Road**

September 14, 2022

- MEMBERS PRESENT** Regular members: Mr. Tierney, Mrs. Belanger, Mrs. Arsenault, and Mr. Newman
- OTHERS PRESENT** Land Use Administrator Mrs. Vose, Larry O'Brien, Doug & Philippa Bohl, Midge Makris, and Susan Horner.
- CALL TO ORDER** Mr. Tierney called the meeting to order at 6:01 PM.
- DISCUSSION**  
*Consider Motion for Rehearing – Dimitri Neyshtadt & Arthur Dyech*
- Mr. Tierney advised that this meeting was to consider the Motion for Rehearing for Dimitri Neyshtadt & Arthur Dyech, Case No. 08032022-Neyshtadt, Dyech. The applicants had filed for a Special Exception under New Hampton Zoning Ordinance Article VI, Section A(3) to operate a short-term rental. The Zoning Board of Adjustment voted to deny the application on August 3, 2022. This meeting is to consider the request for rehearing only, no additional testimony or evidence relative to the application for Special Exception will be heard or considered at this time.
- Mr. Tierney advised the Land Use Administrator had previously emailed RSA 676:2 to the members, which outlined when and how an appeal can be requested, and distributed to members, RSA 677:3, which set forth the grounds on which an appeal can be claimed for their review.
- Mr. Tierney advised Atty Fennessy has laid out his reasons for appeal and the board must determine whether the ZBA's decision is unlawful or unreasonable. Mr. Newman confirmed that the ZBA could also consider any new information, but said he saw no new information in the request, and Mr. Tierney agreed. Mr. Newman said that the motion, on the first page, states that the ZBA didn't properly consider evidence from HOA President Mr. Carlino (his emails with Mr. Neyshtadt), and abutter Donna Girard (her texts with Mr. Neystadt) who were not present at the hearing of 8/3/22. Mr. Newman said he doesn't see anything in those emails or texts that supports the use of the property as a short-term rental and the fact that neither Mr. Carlino or Ms. Girard did not attend, doesn't mean that they would express their support, as other emails from each of them states they are not in support of this use. Mr. Tierney said the motion makes some assumptions and misstatements on the Board's opinion, for which there is no basis, which all the members agreed. He said the motion states the ZBA erroneously relied on unsubstantiated testimony but that the testimony before the ZBA is legal testimony that the ZBA is required to consider all testimony by the applicants, abutters or interested parties. Mrs. Arsenault pointed out that Ms. Girard had sent a subsequent email to the Selectmen's Office stating her opposition to the short-term rental use, which also provided the reason she was unable to attend. Mrs. Arsenault said that in an HOA vote Ms. Girard stated opposition there also. Mrs. Belanger pointed out that even though that was relative to covenants and

restrictions in their association, they were taking a vote on whether the residents opposed the short-term rental of the Neyshtadt/Dyech property and the vote shows no residents supported the use. Mrs. Belanger said there are photos of text messages that are supposed to be between Mr. Neyshtadt and Ms. Girard which states that she doesn't oppose him living in the home and renting a few weeks in a year but supports the HOA in their opposition of a strictly short-term rental use. Mr. Tierney reminded the Board the HOA covenant & rules are a civil matter. Mr. Newman agreed but pointed out that the motion states the ZBA didn't properly consider evidence from Mr. Carlino and Ms. Girard but said this is not new evidence to consider.

Mrs. Belanger pointed out that the motion states the ZBA erroneously relied on undocumented and unsubstantiated testimony from neighbors, but never provides evidence that the ZBA acted unlawfully or unreasonably in their decision. Mr. Tierney agreed after reading the entire motion. Mrs. Arsenault said it was her understanding that 74 Smoke Rise Road had never been offered as a short-term rental in the past, and Mrs. Vose said that as far as the town knows, it was never used in that way. Mrs. Arsenault confirmed with Mrs. Vose that the realtor never asked the Town whether short-term rentals were allowed, and Mrs. Vose saying that the applicant himself, stated he only asked the realtor at the 8/3/22 hearing. Mr. Tierney said it took a series of letters from the Selectmen's Office to get the property owner to comply with an application. Mr. Newman asked if they were Cease and Desist letters. Mr. Tierney said the 1<sup>st</sup> letter was to inform them of the regulations and what was required if they offered their home as a short-term rental, and the 2<sup>nd</sup> letter was to Cease and Desist. Mrs. Arsenault asked if after a letter was sent, dated 11/5/21, the Town heard from the property owner. Mrs. Vose reviewed the discussions she had since the letter was sent as she had written down (on 7/7/22) all her discussions/emails relative to this issue:

