



# TOWN OF NEW IPSWICH

661 Turnpike Rd, New Ipswich, NH 03071

*ZONING BOARD OF ADJUSTMENTS*



## **Meeting Minutes September 21, 2023**

The Zoning Board of Adjustments held a special meeting at the Town Office, 661 Turnpike Road, New Ipswich, New Hampshire, on Thursday, September 21, 2023 at 6:05 p.m.

### **1) Call to Order and Seating of Alternates**

Chairman Walker Farrey called the meeting to order at 6:05 PM.

Present at the meeting were Chair Walker Farrey, Member David Lage, Alternates Dwayne White, Jay Hopkins, and Brett Kivela. Staff present included Land Use Clerk Jennifer Worth.

Chairman activated alternates Dwayne White, Jay Hopkins, and Brett Kivela to fill seats of Danielle Sikkila, Jeff Muhonen, and Lou Alvarez.

These five are the Zoning Board of Adjustments voting members.

### **2) Other Business**

#### **a) Case ZBA-2023-09: Richard & Sharin Smeeth – Appeal of Administrative Decision**

The Court has authorized the Zoning Board of Adjustments to move forward with case number, ZBA-2023-09, Application for an Appeal of Administrative Decision. Since the court has addressed this, Chair would like to set a date for the application review. Parties agreed that they would like to wait till after the case re-hearing to set a date. This will be put on the agenda for October 5, 2023 to set a date for the application review.

### **3) New Business**

#### **a) Case ZBA-2023-09(R): Jane Elwell – Variance Application - Lot 11/128, 99 River Road**

Chair asks the board if any members need to recuse themselves before this case is reviewed. None do, Chair opens with the following statement, "This is a remand from the Housing Appeals Board, related to a variance application by Silver Scones Teas. For the ease of administrative admission, past admissions are incorporated for reference and they

are available here in this certified record for this case. Meeting minutes and past notices of decisions have been removed, unless they were submitted by other parties as part of a past submission. However, past notices of decisions and meeting minutes will not be relied upon in this matter, as this is a De Novo hearing. We are hearing it as new. Parties are welcome to submit additional information material for the board to consider in making its decision.”

Chair clarifies that the Zoning Board of Adjustments is hearing an application for Article 4, Section B NOT section C. This is a variance NOT a special exception.

Nancy Clark objects. Her objection is that improper notice was provided on a couple of basis.

1. Notice is required to provide the Map and Lot number for the property. Notice does not provide Map number.
2. Article 4, Section B – The application that was submitted is for Article 4, Section B and Article 4, Section C so either there was an omission of Article 4, Section C or there was an abuse of the board’s power to make a decision to eliminate Article 4, Section C from consideration on the variance request. This is an abuse of power because no decision is permissible for this board, unless there is a public hearing. There was no properly noticed public hearing for this matter prior to today. RSA 676:7 requires a public hearing in order for there to be a decision.

The Zoning Board of Adjustments received confirmation from the Town’s attorney that the board will move forward with Article 4, Section B only. Nancy Clark claims this does not match up with application.

In an effort to let everyone speak, Chair announces that opening statements will be set to a fifteen minute timer and all public comments will be on a three minute timer. The board will hear anything with interest, any evidence that pertains to the facts of the case and how the facts relate to the provisions of the zoning ordinances and the state’s zoning laws.

David Lage motions to set a time limit on public comments to three minutes to concur with the Chair. Jay Hopkins seconds. The motion passed unanimously.

Nancy Clark objects. Her objection is that you cannot limit any abutter or aggrieved parties’ statement to any time limit. You are required to hear them. RSA 676:7

Chair states town council has reviewed and approved. The board will move forward.

The floor is open for open statements by Jane Elwell. A fifteen minute timer was set. Please see attached document of Jane’s full opening statement.

Jane also presented a slide show to show inside and outside of the house. Also showed plot maps, images of her driveway and parking area. Jane mentions that any signage she will have for her business will not be illuminated.

