

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

**Town Offices upstairs meeting room
6 Pinnacle Hill Road, NEW HAMPTON, NH 03256**

June 9, 2022

MEMBERS PRESENT Regular members: Mr. Tierney, Mrs. Belanger, Mr. Newman, and Mr. Livernois (7:07 pm)

OTHERS PRESENT Resident and Planning Board member Dave Katz

CALL TO ORDER Mr. Tierney called the meeting to order at 7:02 PM.

PUBLIC HEARING Mr. Tierney advised that the applicants, Carlos & Jennifer Duran, have requested a Public Hearing in accordance with RSA 676:7, for the following:

Jennifer & Carlos Duran, 95 Old Bristol Road, Tax Map R-12, Lot 3, for a Special Exception -Article IV, Section A(3), and a Variance – Article XIV, definition of “Bed & Breakfast/Tourist Home of the New Hampton Zoning Ordinance.

1. Special Exception request under Article IV, Section A(3) of the New Hampton Zoning Ordinance. The applicants’ proposal is to operate a short-term rental, under the definition of a Bed & Breakfast/Tourist Home on property owned by the Carlos & Jennifer Duran, which is a permitted use by Special Exception.
2. A Variance request under Article XIV, “Bed & Breakfast/Tourist Home” definition of the New Hampton Zoning Ordinance. The applicants’ proposal is to offer their property as a Bed & Breakfast/Tourist Home for more than 6 persons for a fee. The Zoning Ordinance allows for no more than 6 persons for a fee.

The property is located at 95 Old Bristol Road, Tax Map R-12, Lot #3, in the General Residential, Agricultural & Rural District and the Pemigewasset Overlay District.

Mrs. Duran was present to represent the application. Mr. Tierney advised that a full board consists of 5 members, and there are only 4 members expected tonight, asking if she wishes to move forward with just those present. Mrs. Duran agreed. Mr. Tierney advised that lack of a full board would not be a reason to request a rehearing.

Mr. Tierney asked all members present if they had previously read through the application submitted and they had. He asked if the members felt this application had a regional impact and they agreed it did not.

Mr. Tierney advised that though the applicants have asked for a Variance also, the Special Exception request would be decided first, as it is pertinent to the Variance request.

Mrs. Duran advised this property was purchased as a vacation home in October of 2021, and as they are not able to utilize it much, decided to offer it on Airbnb. She said there are no homes in close proximity to this one. She said the home is renovated, yard is fenced as they like to rent to families - with dogs being welcome, and they like that people are present

from time to time when they are not. A property maintenance person handles all maintenance inside and out. Mr. Tierney asked about number of bedrooms and Mrs. Duran said there are 3 bedrooms and a day room, with no closet, that can fit a day bed or pullout couch. She said they are requesting more than 6 guests because they have a large family and have fit their family and another, comfortably.

Mr. Newman asked about the septic design and whether it was adequate. Mr. Tierney said a new design was obtained, but not installed, showing that the land can support the appropriate 3-bedroom system, if replacement is required.

Mr. Tierney asked about smoke and carbon monoxide detectors and Mrs. Duran said they are in place and are hard-wired. He reminded her that the Fire Dept would need to inspect the premises for life safety concerns if this application was approved.

Mr. Tierney advised the board would now go into deliberations, coming out of deliberations if any questions need to be asked of others present.

As Mr. Katz was present Mr. Tierney confirmed he was not an abutter to the property and offered Mr. Katz the opportunity to ask questions. Mr. Katz asked if this would constitute a change in use and the need for a Site Plan review. Mr. Tierney advised that would be up to the Selectmen and/or the Planning Board. Mrs. Duran pointed out that the only reason she is applying for this use is because someone saw it on the Airbnb website. The members advised that due to the regulations offering this property as a short-term rental means it must meet the ordinance and its criteria.

Mr. Tierney reviewed the special exception criteria.

The specific site is an appropriate location for such use: The board agreed based on the description by the applicant.

There is adequate area for safe and sanitary sewage disposal: The board agreed it was suitable.

The use will not adversely affect the adjacent area: At 2.46 acres and given its location the board agreed.

