

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

**Town Offices upstairs meeting room, 6 Pinnacle Hill Road – AND -
Fire Dept Training Room, 26 Intervale Road, New Hampton, NH 03256**

August 3, 2022

- MEMBERS PRESENT** Regular members: Mr. Tierney, Mrs. Arsenault, and Mr. Newman
- OTHERS PRESENT** Land Use Administrator Mrs. Vose & large group
- CALL TO ORDER** Mr. Tierney called the meeting to order at 7:00 PM. Due to the size of attendance Mr. Tierney advised the hearings will be moved to the Public Safety Building Fire Dept training room.
- RECESS** At 7:02 pm Mr. Newman made a motion, seconded by Mrs. Arsenault to recess to move the meeting. Vote was unanimous.
- RECONVENE** At 7:16 pm Mr. Tierney called the meeting to order. The same group was in attendance as was Fire Chief Lang. Mr. Tierney reviewed the conduct for the meeting.
- PUBLIC HEARING**
Brian Meckel, 438 NH Route 104, Tax Map R-4, Lot 81, for a Special Exception - Article VI, Section A.1, 8-xii, of the New Hampton Zoning Ordinance. Mrs. Vose advised that the applicant, Brian Meckel, has requested a Public Hearing in accordance with RSA 676:7, for a Special Exception request under Article VI, A., Section 1 of the New Hampton Zoning Ordinance. The applicant's proposal is to change a pre-existing, non-conforming use to another non-conforming use which can be done by Special Exception if all criteria is met under Article VI, Section A.1, 8, i-xii. The property belonging to 104 Store LLC is located at 438 NH Route 104, Tax Map R-4, Lot #81, in the General Residential, Agricultural, and Rural District (GR).
- Mrs. Vose advised that all abutters were notified but has heard from none. Mr. Tierney advised that a full board consists of 5 members, and there are only 3 members tonight, asking if Mr. Meckel wanted to move forward with just those present. Mr. Meckel agreed. Mr. Tierney advised that lack of a full board would not be a reason to request a rehearing.
- Mr. Meckel was present to represent the application. The Board had previously been provided with copies of the application from Mr. Meckel, which they had reviewed. He advised that Tri-City Masonry sells mostly pavers, bricks, facing stone, etc. and has a distribution location in Somersworth where their deliveries are made from, with installation done by contractors. Mr. Meckel said this would be a good location for a showroom where customers could see products. Mr. Meckel confirmed there were be no truck traffic for product, plans no changes at this time but may repave the parking lot with various types of products so it can be viewed and there are plans for only one employee in the beginning.
- Mr. Tierney confirmed that there were no abutters present to discuss this application. Mrs. Arsenault confirmed that it was previously used

commercially.

Mr. Tierney read the criteria for changing a Non-Conforming Use to another Non-Conforming Use by Special Exception:

- i. *The new non-conforming use will be equally or more conforming with the purposes of the ordinance and the intent of the use restrictions applicable in the particular zoning district.*
Mr. Tierney said it seemed to be equal to the previous use.
- ii. *The applicant must surrender all rights to continue the previously existing non-conforming use.*
Mr. Meckel agreed to the surrendering.
- iii. *There will not be an adverse impact on the surrounding neighborhood.*
Board members agreed this would be the case.
- iv. *The proposed replacement would not result in an increase in noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.*
Mr. Tierney said based on the description provided by Mr. Meckel it would not result in an increase.
- v. *The numbers and kinds of vehicular trips to the site will be comparable to, or lower than, those associated with the existing use.*
Mr. Tierney said it's a possibility if the business was very successful.
- vi. *The replacement will not place increased demand on the amount and nature of outside storage or loading requirements, and there will be no net loss in the number of existing off-street parking spaces servicing the existing uses(s).*
Mr. Meckel confirmed parking spaces would remain the same and there would be no product coming and going from the site.
- vii. *The visual appearance of the site and structure will either remain unchanged or will be improved.*
Mr. Meckel said he hopes to improve the site with new signage.
- viii. *The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood.*
Mr. Tierney noted that Live Free Home Health Care had some employees accessing the building 24/7. Mrs. Arsenault asked the hours of operation and Mr. Meckel said M-F from 7am -5pm, Sat. 7am-noon.
- ix. *Non-Conforming characteristics including, but not limited to, signs, off-street loading and parking, lighting, landscaping, of the previously existing use shall be brought into conformance with the ordinance to the extent feasible.*
There were no non-conforming characteristics currently present on the property.
- x. *The non-conforming use area of the lot will not be increased.*
Mr. Tierney noted nothing would change.
- xi. *The gross square foot floor area of the building housing the existing non-conforming use will not be expanded as a result of the replacement.*
Mr. Tierney noted nothing would change.
- xii. *The replacement will be equally or more compatible with the neighborhood, will contribute to neighborhood socioeconomic*

needs, or will otherwise be in the public interest.

