



TOWN OF NEW IPSWICH

661 Turnpike Rd, New Ipswich, NH 03071

ZONING BOARD OF ADJUSTMENTS



Meeting Minutes December 7, 2023

The Zoning Board of Adjustments held a meeting at the Town Office, 661 Turnpike Road, New Ipswich, New Hampshire, on Thursday, December 7, 2023 at 6:00 p.m.

1. Call to Order and Seating of Alternates

Chairman Walker Farrey called the meeting to order at 6:03 PM.

Present at the meeting were Chair Walker Farrey, Co-Chair Danielle Sikkila, Member David Lage, Lou Alvarez, Jeff Muhonen, Alternates Michelle Saari, Jay Hopkins, Dwayne White, and Brett Kivela. Staff present included Land Use Clerk Jennifer Worth.

2. Application Review

Case: ZBA-2023-13 Application review for a special exception from Benjamin Soderstrom, Map3/Lot99, 122 Lower Pratt Pond Road, requested from Article 13, Section N of the zoning ordinance to permit the construction of a detached ADU on the parcel.

Benjamin Soderstrom presents the application. Mr. Soderstrom and wife are both artists who have family in need of housing. The proposed ADU would allow for the applicant to keep doing art in an art space as well as provide a dwelling on the parcel for a family member in need of housing. The applicant plans to purchase a 16x20 Jamaica Cottages Cabin that is 320 square feet to build as a detached ADU on the parcel. The cabin will match the main house as an accessory dwelling should. Mr. Soderstrom states he used Google Earth and took his own measurements by walking the parcel to ensure the ADU would meet wetland setback requirements. The Board questions if the current septic system will be adequate to hold the added load of the ADU. Applicant states he spoke with the building inspector about composting toilets and running water from main house. He was lead to believe that this would be a sufficient system. The board recommended that the applicant consult an engineer for data and that it would be worth seeking an alternate septic system to meet the septic loads. Either system would need a treatment system, therefore the board would like to review a septic system plan that would met the criteria of town ordinances.

After reviewing the application, abutter's list and supporting documents errors were noted for amendments. The application was considered complete. Applicant received a breakdown of fee determination.

David Lage motions to accept the application (with the revision of Article 13, Section N of the zoning ordinances and with the addition and deletion of the abutters list) as complete. The public

hearing will be set for January 4, 2024 at 6:00 PM. Jeff Muhonen seconds. The motion passed unanimously.

3. **Public Hearing**

Case ZBA-2023-09: Richard and Sharin Smeeth requesting an Appeal of Administrative Decision in accordance with Article XIII, Section G(3) of the zoning ordinance in question and Article X, Section D(3)(b) of the zoning ordinance in question. This hearing was continued from November 16, 2023.

Lou Alvarez, Jeff Muhonen, Dwayne White, and Co-Chair recuse as affirmative members.

Michelle Saari, Brett Kivela, and Jay Hopkins serve as alternates and act as affirmative members.

Chair makes opening statements. It is the Zoning Board of Adjustments' authority to appeal administrative decisions if made in error to the New Ipswich Zoning Ordinances and also with the New Hampshire Statutes Title LXIV, RSA Chapters 672-678 covering planning and zoning. The board is prepared to reverse, confirm or modify the order requirement decision or determination to appeal the decision as if it were from the Planning Board themselves. The Zoning ordinances will be reviewed and the board will determine if decisions were made in error.

Chair confirms with Land Use Clerk that public notice was properly posted. It was determined that notice was posted adequately with no fatal flaws. Nancy Clark objects on grounds that the public hearing for this case was improperly noticed and due to that abutter's could not attend. Chair states notices were posted in two physical locations, on the Town's website and published in newspaper so the board will move forward with the hearing. Nancy Clark confirmed that the abutter's who could not attend are represented by her.

Chair announces the formalities for this hearing. There will be a 15 minute time limit for applicant's opening statements, opposing statements, and rebuttal. Public comments should be limited to three minutes.

David Lage motions to implement the time limits of 15 minutes for statements and three minutes for comments by speakers. Brett Kivela seconds. The motion passed unanimously. Nancy Clark objects on the grounds that the current ZBA Rules and Procedures do not allow the authority to limit comments.

