

LANCASTER ZONING BOARD OF ADJUSTMENT
June 30, 2021
6:30 PM

CALL TO ORDER:

The meeting was called to order at 6:30 p.m. by Chairman Rick Bernier.

ROLL CALL:

Regular Members Present: Rick Bernier, Steve Young, Les Hilton, and Tricia Frenette

Regular Members Absent: Chris McVetty.

Alternate Members Present: Linda Ogle, Nathan Kenison and Don Freddette.

Others Attending: Rob Christie, Eric Livingstone, John Danos, Aaron Foti, Randy Flynn, Ted Joubert, Peter Bornstein, Linda Upham-Bornstein, Brad and Valerie Griswold, Peter Riviere, Troy Merner and Town Manager Ben Oleson.

Chairman Rick Bernier appointed alternate member Nathan Kenison to a full voting member for the night's meeting due to the absence of regular member Chris McVetty.

APPROVAL OF MINUTES:

Ben Oleson explained that at the May meeting when he announced it was not an official meeting due to a lack of quorum he was incorrect. He stated there were actually 3 members there which is a minimum quorum so the meeting was official and therefore they can approve the minutes of that meeting as well as the minutes from March which were not approved at the May meeting.

Moved by Les Hilton and seconded by Tricia Frenette to approve the minutes of the March 31, 2021 and the May 26, 2021 meetings as presented. Motion carried.

PUBLIC HEARINGS:

Case #532 – John Danos for a Special Exception concerning article 5.04, "Uses Permitted by Special Exception in the Agricultural District". Applicant/Owner seeks special exception approval to rent his single-family home for transient lodging as a short-term rental in the Agricultural Zoning District. Land Zoned Agricultural. (143 Mount Prospect Road, Tax Map R23-Lot 019-1, 6.23 acres).

Notices were sent to all known land abutters.

John Danos designated Aaron Foti as his agent to represent the request. Mr. Foti went over the application to further explain why the request for a special exception should be granted. Mr. Foti said the argument could be made that a special exception is not required. He said that he believes this is a gray area in the Ordinance. He said the Ordinance allows for lowest intensity uses in the Agricultural Zone and single family dwellings is one of those allowed uses. He said the requested use is a lower intensity use than some of the allowed uses – one group of people at any given

time. Mr. Foti said that the requested use is similar to other types of transient lodging allowed by special exception in section 5.04 of the Ordinance. He said the owner is not looking to add on or to make any changes to the property. Mr. Foti said the use is in harmony with the intent of the Ordinance because of the owner proximity to handle any issues with the rentals and because the maximum occupancy of 8 has less of an impact than some of the other allowed uses by special exception. He said the proposal is also in harmony with the Master Plan. Regarding the character of the area, Mr. Foti said the use will not adversely affect the character because the requested use supports the allowed uses. He said there would be no negative impact on soil, water resources or existing structures. He said property values will not be negatively affected and probably will increase.

Regarding the disposition of waste on property, Tricia Frenette said that it will be necessary to have someone maintain the garbage disposal and to prevent bears and other animals from being drawn to it. Mr. Foti said that the owner will have to locate a dumpster on the property and require renters to sign an agreement not to leave garbage outside.

Another concern was traffic on the road. Ms. Frenette said there is a potential to rent to 8 college students with 8 vehicles – an increase in traffic and potential for speeding on the road is different than a single family dwelling. Mr. Foti said that there could be speeding on the road but anyone could speed on the road. He said tourism should not be maligned.

Linda Upham-Bornstein noted that there is already a traffic issue on the road. Mr. Foti said it's not because of transient use. He read section 3.09 of the Ordinance that shows the intent is to include transient use. He again said it is a gray area and he questions if a special exception is necessary. Mr. Foti said granting the request would be in accordance with the Ordinance and the Master Plan.

Mr. Danos said he bought the property for his retirement. He said he will not be able to retire for 4 years and travels for his work and is taking care of his elderly father in MA and is away from area a lot of the time. He said when he is in the area he stays with his son in Dalton.