Mr. Newman stated his agreement.

Mr. Tierney asked for any further questions and there were none so he closed the public hearing so the board to go into deliberations.

The board members said there were no failures on the criteria so Mr. Newman made a motion, seconded by Mrs. Arsenault to approve the change in a non-conforming use to another non-conforming use by Special Exception for 438 NH Route 104. Vote was unanimous.

PUBLIC HEARING

Anthony Guyotte & Patricia Thompson, 1351 Winona Road, Tax Map R-19, Lot 20, for a Special Exception - Article IV, Section A (3&5), of the New Hampton Zoning Ordinance.

Mr. Guyotte was present to represent the application. Mr. Tierney advised the attendees that the applicant was requesting a Special Exception to create an accessory dwelling unit (ADU) and at the first meeting on 7/6/22 additional information had been required so the hearing was continued.

Mr. Tierney said his revised plan, which reflected an apartment at 475 sq. ft. of habitable floor area, the removal of a deck, changing it to a patio, and changing the square footage of the stairway and adding a storage locker in the kitchen. This brought the application in compliance with the regulation that states an “ADU in an accessory building shall not exceed 45% of the square footage of the floor area of that accessory building, to a maximum of 800 square feet.” as the total square footage of the floor area was 518.4 sq. ft. Mr. Tierney advised that the Town received the appropriate NHDES Approval for Construction on an appropriate septic design to accommodate the proposed ADU. For this reason, Mr. Tierney said the application met the ADU requirements.

Mr. Tierney and Mrs. Arsenault confirmed with Mr. Guyotte, the plot plan submitted for the building permit, showing the location where the garage with ADU would be placed. Mr. Guyotte explained that the access to the garage would be from the rear of the structure, underneath. Mr. Tierney submitted a photo of the property which showed the approximate location of the garage. The members reviewed the documents.

The Board confirmed the following requirements as part of the continuation of the application.

- ADU will not have more than 2 bedrooms and has adequate parking.
- There was a minimum of 2 off-street parking spaces in addition to the primary dwelling unit parking requirements. Mr. Guyotte said there would likely be 4 parking spaces for this ADU.
- The ADU makes provision for adequate water supply and sewage disposal service in compliance with RSA 485-AA:38 and regulations adopted by the NHDES. Mr. Guyotte said there is an existing well that will serve both dwellings.

The Board had previously been provided with copies of the application from Mr. Guyotte and Ms. Thompson, which they had reviewed.

The board reviewed the Special Exception requirements:

The specific site is an appropriate location for such use: The board agreed and noted they had all driven by the site.

There is adequate area for safe and sanitary sewage disposal: Mr. Tierney advised the NHDES approval documents this.

The use will not adversely affect the adjacent area: Board members agreed this was true.

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.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: Mr. Guyotte said the ADU would look similar to the current dwelling.

The building, parking/or driveway area will not exceed the maximum percentage of lot coverage in the applicable zoning district: Ms. Arsenault asked the acreage amount and Mr. Guyotte stated it was about 3 acres. The board agreed that this would not be an issue at that amount.

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

Mr. Tierney asked for input from anyone present. There were none. Mr. Tierney closed the public hearing so the board could go into deliberations.

Mr. Newman said this meeting and the one on 7/6/22 all issues had been satisfied. Mrs. Arsenault made a motion, seconded by Mr. Newman to approve the Special Exception for the ADU as submitted by Mr. Guyotte, at 1351 Winona Road. Vote was unanimous.

PUBLIC HEARING

Devin Humphries & Adam Difilippe, 837 Dana Hill Road, Tax Map R-17, Lot 30C for a Special Exception - Article IV, Section A (3&5), of the New Hampton Zoning Ordinance.

No one was present to represent the application. Mrs. Vose advised that Ms. Humphries' mother had submitted a more detailed, revised drawing of the basement and proposed ADU, which had been requested, but had advised her that they were still trying to engage a licensed septic designer. Mrs. Vose had told the woman to have the applicants submit a request for continuance to a date specific, but to date, had not received one. Mr. Tierney advised the board could either vote to continue the hearing to 9/7/22 in the hopes the applicants would have an appropriate septic design, or to reject the application as incomplete, which would require a new application with fees.

Mrs. Arsenault made a motion, seconded by Mr. Newman to continue the hearing to 9/7/22 at 7:00 pm. Vote was unanimous.

