

HAMPSTEAD BOARD OF ADJUSTMENT MINUTES

NOVEMBER 1, 2023

Members present: Hank Riehl, chairman, Randy Clark, Proc Wentworth, Jaye Dimando, Karen Hanides and alternate Kevin Hastings.

A copy of the Posting Notice and abutters' notice are a part of these minutes

There was a request by Christine Murray for a rehearing of the Scott and Beth Spicer decision, September 6, 2023, approving a Special Exception for the alteration and enlargement of a structure on a nonconforming lot at 28 Shore Drive, Hampstead, NH in the Recreational Zone, Map 8B Parcel 10. Jaye stepped down and Kevin sat in as a voting member. Chairman, Hank Riehl explained that even though he was not present for the September hearing, after speaking with Town Attorney, he was told that he could vote on the rehearing petition but that he should announce how he familiarized himself with the original proceedings. He indicated he reviewed the hearing video twice and reviewed all documents in the file as well as the rehearing petition.

Hank began by reading guidelines on handling rehearing petitions drawn from the New Hampshire ZBA Handbook. He read that this is not a public hearing so there would be no testimony and the board relies solely on the written submission. He said any evidence should be compelling. He said the board would consider new information only if that information could not have been known at the time of the original hearing. All members were mailed the complete rehearing file- Memorandum of Law- in support of the rehearing request, prepared by Ms. Murray's attorney, Kristin Yassenka, Esq. prior to this rehearing request.

Hank said he detected two significant criteria cited in the request – Spirit and Intent and diminution of property values. Karen asked about Shoreland Protection. Hank said that per the RSA, enforcing regulations from other governing bodies was not the concern of the board. He spoke to the diminution of property values, noting a similar case referenced both in the original hearing and this rehearing request, Devaney vs Windham, in which the Supreme Court ruled that nearby property values could be diminished by loss of view caused by another.

Kevin said no one owns a view and there was no guarantee of a view.

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Hank addressed the second point – spirit and intent of the ordinance. He challenged the petition's assertion that height restrictions were established to preserve neighbors' views; there could have been any number of other reasons. Randy spoke to the issue of one and a half story construction. He said the definition has changed over the years.

Speaking to the third point- requirements of DES, Hank cited RSA 674.33, noting that the board deals with Town ordinances and not those from other government agencies.

Karen said the Shoreland Protection Act is something everyone should be aware of when a building is within wetlands. She said the board is not paying attention to the buffer zone and asked if there could be input from the Town Attorney. She also noted that the roofline is closer to the wetlands. Hank said it is not the board's job to enforce state regulations. Randy said nothing can be built without DES approval so the state can look after their own regulations.

Kevin said the water containment will be better than what's there now. He suggested there could be conditions to the approval that there would be provisions to contain water.

Addressing the concern that the decision failed to address DES conditions, Randy said all new construction has to meet DES approval.

Pertaining to the point that the hearing was improperly noticed, based on the confusion of the address from 24 to 28 Shore Drive, it was agreed that all the abutters of the Spicer property were properly and timely noticed by certified mail and most, if not all, were present for the original hearing. Hank said it did not materially affect the discussion or outcome. Randy agreed.

THE VOTE : Randy made a motion to grant a rehearing. Proc seconded. Kevin voted against because he felt everything was properly covered at the original hearing. Karen voted in favor of a rehearing because it would be a good case in court. Proc voted against based on DES. He said it would be up to the Building Inspector to see to that. Randy voted against. Hank voted in favor of a rehearing based on the Supreme Court finding. The result was 3-2 to deny the rehearing petition.

Randy then made a motion to affirmatively deny the request. Proc seconded. Kevin, Proc and Randy voted in favor of denying the request. Karen and Hank voted against denying the request. Hank announced that the vote affirmatively denied the rehearing request 3-2.

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SUMNER KALMAN/PATRICK DALLEVA 18/157

The request was for a Special Exception to permit six rental contractors' offices at 9 Commerce Park Drive in the C-1 Zone. The property is owned by Sumner Kalman with a sale pending to Patrick Dalleva. Jaye rejoined the board as a full voting member. The applicants were represented by Jim Lavelle. He gave a history of the lot which abuts Ram Printing. The rest of the neighboring property belongs to Hannaford's. The request was brought forward by Code Enforcement Officer, Kris Emerson, because this use is not specifically listed in the C-1 Zone. Jim said the zone allows gas stations, doctors' offices, etc. The purpose of the request is to create a building for shops and offices for contractors. He said there might be two people there during the day with low activity. He said it is not a heavily travelled road. He said there is one section of wetlands in the front of the lot. Jim said this is just before the board to allow the use in C-1. It will still need to go before the Planning Board.

The units will be rentals for contractors to pick up materials and head off to work. Karen asked if there would be any hazardous waste. The answer was No. Patrick said there would be no automotive use – only electricians, painters, etc. Hank asked if the board could stipulate that. Patrick said he doesn't want automotive activity in his building. Jim said the Fire Department would be looking at it. He said it is a good use for the lot. He said it would be a home office for those people who work elsewhere. Patrick asked if spray painting would be okay. Jim said gas stations are allowed in the zone. Hank asked if the Fire Department would be checking with every new tenant. There were no comments from abutters.

THE VOTE – Randy made a motion to permit a building, as shown on the plan, with the conditions it has periodic inspections by the CEO and Fire Department with every new tenant. Proc seconded and the vote was unanimous to grant the request.

OTHER BUSINESS – The **minutes** of the October hearing were accepted with Randy abstaining. **Library Forum** – Hank read a letter from the library inviting board and committee members to take part in a Civic Meet & Greet January 20, 2024 from 11 a.m. to 1 p.m. Karen volunteered to represent the board. **The meeting was adjourned at 8:15 p.m.** Respectfully submitted