



# TOWN OF NEW IPSWICH

661 Turnpike Rd, New Ipswich, NH 03071

ZONING BOARD OF ADJUSTMENTS



## Meeting Minutes November 16, 2023

The Zoning Board of Adjustments held a meeting at the Town Office, 661 Turnpike Road, New Ipswich, New Hampshire, on Thursday, November 16, 2023 at 6:00 p.m.

### 1. Call to Order and Seating of Alternates

Chairman Walker Farrey called the meeting to order at 6:20 PM.

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

### 2. 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 2, 2023.

Dwayne White and Lou Alvarez recuse themselves as affirmative members.

Michelle Saari, Brett Kivela, and Jay Hopkins have been appointed by the board to serve as alternates and act as affirmative members for this hearing.

Chair asks Land Use Clerk to verify that all abutter's and public notices were publicly noticed. To the knowledge of the clerk, abutter's and notices were properly posted.

Nancy Clark objects on the grounds that the newspaper ad in the Monadnock Ledger printed on October 24, 2023 was fatally flawed. This public notice ad did not provide the required location of the hearing in the advertisement for the November 2, 2023 Zoning Board of Adjustments public meeting.

Chairs asks Land Use Clerk where else the November 2, 2023 meeting public notice was posted. It was posted at two physical locations (New Ipswich Town Offices and New Ipswich Post Office), as well as, prominently posted on the Zoning Board of Adjustment's web page.

The board discussed how if an interested party wanted to question where the location of the meeting would be, it was possible to call the Town Offices learn this information prior to the meeting.

David Lage asks Land Use Clerk if it is possible to verify the date the public notice for the November 2, 2023 was posted on the ZBA's web page. Land Use Clerk verified the date it was published to the web page was October 25, 2023. This posting is within the 5 day notice for an appeal per RSA 676:7 I. (b).

Land Use Clerk mentions the letterhead that is utilized in the creation of the public notice does in fact state the location of the Town Office as 661 Turnpike Road, which is where the meeting was held.

David Lage motions to continue the public hearing to December 7, 2023 at 6:00 PM. Jay Hopkins seconds. The motion passed unanimously.

Nancy Clarks objects on the ground that there is not time for public notices to properly be noticed.

### 3. Application Review

**Case ZBA-2023-14:** Richard and Sharin Smeeth requesting a Motion for Rehearing for the decision of the Zoning Board of Adjustments issuance of a variance to Article IV, Section B of the Zoning Ordinance to Jane Elwell on behalf of Silver Scone Teas, LLC

Nancy Clark presents the application. Application is complete with list of abutter's, tax maps, and a motion for a rehearing submitted by Nancy Clark who is representing her clients. Nancy reads the motion for a rehearing. Please see attached documents for the submitted motion for a rehearing.

The board deliberated and discussed each ground for rehearing from Mrs. Clark Motion for Rehearing document.

*Allegation #1: David Lage was not eligible to sit as a member of the ZBA to hear this case.*

**Reason for Denial:** Mr. Lage denies this statement. The appointment is on record with the Town Clerk. David Lage noted that he has approximately sat as a ZBA member since 2010.

*Allegation #2: Walker Farrey was not eligible to sit as a member of the ZBA to hear this case.*

**Reason for Denial:** Chair Farrey denies this allegation. Mr. Farrey was appointed as a member by the Board of Selectmen on April 12, 2016. The appointment is on record with the Town Clerk.

*Allegation #3: The ZBA unreasonably restricted public comment in violation of NH RSA 676:7,1(a) in failing to allow all abutters and affected parties to be heard.*

**Reason for Denial:** The ZBA cleared this with legal counsel to make sure the ZBA was within its rights. At the hearing, the public was provided with a uniformly, fair and equal time to speak. In regards to Mr. Fournier's choice to read his statement or present a PowerPoint, he chose to read his statement over the PowerPoint. Chair recollects that the night of the hearing before powering the TV down, alternate Dwayne White offered the use of the screen, with the public stating there was no need for presenters and, as a result, it was shut off. For those who wanted to present their statement the night of September 21, 2023, the board accepted all submitted statements for the certified record. The public comment section was closed on September 21, 2023, and no further submittals would be accepted after.

