

# ZONING BOARD OF ADJUSTMENT

11 Main Street, Hampstead, New Hampshire 03841-2033

## DRAFT May 1, 2024 Minutes

A meeting of the Zoning Board of Adjustment was held on Wednesday, May 1, 2024, at the Hampstead Town Hall, 11 Main Street, Hampstead, NH. This meeting was broadcast live on HCTV 16.

**PRESENT:** Randy Clark (Chairman), Proc Wentworth, Karen Hanides, Jaye Dimando, Kevin Hastings, alternate Rick McQuesten, and Chief Building Official, Kris Emerson.

Chairman Clark informed the public that there would be three applications discussed at this evening's public hearing. Chairman Clark introduced the board members present.

### 1. Map 16 Lot 071 aka 42 Golden Meadow Road, Special Exception

Larry and Mikella Eichen, property owners, were present to request a special exception in residential zone A for an in-ground pool. Eichen commented that they have been working with Ernhardt Landscape on the project as well as other landscaping on the property.

Chairman Clark commented that the lot to the left of the applicant is Town owned conservation land, the town would be the only one impacted by the reduced setback. Clark commented that the conservation land is in a natural state.

Eichen stated they are improving the property and adding landscaping. The pool will not be used for commercial purposes, they understand the hours of use, there will be proper fencing in place.

Clark commented that the property owner received a letter from Kris Emerson informing them that a Special Exception was needed for the setback. Hanides asked where the water goes when they drain the pool each year. Eichen stated the water naturally drains towards the front yard, there is grass in the area it will drain.

Chairman Clark asked the board members if they had further questions and there were none. Chairman Clark asked Emerson if he had any comments and there were none.

Chairman Clark asked for public comment.

Steve Poggi – 105 Rolling Hill Road – stated he questioned whether the pool would affect his property since they abut in the rear, based on the discussion it will have no impact on his property and he has no issue. Clark commented from the pool to the side lot line will be 15-feet.

Chairman Clark stated the requirements of a Special Exception are to meet the spirit and intent of the ordinance as well as no diminution of surrounding property values.

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**MOTION:** Hanides made a motion to approve for Lawrence & Mikella Eichen a Special Exception as provided in Article IV Section 3:2 E of the zoning ordinance and asks that the terms be waived to permit an in-ground pool and allow a 15-foot side setback where 30-feet is required for property located at 42 Golden Meadow Road, Map 16 Parcel 071 in Residential Zone A.

**SECOND:** Dimando

**VOTE:** 5-0

## **Findings of Fact:**

- Not detrimental to property.
- They are quiet neighbors.
- Fencing to be installed.
- Water would be drained off to the front of the house.
- Drainage from pool will be kept on property.
- One abutter asked about location of pool and had no issue.
- It meets the spirit and intent of the ordinance.
- It does not diminish surrounding property values.
- No impact on neighbors.
- Town is an abutter.
- Located 15 feet from town conservation land.

Chairman Clark announced that there is a 30-day appeal period.

## **2. Map 12 Lot 005 aka 152 Emerson Ave, Special Exception**

Gail Witham, property owner, was present to request a Special Exception to permit a cargo trailer on her property. Witham stated her property had a major flood during the pandemic, the insurance company was not cooperative, the house was gutted to the studs. Witham stated this started in 2016 when her mom came to live with her, during that time she had an addition built for her mom, her mom had a large amount of goods, her mother pleaded with her to take her things and thus the cargo trailer was placed in 2016. The cargo trailer was on site for 5 years without complaint. Three years later her mom passed and upon her demise Witham inherited more antique pieces. Witham stated she was caring and respectful of her mom's things. Witham added she works full-time approaching her 80's.

In 2019 Witham came home and found water pouring out her front door, there were inches of water in the basement and the first floor was soaked. Witham stated she shut off the water and called the insurance company and the water company. A pipe under the kitchen sink had broken, the insurance company stated men would come and clean out the water, etc.

Witham stated she could not stay in the house due to the risk of mold; she did not live in her house for 2 years. Witham stated folks were not available to do the work or

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materials were not available. On 9/30/2019 an emergency team worked to remove water, the team began to take items out of the house and placed on tarps in the backyard. There was no inventory taken and the clean out crew were paid over \$26K for their work.

Witham stated she spent over \$80K up front on repairs, etc. Witham stated she salvaged some of her rugs. Witham stated the insurance adjuster was not responsive. Witham stated she hired a local builder to do the work, she stated she could not start work until the insurance company gave the ok, she had to wait months. She was under the impression the insurance company would replace home to as-built conditions.

Witham stated the electric had to be brought up to code. The house was torn down to the studs, there were new kitchen appliances, cabinets, flooring, etc. Things were delayed since she could not find a dumpster for the property. Witham stated the insurance company ordered pods to be placed in the front yard and driveway. Witham stated her neighbors were not happy. Witham stated she requested an extension from the town as nothing was moving during the pandemic.