- 11/5/21: Letter sent to property owners after the town had seen the home listed on Airbnb, after they purchased the property on 9/24/21. Mrs. Vose noted the property was being offered to 12 people, with 5 bedrooms, 7 beds, and the septic design was for 3 bedrooms.
- 11/20/21: As there had been no response, Mrs. Vose tracked down Mr. Neyshtadt's phone number, called him, and as she started reviewing the regulations with him almost immediately, PretiFlaherty attorney Mark Puffer, was on the phone with them. Mrs. Vose advised them both of the definition (Bed & Breakfast/Tourist Home to no more than 6 persons for a fee) and the application process to the ZBA for a Special Exception. Mrs. Vose was asked to scan the 11/5/21 letter and email it to Atty Puffer which she did. Nothing further was heard on the matter and no application was received.
- 4/21/22: Letter was sent to the property owners. This was a Cease & Desist letter. The certified, return receipt letter was acknowledged received by Mr. Neyshtadt on 4/27/22.
- 5/17/22: Letter dated this date from Attorney Nathan Fennessy to Town Administrator Mr. Irvine that they would be representing their client on matters relating to the letter of 4/27/22 and hoped to submit to the ZBA shortly.
- 5/24/22: Mrs. Vose received an email from PretiFlaherty's Gretchen McKeen looking for names and addresses for the abutters to 74 Smoke

Rise Road, which she provided.

- 6/21/22: Next deadline date for submission to the ZBA. The deadline date passes and no application is received yet the property owner's listing remains online, for 12 people.
- 6/30/22: Mrs. Vose sent an email to Ms. McKeen, cc'ing Attorney Fennessy, advising them that we had not received their application by the deadline date of 6/21/22, expressing concern that it may have been lost in the mail or someone had neglected to send it. She asked them to advise the office of the submission status.
- 7/7/22: Mrs. Vose states that there was no response from the law firm in the form of an email, letter, or phone call from PretiFlaherty.
- The next deadline date to the ZBA is 7/19/22 and on 7/18/22 the Selectmen's Office receives submittal of an application for a Special Exception to allow for short-term rental use at 74 Smoke Rise Road.

Mrs. Arsenault confirmed with Mrs. Vose that after discussion with Mr. Neyshtadt and Atty Puffer took place there was no further response from either, until the Cease & Desist letter went out. Mrs. Arsenault said that even with the Town advising them of the regulations, with the attorney being aware of regulations, how they work and the process for a Special Exception, the property owner ignored that and the listing continued online for 12 people. She said the motion states the ZBA decided to only hear the testimony of the abutters/neighbor present at the 8/3/22 hearing when in fact evidence of this use went back to November 2021. Mr. Tierney said the information Mrs. Vose provided is on enforcement action from the Selectmen's Office and not from the ZBA, in an effort to get the property owner into compliance, and that this information should not be used in determining whether a rehearing should be granted. Mr. Newman pointed out that he knew nothing about the sequence of events Mrs. Vose had documented, which Mrs. Arsenault said was true for her also, until this evening and their denial was not based on this information either as they did not have it. She said she vaguely remembered someone in the audience mentioning a Cease & Desist during the 8/3/22 hearing. Mr. Tierney said he was aware of the timeline but did not bring it to the hearing as it was not something to be considered during the hearing process in order to avoid prejudicing the hearing. Mr. Tierney advised that relative to discussion on covenants/restrictions even though those are only enforceable through the civil courts, the fact that documentation was gathered from the association's residents stating their opposition to the short-term rental use, was testimony for the ZBA to consider. Mr. Newman pointed out that the ZBA had heard from all, or almost all - residents in the association, either by an email, or in person on 8/3/22 and there were none that supported the short-term use. Mr. Tierney said that initially Mr. Carlino seemed to have no issue with the use (per emails between Mr. Neyshtadt and Mr. Carlino) but later he had changed his mind and was against it (email to Selectmen's Office on 8/2/22). Though no evidence was able to show the reason for Mr. Carlino's support or lack of support - later, Mr. Newman said the ZBA had both of Mr. Carlino's statements to consider during deliberations whereas the motion states the ZBA did not consider Mr. Carlino's support. Mr. Newman said he doesn't think there was any information the ZBA did not consider in their deliberations and said after reading the motion for rehearing, many times, he did not see anything unlawful or unreasonable in the ZBA's decision.

