Lancaster Zoning Board
Location: Lancaster Town Hall
January 29, 2025

Chair Tricia Frenette CALLED TO ORDER the public meeting at 1830H and led the Pledge of Allegiance

Roll Call:
Regular Members Present: Chair Tricia Frenette, Vice Chair Nate Kenison, Steve Young, Les Hilton
Absent: N/A
Alternate Members Present: Donald Freddette, Eric Livingstone, Robert Cass
Absent: N/A
Others Attending: Land Use Coordinator Robin L Irving, Diana Drouillard (Abutter), Paul O'Brien (Abutter), Alex Eaton (Resident along Page Hill Road), Mike Roberts (Abutter), Shelli Roberts (Abutter), Nona Cordwell (Resident on Cordwell Way), Mark VanderHeyden (Surveyor), Peter Lupachino (Appellant), Debbie Lupachino (Appellant), Scott Lambert (Abutter w/interest in Kelsea Drive)

Minutes:
Les Hilton moved to APPROVE AS WRITTEN the November 27, 2024 meeting minutes. Steve Young seconded the motion. All members voted to **APPROVE AS WRITTEN** the November 27, 2024 meeting minutes, no objections. *Motion passed.*

Appointments: None

Public Hearings:

LUC Irving recommended that the Chair moves alternates up to be a 5-voting-member board. Chair Frenette moved all alternate members up to voting status making it a 6-voting-member Board. Chair Frenette **OPENED THE PUBLIC HEARING** for ZBA Case #555 and announced the following case description:

SPECIAL EXCEPTION

Case# 555 – Lupachino, Peter V. for a Special Exception concerning Article 5 "Districts," Section 5.05, "Uses Permitted by Special Exception in the Agricultural District," Subsection (f) "Motels, inns, cabins or other transient lodgings provided that every individual cabin or rented space shall be supplied with its individual running water and sewage facilities." Applicant/Owner seeks special exception approval to construct and operate a commercial, short-term-rented, multi (4)-cabin facility with one gravel ingress/egress, and each 1,140 sf cabin with its own septic system and potable water access, on land situated in the Agricultural District. Applicant/Owner intends to construct a 2,855 single-family dwelling on the lot in addition to the four cabins. Land Zoned Agricultural. (Tax Map R02-Lot 063, 11.68 acres (508,780.80 sf), off Page Hill Road).

Chair Frenette recused herself from the Board because she is an abutter. LUC Irving announced that Frenette will not be able to vote on the matter but will be able to contribute to the discussion as an abutter. Irving further clarified that 1) short-term rental is defined as commercial use in the zoning ordinance, contrary to the claim by the appellant that the use is residential, and 2) the appellant is able to appeal to the ZBA because the Planning Board requested a decision on the use and Irving (Selectman's Designee) denied issuance of a Land Use Permit.

Vice Chair Nate Kenison served as Chair for the remainder of the Public Hearing.

Surveyor Mark VanderHeyden presented an introduction of the project. VanderHeyden explained that he and Appellant Lupachino had appeared before the Planning Board for a consultation and the next step in the process was to iron out any issues with the use of the land. History: In 1989 the lot in question was a 23-acre lot (2X current size) that Lufkin subdivided. Vincent Lupachino purchased it in 1990; one lot was eventually sold and the other was conveyed to Peter Lupachino. The family has owned this land for 35 years as a long-term investment. It is an 11.6-acre lot with 400 feet of frontage and zoned as Agricultural. The family has wanted to develop the lot, at least with a single-family home, but always intended to have some kind of cabin-related, family-oriented project. Surveying and mapping began in 2023. The wetlands are mapped out. The access road lays in with the contours. Zoning allows for a density of 3 dwelling units per acre. The sites for the cabins are well below the allowed density; each cabin has 1-2 acres separation buffer. The cabins are pre-fabs built by a NH company (Coventry); the applicant will hire local contractors. The lot is wooded and much of that is preserved for privacy between cabins and a buffer between lots. Each cabin will have its own septic and water. NHDES requires a subdivision analysis if a lot is for sale, rent, or lease. NHDES will have oversight of the septic systems as well as ensuring that wetlands and steep slopes are avoided. Change of use is from residential single-family dwelling(s) to commercial rental units.

Appellant Peter Lupachino distributed project pamphlets. History: Peter started coming to Lancaster since he was 10 years old. His father passed away 2 years ago and this project was his father's long-time family dream for this property. In the family, there are 5 boys and 3 girls to share the land. With respect to 'rentals,' the focus concept is mostly NOT about renting but to have each sibling's family with their own cabins to come up to visit. The cabins could be rented during family off-time. The idea is NOT to rent as AirBnB. Peter is a CT electrical contractor by trade also licensed in NH, VT, and ME. He would like to move here permanently once the main cabin is built and open up another electric contracting company (Lupo Electric is already in CT and MA).