Chairman Bernier opened the hearing to the public.

Rob Christie, 155 Mt Prospect Road and an abutter, asked that the board deny the request for the following reasons:

1. The use is not allowed in the agricultural zone so must have a special exception.
2. The property is the smallest lot on the road. Other lots are at least 15 acres and are involved in agricultural uses and are 2 person dwellings.
3. Public health – septic is for a 3 bedroom, 6 people home and applicant is proposing 8 people. The well (with drought issues) may not support 8 people. Would affect the water table.

4. Transmissible disease (COVID) – people coming from other parts of country and into the neighborhood – effects stores, restaurants.
5. Safety – 8 people will have more than 2 cars. Already a lot of dust on road – would increase with more vehicle use. A lot of people walk, jog and ride horseback on road now – more traffic will affect their safety. Already 2 dangerous spots on Mt Prospect Road – intersection onto Route 3 and intersection with Old East Road.
6. Fire danger on the road – transient people using fire pits.
7. 2 people per house is character of neighborhood. Applicant has smallest lot on the road.
8. 3 zones permit Bed and Breakfast but owner must be present or adjacent to property. Mr. Foti said the property will be managed from Twin Mt.
9. Section 3.02 definition – owner live on property or adjacent and serve meals.
10. Believes property values will decrease – not as much privacy in area. But as property values increase, taxes increase –will affect retired people on the road with a fixed income.

Dr. Upham-Bornstein, 185 Mt Prospect Road, submitted a letter in opposition to the request (will be part of permanent record). Peter Bornstein spoke for his wife and stated that there is no gray area. The use is not a single family dwelling. Section 5:04 permits transient lodging by special exception. He said the applicant has the burden of proof and that means that all criteria must be met. He said the applicant has a heavy burden to satisfy and the applicant has not done that.

Brad Griswold said the applicant is stating opinions not facts. He said there will be a negative impact to property values. He said applicant has good intentions that may or may not happen. Mr. Griswold said renters would not have the same feel for the scenic road and changing the character of it.

Valerie Griswold said the road is dangerous now. She said transient people are not going to be aware of the dangers. She said it is a single family home – transient people are not a single family home. Not an area for an Airbnb.

Mr. Bornstein noted that Mt Prospect Road is one of 5 designated scenic roads in Lancaster.

Mr. Christie noted that there is a snowmobile corridor nearby but snowmobiles and ATV's are not permitted on the road. It would be illegal and dangerous.

Chairman Bernier closed the hearing to the public and opened the hearing up for discussion from the board.

Donald Freddette said he was concerned with the water, solid waste and wastewater. He questioned if the septic system would support 8 people. He asked what if the well did not produce enough water needed to take care of the wastewater. How would that

be handled? He said he was also concerned with the bear issue and the dumpsters, and the potential for increased traffic on the road and safety of the residents of the road.

Mr. Danos said that the septic is 1000 gallon and the well 11.5 gallons per minute. He said he feels that is sufficient. Mr. Danos said he cannot control the well going dry. Regarding the traffic, he said he sees that people are not as careful as they should be. Regarding the number of vehicles at the property, he said that he has several vehicles that will be there when he retires. He said he has been visiting the area for years and does not want to disturb anyone in the neighborhood.

Mr. Freddette said that a 1000 gallon septic is not large enough for 8 people. He said the leach field is questionable and should be looked at by an engineer. He said the well is good but the leach field could be an issue and reason not to support the request. Mr. Foti noted that the leach field issue could be a condition to be mitigated if the request is approved.

Les Hilton said he did not believe this was the right property for this use. The management company is 20 miles away, there is no one present to make sure rules are followed. By the time complaints are heard renters could and probably would be gone.

Ben Oleson noted that the use is listed in the ordinances but only allowed by special exception. Board must decide if use is out of character with criteria based on facts from applicant, abutters and personal knowledge.

Mr. Hilton said the use does not create the proper atmosphere for the road.