The board asks questions on Jane’s opening statement:

Q: You showed on the Monadnock easement plan two driveway accesses, will you be using both?

A: No, will not be using both of them. Will be using the closest driveway to Currier Road. Jane does have it in writing that Monadnock Conservancy has approved her to utilize this driveway for her business.

Chair states that he will add the letters from Monadnock Conservancy to Mrs. Elwell into the certified record.

Q: How far off River Road is the driveway on Currier Road?

A: 80 – 100 yards.

Q: You mentioned four afternoons per month, is that one time a day or multiple times a day? Can you clarify?

A: 50 people in a day. Sometimes it would be 25 people in two small seatings. There could be multiple seatings, but would always stay to 50 people a day.

Q: For clarification, could you please tell us what the hours of operation would be?

A: A tea party normally last one hour to two hours. At most, three hours if hosting a baby or bridal shower. The parties usually start at 2:00 PM and last till 4:00 PM. Sometimes hours of operation could look like 9:00a – 6:00p, but majority would be held in the early afternoon.

Q: What is the typical noise level like?

A: It's quiet. Classical music is played. Guests bring family to enjoy an afternoon of chatting and catching up.

Q: Is there any kind of screening for the neighbors?

A: There is a lot of vegetation. Lots of trees and gardens. There is privacy from the road and neighbors as well as privacy for guests. The parties are secluded, neighbors can't see the parties and guests can't see the road or neighbors. Neighbors would have to be standing on something in order to see the top of umbrellas.

Q: Are tea parties just on the weekends?

A: No, most of the time it is on weekends because that is what people prefer. Sometimes it might be a Friday. It depends, if someone wants a bridal shower. Ms. Elwell will not dictate what day of the week guests want to have their event. Will accommodate their needs of which day they prefer.

Chair reviewed the Fieldstone map. Jane states the only difference is from the property on the map, is that the path will be going away. Please see attached documents for map.

Q: Where does the path end?

A: It ends at the existing woods road. Guests will walk across the lawn towards the circle garden. Then there is an existing path that goes around the house. There will be a total of 18 parking spots near Currier Road and two handicap spots at the front of the house. 20 parking spots in total. State law states that Silver Scones must have one space for every three seats. If there are 50 people, 17 parking spots would cover it. This covers 51 people, but the 20 parking spots allow for 60 people. Silver Scones will stick with 50 people though.

Q: Besides the parking are on the Fieldstone Map, there is also some drainage plans, could you please fill us in on that?

A: The civil engineer from Fieldstone suggested putting in a rain garden. It would be a depression for rain water to flow. Recently the parking area was maintained with 250 tons of gravel for my daughter's wedding. It rained during Hurricane Lee with 117 guests. There was no standing water anywhere. Rain gardens were not in place.

Q: There is a pipe that connects the two rain gardens, explain this please?

A: The engineer suggested putting a culvert in. The parking lot has been graded down, it's only a 2% grade right now. Might not even need to put rain gardens in. The engineer plans to come back and look at it.

Chair states, that if rain garden and culvert is needed, Ms. Elwell may need to seek additional relief with a wetland setback for putting a structure in the ground. The pipe can be considered a structure. Town ordinances state that any structure in the ground cannot be within 50 feet of the wetlands.

Q: Could you have your engineer provide the board with a letter or updated plan if the rain gardens and culvert are removed from the plans? This change would require Planning Board review.

A: Yes.

Q: You said you would like to host 50 people maximum, is that per a RSA or what you prefer? Is that the smallest number of guests that you are able to host?

A: That is what I prefer. The septic system can only handle 50. Never has actually hosted 50 people. States that it is a lot of work.

Chair opens the floor for Abutter's Opening Statement.

Nancy Clark speaks. I only have three items, so I will reserve the remainder of my time for my motions for a rehearing filing of these illegal proceedings.