PUBLIC HEARING

Daniela Campos & Juan Gomez, 90 Mountain Vista Drive, Tax Map R-8, Lot 1A8 for a Special Exception - Article IV, Section A.3, and for a Variance – Article XIV, of the New Hampton Zoning Ordinance.

Mrs. Vose advised that the applicants, Daniela Campos & Juan Gomez, have requested a Public Hearing in accordance with RSA 676:7, for the following:

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, 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 12 persons for a fee. The Zoning Ordinance allows for no more than 6 persons for a fee.

The property belonging to The 18th Tree LLC is located at 90 Mountain Vista

Drive, Tax Map R-8, Lot #1A8, in the General Residential, Agricultural & Rural District.

Mrs. Vose advised that abutters were notified, she knows many abutters and other neighbors are present and has received correspondence from both.

The Board had previously been provided with copies of the application from the applicants, which they said they had reviewed.

Ms. Campos and Mr. Gomez were present.

Mr. Tierney asked the Board if they felt this application had a regional impact and they agreed it did not. Mr. Tierney explained that the applicants are seeking a special exception to operate a short-term rental and a variance to offer it to 12 persons for a fee, adding that the Board would address the special exception request first, for it were denied, there would be no need to hear the variance request.

It was noted that Mr. Tierney and Mrs. Arsenault had visited the site. Mr. Gomez advised they want to use the home as a short-term rental to offset the cost of improvements to the property, offering it part of the year, while they utilize the property themselves, for the remaining time. Ms. Campos said they intend to rent it approximately 40% of the year. Mr. Tierney advised that he measured the driveway and thinks there is parking for 4.5 vehicles which may not be enough. Relative to sewage disposal the applicant states it will be inspected annually and pumped 2x/year. Mr. Tierney asked how many bedrooms were in the home and Mr. Gomez said he thinks it is five, with another room being considered a study as it doesn't have a closet. Mr. Tierney asked if they were aware, it was only a 3-bedroom septic system, installed in 1989, and Mr. Gomez said he did not know. Ms. Campos advised they could fit a minimum of 2 cars in the garage.

Mr. Newman expressed concern with the septic system, especially given the location of the property but this could apply more to the variance request than the special exception request. Mr. Gomez said this is why they pump more often and there are times the home is empty. Mr. Tierney expressed concern with the amount of people utilizing the home and its affect on the system and that below this subdivision, water flows towards Lake Waukegan, being Meredith's water supply.

Mr. Tierney said he would review the abutter's correspondence Letter dated 7/26/22 from abutters Michael & Linda Oakes read into record, summarizing:

- Emergency vehicle concerns when renters cannot park all visiting vehicles on the property; excessive speed and inconsiderate driving in a neighborhood which is steep, has a 90° blind corner, and where many residents, including children - walk;
- Trespass and nuisance concerns as evidenced by personal negative experiences with renters;
- Concern with why the use was not given approval prior to it being offered as a sort-term rental, then continuing the use while they obtain

permission.

Letter dated 8/1/22 from abutters Marla & Glenn Arber read into record, summarizing:

- The site is not appropriate for the use as most all residents in subdivision are full-time and the transitory & volatile nature of short-term use brings instability.
- The use has been taking place without approvals creating excessive noise, trespassing, excessive vehicles, speeding and unfamiliarity with the steepness of the road;
- Inadequate sewage disposal with listing showing rental for 6 bedrooms to 15 people and the concern with a failing system's effect on nearby properties, the aquifer, and Meredith's water supply;
- Negative impact to aesthetic values of the neighborhood and its peace and tranquility;
- Diminished surrounding property values with short-term rental nearby as stated in article by Norman Spencer Appraisers on Airbnbs and external obsolescence;
- Concern with the granting of this appeal to the land.

Mrs. Arbor then submitted an addendum, to be read into record, which summarized:

- Winona Heights Declaration of Covenants & Restrictions, Book 865, Pg 263, and amended, as it relates to year-round & seasonal residential development and restricting use to residential purposes only;
- IRS recognition of short-term rentals as commercial real estate [transient rule Section 168(e)(2)] as a property being leased for 30 days or less at a time to visiting tenants, classified as commercial real estate carrying depreciation (Kimberly Lockridge, Executive VP, Engineered Tax Services)

Mr. Tierney said relative to the word "transient" is applies to the length of time someone stays in the building. The special exception, if granted, is not temporary, but is permanent and runs with the land.

Mr. Tierney asked the applicants if they were aware of the covenants and restrictions when they purchased the property and Mr. Gomez said he was surprised to learn that and admitted he did not perform due diligence in determining whether short-term rentals were allowed. Mr. Tierney said covenants and restrictions are a civil issue and not under the purview of the Town. Ms. Campos advised that since they have received the Cease & Desist letter, they have taken no further bookings and are currently only letting family and friends rent the home.

