



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, NH 03823

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Approved 12/4/2024

OFFICIAL BUSINESS

Minutes of: November 20, 2024

Meeting Convened: 7:00 pm

Members in Attendance:

Marcia Goodnow - Chair
Mark Avery - Ex Officio
Doug Hoff
Bill Courtemanche (via Zoom)
Michael Card
Andrew Losee
Greg Merrell

Support Staff:

Elizabeth Durfee - Contract Planner
Daphne Chevalier - Recording Secretary

Meeting Attendees:

Katie Engebretson, 78 Perkins Rd
Andrew Engebretson, 78 Perkins Rd
Mark Engebretson, 154 Bank St, Minneapolis
Pam and Jeremy Kent, 5 Cherry Lane
Chuck Goss, 6 Cherry Lane
Beth Carroll, 6 Cherry Lane
Scott Reid, 15 Cherry Lane
Megan Martin, 3 Cherry Lane
Eric Fiegenbaum, 6 Moharimet Drive

1. Call to Order

Chair Goodnow called the meeting to order at 7:01 pm.

2. Seating of Alternates

Alternate Merrell was seated in Vice Chair Jordan's absence.

3. Approval of Minutes - October 16, 2024

Motion by Member Merrell to **accept** the minutes for October 16, 2024 as amended.

Seconded by Member Losee. **Motion passed unanimously (7-0-0).**

4. Board meeting with Mr. Tim Martin re: 3 Cherry Lane

This is a conversation between Mr. Martin and the board to clarify whether activities at 3 Cherry Lane require a conditional use or home occupation permit.

Note: The public is, as always, invited to attend, but this is not a public hearing.

Chair Goodnow informed the public that neither board in town can have a private meeting on this issue, and that the purpose for tonight's meeting is for the board and the Martins to have a conversation. There will be no public comment this evening. The board wants to determine if the uses at the 3 Cherry Lane property are in compliance or if an application for conditional use or home occupation is warranted.

- Megan Martin explained her husband is not able to attend the meeting as he got pulled away for work.
- Chair Goodnow asked Ms. Martin to explain what it is that they are doing at their property on Cherry Lane.
- Ms. Martin said she's met with the Select Board before, and there should be a documented history. They rent their home on Airbnb about once or twice a year and use the funds for their personal travel. She said the board can see the documentation on Airbnb. She acknowledged the town had concerns and stated they tried to address and document those changes.
- Chair Goodnow: Who are the renters? Ms. Martin replied it varies: last was a family from the west coast here for the wedding. Sometimes there are UNH families here for family week or to attend the football game. The Martins screen the guests. It is their personal home and they don't want the house rented out as a party house. They are careful about who they approve.
- Chair Goodnow asked how many beds are listed on Airbnb. Ms. Martin said Airbnb has a strict policy of 14 beds max. They adhere to that.
- Chair Goodnow asked if renters have use of the barn. Ms. Martin said yes, as an extension of their home. It can be used for renters to watch football, do yoga, and have a common area to hang out.
- Chair Goodnow noted there are 18 reviews on Airbnb of the property; some of the reviews have not been families and have stated the property is a great spot for their party. She asked how Ms. Martin accounts for this discrepancy. Ms. Martin said some are families, some are people gathering for celebration or bachelorette parties. They've had families coming into town for a wedding, but they are not hosting weddings. Airbnb doesn't allow that. That's strict on Airbnb.
- Chair Goodnow asked if the Martins are on property during the rental. Ms. Martin replied, "No, it's rented."
- Chair Goodnow asked Ms. Martin for an estimate of the maximum number of people at once on the property. Ms. Martin said only 14 can spend the night. Chair Goodnow stated that was not her question. Ms. Martin said she's not sure. There has never been an event. The guests may have had people coming and going, but she's never known the max number of people. They've had inquiries of people wanting to use the property for an event, and those requests have been turned down. Ms. Martin stated it's their private home, and they don't want a lot of people flooding the home. She thinks about the number of people and is cautious. She has a personal conversation with everyone who rents from them.

