

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

April 4, 2023

**APPROVED:** May 2, 2023

**AGENDA:** 23SPX01 - GEORGE LONGO/ANDREW LITZ - 30 HOLIDAY HILLS ROAD - #110-051  
23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005  
23VAR02 – MICHAEL KELLEY - 188 PLEASANT STREET - #113-014  
23VAR03 – ANTHONY MCMAHON - 71 SUMMER STREET - #223-019

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

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

**OTHER:** **Staff:** Christina Goodwin (Town Administrator), Donna Sullivan (Land Use Administrative Assistant)  
**Applicants & Public:** Margaret and Andrew Litz, George Longo, Anthony McMahon, Steve and Jodi Favorite, Bob and Carol Huber, Sandra Provost, Pam Cote, Del Woodward, and Mike and Justine Kelley.

Chairman DeStefano called the meeting to order at 6:02 pm with a quorum present in the meeting room and full Board present with two members attending via Zoom. He noted that all votes will be done as a roll call as required with members participating via Zoom. He also stated that with the fully seated Board there would be no requirement for a continuance of any cases on the agenda.

**23SPX01 - GEORGE LONGO/ANDREW LITZ - 30 HOLIDAY HILLS ROAD - #110-051**

Mr. DeStefano asked Ms. Sullivan to read the first case into the record.

Ms. Sullivan read the Special Exception Application 23SPX01 for Andrew Litz to build a house in the Lake District which is taller than the one foot allowed over the existing structure. She noted notifications to abutters, advertising and postings done as required. She stated that no phone calls or written inquiries were received from the public. The Water & Sewer Department commented that the septic plan and septic location would not impact water service location and the applicant should contact the Water and Sewer Department prior to demolition of the existing structure.

Mr. DeStefano asked the Board to review the application to determine if it was complete. Mr. Longo distributed a large copy of the plans to assist the Board.

Ms. Mansur moved to accept the application as complete. Ms. Bohmiller seconded. The motion carried by roll call vote 4-0-1. Ms. Bohmiller recused herself from deliberation on the application as she was a neighbor.

Mr. DeStefano asked Mr. Longo to explain the project. Mr. Longo presented his plan to demolish an existing structure and build a new house on the same footprint with a Special Exception to exceed the one-foot taller height than the original structure restriction. Mr. Denton confirmed with Mr. Longo that he was looking to have an eleven-foot height increase.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23SPX01 - GEORGE LONGO/ANDREW LITZ - 30 HOLIDAY HILLS ROAD - #110-051 – continued**

Mr. DeStefano moved the discussion to Mr. Longo's presentation of answers to the criteria questions on the application and Mr. Longo read his criteria answers into the record.

Following Mr. Longo's application presentation, Mr. DeStefano asked for questions from the Board. Ms. Mansur asked if Mr. Longo felt the increase in height would not be impeding on neighbors. Mr. Longo responded that height and setbacks are all in keeping with other properties in Holiday Hills neighborhood and there would be no impact for neighbors. Mr. Denton asked if there would be the same number of bedrooms and bathrooms in the new house. Mr. Longo stated that there would be the same number of bedrooms and one additional bathroom.

Mr. DeStefano asked if the public had any questions or comments. Hearing none, he asked if the Board had any further questions. Hearing none, he closed the public portion of the meeting and moved on to Board deliberations.

Mr. LaFlamme asked the Chair to advise the applicant that with Ms. Bohmiller's recusal, any decision for approval or denial of the Board would require a vote of at least three members in favor or against. Mr. DeStefano confirmed this for the record.

**Criteria #2** – Mr. LaFlamme motioned that criterion #2 regarding appropriate location and size **was met**. Ms. Mansur seconded the motion stating that the new home would be built on the same footprint of the old one which is to be demolished and will meet all setbacks. The motion carried by roll call vote 4-0-0.

**Criteria #3** – Mr. Denton motioned that criterion #3 concerning adverse impact to character of the area **was met** because applicant will be demolishing existing structure and building new home on same footprint. Mr. LaFlamme seconded. The motion carried by roll call vote 4-0-0.