1. Occasional Food Service Establishment - RSA 143 A:3-5 that the applicant sited. The legislative history of that statute indicates that it was only intended to cover churches for purposes of serving Sunday lunch.
2. The rain garden that the applicant claims she might be able to eliminate from her site plan approval. That was a required element that the planning board approved. She can't remove it based on an engineer's review. That item and the variance is part of the appeal to this board from the planning board. That was the next case that you mentioned earlier that you plan to take up.
3. For the new members of the Zoning Board of Adjustments, there is a letter which is part of the certified record, from a real estate agent generally opining on the fact that businesses in residential neighborhoods decrease home values.

Brett Kivela researched RSA 143 A:3-5. This RSA specifically states that one of the examples of an Occasional Food Service Establishment is "tea room".

Chair reads the letter from the real estate agent in the certified record to those present. Chair says his take on this letter is that it is a "general statement". The real estate agent is not aware

of every detail of this case. David Lage points out that the big umbrella picture is that no one came out to analyze and compare businesses that have been in Bank Village in the past and the type of impact those would have had today. Jay Hopkins feels you cannot compare this business to ones like Walmart, mentioned by the real estate agent comparing Walmarts to bakeries.

Chair mentions again, that Jane Elwell may need relief from the board for the rain garden area shown on site plan.

Jane Elwell presents her application with the five criteria of that application. Please see attached document of her full statement of variances.

Chair opens the floor for public comments. Those in favor will be allowed to speak first.

Dixie Blease speaks. Please see attached document for her full statement.

1. Kathleen Sheldon speaks. I have attended several tea parties and volunteered to assist many tea parties. Some of the objectives that have been raised do not apply. There is very little noise like Jane has stated. These are family and social gatherings, visitors from out of town all enjoying companionship, a nice English tradition and having a wonderful time. As far as parking goes, you can hardly, if at all see it from River Road. The objection that there is a scar on the landscape is not the case. This is a woman owned endeavor in a perfect location, as Jane also stated. It is very respectful and very appropriate at a time where entrepreneurship is promoted across the country and should be supported here.

Robin Blackburn Ellis speaks. Her parents use to own a tennis court on Perry Road back in the 1970s. They had 165 members at one point. When this first came, there was a petition that there would be night parties and put up lights. My father was a showman and a wonderful communicator, so due to all of that none of those things were going to happen. There were many town residents who joined, sang, played tennis, and had parties. Jane is a friend and I've also helped at tea parties. Her business struck a chord with me as it reminded me of my parent's business. As far as, the neighbors being able to see her parties, it dawned on me if 12 neighbors decided to have a summer BBQ in one month, that would be 12 parties and people generally entertain outside, you would hear them. Jane's parties, although there may be 20 people, the back of her house is very secluded and usually held inside. The outside is protected by her house and the land is screened off from anyone. I suppose if you wanted to see the parties, you could go to the second floor of your apartment, look down, and say, "Look what fun they are having". I wanted to say one thing about the parking area, I was just at Jane's daughter's wedding and said, "I thought you had put down some gravel? It looks like dirt." It is gravel that looks like dirt. The parking area looks like a clearing in the forest. I will say that if you are in the driveway and you look out Currier Road, you are looking directly at a shed with three cars that are falling apart. They have been there for as long as I've known Jane. I would consider this an eye sore to guests who are leaving the parties. So if you want to talk about a scenic road or how Jane is invading it with cars, all you have to do is look directly across her road. I have been following the ZBA, Planning and Selectmen board meetings. The boards are always in favor for Jane, yet we continue to stall. We have put someone out of

business for a year and half, when she could have been contributing business taxes to the town.

Bentti Hoiska speaks. I'd like to comment on the realtor's letter. The realtor's opening sentence says it is a general statement and as a general statement it is true. If Jane were applying for a variance to build a metal stamping plant in Bank Village, I suspect that the residential value would decline. That is not what she is applying for. She is applying for the right to host tea parties in her existing home. What is her basic business plan? Her basic business plan is to offer high end tea parties, a very elevated experience. The property itself is important to that experience, and is essential. She has every sentiment in the world to maintain and improve her property. I don't see how surrounding property values would be diminished. A fact is that we know she will do this. I have been driving by her house ever since she has owned it. The grounds around that house have been much improved in the ten years that she has owned it. I think she has credibility. When she says she will do something, she does it. I am in support of her application for a variance.