- Chair Goodnow asked if a bachelorette party is ever an event. Ms. Martin said no, she considers it a celebration and asked if Chair Goodnow considers it an event? Chair Goodnow confirmed she would consider it an event.
- Chair Goodnow asked if Ms. Martin has any sense of the traffic generated by renters. Ms. Martin said they have cameras on the property.
- Chair Goodnow asked what the maximum number of cars are on the property at once. Ms. Martin said probably 10 maximum.
- Chair Goodnow asked Ms. Martin the duration of the rental. Ms. Martin said it depends on the rental: some are two nights. It's not that often; this past year there was a two night rental and a four night rental.
- Chair Goodnow asked how that number of rentals squares with the number of reviews on Airbnb (18 reviews). Ms. Martin said they've only had two rentals this year. She doesn't know when the document Chair Goodnow has was printed. Selectperson Avery stated he printed his copy of the reviews tonight and it says the same thing.
- Member Merrell asked if the rentals are always people staying overnight. Ms. Martin said they could stay and not sleep the night, but they are allotted the overnight rental.
- Member Merrell asked if Airbnb limits the number of cars. Ms. Martin said the property has two extensions of the driveway: the barn and the main driveway. The driveway alone would allot 8 cars.
- Member Merrell stated his concern is about emergency vehicle access and egress from the property. He asked if the cars are stacked up back to back. Ms. Martin said he'd have to look at the property. There is the option to park on the road, but she prefers that guests park in the driveway.
- Chair Goodnow asked if there have ever been buses. Ms. Martin said to her knowledge no. Maybe there was a party bus to go into Portsmouth. She said they've had some Baby Moon folks.
- Member Card asked how much it costs per night for the rental. Ms. Martin stated there are different rates, but they keep it to \$2500/night.
- Member Card asked if since she is not on the property, if they carry more liability insurance. Ms. Martin said they have it and Airbnb carries it as part of the platform. They also have security cameras.
- Member Card asked if Ms. Martin worries about underage drinking or people drowning in the pool. Ms. Martin said they have cameras and have a dialogue with their renters before letting them in the home.
- Member Card asked if the insurance they have is business insurance. Ms. Martin said she is not sure.
- Member Card asked if she considers her Airbnb rentals a business. Ms. Martin said she is not sure. She doesn't think it is. It's more of a tourist attraction.

- Member Card said at \$5k for two nights, that would seem like a business and asked if the government considered it a business. Ms. Martin said they pay taxes. She is not sure if they're a sole proprietor or if it's their personal taxes.
- Member Card asked if there was ever any catering. Ms. Martin said not that she is aware of. If someone asked for a private chef, she might approve that on the property. She hasn't had anyone ask about catering before, but she doesn't see a problem with it. She's seen Chipotle boxes. Most people want to spend the night in Portsmouth, and she wants to support parents coming for parents weekend. It's a unique property. It's fun to entertain there and allows her family to go to Disney.
- Member Card asked about the scale of people on the property. Ms. Martin said they're strict about the sleeps 14 number.
- Member Card asked if the house is a 14-bedroom home. Ms. Martin said they sleep 14. They can sleep 14.
- Chair Goodnow asked how Ms. Martin knows there are only 14 there since she sets up the rental and leaves. The town is getting reports that there are more than 14 people there. Ms. Martin said she doesn't police her guests. She doesn't count their bodies.
- Chair Goodnow asked if Ms. Martin is convinced no more than 14 are staying on the property. Ms. Martin stated again that she doesn't police her guests. She's not there. If there's something crazy going on, she'll be alerted because of the camera.
- Chair Goodnow pointed out Ms. Martin used the phrase "unique property" and asked what makes it unique. Ms. Martin said the barn as an extension of their house and the pool. And a garden area. It offers a lot of different attractions.
- Member Hoff asked what types of safeguards Ms. Martin has in place to ensure no more than 14 guests are there. Ms. Martin responded no.
- Member Hoff asked what the barn is being used for when not rented as part of an Airbnb rental. Ms. Martin said it is a man cave/kid play area.
- Chair Goodnow asked about the noise levels emanating from the mancave that might be of a disturbing nature for the neighbors. Ms. Martin said her husband is a musician and that some may call that noise while others call it music. She stated her child does have tantrums sometimes.
- Chair Goodnow asked if the barn was used for practicing or making cds. Ms. Martin said her husband just enjoys playing music, and he does go out and plays in some bands. It's a hobby. He likes his keyboards.
- Member Losee asked about the discrepancy between Ms. Martin stated they rent the property once or twice a year and there being 11 reviews from 2023. He asked if the number of reviews from 2023 is indicative of the number of guests they had that year. Ms. Martin said she was only thinking about 2024 when she stated the number of rentals. She doesn't know if the number of reviews is an accurate number of her renters for that year. They all blend together.