**Criteria #4** – Mr. Denton motioned that criterion #4 addressing nuisance or hazard to pedestrians or vehicles **was met** as the location of the building will remain the same on the original footprint. Mr. LaFlamme seconded. The motion carried by roll call vote 4-0-0.

**Criteria #5** – Mr. LaFlamme motioned that criterion #5 regarding excessive or undue burden on Town services **was met** as the use, footprint and location will not change. Mr. Denton seconded. The motion carried by roll call vote 4-0-0.

**Criteria #6** - Ms. Mansur motioned that criterion #6 regarding no significant effect upon public health, safety and general welfare of the neighborhood **was met** because there is no significant change to use and location of house. Mr. LaFlamme seconded. The motion carried by roll call vote 4-0-0.

With all criteria addressed and approved, Chair DeStefano asked for a motion. Mr. LaFlamme motioned to **grant** the Special Exception 23SPX01 as presented. Ms. Mansur seconded. The motion carried by roll call vote 4-0-0.

Mr. DeStefano cautioned the applicant that there was a 30-day appeal period and that the Notice of Decision would be issued shortly. Ms. Goodwin informed the applicant of the next steps with Land Use permits.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005**

Mr. DeStefano asked Ms. Sullivan to read the next case into the record.

Ms. Sullivan read Variance Application #23VAR01 for Sandra Provost to have two primary structures on a single lot which is currently not allowed per Article 4 Section 14 of the Zoning Ordinance. She noted notifications to abutters, advertising and postings done as required. She stated that no phone calls or written inquiries were received from the public. The Water & Sewer Department commented that 76 North Main currently has two (2) water and two (2) sewer connections with the understanding that the property is to remain as one lot. The property is similar to 11 Fourth St., 245 Crescent St., 266 Summer St and 71 Merrimack St.

Mr. DeStefano asked the Board to review the checklist for a motion for complete application.

Ms. Mansur motioned that the application is complete. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

Mr. DeStefano asked for a brief presentation of the application from the applicant, Sandra Provost, instructing her to then read her answers to the criteria questions in the application.

Ms. Provost indicated that she was applying for a variance because she was instructed by the Town that a covered deck would be needed to connect the two buildings located on her property. She stated it would be a hardship to do this as she would lose the backyard and parking and she would also need to allow for handicap access ramp for her granddaughter. She stated that the use of property is for family use only. She has no intention of renting out either property to anyone but family.

Mr. Denton asked if there were two primary dwellings on the property. Ms. Provost stated that was correct and that there were two at the time she purchased the property.

Ms. Goodwin clarified the history of this property. She stated when the property was purchased the main house was gutted and when the Town started working with the builder, he was told they would need to connect the properties because two unattached dwellings would not be allowed on the property. She stated the builder was the one who came up with the solution of the covered deck attaching both units and that was what was approved previously. The question for the Board is that the renovations were approved subject to the building of the connecting covered deck and now the applicant was applying for a Variance to keep the two buildings as two unattached primary buildings.

Ms. Provost stated that her contractor dropped the ball on that because she was not warned of this.

Mr. Denton asked the applicant if one house was being lived in and if one house was being gutted and refurbished when bought. Ms. Provost stated she gutted and refurbished one dwelling while living in the other when she bought the property.

Ms. Goodwin added more information to the history of this property stating that the property originally had a house and a detached garage. The former owner converted the garage into living space, and they were supposed to tear down the main house once this was completed. The former owner never tore down the house and rented out the garage. That owner was told the rules and told to connect the two dwellings. During this timeframe, the former owner sold the property and the new owner's contractor

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005 - continued**

was then informed that dwellings would need to be connected or the owner would need to apply for a Variance for two separate dwellings on the property.

Mr. DeStefano asked Ms. Goodwin to clarify and confirm the sequence of the previous owner's application to renovate a garage for living space with demolition of original house or have two structures. Ms. Goodwin stated the former owner applied to renovate the garage and was to tear down the original house. She stated that there the house was used for fire training, but the former owner never finished the process and then the property was sold.

Mr. DeStefano noted that the current owner had appraisal information and he was concerned about how a mortgage was achieved when the property was not in compliance with the Town ordinances.