Letter received by the Selectmen's Office on 7/29/22 signed by abutters and residents (Kopelman, Heckman, Dougan, Arber, Keaveney, Hahn, & Harkins) requesting denial, read into record, summarizing:

- Site is inappropriate for this use due to most residents being full-time with short-term renters creating disturbances (reported to Town) and safety concerns for the resident's children, rental offered to 12 people w/6 cars, steep section of road – difficult in the winter months;
- Inadequate septic system for the 3 unpermitted new bedrooms;
- Nuisance and hazards being loud noise, trespassing and speeding.

- No information so residents can contact owners when there are problems with renters.

Mr. Tierney asked if any abutters wish to speak.

- Karyn Gattermann advised that though she realizes the covenants and restrictions are a civil issue she wanted the applicants to know that the restrictions state that in the event the association's covenants are more restrictive than the Towns' the stricter rules shall apply. She said if the special exception runs with the land and it is approved the residents may be faced with a future court fight against a new owner if they offer this property for short term rentals.
- Richard Harkins submitted the VRBO listing that sleeps 15, 6 bedrooms, with the MLS listing sheet showing it was a 3-bedroom home when it was sold. He said since motorcycle week it has been rented with large groups and a lot of noise, in a quiet neighborhood, making it difficult to enjoy their own property. He welcomed the owners as primary residents. He expressed concern with all appropriate permits to add the additional bedrooms. Mr. Tierney advised that an inspection for life-safety code and site plan review by the Planning Board if this was approved.

Mr. Tierney asked if anyone else present wished to speak.

- Ron Leach said they moved to this neighborhood recently, leaving a community that was very busy, attracted to this quiet neighborhood.
- Magdolna Mitchell agreed as they chose this neighborhood due to its quiet nature.
- Bill Gilson said they live at the intersection and have seen a significant change in the traffic, where motorists speed and are unfamiliar with the road. They enjoy their quiet neighborhood.

Mr. Tierney closed the public hearing so the board could go into deliberations and thanked the residents for their input.

The board reviewed the Special Exception requirements:

The specific site is an appropriate location for such use: Mrs. Arsenault said she didn't think this use was an appropriate fit for the location, when she performed her site visit. Mr. Newman did not visit the site but looked at satellite images of the neighborhood but wanted to hold his opinion on this criterion.

There is adequate area for safe and sanitary sewage disposal: There was discussion on the current system and the fact that the rental is advertised for 6 bedrooms, but that if the use were allowed for 6 persons, being current requirement, the 3-bedroom system would be sufficient. Mr. Tierney expressed concern with the age of the system being 1989, which the board agreed, but according to NHDES the system is sufficient.

The use will not adversely affect the adjacent area: The board agreed it would have a negative impact on the area, based on testimony, and for Mrs. Arsenault – the site visit. Mr. Tierney said this is a residential area and this use is out of character. Additionally, this is an area where most tourists would not expect to be found.

There will be no nuisance or hazard created: The board agreed the use poses a nuisance and hazard as noted by the emails, letters and abutter's statements and has only been rented for a short period of time so far.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use: The board agreed the home could handle 6 persons and could accommodate 6 vehicles if the garage was used.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: After discussion Mr. Tierney and Mr. Newman agreed the aesthetics of the property would likely remain the same, but Mrs. Arsenault stated she felt it could affect the appearance.

The building, parking/or driveway area will not exceed the maximum percentage of lot coverage in the applicable zoning district: Ms. Arsenault asked the size of the lot and the board agreed this is not applicable as there are no changes to the lot development.

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

The board returned to the 1st criterion. **The specific site is an appropriate location for such use.** Mr. Newman explained he had wanted to discuss other criteria before making a determination on whether it was an appropriate location, and for this reason feels it is not the appropriate location for this use. Mr. Tierney and Mrs. Arsenault agreed. Mr. Tierney pointed out that this indicated failure with the special exception.

Mr. Newman made a motion, seconded by Mrs. Arsenault to deny the applicants' Special Exception request under Article IV, Section A(3) of the New Hampton Zoning Ordinance to allow for the use of 90 Mountain Vista Drive as a short-term rental. Vote was unanimous. As the Special Exception has been denied there is no need to continue with the Variance application. Mr. Tierney advised that the applicants have 30 days to file a motion for a re-hearing and if denied, they can appeal to the NH Superior Court.

**RECESS
RECONVENE**

Mrs. Arsenault called for a brief recess at 8:46 pm.
Mr. Tierney reconvened the meeting at 8:52 pm.