- Member Losee asked if there was a limit to the number of times she rents out her property. Ms. Martin said it's up to her discretion. She can say she doesn't feel comfortable with anyone requesting to rent the property. She keeps it open to what works with her family.
- Chair Goodnow asked if Ms. Martin ever turns people away. Ms. Martin said yes.
- Member Courtemanche stated whether Ms. Martin considers it an event or not, her reviews say the barn is being used for parties and he is shocked that 14 people are staying in a single family residence. He asked if Ms. Martin has the septic capacity for that number of people. Ms. Martin said that was a great question. It's not often or for that long period of time, so it's not an issue. They make sure their septic is maintained.
- Chair Goodnow asked if Ms. Martin knows the septic capacity. Ms. Martin said she doesn't know exactly but can look into that.
- Member Courtemanche stated septic capacity is sized based on occupancy limits. Ms. Martin stated that's for a continuation of people. Member Courtemanche stated the plan is based on the size of the home occupancy.
- Member Courtemanche stated Ms. Martin has spoken to the scrutiny she puts her occupants to and asked what actions she has taken to be a good neighbor based on her neighbors' reports. Ms. Martin stated being here tonight and not sending an attorney. She said she was the first to welcome her neighbors to the neighborhood with a gift basket. Some people seem to have issues with it. She tries to make sure everyone is comfortable but she can't please everyone.
- Chair Goodnow added she is disappointed that Mr. Martin didn't attend this evening because it has been a long back and forth with him to determine tonight was the night that worked best for him. This was the date he chose long ago. Chair Goodnow states she is disappointed and doesn't understand how with this as a festering issue, it appears he blew it off. It is so important to the community and the board, and it doesn't appear to be important to him. She stated she is appreciative of Ms. Martin's presence. Ms. Martin said Mr. Martin owns his own IT company, and there are emergencies that do come up. Being married to a CEO, she knows it's tricky sometimes.
- Selectperson Avery stated there is an RSA for the septic. When a use comes in that affects occupancy, applicants need to have an engineer come in. He explained it is in her best interest to have an engineer because she CAN flood a system by having too many people using it at the same time. Regardless of the outcome, he recommended she look into that. If her system fails, then pollution becomes an issue. Leachfields can't take it. He noted Ms. Martin talked about wanting to work with us and be good neighbors. He mentioned home occupation, stating the town believes in allowing people to have business in their homes. In applying for a permit for a home occupation, it allows for a conversation. He stated initial contact with the Martins was in 2023. The Select Board has been in contact with her lawyer after that. He appreciates her coming in but respectfully disagrees that she answered the board's questions. In the letter, the Select Board told her using the barn does not fit the definition of a tourist home. The barn is not within the confines of the original structure. The

Select Board didn't take enforcement action because Ms. Martin wanted to go through this process. He admits the tourist home definition is outdated and there is room for a discussion. But if she wants to use the house for something more than sleeping, she should be asking for a conditional use permit. The Kenny Brothers Band website says they record at the barn. Selectperson Avery stated they need to discuss how that isn't a business if they are recording there. Ms. Martin said her husband doesn't make money on this.

