

**TOWN OF NEW BOSTON
NEW BOSTON ZONING BOARD OF ADJUSTMENT
Minutes of 2018**

October 16, 2018

The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were regular members Greg Mattison, Ken Clinton, Anthony Olivier and Alternate Members Michael Dahlberg and Wayne Charest. Also present were Zoning Board Clerk Nadine Scholes and Planning Coordinator Shannon Silver. Absent was Doug Martin.

MICHAEL J., Jr., & SHANYA L. CHASE

Application for Special Exception - Lodging House

Location: 127 Butterfield Mill Road

Tax/Map Lot #10/12

Residential-Agricultural "R-A" District

Present in the audience were Michael J. Chase, Jr., Shayna L. Chase, Randi Crouse, abutters Buckner Creel, Kathleen P. Nichols, Don and Leslie Roach and George St. John.

Greg Mattison abstained himself as a voting member of the Board. The Chairman noted that alternate Board members, Wayne Charest and Michael Dahlberg would vote on decision for this application because Greg Mattison abstained and Doug Martin was absent.

The Chairman noted the hearing had been adjourned from September 18, 2018, and asked Michael Chase to explain what had been resolved with the abutters since then.

Michael Chase explained that there had been some concerns for the abutting property values. He provided the Board the findings from the research he had done regarding these concerns. He explained that the findings were unbiased and indicated that there would not be any negative impacts on surrounding property values. He found that most property values increased because the owners had improved the property that would be rented.

Mr. Chase noted that it had been discussed at the hearing on September 18, 2018, that there would need to be a property manager that would oversee the rental and the guests. He said that he would be willing to fulfill that requirement and would consider any other suggestions. The Chairman asked if the property manager would be on-site or available by phone. Mr. Chase said that he was willing to have a property manager living on-site, if that was required.

Randi Crouse stated that she is Michael Chase's mother and she meets the guests at the house upon arrival to go over the rules, provide information and answers any questions. She noted that she cleans the home after the guests leave and all the renters thus far have been very respectful of the home and the property.

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The Chairman asked the applicants what was the largest party size on the property at one given time. Mr. & Mrs. Chase replied about 20 people but only 13 guests maximum could stay in the house overnight.

The Chairman opened for public comment.

Kathleen Nichols and Buckner Creel noted they had found and provided some research that indicated property values might be negatively impacted but only if there were functions/events on the property. Ms. Nichols noted that short term rentals are a direct competitor of hotels and inns which might negatively impact nearby hotels. Ms. Nichols continued that she found the Chase's rental to be advertised on AirBnb more as a function/event rental rather than just a lodging type rental. Ms. Nichols and Mr. Creel expressed that they recommended the Board reconsider re-evaluating the use as something larger than just a lodging house because of the way it was being advertised and consider the property be occupied by an owner or on-site property manager to control/monitor the guests.

The Chairman said it would be a concern if the house were being advertised as an event/function venue because that use was not being proposed at this time and may not even be allowed. Anthony Olivier stated he had found the advertisement online and it was listed as 'farm stay at Butterfield Mill Farm Estates'. He noted that there were some guest reviews that may have rented the property for events but he did not find an advertisement showing it was available for events or functions.

The Chairman asked the abutters if Mr. Chase had directly contacted them to discuss their concerns. They said there had been a few emails back and forth. Mr. Roach said his concerns had been covered but suggested that the guests of the lodging house are well informed what the rules are for the property and the surrounding properties.

The Chairman asked Michael Chase if he would like to address the abutters concerns regarding the house being advertised for events. Mr. Chase explained that in the past the renters may have used the house for family gatherings or ceremonies but there was never a crowd larger than 20 people on the property and a maximum of 13 overnight guests. There are many other properties in New Boston that are being used as short term rentals, but he understands his rental was on a larger scale and he needed approvals to operate. He said he wanted to comply with the Town's Regulations. He explained that he would verify in everyway possible that the renters are suitable and would assign a on-site or on-call property manager that could be available at all times for the guests and/or abutters to handle any issues that may arise. They could also contact him if there is anything they need to discuss. He wants to be respectful to the neighbors and if the guests were not following the rules, he would not tolerate that on any scale. This in the end was his home and he doesn't want it to be destroyed by renters. Mr.

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Chase explained that he had created a separate listing for people looking to rent the house for events and weddings because he was getting so many requests but has not actually rented out the house knowing there would be a wedding held on the property. He used this listing to help explain that he may be able to have events in the future but the Town would have to approve and add a use to allow him to do so. He would remove the advertisement if the Town would not ever allow this use but he was aware there had been some discussions on potentially adding a process for allowing this use. Mr. Chase explained that if he were able to have functions he would not be looking to expand beyond what existed or change the property.

George St. John noted that he was not a direct abutter but he could possibly be the closest nearby neighbor to the Chase's, he abuts the land owned by Mr. Creel and Ms. Nichols. He had seen a few different owners come and go at Butterfield Mill Farm but Mr. & Mrs. Chase had done a wonderful job taking care of the property. He attested that he had not heard any noise coming from the property over the past year and did not find the lodging house had any additional impact on the traffic in the area. There are many people from the general public that come to hike the trails along the river on Butterfield Mill Road.