Ms. Mansur asked if she wanted to connect the buildings or if she was looking to avoid this and Ms. Provost confirmed that the connection would cause her hardship with property maintenance, parking, handicap access and other issues so she was looking for the Variance.

Mr. DeStefano asked Ms. Provost if she was aware of the requirements to attach the buildings at the time, she purchased the property and she stated that she was not informed of this with the purchase.

Mr. Denton asked for clarification of the timeline. He asked if both houses were inhabited at the time of her purchase. Ms. Provost stated that at the time of purchase one was inhabited, and she indicated that after purchase, the other one was then gutted and refurbished. She stated she purchased the home in April of 2022, and it was planned to live in one while renovating the other. This was completed around Christmas of 2022. Mr. Denton asked if she was aware at that time that the ordinance did not allow for two dwellings on one property. Mr. Provost indicated she was not as her contractor was very vague with her and she found it confusing. Ms. Goodwin stated the Town worked with the contractor who was authorized by the owner to apply for the permit. Mr. DeStefano confirmed that the contractor, upon authorization of the owner applied for the permit for renovations with the Town. It was the Town's understanding that he would communicate with the owner. Mr. DeStefano added that by issuance of the permit, the owner was informed of the requirements. He asked Ms. Provost if she saw the permit. She indicated that it was displayed in the window as required and she did not really pay attention to it.

Mr. Denton stated that to comply with the ordinance, the buildings would need to be attached. Ms. Goodwin answered yes these would need to be connected or the owner could apply for a Variance to keep unattached.

Mr. Denton asked more about connecting the buildings with the deck as suggested by the contractor. Ms. Provost indicated that the deck as proposed poses issues due to leveling, parking, access to the deck and the dwellings as set up.

Access issues and street and back entrance views were discussed. Mr. Denton stated that it did not matter where they connected as long as they were connected. Mr. DeStefano stated that the requirement would be to connect the buildings and the Board does not have to define how these should be connected.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005 - continued**

Mr. DeStefano asked Ms. Provost to read her responses to the criteria questions in the application and answer any further questions about these responses. Mr. DeStefano asked if there were any further questions from the Board.

Mr. DeStefano asked Ms. Provost to further explain issues for parking should a covered deck be connected in the rear of the property. Ms. Goodwin referred to the deck plan design submitted with the permit application. Ms. Provost stated cars cannot park in the middle as indicated on the plan due to the slant of metal roofs and snow slides onto vehicles. Mr. LaFlamme stated a second level deck could solve that.

With no more questions or comments from the Board, Mr. DeStefano opened it up for questions from the public asking if anyone would like to speak in favor of the application.

Mr. Steve Favorite indicated that the smaller building was originally a tv repair shop. He stated that this was changed in 2014 and this abuts against stone wall of elementary school. He was in favor of the applicant not having to spend any more money.

Ms. Carol Huber spoke in favor citing that it appeared that there were no feasible options due to issues of uneven levels, snow and access mentioned.

Mr. DeStefano asked if there was anyone who wished to speak against this application.

Ms. Pamela Cote stated she would like to speak in favor as she felt that the applicant, her sister, bought a property as two dwellings and she put a lot of money into renovations and the issue of connection was an issue for the previous owner that she felt should not be the burden of the new owner.

Mr. DeStefano explained the Zoning Ordinance, accessory dwelling units and compliance necessary. The remedies were discussed, and he stated that the Board could not get involved with what a previous owner or contractor did or did not do.

Ms. Goodwin added that the actual change occurred with sale, renovations, and occupancy of both dwellings as the previous owner only occupied one unit at any time.

Mr. Mike Kelley asked if he could comment about a small roof addition over the building that might be a more affordable option. Mr. DeStefano stated that he would like to close commentary as the Board is not looking for solutions for the owner but has a duty to review the Variance application for approval or not based on the criteria.

Mr. DeStefano asked for any other questions or comments from the Board before he closed the public portion. Ms. Bohmiller commented "Buyer Beware" and stated that the applicant had a responsibility to look at the permit and not transfer her burden to the Zoning Board to resolve an issue she would have been aware of if she read the permit.

Hearing no further comment or questions from the Board, Mr. DeStefano closed the public portion of the meeting and moved on to review of application criteria questions.

