

**TOWN OF NEW HAMPTON
ZONING BOARD of ADJUSTMENT
MEETING MINUTES
NEW HAMPTON TOWN OFFICE
NEW HAMPTON, NH 03256**

May 1, 2019

MEMBERS PRESENT:

Regular members: Mr. Tierney, Ms. Karnis, Mr. Hofling, and Mrs. Belanger
Alternate member: Mr. Livernois

OTHERS PRESENT:

Administrative Assistant Mrs. Vose

CALL TO ORDER:

Mr. Tierney called the meeting to order at 7:00 pm. Mr. Tierney appointed Mr. Livernois as a regular member for the vacant regular member position.

CORRESPONDENCE

It was the consensus of the board to table this until after the 2 hearings.

ANNUAL ELECTION OF OFFICERS

It was the consensus of the board to table this until after the 2 hearings.

PUBLIC HEARING:

Philip Jones, 46 Seminole Avenue, Tax Map U-11 Lot #19, for a Special Exception under Article IV, Section A(3) of the New Hampton Zoning Ordinance.

Applicant Mr. Jones was present as were many Seminole Avenue residents, Atty. Peter Minkow, and 2 representatives from Bayside Rentals.

Mrs. Vose read the Public Hearing Notice that was sent out to all abutters on 7/18/2018 that advised that *the applicant, Philip Jones, has 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 applicant's proposal is to operate a short-term rental, under the definition of a Bed & Breakfast/Tourist Home on property owned by Tenley M. Jones Family Trust and Rouyan V. Jones Trust, which is a permitted use by Special Exception.*

The property is located at 46 Seminole Avenue, Tax Map U-11, Lot #19, in the General Residential, Agricultural and Rural District and the Waukewan Watershed Overlay District.

Mr. Tierney advised there was a problem with the application as submitted because in Mr. Jones' Statement of Justification he states he is applying for a Special Exception to offer their home as a "Vacation rental" as defined in RSA 48-A:1 and not as a "Bed & Breakfast/Tourist Home" which is a permitted use by Special Exception. Mr. Tierney said a "vacation rental" is not a permitted use by Special Exception.

As Mr. Tierney advised Mr. Jones of his options:

- Withdraw the application, resubmitting one for a Variance if a "vacation rental" is what he seeks.

- Proceed with the hearing as submitted which would likely result in denial as vacation rental isn't a permitted use.
- To verbally modify the application by removing the term "vacation rental" and replacing it with Bed & Breakfast/Tourist Home".

Mr. Jones said he thought a Bed & Breakfast/Tourist Home meant the operator stays on site during the lodging. The board advised the definition does not require an operator to stay on site. Mr. Jones stated he would move forward, modifying his application by removing the word "vacation rental" and inserting "Bed & Breakfast/Tourist Home".

The specific site is an appropriate location for such use: The applicant wrote: *while many of the lots on Seminole Ave are small than the required 2 acres minimum, have homes only a few feet apart, and many have very limited off-street parking, the applicant's 5-bedroom, 4.5 bath home is located on 3.3 acres with generous wooded buffers to adjacent properties. There is off-street parking for at least 6-8 cars. There is a private sandy beach hundreds of feet long and a small dock. A picnic pavilion covers a fire pit and picnic table. It is a site of great natural beauty.*

Mr. Jones reviewed the historical use of the property by family and in the last few years have offered rentals to help offset costs. Mr. Jones said they want to rent the entire home so it is occupied some time of the year and had the opinion that a tourist home required an owner/caretaker be on site during the accommodations to transients. Relative to the restriction that a tourist home cannot provide accommodation for more than 6 people, Mr. Jones asked if this includes children and the board said children are considered people.

The board reviewed aerial photos of the property that were submitted.