Nathan Kenison noted a discrepancy – application lists occupancy for 8 but the listing shows 6. He said that transient people coming from all over may disrespect other people's land. Snowmobiling could be an issue. He said use could be limited to 4 or 6 people that could limit the number of cars and have less of an impact on the septic and water.

Mr. Oleson noted that the septic system is approved for 3 bedrooms.

Mr. Christie noted that there could be an issue with firearms. He said that there is firearms activity on Horan Road in Jefferson and the noise is heard on Mt Prospect Road and in the bullet path.

Mr. Bornstein suggested a condition limiting the use to 6 occupants and a limit to the length of stay and no snowmobile or ATV use. He said that even if this is a condition, short stays could breach the condition.

Mr. Griswold added that good intentions comes down to enforcement.

The Board completed the first 2 sections of the Special Exception Board Finding Form (copy attached to minutes).

Mr. Danos stated that the house is currently being rented for 3 months with the intent to extend it to 6 months.

Chairman Bernier stated that long term rental is a better use or Mr. Danos should live there.

Ms. Frenette asked why Mr. Danos was not continuing with something like that rather than an Airbnb. She said he would still make money and it would be a more sensible use.

L Hilton added that short use renters would not have a sense of community.

Moved by Les Hilton and seconded by Tricia Frenette to deny the request for a Special Exception based traffic concerns and belief the neighborhood character would change and outlined further in Sections A and B of the Special Exception Board Finding Form.

Motion carried with all voting members voting in the affirmative.

Chairman Bernier advised the applicant of the 30 day appeal process.

OTHER BUSINESS:

Amendment to Zoning Board of Adjustment's Rules of Procedure:

Mr. Oleson explained that the proposed amendments were discussed at the May meeting. He said the changes proposed were based on information presented at the Spring Planning/Zoning Conference. He explained the only two changes proposed were:

- Page 1, number 4-How alternate members operate.
- Page 3, Applications-Appeals of Administration Decisions must be made within 30 days from date of decision.

Moved by Tricia Frenette and seconded by Nathan Kenison to accept the Rules of Procedure as amended. Motion carried.

Training Topic(s)/Material(s): None.

Announcement(s)/Correspondence(s): None.

Peter Riviere asked that the Selectmen and Town Manager investigate with DOT the possibility of changing the intersection of Route 3 and Mount Prospect Road. He suggested moving it so it is right across from Martin Meadow Road making a 4 way intersection. He stated that he and his wife would be willing to give the land necessary for this. He is concerned due to the numerous accidents at the current intersection location.

Mr. Oleson stated he would speak to Phil Beaulieu from DOT.

The sight obstruction caused by the hedgerow at the Davidge property on Mount Prospect Road/East Whitefield Road was also discussed briefly. Also the relocation of the stop sign. It was identified as another dangerous intersection.

Chairman Bernier asked Fire Chief Randy Flynn if he and Assistant Chief Ted Joubert were present at the meeting to address any life safety concerns with the proposed case. Mr. Oleson explained that Mr. Flynn and Mr. Joubert were there in case there were any questions related to life safety concerns for the proposal the Board reviewed. Mr., Oleson explained it has been policy for a while to have the Department Heads review proposals to the Planning and Zoning Boards and provide input if needed.

Moved by Les Hilton and seconded by Nathan Kenison to adjourn the meeting.
Motion carried.

Meeting adjourned at 8:25 p.m.

Respectfully submitted,

Jean E Oleson
Clerk

Approved:

Rick Bernier
Chairman

DRAFT

Linda Upham-Bornstein, Ph.D.

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June 29, 2021

Lancaster Zoning Board of Adjustment
25 Main Street
Lancaster, NH 03584

Dear Zoning Board Members,

Re: Opposition to Special Exception Application of John Danos

I reside at 185 Mount Prospect Road in Lancaster, in close proximity to the subject property at 143 Mount Prospect Road, and will be directly and adversely impacted by the applicant's proposed Airbnb use. I request that the Zoning Board of Adjustment (ZBA) deny the applicant's request for a special exception to use the subject property in the Agricultural District as "transient lodging." The zoning ordinance prohibits the granting of a special exception unless it is "in harmony with the general purpose and intent of the zoning ordinance" and "unless the applicant affirmatively establishes by clear and convincing evidence that the proposed Special Exception will not adversely affect" the five criteria set forth in section 12.02 of the ordinance. "Clear and convincing evidence" is a very high bar, the highest standard of proof in the law except the "beyond a reasonable doubt" standard required to convict a person of a crime. I respectfully submit that the applicant has not met his burden of proof.