**Criteria #1** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that the applicant **met** criterion #1 as there is no public interest impact should the

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005 - continued**

two dwellings not be connected as required. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

**Criteria #2** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #2 regarding the spirit of the ordinance being observed **was not met** because the ordinance requires the houses be attached and her response that at the time of sale it could be done. Ms. Bohmiller seconded. She stated that it would be unknown if the value of property would be changed at a future sale if the bridge deck were installed. Mr. DeStefano added that credence could be placed on the applicant's statement for the future and the Board could not put a condition in place to limit the property to family use. He stated that the ordinance requirement is not being met. The motion carried by roll call vote 5-0-0.

**Criteria #3** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #3 concerning granting the variance would do substantial justice **was not met** because the ordinance was not to govern parking, it was requiring connection of the two dwellings. Mr. LaFlamme seconded. The motion carried by roll call vote 5-0-0.

**Criteria #4** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #4 addressing diminished value to surrounding properties **was met** because whether the buildings are connected or not should not diminish the value of surrounding properties. Ms. Mansur seconded. Mr. DeStefano commented that the applicants comment of compliance option of connecting deck being an eyesore to the public, that a member of the public tonight offered a pleasing solution to this. The motion carried by roll call vote 4-1-0.

#### **Unnecessary Hardship**

**Criteria #5-A-I** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Bohmiller motioned that hardship #5-A-1 **was met** because she bought the property with two dwellings existing and was not informed of ordinance requirements at the time. Ms. Mansur seconded. The motioned carried by roll call vote 3-2-0.

**Criteria #5-A-II** – Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-A-II **was met** because to connect the two buildings, the location of the buildings on the property would cause diminished parking and restricted yard use per the applicant. Mr. Denton seconded. The motion carried by roll call vote 5-0-0.

**Criteria #5-B** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-B **was met** because the position of the buildings, location of fuel tanks and the slant of roofs causes the difficulty to connect the buildings. Ms. Bohmiller seconded. Mr. DeStefano stated that the Board's focus should not be on the one way offered as a plan to connect but that the requirement is to connect buildings. Mr. Denton stated the decision on this criterion is based on evaluation of the applicant's answer to the question not other options that may have been brought up at this meeting. The motion carried by roll call vote 3-2-0.

With all criteria and hardship questions addressed, Chair DeStefano stated that the applicant has not met two criteria for the Variance. Mr. LaFlamme motioned to **deny 23VAR01** because the applicant has **not met** criteria #2 and 3. Mr. Denton seconded. The motion carried by roll call vote 5-0-0.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR01 – SANDRA PROVOST - 76 N. MAIN STREET - #114-005 - continued**

Mr. DeStefano stated that the Variance is denied and the Notice of Decision will be forthcoming from the office in next couple of days. He stated that the applicant had a right to appeal the decision within 30 days.

#### **23VAR02 – MICHAEL KELLEY - 188 PLEASANT STREET - #113-014**

Mr. DeStefano asked Ms. Sullivan to read the next case into the record.

Ms. Sullivan read the Variance Application 23VAR02 for Mike Kelley to be allowed permission to divide this lot into two lots which will result in road frontage of each new lot that is less than 75 feet as stated in Article 3.3 Section A of the Zoning Ordinance. She noted notifications to abutters, advertising and postings done as required. She stated that one phone call in favor of allowing the Variance came from Dakota Coburn and no written inquiries received from the public. The Water & Sewer Department commented that they have concerns that it most likely will not be able to provide sewer service at the proposed site due to the shallow depth of the sewer main across Pleasant Street located under the sidewalk in conjunction with obstacles that other utilities create with an attempt to cross them.

Mr. Denton asked for clarification of the frontage requirement for this property. Ms. Sullivan stated the frontage requirement for this neighborhood was 75 feet and the Variance request was for division into two (2) lots with one lot having frontage of 65 feet and the other 61 feet.

Mr. DeStefano asked the Board to review the application for determination if it is complete. Ms. Bohmiller indicated she did not see any photos of the property in the application. Mr. DeStefano stated that the packet included a photo of the renovated structure, but this would have no relevance for the frontage variance request. Mr. DeStefano asked Ms. Goodwin to display the property map for this location.

