

## **ZONING BOARD OF ADJUSTMENT**

### **MINUTES**

November 1, 2022

**APPROVED:** 12/6

**AGENDA:** 22SPX05 – NORM HEBERT – 166 HEMPHILL RD - #215-003  
22VAR05 – SPENCER LACASSE - 66 SCHOOL ST - #114-028  
22SPX08 – DONALD MILBRAND – 22 HEMPHILL RD - #214-037

**ATTENDING:** Alan DeStefano (Chair), Richard LaFlamme (Vice Chair), Larry Denton, Lorraine Bohmiller, Melody Mansur, and John Miller (Alternate)

**ABSENT:** Ashley Dolloff (Alternate)

**OTHER:** Christina Goodwin (Interim Deputy Town Administrator), Joanne Bailey (Land Use Manager) Michelle McCaleb (Land Use Administrative Assistant), Attorney Shawn Tanguay (Town Counsel), Applicant Attorney Darrin Brown, Applicant Attorney Megan Carrier, Applicants and Abutters.

Chairman Alan DeStefano called the meeting to order with a full quorum present at 6:19 pm.

#### **MINUTES:**

The Board reviewed the minutes of October 4, 2022. Mr. LaFlamme motioned to approve the minutes as written. Ms. Bohmiller seconded. The motion carried 5-0-0.

#### **22SPX05 – NORM HEBERT – 166 HEMPHILL RD - #215-003**

Chairman DeStefano opened discussion of Special Use Exception application. Ms. Goodwin read into the record the application for placement of a storage container on property at 166 Hemphill Rd for longer than one year. She noted the abutters notified, where the notices were posted, that there were no telephone or other public inquiries received, and there was no feedback received from Department Heads.

Mr. DeStefano asked for a complete application motion. Ms. Bohmiller moved to accept Application 22SPX05 as complete. Ms. Mansur seconded. The motion carried 5-0-0.

Mr. DeStefano stated that the Applicant's Attorney Darrin Brown was present for Mr. Hebert. Attorney Brown presented the application and photographs of an existing permitted temporary manufactured storage container located on the property. He stated the container is located 32 feet from Hemphill Road adjacent to the driveway on the property and the container is 8 feet high, 8 feet wide and 20 feet long. He went on to address the Town's criteria for the Special Use Exception as follows:

1. Proposed use is only allowed by Special Exception per Article IV Section 4.3
2. Photos and a narrative were shared outlining applicants need and purpose for use of the container long term to store tools, equipment, and other items in secure, dry, and accessible location for his continued activities at this home, which is planned to be his retirement location.

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3. The use does not adversely affect the rural character of the area as the location is 32 feet from the road, within other setbacks, and in looking at other properties in this rural area this did not seem out of character. He stated that it was a nicely painted, 8X8X20 Conex box container. He also noted that abutters downhill and uphill from this property would not have direct view of container.
4. He stated that there was no nuisance or hazards to vehicles or pedestrians by placement 32 feet from the road or with use of this container to store his equipment and materials.
5. He shared that the use of this container would not place any excessive or undue burden on Town services as what is to be stored is not hazardous and the container is a more secure storage option than a shed or other outbuilding.
6. For significant effect on public health, safety and general welfare of the neighborhood, he stated the location, the condition and the intended use of this “inert” container would not impact the neighbors or area.

He then went on to cite the locations and share information about the photos taken to support the application.

Mr. DeStefano asked for comments or questions from the Board. Mr. Denton stated that at the time of the original application, abutters and the Board were concerned about the appearance of the property. He asked if the applicant had made any effort to clean up the property. Attorney Brown responded that he was unaware of any issues with the condition of the property, so he asked what specific action Mr. Denton was asking for. Ms. Goodwin clarified that the character criteria was only for the storage container per this application and any other issues with the condition of the property would be outside this process.