There is adequate area for safe and sanitary sewage disposal: The applicant wrote: *there is a modern on-site septic field permitted for up to 6 bedrooms. Water is from a deep well. The attached site plan drawing shows the location of the well and septic field.*

The use will not adversely affect the adjacent area: The applicant wrote: *The home was designed for extended family groups of grandparent, children, grandchildren and great-grandchildren to be together. Vacation rentals of the whole house are the same usage. Adjacent property is shielded from normal recreational activities such as swimming, fishing, and picnicking by a thick wooded buffer.*

Ms. Karnis asked how many people are on-site when his extended family is present and Mr. Jones said it's at least 15 people. She asked if this tourist home is used in the same manner did he intend to allow 15 renters and Mr. Jones said he would restrict the number to what was allowed.

There will be no nuisance or hazard created: The applicant wrote: *A significant security deposit is held and vacationing families are given an orientation, and a reference sheet of rules when they acquire the keys to the lease with Bayside Rentals in Meredith. Disturbing the*

peace and parties with outside attendees are prohibited.

Relative to conditions placed on any approval, Mr. Jones said he tried to get input from neighbors but they stated they could not support the application at all. Mr. Jones said that as he understands the issues he is proposing conditions, such as only renting it between July 4th and Labor Day and add conditions & limits to the rental agreement, including any suggestions from the board. Mr. Tierney advised that any conditions go with the property, not the owner.

Ms. Karnis asked if there had been any complaints relative to dumping anything into the lake and Mr. Jones said he has not heard of any. Mr. Tierney asked if he had received any complaints from Bayside Rentals and Mr. Jones said when there are problems he hears of them from his abutter, Mr. Hays, and then reports them to Bayside Rentals who then visit the property. The only issue he can remember hearing about was an unauthorized graduation party which got out of hand. Mr. Jones said during a meeting Mrs. Hays had with the Selectmen on 10/25/19 she had said the biggest concern was that there were 4 houses renting short term rentals on Seminole Ave and that other homes for sale may get purchased and used in the same manner. Mr. Jones reviewed the other neighborhood properties he found that had offered short term rentals over the past 8 years being: #8, #14, 64, & 96 saying some rental problems may have come from other sites.

Adequate and appropriate facility will be provided for the proper operations of the proposed use: The applicant wrote: *The use is residential and will continue to be residential per NH Statute Title III, 48-A:1 (V). It is a residential house on a 3.3 acre heavily wooded private lot in the woods with a dock, and private beach and a picnic pavilion.*

Ms. Karnis advised that this criteria had been answered during some of the previous testimony.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: The applicant wrote: *the existing house was designed by an AIA Architect and constructed to meet all State and local regulatory requirements and to protect the natural shoreline. No new constructions is planned or requested. The house and its occupants are not visible from the neighborhood homes.*

The board agreed after looking at the aerial photos.

Any building or impermeable area shall not exceed the maximum percentage of lot coverage in the applicable zoning area. The applicant wrote: *Building, parking and driveway are less than 20% of the conforming lot size of 3.3 acres (2.0 acre minimum). The majority of the property is woodland and natural shorefront.*

Mr. Tierney said based on the aerial photos submitted it appeared this was met.

Letters written by neighbors and abutters which did not support the

Special Exception and noting problems created by renters, such as: excessive noise & traffic, large groups of renters, refuse on the roadway, speeding vehicles, disrespectful behavior, etc. were read into record from:

1. David & Debra Marsh – owners of 8 & 12 Seminole Ave.
Mr. Tierney asked if Mr. Marsh was stating that the roadway was private property and Mr. Marsh said to get down the road vehicles are crossing private property and only owners, family and guests only are allowed to use the right-of-way to pass.
Ms. Karnis asked if there are invoices associated with costs to road maintenance and Mr. Marsh advised there were adding that renters tend to travel back and forth on the road at more frequency than the owners, with Saturdays being the busiest.
2. Jay Wilson – owner: 14 & 24 Seminole Ave.
3. Greg Strassell & Meredith McEwen – owners: 82 Seminole Ave.
4. Joseph & Donna Tuzzolo – owners: 76 Seminole Ave.
5. Deborah Corr, and Cabot, Gardner, & Eliot Orton. – owners: 20 Seminole Ave.
6. Peter & Catherine Tallman – owners: 6 Seminole Ave.
7. Sean Sweeney – owner: 84 Seminole Ave.
8. Anne Tarryk & Bill Hodges – owner: 102 Seminole Ave.
9. Wes & Janan Hays – owners & abutter: 28 Seminole Ave.

