



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, October 15, 2019  
New London Town Offices, 375 Main Street  
6:30 PM**

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), Frank Anzalone, Stan Bright, Heidi Lauridsen, Ann Bedard, Katharine Fischer

**MEMBERS EXCUSED:** W. Michael Todd, Bruce Hudson

**STAFF PRESENT:** Nicole Gage, Zoning Administrator

**OTHERS PRESENT:** Nicole Gage, Zoning Administrator, Michael Cornelio, Jake Messer, Tracey Godin, Bill Huntoon, Ben Dulac, James Deangelis, Matthew Ayres

1. **Call to Order** – Chair Lyon called the meeting to order at 6:30 pm.
2. **Roll Call** – Chair Lyon called the roll.
3. **Review of Minutes of October 1, 2019**

**IT WAS MOVED (Katharine Fischer) and SECONDED (Frank Anzalone) to approve the minutes of the October 1, 2019 meeting with one change. THE MOTION WAS APPROVED UNANIMOUSLY.**

**4. Case #ZBA19-17 - Variance**

**New Parcel ID 139-001-000-000-000, 41 Stonehouse Road**

**Owner: Jake & Molly Messer**

**Applicant: Jake Messer**

**ZONE ARR**

**A variance is requested from the provisions of the New London Zoning Ordinance, Article VI, Section A to permit continued use of pre-existing non-conforming use.**

Michael Cornelio attended the meeting to represent Jake & Molly Messer. He reviewed the five criteria as follows:

1. The variance will not be contrary to public interest - Mr. Cornelio explained that there is no harm or danger that will come to anyone from this. This operation has been operating for about 50 years when Jake's father Joseph Messer began using the property the way it's being used today. Having a business and an income is part of the public interest to help and take care of each other. Without this variance, Jake Messer could lose his business. Another part of public interest is so that landowners can get their value out of their property.
2. The spirit of the ordinance is observed - Mr. Cornelio quoted a Supreme Court Case from 1980 which discusses variances and mentions "variances are included in the zoning ordinance to prevent the ordinance from being confiscatory or unduly oppressive as applied to individual

properties uniquely situated". Part of the spirit of the zoning ordinance is the fact that there is an allowance for these pre-existing non-conforming uses. By following this allowance, you are following the spirit of the ordinance. This property has been used this way for over 50 years. They are not asking for an expansion of the non-conforming use so they are obeying the ordinance by not asking for something different. They are asking to continue using it the way it has always been used.

3. Substantial Justice is done - The potential harm to society needs to be weighed against the potential harm to the individual. This is how we decide what justice is. In this case, there is no harm to the public by allowing this business to continue. This will have a tremendous detrimental impact on Mr. Messer's family, his employees and his customers. By granting a variance, substantial justice is being done.

4. The values of the surrounding properties are not diminished - This business has been on this property for over 50 years. Mr. Cornelio believes that most of the neighbors moved in after this property was already being used so it is not going to have an effect on values. For values to go down, something has to change. By allowing it to remain the same means that nothing will change and values will remain the same. Granting the variance tonight does not mean that surrounding property will go down tomorrow or any day after.

5. Literal enforcement of the provision of the ordinance would result in unnecessary hardship – If Mr. Messer doesn't have a place to run his business he has no job. This is significant loss of income for his family and his employees. The special condition is that it has been this way for 50 years and used commercially. It is well suited for the business that is being conducted there. The fact that they have been successful there shows that this property is well suited for what they are looking to do. It has good safe access for equipment.

The proposed use is a reasonable one – they aren't proposing a use, they are asking to continue the use that is already there. This is an agricultural and rural residential district. Agricultural operations often use the type of equipment Mr. Messer uses so this is not unusual.