Ms. Mansur motioned that the application was complete. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

Mr. DeStefano asked the applicant Mike Kelley to present his application. Mr. Kelly presented his plan and request for Variance to allow him to subdivide the lot with less frontage than required to allow for another house to be built that would be in keeping with the neighborhood. He stated that other lots along the road had similar frontages. He stated he just remodeled the existing house on the lot and would like to move forward to subdivide and build an additional house next to it. To subdivide he would first need to get frontage Variance.

Mr. DeStefano asked Mr. Kelley to read his answers to the application criteria questions and answer any questions from the Board.

Mr. Kelley then read his responses to the application criteria into the record.

Mr. DeStefano asked that the survey map be displayed again. Mr. Kelley shared a copy of the plan with the Board. Mr. DeStefano asked Mr. Kelley about his alluding to these lots being smaller in the past, but the survey provided for subdivision of the lot is based on a more recent survey. Ms. Goodwin read the survey information and Ms. Sullivan stated some deed research was done with nothing found. Mr.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR02 – MICHAEL KELLEY - 188 PLEASANT STREET - #113-014 - continued**

DeStefano asked if Meridian was able to do this research for the applicant. Mr. DeStefano wanted to clarify if this might have been a pre-existing subdivision and that at some point two lots were co-joined.

Mr. DeStefano asked for questions from the Board. Ms. Bohmiller asked if the subdivision of the property would be an equal distribution of the original lot. Mr. Kelley explained that the lot was divided as equally as possible to allow for setbacks, driveway easement and other factors. Mr. DeStefano stated that the Board was to only consider the frontage variance and did not have jurisdiction for the subdivision or house placement etc.

With no other questions from the Board, Mr. DeStefano opened the floor for public comment. He asked for comments in favor of the application. Hearing none, he asked for any comments against the application. With no comments from the public and no further comments from the Board, Mr. DeStefano closed the public portion of the meeting and moved on to deliberation on the application.

Mr. DeStefano asked the Board to review the application criteria and provide motions as to whether the applicant met or did not meet the criteria for Variance.

**Criteria #1** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that the applicant **has not met** criterion #1 about public interest impact because the applicant has not referenced frontage issue in answer to this question. Ms. Bohmiller seconded. Others agreed that the answer was not specific to the frontage. The motion carried by roll call vote 5-0-0.

**Criteria #2** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Ms. Mansur motioned that criterion #2 regarding the spirit of the ordinance being observed **was met** because his proposed subdivision and plans would be in keeping with the neighborhood. Ms. Bohmiller seconded. The motion carried by roll call vote 3-2-0.

**Criteria #3** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #3 concerning granting the variance would do substantial justice **was not met** because the applicant's answer, which may be true, it does not address why the frontage should be reduced below the Ordinance requirement. Mr. LaFlamme seconded. The motion carried by roll call vote 5-0-0.

**Criteria #4** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Mansur motioned that criterion #4 addressing diminished value to surrounding properties **was met** because there is no indication that the property values would be impacted up or down by the Variance. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

#### **Unnecessary Hardship**

**Criteria #5-A-I** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-A-1 **was not met** because the applicant did not answer the question defining frontage hardship. Ms. Bohmiller seconded. The motioned carried by roll call vote 5-0-0.

**Criteria #5-A-II** – Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Denton motioned that hardship #5-A-II **was not met** because the answer does not reference frontage hardship. Mr. LaFlamme seconded. The motion carried by roll call vote 5-0-0.

**Criteria #5-B** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-B **was not met** because the answer does not

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR02 – MICHAEL KELLEY - 188 PLEASANT STREET - #113-014 - continued**

reference the frontage hardship. Mr. LaFlamme seconded. Both Ms. Mansur and Mr. LaFlamme commented that the applicant may not have understood the questions regarding hardship. The motion carried by roll call vote 5-0-0.

With all criteria and hardship questions addressed, Chair DeStefano asked for a motion to deny the application as presented. Mr. LaFlamme motioned to **deny 23VAR02** as presented. Ms. Mansur seconded. The motion carried by roll call vote 5-0-0. Mr. DeStefano stated the application is denied and the Notice of Decision will be coming from the office soon. The applicants asked questions about their answers and how to better answer questions for a future application. Mr. DeStefano commented that the applicants had not answered questions with reference to the Variance for the frontage requirements and that to move forward they could consider a new application.