Mr. Tierney asked if any other abutters or anyone present wished to speak.

Atty. Peter Minkow was present to represent several Seminole Ave. residents and submitted photos of Seminole Ave. He said Mr. Jones has stated there have been up to 15 people staying in the house, also stated in the Bayside Rental ad for number of occupants allowed, which cannot meet the restriction in the zoning ordinance that it not be more than 6 persons. Atty Minkow said the criteria that the site is appropriate for such use cannot be met. Mr. Tierney asked Atty Minkow if he has seen the deeds and references to the right-of-way and he said the deeds do note a deeded easement for the property owners and their guests to access their lots. Atty Minkow stated his opinion was that offering rentals may be an overburdening of the easement.

Mrs. Hays provided a brief history of Seminole Avenue development since the early 1900's including how the roadway was once a path, ending just past the Hays home, but in later years the road was extended to the end of Seminole Ave with the roadway being given to all properties along the way as access.

Mr. Jones read from his deed the reference to the deeded access, which includes access to his invitees. He read from "A Hard Road to Travel" relative to easements.

Mr. Tierney ask about RSA 635:2 as it's referred to on the Seminole Ave sign that was shown and Atty. Nimkow confirmed that this criminal trespass would not apply to guests or invitees.

Mrs. Hays pointed out that Seminole Ave is not a road, as each owner owns the land from the lake to the railroad, but is only an easement to

pass.

The hearing was closed and the members went into deliberations.

Members reviewed the criteria for a Special Exception:

The specific site is an appropriate location for such use: Ms. Karnis said the property and house is appropriate for the use, but the site as located on the one lane private road - is not appropriate. Mr. Livernois said the added traffic is not appropriate and Ms. Karnis said there are more trips to the site for visitors, trash removal, and housekeeping. Mr. Hofling said he felt the site itself is suitable.

There is adequate area for safe and sanitary sewage disposal: Mr. Livernois stated it appeared to be adequate. Ms. Karnis agreed. Mr. Hofling confirmed that the town has the septic design to show it is adequate.

The use will not adversely affect the adjacent area: Ms. Karnis said there is evidence that noise, increased traffic, do affect the adjacent area and detracts from the neighborhood's sense of safety. Mr. Livernois agreed, saying that it coincides with the use being a nuisance. The board agreed that it rises to the use being a nuisance and a hazard.

There will be no nuisance or hazard created: The board agreed that they covered this during the adverse effect discussion. Mr. Livernois said the increased traffic, noise, and trash creates a nuisance and hazard. Ms. Karnis pointed out that neighbors have testified that they have to water the road to keep down the amount of dust created by the extra traffic. Ms. Karnis pointed out the issues with excessive speed, its narrowness, bends and undulations in the road, and the need for extra policing. Mrs. Belanger said the increased traffic is creating problems with the road conditions which can create a hazard. Mr. Hofling confirmed that the road is not maintained in any way, by the town.

Adequate and appropriate facility will be provided for the proper operations of the proposed use: Mr. Livernois said the lot itself is appropriate but the road access is an issue. Ms. Karnis advised that as no one is onsite during rental periods there is a lack of control.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: Ms. Karnis said there was testimony about the abundance of trash being left on the sides of the road and cigarette butts being a fire hazard – which impair the aesthetic value. Mr. Tierney said the speeding cars are affecting the peaceful enjoyment of the neighborhood. Ms. Karnis said the added use is affecting the feel of the neighborhood. Mr. Hofling added that the renters are more transient than the other residents which has a negative effect on the area.

The building, parking or driveway area will not exceed 20% of the lot. The board agreed this was met.

Ms. Karnis made a motion, seconded by Mr. Livernois, deny the application for a Special Exception due to the location of this use, being

at the end of a dirt, private right-of-way, which causes adverse effects on the adjacent area due to noise, increased traffic, and detracts from the security of the neighborhood. The use creates a nuisance due to speeding traffic, increased noise, dust, disposal of incendiary refuse along the roadway, and the lack of reliable controls to assure proper adherence to rules and regulations that the criteria for a Special Exception are not met.

