



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

ZONING BOARD OF ADJUSTMENT (ZBA)  
MEETING MINUTES  
Tuesday, September 15, 2020  
Digital – only meeting via Zoom  
6:30 PM

Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to contemporaneously listen and participate in this meeting through the video conferencing platform Zoom.us.

**MEMBERS PRESENT:** Douglas Lyon (Chair), Frank Anzalone, Michael Todd (Vice Chair), Stan Bright (Alternate), Lauren Chadwick, Katharine Fischer, Heidi Lauridsen, Steve Root (Alternate)

**MEMBERS ABSENT:** Ann Bedard

**OTHERS PRESENT:** Nicole Gage, Zoning Administrator, John Doyle, Mary (Donna) Doyle, Tyler Kipp

1. **Call to Order**—Chair Lyon called the meeting to order at 6:30pm. Chair Lyon called the roll. Doug Lyon: here. Stan Bright: here. Michael Todd: here. Frank Anzalone: here. Katharine Fischer: here, Steve Root: here Lauren Chadwick: here. Heidi Lauridsen: here. Heidi Lauridsen will be a voting member tonight.
2. **Public Hearing continued from 8/18/20:** Case #ZBA20-20 (Variances) for owner Donna Weaver, applicant Doug Gamsby, Greenline Property Services LLC, Parcel ID 106-006-0-0, 38 Beaver Point.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Katharine Fischer) to approve the continuation request of Public Hearing case number ZBA20-02 for owner Donna Weaver and Doug Gamsby, Greenline Property services, to be continued until October 6, 2020. Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Heidi Lauridsen: yes, Katharine Fischer: yes. THE MOTION WAS APPROVED UNANIMOUSLY.**

**3. Public Hearing:**

Case #: #ZBA20-03 (Variances)  
Owner/Applicant Tyler Kipp & Catherine Newick  
New Parcel ID 078-001-0-0-0  
Address: 495 Elkins Rd.  
Zone(s): R-1 (Residential) with 100-foot Stream Buffer, Streams  
Conservation Overlay

Summary of the Case: A variance is requested from Article V Section C.1 of the Zoning Ordinance to permit construction of a 5X5-foot section of a wraparound porch within the 25-foot front setback.

Mr. Kipp stated he came before the ZBA this past December for a variance to rebuild. They demolished the house in January and the variance received was to rebuild within the 100 foot stream setback. They were allowed to build within the existing footprint and conform to the rest of the zoning ordinances. There is now a 5x5 foot section of porch that falls outside of the existing footprint. They've tried to reduce the footprint of the house as much as they could and the house they are rebuilding is further back from the road and further away from the stream.

Chair Lyon stated there appears to be two issues. The first issue is that there is a setback issue but the setback violation is less than the existing porch that used to be there and has been torn down. The other issue is that Mr. Kipp is asking the ZBA to relieve him of the restriction that was put on with the original variance which said everything had to be within the existing footprint.

Mr. Kipp clarified that in the original variance they were able to build outside of the footprint as long as they were not closer than 80 feet. Zoning Administrator Nicole Gage commented that it is her understanding that everything they are proposing is permitted now based on either the variance that was given or because it's in a buildable area except for the 25 foot square area. Ms. Gage also noted that the Department of Public Works Director reviewed the project yesterday and has no concerns.

Mr. Kipp provided the following information regarding the five criteria that need to be met for a variance:

1. **The variance will not be contrary to the public interest** – There is a 5x5 corner addition to the improvements being made. Substantial improvements are being made to the lot by removing the old house and building a new structure on the property. This 25 square foot addition is not going to fundamentally change the character of that neighborhood.
2. **The spirit of the ordinance is observed** – The spirit of the ordinance is to maintain setbacks and in this case, that means not pulling the house forward. The new house was designed to be further back than the old one and is more conforming to the ordinance than it was before. The new design is more in keeping with the spirit of the ordinance. Since the new structure and porch is further away from the sidewalk, it will not threaten public health, safety or welfare and will be safer.
3. **Substantial justice is done** – This small (5x5) piece of the total project is an improvement over what existed before. This is a reasonable request. By denying the variance, he would have to step off the porch and step back up. This is a loss to the owner and has to be offset by a gain to the general public. If the 5x5 piece is not made a part of the regular porch the house would be an eyesore and a loss to the public.
4. **The values of surrounding properties are not diminished** – What is being done to this property is an improvement so the values of surrounding properties are not diminished. The proposed building is attractive.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship** – The property is distinguished from others by the virtue of its size and the difficulty of building within it. The part of the ordinance that deals with unnecessary hardship talks about no fair and substantial relationship exists between the public purposes of the ordinance provision and the specific application. It is perfectly clear that this project has improved the property in terms of the general public purposes of the ordinance and the 5x5 section does not violate this in any way. The proposed use is a reasonable one.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) to discuss. Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Heidi Lauridsen: yes, Katharine Fischer: yes. THE MOTION WAS APPROVED UNANIMOUSLY.**

Frank Anzalone stated that based on the site plan there is a good size buildable area. He asked why the house can't be fit into that buildable area with a porch. Mr. Kipp responded this is due to the 80 foot setback and he started with that setback and that was as close as he could get to the stream. He was trying to pull the house away from the road.

Chair Lyon stated overall, the project is more conforming in many ways.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Katharine Fischer) to approve the application. Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Heidi Lauridsen: yes, Katharine Fischer: yes. THE MOTION WAS APPROVED UNANIMOUSLY.**

**4. Public Hearing:**

Case #: #ZBA20-04  
Owner/Applicant Mary Doyle Living Trust/John & Mary Doyle  
New Parcel ID 119-016-0-0-0  
Address: 533 Forest Acres Rd.  
Zone(s): R-2 (Residential) and Conservation District, with Shore Land Overlay  
Summary of the Case: A variance is requested from Article VII Section B.1 of the Zoning Ordinance to permit construction of a garage within the front setback.

Chair Lyon noted that a letter was received today from an abutter of the Doyle's that supports the project. It was pointed out that John Doyle has been a member of the Messer Pond Protective Association for many years and has tried to design this project with as little impact as possible.

John Doyle and his wife Mary attended the meeting via zoom. They have applied to construct an oversize one car garage on their property. They are asking the board to consider granting them relief from a front yard setback ordinance.

The property is located on Messer Pond on the corner of Forest Acres and Beaver Point. They recently purchased the property and have several other smaller non-conforming lots that were merged in 2007. They now have an approximately 2 acre property that is split by Forest Acres Road. The home is located on the odd shaped portion of the lot that is on the north side of Forest Acres. The only option is to put the garage across the road from the house. They tried to minimize the disturbance of trees and other vegetation on a lot that is in a conservation district. This area is easier to keep clear and allow for safe and lighted access as well as allow for emergency vehicle access. The location provides an adequate setback that doesn't impact the ongoing dirt road maintenance activity of the Department of Public Works.

Michael Todd stated that because this is a setback issue a survey should be required. Mr. Doyle stated a survey was done by Clayton Platt and submitted.

Frank Anzalone asked if any permitting would be required from DES. Mr. Doyle stated yes, as soon as he gets through this process he will apply for a permit by notification.

Mr. Doyle stated he believes the variance request is not contrary to the public interest and is consistent with the spirit of the ordinance because while they are asking for a setback from the roadway be only 25 feet, the garage will still be 60 feet from the center line of Forest Acres

Road. This is because the actual road skewed to one side because of the large outcrop of ledge on the property. They reviewed the location with the DPW Director and he believes the location will not be an issue with ongoing maintenance activity on the dirt road. Disturbance of trees and vegetation will be kept to a minimum. The garage will be over 100 feet from drainage culverts on the property and will be between about 30-60 feet away from the edge of wetlands which will allow space to address any runoff from the roof or driveway. .

**Substantial justice is done** – Mr. Doyle stated they are asking to meet the same setback requirements that the majority of the homeowners on the road are being held to. The setback does not impact the town maintenance of the dirt road.

Michael Todd asked if the garage they are proposing will fundamentally change the character of the neighborhood and Mr. Doyle responded he does not think so.

There is a letter on file from the town road agent and he has not raised any safety concerns. Mr. Todd asked if it was fair to say that this proposal does not pose any threat to the public health, safety or welfare. Mr. Doyle stated he does not think it poses any threat to the public health safety or welfare.

**The values of surrounding properties are not diminished** – Mr. Doyle does not believe the value of surrounding property will be diminished because the proposed location and design of the garage is in keeping with the overall character and layout of surrounding residences on Forest Acres road.

**Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship** – Mr. Doyle believes the proposed use is a reasonable one and in this case there is no fair or substantial relationship between the general public purposes of the ordinance and the specific application requiring a 50 foot setback. This is because the location of the garage is going to be 60 feet from the center line of the road and will not present an issue to the ongoing maintenance of the dirt road. The location minimizes the disturbance of trees and vegetation on the lot. It will be easier to maintain a clear opening on the location and provide easy access and safe lighting access.

