



FINAL
TOWN OF GRANTHAM NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
February 23, 2023

Chair Thomas Shemanske called the meeting to order at 7:00 p.m., February 23, 2023. The meeting was offered at the Town Offices and electronically.

Roll Call

Present: Chair Thomas Shemanske, Susan Terwilliger (remotely), C. Peter James (remotely), Paula Bresnick, Alternate Paul Nicolai, Alternate Richard Covill, and Board Clerk Emily Owens

Chair Shemanske started the meeting by taking a roll call. Each board member and alternate introduced themselves and explained that they had their packets and everyone but Board Member James and Alternate Covill had visited the sites. Chair Shemanske appointed Alternate Board Member Paul Nicolai to a full voting board member since V.C. Tod Lloyd was absent.

Approval of Minutes

Chair Shemanske asked the Board if there were any additional corrections for the minutes from December 15, 2022. There being none, Board Member Paula Bresnick made a motion to approve the minutes as printed, seconded by Board Member Paul Nicolai. ***Unanimously Approved by roll call***

New Business

Application #02-2023-01 for a Special Exception from Article IX

Application for a Special Exception: #02-2023-01; Eleanor E. Walla; 201 Walker Road; Tax Map Number 220 Lot Number 020

Chair Shemanske introduced the application as a request for a special exception from Article IX to operate a home business providing cookie decorating classes for 8 students to be held no more than one day per week. Chair Shemanske asked if there were any abutters online or in the room and Board Clerk Owens responded no. Additionally, Board Clerk Owens had not heard any comments from the public prior to the meeting.

Chair Shemanske explained the process for the public hearing, first the Board would ask questions and then the public. After everyone has had a chance to be heard, Chair Shemanske would close the public portion and the Board would begin deliberating the five questions.

Chair Shemanske introduced the applicant Eleanor (Missy) Walla and asked her to explain the application. Ms. Walla explained that she wanted to teach a cookie decorating class to eight students in her basement one day a week. Onsite parking would not be an issue since the residence has two driveways.

Chair Shemanske asked if there were any questions from the board. Board Members Bresnick and Nicolai did not have any questions. Chair Shemanske asked if Ms. Walla would be supplying the cookies and she stated that all the materials would be made onsite prior to the arrival of the students. She clarified that the class is specifically just for decorating the cookies not baking or cooking classes. Chair Shemanske thought that parking and access to the basement during the winter would be difficult. Ms. Walla explained that most likely the classes would not be offered in the winter months because of those reasons. Ms. Walla explained there will be no signage indicating the existence of the home business. Chair Shemanske explained the 13 conditions imposed on a home business as specified in Article IX of the Grantham Zoning Ordinance which the applicant would be required to adhere to. Specifically, the conditions that on street parking is not permitted, direct wholesale or retail sales of merchandise, supplies or products are not permitted, and any sign shall conform to Article XIV of the Grantham Zoning Ordinance. Ms. Walla understood the conditions and reiterated that there would not be any signage.

Board Member Nicolai requested that the condition of no parking on the street be added as a condition of approval. Chair Shemanske thought that the number of classes and number of students should be limited to what was indicated on the application. Board Member Nicolai stated that he did not believe that the public interest required limiting those elements in this instance.

Chair Shemanske asked if there were any further questions from the board. Hearing none, he entertained a motion to close the public portion of the application. Board Member Paula Bresnick moved the motion, seconded by Board Member Paul Nicolai. ***Unanimously Approved by roll call***

Chair Shemanske began reading the Special Exception Application questions; the vote is recorded as follows (support, against, abstention), and in the event of a tie the question will fail to pass. Chair Shemanske explained that he would read the question, entertain discussion from the Board, and then take a roll call vote on each question. Lastly, the Board will make a motion that includes any conditions that the Board may impose if the application is approved.