- Selectperson Avery asked if the band makes money. Ms. Martin said they do not collect money from the band. Selectperson Avery stated if the band makes money and they're recording at the barn, then that's a business. There's an activity there.
- Selectperson Avery stated in addition to the issue of barn use and recordings, the Board has received reports of organ repairs happening on the property. Ms. Martin said her husband collects organs. He likes to play vintage keyboards. Some will get dropped off. There isn't a repair business.
- Chair Goodnow stated the Board is hearing from Ms. Martin's neighbors who are on the scene when she is not about the number of cars and activities happening at the property. Ms. Martin started by saying they have two or three rentals a year of families, but the Board has established that isn't true. Ms. Martin stated some of the rentals are families and some are events.
- Chair Goodnow asked if Ms. Martin understands the difficulty the Board is having sorting this and the need for her to listen to Selectperson Avery when he says to make an application to put this in official capacity with official guardrails to be accountable.
- Ms. Durfee said there is value in talking about numbers of people on the property, but stated it doesn't matter who the individuals are (families or not). The issue is the size of the group not the composition of who is in the group.
- Member Hoff asked if Airbnb has determined how many people can sleep at Ms. Martin's property. Ms. Martin said the number is part of Airbnb's platform and coverage. They've said 14 is the max number of guests a property can have.
- Member Hoff asked how that number was determined. Ms. Martin stated she doesn't know and thinks it's a blanket number.
- Member Hoff stated 14 is not a party, but 15 is and asked if Airbnb dictates how many can be on the property at one time. Ms. Martin said ideally if there are 14 there, then 14 stay. That's what they're renting.
- Member Hoff asked if Ms. Martin would be surprised if he said there have been on occasion 20 or 25 people on the property. Ms. Martin said 14 people should be staying the night. There shouldn't be more than 14 people on the property.
- Member Card asked what the difference is between events at Ms. Martin's property and events at the Goss' property. Others have gone through the Conditional Use Permitting process and he asked why she shouldn't go through the same process. Ms. Martin said the Goss' do large events.

- Member Card noted that Ms. Martin doesn't know how many people there are on her property in her absence. Ms. Martin stated the property can sleep 14 comfortably.
- Member Card stated in his mind, 14 beds is hotel territory. He wondered what Ms. Martin thinks the difference is, Ms. Martin said her rental is on a smaller scale and not an event. Hers is a gathering. She said it's a tomato (to-may-to) tomato (to-mah-to) situation.
- Member Card stated that's why the planning board has the conditional use permit - to determine the difference. Ms. Martin said this was an experiment they started a few years ago. Member Card asked how she thinks the experiment has gone. Ms. Martin said she didn't know how to answer Member Card.
- Member Card asked if Ms. Martin has a responsibility to the people behind her (in attendance at the meeting). Ms. Martin said if there is a noise violation, people can call the police. Member Card noted Madbury doesn't have a noise ordinance. Ms. Martin said she doesn't know how that is put on her. Member Card noted her events are causing a disturbance.
- Member Courtemanche asked if she is generating revenue why she hasn't gone through the home occupation process. Ms. Martin said under tourist home ordinance she wouldn't need to. There are other Airbnbs in Madbury. The issue is she's the Airbnb that can sleep 14 people.
- Selectperson Avery stated one issue is the use of the barn. The Select Board told her to stop using the barn, and the Martins didn't apply for a home occupation to use the barn or stop using it. He stated this advice was given a year ago.
- Member Hoff asked Ms. Martin what responsibility she feels she has to the community when there are more than 14 people on the property and asked what recourse she has. Ms. Martin said she has security cameras so she would see if there was something alarming happening on the property.
- Member Hoff asked how many times she told people they have to leave for violating the 14 people policy. Ms. Martin stated it's hard to know if there are more than 14 people.
- Selectperson Avery asked if she meets the people or if she uses a key drop off. Ms. Martin said she meets some and some are key drop offs.
- Selectperson Avery asked about the security cameras: if they are indoors or outdoors and how many there are. Ms. Martin said they are outside along the driveway and perimeter.
- Chair Goodnow mentioned that she stayed as a historic location once through Airbnb and had to sign an affidavit that she would limit the number of people. She asked Ms. Martin if that is something she could do. Ms. Martin said absolutely. She'd be open to that and appreciates Chair Goodnow sharing that. Chair Goodnow stated that's the kind of recommendation that would come up in an application for a conditional use permit.
- Selectperson Avery asked if there was reluctance to apply for a home occupation for some reason. Ms. Martin stated it seems like the big problem here is their renting the barn and asked if that was correct. Selectperson Avery stated that's the one the Select Board had issue with. He explained they could have gone straight to a cease and desist. There are concerns

about the impact of the Martins' activities on their neighbors. The rest of the Planning Board would have to speak to the rest of the concerns.