There will be no nuisance or hazard created: Mrs. Duran advised that their property manager could respond if they were made aware of any problem created by a renter.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Mr. Tierney confirmed the septic design was suitable for 3 bedrooms. Relative to parking, due to recent paving that was added, there is a lot of parking available.

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: Mr. Tierney advised there is no further development of the lot that would affect this and it is 2.46 acres.

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

Mr. Tierney asked the board to consider any conditions the board that should be imposed if this was approved. Mr. Newman suggested the condition to have an inspection by the Fire Dept. for life-safety issues.

Mr. Livernois made a motion, seconded by Mrs. Belanger to approve the Special Exception to allow the use of the property as a short-term rental (Bed & Breakfast/Tourist Home). Vote was unanimous.

Mr. Tierney advised the board would now consider the request for a Variance to allow for the rental of the home to more than 6 persons for a fee.

Mrs. Duran said she would like to have the flexibility to offer this to more than 6 persons, as she does personally to friends and family and there are many beds. Mr. Tierney asked what number was she hoping to get approval for and Mrs. Duran said 10 people. Mr. Tierney said the septic system would be a concern for that number of people.

Mr. Tierney reviewed the Variance criteria.

The variance will not be contrary to the public interest – Applicant wrote “this is a secluded large lot with a fully fenced yard. We will screen potential renters carefully and parties are strictly prohibited”.

The spirit of the ordinance is observed – Applicant wrote “the ordinance is important to preserve the peace and economic value of the town. Our request can add value by additional family tourism to the town”.

Mr. Livernois wondered why this limitation for 6 persons would be in place, with members considering that it may be related to parking limitations, or substandard lot sizes, especially in the Village District. Mr. Livernois expressed concern that increasing the number of 6 to 10 could potentially be contrary to the public interest.

Substantial justice is done – Applicant wrote “we will take full responsibility for our guests and take pride in our new home and renovations that add significant value”.

Mr. Livernois said he sees this criterion as being related to allowing a variance because someone couldn't use their property in a manner that they would like, thus creating a hardship.

The values of surrounding properties are not diminished – The applicant wrote “there is a large space between properties on a wooded lot where no other house can be seen”.

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 because – the applicant wrote “this river view property allows for greater than six persons to enjoy without adding additional noise to neighbors”.

The proposed use is a reasonable one because: the applicant wrote “the house can comfortably accommodate 2-3 families and we would like families to enjoy time together in this large space”.

Mr. Livernois advised there are no special conditions of the property that distinguish it from other properties in the area, which limits its use. He said the applicant hasn’t identified any specific feature of the property that limits its use to offering the rental to more than 6 persons for a fee.

With no more questions or comments, Mr. Tierney advised the Board would go into deliberations.

Relative to the variance will not be contrary to the public interest and the spirit of the ordinance is observed Mr. Tierney said he didn’t think the spirit of the ordinance is being observed and Mr. Livernois agreed. Mr. Livernois advised the concerns with more than 6 people would be related to noise, parking, and in this case - the septic system.

In regards to substantial justice being done, Mr. Tierney said this relates to an injustice being done to the property owner. Mr. Livernois stated this criterion also relates to some particular conditions of the property that limits the owner’s ability to do something. Mrs. Belanger said if this was a 6-bedroom home with the appropriate septic system this may be different but the town still limits the number to 6 persons. In this case, the septic system is also a concern. Mr. Livernois said the additional people may also be a concern for the public.

The board agreed that the value of surrounding properties would likely not be affected by this change in number of persons.

Relative to hardship criterion, the board agreed that wasn’t met and that there were no special conditions of the property that distinguishes it from other properties in the area.

Mr. Livernois made a motion, seconded by Mr. Newman to deny the Variance request for offering the property as a short-term rental for more than 6 persons as the application does not meet all required criterion for the reasons discussed. Vote was unanimous.

Mrs. Duran asked if there was anything she could do to accommodate more than 6 persons and Mr. Newman said it would take a change to the ordinance. The Board suggested she could discuss this regulation further with the Planning Board.

(ZBA Minutes, June 9, 2022, cont.)