Les Hilton asked if the septic planning had started. VanderHeyden responded that they have preplanned, but because the area is fully wooded, they needed to get access. Someone is lined up to do the test pits. The web soil survey looks good. They don't want to get too far ahead because they will need direction with different board decisions and other approvals. The land has been walked without snow cover, so VanderHeyden knows what they are dealing with. Don Freddette asked if VanderHeyden could elaborate more on the test pit? VanderHeyden said that he did not have any logs, and it was a hole in the ground that he recognized as being in a proper place. The web soil survey information is on the plan. Eric Livingstone asked if there is a brook crossing the land? Lupachino responded that there is a brook at the rear/back corner of the lot. Livingstone asked if it created any wetlands issues? VanderHeyden explained that having access on the front upper end of the lot stays away from the wetland and meets the setbacks. NH has strict setbacks to wetlands e.g. poorly drained or very poorly drained soils. For septic approvals, NHDES relies on the designer's plans and inspection occurs after installation. In this case where it is treated like a subdivision, NHDES will physically inspect and walk the proposed site(s) that have been deemed acceptable by VanderHeyden, see the wetlands flags, and check test pits BEFORE it is installed. Freddette asked about wells? VanderHeyden explained that the wells will meet setbacks. Under the category of '25 people and under,' the well(s) are not regulated. The logistics have not been figured out but the idea is to situate them in areas of least disturbance. Freddette asked what the distance was between well and leach field? If the draw is up to either 700 or 900 (could not remember), the radius is 75 ft and increases as the draw increases. Freddette also expressed concerns about drainage; he pointed out a culvert at the entrance, then the road curves around to a wetland near the 3rd cabin yet there was no culvert. VanderHeyden explained that the water runoff follows the contours and moves away and breaks out in the pooled areas due to the soil conditions. Freddette asked if any of the dwelling had to be built

up? VanderHeyden answered 'no;' the single-family dwelling is situated upland and the cabins are along sloped wetlands. Livingstone remarked that none of the buildings have basements. Lupachino confirmed that the cabins are on slabs but the main home is on a foundation. Additionally, the 4 cabins (2-3BR, 2-1BR) will not have garages (like some of the pictures show in the pamphlet) to discourage use of the property as rentals for ATVers and snowmobilers. Hilton asked if the design of the road had been determined i.e. what are they using for a sub-base, etc.? Lupachino asserted that the road would be paved with asphalt. LUC Irving reminded the Board that the road will be a private road for which the only things that can be required are frontage on a Class V or better, a 911 address, and a waiver of liability to be recorded at the Registry of Deeds. Lupachino asserted that this is not a road, it is a driveway. Irving responded that the lot is subdividable and while not classified as a subdivision by the *Town*, should be scrutinized for strategic development—the Board(s) decide whether this is a private road or a driveway. This is similar to the Planning Board's determination that the structures labelled as ADUs are not ADUSs but detached multi-unit dwellings. Hilton asked if there were required standards for a private road, or even a driveway, to allow emergency vehicles access? Irving responded that the road agent typically requires longer driveways to provide 2-vehicle passage with shoulders but does not require a standard buildout specification. Lupachino mentioned that there is a PSNH powerline easement running through the upper left corner that is not buildable and creates another buffer; there is no access to Corridor 5 either. He also recognized that there is a development with 10+ lots being built on the land across the street (Kelsea Drive subdivision) where a lot of land has been cleared; his lot will not be cleared like the Kelsea Drive development and the cabins will not be seen.

Chair Kenison **OPENED TO THE PUBLIC** the public hearing for Case #555.

Abutter Paul O'Brien categorized the proposal as a 'private compound" with access from a private driveway. He feels strongly that, if the Appellant is granted the authority to rent the propert(ies), then the access should be PUBLIC and brought up to road standards. O'Brien also feels that the development would negatively impact his property value. He felt that if the Appellant were to subdivide this property into lots with single family homes, then he would support the project. He felt that the Appellant's assertion that the development would not affect anybody was bogus. There are 2 sides to every coin and the factors for each side need to be hashed out. O'Brien was frustrated that he had to reschedule a trip at triple the cost just to come to this hearing to object to a request for something that he didn't feel the Appellant was being truthful about. He felt that the proposal didn't feel right and had a bad feeling about it.