The proposed "transient lodging" use is not in harmony with the purposes of the ordinance outlined in Article I. It will not maintain or improve the quality of life for residents (especially those in the neighborhood), the rural character of the town, the sense of community among its residents, the uncrowded living conditions and aesthetics unique to the Town, or the peace and quiet of the Town. On the contrary, the operation of an Airbnb in this peaceful and idyllic neighborhood with potentially hundreds of short-term visitor stays annually will undermine and detract from those purposes. The applicant does not even attempt to address specifically these purposes of the ordinance and has not shown that the proposed Airbnb use is in harmony with those purposes.

The applicant also has not established that the Special Exception is in harmony with the zoning ordinance's intent. The ordinance (§5.04) provides that the Agricultural District "shall be characterized by the lowest intensity of use having primarily such uses as agriculture, forestry, outdoor recreation and single-family dwellings." The proposed Airbnb use is inconsistent with this mandate. It is a commercial enterprise run by an out-of-town management company in which the applicant seeks to maximize the return on his investment property. It will offer potentially hundreds of short-term visitor stays each year, an extremely high-intensity use. The profitability of the proposed use is directly proportional to the intensity of the use: the higher the intensity of the Airbnb use, the more profitable the proposed use will be. The applicant, whose main concern is the profitability of his proposed transient rental property, has a strong incentive to make the intensity of the use as high as possible. If, as the applicant incorrectly asserts, the proposed Airbnb use would be no more intense than a single-family home use, his property would be unprofitable. It is telling that the applicant proposes "[b]ringing tourism to Main Street" at the expense of the rural, low intensity use of the neighborhood. His premise that a stream of transient tourists will be better for the Town's economy than permanent residents in the subject property is also flawed. A family that permanently resides in a single-family dwelling in the neighborhood and has a

vested interest in the Town's prosperity will patronize local businesses and use local services to a greater degree and more regularly than transient tourists.

Moreover, the applicant has not demonstrated by clear and convincing evidence that the proposed Special Exception will not adversely affect the character of the area, the value of neighboring properties, and traffic in the area. The proposed Airbnb use will fundamentally alter character of the area and is not compatible with surrounding uses. The proposed use will be far more intense than a single-family dwelling in which a single family resides on a non-transient basis. The proposed high-intensity Airbnb use, which will cause excessive noise, traffic, dust, and other conditions not typical of permitted uses in the area, will indeed adversely affect the value of the neighborhood properties. The applicant's suggestion that the "potential for income based upon proven results from a property only adds to the market value of the home" reflects the future of numerous Airbnbs that the applicant envisions for the neighborhood. The applicant's assertion that transient residents on holiday are not more likely to disturb the peace or cause other problems is contrary to common experience. Finally, the proposed high-intensity use will represent a traffic hazard to the neighborhood, vehicles, and the many pedestrians who run and walk on Mt. Prospect Road and other roads in the area.

The applicant's argument that "motels, inns or cabins ... would have far more impact" than the proposed Airbnb use "yet also may qualify for a Special Exception in this Zone" misses the mark. The fact that motels, inns, or cabins may be permitted uses in the Agricultural District does not mean that they would be granted a special exception and in fact permitted everywhere in the agricultural District. If, for example, an applicant sought a Special Exception to operate a motel, inn, or group of cabins in an area of the Agricultural District abutting a state highway such as Route 3, such a use might not adversely affect the character of the area and might otherwise meet the criteria for a Special Exception. Such uses on Mount Prospect Road, on the other hand, clearly would adversely affect the character of the area and otherwise would not satisfy the Special Exception criteria. There may be places in the Agricultural District where granting a Special Exception for motels, inns and cabins would be appropriate and permissible, but Mount Prospect Road is not one of them.

