



**Zoning Board of Adjustment
Town of Eaton
Evans Memorial Building
Eaton, NH 03832
603-447-2840**

January 30, 2023

The Zoning Board of Adjustment met on Monday, January 30, 2023 at the Town Hall. Present were Chairman Steve Larson, John Border, Stan Dudrick and Alternates Pam Burns and Greg Grinnell. The meeting was called to order at 6:03 pm. Chairman Larson appointed Alternates Pam Burns and Greg Grinnell to act as regular members for this meeting.

Review of Minutes

Pam Burns made a motion, seconded by John Border, to waive the reading of the Minutes and to adopt the Minutes of December 19, 2022 and January 23, 2023 as written. Motion unanimously carried.

Atty. Autumn Kish requested that the Variance application be heard first. There being no objections, the order of Public Hearings was revised.

Chairman Larson read the Public Notice.

Case # 202301 – Steve & Elizabeth Farrell – Variance

Chairman Larson opened the Public Hearing on an application from Steve & Elizabeth Farrell for a Variance to Article V Section A.2(e) of the Zoning Ordinance to allow a “short term rental” at 37 Woodland Acres Road (R05-014).

All notices required by Statute have been posted and abutters notified. The applicants submitted a letter authorizing Atty. Autumn Kish to act on their behalf. There were no conflicts of interest. No correspondence has been received. Atty. Kish submitted an Abutter Assent from Andrew Mahoney to be added to the application packet.

Chairman Larson gave an overview of the Public Hearing procedures and stated that an decision of the ZBA can be appealed as set forth in RSA 677.

Atty. Kish gave an overview of the Farrells and noted that they have been renting out “Tranquility Lodge” since 2009. Atty. Kish noted that the property owners received a letter from the Board of Selectmen in August 2022 and wanted to make the use of the property right, but their 2-acre lot does not meet the required size for transient lodging. Atty. Kish stated that the rental of this property does not exceed 42 days annually.

Atty. Kish addressed the five criteria required to obtain a Variance. Atty. Kish stated that the use is not contrary to public interest as there have been no complaints since 2009 and that the Board recently approved a Special Exception for another short-term rental. Atty. Kish explained the occupancy limits and gave an overview of the rental agreement. John Border questioned the occupancy limits and Atty. Kish noted that it is 6 to 10 people in 4 bedrooms. Greg Grinnell noted that the rental advertisement states 5 bedrooms and that the septic approval is for 4 bedrooms. Steve Farrell noted that the error has been corrected and that 6 to 8 people is the normal occupancy.

Atty. Kish stated that the spirit of the Ordinance is met and that it meets all the conditions required for a Special Exception. Atty. Kish explained that the property is in a dense forest location and that traffic and parking are not an issue. Atty. Kish noted that there are abutting properties with no residential structures and that this use will not alter the character of the area.

Atty. Kish stated that substantial justice would be served and that this property is used as a rental approximately 12 percent of the year with an average stay of 3 to 7 days. Atty. Kish stated that the rental helps to alleviate expenses of the property. Atty. Kish stated that the property is located in a private community and that it has no adverse impact on the Town.

Atty. Kish stated that the value of surrounding properties will not be diminished as the forest buffers the property. Atty. Kish stated that most abutters have signed a deed restriction release to permit this type of use.

Atty. Kish explained that the property is unique and limited in its expansion ability due to the topography. Atty. Kish stated that when the driveway was installed many years ago, the property owner had to secure a wetlands permit from NHDES to install a culvert. Atty. Kish noted that there are steep slopes and an intermittent stream which limits the use of this property. Chairman Larson noted that the Board understands that it was difficult to develop the property but that hardship in this case must be for the proposed use and peculiar to this lot. Chairman Larson stated that the lot is less than half of the required size and noted that the Town voters decided on this restriction. Atty. Kish stated that there is no place for future development so the property owners is not able to expand to get the 4 acres. Atty. Kish stated that the acreage requirement is keep people away from each other but that there are other natural qualities that protect this property. Atty. Kish stated that there are no adverse effects because of the location of this property. Atty. Kish noted that the size of the parcel is the only limitation to qualifying for the proposed use. Atty. Kish stated that she believes the acreage requirement is to keep this use from downtown. Greg Grinnell noted that approving this application would render this section of the Ordinance null and void. Atty. Kish stated that each application is different and that approving this Variance would not set a precedence. Atty. Kish noted that the use is permitted and that the property size cannot be increase to meet the requirement. Steve Farrell stated that there was no access to his property because of the stream, which makes it unique. Steve Farrell stated that there is an expectation of economic use to be able to keep the property as a legacy for his children. Steve Farrell noted that there is another property that rents in the neighborhood.

Chairman Larson opened the Public Hearing for public comment. Judy Wilson questioned access to the lake. Steve Farrell stated there are canoes and kayaks on a rack at the water.

John Border stated that the Ordinance requires 4 acres plus 2000 square feet for each bedroom to qualify for transient occupancy. Steve Farrell stated that this topic has become controversial over the past five years and does not believe that the 4 acre requirement belongs with this use. Chairman Larson stated that the ZBA does not write the Ordinance but must enforce what the Town adopts. Steve Farrell stated that he has never rented to a transient lodger as that is a person who does not have a permanent residential identity. Chairman Larson stated that the Town defines transient as anything under 30 days.

Phil Trapasso noted that the other property rented in the community is a long-term rental property. Phil Trapasso stated that he is concerned about safety and fire because there are fireworks used on this property by renters quite frequently. Steve Farrell noted that the renters have instructions on who to contract if there is an emergency.

There being no further comment, Chairman Larson closed the Public Hearing at 6:57 pm.

1. Granting the Variance would/would not be contrary to the public interest. John Border noted that public interest is based on the 4 acres and that waiving the requirement is not in the public interest. Pam Burns stated that the 4-acre requirement was adopted by the Town and that reducing it is not in the interest of the Town. Stan Dudrick and Greg Grinnell agreed. Chairman Larson noted that the use is not the issue, but approving the use on less than 4 acres is contrary to public interest.
2. The spirit of the Ordinance would/would not be observed. John Border noted that the Ordinance requires minimum lot sizes for particular uses and waiving that requirement is not in the spirit of the Ordinance. Pam Burns stated that the minimum lot size makes sure abutters are protected. Stan Dudrick, Greg Grinnell and Chairman Larson agreed that the Town has voted to require minimum lot sizes.
3. Granting the Variance would/would not do substantial justice. Stan Dudrick noted that the difference between the lot size and required size is too great. Chairman Larson agreed and noted that the lot is less than half of the required acreage. John Border and Pam Burns agreed.
4. The values of the surrounding properties would/would not be diminished. The Board agreed that values would not be diminished.
5. Unnecessary Hardship. The Board agreed that it is reasonable to deny this application because the required acreage is not met and there is nothing about the lot that is unique. The Board agreed that the use is not reasonable because the lot is less than half of the required size. The Board noted that there is no unnecessary hardship as the property is a residence and can be used as such.

Chairman Larson made a motion, that based on the above findings of fact, the Variance from Article V, Section 2.A(e) be granted. There being no second, Chairman Larson withdrew the motion.

Chairman Larson made a motion, that based on the above findings of fact, the Variance from Article V, Section 2.A(e) be denied. Motion seconded by John Border. Motion unanimously carried.

Chairman Larson stated that this decision can be appealed within 30 days as set forth in RSA 677.

Case # 202209 – Steve & Elizabeth Farrell – Appeal From Administrative Decision

At 7:21 pm Chairman Larson addressed the application for an Appeal From Administrative Decision. Atty. Kish stated that the applicant received a letter from the Board of Selectmen on August 16, 2022 and that the final letter from the Selectmen was September 20, 2022. It was noted that the application was dated November 9, 2022.

Chairman Larson read RSA 676:5 indicating that an Appeal must be filed according to the ZBA rules. Chairman Larson read Section 5 of the ZBA rules which states that appeals filed under RSA 676:5 shall be filed within 30 days. Chairman Larson noted that the application was filed 50 days from the last letter.

Chairman Larson made a motion, seconded by Pam Burns, that based on the application not meeting the 30-day requirement, the application for an Appeal From Administrative Decision be denied. Motion unanimously carried.

Chairman Larson stated that this decision can be appealed within 30 days as set forth in RSA 677.

Steve Larson made a motion, seconded by Pam Burns, to adjourn the meeting. Motion unanimously carried. The meeting was adjourned at 7:29 pm.

Respectfully submitted

Lianne M. Boelzner

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