The floor is open to those opposed of the applicant.

Annmarie Fournier speaks. Please see attached document for her full statement.

Liz Freeman speaks. Please see attached document for her full statement.

After Liz Freeman's three minute timer went off, she did not end her statement. Chair stated to be fair to all, the next person may speak. Richard Smeeth said, I'm on the planning board and a private citizen. I recuse myself from any dealings with this grievous offense.

Richard Smeeth speaks. Please see attached document for his full statement.

Craig mentions that he can't even walk down the road without the threat of being run down by cars. Board asks that we stay on track with facts that relate to the case.

Chair uses this time to clarify that anyone is welcome to submit their written statements to the land use clerk and these will be added to the certified record.

Chris Allen speaks. Please see attached document for his full statement.

I am at 97 River Road, the right hand side of Jane's property. I would like to address a few things brought up here tonight. Specifically, having to do with the history of what the businesses were in the area. I think there is no doubt that there were businesses in the area, but they would have been considered minimal impact home occupations. A tailor use to be there, people would show up to have something altered and then leave. One or two people showing up here or there is not 50 people at an event. In my mind, this is the key difference between prior businesses and this business. It is the idea of the minimal impact home occupation which is the problem here, because looking at the criteria for a minimal impact home occupation, none of the criteria have been met.

David Lage, asks to stop the clock to state that others have spoken about minimal impact home occupation. That is a separate part of the ordinance and is not part of the variance.

Applicant has not asked for a minimal impact home occupation, which is a separate criteria. Comments should be focused on the variance. David explained the definition of a variance, special exception and what a minimal impact home occupation is for clarification.

Mr. Allen states that he can in fact see the backyard from his back area. Jane's back area dips down and he can very easily see the tea parties from his deck. This is such a drastic difference of any business that has been in Bank Village before. There has not been any other business that accommodated 50 people at a time. Jane states four times a month, but it sounds like it might be eight times a month if you divide the 25 people. Mr. Allen's house has a blind driveway and said, "I can't tell you how many times, I've almost been clipped coming out of my driveway." More traffic from Silver Scones is a concern.

Louise DelPapa speaks. Please see attached document for her full statement.

Stan Zabierk speaks. Please see attached document for his full statement.

Colin Carroll speaks. Please see attached document for his full statement.

Mr. Carroll adds that there are children that live in this area who attend school. Loud noises past the town ordinances is disruptive to families in Bank Village.

Rob Fournier speaks. Please see attached document for his full statement.

Mr. Fournier lives next door to Ms. Elwell. The tea parties do bother him, his wife, and his dogs. He works a full time job. The only time he is home is on the weekends. A tea party having 50 people next door to your house, is like a party every weekend in the middle of the day when you would like to be home enjoying private time at your house. Just imagine yourself wanting to sit in your backyard, maybe have a BBQ or lunch on a Sunday afternoon and have 50 people every Sunday parading near your house. It is extremely disturbing.

Mr. Fournier asks, what is the definition of a tea party? Ms. Elwell serves food and drink for money. Under International Building Code this is considered a restaurant and he would like it to be recognized as such.

David Lage's only comment to that is that the applicant has defined what her tea party consists of. During her rebuttal she could address this.

Sharin Smeeth forfeits her three minutes of time to speak so Liz Freeman may finish her statement. Liz Freeman speaks.