Steve Root stated that all of the properties on the side of the street that they are proposing to build on are in the Conservation District so they are all subject to the 50 foot setback unless they've been grandfathered. Mr. Root commented if they accept the premise that the majority of the properties only need a 25 foot setback then they are ignoring the fact that there are two different rules on two different sides of the road. He questioned if there was room to build that garage further back outside of the actual 50 foot setback? Mr. Doyle stated by moving it back 25 feet they would need to clear a lot more of the land, would require more fill and be closer to wetlands. It would also mean they would drive over septic system pipes.

Chair Lyon commented that he drove out to look at the property and it appears that there would be a substantially greater impact on the property to move the garage back further. While they would conform to the 50 foot setback, it would do greater violence to the spirit of the ordinance in terms of maintaining that property in a Conservation District. This was a compromise that was a reasonable request given the impact on the land. A unique aspect of this property is that it is separated by the road and falls into two zones. This differentiates it from other properties around them and conforms to the hardship criteria as a unique aspect to this property compared to other properties on the street. He agrees with Mr. Todd and Mr. Root that there is a remedy, but that remedy does more damage on the Conservation property and that is not a good thing.

Steve Root reiterated that all of the properties on that side of Forest Acre Road are in the Conservation District so they all have a 50 foot setback. It is important that we look at the topography but we were only given a general description that setting it further back would cause it to be lower or require more construction. He is concerned that this will set precedence. Chair Lyon stated that all variance requests are considered on their own individual merit so if anyone came in with a similar request, they would have to consider the specific merits of that particular case and the design that was proposed. He believes the request is a reasonable one given what the owner faces in this situation.

Nicole Gage noted the Doyle's property is unique because it is bisected by the road so the house is on one side and there isn't enough room for a garage on that side. Looking at the town map, all the other houses are 100% in the Conservation District. Frank Anzalone stated that having the property bifurcated by the road is not unique, but if the property does slope to the point where construction becomes difficult or impacts more of the property than is necessary than that should be considered.

**IT WAS MOVED (Frank Anzalone) AND SECONDED (Heidi Lauridsen) to discuss. Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Heidi Lauridsen: yes, Katharine Fischer: yes. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Lyon stated as they went through the criteria there was general agreement with the first four. The unnecessary hardship criteria raised issues and concerns. In this case there is a reasonable criterion in the hardship requirement about whether the proposed use is reasonable. The purpose of the Conservation District is to protect the land and it seems that this represents a reasonable case on a property that does have a unique element in that it is bifurcated. Everyone in the Conservation District has the same requirement but not everyone has land that is in two different districts. This property does have a special condition and there is no fair and substantial relationship between what we are trying to accomplish in the Conservation zone and this specific request.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Heidi Lauridsen) to approve the variance on the basis that having discussed each of the five criteria we find that the applicant has met the requirements of demonstrating that the five criteria have been met. Doug Lyon: yes. Michael Todd: no, Frank Anzalone: yes, Heidi Lauridsen: yes, Katharine Fischer: yes. THE MOTION WAS APPROVED.**

##### **5. Review of Minutes of August 18, 2020**

**IT WAS MOVED (Doug Lyon) and SECONDED (Michael Todd) to approve the minutes of the August 18, 2020 meeting. THE MINUTES WERE APPROVED UNANIMOUSLY. (Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Stan Bright: yes, Lauren Chadwick: yes)**

##### **6. Other Business**

Chair Lyon reported that Michael Todd sent him a two page summary of variance requirements. He has used this for orientation of new board members and it is a good idea to have this to reference as needed. He has asked Nicole Gage to send it out to all board members.

Nicole Gage stated that the next ZBA meeting will be held on October 6, 2020. She is working on budget requests for the zoning office and the ZBA. She would like to know what interest

there is in training and travel opportunities beginning in July 2021. She encouraged everyone to participate in the annual Planning and Zoning Conference if they are interested. Chair Lyon feels that continuing education is critical.

**7. Motion to Adjourn**

**IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY (Doug Lyon: yes. Michael Todd: yes, Frank Anzalone: yes, Heidi Lauridsen: Yes, Katharine Fischer: Yes).**

The meeting was adjourned at 7:51PM

Respectfully submitted,

Trina Dawson

Recording Secretary  
Town of New London