#### **23VAR03 – ANTHONY MCMAHON - 71 SUMMER STREET - #223-019**

Mr. DeStefano moved on to the next case and asked Ms. Sullivan to read the case into record.

Ms. Sullivan read the Variance Application 23VAR03 for Anthony McMahon to have permission to offer a short-term Airbnb rental at 271 Summer Street, which is currently not allowed per Article 3.2 Section A of the Zoning Ordinance. She noted notifications to abutters, advertising and postings done as required. She stated that no phone calls or written inquiries were received from the public. The Fire Department commented that an inspection of the property by the Fire Department should be conducted prior to approval to confirm that the occupancy is compliant with the Fire and Life Safety codes. The Water & Sewer Department has no concerns if this is to remain a single-family home, however if the proposed Airbnb is to create an additional unit within the dwelling, they would need to contact the Department.

Mr. DeStefano asked the Board to review application for completeness. Ms. Bohmiller mentioned that no property photos were provided with the application, and Ms. Goodwin displayed the property for the Board. Mr. Denton motioned the application was complete. Ms. Mansur seconded. The motion carried by roll call vote 3-2-0.

Mr. DeStefano asked the applicant Anthony McMahon to provide a brief presentation of his application. Mr. McMahon stated he purchased the property at 271 Summer Street in July 2021 with the intention of using it as a personal residence and as a short-term rental when the family was not there. In 2021, this was allowed in a Village Commercial area, and he had 13 successful short-term rentals with no complaints or issues. It is listed with Airbnb with restrictions. With the new ordinance update in 2023 this is no longer allowed without a Variance. He is looking to continue the short-term rentals.

Mr. Denton asked if the property has been zoned differently since he bought the property. Ms. Goodwin stated short-term rentals were considered hotel/motel/lodging previously and the zoning update defined short-term rentals, which includes Airbnb's. She stated that the applicant would have had to apply for a Special Exception previously. Mr. McMahon did not have a Special Exception prior.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR03 – ANTHONY MCMAHON - 71 SUMMER STREET - #223-019 - continued**

Mr. DeStefano asked the applicant to read his answers to the application criteria and Mr. McMahon read the criteria answers into the record. Mr. DeStefano asked the Board for their comments or questions.

Mr. Denton asked if the whole property or a part of the property is used for the short-term rental. Mr. McMahon stated that the whole property is rented as short-term rental when they are not in residence. He added that the comments from the Fire Department and the Water Department he felt these were addressed as the home met fire code at time of sale and the home would remain single family residence so the Water Department comment should be no problem.

Ms. Goodwin stated that when a property is a rental property, different requirements may apply for the Fire Department. Mr. DeStefano added that the life safety code is different when a property is rented.

Mr. Denton asked what short-term rental means. Mr. McMahon stated 30 days or less by definition. Ms. Mansur asked the applicant if he had other properties used for short-term rental. He stated he just had this property and that when purchased as a second home, to offset costs they looked to use as short-term rental when they were not there.

With no other questions from the Board, Mr. DeStefano opened the floor for public comment. He asked if anyone wished to speak in favor of the application. Ms. Carol Huber stated that she owned property at 266 Summer Street, and she wanted to speak in favor because to date the short-term renters were respectful, quiet, the property is well maintained, and she had no problems with this used for Airbnb. Mr. Steve Favorite of 36 Baker Street spoke in favor as an abutter at the rear to the property stating that he observed that renters were nice people and left the property clean. Ms. Jodie Favorite spoke in favor of the application stating that the renters were nice families, were quiet, held no parties and she liked that the residence was occupied to stave off break-ins in the area.

Mr. DeStefano asked if there was anyone against the application that would like to speak. Hearing none, he closed the public portion of the meeting to begin deliberation on this application.

**Criteria #1** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. LaFlamme motioned that the applicant **met** criterion #1 because the neighbors were aware of the use and approved it. He also felt that the short-term rental would bring in tourists to the area which would also take advantage of local businesses. Mr. Denton seconded. The motion carried by roll call vote 5-0-0.