Mr. DeStefano asked about what was to be stored in the container stating he was concerned that there may be hazardous materials and there could be leaking from the container. Attorney Brown stated that Mr. Hebert’s intended use of the container was to securely store materials and tools necessary for his continued work on the house on this property and no hazardous materials would be included. Mr. DeStefano asked if the applicant might be amenable to relocating the container elsewhere on the property where it would not be in view from the road. Attorney Brown stated at its current location next to driveway, it allowed the applicant easy access especially in winter and it also screened propane tanks and other items from view on the property.

Ms. Goodwin referred to a photo showing an oil tank in front of the container and asked if this was plumbed to it or being used for the home. Attorney Brown indicated it was not being used with or plumbed to container.

With no further Board questions, Mr. DeStefano opened the hearing to the public for questions and comments of those in favor of the application. Hearing none, he opened the hearing to those who might oppose the application.

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Ms. Lisa Ford, a neighbor at 140 Hemphill Road commented that she felt the container was not in keeping with the character of the neighborhood and that there were many more storage options on this property already and some of which made her sad to see every time she walked or drove by. Attorney Brown stated that he was not aware of any new structures being referenced but he reiterated other properties up the hill looked a lot worse than this property with a container box. He felt there would be no impact to property values or rural aesthetic of the neighborhood with continued use of this container for storage. He stated that this type of storage container was a better and more secure storage solution for the applicant.

Mrs. Jan Barrett of 48 Hemphill Road pointed out that Hemphill Road was a designated Scenic Road. She stated she liked to walk and travel the road, she lived on the road, and she felt a permanent container on the property was not in keeping with the pleasant view and intentions of the character of the Scenic Road. In addressing her concern, Attorney Brown indicated that the criterion for the application is what the applicant has been intent to adhere to for allowing him to keep container for over a year. He stated that the Board may be able to consider screening which may be a workable solution.

Mrs. Susan Peterson, who walks this road often and enjoys the scenic character, expressed that she does not find this attractive and does not know what is being stored in the container, so she is uncomfortable when she walks by.

Mr. Jim Collins, resident of 94 Hemphill Road commented that he felt that the Zoning Ordinance allows for and controls a temporary use of manufactured storage containers, and his feeling was that if allowed as a permanent use it would be way out of character and would have the look of a commercial property rather than a private residential use. Mr. Brown stated again that it was not out of keeping with a character of a rural area. He also stated that other activities on the property are properly permitted.

Mrs. Barrett stressed that the Board and applicant consider the Scenic Road designation and stay in keeping with this.

Mr. Denton asked Attorney Brown if he felt the applicant would be amenable to address the neighbors' concerns. Attorney Brown stated that he and his client have followed the process and that until now he was unaware of the neighbors' concerns, issues, or the Scenic Road designation mentioned. He stated that this was not a use out of keeping with the ordinance or neighborhood character. He added that though asking for more than a 1-year use of the container, it was not intended to be permanent, it might only be for two (2) years. Ms. Goodwin stated that if Board approved the Special Exception, it could be permanent as it was for more than 1-year with no expiration date.

In answer to other storage options concerns, Attorney Brown reiterated again that the Conex box unit was wind, water, and rodent proof and this was especially important for Mr. Hebert's intended use and access for valuable tools and materials storage. He continued to say that he felt that there were workable solutions to address neighbors' concerns and that he could talk to his client to see if he was amenable to possible re-location or screening. He suggested that the Board could condition this. Mr. DeStefano stated that in the past, Mr. Hebert was not open to moving the location of the unit.

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Town Counsel, Attorney Shawn Tanguay asked Attorney Brown if he was thinking that he would like the opportunity to talk with his client before the Board decided on the application. Attorney Brown said that a continuance would be a good option to allow for workable solutions. Attorney Tanguay counseled the Board that it could continue the hearing to allow Attorney Brown opportunity to talk with Mr. Hebert.