Nancy Clark presents the application, but not before stating objections and requests for recusals. David Lage and Walker Farrey on the grounds that these members are not eligible to sit on the ZBA board. Jay Hopkins and Brett Kivela's on the grounds for communication with and reliance on a third-party real estate agent was illegal and demonstrated bias. Walker Farrey's recusal for a statement of, "...do you want it to be remanded like the last time" during a past hearing, which demonstrated bias. David Lage's recusal on the grounds that he exhibits intimidating tactics to get board members to sway in the decision making process. Mr. Lage has also had conversations with Raymond Holmes, which demonstrated bias. Chair states these items were covered in the last hearing. The board will move forward with the hearing.

The appeal concerns the following item violations:

1. Handicapped Parking Ordinance Violation
New Ipswich Site Plan Regulations, Section VII, (2)(a) requires that the “proposed use, building design and layout shall meet the provisions of the Zoning Ordinance...” The New Ipswich Zoning Ordinance Article XIII (G)(3) provides, in relevant part, that a “driveway qualifies as a parking space only to the extent that the portion of the driveway used for parking does not block the garage...” In this case, the Respondent approved the Site Plan Application that contained a handicapped parking space located such that blocks the garage on the Subject Property. Given the foregoing, Respondent approved a Site Plan Application that included a violation of the Zoning Ordinance and erred as a matter of law in approving the Site Plan Application without a variance.
2. Wetlands Ordinance Violation – Stormwater Structure
New Ipswich Site Plan Regulations Section VII, (2)(a) requires that the “proposed use, building design and layout shall meet the provisions of the Zoning Ordinance...” The New Ipswich Zoning Ordinance Article X, (D)(4)(b)(1) provides that “no structure may be enlarged or constructed closer than 50 feet to any wetland or to the reference line of any surface water body.” Article XVII of the New Ipswich Zoning Ordinance defines a structure as “anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, including, but not limited to, parking lots, streets, and driveways, but exclusive of fences.” The applicant submitted an Engineered Plan to the Respondent, prior to the first Site Plan hearing, with delineated wetlands. Respondent approved Site Plan Application that included a permanent stormwater drainage feature that is a rain garden including riprap apron, berm, at least one high density polyethylene pipe for overflow and a spillway that is located almost entirely within the 50 foot setback from the wetlands. Given the foregoing, Respondent approved a Site Plan Application that included a violation of the Zoning Ordinance and erred as a matter of law in approving the Site Plan Application without a variance.
3. Wetlands Ordinance Violation – Walkway
New Ipswich Site Plan Regulation Section VII, (2)(a) requires that the “proposed use, building design and layout shall meet the provisions of the Zoning Ordinances...” The New Ipswich Zoning Ordinance Article X, (D)(4)(b)(1) provides that “no structure may be enlarged or constructed closer than 50 feet to any wetland or to the reference line of any surface water body.” Article XVII of the New Ipswich Zoning Ordinance defines a structure as “anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, including, but not limited to, parking lots, streets, and driveways, but exclusive of fences.” The applicant submitted an Engineered Plan to the Respondent, prior to the first Site Plan hearing, with delineated wetlands. The New Ipswich Zoning Ordinances Article X (D)(4)(b)(1) provides that “no structure may be enlarged or constructed closer than 50 feet to any wetland or to the reference line of any surface water body.” In this case, the Respondent decision includes that the Applicant should relocate the walkway out of the wetlands buffer on Fieldstone plans.” Relocating the walkway out of the wetlands buffer is impossible because the existing portion of the walkway runs from the parking lot and across the wetlands. While the location of the new proposed walkway on the Fieldstone Plan can be modified, it will remain in 50 foot wetlands setback where it meets the current existing walkway. Given the foregoing, Respondent approved a Site Plan Application that included a violation of the Zoning Ordinance and erred as a matter of law in approving the Site Plan Application without a variance.