**Criteria #2** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #2 regarding the spirit of the ordinance being observed **was met** based on the abutters' positive comments and favorability to the use as well as the quality of rental clients. Ms. LaFlamme seconded. The motion carried by roll call vote 5-0-0.

**Criteria #3** - Mr. DeStefano read the criterion and the applicant's response for the Boards consideration. Mr. Denton motioned that criterion #3 concerning granting the variance would do substantial justice **was met** because the of a successful rental history and abutter favorability to the continuance of the use. Ms. Bohmiller seconded. She stated that the neighbors are in favor and there have been no issues. Mr.

## ZONING BOARD OF ADJUSTMENT

### MINUTES

April 4, 2023

#### **23VAR03 – ANTHONY MCMAHON - 71 SUMMER STREET - #223-019 - continued**

DeStefano added that the location in a Village Commercial zone should also be a consideration as this is not a quiet residential neighborhood where this could be considered a more adverse use. The motion carried by roll call vote 5-0-0.

**Criteria #4** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that criterion #4 addressing diminished value to surrounding properties **was met** because she believed the property has been well maintained and its use would not diminish property values in the area. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

#### **Unnecessary Hardship**

**Criteria #5-A-I** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Mr. Denton motioned that hardship #5-A-1 **was met** because the new zoning criteria has caused them to lose the opportunity of short-term rental use while home is not in use by them, and the use does not impact neighborhood. Mr. LaFlamme seconded. The motion carried by roll call vote 5-0-0.

**Criteria #5-A-II** – Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-A-II **was met** because he is in a zone that allows for this use without impact to commercial and residential neighbors. Mr. Denton seconded. The motion carried by roll call vote 5-0-0.

**Criteria #5-B** - Mr. DeStefano read the criterion and the applicant's response for the Board's consideration. Ms. Mansur motioned that hardship #5-B **was met** because the new change to the Zoning Ordinance creates a hardship for the owners. Ms. Bohmiller seconded. The motion carried by roll call vote 4-1-0. Mr. DeStefano qualified his nay vote as being because the applicant used financial reasoning for hardship which is not allowed to be considered.

With all criteria and hardship questions addressed, Chair DeStefano stated that the applicant has met criteria for consideration of the Variance. Ms. Mansur motioned to **grant** the Variance **#23VAR01** as presented. Ms. Bohmiller seconded. The motion carried by roll call vote 5-0-0.

Mr. DeStefano told the applicant the Variance is approved, and the Notice of Decision will come from the Land Use Office in a few days.

#### **MINUTES:**

The Board reviewed the minutes of December 6, 2022. Mr. Bohmiller motioned to approve the minutes as written. Ms. Mansur seconded. The motion carried 5-0-0.

**COMMUNICATIONS:** None

**UNFINISHED BUSINESS:** None

#### **NEW BUSINESS:** - Election of Officers

Mr. LaFlamme nominated Mr. DeStefano to continue as Chair. Ms. Bohmiller seconded. The motion carried 5-0-0.

Mr. DeStefano motioned to have Mr. LaFlamme continue as Vice Chair. Mr. Denton seconded. The motion carried 5-0-0

## **ZONING BOARD OF ADJUSTMENT**

### **MINUTES**

April 4, 2023

**OTHER BUSINESS:** Ms. Goodwin thanked the Board for working through the four applications tonight. Mr. DeStefano thanked the Board for the effective review and listing of reasoning for approval and denial of criteria as required by statute. Based on some of the criteria issues with applications denied, there were some questions as to how better to guide applicants with the questions for future. It was determined that guidance and review can come from the Land Use Office, but the office was not responsible for researching surveys, deeds or subdivisions to help applicants. The Board and the Land Office can assist with better clarification of applications but cannot tell applicants what to say.

**NEXT MEETING:** The next meeting is scheduled for May 2, 2023.

#### **ADJOURNMENT:**

With no other business before the Board, Ms. Bohmiller motioned to adjourn. Ms. Mansur seconded. The motion carried 5-0-0. The meeting adjourned at 8:26 pm.

Respectfully submitted,

Janet F. Cote

Land Use Associate