Abutter Shelli Roberts was not okay with the activity being commercial as 1) the location is not a commercial area, and 2) an exception would allow unwanted commercial activity that paves the way for other unwanted commercial developments, especially with all of the subdivisions in the area. They would support a permanent family home that is not short-term-rented, like the rest of the homes in the immediate area.

Resident Alex Eaton stressed that the Appellant's written answers in the application clearly state that the buildings are intended to be rented, so if the intent is not to rent and is for family use, there should not be any reference to rental in the application and don't say "it's not *really* for rent…"

Abutter Tricia Frenette expressed her concern that the Agricultural Zone is designed to support larger lots with single-family homes. People, including her family, choose to live there because they don't want the ruckus and the increased traffic on the roads; they like the peacefulness. She was not in favor of the subdivision across the road, however, the people who have built *homes* and moved there have been very cordial and respectful to the neighborhood. She has also seen the public constantly travelling, sometimes recklessly, up and down Page Hill Road, not following traffic rules, not conscious of pedestrians, ripping out of ditches, etc. She lives there for a reason…she wants to live in the woods where it is more calm and

serene. Frenette also objected to having rental units as she services many units through her personal business and they are a disgusting nightmare. Abutter Diana Drouillard stated that the vernacular is for 'rental,' and unless the vernacular is changed, it opens the door for expansion of rentals—and this exception is based on 'the word of the Appellant' that the rental will not have any impact. These kinds of developments will happen across the road, along Page Hill Road, out east, and other outer areas. She said that the people in those other areas feel the same way.

Appellant Peter Lupachino asked how many houses are going into the Kelsea Drive development? Frenette responded 15 lots. Lupachino asked what the smallest lot size was? Frenette recalled that most of them were between 4 and 5 acres. Lupachino said that the average acreage per cabin in his proposal over 3.5 acres, consistent with the larger-lot-type layout across the street, and sufficient to protect everyone's privacy. Like the Lancaster residents living in the Agricultural Zone, he lives in the country on a 4 to 5 acre lot in CT, and the privacy is one of the reasons they wanted this lot off Page Hill. He stressed that the value of this project for his family is not from the renting, but he wants to be transparent that he MAY rent.

LUC Irving announced that she wanted to re-focus the conversations to the zoning ordinance. She summarized that the Board agreed that the Appellant has met the setbacks and density requirements and it seemed that the collective concern among abutters was the renting and its impact on the area. Lupachino asked Irving if his application met all of the requirements to approve the exception? Irving responded that she could not answer that because it is the Board's role to determine whether they agree with the answers to his questions as they relate to the zoning ordinance and the master plan or any other reference that they deem relevant.

Abutter O'Brien focused on the change of character question saying that it was pretty apparent that most if not all of the abutters agree that this proposal DOES change the character yet the Appellant says that it does not. He wouldn't need an exception to the rule if it didn't change the character (that's the exception). Abutter Scott Lambert countered that the exception to the rule is allowing commercial activity that does not affect the character or is minimally impactful. Lambert felt that putting 4 cabins on the lot was great for the family, but he has been building at the top of Kelsea Drive which looks down at land similar to the Appellant's lot, and he anticipates that property owners would look at an approval of this project as a green light to do the same thing on those other lots, and THAT negatively impacts the value of his lot. If this is excepted for the Appellant, and it gets excepted for other areas of town, then it should be brought to Town Meeting to vote on whether the provision is setting the precedent and affecting the overall character of the Town. Lupachino may well be responsible with his renting, but some other owner may simply rent indiscriminately for the money, and Lambert does not want that in his residential area.

Appellant Deb Lupachino stated that she is a real estate agent and she is sensitive to their concerns about renting, however, she observed in this neighborhood and nearby, homeowners are even renting out their homes i.e. snowbirds. It's happening everywhere and they are just being honest about their intent. LUC Irving said that the Boards are aware of short-term rentals from data in a Housing Assessment done for the Town last year. She explained that short-term rentals cannot be blanketly prohibited in NH, but they can be regulated through conditions per zoning. Short-term rentals in Lancaster's zoning ordinance is for periods under thirty (30) days. The Special Exception is for 'transient lodgings' which could be under or even over 30 days.

Chair Kenison read a written comment received 1/29/2025 from Abutters Chris and Vanessa Lazzaro who could not be in attendance: "I am writing you in reference to case#555 and the appeal for special exception to construct and operate rental cabins abutting our Page hill property. We are against the building and operating rental cabins, granting the exception to do so. We purchased our

property with the plans to retire to our property on Page hill being led to believe that only single-family homes were to be built with no exceptions. Making an exception to one person will undoubtedly lead to more rental properties. More traffic, more people occupying residence they do not own. Which I have no doubt will lead to noise, litter, destruction of property, and theft. Not everyone who rents is respectful of property and neighbors. So we ask that you do not grant the exception in this case. Thank you, Chris and Vanessa Lazzaro"

LUC Irving announced that she had a telephone conversation with Abutter Steven Lukeman who expressed concern over the rentals, but did not get into detail.

Chair Kenison CLOSED TO THE PUBLIC the public hearing for ZBA Case #555.

Chair Kenison went through criteria for Special Exception for Board deliberation:

1. Would the use be detrimental to the public health of Lancaster residents or the general public? Appellant's Response: *NO. Basic residential occupancy consistent with uses throughout the Town of Lancaster. Approved on-site wells and septic systems will be utilized to handle typical residential waste.*

All Board members agreed that the proposed use would NOT. There was no discussion.

2. Would the use be detrimental to the safety of Lancaster residents or the general public? Appellant's Response: *NO. Proposed residential units are low density and short-term rentals which will employ strict rental requirements.*

Most Board members agreed that the proposed use would NOT; the concern is that there is no way to gauge that with short-term rentals. The advantage of this model is that it focuses on family use and it will not be rented as an AirBnB. Don Freddette wanted to restrict the use to family-only. LUC Irving prompted the Board to consider things that affect the *safety* of the general public? A couple of factors were mentioned: condition of the access and increased traffic. Robert Cass said that this project as a standalone project does not present remarkable issues affecting traffic, however, this project tenfold does. Everyone agreed with this future impact but the Town has not reached that point yet. Chair Kenison said that each project must be analyzed on a case-by-case basis. There was no further discussion.

3. Would the use be detrimental to the character of Lancaster?
Appellant's Response: *NO. Proposed residential rental units would be located in a wooded area, not visible from Town road(s) and will maintain rural character found in the neighborhood and in the Town of Lancaster.*

Robert Cass emphasized the distinction of this question from a later one wherein this is about the character of *Lancaster* as opposed to the specific lot. He felt that anything that is done to your lot has an impact on the Town albeit subtle. Chair Kenison said that the discussion should revolve around the *definition* of character. LUC Irving directed the Board to the section of the zoning ordinance following the title of the Agricultural District: "The Agricultural District shall be characterized by the lowest intensity of use having primarily such uses as agriculture, forestry, and outdoor recreation and single-family dwellings." Cass argued that by having multiple cabins on the property, it is not consistent with having the character of single-family dwellings. Livingstone stressed that the Board could not deny just because nobody wants the project—he said that this use of land for cabins is allowed per Special Exception, so the question is not whether it *changes* the character but *how much change* makes it detrimental to the Town? Les Hilton felt that the Board should consider the abutters' part of the Town as

the Town generally, especially because the abutters feel that it does change the character of their area. Livingstone agreed with Cass that this one project would not be detrimental but lots of similar projects would. The Town does not have experience with that kind of growth. Livingstone further stated that the Zoning Ordinance is in place to control growth and essentially keep the Town as it has been for generations; does the ZBA want to take the risk of shifting the odds of change? Hilton responded that it was a loaded question because there are different interpretations. Cass turned attention to the Master Plan. With regard to population, he said 25% of Lancaster is comprised of the elderly; there is nothing here for the younger people. If applications like this are continually denied, then the Town will not attract nor retain any young people. Is that in the best interest of Lancaster? He felt that tying it back to the Master Plan does allow a little change. He felt that it was still controlled growth as opposed to random sprawl which is what both the Master Plan and Zoning Ordinance are designed to address.

The Board agreed that this singular project was NOT detrimental to the character of Lancaster but that opening the door to these kinds of projects would be detrimental to the character of Lancaster. There was no further discussion.

4. Would the use be detrimental to the welfare of Lancaster?
   Appellant's Response: *NO. Limited development with on-site wells and septic systems should not require substantial town services, while at the same time increasing the tax base.*

All Board members agreed that the proposed use would NOT. There was no discussion.

5. Is the granting of this Special Exception in harmony with the purpose of the Zoning Ordinance?
   Appellant's Response: *YES. I have reviewed NHRSA 674:17, and feel the proposal is in keeping with the "Purpose(s)" outlined in the Statute and the Town of Lancaster Ordinance.*

Abutter Tricia Frenette asked if it is really in harmony when the ordinance says only single-family dwellings. LUC Irving responded that the language of the ordinance indicates that the district is *characterized* by single family dwellings but is not *restricted* to them; also, the density for that district is three (3) dwelling units per acre (he could put 33 units on the lot so long as it the septic was supported). LUC Irving recited sections I and II of NHRSA 674:17:

674:17 Purposes of Zoning Ordinances. –
I. Every zoning ordinance shall be adopted in accordance with the requirements of RSA 674:18. Zoning ordinances shall be designed:
(a) To lessen congestion in the streets;
(b) To secure safety from fires, panic and other dangers;
(c) To promote health and the general welfare;
(d) To provide adequate light and air;
(e) To prevent the overcrowding of land;
(f) To avoid undue concentration of population;
(g) To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
(h) To assure proper use of natural resources and other public requirements;
(i) To encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34-a supporting the agricultural lands and buildings; and
(j) To encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477. Zoning ordinances may establish buffer zones or additional districts which overlap existing districts and

may further regulate the planting and trimming of vegetation on public and private property to protect access to renewable energy systems.
II. Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

LUC Irving directed the Board's focus to Section II; the Board has made their decision regarding character of the area but what is the area's 'peculiar suitability for particular uses" or "most appropriate use of the land?" She repeated the application's question "what about the project, because it is about harmony, is consistent with the zoning ordinance or master plan?" Les Hilton argued that there is no difference in the use from a subdivision with single-family dwellings that can be rented. Irving said that the ordinance specifically states that the short-term rental of a single-family dwelling in the *Agricultural* District would have to come before the Planning Board for a Conditional Use Permit just like this case. Abutter Paul O'Brien interjected that rental of cabins on a private road is not in harmony. Don Freddette opined again that the use should be restricted to family use only and not rental. Irving clarified that short-term rentals cannot be prohibited in NH as a prohibition would be constitutionally overbroad BUT short-term rentals can be regulated through the Conditional Use Permit process before the Planning Board. Abutter Tricia Frenette mentioned that another consideration is that Lupachino could sell the property—what is the effect post-sale when a zoning decision follows the land? The buyer might come in and rent as a short-term rental every night. The Appellant objected to Abutter Frenette's comments as being out of order. Chair Kenison allowed the comment. Lupachino objected again as he felt it was influential. Chair Kenison responded that Frenette is an abutter that he allowed to comment. LUC Irving said that a new owner would be required to get a Conditional Use Permit because they expire every 2 years. Chair Kenison acknowledged Resident Nona Cordwell to speak. Cordwell mentioned that there is a list of permitted uses by Special Exception and permitted uses by Conditional Use Permit in the Zoning Ordinance, so is there anything in that list that includes the Appellant's proposed use? LUC Irving said that the Notice of Public Hearing lists the ordinance's provision citing the proposed use (subsection f of section 5.05 in Article 5) and also said that a Notice of Decision lists the date of decision, the type of decision process used by which Board (Special Exception is ZBA and CUP is Planning Board), and any conditions of approval. The Planning Board's Conditional Use Permit decision is recorded at the Registry of Deeds but the ZBA's Special Exception decision is not. Cordwell further asked if conditions of approval can be set by the Board or were they set by statute? What are those conditions? LUC Irving responded that conditions are set by the Board and are often related to the abutter concerns. For instance, the ZBA can put restrictions on anything within their control that impacts public health, safety, traffic, welfare, noise, etc., so long as it justified (she gave an example regarding noise). Cordwell asked how the case gets a Conditional Use Permit? Irving said that, if the ZBA permits the use as 'transient lodgings' in this case, the Appellant must then submit his proposed plan to the Planning Board for a Major Site Plan Review and a Conditional Use Permit for determination of 'how' he will commercially short-term rent. This permitting process requires a fire inspection of the premises, registration with the police, perhaps restrictions on parking, and it takes into consideration the condition of the access. Cordwell was still confused on what the role of the ZBA played? Irving explained that, if the ZBA determines that these transient lodgings are not in harmony, negatively affect the town's character, or are inconsistent with the purpose of the ordinance and master plan, and they *deny* the application for Special Exception, then short-term rental is off the table and the Appellant would not seek a Conditional Use Permit. The Appellant could still pursue a Major Site Plan for the cabin community and rent more than 30 days (not considered short-term rental). If denied, there is a 30-day appeal period. It would then be a reconsideration by this board. If denied again, then the Appellant can appeal to Superior Court.

All Board members agreed that granting the Special Exception IS in harmony with the purpose of both NHRSA 674:17 and the Lancaster Zoning Ordinance. There was no further discussion.

6. Is the granting of this Special Exception in harmony with the intent of the Zoning Ordinance? Appellant's Response: *YES. I believe the proposed use will have minimal change/impact, well below allowable use/density, and is therefore compliant with the "Intent" of the Ordinance.*

Chair Kenison emphasized that this question is about harmony with INTENT as opposed to PURPOSE of the Zoning Ordinance. Everyone agreed that the proposed use had minimal impact and met density requirements. Les Hilton stated that he did not feel that the commercial use of the property was consistent with the intent of the zoning ordinance. Robert Cass said that if considering strict adherence to the zoning ordinance, then it is not in harmony with the intent, but if the Special Exception is granted, the hangup revolves around the level of 'commercialness.' Chair Kenison allowed Abutter O'Brien to ask if the Board can speculate that if this allowed then you can foresee several drives with a high number of rental cabins pop up in the area and throughout Lancaster? LUC Irving responded that the ZBA can refer to the Master Plan for the adopted guidance on growth. The Master Plan is based upon resident responses to community surveys and the Zoning Ordinance is voted on by residents at Town Meeting. These documents reflect what the community wants. Don Freddette admitted that he didn't know how to tie this issue back to either the zoning ordinance or the master plan. Abutter O'Brien spoke up and reflected on the growth pattern of his town of residence, Seabrook, that allowed multiple dwellings on single lots to accommodate the construction labor force when the nuclear power plant was being built. This destroyed the essence of the town and property values have been depressed since. He does not want that result for Lancaster. Chair Kenison allowed Appellant Lupachino to speak. Lupachino sternly stated that his application must be approved if the parameters all meet the requirements of the zoning ordinance and the word 'but' does not exist in the Board's book. He felt that the problem lied in each person's perspective of their environment. He quipped that the Board seems to be worried about his 4 cabins yet the subdivision across the road is building 5 times that many houses. LUC Irving responded that the ZBA decisions are not rooted in a checklist like the Planning Board—the questions on the application are subject to the Board's interpretation, so there is not an automatic approval.

Cass and Hilton both felt that the intent was to minimize sprawl, and as areas become more populated, the impact on roads from increased traffic. Abutters are here to object to this proposed use becoming uncontrolled sprawl. Livingstone asserted that this proposal is *not* going to contribute to sprawl. It is located within a populated area and is not an expansion of the outer limits. He felt that it was in harmony with the intent of the zoning ordinance. Livingstone said that every case will have to come before the ZBA for Special Exception, and the ZBA will have to determine the point at which growth is out of control and restrict or deny applications, not deny before anything happens.

Abutter Shelli Roberts communicated that she was having a difficult time understanding the Board's reasoning. She understood the intent of the agricultural district is not to have commercial activity, but this is a commercial request which is a Special Exception, but it is not the intent of the agricultural district, which does affect the harmony. To her, the issue is cut and dry because if it was in harmony, there would be no need to seek a Special Exception. Les Hilton agreed with her assessment. Cass and Livingstone responded that, if that were the case, then there would be no need for Special Exceptions at all. LUC Irving explained that there might be confusion about the term 'commercial use': long-term rental is a commercial use but would be

permitted by right and the Appellant would not need to go to the Planning Board; short-term rental under 30-days is also commercial use but would have to go to the Planning Board for a Conditional Use Permit, so if rent/income is derived from letting someone live on your property, it is commercial use but it does not make the lot commercial. Don Freddette said for the 3rd time that if the 'rental' activity were simply removed from the application, then everything would be approved. Appellant Lupachino remarked that he does not have a problem removing 'rental' from the application, but that would not be honest and he is being transparent. Lupachino wants to respect the Town's rules and laws because he wants to reside here too.

The Board members were split on whether granting the Special Exception was in harmony with the intent of the zoning ordinance. There was no further discussion.

7. Will the character of the area be adversely affected?
   Appellant's Response: *NO. Proposed use is located as such to optimize site conditions. The proposed use(s) are sited out of view of neighbors and passing traffic along Page Hill Road.*

Eric Livingstone recalled a similar case that was denied for a short-term rental on Mt. Prospect Road a couple of years ago. Chair Kenison said that it was a Bed and Breakfast; the septic capacity also did not support the number of potential occupants. Livingstone agreed that the denial was heavily based on technical shortcomings, however, the most prevalent emotional objection was the opening of the door to change the character of the *area*. In this case, Cass said the lot sizes are larger, the lot is still mostly wooded, travel is nominally increased, and the cabins cannot be viewed, so the area does not change.

The Board agreed that this singular project was NOT detrimental to the character of the area. There was no further discussion.