Witham stated the insurance company delayed the process and the pandemic was in full bloom. Witham stated she had over \$86K of loss, the insurance company discounted the payment to \$25K leaving her with out-of-pocket costs of more than \$50K. Witham commented she doesn't know how people front the cost for such things.

Chairman Clark commented that the town allowed Witham to have the trailer for many years and then the town sued you for not moving the trailer. Witham commented that the town sued her for \$13K as she could not comply within the time frame, she cannot make promises of when things can happen.

Witham stated it is not her intent on being truant or violating laws. Witham stated she was surprised the town was complaining about this pod and feels the backyard pod was grandfathered.

Chairman Clark commented that the town attorney sent Witham a letter dated 3/18/2024 regarding the current violation. Witham stated that off-site storage is a huge cost. Chairman Clark stated he is very sorry for her experience and her loss. The question is where do we go from here, Clark asked if she has considered moving material to off-site storage. Witham stated it costs approximately \$400 a month.

Witham stated she has been in town many years and would appreciate any consideration or relief the board could offer. Witham added her neighbor wasn't bothered by the pods.

Clark asked the board members if they had comments/questions.

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Hanides asked if this is the same trailer as before and it was a new trailer. Dimando asked how long the pod was in the yard and Witham stated since 2016. Dimando asked if the 2016 stuff is still in that pod and the answer was yes, her moms' stuff. Witham stated in the past three years she has been storing things off-site.

Witham added that she has sold a few things, still has other things, she added work still needs to be done in the house. Witham stated she expect by September 1, 2024 the pod will be gone. Witham stated she will give away some stuff, donate some stuff, and sell other items. Witham stated that the three pods out front have been removed and the pod in the back is replacing the original pod.

Chairman Clark asked what Witham will do between now and September 1 to get rid of stuff. Witham stated she is looking for places she can sell things. McQuesten commented what is her plan if she still has all the stuff as of September 1, 2024.

Witham stated she would like to stay in her house and hopes the town can be considerate.

Chairman Clark asked for public comment.

Dan Maurice – 145 Emerson Ave – lives across the street from Witham and stated they have always got along good. Witham removed all the pods and now another pod showed up in January 2024. Maurice stated he has heard this story before as Gail is a collector. Maurice is concerned if allowed to have a pod it will be there forever and more pods would start popping up, this would set a precedent. Maurice feels the matter won't go away, if removed by September 1<sup>st</sup>, no problem, but he doesn't think it will happen.

Twila Wain – 153 Emerson Ave – is concerned that the last time it was a long period of time, they could not sell their home since there were pods there for several years. Wain stated the pod won't be gone by September 1 or in 5 years. Wain stated there were issues with rodents as a result of the outside storage and she doesn't want history to repeat itself.

Dimando asked the size of the trailer in question and the response was 40 feet by 10 feet.

Jodi Richards – 13 West Road – stated she has only known Gail for three months as a co-worker. Richards stated in all the years she has driven by Witham's house she never noticed the pods in her yard. Richards stated she did notice the pod in the backyard once made aware of it.

Dru Farrell – 324 Wash Pond Road – Witham's daughter – knows her mom has had a hard time. She added her mom and family members all work full-time. Farrell stated September 1 will be 4 months and asked if they would be willing to consider November 1 as an alternative.

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Chairman Clark commented that the zoning states a cargo trailer is allowed for 3 weeks and September 1 is months away. Farrell commented that she realizes the town has been patient. Clark stated the pod needs to move.

Jodi Richards – 13 West Road – feels that there are properties in town with pods or things in the yard that are hard to look at on a daily basis and feels that Witham is not the only one with this burden.

Chairman Clark commented that there is lots of history here, Witham pledged to remove the pod and it is still there. Clark asked the board members for comment.

Hanides asked if the neighbors were ok with September 1 would that work. Dimando stated that she is not ok with September 1, it has been 8 years since the first trailer was placed on property and is still there. Dimando commented that she loves collecting stuff, she understands, but you cannot encroach on your neighbors. Dimando stated as a town board they need to consider how the neighbors are affected. The board deals with what is in front of them, usually as a result of a complaint. Dimando wants the family to step up and clean out the trailer within the next 75-days.

Hastings commented that this started 8 years ago and is not new, folks have known for years that stuff needs to leave. Hastings stated he understands the neighbor's concern, 3 pods left, she was fined and another pod returned. Hastings commented they need to be looking for a solution.