4. Parking Surface Ordinance Violation

In its decision, Respondent concludes on pages 4 and 5 that on two occasions the Planning Board Engineer reported that “proposed plans compiled with the New Ipswich Site Plan Regulations”. New Ipswich Site Plan Regulations include Section VII, (2) that provides that “the proposed use, building design and layout shall meet the provisions of the Zoning Ordinance and other regulations and ordinances of the Town and shall meet the intent of the Master Plan.” In addition to the Zoning Ordinance violations as detailed above, Article XIII (G)(4) of the Zoning ordinance requires that “all parking areas containing more than four spaces and driveways thereto shall be surfaced for year round use and must be graded so as to carry off all surface water.” In this case, the Planning Board Engineer failed to make a finding whether the proposed gravel parking lot satisfied the Zoning Ordinance requirement that it be “surfaced for year round use” and “graded so as to carry off all surface water”. As a result of the Zoning Ordinance violations as detailed herein and the Town Engineer’s failure to make a determination regarding the proposed gravel parking lot and whether the Town’s Engineer erred as a matter of law stating that the “proposed plans complied with the New Ipswich Site Plan Regulations”. The Planning Board erred as a matter of fact for relying on the Town’s Engineer’s incorrect conclusion. In addition, as a result of the foregoing, it was impossible for the Planning Board to conclude that the gravel surface was “suitable for year round use” and “graded so as to carry off all surface water” and erred as a matter of fact in approving the parking lot without an independent determination based on the specific characteristics of the land on the subject property.

Chair opened the floor for opposing comments. Robert Fasanella is representing as a consultant to Jane Elwell as an Attorney not licensed in New Hampshire. Mr. Fasanella practices in MA with Land Use and Environmental Law.

Opposing party feels there is no need for recusals and bias has not been shown. They trust the Zoning Board of Adjustments will act fairly with this matter.

1. Handicapped Parking Ordinance Violation

The parking spaces in the driveway are not considered to be required to have the adequate amount of parking spaces under the Zoning Ordinances, Section G Space Determinations and Subparagraph F – restaurants and theaters require one space for every three seats. The parking area that exists behind the house show the total of 18 parking spaces. There is more than enough spaces that are shown on the plan (18x3=54). Zoning Ordinances page 37 Section 3 – Dimensional Requirements reads, “A garage or carport qualifies as a parking space, but a driveway qualifies as a parking space only to the extent that the portion of the driveway used for parking does not block the garage or another vehicle parked in the driveway”. There is adequate spaces in the rear parking area that has existed for decades. There is no need to rely on the handicap space shown on the plan to meet the parking requirements. The driveway parking area would only be required if it was required space for the overall use of the facility. Additional parking space is not required as there is adequate parking shown in plan.

2. Wetlands Ordinance Violation – Stormwater Structure

The rain garden structure that was added to the plan was discussed in detail at the Planning Board Site Plan Review Hearing by Ms. Elwell’s Engineer. This Engineer has a well-known reputation for his experience with filings before the Town. At the Review hearing, he indicated the Planning Board has never deemed a retention basin or a rain garden to be

considered a structure. It is not considered a structure, many applications have come before the Planning Board and noted similar “structures”. The culvert that sheds water from the parking area over to the rain garden can easily be moved outside the 50 foot wetland setback. The applicant is prepared to show this plan. Before the applicant could submit this revised plan consistent with the Planning Board’s conditions, the decision was appealed to Superior Court.

3. Wetlands Ordinance Violation – Walkway

This walkway on the Site Plan was discussed in detail at the Planning Board Site Plan Review Hearing. It was determined that the walkway could be eliminated or easily moved to meet the 50 foot wetland setback. The walkway was part of an existing walkway that has existed for decades. The walkway provides adequate stable ground for guests to access back of the house. There is no need to construct a new walkway at the event location. Applicant agrees to show plan modifications, but has not been able to because the decision was appealed to Superior Court.

4. Parking Surface Ordinance Violation

This was discussed in details at numerous hearing as well as, at the Planning Board Site Plan Review Hearing. During hearings, applicant presented a dozen parking lots that have been constructed in the town of New Ipswich that was made with gravel. The gravel that was shown on the plans has been put down on existing driveway. The building inspector looked at it. It was approved to be a consistent with being “surfaced for year round use”.