Accordingly, I request that the ZBA deny the applicant's Special Exception application. In the unlikely event that the applicant is able to establish his right to a Special Exception by clear and convincing evidence, I submit that the ZBA needs to impose appropriate safeguards and conditions, which at a minimum should include:

1. A occupancy limit of six (6) persons;
2. A minimum stay of seven (7) nights; and
3. A requirement that renters acknowledge in writing, as part of the Airbnb rental agreement, that the operation of Off Highway Recreational Vehicles (snowmachines, all-terrain vehicles, and so forth) is not permitted on Mount Prospect Road, Wesson Road, Reed Road, and other roads in the area.

Thank you for your consideration.

Sincerely



Linda Upham-Bornstein, Ph.D.

Yes No

Explain: Use will negatively impact the scenic road because of the increase of traffic and would set a negative precedence.

*Note: If the board answers **no** to any of the above criteria, the special exception should be denied.*

.....
Section C: (Complete 1, 2, 3, 4 & 5)

Pursuant to Section 12.02 of the Zoning Ordinance, the **applicant** must introduce **clear and convincing evidence** in resolution of the following queries:

1. Will the "character of the area" be adversely affected? Yes No
(If answer is "yes", see conditions section below or permit should be denied.)

Explain: _____.

Clarifying Language from the Zoning Ordinance: "The proposed site should be an appropriate location for the use. Among the factors the Board of Adjustment will consider are: topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with surrounding land uses."

2. Will the "value of adjacent property" be adversely affected? Yes No
(If answer is "yes", see conditions section below or permit should be denied.)

Explain: _____.

Clarifying Language from the Zoning Ordinance: "The proposed use should not adversely affect the value of adjacent property. An adverse affect on adjacent property is one that would limit the use of neighborhood property by causing such problems as excessive noise, traffic, dust, fumes, glare or other conditions that are associated with the intended use but are not typical of permitted uses in the area."

3. Will the "character of the lot " be adversely affected? Yes No
(If answer is "yes", see conditions section below or permit should be denied.)

Explain: _____.

Clarifying Language from the Zoning Ordinance: "The lot must be of a size and configuration, slope and soil type such that the proposed use is able to comply with all requirements of the Lancaster Zoning Ordinance."

4. Will hazardous waste be disposed of on the property? Yes No

(If answer is "yes", see conditions section below or permit should be denied.)

Explain: _____.

Will provisions be made for disposition of all waste without jeopardy, financial or otherwise, to the Town of Lancaster? Yes No
(If answer is "no", see conditions section below or permit should be denied.)

Clarifying Language from the Zoning Ordinance: "No hazardous waste shall be disposed of n the property, and provisions for disposition of all waste made without jeopardy, financial or otherwise, to the Town of Lancaster."

5. Will "traffic in the area" be adversely affected? Yes No
(If answer is "yes", see conditions section below or permit should be denied.)

Explain: _____.

Clarifying Language from the Zoning Ordinance: "Traffic generated by the proposed use must not represent a hazard to the neighborhood for either vehicles or pedestrians."



Section D: THE DECISION OF THE BOARD

GENERAL CONDITIONS: The granting of this Special Exception requires the following conditions to ensure that the use is in harmony with the general purpose and intent of the zoning ordinance:

SPECIFIC CONDITIONS: The granting of this Special Exception requires the following conditions to ensure that the use will not adversely affect the "character of the area"; the "value of adjacent property"; the character of the lot"; or "traffic in the area." In addition, no hazardous waste may be disposed of on the site and provisions must be made for disposition of all waste materials without jeopardy, financial or otherwise, to the Town of Lancaster.

N/A This permit is issued without conditions.
Initials of
Chairman

Decision of the Board:

Date: 06/30/2021

N/A
Approved, Signature of Chairman

Denied, Signature of Chairman