Chairman DeStefano closed further discussion and comment on the application. Mr. LaFlamme motioned to continue the hearing on application 22SPX05 to December 6 to allow Attorney Brown to confer with Mr. Hebert about neighbor concerns and possible solutions. Ms. Bohmiller seconded. The motion carried 5-0-0. The hearing was continued to December 6, 2022.

#### **22VAR05 – SPENCER LACASSE - 66 SCHOOL ST - #114-028**

Chairman DeStefano opened the hearing for application 22VAR05. Ms. Goodwin read the application into the record noting the abutters notified, where the notices were posted, that there was no telephone or other public communications, and the Department Head feedback was included in the application packet before the Board.

Chairman DeStefano announced that he was an abutter to this application and recused himself from action on it. Alternate John Miller was appointed to serve for this application. Mr. LaFlamme stepped into the Chair position for purposes of this application. He stated the applicant's Attorney Megan Carrier was present to represent Mr. Lacasse. She was asked to speak to the application.

Attorney Carrier stated that Mr. Lacasse had purchased the property at 66 School Street which was a multi-family home before zoning and considered a non-conforming use. The question at hand for this application was that prior to her client's purchase of this property, it was converted from a 4-unit to a 5-unit multi-family home requiring a variance to allow for expansion of a non-conforming use. At this point Attorney Carrier stated she believed that the expansion to a 5-unit was a lawful expansion based on the Town's Ordinance.

Town Attorney Tanguay asked Attorney Carrier if she would like to address the issue of expansion of a non-conforming use being allowed by Ordinance prior to Board and public discussion on Variance. She agreed.

Attorney Carrier cited Section 4.12 (B)(2) of the Bristol Zoning Ordinance which allowed expansion of a non-conforming use within a structure if no expansion went beyond the structure. In this case, a two-bedroom unit was converted into two (2) one-bedroom units within the footprint of the original structure and the original two-bedroom unit. Only walls were changed. No additions were constructed.

Mr. Miller asked if the property has the same number of bedrooms as before it was split and Attorney Carrier responded yes.

Town Attorney Tanguay counseled the Board that the issue at hand is if the Board agrees that this constitutes a lawful expansion of a non-conforming use. Should the Board address that, its decision may preclude the need for a variance.

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With no more questions of the applicant the Board proceeded to deliberate the issue of lawful expansion. Mr. Miller stated he felt with no increase of bedrooms as a result of the split it was within ordinance requirements as a lawful expansion. Mr. Denton reiterated the citation of Article 4 Section 12.B.2 and stated that by not increasing the size of building there was a lawful expansion which would not require a variance. Mr. Denton motioned that Article 4 Section 12.B.2 indicates that a variance is not required for this application. Ms. Mansur seconded. The motion carried 5-0-0. Ms. Goodwin let Mr. Lacasse know there would be a Notice of Decision issued and a follow up letter/email to advise of the next steps.

Mr. DeStefano returned to the Board and Chair position and Mr. Miller returned to Alternate.

#### **22SPX08 – DONALD MILBRAND – 22 HEMPHILL RD - #214-037**

Ms. Goodwin read the application to change from a Brew Pub to a Restaurant/Nano Brewery designation allowing the applicant more control over hours of operation into the record. She noted the abutters notified, where the hearing was posted, that there were no telephone calls or written public comments received, and no Department Head feedback received. Ms. Bohmiller motioned to accept the application as complete. Mr. LaFlamme seconded. The motion carried 5-0-0.

Mr. Milbrand presented his application stating that his business, Traveler's Rest, is currently operating as a Brew Pub which under State RSA 178.4 has a requirement that it operate as a full-service restaurant open to the public a minimum of 5 days. He is asking for a special exception so he can change operation from a Brew Pub to a Restaurant/Nano Brewery allowing him to change open hours to less days and have more control in his retirement. He stated that it would change his liquor licensing to beer and wine only as well. All of this would be lower impact.

Mr. Denton asked if he was currently open five (5) days a week and Mr. Milbrand answered yes. Mr. DeStefano stated that the current license and Brew Pub requires you to be open five (5) days and this change with Special Exception will allow him to operate less days. Mr. Milbrand answered yes and that it would also require change in liquor licensing to just beer and wine which will be lower impact than the full liquor license he has currently.

He then went through what he has for hours and operations under the current approvals and his application request for Special Exception to change that.

Mr. DeStefano asked that he review his application and reference any impacts to the criteria cited in the application. Mr. Milbrand reviewed his criteria as follows:

2. With reference to appropriate site for operating with the change, he stated that the property was already approved for the Brew Pub with Town Site Plan approval #18MSPR04 and has been licensed by the State of New Hampshire per RSA 178:13 as such. A Brew Pub is required to be full-service restaurant operating with a requirement to be open a minimum of five (5) days per week. The change to Restaurant requires a Special Exception. He stated that operating as a Restaurant/Nano Brewery would allow him to be open less hours and reduce the liquor license to beer and wine having lower impact.

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3. The use as proposed will not adversely affect the character of the area because the property is currently operated as Brew Pub without issue and if hours are lessened should be lower impact.
4. There will be no nuisance or serious hazard to vehicles or pedestrians due to none to date as Brew Pub and lower impact expected with less days open.
5. The use will not place excessive or undue burden on Town services or facilities as there are none currently and this change will be a lower impact and not require any additional services.
6. There will be no significant effect from the use on public health, safety, and general welfare of the neighborhood in which the use is located because there are none currently and the change in use will be a lower impact use.

Mr. DeStefano asked if this change and licensing change could theoretically be a higher impact use. Mr. Milbrand responded no and read the criteria for State licensing and the Town's Zoning definitions to support his position and he stated he plans to remain with the same 24 seat capacity and not increase any seating.

Ms. Bohmiller asked about his hours of operation currently and what these might be if he received Special Exception. Mr. Milbrand responded that currently he is open five (5) days which is the minimum required. He stated he could be open seven (7) days if he wanted to. With the Special Exception he would be able to open less.

With no further questions from the Board, Mr. DeStefano opened the floor to the public asking if any would like to speak in favor of the application. Hearing none, he asked if anyone would like to speak in opposition to the application.

Mrs. Jan Barrett of 48 Hemphill Road stated she was not really in opposition but had a question about whether Mr. Milbrand would need to go back to the Planning Board if he received the Special Exception to get approval for being open less days with a change to increase hours. Mr. Milbrand explained that he would, that the Special Exception was a first step for change of use and that he would be filing a Site Plan Review. He said that this would be for several things, including adding a small deck for outside seating in the summer without increasing total seating capacity, change from the Brew Pub to Restaurant/Nano Brewery, and change of his hours to 12 pm – 10 pm.

Mr. Victor Field expressed concern regarding if Special Exception is approved and go on in perpetuity, what would keep the business from being open seven (7) days a week for longer hours. Mr. Milbrand stated that he could not answer that for future, but he stated at present as a Brew Pub he could be open longer hours seven (7) days per week. His intention was to do less as he was thinking about his retirement. Ms. Goodwin stated that any change requires him to go back to Site Plan Review with the Planning Board, which would require abutter and public notices and allow for public comment.

Mr. DeStefano stated that the Zoning Board has no jurisdiction to restrict this, if Mr. Milbrand meets the criteria. He added that a restriction would be with Planning Board and that what is before the Zoning Board is the Special Exception needed to have a Restaurant and Nano Brewery instead of a Brew Pub, which is allowed.

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Mrs. Barrett asked if the current or future operator wanted to make a larger deck and expand seating capacity or other change, then they would be restricted to same Site Plan Review process. Mr. DeStefano and Ms. Goodwin clarified this with some examples and stated that Town would have control based on the Ordinance and some other items that were not in their control like State Licensing for liquor which cannot be transferred.

Mr. Field and Mr. Ian Dunmore asked Mr. Milbrand questions about State Licensing process for liquor and change from Brew Pub. Mr. Milbrand answered that his goal was to decrease hours so it would require change from Brew Pub to a different class of license as Restaurant allowing for less hours required. Liquor license would go from all alcohol to just beer and wine.

With no more comments or questions from the public, Mr. DeStefano closed the hearing and moved into deliberations.

Citing Criteria for deliberation, Mr. DeStefano stated they would discuss and vote on each separately.

2. - Based on Board agreement that the existing use as Brew Pub was appropriate and with no expansion proposed on the site and anticipated less impact with less days open, Mr. LaFlamme motioned to approve. Ms. Mansur seconded. The motion carried 5-0-0.
3. The Board agreed that allowing a change for the applicant to have less hours would be less impact to the character of the area. Mr. Denton motioned to approve because this was lower impact with less days of operation than the Brew Pub. Mr. LaFlamme seconded. The motion carried 5-0-0.
4. It was agreed that there were no demonstrated impacts with current use as Brew Pub and change would be less impact with reduction of days open to the public. Ms. Mansur motioned to approve that change from Brew Pub and less days open would allow for lower impact to vehicle and pedestrians. Mr. LaFlamme seconded. The motion carried 5-0-0.
5. With regard to excessive or undue burden on Town Services, the Board discussed and agreed that none was known with present use and less impact would be expected with less days of operation. Mr. LaFlamme moved to approve this based on lower impact expected due to less days in operation. Ms. Bohmiller seconded. The motion carried 5-0-0.
6. It was determined that existing Brew Pub operation was not causing any impacts to public health, safety or general welfare and continuing with a similar operation for less days open should have less possible impact. Ms. Mansur motioned to approve the change due to less impact. Mr. LaFlamme seconded. The motion carried 5-0-0.

Following this review of criteria, Mr. LaFlamme motioned to grant the Special Exception for case #22SPX08 – DONALD MILBRAND – 22 HEMPHILL RD - #214-037 to change from Brew Pub to Restaurant/Nano Brewery. Ms. Mansur seconded. The motion carried 5-0-0.

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**COMMUNICATIONS:** Mr. Brown asked if the Town Survey was complete. Ms. Goodwin updated the Board about status of the Master Plan Survey and asked those who may not have completed this consider doing so before October 28.

#### **NEW BUSINESS – 2023 Meeting Schedule**

The Board reviewed the proposed 2023 Meeting Schedule. Mr. DeStefano stated he would be present for December meeting but would be out of town for January through May meetings. He said he would be available via Zoom. There was discussion about the 4<sup>th</sup> of July and Election Day dates. Ms. McCaleb asked if the Board wished to cancel these. It was suggested that cancellation could be done closer to those dates allowing for consideration of applications and hearings that might need scheduling. They will make note of this for consideration for the Board in a meeting before these dates.

#### **OTHER BUSINESS:**

Ms. Goodwin introduced Joanne Bailey who was her replacement as Assessing / Land Use Manager. Ms. Goodwin updated the Board about the Land Use Office transition and training status and her transitioning to Interim Deputy Town Administrator.

**NEXT MEETING:** December 6, 2022. Ms. Goodwin stated that the continuance of the Hebert hearing would be noticed. Attorney Brown would be present. Mr. DeStefano asked that Town Counsel be present for this meeting as well. Ms. Goodwin stated she would contact but was not sure if it would be Attorney Tanguay or Attorney Filmore. The Board and Ms. Goodwin thanked Mr. Miller for agreeing to being an alternate for the Zoning Board to help assure full quorum at meetings.

#### **ADJOURNMENT:**

With no other business before the Board, Richard LaFlamme motioned to adjourn. Ms. Bohmiller seconded. The motion carried 5-0-0. The meeting adjourned at 8:13 pm.

Respectfully submitted,

Janet F. Cote  
Land Use Associate