Mrs. Vose advised that this property is not the end of the roadway, as there are several properties past the Jones residence. Ms. Karnis amended the motion to replace “at the end of” with “after many houses and a long distance in, on the one lane,” seconded by Mr. Livernois. Vote was unanimous.

The board took a brief recess.

PUBLIC HEARING:

Richard Berube, 40 Chapman Point Road, Tax Map U-10 Lot #37, for a Special Exception under Article IV, Section A(3) of the New Hampton Zoning Ordinance.

Applicant Mr. Berube was present as were Gail Archibald & Rob Wichland from Bayside Rentals and abutter Robert Girvin.

Mrs. Vose read the Public Hearing notice that was sent out to all abutters on 7/18/2018 that advised that *the applicant, Richard Berube, has 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 applicant’s proposal is to operate a short-term rental, under the definition of a Bed & Breakfast/Tourist Home on property owned by Great Vacation LLC, which is a permitted use by Special Exception.*

The property is located at 40 Chapman Point Road, Tax Map U-10, Lot #37, in the General Residential, Agricultural and Rural District and the Waukewan Watershed Overlay District.

In reviewing the map it was noted that to access to Chapman Point Road is through Meredith.

Members reviewed the criteria for a Special Exception:

The specific site is an appropriate location for such use: The applicant wrote *“40 Chapman Point Road is a lakefront residential property. If granted a Special Exception it will continue with the same purpose except for the short term rentals. There is a an association in the neighborhood that has rules regarding quiet hours, no parking on the street, and all the neighbors enjoy quiet enjoyment of the neighborhood. Bayside Rentals is a professional rental agency in Meredith NH just 3 miles away. Bayside Rentals had managed the property for years and has strict rules to safeguard and screen guests so there are no disturbances. They have formal leases and are hands on in meeting and reviewing the stressing the communities’ requirements so as to maintain their good name and business. I have found them to be very reliable. This property can only sleep 3 and that is stressed on screening from the outset. Lastly I am the neighbor to the left of this property. I am there June to August most day and can clearly screen any activity. My Association’s President and Vice President are my*

neighbors across and to my left so there are plenty of people who monitor and know what is going on in the neighborhood.”

Ms. Karnis asked Mr. Berube to describe the access and he said it is accessed from Meredith on a paved road, but turns to dirt where the Lake Waukegan Association begins, and said the road is well kept and thought there may be about 28 homes in the association. Ms. Karnis said the application states the home only accommodates 4 people, but there is a pull out, full size couch in the living room, that can sleep 2 as noted in the Bayside Rental ad. When asked who maintains the road, Mr. Wichland said the Town of Meredith maintains the road, including the New Hampton section. Mr. Berube said road is wide enough for 2 vehicles to pass.

There is adequate area for safe and sanitary sewage disposal: The applicant wrote *“the septic was upgraded when the property was purchased on 2010. The system has been pumped last year. There is a maximum occupancy of 4 sleepers. The system is professionally maintained.”*

Mr. Hofling asked the size of the lot, which was .53 acres. Mrs. Vose said she did not have the septic design present, but could get it. Mr. Girvin said when the septic system was installed years ago the owner at that time had to get a Variance. The board agreed they would need to confirm the system for adequacy.

The use will not adversely affect the adjacent area: The applicant wrote *“the use is strictly to allow short term enjoyment of the area with respect to quiet enjoyment of the rest of the neighborhood. Quiet hours are 10:00, no cards on the street, no unleashed dogs, no tents, no fireworks and no access to the private boat ramp”.*

Mrs. Belanger asked about boat access as the ad references a dock and boat access. Mr. Berube said access for renters would be through the Waukegan public boat launch. Mr. Hofling asked if this was a private road and it was noted it was private, though Meredith maintains it.

There will be no nuisance or hazard created: The applicant wrote *“The short term renters must sign rules and regulations of conduct with Bayside Rentals. They are informed there is an association with similar rules so there is overlap in stressing quiet enjoyment. There is a paid trash collection service every Thursday. The owner of this property lives next door and can monitor as well. Dogs must be leashed and cars must park in the driveway”.*

Mr. Berube confirmed he is present on his other property June through August and is typically only renting this subject property – June through August.