Frank Anzalone asked if this business has been going on since 1965, why do they need a variance now. If use has been discontinued for more than a year it would be required. Mr. Cornelio explained that the issue was brought to Mr. Messer by the town. Mr. Messer's father died in 2014 and they questioned if there had been an interruption in the use of the property. Mr. Cornelio stated Jake Messer started his landscape/firewood business there in 2010. There has never been a gap. Katharine Fischer asked if the businesses were similar enough to constitute a continuation. Mr. Cornelio stated yes and copies of advertisements that stated what kind of business was being run there was given to Nicole Gage. Joseph Messer did more since he did road construction, land clearing, landscaping, forest management and firewood. Jake Messer is not doing all of these things, he's actually doing less, as he focuses on landscaping but there has been no interruption.

Mr. Cornelio addressed a complaint from 2016 that Lucy St. John responded to. There are 2 emails that note that according to Ms. St. John, this is a pre-existing non-conforming use. Mr. Cornelio does not believe a variance is necessary but Mr. Messer was told that he should seek a variance.

Frank Anzalone asked Mr. Cornelio the following three questions:

1. When it changed from Joseph Messer to Jake Messer, did the nature and purpose of the original non-conforming use change? Mr. Cornelio responded no.
2. If there was any expansion, did it change the character and nature in kind of the business. Mr. Cornelio responded only that it slightly narrowed it to focus mostly on landscaping.
3. Has there been any substantial different effect on the neighborhood? Mr. Cornelio stated no.

Mr. Anzalone stated these are the three items the court would address.

Ben Dulac stated it's mostly family members that are immediate abutters. They support Mr. Messer and don't want a variance to affect him. He has been there since 2010 and operates a business that is the same use as it has been for many years.

Bill Huntoon agrees that the use is the same.

Matthew Ayres is a neighbor and came to support Mr. Messer. He does not see any problems with his equipment on the road.

Jim DeAngelis has worked with Jake Messer for years and Mr. Messer has also done work for his family. He is a man of great character and he supports Mr. Messer.

**A MOTION WAS MADE (Frank Anzalone) AND SECONDED (Katharine Fischer) to DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Lyon addressed the question as to whether a variance is required at all. If the conclusion is that there has been no interruption in the business, which was one of the complaints, then a variance is not necessary. This was addressed by former Zoning Administrator Lucy St. John in a memo in which she also consulted with the Highway Director Richard Lee and the town assessor. They did not feel there was any change in the use or any interruption in the business.

They also need to conclude that there has been no expansion in the business and the testimony has been that there has actually been a reduction in the scope of the business. Based on this, the issues that have been raised have been settled. Members discussed whether a variance is even necessary in this case. Mr. Cornelio expressed that his client wishes to be granted the Variance. He asked to step outside to consult with his client. After returning to the meeting room, Mr. Cornelio stated that they withdraw the application for a Variance.

Nicole Gage asked if the findings would be that this is not just a non-conforming use but it is a legal pre-existing non-conforming use which is allowed to continue under Article XX Section A. Chair Lyon stated yes, that is the conclusion.

**A MOTION WAS MADE (Frank Anzalone) AND SECONDED (Katharine Fischer) that the Zoning Board of Adjustment has found that the use that Jake Messer has of the property is a legal non-conforming use and there has been no interruption in the grandfathered use of the property and there has been no expansion of the business. The Zoning Board of Adjustment has heard evidence of this from the petitioner and there have been no objections raised by members of the audience. THE MOTION WAS APPROVED UNANIMOUSLY.**

#### **4. Case #ZBA19-18 – Variance**

**New Parcel ID 124-006-000-000-000, 148 Fairway Lane**

**Owner/Applicant: Steven P & Tracey Godin Revocable Trust/Steve & Tracey Godin  
ZONE ARR**

**A Variance is requested from the provision of the New London Zoning Ordinance, Article VI, Section C-1 to permit the erection of a wood/timber style car port over a section of existing driveway.**

Tracey Godin attended the meeting and provided some history of the property. The land was surveyed two years ago when an addition was put on the back of their house. At that time, they had to survey it also for wetlands as a stream goes through the back of the property. They also had to file an approved septic design with the state.