Mrs. Freeman states that in the zoning board's handbook, for an unnecessary hardship to exist there must be special conditions that distinguish it from other properties in the area. She wonders what those conditions are. Certainly the conservation land is not part of that. Jane has residential property just like everybody else. The only unnecessary hardship that Mrs. Freeman has heard is that it is hard to find another place that would be as nice to host tea parties like the one she has. She would like the board to consider the implications for the future of Bank Village if in fact the applicant's property is no different than any property in Bank Village. She wonders what the zoning board would have to do if a future resident whose

property is no different from Jane's property to have a similar business. If approved, the board would have to approve future likewise businesses. That is why this is not just about the one single business or use, it's about future business in Bank Village. One of the criteria for granting a variance is that substantial justice must be done. For substantial justice to be done, there must be an injustice. The applicant claims she can't use the property for something that is not allowed in the zoning ordinance. Anyone in town could get a variance if that was the injustice that they claim. Finally, if this parking area was approved you would also have to approve similar parking areas.

Nancy Clark reserves the right for anybody who did not submit their statement tonight or who needs to submit electronically or make modifications to the statements that they may be allowed to do so. Chair and David Lage state that this is the public hearing and the only opportunity to do so. Mr. Lage gives those who didn't speak an opportunity to do so. No one else presented an opposing statement.

Chair opens the floor for Jane Elwell's rebuttal. Jane speaks.

Ms. Elwell is basing her parking area on State regulations of one space per three people. Her limit is 50 people, which means she is legally allowed 17 spots. The parking area is already constructed. She will not be cutting down trees or making a big space in the forest. The space has been there for a long time with the barn being built in 2016. She uses it to store wood, farm machinery, etc. The only thing she did do, was take five trees down in the center of the area. There will not be 50 cars coming in and out. Her home is not an event center. She enjoys sharing her British heritage as it is very satisfying to her. The only kind of events she would do is bridal and baby showers that are just tea party themed. It is very quiet. It is a fellowship of people who enjoy getting together. The parking lot is not in the middle of Bank Village, it is behind a lot of trees in the middle of her woods on Currier Road. It is her belief if someone in Bank Village were to apply for a special exception like a bed and breakfast or inn, those would be more disruptive than her business. The car increase with having four tea parties, 12 months per year with 50 people each time would be 2.1 extra cars per day. The business has not grown since 2022. During Mother's Day in 2022, I had 126 guests which was over two days and three tea parties, which is still less than 50 people per seating. Mother's Day is the busiest time of the business. Ms. Elwell states that Stan Zabierk's claims on when the barn was built, is not true. The parking area has not been expanded, it has just been tidied up. Jane would like to operate 12 months of the year to make a profit.

Chair asks Ms. Elwell to define what a tea party is for the record. For the record Ms. Elwell states a tea party is a party that women sometimes men attend in nice clothing, hats, and heels. Guests bring family and are served pots of tea and a cake stand of goodies at their seating. Children are taught manners and it is a polite and proper tea time. Guest sit, eat, and go home.

David Lage asks, you are not serving a full course meal? Only tea and desserts? Ms. Elwell said she will not be serving a full meal and Mr. Lage is correct in saying only tea and desserts.

Dwayne White asks, what would separate your establishment from an actual so called restaurant? Ms. Elwell answers that the difference is that she is an occasional food



establishment. Tea parties are not made to order and guests are not offered a menu. There are no walk-ins, guest have to make a reservation.

Brett Kivela asks if Ms. Elwell pays a business tax. Jane says, yes. Jane pays tax on 100% of the \$45.00 that guest pay. She does not entertain, there is no live music or alcohol to serve.

Ms. Elwell feels like there were many statements made tonight that are defamatory and untrue. Chair states that this irrelevant to the zoning criteria, but understood for the record.

Chair opens the floor to anyone in favor with questions or comments about Ms. Elwell's rebuttal.

Dixie Blease would like to acknowledge that those who are most impacted to Silver Scones is Annemarie & Robert Fournier as well as, Chris and Mary Allen, who are the two immediate abutters. She hopes that they can work it out because she is in support of Jane's business.