Adequate and appropriate facility will be provided for the proper operations of the proposed use: The applicant wrote *“each short term guest understands the maximum number of sleepers allowed, the trash pickup schedule, and the additional fees if the home is left dirty. There is a weekly cleaning crew that arrives and cleans the house each*

Saturday. There is a filtered water system which provides drinkable water and a propane heat hot water source along with a refrigerator and electric stove. There is a small washer/dryer unit as well”.

Ms. Karnis asked if Mr. Berube has ever had more than 4 people and he said he has seen a small number of daytime guests, but they leave at night.

The use will not impair the aesthetic values exhibited by the surrounding neighborhood: The applicant wrote *“the screening of guests by Bayside Rentals of Meredith and the maintenance of the location since it was restored in 2010 has only increased the value of the surrounding neighborhood.”*

Mr. Berube said this property had been left alone for a long time and was deteriorating, so he reached out to the owner to purchase it, investing money to fix the property. Mr. Tierney asked if the association has any restrictions on short term rentals and Mr. Berube said they did not. Ms. Karnis asked about the general vegetation in the area to get an idea on how well the home can be seen and Mr. Berube said there are trees and shrubs which have been left untouched. Mrs. Belanger asked if his view of this property was unobstructed and Mr. Berube he usually only sees people when they are on the dock, but on the other side the Girvins can see the waterfront side of the porch from the rear of their home. Mr. Wichland said he had a copy of the association covenants which do not prevent rentals of the properties to single families.

The building, parking or driveway area will not exceed 20% (applicant had rewritten all criteria in the application and incorrectly noted this as 50%) **of the lot. The applicant wrote** *“the building and driveway amount to 25-30% of the percentage of lot coverage.”*

Ms. Karnis advised that the lot coverage limitation is 20% in the GRA District. Mr. Berube said he guessed on the lot coverage. The board tried to calculate the footprint of the house, noting that it doesn't take into consideration other impermeable areas. Ms. Karnis asked how many cars could park on site and Mr. Berube said it can fit 3 comfortably.

Mrs. Vose read into record a letter from an abutter and VP of the Lake Waukegan Assn. John Demichaelis, who expressed support of the use of the property as a short term rental and has never seen any problems with its use.

Abutter Mr. Girvin explained that he was a direct abutter on lot 38 then the Berube's rental cottage, and on the other side of that, the Berubes empty wooded lot, then the cottage the Berube family uses. Mr. Girvin asked if any approval would be reviewed annually or would go with the land. The board advised if it is approved it would stay with the land, but noted there could be conditions, but no time limit. Mr. Girvin asked if there is any recourse if problems arise such as what had been happening on Seminole Ave., ie. noise, trash, speeding vehicles, etc. He said his kitchen is in close proximity and there aren't many trees in

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between his house and the Berube's cottage. He pointed out that Mr. Berube states it sleeps 4 but the ad still says it can sleep up to 6. He expressed concern with the proximity of the well to the septic system and the outdoor shower to the lake. Mr. Girvin said they were not against the short-term rentals if certain conditions were in place. Mr. Berube said he is supportive of any conditions the board would like.

Ms. Karnis said she would like to perform a site visit. Mr. Hofling made a motion, seconded by Ms. Karnis to continue the meeting to 5/8/19 at 6:30 pm. at 40 Chapman Point Road followed by a meeting in the upstairs meeting room of the Town Office. Vote was unanimous.

ELECTION OF OFFICERS:

This was continued to the meeting on 5/8/19.

DISCUSSION ON AMENDMENTS TO BY-LAWS:

This was continued to the meeting on 5/8/19.

MINUTES:

This was continued to the meeting on 5/8/19.

CORRESPONDENCE:

There was none.

OTHER BUSINESS:

There was none.

ADJOURNMENT:

Ms. Karnis made a motion, seconded by Mrs. Belanger to adjourn at 10:41 pm. Vote was unanimous.

*Respectfully submitted,
Pam Vose*