PUBLIC HEARING

Dimitry Neyshtadt & Arthur Dyech, 74 Smoke Rise Road, Tax Map U-8, Lot 18 for a Special Exception - Article IV, Section A.3, of the New Hampton Zoning Ordinance.

Mr. Neyshtadt and Attorney Nathan Fennessy (Preti-Flaherty) were present.

Mrs. Vose advised that the applicants, Dimitry Neyshtadt and Arthur Dyech, have requested a Public Hearing in accordance with RSA 676:7, for a 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, which is a permitted use by Special Exception. The property belonging to Dimitry Neyshtadt and Arthur Dyech is located at 74 Smoke Rise Road, Tax Map U-08, Lot #18, in the General Residential, Agricultural & Rural District.

Mrs. Vose advised that abutters were notified and has received correspondence from both abutters and neighbor, many of each, present.

Atty Fennessy confirmed with Mr. Tierney that 3 affirmative votes by the board would be needed for an approval on the appeal application. Atty Fennessy advised that on behalf of his clients he would like to wait until a full member board is available to hear the application. Mr. Tierney advised the hearing would be continued until September 7, 2022,

reminding the applicant that there is a Cease & Desist in effect so the applicants cannot continue to rent the property. Mr. Neyshtadt decided that he wanted to continue with the hearing with the 3 members present. Atty Fennessy rescinded his request for a continuance and to move forward with the 3 members.

The Board had previously been provided with copies of the application from Mr. Neyshtadt and Mr. Dyech, which they confirmed they reviewed.

Mr. Tierney asked the Board if they felt this application had a regional impact and they agreed it did not.

Atty Fennessy advised that the present owners purchased this property in the fall of 2021 and that they and another partner contribute it its upkeep. He said they purchased this as a vacation home of their families. The applicants wanted an opportunity to rent the home when they are not there. During the purchasing process they contacted the homeowner's association, whose president stated they could rent out the property. Mr. Fennessy said he understood that these covenants and restrictions were a civil matter but referred to B. General Restrictions and Covenants, 1. Lots – General Use which states “no lot shall be used except for single-family residential purposes, either seasonal or year-round.” Atty Fennessy said Mr. Neyshtadt and Mr. Dyech tried to do their due diligence in confirming they could rent the property on Airbnb. Atty Fennessy submitted pictures of text messages between the association president and Mr. Neyshtadt which said the covenants do no restrict renting. Atty Fennessy said the realtor did not provide the information that a Special Exception would be necessary in order to offer the property as a short-term rental. Once a cease & desist was received they started this application process. Atty Fennessy said he knows others in the subdivision who have rented their property and as this property is on the lake, it is consistent with the uses taking place on the lake. Relative to the septic system, he realizes it is a 3-bedroom system and would be suitable for 6 persons. Mr. Tierney pointed out that the septic system was installed in 1972 and Atty Fennessy said it had been inspected prior to the purchase and found to be in working order. Atty Fennessy provided copies of email correspondence between Mr. Neyshtadt and Michael Carlino, association president, noted some resident's complaints about speeding and feeding of the ducks by some of the Airbnb's renters. At that time Mr. Neyshtadt said he would advise his renters of the rules and Mr. Carlino had no other concerns. Mr. Neyshtadt pointed out that he has cameras on his property so he can keep an eye on his renters and quickly respond to problems. Atty Fennessy said there had been a problem with too many people at the residence but it was found to be visitors who came for the day to see the renters and Mr. Neyshtadt contacted them to say that it was too many people. Mr. Neyshtadt said he has a house rules binder which has been updated to address the neighbor's concerns. Mr. Tierney asked if there was construction to bring the home up to the 5 bedrooms that the Airbnb listing states the house has. Atty Fennessy said there was a loft area on the 3rd floor and they added a wall. He said if he were sell the house, it would be a 3 bedroom home. Mr. Tierney asked if a life-safety inspection had been performed and Mr. Neyshtadt said it has not.

Mr. Tierney asked for abutter's input.

- Mr. Tierney read into record a letter from Mr. Carlino, association president, brought up concerns with the road being a private dirt road, issues with speeding, compromising safety, maintenance, traffic neighborhood security unleashed pets, feeding of wildlife, and septic concerns. He recalled an uncomfortable encounter with a renter who came onto his property asking if he'd like to sell his house.
- Marsha Rodman said there haven't been Airbnb listings in their association, but that there were a few occasions where Donna Girard and Mike Carlino had briefly rented their homes out, but they stopped. Mrs. Rodman said the short-term rental use has had a negative effect on their piece of mind as each week it's been a different set of problems brought by the various renters ie. speeding, unleashed dogs, unfamiliar and excessive amounts of vehicles. She said renters are using other residents swim floats and said some underage kids left a campfire unattended and expressed concern with their safety as they were drinking and swimming.
- Read into record - an email dated 8/2, from Donna Girard expressing concern with privacy and the number of strangers coming into the neighborhood; condition of the private, dirt road due to the added traffic; and covenants that prohibit this business use. Mr. Tierney noted that Ms. Girard states this is a prohibited use whereas Atty Fennessey said it is allowed. Mr. Neyshtadt said there is nothing in the covenants which outlines the duration of days to rent or how often.
- Curtis Rodman read the correct paragraph in the covenants which states "No lot shall be used except for single-family residential purposes either seasonal or year-round. No lot shall be used for commercial purposes". Mr. Rodman said this has been renting this without the appropriate approvals and that this use is commercial. He said it's new people every week and has not seen Mr. Neyshtadt vacationing there.
- Read into record, an email dated 8/3 from Mr. Rodman, reviewing the special exception criteria: whether the specific site is appropriate, the road is a private way maintained by the HOA, and there's increased volume of renters traveling the road; adequate area for sanitary sewage disposal – concern with number of renters at a time and the 3-bedroom septic system; whether it will adversely affect the area – problems with speeding, unleashed dogs, & feeding wildlife; whether a nuisance or hazard is created – speeding vehicles and their affect on the dirt road and pedestrian safety; relative to adequate facilities and aesthetic values he refers back to other criteria.

Other emails were read into record from other neighbors:

- Email dated 8/2 from Michael DiGregorio states the use doesn't comply with the covenants, expressing concern with speeding and the threat to pedestrian safety, the number of strangers in the neighborhood, possible vandalism especially with some residents not being present year-round, the maintenance of the private road by the residents, and concern with more of the same use with new property owners if this were approved.
- Email dated 8/2 from James and Kathleen Soukup stating the property use for short-term rentals has been violating the Town's and the HOA's covenants and that Mr. Neyshtadt was aware of the covenants when the house was purchased. They expressed concerns with speeding, trash being left along the road, increased noise and renting to 12 persons

- when the septic system is only for 3 bedrooms. They request a denial.
- Email from Philippa and Doug Bohl expressing concerns with noise, increased traffic & trash detracting from the neighborhoods sense of safety, speeding on narrow, dirt road with many bends, septic system and excessive vehicles visiting the property.

Donna White asked if the Board has visited the neighborhood and Mr. Tierney and Mrs. Arsenault said they had. Mrs. White said they just became full-time residents and said the road is very narrow and some of the visitors have not been aware of how narrow the road is, as it is only one lane. The property owners have a vested interest in the care of the common beach and the road maintenance, which visitors don't have. Mrs. White expressed concern with how many properties Mr. Neyshtadt owns and that he is not living at this property and cannot control what his renters do. In the past few months, the character of the neighborhood has changed.

Mr. White expressed concern with the liability of the road as it is private and maintained by the property owners. Mr. Tierney said the ZBA could not answer this question.

Doug Bohl said traffic has affected them the most as they are at the beginning of the road. At times several cars come and go at once, at excessive speeds, and has safety concerns when he is walking the road.

Susan Horner said the Board has heard from all the residents on the road. She said the environment no longer feels as secure with the various renters coming through. She said each renter has a different variation of rule breaking that the residents have to endure.

Midge Makris said she is very concerned with the septic system and the extra washing of laundry for the abutters and the threat to the lake. She said she witnessed a target placed on a tiny island that renters were shooting arrows at.

Anne Marie Dunn said she saw the kids drinking and peeing into the bushes abutting the neighbor. She said it seems renters have a sense of entitlement in the use of the property and the homes are very close so the sense of privacy is disappearing. She doesn't feel as comfortable with her belongings being seen by renters.

Mr. Neyshtadt said this is the first time he's hearing a lot of these concerns and wished he had been told about these issues so he can address them.

He said his primary home is in Meredith, that he has a trailer at Twin Tamarack, so he is always close by to respond. He said if he is granted the Special Exception he would get the life-safety inspection and would comply with the 6-person limit and thinks additional speed limit signs are needed and are willing to pay for them.

Mrs. White asked why it should be the concerned residents who have to report issues to Mr. Neyshtadt. Mr. Neyshtadt said he polices the renters himself as he has cameras on-site but welcomes input from neighbors.

Marsha Rodman said even with a camera this won't stop bad behavior from taking place.

Mr. Tierney closed the public hearing so the board could go into deliberations and thanked the residents for their input.