Sean (Shay-) Hutchinson, 7 Cleveland Way, Tax Map R-4, Lot 64 for a Variance - Article V, Section N, of the New Hampton Zoning Ordinance.

Mr. Hutchinson was present. Mr. Tierney advised that the applicant, Sean Hutchinson, has requested a Public Hearing in accordance with RSA 676:7, for a Variance under Article V, Section N of the New Hampton Zoning Ordinance. The applicant's proposal is to construct a single-family dwelling on a lot, which requires a minimum lot size of one acre, considering soils, slopes or proximity to running waterways. The amount of usable land is unknown. The lot size is 1.74 acres. The property is located on 7 Cleveland Way, Tax Map R-4, Lot #64, in the General Residential, Agricultural and Rural District.

Mr. Hutchinson said the town is requesting he have a home built as he is presently living in a camper on-site. He said the town needs to know if he has one buildable acre and he doesn't know. He is requesting a variance from not knowing the amount of buildable land. Mr. Newman asked if he has had it surveyed and Mr. Hutchinson said he has not because the cost is \$6,000. Mr. Livernois asked why he thinks it isn't enough land at 1.74 acres and Mr. Hutchinson says the town wants to know, because of the brook running through the property and the soil type. Mr. Tierney said these may also apply to whether or not he has the ability to get a septic design for the property.

Mr. Newman asked if there were any concerns from abutters and Mr. Tierney advised that at the meeting scheduled for June 1, abutters had been present but as there was no quorum the hearing couldn't be held. It was noted there were no abutters present this night.

Mr. Tierney asked if Mr. Hutchinson had any plot plan to show what he is planning for the property and Mr. Hutchinson said he would put a structure next to where his camper is presently. Mr. Newman said there are 2 septic plans in the property file which were never built and Mr. Hutchinson said it was his understanding the previous property owner was planning 2 garages. Mr. Hutchinson said his plan is to keep the privy he currently uses, that was approved by the Town, and just add a building, 10x10 or 12x16, as requested by the Town. He advised he cannot live in the camper, which can only be temporary, so he has to construct a small dwelling and plans to live in that.

Mr. Newman said he cannot judge this application without further information on usable land or construction of a building and Mr. Livernois agreed. Mr. Hutchinson said he wants to buy a pre-built, small shed. Mr. Tierney asked if this would be on a foundation and Mr. Hutchinson said it would not. Mr. Tierney agreed there isn't enough information to determine whether this variance can be granted and the Board could decide to reject this application as there isn't enough information. The Board could then advise him of what he would need - to consider the appeal. Mrs. Belanger looked at the definition of a single-family home which qualifies the shed as a dwelling. Mr. Tierney said the dwelling would require an occupancy permit that requires connection to electricity and water and Mr. Hutchinson said he was not told that. He was asked what he was told he needed and he said it was just to have a building. Mr. Hutchinson said he has tried to get a survey plan from the prior owner with no luck. Mr. Livernois pointed out everything that an Occupancy permit would require. Mr. Newman agreed the most sensible action to take was to reject the

application as there wasn't sufficient information to begin discussing the criteria.

Mr. Katz suggested continuing the hearing and getting further information on the discussion Mr. Hutchinson had with the Selectmen. Mr. Katz then found minutes online, from 12/2/21, that reflected that meeting and Mrs. Belanger read those minutes. Mr. Hutchinson said he met with Selectmen again on 4/21/22, for which Mrs. Belanger read those minutes also.

Mrs. Belanger made a motion, seconded by Mr. Livernois to reject the application without prejudice. Vote was unanimous.

Mr. Tierney advised that what would be needed to consider the application would be:

1. A plot plan that should show buildable areas;
2. Soil types and waterway setbacks;
3. Setbacks to property lines and rights of way;
4. Impermeable areas.

Mr. Tierney said the board would continue this hearing until 7/6/22 at 7:00 pm if Mr. Hutchinson can get this information. It was noted a survey would be required in order to obtain this information.

MINUTES

Mr. Livernois made a motion, seconded by Mr. Newman to approve the minutes of 5/4/22 as written. Vote was unanimous.

ADJOURNMENT

Mrs. Belanger made a motion, seconded by Mr. Newman, to adjourn at 8:46 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator