

ZONING BOARD OF ADJUSTMENT

MINUTES

December 6, 2022

APPROVED: April 4, 2023

AGENDA: 22SPX05 – NORM HEBERT – 166 HEMPHILL RD - #215-003 CONTINUANCE
22SPX09 – DONNA SELLERS – 39 BRIAR HILL RD - #222-005

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

ABSENT: Ashley Dolloff (Alternate) and John Miller (Alternate)

OTHER: Christina Goodwin (Interim Deputy Town Administrator), Joanne Bailey (Land Use Manager) Michelle McCaleb (Land Use Administrative Assistant), Attorney Christine Fillmore (Town Counsel), Applicant Attorney Darrin Brown, Lisa Ford, John & Donna Sellers, and Robert Swain.

Chairman Alan DeStefano called the meeting to order with a full quorum present at 6:05 pm.

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The Board reviewed the minutes of November 1, 2022. Mr. LaFlamme motioned to approve the minutes as written. Ms. Bohmiller seconded. The motion carried 5-0-0.

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Chairman DeStefano re-opened discussion of the Special Exception application. Mr. DeStefano invited the applicant's Attorney Darrin Brown to present his updated information.

Attorney Brown stated that after the hearing that was held previously, he considered the abutter and Board concerns and his updated narrative addresses each of these. He remarked that there were concerns for the placement of the container more permanently on the Hebert property, being not in character for the area and for Hemphill Road designated a Scenic Road. He researched both the Scenic Road and Zoning statutes and rules. His findings regarding the character of the area were addressed in the Zoning statutes, stating that any consideration of the character in the area could not take into account properties outside the Bristol town line which is just uphill from Mr. Hebert's property. It should only be addressed by the Zoning for Bristol and the proposed use was permitted by Special Exception in a Rural Zone and in keeping with rural property uses. His findings for scenic roads were addressed by Title 20 – Transportation - Section IV which indicated that a scenic road designation should not impact the property rights of a landowner. He went on to state that statute does not allow for spot zoning in reference to character and to stress this point he used the Bristol downtown area to describe examples of historic buildings sited alongside more modern business buildings as allowed by zoning.

To address the storage container location concerns of abutters and the Board at the last meeting, he stated that his client was willing to re-locate the container further from the road to a spot adjacent to the

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home. He introduced this proposal to the Board for their consideration. He indicated the new location with a plot plan showing setbacks and shared his client's request for allowance of time to complete this re-location by September 2023. The reason for requesting extended time was due to the need for a concrete pad installation and use of crane and contractors to complete the project. The storage container is too heavy to trailer back to new location due to the location of his septic system. Mr. Hebert would be amenable to incurring this extra cost and anticipates that lining up contractors for site work and installation to this revised location may take some time. He also mentioned that Mr. Hebert would need to comply with spring road postings. Attorney Brown mentioned that this was a location that would address the concerns of abutters and the Board as it would not be seen from the road.

Mr. DeStefano opened the floor for questions from the Board.

Mr. Denton asked for clarification of the drawing to distinguish between what was the container and what was the home. Attorney Brown pointed out the rectangle next to house as the container and stated that the property slopes away from the road so this would be out of view from the road.

With no more questions from the Board, Chair DeStefano opened the floor to the public for questions or comments from those in favor of the application. Hearing none, he opened the floor to the public for those in opposition to the application.

Ms. Lisa Ford from 140 Hemphill Road spoke in opposition. She pointed out the aerial view of the property shows many sheds, trailers, and other outbuildings which have been used for storage by the property owner for eleven (11) years. She stated that in her opinion it was an eyesore, not in keeping with character of the area and the Board would be setting a bad precedent if they chose to grant the permit for a permanent storage container, citing number six (#6) of the application criteria. She was also concerned for public safety and welfare due to the possibility of hazardous materials being stored and carried by the wind or water table if there was ever a leak.

Mr. DeStefano stated that the hearing is to address rules and criteria for storage container only and other issues of the property cannot be addressed by this Board and should not be discussed. When Ms. Ford mentioned the applicant has already exceeded allowable limits for keeping the temporary storage unit, Mr. DeStefano stated that the applicant was notified of this and that is why there is an application for a permanent storage container use.

Attorney Brown stated that they were not talking about other issues or permits as his client has all his permits in place. Attorney Brown reiterated that the container was wind proof, rodent proof, and waterproof. He added that his client was willing to re-locate this container to address public concerns raised and the use of a storage container was in character for the rural area and allowable by Special Exception when criteria is met. He stated that his client, Mr. Hebert, was trying to harmonize his need with the public concerns.

With no further questions, Chair DeStefano closed the public portion of the hearing.

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Mr. Denton asked if the Board needed to review that whole application again before deliberation. Mr. DeStefano stated it was a continuance, so the Board should now consider the applicant's proposal and additional facts.

Ms. Goodwin stated she was concerned with the setbacks with the new proposed location and stated the Board could, if approving, add a condition for verification of setbacks on plan to ensure no other applications are needed. Moving a container will not require a new permit issued once the Special Exception is approved.

Chair DeStefano moved into discussion and deliberation of criteria for this application.

#2 – Mr. Denton stated that the re-location proposal for the existing storage container addressed concerns for location further away from the road. Mr. Denton motioned that with re-location the applicant met this criteria. Mr. LaFlamme seconded. The motion carried 5-0-0.

#3 – Mr. LaFlamme motioned that criterion #3 regarding being in keeping with the rural area was met. Mr. Denton seconded. Mr. Denton added that the narrative update addressed concerns of Scenic Roads and character of the area and applicant was taking steps and incurring additional costs to locate the storage container to be out of view of others. The motion carried 5-0-0.

#4 – Mr. Denton motioned that criterion #4 was met. Ms. Bohmiller seconded. The storage container was to be away from the road on private property so there would be no impact to pedestrians or vehicles. The motion carried 5-0-0.

#5 – Mr. LaFlamme motioned that the use would not be a burden to Town services or facilities due to no impact to services to date with allowed temporary use of storage container and none is anticipated with permanent use. Ms. Bohmiller seconded. The motion carried 6-0-0.

#6 – Mr. LaFlamme moved that criterion #6 is met. Mr. Denton seconded. It was determined per narrative, testimony and discussion, that tools and furniture were to be stored in the container, so there would be no impact to Public Health or Safety. The motion carried 5-0-0.

Following this review of criteria, Mr. LaFlamme motioned to grant the Special Exception for case #22SPX05 – NORM HEBERT – 166 HEMPHILL RD - #215-003 for permanent use of a storage container with conditions as follows.

1. that it is to be relocated next to house per updated plot plan submitted
2. that applicant provides verification of setbacks and complies with any other permits/applications, if needed
3. that relocation activities are to be completed by September 29, 2023

Mr. Denton seconded. The motion carried 5-0-0.

Mr. DeStefano stated that all decisions of the Board are subject to appeal. The applicant should receive Notice of Decision within the week.

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Chair DeStefano opened this hearing. Ms. Goodwin read the Special Exception Application 22SPX09 for Donna Sellers to use an existing basement apartment for short term rentals into the record. She noted notifications to abutters, advertising and postings done as required. She stated that no phone calls or written inquiries were received for this application and that there was an inspection report and email communication from the Fire Chief in the application packet for the Board's review.

Mr. LaFlamme motioned to accept application 22SPX09 as complete. Ms. Bohmiller seconded. The motion carried 5-0-0.

Chair DeStefano asked the applicant to present the application. Mrs. Donna Sellers stated that their home had a basement apartment which was used for their children until they grew up. Since then, they started using it as an Airbnb short-term rental. They were recently made aware that because half of their property is zoned Village Residential, and the other half is zoned Rural they would need a Special Exception to use as a short-term rental. She and her husband John Sellers would like to continue to do this, so she applied for the Special Exception.

Ms. McCaleb displayed the Seller's property on the mapping and stated that the lot is split by two zones, Village Residential and Rural. When a property is split, the harsher district rules apply. In Village Residential, short-term rental is allowed by Special Exception and in Rural it is allowed.

Chair DeStefano asked the applicant to present and answer questions about the application criteria.

Chair DeStefano asked how long the apartment was in use. Mr. Seller's responded that it has been in use since the home was built in 1968. Previously this was used by their children and recently, they began using this for the Airbnb rental. He added that they thought their whole property was zoned Rural so they thought the use as short-term rental was allowed.

Chair DeStefano asked about the size of the apartment and if there was interior access to their area of the home. Mr. Sellers stated the apartment area was about 800 sq. ft. with a kitchen and that the interior access was blocked but there were two egresses to apartment, one a door and another through garage.

Chair DeStefano asked how often they rented or expected to rent this unit. Mr. Sellers responded that it would be for 100 to 120 nights per year usually on weekends.

Mrs. Sellers addressed criterion #4 by stating that Briar Hill Road was a private road so there was no impact to pedestrians or vehicles.

For criterion #5, Mrs. Sellers stated that as a short-term rental on a private road, there would not be any undue burden on Town services as there might be with a long-term rental. The Town receives the rooms and meals tax. She also stated that guests are encouraged to visit local restaurants and business establishments.

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Ms. Bohmiller asked why they chose to do short-term rental instead of long-term rental. Mrs. Sellers stated that there were no laundry facilities and other amenities that would enhance long-term rental, so it seemed a better fit to do the short-term rental.

Ms. Bohmiller asked about the typical rental periods, asking when it is rented. She asked if it was weekends only or if guests could rent for a week or more. She also asked if renters might go mid-week. Mrs. Sellers responded that a typical rental was a couple of days on a weekend or possibly a week. Ms. Bohmiller cited an example of rentals such as Friday to Sunday and then a Monday to Thursday asking what the difference between short-term and long-term rental would be if full occupancy was the result for the year especially with comments about undue burden to Town services. Mr. Sellers responded that with a long-term rental it would be a residence for the tenants, so schools and Town services could be impacted. He cited an example of a renter losing a job and finding themselves unable to pay rent and therefore looking for welfare services to help in that situation. With short-term, guests are visitors to the area, not residents that may require these types of services.

In response to criterion #6, Mrs. Sellers indicated that because this was an existing apartment it does not affect the neighborhood.

With no other questions from the Board, Chair DeStefano asked for comment or questions from the public in favor of the application. Hearing none, he asked for any comment or questions from those opposed.

Mr. Robert Swain of 18 Briar Hill Road spoke as an abutter to the applicant. He stated he actually owns Briar Hill Road and there is a private right-of-way granted to the Sellers property across his property. This was noted on the property map. He had concerns about renters trespassing on his property while out walking their dogs and with those in vehicles in need of directions etc. He was also concerned for any further development that may impact the right-of way or his property.

Chair DeStefano stated that information shared indicates the home and apartment and use has been in effect since 1968 but any further development would require applications for permits. Mrs. Sellers responded to Mr. Swain's concern for guests trespassing and walking dogs saying that guests have been educated to where property lines are and are asked to go straight down to Danforth Brook Road traveling within and along their property line and not continue along Briar Hill Road.

Mr. DeStefano indicated that the right-a-way issues are addressed in deeds and not in any way altered by the Zoning Board. He stated that if the applicant wanted to change use or do development, Mr. Swain would be notified as an abutter.

Chair DeStefano asked about the parking and driveway location and if there was a way to access the unit any other way than across Mr. Swain's property. Mrs. Sellers replied that the only access to house is along Briar Hill Road right-of-way. She stated that Briar Hill Road turns into their driveway and there is more than sufficient area for parking up by the house. She stated guests are usually couples with one vehicle.