He said the motion states there were no police reports filed by the neighborhood, but given the testimony at the 8/3/22 hearing the Board determined the neighborhood was not an appropriate location and that it would create a nuisance, because it *had* created nuisances. Mr. Newman said the motion provides evidence of many speed limits signs but speeding vehicles were only a piece of the reason why the Board denied the application, as there were many reasons, based on testimony. Mr. Tierney pointed out the ZBA's experience with narrow, dirt, private roads being a problem for other short-term rental uses. Mr. Tierney said the motion indicates that the ZBA should have had evidence such as reports from police or fire but the ZBA takes evidence and testimony at a hearing. Mr. Newman said that the ZBA must take all the testimony and make a subjective decision on some of the Special Exception criterion, while some of the criteria are objective, such as having an appropriate septic system or whether it meets lot coverage requirements. He said what would be the point to these other criteria if the ZBA could not take testimony and evidence during the hearing process for which to base their decision. He said the ZBA shouldn't have to have concrete evidence, such as a photo of renters behaving badly, in order to make a decision. Mr. Newman said that the board looked objectively at the septic system, and while the applicant was renting to 12 persons for a fee, if they complied with the rental limit of 6 persons, the 3-bedroom septic system would be appropriate. He said what failed was relative to "appropriate location", "no adverse effect on adjacent area", and "no nuisance" pointing out that it only takes a determination by the Board that one of the criteria is not met for a denial, but the Board found that three criteria were not met.

Mr. Tierney asked the Board if they felt there was anything the ZBA did that was unlawful or unreasonable and all members said no. Mr. Newman said the Board followed the Town's ordinance in considering the application. Mrs. Belanger said in reviewing the minutes since she wasn't present on 8/3/22, the Board did not prohibit testimony from anyone and that everybody who wanted to participate – could, and nothing was excluded from consideration. Mr. Tierney said the applicant had the opportunity to rebut testimony, which he did. For this reason, Mrs. Belanger did not find anything unreasonable in the deliberations or the decision. Mrs. Arsenaault agreed, saying the ZBA heard from Atty Fennessy, Mr. Neyshtadt, and from abutters & neighborhood residents and didn't stop anybody from speaking and didn't make a hasty or quick decision. Mr. Newman said he didn't think the board was unreasonable in how the ZBA heard the testimony, took the evidence, or in their assessment of the application. Mrs. Belanger, Mrs. Arsenaault and Mr. Tierney all stated their agreement to that and to there being no new information. As Mrs. Belanger could only rely on reading the minutes and motion for rehearing said she felt the motion had a lot of irrelevant information such as the covenants/restrictions discussion or texts between the proposed buyer and the realtor. Mrs. Belanger said the only new information she sees in the motion is that it states the applicants purchased the home for their families but that it was not shown in the evidence or testimony.

Mr. Newman made a motion, seconded by Mrs. Belanger to deny a rehearing for Dimitry Neyshtadt and Arthur Dyech for a Special Exception

*(ZBA Minutes, September 14, 2022, cont.)*

under New Hampton Zoning Ordinance Article VI, Section A(3) to operate a short-term rental at 74 Smoke Rise Road based on the fact that the Board has not found any new evidence, nor were unlawful or unreasonable in the Boards assessment of the application during the hearing of 8/3/22 or in this meeting on 9/14/22. Vote was unanimous.

**ADJOURNMENT**

Mrs. Belanger made a motion, seconded by Mr. Newman, to adjourn at 6:59 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator