

**Town of Boscawen NH
ZONING BOARD OF ADJUSTMENT
Boscawen Municipal Complex**

**MEETING MINUTES
Tuesday, November 22, 2022 at 7:00 PM**

Members Present: Chairman Ed Cherian, Dr. Scott Maltzie, Tracy Jo Bartlett, Roger Sanborn, Tama Tillman

Absent: Ann Dominguez

Others present: Kellee Jo Easler, Planning and Community Development Director, Kearsten O'Brien, Deputy Planning & Community Development Director, Kara Gallagher, Planning and Community Development Assistant, Rose Fife, Recording Secretary.

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- Call to Order by Chair at 7 pm
 - Roll Call by Recording Secretary
 - Designate member for Action Items by the Chair: Tama Tillman
 - Approval of draft minutes 10.25.22: A **motion** to approve the Minutes as amended was made by Bartlett, seconded by Sanborn and passed by a unanimous vote.

Old Business:

None.

New Business:

- **Public Hearing – Amend Rules of Procedure – Open public hearing at 7:01 pm.** Easler reported. Item #1 meetings of Rules and Procedures the time will be changed from 7:00 pm to 6:30 pm. The Rules of Procedures are 6 pages. Dr. Maltzie asked if they would be opening the public meeting for each applicant. Chair Cherian said that was correct. Chair Cherian noted that the rules and procedures defines a quorum as 3 members. If there are fewer than 5 members they need to offer the applicant an opportunity to continue their hearing until they have a full board. A **motion** to approve the rules of procedures as amended was made by Dr. Maltzie. Chair asked if there were members of the public that may want to speak. None were seen or heard. The public hearing was closed at 7:05 pm. A **motion** to approve the amended Rules of Procedures as stated was made by Dr. Maltzie, seconded by Tillman and passed by a unanimous vote.
- A request for a **Variance** seeking relief from Article **XXII Section 23.02 Provisions, Subsection (g) to build an ADU larger than allowed**, submitted and owned by **Ruth Ashby of 502 West River Road, Apt 120, Hooksett NH 03106**, with a property address of **154 North Main Street, Boscawen, NH 03303** on **Map 183D, Lot 16, Sublot B** located in a **COM zone**.

Testified: Ruth Ashby. Ms. Ashby explained that according to the Ordinance she cannot add on 50% of the primary structure space and not less than 350 s.f. The primary structure is 440 s.f. and 220 s.f. would be half that size which is less than the 350 s.f. the Ordinance allows. She's asking for a variance to build an ADU behind this building which is the old Marshall's Fire Arms building. Chair Cherian asked Easler about the size. Bartlett noted that she could add 50% of primary structure size or 750 s.f. Ashby explained that the building is 440 s.f. Chair Cherian asked if it was attached. Ms. Ashby explained it would be attached by an interior breezeway. She is going to rent the old gun shop as an air B&B potentially.

In favor or opposition: none seen or heard.

Tillman asked if the ADU was the old gun shop area. Ms. Ashby stated that the ADU would be an addition behind the old gun shop. She will live in the ADU as she has to live on the property. Bartlett asked if parking would be in the front. Ms. Ashby answered that was correct.

Chair Cherian asked if the application was complete. O'Brien answered that it was complete.

Regional Impact: A **motion** that the application has no regional impact was made by Dr. Maltzie, seconded by Bartlett and passed by a unanimous vote.

Bartlett asked how many bedrooms would be in each unit. The old gun shop has 1 bedroom and 1 bath. The ADU has 2 bedrooms and 1.5 bathrooms. Cherian asked if it was on town septic and water. She answered yes. Cherian asked if they each had their own kitchen. Ms. Ashby said they did.

Public hearing was closed at 7:12 pm.

DECISION: A **motion** to approve the request was made by Sanborn, seconded by Dr. Maltzie and passed by a unanimous vote.

- A request for **Rehearing of the ZBA's decision dated October 25, 2022 whereby the ZBA upheld the decision of the enforcement officer, determination letter dated 07.22.22 regarding a site plan application** submitted and owned by **Aldea Holdings LLC, Canterbury House, PO Box 1241, Alton NH 03809**, property address of **109 High Street, Boscawen NH 03303** on **Map 81D, Lot 34** located in an **IND zone**.

Cherian stated they do not see the applicant or attorney.

Nick Nolan, Engineer from TF Moran was present. He'd like the variance request heard first before the rehearing request.

- A request for **Variance** for relief from **Article IV Use Regulations** to allow for a **Rooming & Lodging House** in an **IND zone**, submitted and owned by **Aldea Holdings LLC, Canterbury House, PO Box 12341, Alton NH 03809**, property address of **109 High Street, Boscawen NH 03303** on **Map 81D Lot 34** located in an **IND zone**.

Testified: Nick Nolan, Engineering with TF Moran. He showed the plan where the property is located and the general surroundings. In the packet submitted to the Board there is an internal layout of the building. There are adequate provisions for parking, water, sewer, electric, etc. There are no revisions to the site. There would only be internal renovations to the existing approved single family home. The facilities requirements are met. There is no undue need of police or fire. It is in the public interest. The state needs this type of facilities. He understands there is already a Sober Living House in town. This expanded use is within the spirit of ordinance and is a reasonable use. It has a history of being used as a single family home.

Chair Cherian wanted to state for the record that he knows Mr. Nolan as he worked with him when the chair was working at GE. He has no prejudice or bias.

They are requesting a Rooming & Lodging/ house based on the Ordinance. Chair Cherian asked if Mr. Nolan or the applicant had consulted with the Planning/Community Development Department for a letter of determination. Mr. Nolan has not. Sanborn asked the size of the lot. Mr. Nolan answered that it is

listed on the tax card and site plan. It is 0.22 acres. Chair Cherian noted that it is a non-conforming lot. Easler corrected that it is a pre-existing non-conforming lot. Chair Cherian asked if they reviewed the lot for lot coverage, parking spaces, etc. as well as consulting with their client to see if they needed any other variances. Mr. Nolan answered that it is an existing lot of record and they should move forward for site plan approval. There are no expectations that other variances would be required. Bartlett asked if it were a 9 bedroom home or a 10 bedroom home. Mr. Nolan answered that it is 9 bedrooms. Bartlett asked how many bedrooms are there now. Mr. Nolan answered that there are 3 bedrooms there now. Bartlett asked how big the septic tank was going to be. Mr. Nolan answered that it would be as it exists today. It is 540 gallons. The letter from DES is in the Board's packet. They are approved for 540 gallons a day. Bartlett asked again how large the tank would be. Mr. Nolan answered about 1000 gallons, but he doesn't have that information with him today. It meets the appropriate size needed. Easler added that they have an approval for construction. Nolan explained that the tank size isn't the treatment mechanism, it's the field size. He asked if there were concern that it would be undersized. Bartlett said yes. Sanborn asked what size field they would have. Nolan understands there is adequate space in the front yard for the tank. Chair Cherian noted that the Septic is a State regulated item, not something within the Zoning Board's prevue. Dr. Maltzie noted that the State Approval for Construction is for a 9 person rooming house. Bartlett noted that it may say 9 people, but some rooms could have double occupancy. Mr. Nolan noted that State Approved Septic system are based on rooms, not people. It is appropriate for the request they are asking for. They are asking for a variance for the use of the facility. Chair Cherian noted that the applicant stated that up to 14 people can live there. Easler had understood that when the prior owner converted it, the septic was approved for a 3 bedroom home. She understood that they had to redo the septic. Mr. Nolan answered that they would have the appropriate information at the right forum. Chair Cherian noted that per Article VIII the parking and lodging/rooming parking formula is 1 space per lodging unit which means they have to have 9 parking spaces or they would need to request a variance for relief. Mr. Nolan noted that they are looking at other configurations to provide 9 parking spaces. He believes they can fit 9 spaces. Easler noted that if the Board approves the variance, it would go forward to site plan review.

Chair Cherian noted that this board requires 1 parking space per unit. They need to demonstrate 9 parking spaces. Cherian asked Mr. Nolan if he would agree to a condition to provide documentation of 9 parking spaces. Mr. Nolan will provide documentation that there can be 9 spaces on site. He also noted that handicapped spaces are not required for this type of use. The layout would be an 'L' configuration and it would be necessary to stripe the area. Bartlett asked if there was enough room for snow removal. Mr. Nolan answered that there is space behind the building. Sanborn asked how they would get to the rear of the building. Mr. Nolan answered that they would have to drive around. They would have to show it at site plan approval. Chair Cherian wanted to recommend the parking spaces be added as a condition. Paving more of the lot for more spaces makes it more non-conforming. Sanborn would like to see where the leach field, septic tank will be located and the parking area layout. He would also like to see one handicapped space. Chair Cherian noted they may not be required to have 1 handicapped space. Tillman would like the site plan redone to show 9 bedrooms, not 10 bedrooms. She'd like to see what they actually want. Mr. Nolan answered that it would be 9 bedrooms as clearly stated by the applicant's attorney. They are asking for a use variance. They need to provide adequate site provisions. That is the venue of the Planning Board, not the Zoning Board. Chair Cherian answered that the parking spaces would be a commitment to have 9 paved parking spaces. This Board regulates parking, but where they put them or whether they are ADA is for the Planning Board to review.

Bartlett wondered if they should do a site plan walk. Sanborn thought that would be important to do. Chair Cherian supports it if the board would like to do that, but he's heard a clarified request for a variance with a commitment to meet the requirements. Looking at the property won't make it better or different.

Tillman clarified. If the Board approved the variance, the request would then go to the Planning Board to review parking, snow removal, etc. Chair Cherian noted they would look at parking configuration and snow removal. Tillman added the number of bedrooms as well. Chair Cherian explained that they have standard specifications on parking spaces. He also noted that a lot of issues and concerns were resulting from the number of people and the number of parking spaces, which would be reviewed by the Planning Board. They have to prove adequate septic. This town and the Board has been accommodating for sober living houses and have facilities in the town and they have been a good host and have a number of those houses. Many of the residents of the sober houses have been volunteers at community events.

Sanborn asked what the exact parking lot size is. Mr. Nolan said it is 54 x 48 for the parking lot. The spaces will be 9x18 and the parking lot will be 2 way in and out. It should accommodate a 24 foot aisle width. They can fit 9 spaces there. Mr. Nolan also explained that they do not expect to back out into the road. Tillman asked if the Planning Board would follow up on the septic being approved by the state. Chair Cherian explained that the State regulates that. The Board can include a condition that they get adequate State approval for a new driveway or septic, etc. Dr. Maltzie noted that the applicant won't be able to move forward without those items. Mr. Nolan will get the information clarified for the Planning Board. Bartlett asked who lived there now. Mr. Nolan can't speak to that. Dr. Maltzie recalls the applicant testifying that there were 1 or 2 people living there last time.

Chair Cherian opened the public hearing for comment at 7:40 pm.

Abutters and members of public in favor or opposed: none.

Chair Cherian closed the public hearing at 7:40 pm.

Chair Cherian explained that the Board can attach conditions if they choose to approve the request. Tillman wanted it clarified that this is a variance for a boarding/rooming house, not a single family home.

Decision:

Contrary to the public interest: Tillman personally doesn't see anything that would be contrary to the public interest. These facilities are necessary. It is in an Industrial zone. Bartlett noted that it may be a hassle to get out of the site due to traffic. Chair Cherian stated there is a need for this type of housing. Dr. Maltzie sees no undue safety concerns other than pulling out in traffic. Sanborn noted that it is a very small lot. Too tight of a lot with so many people potentially there. Chair Cherian thought that speaks to the unnecessary hardship. It is a hardship as it is a nonconforming lot. It's a valid concern. It is a more intensive use in an Industrial zone. Chair Cherian took note that there are no abutters here tonight to speaking against this request. Abutters were notified by certified mail. There have been no correspondence from abutters. Sanborn noted that there are businesses across the street who may be concerned with the security of their property. He has heard that the garage on the south side are upset having that many people that close. A **motion** that the request is not contrary to public interest was made by Tillman.

Discussion with the town Attorney, Mike Courtney from Upton & Hatfield regarding how the Board took a vote in the past. Did they review each criteria and vote on those, or on the request as a whole and note what criteria the applicant met or didn't meet. Chair Cherian explained that they have discussed the request and made a vote on the variance and what criteria they met. Attorney Courtney explained that the written findings are a requirement. He explained that they could do a motion to grant and then go through the 5 criteria and add conditions.

A **motion** to approve the request to have a rooming & boarding house with up to 9 bedrooms at 109 High Street was made by Dr. Maltzie and seconded by Bartlett.

Discussion: Item #1 Tillman sees nothing to be contrary to the public interest and there were no abutters here to speak. She reincorporates what she said before. Chair Cherian explained that the provision for onsite parking mitigates safety. This is an area that has a lot of accidents. They are not adding or increasing noise. Sanborn had concerns with the parking. Chair Cherian noted that the parking area size is 9x18. Easler explained that the Zoning Ordinance reads ‘a rectangular area not less than 9 x 19 feet not located in any public right of way and sufficient maneuvering room’. Chair Cherian noted that they are required to have 9 spaces. A **motion** to approve was made by Dr. Maltzie, seconded by Tillman and passed by a 4-1 vote, Sanborn abstained.

Item #2 Spirit of Ordinance: Bartlett assumes that even though it is a nonconforming lot, the road frontage is met. Sanborn stated it is illegal to back onto the highway. Bartlett noted that there is no public or abutters here to speak, so applicant has done their due diligence. Chair Cherian noted that it is a nonconforming lot in an Industrial area. They are not trying to skirt or undermine the ordinance. It is a nonconforming lot. It is in the IND zone. They are making commitments to not have an impact. A **motion** that the application meets criteria #2 was made by Cherian, seconded by Tillman and passed by a 4-1 vote with Sanborn in the minority.