Ms. Godin provided photos of the plan which shows the property boundary and setbacks. Fairway lane is a dirt road and slopes from the road down to the golf course and to the river. Where they are proposing to put the open car port is about 50 feet from the actual road. They are purposely not putting in an enclosed garage as they don't want to impair vision as you come down the street. It will be well hidden from view and was the most logical place to put it.

Ms. Godin reviewed the five criteria as follows:

1. It is not contrary to public interest since it is obscured from public view because of the way the road curves and due to the foliage. There is a significant distance from the road itself. Chair Lyon asked for clarification on the distance. Ms. Godin stated it would be 78 feet to the property boundary but about 50 feet from the road and 22 feet from setback boundary.
2. The Spirit of the Ordinance is observed – Due to the lot conditions they are trying to work with, they will be erecting the structure over an existing paved driveway.
3. Substantial Justice is done – They are trying to provide as much distance from the road and abutters as possible. Public Works Director Bob Harrington has no issue with where they want to put the proposed structure.
4. Values of surrounding properties will not be diminished – Ms. Godin stated that most of the surrounding properties have garages and they are one of the few that don't. The reason they chose the design of the structure is to make it match the existing A frame structure of the house design and didn't want to close it in and obscure the view.
5. The enforcement of the provision of the ordinance would result in unnecessary hardship – It is a hardship as this is the only flat area on the property to potentially build it without dealing with water run off due to the sloping lot.

Chair Lyon stated as he looked at the design, the only places that this could be located is on top of septic system design, on top of generator and well or by a steep slope area near wetlands. He was unable to find a better spot than the proposed location.

Ms. Godin also wants to prevent taking trees down and this plan doesn't require any tree removal.

Chair Lyon asked if any neighbors had any concerns. Ms. Godin stated she hasn't heard anything from them. Nicole Gage has also not heard from any abutters.

Chair Lyon stated that the applicant has made a good effort to find the best spot to put the car port and having a car port in New Hampshire in the winter is not an unreasonable request.

**A MOTION WAS MADE (Doug Lyon) AND SECONDED (Stan Bright) to approve the variance having found it will not be contrary to the public interest as it is mostly obscured from view. The spirit of the ordinance is observed as it minimizes the impact on the area and the applicant has tried all other possible location for this building. The values of the surrounding properties will not be diminished as there are other buildings and sheds in the neighborhood. Literal enforcement of the ordinance does result in an unnecessary hardship. This is a unique property in terms of the way it is located. The proposed use is a reasonable one. THE MOTION WAS APPROVED UNANIMOUSLY.**

#### **6. Updating Rules of Procedure**

Nicole Gage would like to review the redlined draft of the rules and procedures to include checking notes and reviewing the RSA references. Chair Lyon suggested that all Board members review the material and send any suggestions to Ms. Gage prior to the next meeting.

#### **7. New Business**

**IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) to enter into nonpublic session per RSA 91-A:3 (II (I) to consider written legal advice to the ZBA provide by town counsel. THE MOTION WAS APPROVED UNANIMOUSLY with a roll call vote: Doug Lyon yes, Frank Anzalone yes, Katherine Fischer yes, Ann Bedard yes, Heidi Lauridsen yes, Stan Bright yes.**

**The Board entered into a nonpublic session at 7:29 PM. The Board reentered the public session at 7:50 PM and took a roll call vote to seal the minutes: Doug Lyon yes, Frank Anzalone yes, Katherine Fischer yes, Ann Bedard yes, Heidi Lauridsen yes, Stan Bright yes.**

#### **8. Motion to Adjourn**

**IT WAS MOVED (Doug Lyon) AND SECONDED (Ann Bedard) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting was adjourned at 7:50 PM.

Respectfully submitted,

Trina Dawson  
Recording Secretary  
Town of New London