- Member Card stated he thinks it excessive to advertise her home as a 14 bedroom home when she's not being taxed at that rate. If she advertised by the number of bedrooms, she wouldn't make as much money, but she might be a happier member of the community.
- Ms. Martin stated she feels like she is being attacked and that she thought this meeting was going to be more collaborative. She thought the board wanted more questions answered. Chair Goodnow thanked Ms. Martin again for coming to tonight's meeting.
- Selectperson Avery recommended Ms. Martin ask her husband (either directly or through their lawyer) to get back to the board via Mr. Fiegenbaum about the questions about the band. Ms. Martin asked if there were other questions the board wanted answered.
- Selectperson Avery asked if Ms. Martin will apply for a Conditional Use Permit or if she needs to talk it over with her husband first. Ms. Martin said she needs to talk with her husband first.
- Selectperson Avery asked when she would be able to let the Board know if they will apply for a conditional use permit. Ms. Martin said probably within 24 hours.
- Member Hoff asked Ms. Martin to please let the board know either way (yes or no) so the Board knows where they are in the process.
- Member Card stated he thinks this situation is because most people go through the conditional use permit *before* starting a business. Ms. Martin said she thought we were under the tourist condition, which she talked about with Selectperson Avery. She said when they were asked to come, they came. There's been some back and forth there. I looked into Airbnb and looked to make sure we were allowed to do this. The tricky part was the barn, which we didn't know about.
- Selectperson Avery stated that's all water under the bridge and we can move forward, Ms. Martin said she loves Madbury and wants to be a valued member of the community.
- Chair Goodnow stated the community members at the meeting tonight are exercising their right to find out how to rectify this situation. When we have the conditional use hearing, Ms. Martin can lay out what she wishes to do and people can speak about their concerns publicly. The Board can determine if they want to have any guardrails on the use. It's not an affront to Ms. Martin or to strangle her business.
- Selectperson Avery stated the application for a conditional use permit involves a public hearing, at which everyone has a right to speak.

The board thanked Ms. Martin for her time and for coming in to speak with them.

5. Board workshop on Article V, Section 4 of Madbury Land Use Zoning Ordinances (Accessory Apartments): Consideration of new requirements, limitations and language

Chair Goodnow provided some background for the public regarding the history of accessory dwelling units and the need for housing given the current housing crisis. She stated the board has

work to do to increase housing possibilities without having tiny houses everywhere. Every planning board in NH is having similar discussions. There aren't many options for Madbury residents who wish to downsize.

Ms. Durfee stated current regulations allow for accessory dwelling units (ADUs) between 350 and 750 square feet and require a shared wall.

Member Courtemanche stated last time the board scrutinized the edits on the draft proposal. This session is to go over the revision. He noted a big word change from accessory apartment to accessory dwelling unit. He added the definition paragraph the board discussed, which changes the paragraph numbering. He stated most places have done away with setting a minimum size. In terms of max size, the board previously spoke about that and didn't reach consensus other than wanting to ensure the ADU doesn't exceed the size of the primary dwelling. Member Courtemanche suggested using a percentage of the primary dwelling as the maximum number. The board likes the idea of using a percentage of the living area of the primary dwelling unit to determine the maximum size of an ADU. Selectperson Avery said ADUs are permitted subject to approval of a conditional use permit.

Paragraph D is something new Member Courtemanche created and asked for feedback. Ms. Durfee suggested the process should be under the conditional use permit section rather than in its current location. The application form could have instructions, but that section is probably not necessary. Given the tax card has three square footage numbers and rarely matches what a real estate agent comes up with, Mr. Fiegenbaum suggested using a number that is usually consistent. Member Merrell asked if there is a way to verify that number as part of the application process. Selectperson Avery asked if the board wants to exclude ADUs that are primarily for short term rentals. The Board generally felt that they do want to exclude short term rentals. Ms. Durfee said to do so, the board will need to define short term rental. Ms. Durfee recommended adding in a minimum number of days.

Chair Goodnow asked if there is a subcommittee working on short term rentals. The board believes Vice Chair Jordan is working on that. The Board discussed requirements for the conditional use permit to include in the ordinance.

The board is planning to hold a public hearing on this issue January 8, 2025.

6. Other Business

Chair Goodnow asked the board to read the guide to zoning laws in 2024 for homework.

7. Adjournment

Motion to adjourn by Chair Goodnow. Seconded by Member Card. Motion passed unanimously (7-0-0).

Meeting adjourned: 9:10 p.m.

Respectfully submitted by Daphne Chevalier.