The board reviewed the Special Exception requirements:

The specific site is an appropriate location for such use: The Board

agreed to circle back to this criterion.

There is adequate area for safe and sanitary sewage disposal: Mr. Newman and Mrs. Arsenault expressed concern with the septic system and given how old it is. Mr. Tierney said NHDES is satisfied with the system for 3 bedrooms only, not 5 bedrooms, so with a limitation of 6 persons this would be adequate. Looking at it this way Mr. Newman agreed it was adequate.

The use will not adversely affect the adjacent area: Mr. Newman said he disagrees with this based on the testimony by the abutters and neighbors as it seems the use has already adversely affected the area. Mrs. Arsenault agreed. Mr. Tierney said the use will adversely affect the adjacent area due to the extra traffic as the road is dirt, narrow, and winding.

There will be no nuisance or hazard created: Mr. Tierney said if the owner has tight enough control and supervision these issues may not take place, but they are, in spite of the electronic supervision he has put in place. Mr. Newman said this issue is fairly specific to this neighborhood given the nature of this community.

Adequate and appropriate facilities will be provided for the proper operation of the proposed use: The board agreed this property was adequate and appropriate.

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

The building, parking/or driveway area will not exceed the maximum percentage of lot coverage in the applicable zoning district: The Board agreed that this was not changed so this criterion was met.

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

The specific site is an appropriate location for such use: Mrs. Arsenault said it is not an appropriate site for this use. Mr. Newman said this is evidenced by the concerns in criterion 3 & 4, and doesn't feel the site is appropriate for the use given the road and abutter's/neighbors' issues. Mr. Tierney agreed with these statements.

Mr. Newman made a motion, seconded by Mrs. Arsenault to deny the applicants' Special Exception request under Article IV, Section A(3) of the New Hampton Zoning Ordinance to allow for the use of 74 Smoke Rise Road as a short-term rental under the Bed & Breakfast/Tourist Home definition. Vote was unanimous. Mr. Tierney advised that the applicants have 30 days to file a motion for a re-hearing and if denied, they can appeal to the NH Superior Court.

The Board was asked if the cease & desist was in effect and it was noted that if the applicant were to appeal, they could continue the use until they have been reheard, if a rehearing is granted. Asked when the cease & desist was issued Mrs. Vose said she would have to check the file at the office and said she believed there were 2 cease & desist letters, one being in 2021 and one more recent. As far as why this continued, they were told to speak with the Town Administrator about it.

PUBLIC HEARING
*Andrew Westcott & Ben
Durack, 996 NH Route*

Mr. Westcott and Mr. Durack were present.

The applicants, Andrew Westcott & Ben Durack, have requested a Public

(ZBA Minutes, August 3, 2022, cont.)

132N, Tax Map R-20, Lot 50 for a Variance - Article V, Section B, of the New Hampton Zoning Ordinance.

Hearing in accordance with RSA 676:7, for a Variance request under Article V, Section B (Home Occupation/Professional Office), of the New Hampton Zoning Ordinance. The applicants' proposal is to use 2 acres of the property for a landscape materials business. The property belonging to Andrew Westcott is located at 996 NH Route 132N, Tax Map R-20, Lot #50, in the General Residential, Agricultural & Rural District.

Mrs. Vose advised that abutters were notified.

- She said she spoke with abutter Jonathan Moore who would have been present but decided to leave when he heard how late this hearing may be. Mr. Moore said he supported it, knows where this use would be located on the lot and there is a buffer of trees between the properties, and relative to truck traffic he already hears Ambrose Bros trucks so that was not an issue.
- Mrs. Vose read into record an email dated 8/1/22 from abutters Jerry and Jacqueline Busby questioning where on the property this would be located, expressing concern with the applicants wanting to add additional acreage to this use, who their intended customers were, where the materials were coming from and how often there would be visits for delivery or pick-up and concern with increase traffic to an already busy roadway. They said business conducted in a home was suitable but this use seemed better suited to a non-residential area.