8. Will the value of adjacent property be adversely affected?
   Appellant's Response: *NO. Use in keeping with residential use characteristics presently found throughout the adjacent and neighboring properties in general.*

All Board members agreed that it would NOT because despite being commercial use, the characteristics of the development are akin to residential use. Les Hilton was concerned that those characteristics might change upon sale of the property. Appellant Debbie Lupachino interrupted to clarify that assessed value and appraisal are two different things (she is also an appraiser). Commercial would add a lot of value. LUC Irving clarified that the lot does not become 'commercial;' the lot is still an agricultural lot having an allowable commercial use. Everyone agreed that the value would be adversely affected if there was an AirBnB. Livingstone said that it is the role of the Planning Board to impose restrictions on use as a rental.

Cass said that every time a lot is improved, the value goes up. No one felt that the development would impact anyone's view. All Board members agreed that the value of adjacent property would NOT be adversely affected. There was no further discussion.

9. Will the character of the lot be affected?
   Appellant's Response: *NO. Proposed development is greatly less than the allowable density of 3 units/acre; utilizing only 15% of the total density permitted.*

All Board members agreed that the character of the lot would NOT be affected with respect to the new housing that will be built along the Kelsea Drive subdivision. Density is the same as the subdivision and adjacent lots. Native vegetation will be conserved as much as possible like the area's surrounding wooded lots. There was no further discussion.

10. Will hazardous waste be disposed of on the property?
    Appellant's Response: *NO. No hazardous waste would be disposed of on the property. Regular waste/trash/recycling will be disposed of within the Town of Lancaster Transfer Station guidelines/rules and regulations.*

All Board members agreed that hazardous waste would NOT be disposed of on the property; waste will be regular household waste. There was no further discussion.

Will provisions be made for disposition of all waste without jeopardy, financial or otherwise, to the Town of Lancaster?
Appellant's Response: YES.

11. Will traffic in the area be adversely affected?
    Appellant's Response: *NO. Character of development is such that it will only represent a small fraction (increase) of "trips per day" compared to the overall existing traffic on Page Hill Road. Only 1 access point will be used to access Page Hill Road from the development's driveway. Site distance meets Town safety requirements.*

LUC Irving said that she had provided the plan to Road Agent Tim Brown and asked him to inspect the area where the proposed ingress/egress would be; Brown reported that the curbcut has sufficient site distance and is located in the most reasonable portion of the frontage.

All Board members agreed that traffic in the area will NOT be affected, especially with respect to the 15-lot subdivision across the street with potential for 15 household increase in traffic. There was no further discussion.

12. NARRATIVE: *Proposed plan is to build four (4) pre-fabricated homes for rental purposes and one (1) log cabin-style home for owner's use. Attached are descriptions of the intended units for rental with dimensions, materials, and sustainability. Also attached is a sample of size/layout of owner's private use home a/k/a "The Jefferson."*

Both a plan and narrative were provided. The Board came to the conclusion that the use is light-volume commercial use that is in harmony with the purpose and character of the lot, area, and Town. Their single-most conflictual issue was over harmony with intent. LUC Irving reminded the Board that the burden of proof is 'clear and convincing evidence' for Section C. She asked the Board if they felt that the burden of proof was met? All members agreed that the burden of proof was met for Section C. There was no further discussion.

Steve Young moved to APPROVE WITH NO CONDITIONS the application for Special Exception as presented. Eric Livingstone seconded the motion. Board members voted 4-2 to **APPROVE WITH NO CONDITIONS** the application for Special Exception as presented, Les Hilton and Chair Nate Kenison objecting.

Don Freddette asked to change his vote (a motion to re-vote). There was no second to the motion. No re-vote occurred but tallies were made by LUC Irving to compare both situations. Original vote stands. *Motion passed.*

Chair Kenison reminded the parties that there is a 30-day appeal period.

Chair Kenison CLOSED THE PUBLIC HEARING for Case #555.

Tricia Frenette resumed as Chair for the remainder of the meeting.

Appellant Peter Lupachino cited Robert's Rules and asserted that it was improper for Tricia Frenette after recusal to stay in the room and contribute to the hearing because her presence may be perceived as influencing the process even if she were not actively participating and leaving the room assures transparency and avoids bias. Everyone on the Board agreed that she was entitled to stay and participate because she is an abutter. LUC Irving said that the Public Hearing notice statute mandates that all abutters shall be heard and the disqualification statute specifically states that the recused member cannot *vote* or *sit on the board* for that particular matter. Lupachino insisted that her presence and contribution were in violation of Robert's Rules.