Robin Blackburn-Ellis wants the public to know that because Jane could have four parties per month does not mean, there will be a tea party every week. This is a minimal business. The only reason Jane is working hard on the parking area is because the road to the parking area is not the best maintained. She has never seen a tea party where one person comes in one car, most car pool. Also, just because she can have 50 people per day doesn't mean there will be every time.

Chair asks Ms. Elwell, when she says there are four seatings per month, 50 people maximum per day, but sometimes you do two seating per day...

Ms. Elwell answers, no, it is four full days per 30 days per the occasional food service establishment under RSA 143 A:3-5. She could host two or three seatings in a day but the maximum of people per day is 50. The maximum is 200 people per month every 30 days. The fire department gave Ms. Elwell the maximum occupancy of 78 people, but she is limiting it to 50 people.

Chair opens the floor to those opposed and may have questions or comments about Ms. Elwell's rebuttal.

Chris Allen says that the mention of increased cars to 2.1 cars per day is not an issue. The issue is the frequency of occurrence. If the number of increased cars are occurring inside a narrow window of time, then the possibility of an accident that could happen in that window also increases.

Nancy Clark states non-credible statements by the applicant.

1. She does not serve alcohol. Submitted a Silver Scone Tea Parties Google review from a year ago, that references the best Valentine's dinner, tea and bubbly went perfect with other courses.
2. Applicant stated that she was simply, "tiding it up" referencing to the parking lot that she claims has always been in existence. The creation of this parking lot started mid-July of last year. That is about 14 months of construction activity in creating this parking lot. Over this period of time, there are countless photographs in the certified record of pictures of a tractor of the applicant's boyfriend creating this parking lot over several

months. After the planning board approval and prior to this wedding she has referred to recently, there was an excavator delivered for 5 days, 8 hours a day or more with constant beeping, not just in reverse but in all directions. "Tiding up" the parking area does not require a delivery of an excavator and the running of tractor and excavator for five straight days.

3. Ms. Elwell claims that her last tea party was on Mothers' Day of 2022. There is evidence in the certified record that Ms. Elwell after the cease and desist orders were issued, sent an e-mail to her customers claiming that she was going to simply have a family BBQ and not to worry that the tea party was not against the law and this was simply a family gathering for her. That last tea party occurred on September 24, 2022, approximately one year ago and after the cease and desist orders were issued.

Chair reminds the public that the board is only hearing pertinent information to the zoning ordinances and state regulations. The existing parking lot is irrelevant. Moving forward, what is being proposed to be created is what we are hearing. There is a current cease and desist on this property. Not allowing to move forward with the proposed use as a business until it can in theory achieve approval from a town board.

Richard Smeeth asks based on the applicant's comment, that the parking lot was already created, who gave the applicant the right to construct? Chair states that it's on the applicant's property and is allowed to do so.

Louise DeIPapa questions how Ms. Elwell will monitor the number of people in the parking spaces so that guests will not park on the road? If there are 30 cars, where do the other 10 cars park? How is it monitored when the reservations are made? Ms. Elwell says that when guest make the reservations she can ask guests to please carpool as much as possible. Other than that, she will not be monitoring cars.

Stan Zabierk refutes Ms.Elwell's claim that the opening in the wall has been there for decades. Her husband opened that wall to put the fabric barn in.

Chair reminds the public that we are not looking back in history of what happened, the board is looking at the proposed use going forward. There is also written document from the Monadnock Conservancy granting her the permission.

Stan Zabierk for the record states that no other business in the Bank Village prior to zoning ordinances had 50 customers.

Chair closed the floor to public comments.

David Lage makes a motion to continue the re-hearing to Thursday, October 5, 2023 at 7:30 PM. Jay Hopkins seconds. The motion passed unanimously.

## **Adjournment**

There being no further business to come before the ZBA Board, Mr. Lage motioned to adjourn the meeting at 9:20 p.m. Mr. Hopkins seconded the motion. The motion passed unanimously.

Respectfully Submitted,  
Jennifer Worth, Land Use Clerk