Mr. Durack said they both live on Route 132N and understand the amount of traffic on the road. Mr. Westcott submitted a picture of his property (13 acres) taken on Google Map (aerial photo) and explained where his home was and that he has gullies on each side of this home, with the proposed business being on the other side of the southern gully, across from Donkin Hill Road. Mr. Westcott said it is somewhat cleared of trees in this location. Mr. Durack said there is a line of trees along the front and they would put in a gate and a sign and trim the scrub pine that has been growing in. Mr. Westcott also submitted a copy of the tax map showing how his property appears on the map. Mr. Durack said they would obtain a State driveway permit. Mr. Westcott said they would cater to homeowners and small landscaping companies and don't anticipate large quantities of customers or large truckloads on a regular basis. Mr. Durack explained that he has a excavation & land clearing business and visits Ambrose and Central NH Aggregate pits on a regular basis, but they are more suited to large truck and they would like to stage their own materials, ie. ledge pack, mulch, etc. for smaller trucks (ie. one-ton) to pick up. If the business became busy, they would be looking to relocate. Mr. Westcott said he runs a landscaping business and they subcontract to each other with their existing businesses. They were not going to build any structure and sales would be by appointment only with no yard attendant. Mr. Westcott said they may invest in blocks to segregate the materials. Mr. Westcott submitted a photo of the area they're proposing to store material, as seen from across the street on Donkin Hill Road.

The Board had previously been provided with copies of the application from Mr. Westcott and Mr. Durack, which they had reviewed.

The Board reviewed the criteria for a Home Occupation/Professional Office:

- ❖ *It is conducted by or carried on under direction of the occupants of the residence and does not employ more than 2 persons other than household members.* Mr. Westcott said this would be true, it would just be himself and Mr. Durack as his partner.
- ❖ *It is conducted wholly within the principal and/or accessory structure.* Mr. Westcott said there will be no structure as the materials would be stored outside.
- ❖ *There is no outward appearance of such an occupation with the exception of one sign.* Mr. Westcott said this would be true.
- ❖ *No more than 25 % of the combined floor area of the residence and accessory structure is used for the business activity.* It was noted this did not apply and Mr. Durack said he understood this was the reason for the Variance request.
- ❖ *There shall be adequate provision for on-premise parking for all employees and customers and for delivering and shipping goods other than by customary home delivery services.* Mr. Westcott said this would be case.
- ❖ *No installation or use of mechanical or electrical equipment or hazardous material that is not normally part of a domestic household shall be permitted without written approval of the Fire Chief.*

Mr. Tierney closed the public hearing so the board could go into deliberations and reviewed the Variance criteria:

The variance will not be contrary to the public interest. Mr. Newman said he didn't think it would be contrary to the public interest and Mr. Tierney and Mrs. Arsenault agreed.

The spirit of the ordinance is observed. As this is tied to criterion 1 the Board agreed.

Substantial justice is done. The Board agreed.

The values of surrounding properties are not diminished. The Board agreed they would not.

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.

Mr. Tierney brought the board out of deliberations and asked the applicants what the special condition of the property is that they are seeking the variance. Mr. Westcott said that portion of the property has trees abutting the site location, making it separate from his home and abutting homes. Mr. Durack said it has good site distance for vehicles.

The board went back into deliberations.

The proposed use is a reasonable one. Mrs. Arsenault agreed. Mr. Tierney came back to a discussion on the provisions of the property.

If the criteria in subparagraph 1 are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area the property, cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it. Mr. Tierney advised there is no structure, there is no

application of 25% of the combined floor area due to there being no structures. Mr. Tierney said the idea of a home occupation was to run a business in the home, or in a garage, therefore the business is within the structure, and the variance requires a hardship. Mrs. Arsenault asked why the applicants could put the materials on their property and not use it as a business, or because the land has separation why couldn't the 2-acre site be commercial. Mr. Newman used the example of someone selling their hay and Mr. Tierney said that was agricultural in nature. Mrs. Arsenault said they could use their garage. She asked if there was some dollar amount of materials sold that would not be considered commercial and Mr. Tierney said the definition states a "building or portion thereof which is used for general business, retail, wholesale sales, or non-profit administrative services involving sale of inventory or provisions, or services involving manual skills." Mrs. Arsenault suggested subdividing, but Mr. Tierney noted that subdividing this 2-acre lot to sell product from could not be permitted as it is not an allowed use in this zoning district. Mr. Tierney gave some examples of what a hardship is, such as putting a septic area too close to a property line because of wetlands or ledge. The board could not find a hardship of the property to allow this use.

Mr. Newman made a motion, seconded by Mrs. Arsenault to deny the variance request under Article V, Section B of the New Hampton Zoning Ordinance for the property located at 996 NH Route 132N based on the requirements of the Home Occupation are not met and the fact it does not meet 5(B) of the variance standards as there is no defined hardship of the property.

Mr. Durack asked if they own the material, and it isn't being sold to other people, can they still store material there, ie. stone, firewood, etc? Mr. Tierney advised they would need to have a discussion with the Selectmen.

Vote on the motion, was unanimous.

MINUTES

No minutes were reviewed.

ADJOURNMENT

Mr. Newman made a motion, seconded by Mrs. Arsenault, to adjourn at 10:53 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose, Land Use Administrator