The board asks questions to the presenters. It was noted that that there are 18 proposed parking spaces in the back of house and two in the front of the house. 17 parking spaces are required by ordinance for this proposed use. The proposed parking lot has a 6" thick layer of 1.5" minus processed gravel, and then 3" thick layer of 3/4" minus processed gravel as a cap. The proposed plan calls for thinner layers (4" base and 2" top layer but owner installed thicker. Under the base coat there is driveway fabric. There is 250 tons of gravel currently on the driveway. Currier Road is made of gravel. There are no proposed changes to any sidewalks. The sidewalks will met the 50 foot wetland setback requirements.

Chair opened the floor for public comment.

Liz Freeman, 410 Ashby Road

“I served on the Planning Board for 25 years. I’m not speaking for the board now, but Ms. Elwell’s representative stated that the Planning Board in the past had agreed that a rain garden was not a structure. In my 25 years, I do not recall the Planning Board ever saying that a rain garden built as a stormwater drainage plan is not a structure.”

Robert Fournier, 111 River Road

“The Fieldstone Engineer stated during the Planning Board Site Plan Review Hearing that the rain garden system had only been designed for the new half of the parking lot. How is the existing parking lot going to be addressed for water run off?”

Raymond Holmes, 278 Old Country Road

“Culverts that are put at the end of the driveway are not considered a structure? If they are put within a 50 foot wetland set back then it is a structure? How is that possible? It is either a structure or not a structure. If it is a structure, everyone who has a culvert at the end of their driveway would need to get a variance for setbacks.”

Chair answers that a driveway is a structure. Mr. Lage agrees. The variance is only required if the driveway is in wetlands.

Liz Freeman, 410 Ashby Road

“Are you ruling on the Site Plan that was presented to the Planning Board or are you ruling on a plan that has never been presented?”

Chair states the board is ruling on the Site Plan that was presented to the Planning Board and has not reviewed or received any other submittals.

Stan Zabierek, 81 River Road

“The theory that the parking lot was put in existence for 70 years is totally false. I am a photo interpreter of the Air Force. That is what I did for four years, looking at aerial photography. I’ve studied aerial pictures of property. There is no evidence of a parking lot whatsoever. It’s a barren piece of ground with no evidence of cars entering or leaving that property. I think it was a vegetable garden.”

Kathleen Sheldon, 102 Old Wilton Road

“That last objection and opinion has been voiced many times as has the other side of the issue. The other side that has been presented shows there was a clearing. Showing logging equipment, trucks, and barn yard equipment being parked there which was seen with aerial photography. One aerial photographer has an opinion, but there are other people who could look at an aerial photograph and with other information with what was used there, is equally valid. We have gone over this so many times. I’d like to be sure that this gets considered tonight.”

Chair opens the floor to rebuttal.

Jane Elwell, 99 River Road

“Liz Freeman stated serving 25 years on the Planning Board and that she doesn’t remember if the rain garden has ever been a structure. If you search any State or Federal sites about rain gardens, they encourage home owners to put in rain gardens. It seems ridiculous then that the Town of New Ipswich would consider a dent in the ground a structure. The culvert won’t be there. The rain garden is a dent. The riprap is just rock. The rain garden can be abandoned, overgrown in no time at all if needed. If you have a garden or raised beds, is that a structure? Mr. Fournier mentioned how the Fieldstone Engineer talked about two parking areas. I’ve never considered it a parking lot till now because it is now used for business. It was used for ten years for farming equipment. Aerial photos show a cleared area for some reason, no one ever said it was a parking lot for 70 years.”

Chair opens the floor for public comments on rebuttal.

Robert Fournier, 111 River Road

“It is not just a rain garden. It is a stormwater retention system. That is the difference. Per the Ordinance the parking lot needs to have a stormwater retention system to retain 100% runoff from the parking lot. That is what is described on Federal Sites.”

David Lage motions to close the public hearing to go into deliberations. Brett Kivela seconds. The motion passes unanimously.

The Zoning Board of Adjustments deliberates.