Scott Lambert asked what part of the zoning ordinance addresses the intent of short-term rentals? LUC Irving explained that the short-term rental amendment was adopted at 2024 Town Meeting. The Conditional Use Permit for Short Term Rentals is focused on ensuring public health, welfare, and safety through things like having a fire inspection, making sure that the roads/driveways are passable by Fire/EMS, having contact information registered at the Police Station, ensuring septic capacity is consistent with the number of occupants, etc. There is no obvious statement of intent. Lambert asked if there is any regulation of long-term rentals in the residential district? Irving said that there is no regulation. Lambert asked if the Town can change where short-term rentals can occur? Irving explained that there is a process to adopt zoning amendments, and when the last amendment was adopted, the language of the amendment was collected from resident survey responses, so apparently there is support for short-term rentals in all districts, however, it was the Planning Board that implemented the Conditional Use Permit process for short-term rentals in both the residential and agricultural districts. The short-term rental prohibition debate originated from housing issues in North Conway. All of their housing stock for long-term tenants was snapped up and used as short-term rental so the local government passed an amendment to prohibit short term rentals. This decision was appealed and eventually the court issued an opinion that short term rentals could not be prohibited because it was 'overbroad' and a violation of one's constitutional right to use their property, BUT the short-term rental could be regulated through zoning. This decision essentially bootstrapped local governments, making them lose full local control. Regulation is only as good as its capacity to enforce. Resident Nona Cordwell asked if there was any way to tax these properties that are used for short-term renting? Irving said that short-term renting is subject to the State's Rooms & Meals Tax, but how does either the ZBA or Planning Board enforce reporting? Irving felt that even if she were to require submittal of annual rent rolls as a condition of approval, the list is essentially a paper tiger because the State would likely not pursue it. Cordwell recommended reading the section of the zoning ordinance listing all of the permitted uses by Special Exception—it would have been helpful to hear the range of uses. She noted that a dog kennel is permitted by Special Exception! She also said that she bought her land knowing exactly what was permitted on it, but it is a person's nature to object to some of the permitted uses if it is in your backyard. Irving noted that it could be a sawmill, directly related to the agricultural/timber industry.

Other Business: None

Land Use Permits: LUC Irving announced the most recently issued land use permits: 1) 25-003, Racheal Stuart, 21 Portland St, for interior renovation and a ground-mounted solar array, 2) 25-005, Henry & Eldora Farnsworth, 354 Elm Street, rooftop solar array, 3) 25-004, Heikki Tapio Heliste, 17 Burnside Street, rooftop solar array, 4) 25-001, Mary Snowman, 22 Depot Street, rooftop solar array, 5) 24-085, Jarrod & Heidi Vestal, 1 Pleasant Street, rooftop solar array, 6) 24-084, Peter Rizzo, 62 Martin Meadow Pond Road, L-shaped addition extension of living area, 7) 24-083A, John & Deborah Curtis and Ronald & Tara Curtis, 16 Sunny View Drive, stick built garage situated on already permitted slab (AMENDMENT), 8) 24-082, George Woods Jr. & Donna Woods, 44 Sand Street, rooftop solar array, 9) 24-081, Jamie & Dian Kenison, 308 Elm Street, rooftop solar array

Sign Permits: 24-006, Darren & Dian Williams, 480 North Road, temporary hand-painted sign for "Hilltop Arts and Event Center"

Planning Board Decisions: There will be 2 Planning Board cases on February 12th: a minor subdivision and a technical subdivision. Les Hilton asked if the Master Plan is being worked on. LUC Irving responded that she had completed the draft and submitted it to both North Country Council and OPD per the statutes for comments. OPD said that the required sections met minimum requirements and she is still waiting for feedback from North Country Council. She plans to have it on the agenda for adoption at the March Planning Board meeting. Once adopted, she and the Planning Board will be working on the Capital Improvement Plan.

Training Topics/Materials: Meeting schedules were distributed. Robert Cass asked what people or references are available to Board members to ask questions. LUC Irving said that she is the resource for questions.

Announcements/Correspondence:
Don Freddette submitted his request for renewal of his term. Steve Young moved to recommend to the Board of Selectmen Don Freddette for renewal of his term as Alternate. Les Hilton seconded the motion. All Board members voted to recommend to the Board of Selectmen Don Freddette for renewal of his term as Alternate, no objections. *Motion passed.*

Other business: None

Chair Kenison moved to adjourn the meeting at 2105H. Les Hilton seconded the motion. All Board members agreed to adjourn the meeting at 2105H, no objections. *Motion passed.*

Respectfully submitted,

Robin L. Irving, Land Use Coordinator

Approved: 2/26/2025