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With no other comments or questions from the public or the Board, Chair DeStefano closed the hearing. The Board reviewed and deliberated the criteria questions for this application as follows:

#2 – Ms. Mansur motioned that criterion #2 regarding appropriate location and size was met. Mr. LaFlamme seconded. Mr. Denton stated that the existing apartment was of adequate size with kitchen facilities as indicated by applicant. Mr. DeStefano indicated that the location of this property was rural in nature and any additional vehicle traffic would not be substantial. Ms. Bohmiller stated that the apartment was to be occupied by no more than three (3) people so most often would be one (1) vehicle at a time. The motion carried 5-0-0

#3 – Mr. LaFlamme motioned that criterion #3 concerning adverse impact to character of the area was met. Mr. Denton seconded. Mr. Denton indicated that the character of the area is already residential, and the applicant has made efforts to address and decrease any impact issues of their immediate neighbor. The motion carried 5-0-0

#4 – Mr. Denton motioned that criterion #4 addressing nuisance or hazard to pedestrians or vehicles was met. Ms. Bohmiller seconded. Mr. DeStefano stated that any nuisance issues for neighbor with pedestrians and vehicles were addressed. Mr. Denton indicated that the apartment was already in use by family prior without any safety or nuisance issues. The motion carried 5-0-0

#5 – Ms. Mansur motioned that criterion #5 regarding excessive or undue burden on Town services was met. Ms. Bohmiller seconded. Ms. Mansur stated she saw no burden to the Town. Mr. DeStefano stated that the applicant addressed this issue of short-term rental being better for little or no negative impact to Town services and some positive impacts with rooms and meals taxes though this benefit would not be a consideration for decision. The motion carried 5-0-0.

#6 - Mr. Denton motioned that criterion #6 regarding no significant effect upon public health, safety and general welfare of the neighborhood was met. Ms. Bohmiller seconded. Mr. Denton stated there was no issues to date with prior use of existing space as family apartment and further use as Airbnb with the applicant clarifying that continued use will be Airbnb. The motion carried 5-0-0.

With all criteria addressed and approved, Chair DeStefano asked for a motion to grant the Special Exception. Mr. LaFlamme motioned to grant the Special Exception 22SPX09 to Donna Sellers at 29 Briar Hill Road, #222-005 to operate a short-term rental Airbnb subject to applicant meeting the Fire Chief's requirements. Ms. Mansur seconded. The motion carried 5-0-0.

COMMUNICATIONS: None

UNFINISHED BUSINESS: None

NEW BUSINESS: None

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OTHER BUSINESS:

Chair DeStefano brought up an issue of the wording in the Fire Chief's communication for the Airbnb application. He was concerned that the Fire Chief has no approval or other decision-making authority on Zoning Board cases. Ms. Goodwin advised that the wording can be addressed.

Ms. Bohmiller asked if the applicant just approved for short-term rental would have to come back to the Board if they changed use to long-term rental. Ms. Goodwin explained that long-term rental was allowable use in that zone, for single and 2-family properties, so the applicant would not need to come back for that.

NEXT MEETING: January 3, 2022

There was discussion of Board member schedules for attendance for this meeting and upcoming meetings in 2023. Ms. Goodwin commented that a quorum of three (3) is needed present in the room. For the purposes of determining a quorum, Ms. Goodwin stated that those who hoped to attend by Zoom should not be considered. She asked if there were any cases scheduled yet for January. Ms. McCaleb stated that there were none yet. The deadline for January is December 12. Mr. DeStefano stated that if there were no cases by the deadline, he would opt for cancellation of the January meeting and move everything to next meeting.

ADJOURNMENT:

With no other business before the Board, Richard LaFlamme motioned to adjourn. Ms. Mansur seconded. The motion carried 5-0-0. The meeting adjourned at 8:32 pm.

Respectfully submitted,

Janet F. Cote
Land Use Associate