1. Handicapped Parking Ordinance Violation

All of the parking for events is in accordance with parking regulations. The two proposed handicap spots are provided in addition to the minimum amount of spaces required by ordinance. Layout of the driveway shows that there is even more space on parcel to accommodate extra parking as needed that is not included on the Site Plan. This shows that there is adequate handicap parking, maybe even enough for five handicap spots. Garage is not labeled on site plan as being a parking spot. Garage looks accessible.

2. Wetlands Ordinance Violation – Stormwater Structure

It is the Chair's opinion that with the definition of the structure given at the Planning Board Site Plan Review Hearing, the proposed rain garden is not a structure, but a set of impressions in the ground. Culvert is a structure in the ground. The culvert is a 12" pipe that would need to be shifted out of the wetland setbacks in order to meet the Zoning Ordinances. The Board would recommend that the rain garden appeal for variance relief if the structure is permanently within the 50 foot wetland setbacks.

3. Wetlands Ordinance Violation – Walkway

The applicant has said that the walkway will be deleted from the Site Plan. There would be no violation if there is no walkway. If new plan shows sidewalks, those sidewalks would need to meet setback requirements. If walkway or sidewalks are within the wetland setbacks then a variance would be needed.

4. Parking Surface Ordinance Violation

The New Ipswich Zoning Ordinances is not detailed in the product that needs to be put down. It reads, "All parking areas containing more than 4 spaces and driveways thereto shall be surfaced for year round use and must be graded so as to carry off all surface water" in section G (4). The Planning Board approved crush gravel and grade for water run-off. There are no alternate requirements. The parking surface is for year round use.

The Finding of the Facts of Decision are as follows;

1. Handicapped Parking Ordinance Violation - Article XIII Section G(3)

The Zoning Board of Adjustments concurs with the Planning Board's decision. There are areas to accommodate a vehicle that is parked in the garage should it need to be parked somewhere else for an event. Applicant has parking that exceeds that ordinance requirements. The plan prepared by Fieldstone Land Consultants dated 5/31/23, Sheet 1 of 2 shows a turn out area to the right side of driveway to accommodate parking for additional vehicle on the existing driveway if it needed to be relocated from garage.

2. Wetlands Ordinance Violation – Stormwater Structure - Article X Section (D)(4)(b)(1)

The Zoning Board of Adjustments amends the Planning Board's condition of approval in accordance with RSA 674 33:2. The Zoning Board of Adjustments concurs with the Planning Board's decision that a rain garden is not a structure, as defined in the Zoning Ordinance however, the interconnecting piping is considered a structure. Proposed plan shall be revised to relocate interconnecting piping at rain garden outside of 50 foot wetlands setback while still achieving storm water treatment requirements. If not, a variance is required. A revised engineer site plan shall be submitted to the Planning Board prior to the construction of the rain gardens.

3. Wetlands Ordinance Violation – Walkway - Article X Section (D)(4)(b)(1)

The Zoning Board of Adjustments concurs with the Planning Board's condition of approval to relocate the walkway out of the wetland setback. The Zoning Board of Adjustments want to confirm that the wetland setback is 50 feet not 25 feet. Walkway would need to meet 50 foot wetland setback requirement. A revised engineer site plan shall be submitted to the Planning Board.

4. Parking Surface Ordinance Violation - – Article XIII Section G(4)

The Zoning Board of Adjustments concurs with the Planning Board's decision that the parking lot construction does comply with Article XIII Section (G)(4) of the Zoning Ordinance which requires parking areas to be surfaced for year round use and must be graded so as to carry off all surface water. Proposed construction details submitted on the plans prepared by Fieldstone Land Consultants meet this requirement.

David Lage motions to deny the appeal of administrative decision in accordance with the finding of facts discussed at meeting. Jay Hopkins seconds. The motion passed unanimously.

4. Approval of Minutes

David Lage motions to approve and accept the November 2, 2023 and November 16, 2023 meeting minutes. Chair seconds. Jay Hopkins abstains. The motion passed unanimously.

6. Adjournment

There being no further business to come before the Zoning Board of Adjustments, Chair motioned to adjourn the meeting at 8:35 p.m. David Lage seconded the motion. The motion passed unanimously.

Respectfully Submitted,
Jennifer Worth - Land Use Clerk