*Allegations #4-7: ZBA Alternate, Jay Hopkin's communication with and reliance on a third-party real estate agent was illegal and demonstrated bias requiring recusal. The ZBA's citation of and reliance on Alternates, Jay Hopkin's communication with a third-party real estate agent for approving the variance was illegal and requires the variance approval be reversed. ZBA Alternate, Brett Kivela's communication with and reliance on a third-party real estate agent on real estate values was illegal and demonstrated bias requiring recusal. The ZBA's citation of a reliance on Alternate, Brett Kivela's communication with a third-party real estate agent of approving the variance was illegal and requires the variance approval to be reversed.*

**Reason for Denial:** Mr. Lage states that from his perspective the comments were not deciding factors. The topic of the effect on real estate values was discussed at length during the public hearing. Members had noted that previous businesses had operated in the village district with no apparent effect on real estate values. Also, discussed how the letter from the out of state real estate agent, which was not specific to the village district, had no application to the case since it was addressing business types not applicable to this case. It was prudent of these new alternate members to do their due diligence in researching information. This was not a factor of his decision. Chair agrees. The rest of the Board members agree with the statement that this real estate comment was not a factor in the decision-making process for this variance.

*Allegation #8: David Lage engaged in a chronic pattern of behavior to intimidate several Petitioners requiring his recusal.*

**Reason for Denial:** Chair states this was previously discussed at the October 12, 2023 hearing. This is an inaccurate statement. At that time, Mr. Lage disputed this, noted he did not feel a need to recuse himself. Mr. Lage comments that he knows for a fact that he does not yell at public meetings. The referenced conversation with Mr. Fournier was regarding the building code. Mr. Lage sat for six years on the State Building Code Review Board. He is familiar with the code and worked construction management for 36 years. Mr. Lage was not trying to discredit anyone, but when he feels the conversation goes off topic and should not be part of the public meeting, he will mention it.

*Allegation #9: Walker Farrey made a public statement demonstrating bias requiring recusal.*

**Reason for Denial:** As previously discussed on October 12, 2023, Chair disagrees and was merely stating procedural manners. See the record.

*Allegation #10: The ZBA's issuance of a variance for a small portion of a larger residential property creates a mixed-use property in violation of the Zoning Ordinance.*

**Reason for Denial:** The Board disagrees. There is nothing in the Zoning Ordinance combining mix use with the approval of a variance. If an applicant has an existing use that is allowed, then a variance is not required. If an applicant is asking for relief from the Zoning Ordinance and a variance is required and the variance was approved, then that is what the applicant has been approved for.

*Allegation #11: The ZBA failed to properly consider the first prong of the variance criteria set forth in NH RSA 647:33I(a)(2)(A).*

**Reason for Denial:** The Board disagrees. See the record for Board's analysis of this criteria, which was lawful and reasonable.

*Allegation #12: The ZBA failed to properly consider the second prong of the variance criteria set forth in NH RSA 674:33, I(a)(2)(B).*

**Reason for Denial:** The Board disagrees. See the record for Board's analysis of this criteria, which was lawful and reasonable.

*Allegation #13: The ZBA failed to properly consider the third prong of the variance criteria set forth in NH RSA 674:33, I (a)(2)(C).*

**Reason for Denial:** The Board disagrees. Chair clarified, any loss to the applicant that is not outweighed by a gain to the public, is an injustice. See the record.

*Allegation #14: The ZBA relied on illegal communications outside the public hearing record to meet forth the fourth prong of the variance criteria set forth in NH RSA 647:99, I (a)(2)(D).*

**Reason for Denial:** The Board disagrees. As discussed in numbers 4-7 above, the decision to grant a variance did not rely on the real estate comments. See record for Board's analysis of this criteria, which was lawful and reasonable.

*Allegation #15: The ZBA failed to properly consider the fifth prong of the variance criteria set forth in NH RSA 647:33, I (a)(2)(E).*

**Reason for Denial:** The Board disagrees. See the record for Board's analysis of this criteria, which was lawful and reasonable.

David Lage motions to deny the application for a Motion of Rehearing submitted by Richard Craig and Sharin Smeeth for the property located at 99 River Road. Jay Hopkins seconds. The motion passed unanimously.

## **6. Adjournment**

There being no further business to come before the Zoning Board of Adjustments, Vice Chair David Lage motioned to adjourn the meeting at 7:53 p.m. Jay Hopkins seconded the motion. The motion passed unanimously.

Respectfully Submitted,  
*Jennifer Worth - Land Use Clerk*