1) The use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation or undue violation of the character and kind of the neighborhood. Chair Shemanske asked if the board members needed to discuss the question. Board Member Nicolai stated that the activity would be occurring in the house with no modification to the house so he did not see any issues. Chair Shemanske asked if there was any further need for discussions; there were not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member

Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. (5, 0, 0) ***Unanimously Approved by roll call***

2) The use will not be injurious, noxious, or offensive, thus, detrimental to the neighborhood. Chair Shemanske asked if the board members needed to discuss the question; they did not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. (5, 0, 0) ***Unanimously Approved by roll call***

3) The use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthy emissions or waste disposal, or similar adverse causes or conditions. Chair Shemanske asked if the board members needed to discuss the question. Board Member Nicolai stated that the activities would not cause these issues if there was no on street parking. Chair Shemanske asked if there was any further need for discussions; there was not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. (5, 0, 0) ***Unanimously Approved by roll call***

4) The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the proposed use, and the location of the site with respect to the existing or future street giving access to it, shall be such that it will be in harmony with the neighborhood. The location, nature, and height of building, walls, and fences will not discourage the appropriate development and use of the adjacent land and buildings and impair the value thereof. Chair Shemanske asked if the board members needed to discuss the question. Board Member Nicolai reiterated that the activities would not cause these issues if there was no on street parking and the other board members agreed. Chair Shemanske asked if there was any further need for discussions; there were not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. (5, 0, 0) ***Unanimously Approved by roll call***

5) Operations in connection with such a use shall not be more objectionable to nearby properties by reason of noise, fumes, odor, or vibration, than would be the operation of any permitted uses in this District, which are not subject to Special Exception procedures. Chair Shemanske asked if the board members needed to discuss the question; they did not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. (5, 0, 0) ***Unanimously Approved by roll call***

All criteria were unanimously approved by all members in favor. The Zoning Board members discussed forming the motion to approve the application.

There was a condition added to this application.

1. No on street parking

Board Member Nicolai made the motion that the ZBA approves the application for a special exception for Ms. Walla to operate a home business teaching cookie decorating with the condition that there is no on street parking. The motion was seconded by Board Member Paula Bresnick and there was no discussion from the board. ***Unanimously Approved by roll call***

Application #02-2023-02 for a Variance from Article XI-C

Application for a Variance: #02-2023-02; Applicants Benjamin and Penny Mellish; Owners Patrick and Kaaren Eastman; 25 Island View; Tax Map Number 215 Lot Number 060-025

Chair Shemanske introduced the application as a request for a variance from Article XI-C to enclose an existing structure, in the Shoreland and River Overlay District, within the 250-foot-high water mark of Eastman Pond. Chair Shemanske asked if there were any abutters online or in the room and Board Clerk Owens responded no. Additionally, Board Clerk Owens had not heard any comments from the public prior to the meeting.

Chair Shemanske explained the process for the public hearing, first the Board would ask questions and then the public. After everyone has had a chance to be heard, Chair Shemanske would close the public portion and the Board would begin deliberating the five questions.

Chair Shemanske introduced the applicants Benjamin and Penny Mellish and asked them to explain the application. Mr. Mellish explained that they wanted a variance from the 250-foot-high water mark to enclose an existing overhang to provide a place for the owners to store and secure outdoor items. Mr. Mellish explained that the process has been completed before and used the next-door neighbor's residence as a reference. Chair Shemanske thought the pictures and explanation were very clear.

Board Member Nicolai clarified that the door would go at the end of the opening not at the outside of the building and Mr. Mellish agreed. The board reiterated their understanding that the project would not add to the footprint of the building or impact the surrounding area. Additionally, DES approval is not required for these reasons.

Chair Shemanske asked if there were any further questions from the board. Hearing none, he entertained a motion to close the public portion of the application. Board Member Paula Bresnick moved the motion, seconded by Board Member Paul Nicolai. ***Unanimously Approved by roll call***

Chair Shemanske reminded the board and public what the variance was requested for and began reading the Variance Application; the vote is recorded as follows (support, against, abstention), and in the event of a tie the question will fail to pass. Chair Shemanske explained that he would read the question, entertain discussion from the board, and then take the vote on each question.

Chair Shemanske asked if any discussion was needed by the board; there being none, he moved on to reading the questions.

1) The variance will not be contrary to the public interest. Chair Shemanske asked if the board members needed to discuss the question and Board Member Nicolai reiterated that the modification will not harm the area or change the footprint. Chair Shemanske asked if there was any further need for discussions; there were not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. **(5, 0, 0) Unanimously Approved by roll call**

2) The Spirit of the ordinance is observed. Chair Shemanske asked if the board members needed to discuss the question and Board Member Nicolai reiterated that the modification will not harm the area or change the footprint. Chair Shemanske asked if there was any further need for discussions; there were not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. **(5, 0, 0) Unanimously Approved by roll call**

3) Substantial justice is done. Chair Shemanske reminded the Board that this question looks at the benefit to the applicant not outweighing the potential harm to the general public. Chair Shemanske asked if the board members needed to discuss the question and Board Member Nicolai reiterated that the modification will not change the footprint. Chair Shemanske asked if there was any further need for discussions; there were not, so he continued with a roll call vote. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. **(5, 0, 0) Unanimously Approved by roll call**

4) The values of the surrounding properties are not diminished. Chair Shemanske asked if there was any need for discussion regarding the question and all Board Members stated no. Board Member Paula Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. **(5, 0, 0) Unanimously Approved by roll call**

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Chair Shemanske looked at the hardship of this property by its location to Eastman Pond and how a home not located on the Eastman Pond would not require a variance. Chair Shemanske asked for discussion regarding the question and expressed his opinion that the Zoning Ordinance was protecting the waterway, but that literal enforcement of the Zoning Ordinance would be a hardship. Chair Shemanske asked if there was any need for further discussion regarding the question; there being none, he continued with a roll call vote. Board Member Paula

Bresnick, Board Member Susan Terwilliger, Board Member C. Peter James, Board Member Paul Nicolai, and Chair Thomas Shemanske voted in favor. **(5, 0, 0) Unanimously Approved by roll call**

Board Member Paul Nicolai made the motion that the ZBA approve the application for a variance for the enclosing of an existing front overhang at 25 Island View within the 250 feet high water mark setback requirement in the Shoreland and River Overlay District and no further conditions be imposed. The motion was seconded by Board Member Susan Terwilliger and there was no discussion from the Board. **Unanimously Approved by roll call**

Chair Shemanske told the applicants that the application had been approved and they should receive a letter within a week.

Brief Discussion of RSA 676:3 I (written findings of facts)

At a webinar offered by the New Hampshire OSI Planning Division, changes in the law which apply to land use boards and which were implemented in the last legislative session were reviewed. Receiving significant emphasis was the change to RSA 676:3, I which requires specific written findings of fact to accompany a Notice of Decision. The board has been accommodating this law by including such details in our meeting minutes, however the emphasis that these findings of fact be specifically included with the written Notice of Decision means we may need a slight change in our procedures.

Chair Shemanske would like to make the smallest change possible to achieve compliance, so his suggestion for discussion is the following: The board continue to conduct deliberations as they have with a full discussion of each of the standard 5 points, suggestions of additional conditions or constraints, culminating in a detailed motion to approve or deny the application. As a part of that discussion, the board will highlight those discussion points which we feel should be a part of our written findings of fact, and then Board Clerk Owens and Chair Shemanske will be empowered to add such comments to the formal Notice of Decision. In the event the board feel the need to enlist the assistance of Town Counsel, decoupling our decision from the generation of the written findings of fact will not negatively impact the operations of this board. The training also reiterated the fact that alternates should not participate in deliberations which aligns with the ZBA's Rules of Procedure.

Board Member Nicolai thought that adding discussion points to the Notice of Decision would make the document lengthy and potentially miss a key point discussed in the minutes. He thought that some reference to the minutes in the document should be sufficient to cover the findings of facts.

Old Business

The board discussed revising the Grantham Zoning Ordinance sections regarding nonconforming structures, affordable housing, tiny houses, and updating the Shoreland and River Overlay District. Board Member Nicolai felt that it was not the role of the ZBA to work on policy dealing with issues surrounding affordable housing or tiny houses. He is interested in clarifying ambiguity

in the Grantham Zoning Ordinance regarding nonconforming structures, nonconforming uses, and the Shoreland and River Overlay District. Selectman Connie Jones explained the Board of Selectmen and Planning Board are looking into the issue of affordable housing.

The final decision of the board is to schedule a work session and Chair Shemanske will draft some language to revise nonconforming uses, nonconforming structures, and updating the Shoreland and River Overlay District. Board Member Bresnick requested that Chair Shemanske provide a reason on why the current ordinances needs to be revised. Chair Shemanske stated that he would provide a draft to the board for a work session.

Adjournment

There being no further business, a motion was made by Board Member Paula Bresnick and seconded by Board Member Paul Nicolai to adjourn the meeting at 7:58 p.m. The next meeting of the ZBA will be held on March 23, 2023 at 7:00 p.m. if the board receives an application.

Respectfully Submitted,

Emily Owens
ZBA Clerk