**MOTION: Dimando made a motion to approve a Special Exception for Gail Witham as provided in Article III Section 2:2 of the zoning ordinance and waives the terms to permit a cargo trailer for property located at 152 Emerson Ave, Map 12 Parcel 005 in the Residential Zone A. The cargo trailer is not to remain past 7/15/2024 (75 days).**

**SECOND: Hastings**

**VOTE: 4-0-1 (Wentworth abstained)**

## **Findings of Fact:**

- Cargo trailer can stay until 7/15/2024.
- Long history of problems necessitating trailer:
  - 2016 home flooded by water leak; all furniture must be abandoned.
  - 2019 mother dies; inside of home cleaned out.
  - 2021 clean-up; insurance company not paying.
- Town has been lenient for many years.
- Town fined Witham \$13K for keeping trailers too long.
- Owner still keeping trailer despite legal notice dated 3/18/2024.
- Suggestion of must be out by 9/1/2024 or 75 days.
- 75 day limit agreed upon.



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- New trailer in question.
  - Problem with trailer has been ongoing for 8 years.
  - House and property sustained flood damage.
  - Storage container on property longer than allowed by town ordinance.
  - Town has a court order; owner in direct violation of order.
  - All trailers left property and one trailer returned January 2024.
  - \$86K loss to repair.

Chairman Clark commented that the cargo trailer needs to be removed, the family has been notified, the abutters are notified. Chairman Clark announced that there is a 30-day appeal period.

### 3. Map 6 Lot 036 aka 5 Gigante Drive, Variance Request

Kurt Meisner, PLS, Meisner Brem Corporation are the engineers for the project representing the Green Machine Company. The building at 5 Gigante Drive is in the commercial C2 zone and they are looking for an addition to the rear of the building. They will be extending the roofline over an existing concrete pad at the rear of the building, looking to put steel walls around the pad. Meisner stated they are currently storing parts on pads or other areas throughout the site, they want to move the materials inside.

Chairman Clark commented that the existing building is 6,900 square feet and asked what the lot coverage percentage was currently. Meisner stated it equates to 15.3% lot coverage. Clark commented they can go up to 20% coverage with a special exception.

Meisner commented that the reason they are going out 34 feet is to accommodate a conveyor belt with a picker. Meisner commented that they want to keep the building under 10,000 square feet. Clark commented that the building will extend into the side setback and rear setback.

Emerson commented that the building was constructed when the setback was 15 feet. Chairman Clark commented that if the lot coverage area being impacted was up to the 20% and if the setback is no worse as before the board usually approves. Emerson commented that there is a recorded site plan with the registry approved by the planning board with the 15-foot setbacks.

Hanides commented that the back lot line of 30 feet will be changed to 20 feet as proposed.

Meisner stated this is commercial property and the materials are left outside, they have a desire to move them inside. Meisner stated they are extending the roof out and adding a steel enclosure.

Hanides asked if all stuff out back will go inside and Meisner responded yes. Meisner explained the process of taking materials apart to manufacture and trying to streamline the process.

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267  
268 Chairman Clark asked Meisner to review the variance criteria.  
269

270 Meisner responded, there will be no diminution of surrounding property values, the new  
271 addition is being built behind the existing structure and will allow items currently stored  
272 outside to be brought inside under cover. The use is allowed in the district and will have  
273 no adverse effect on the health and safety of the community. The addition will be used  
274 for system parts. The proposal is not contrary to the spirit and intent of the ordinance.  
275 There is sufficient space for infrastructure, parking and septic as well as open space.  
276

277 Denial of the variance would result in unnecessary hardship to the owner. The owner  
278 would be required to leave materials and parts outside exposed to the weather and view  
279 causing degradation of said materials. Special conditions of the property: the concrete  
280 pad already exists on site now. The rear of the site is not used other than for storage.  
281 This will allow items to be moved indoors and out of sight.  
282

283 Meiser continued, the benefit sought cannot be achieved by another method. There is  
284 plenty of room on this site for needed infrastructure and the increase doesn't affect the  
285 impervious area since the concrete pad already exists. Substantial justice would be  
286 done as the addition will allow the owners the fullest use of the property. The concrete  
287 pad currently exists and will be covered by a steel building.  
288

289 Chairman Clark commented that the concrete pad extends into the setbacks. Meisner  
290 stated a concrete pad is not a structure. Clark stated the pad is there, adding siding and  
291 roofing is encroaching into the setback.  
292

293 Dimando had a concern about the corner and asked if the expansion could be moved to  
294 the front. Meisner stated the septic and loading dock are located in the front of the  
295 building.  
296

297 Chairman Clark commented that the ends of the building get into setbacks. Meisner  
298 referenced Chief Building Official, Kris Emerson, and indicated that they are maintaining  
299 the 15-foot setback from the original site plan. Soucy stated she recalled the  
300 conversation regarding lot coverage percent and not building setbacks. Emerson stated  
301 he doesn't specifically recall and that people make mistakes. Soucy stated they had  
302 discussed the matter earlier today questioning is the site was grandfathered as existing  
303 non-conforming. Emerson stated there is probably case law on the matter. Emerson  
304 stated that pulling the corner back would meet the 20% lot coverage and appease the  
305 neighbor.  
306

307 Hanides asked if more parking is needed as a result of the expansion. Meisner stated  
308 that the use is manufacturing and parking is based on square footage. Emerson  
309 commented that parking would be reviewed as part of the site plan submitted to the  
310 Planning Board.  
311

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Hastings asked for clarification on coverage over the concrete pad.