Jordan Bailey noted that she was the Stewardship Coordinator for the Piscataquog Land Conservancy (PLC) and she had received the notice for the second hearing. She wanted to provide some information and background regarding an easement that they hold on the Chase property. She explained that the PLC was not in favor or against approval of the application. She said that the owners at the time, the Mulligan's, agreed upon the easement on December 30, 1981, with The Piscataquog Watershed Association (now known as the PLC), and is recorded at the Hillsborough County Registry of Deeds, Book# 2902, Page# 257. She explained that the deed language is old and more difficult to understand; this was only the 3rd out the 108 restrictive deeds held by the PLC today. She noted that the deed references 'Restricted Property', restricting a total of 32.5 acres, including the 17.5 acres with the house and barn now owned by the Chase's. She read from the deed, 'the Grantor (the Mulligan's) wishes, for an unlimited period, to protect the watershed resources of the Piscataquog River and to preserve the open space, rural, scenic, and aesthetic character of the 'Restricted Property''. She continued 'the Grantor hereby grants to the Grantee, its successors and assigns the benefit of the following conservation restrictions on the 'Restricted Property': 1. Uses: Only agricultural, horticultural, forestry, recreation and residential uses shall be permitted on the Restricted Property'. '3. Buildings and Structures: On the portion of Restricted Property to the east of Butterfield Mill Road, in which the Ira Gage House stands (with barn), the Grantor or their heirs may build and maintain an additional residence and appropriate agricultural buildings, if the total of two residences are to provide for (a) the Grantor and one of their heirs or for (b) two of their heirs.' '4. Other Uses by the Grantor: The Grantor reserves to themselves, their heirs and assigns forever, the right to use such land as it is presently being used, so far as it does not affect its aesthetic beauty.' She noted that the PLC

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differed to the Town's definition for 'residential'. The Chairman asked Jordan Bailey if the proposed use would violate the easement restrictions agreed upon with the PLC. She replied that as long as the use meets the ecological integrity allowed within the deed. She noted that if the conservation land value is affected by the use that could also be a concern but AirBnb's are generally not a high risk but if there was a higher volume of people on the property that could increase the risk of impacting the value of the land.

The Chairman asked Jordan Bailey to explain the process if they were to discover a violation and when would the Attorney General come into play with that process. Ms. Bailey noted that if legal opinion was that there is a severe violation and the PLC was not able to remedy a solution with the current owner it would then be brought to and handled by the Attorney General. Conservation Easements fall under the charitable division. The Chairman asked if the Attorney General could act as the enforcement or only would handle the case in court. Ms. Bailey said they could do both. She explained that the PLC manages the land with easements, visiting all the land once a year to estimate the value and if the PLC were to completely dissolve as a non-profit then the Attorney General's office would take over managing the properties until they are able to find another non-profit to manage that land. The Chairman asked if the Zoning Board were to grant approval to the owner, that approval would not stand in court if the use violated the restrictions and it were brought to that level. Ms. Bailey agreed.

The Chairman asked Mr. Chase if he had any thoughts on what Ms. Bailey presented. Mr. Chase said he believed the lodging house would be considered a residential use and he does not believe it would be a violation of the easement.

The Chairman noted that the Board would start deliberations if there were no additional public comment. There were none.

Ken Clinton noted that he personally had researched the property, the deeds, plots and advertisement on AirBnb. He also visited the house and was impressed with what had been done to the property. He stated that he would be in favor to grant the Special Exception but with conditions. He noted that he did not feel an on-site property manager would be necessary but a property manager should be listed that was available by phone and could be on site within one hour. A limit of 25 people maximum would be allowed on the property for gatherings at any given time. Ken Clinton said the Zoning Board couldn't make a decision based on the Conservation Easement restrictions with the PLC that would be a private matter.

Michael Dahlberg noted that he also had done some research and visited the site. He believed the lodging house would be more of a commercial use and should be restricted in the residential zone. He suggested restricting quiet time hours between 11pm and 7am.

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Anthony Olivier noted that he liked the idea of quiet hours and thought that rules should be posted easily visible to the guest but he was in favor of granting the Special Exception for the lodging house.

The Chairman noted that he agreed with what had been suggested for restrictions. He explained that although he was concerned with the restrictions noted in the Conservation Easement, the Board could not deny the approval based on the restrictions in a deed, that is a private matter but he strongly encouraged the applicants to discuss the Conservation Easement restrictions with legal counsel.

The Board discussed and agreed on restrictions for quiet times, limit on the amount of people and property management for the lodging house. Ken Clinton would like the Planning Board to consider enforcement and limiting the use with the site plan approval in conjunction with the conditions put forth by the Zoning Board granting the Special Exception.

Ken Clinton **MOVED** to approve the Special Exception to permit the operation of a lodging house, subject to the following conditions:

1. The applicant shall forthwith apply for a Non-Residential Site Plan with the Planning Board, prior to a permit to operate being issued by the Building Department.
2. There shall be a on-call Site Manager with publically listed contact information, who shall be available by phone and can be on the property within one hour to address any concerns or problems that may arise during the entire time guests are occupying the home. There shall also be a back up Site Manager who can similarly respond if the primary person cannot be reached for whatever reason.
3. There shall be no more than 25 people maximum allowed on the property at any given time while being occupied by guests.

Ken Clinton noted that the Zoning Board strongly requests the Planning Board to consider additional rules and posting the rules somewhere on the property visible to guests, parking, quiet hours, etc. Anthony Olivier seconded the motion. **Discussion:** Michael Dahlberg noted that the abutters are very concerned about noise being an issue and he suggested that the motion be amended to include 'quiet hours' between 11pm and 7am are required to respect the neighborhood. Ken Clinton agreed to amend the motion to include the following:

4. 'Quiet Hours' shall be maintained from 11:00 p.m. to 7:00 a.m.
- The motion **PASSED** unanimously.

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The Chairman explained that the Zoning Board had granted the Special Exception and next step required the applicants to submit the application for the Planning Board to review and approve the site plan.

Ken Clinton **MOVED** to adjourn at 8:51 p.m. Anthony Olivier seconded the motion and it **PASSED** unanimously.

Respectfully submitted,
Nadine Scholes, Zoning Board Clerk

Minutes Approved: 02/19/19