Item #3 Substantial Justice: Sanborn feels strongly that this would be a perfect place to have 4 people there. People do not like to come to town meetings to testify. They could have an attractive area with 4 vehicles in there. They have run off from the roof that can freeze in the driveway. Chair Cherian doesn’t see how approving this would cause harm to the general public that is greater than the benefits to the property owner. The owners are investing in the building and updating it. It is consistent with the surrounding area. There is a junk yard next door now. He doesn’t believe this use will negatively impact the area that is already negatively impacted. A **motion** that substantial justice is done was made by Cherian, seconded by Tillman and passed by a 4-1 with Sanborn abstaining.

Item #4 Values of surrounding properties: Chair Cherian noted that the owners are upgrading the property. It will be denser. It is next to a junk yard. It will improve the property values in the area because there is fresh pavement, etc. No abutters expressing any opinion on this. He understands people do not like to come to public hearings. There are no realtor’s opinions submitted, expert or otherwise. The current uses and immediate abutters will not diminish the value of the surrounding properties. Dr. Maltzie was a former real estate professional and he concurs. Dr. Maltzie feels that it will improve the property values. A **motion** that the variance meets #4 was made by Cherian, seconded by Dr. Maltzie and passed by a unanimous vote.

#5 Unnecessary hardship: Dr. Maltzie concurs that denial will create an unnecessary hardship to the owner of the property. It is a nonconforming use. It is a necessary type of facility. It is a unique property in the area. As a result, it has unique characteristics that make it an appropriate and preferred use for this building. A **motion** to approve criteria #5 was made by Dr. Maltzie, seconded by Tillman and passed by a unanimous vote.

Conditions: Tillman noted that it is a rooming/boarding house in an industrial zone. It follows the rules of a rooming/boarding house. Chair Cherian wanted a condition that there are 9 on-site parking spaces. Easler stated that the plan needs to be updated. Mr. Nolan suggested they put a condition that parking would be in accordance with the zoning ordinance. Chair Cherian agreed to that. Chair Cherian wanted to add that it is for a 9 bedroom rooming/boarding house. Tillman wanted a condition regarding their septic system. Chair Cherian indicated that the applicant is required to get appropriate state approvals for the septic. They could say that it is subject to appropriate State and Local approvals. Sanborn wanted

a condition that they abide by the rules and regulations for parking i.e. setback for parking. Easler noted that there is nothing in the Ordinance for that. Cherian wanted them to meet the parking requirements per the zoning ordinance. Sanborn wanted to note that they will meet State setbacks. They will be approving a 9 bedroom rooming/board house in an IND zone, shall have parking adequate to meet the requirements of the town of Boscawen, subject to state and local approvals.

A **motion** to approve the variance with conditions as noted above was granted by a 4-1 vote with Sanborn abstaining.

- A request for **Rehearing of the ZBA's decision dated October 25, 2022 whereby the ZBA upheld the decision of the enforcement officer, determination letter dated 07.22.22 regarding a site plan application** submitted and owned by **Aldea Holdings LLC, Canterbury House, PO Box 1241, Alton NH 03809**, property address of **109 High Street, Boscawen NH 03303 on Map 81D, Lot 34** located in an **IND zone**.

No action taken on the rehearing request as no one is here to present. Mr. Nolan spoke to say that the applicant told him he is not providing any additional information. Attorney Mike Courtney explained that they needed a ruling on this rehearing request.

Chair Cherian gave a summary of the case presented at the last meeting. The Code Enforcement Officer and Fire Chief testified that the change of use to a 9 bedroom rooming/boarding facility was not a single family home. The Board denied their request and said it was a rooming/boarding house. They spelled out their finding.

Chair Cherian further explained that they have a letter from the applicant's attorney Andrew Tine dated 10.24.22. Chair Cherian doesn't find any new information. They do not allege a procedural error by the Board. He doesn't see a reason to rehash it. The Board, at that meeting, encouraged the applicant to apply for a variance. This Board, in the past, has been friendly to sober living houses. They are not prejudice to sober living houses. Dr. Maltzie noted that they just approved one.

A **motion** to deny the rehearing was made by Dr. Maltzie, seconded by Bartlett and passed by a unanimous vote.

Attorney Courtney noted that it was unreasonable to waive the variance requirements due to life safety requirements. Dr. Maltzie noted that they spoke about parking, safety issues, etc. There are no special accommodations that would be appropriate. Chair Cherian noted that it would not creating a new hazard for abutters. The Board was confident that the applicant could do that, which is why they have a variance process. The town has a vested interest in regulating uses, and a long history of accommodating landowners. Dr. Maltzie noted that the rehearing is largely mute due to a variance being granted.

Meeting Dates: Chair Cherian has no issues with the dates for 2023. A **motion** to approve the meeting dates for 2023/2024 was made by Dr. Maltzie, seconded by Tillman and passed by a unanimous vote.

Next Meeting: December 27, 2022

A motion to adjourn the meeting at 8:28 pm was made by Cherian, seconded by Dr. Maltzie and passed by a unanimous vote.

*Respectfully submitted,
Rose Fife, Recording Secretary*