Meisner commented that the applicant is trying to stay on the property, but they need more space, they currently cannot find another spot and have realtors looking for space. Meisner stated they need the space to be able to pivot their machines inside the building.

Chairman Clark commented that the current proposal is for a 34x91 foot structure, if scaled down to 34x62 feet they would be under the 20% lot coverage. Meisner stated they are proposing a 34x91 foot expansion.

Chairman Clark asked for public comment.

Sue and Donald Zakian – 257 Stage Road – stated they are abutters to the project on her side property line. Zakian had a question about the plot plan and asked if the property was resurveyed. Meisner stated the property was surveyed previously and he did not redo for this plan. Zakian asked the location of the well and septic, she has a problem with the accuracy of the plan. Zakian stated she was not sure where her property line was and had her property surveyed, it appears as though the edge of the concrete pad is inches from her property line per the submitted plan. Zakian had pictures showing the edge of the concrete pad as being on her property. Zakian doesn't feel the plan is accurate.

Zakian read the C2 Commercial Zoning regarding accessory buildings and questioned if the existing steel containers meet the required setbacks. Zakian stated when the parcels along Gigante Drive were developed the land was levelled and septic installed, Gigante Drive was raised in elevation and as a result she now has water on her property.

Zakian the existing area handles snow and rain run off using the 30 foot setback, she feels the run off by the new proposed roof the storm water will be less likely to absorb into the soil, water is sitting longer and longer and she is concerned about her septic system.

Zakian continued, since Green has operated a business in the C2 Zone for 30 years, on a side street, additional space for the business should adhere to zoning setbacks. Zakian feels the interest is best served by following the ordinance, expand as long as the setbacks are observed.

Zakian spoke to unnecessary hardship and commented that the business has operated for over 30 years, they could and should plan for additions to comply with the zoning. Zakian stated there are no special conditions, again they have been working on the property for 30 years. Zakian doesn't feel it is an asset due to the water situation. Zakian feels a resurvey of the property would be indicated.



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357 Hanides asked Zakian to point out the location of her septic.

358  
359 Meisner had a copy of the approved site plan showing the loading docks and doors  
360 across the front of the building. Meisner also had a copy of the original subdivision plan  
361 showing the lot lines which match the current proposal. Meisner stated he had asked  
362 Emerson the question about a request for a variance for the building setbacks. Emerson  
363 stated it was not clear, it could go either way. Meisner stated he would like to table the  
364 discussion to determine if a variance is needed for the setback. Emerson commented  
365 the current setback is 30 feet and they are decreasing to 20 feet; need to address  
366 variance for the setback.

367  
368 Hanides had a question regarding the survey. Clark stated the surveyors need to speak  
369 to each other, it is not a board matter.

370  
371 Chairman Clark stated he understands why Meisner wants to continue the application.  
372 Clark commented that if that building was shortened it could be under 20% lot coverage,  
373 this is a different use for the ZBA. Meisner stated his client wants as much coverage as  
374 possible, he will talk to his client. Chairman Clark commented that several items for the  
375 variance criteria are not in the affirmative.

376  
377 Dimando suggested a continuance. Meisner asked to continue the application to the  
378 July meeting which is scheduled for 7/3/2024, he amended his request to continue to  
379 the August meeting.

380  
381 **MOTION: Hanides made a motion to continue the request of JFRP Realty, John &**  
382 **Janice Green to the August 7, 2024 meeting.**

383 **SECOND: Dimando**

384 **VOTE: 5-0**

385  
386 4. Review/Approve April 3, 2024 Minutes

387 **MOTION: Dimando made a motion to accept the 4/3/2024 minutes as presented.**

388 **SECOND: Clark**

389 **VOTE: 5-0**

390  
391 Hanides asked why all applications don't contain a plot plan with accurate dimensions.  
392 Clark stated the board can always suggest a better plan. Emerson commented that  
393 sometimes there are plans on file and other times not. Emerson stated that if the board  
394 is uncomfortable with what is in front of them they can continue the application and ask  
395 for more information.

396  
397 5. Adjourn

398 **MOTION: Dimando made a motion to adjourn at 8:50 P.M.**

399 **SECOND: Hanides**

400 **VOTE: 5-0**

401 Minutes prepared by Debbie Soucy, Secretary