



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD OF ADJUSTMENT MEETING MINUTES Thursday, November 20, 2014 6:30 PM

**Members Present:** William Green (Chair); Doug Lyon; W. Michael Todd; Cheryl Devoe; Paul Vance, Alternate (arrived 6:38 PM)

**Members Absent:** Ann Bedard, Courtland J. Cross, Alternate

**Also Present:** Lucy St. John, Planning and Zoning Administrator

### Meeting Opened and Roll Call:

Chair Green called the meeting to order at 6:34 PM, took roll call, and noted the meeting had been properly noticed. Paul Vance was asked to sit in as a full member.

### Review of Minutes from September 18, 2014

Chair Green requested one correction to the September 18, 2014 minutes. On page 4, under "Other Business-Abutter Notification Process," the sentence reading "Chair Green commented that if the ZBA changes the notification period from five to 10 days, the number of people attending the hearings might double" be amended to read: Chair Green commented that if the ZBA changes the notification period from five to 10 days, the number of people attending the hearings might double, but that is not a problem as the hearings are lightly attended."

**IT WAS MOVED (Doug Lyon) AND SECONDED (W. Michael Todd)** to approve the minutes of September 18, 2014 as amended. **THE MOTION WAS APPROVED UNANIMOUSLY.**

### Public Hearings

- **Variance Application for Elizabeth Kent Property.** Located at 101 Lamson Lane. Tax Map 049-015-000. Zoned Residential (R-2). Parcel is approximately 1.5+/- acres. Applicant proposes to replace the existing cottage which straddles the Shoreland Overlay District waterfront buffer and which is an existing nonconforming structure, and replace it with a new house in the same footprint. Plan prepared by Pierre Bedard and CLD Consulting Engineers. Four variances have been requested:
  - Variance to Article XVI, Shoreland Overlay District, G 2.b.
  - Variance to Article XVI, Shoreland Overlay District, J. 1 & 2
  - Variance to Article XX, Nonconforming, B 1
  - Variance to Article XX, Nonconforming, B 3.b. 2

Pierre Bedard was present to represent Elizabeth Kent. Chair Green proceeded to read the Articles related to each of the variances requested.

### Public Hearing Opened:

Pierre Bedard noted that the property located at 101 Lamson Lane has an existing structure on it - a small cottage. The proposal is to replace the cottage using the same footprint. This will require a disturbance beyond the existing nonconforming structure. Chair Green asked Pierre Bedard to describe the property on a site map, which was displayed via the overhead projection. Mr. Bedard noted the septic system was updated in 2013.

Michael Todd clarified that this seasonal cottage was being replaced with a year-round structure with crawl space, and Mr. Bedard replied affirmatively.

Architectural drawings of the proposed structure were shown, with Mr. Bedard stating the new roof would have a higher pitch. The structure will have the same dimensions as the existing cottage. He noted that this project is not contrary to the public interest, and the spirit of the ordinance is observed. The value of surrounding properties will not be diminished, and the proposed use is a reasonable one.

Chair Green commented that he had visited the property stating it resembles a bowling alley, long and narrow. He indicated that no additional clearing or work to the lakeside would be required, so the owner is simply planning to take the old structure down and put up a new one.

Chair Green noted for the record that two letters of support was received, one from Donald and Joan Lamson and another from Steven and Nancy Allenby. Chair Green asked if anyone had further questions.

Michael Todd observed that the cottage appeared not to have gutter downspouts and wondered if those would be added to the new structure? Mr. Bedard responded that he was not sure, they might use infiltration trenches instead. Mr. Todd said he wanted to make sure considerations were made for that.

**Public Hearing Closed.**

Chair Green called for a motion to discuss.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.**

Doug Lyon said that based on Mr. Bedard's presentation and his enumeration of the various criteria, he feels this project meets the standards required. The fact that the property has a new septic system and a newly-designed house to avoid further deterioration is all within the spirit of the ordinance and meets the criteria for the variances requested. Chair Green commented that he had looked at the property and everything appears fairly straight forward except the building being within the 50-foot setback. However, the applicant is not looking to increase the size of the building and the plan sounds reasonable to him as well.

Michael Todd asked for one condition, that the areas disturbed during the construction be replanted with native planting per the publication- NHDES Native Shoreland Riparian Buffer Plantings for New Hampshire.

Paul Vance asked Mr. Bedard if the steps and deck on the new house will be similar to what is there currently, and Pierre replied there would be no deviation.

**IT WAS MOVED (Michael Todd) AND SECONDED (Bill Green) to approve all variances, with the following conditions: 1) That some mechanism to minimize runoff such as the use of drip edges be utilized consistent with the recommendation of Pierre Bedard, and 2) That the areas disturbed during the construction be replanted with native planting per the publication- NHDES**

Native Shoreland Riparian Buffer Plantings for New Hampshire. **THE MOTION WAS APPROVED UNANIMOUSLY.**

➤ **Variance Application for New London Wood Products owned by Dean and Pamela Larpen-ter.**

Located at 1554 King Hill Road. Tax Map 129-015-000. Zoned Residential ARR. Parcel is approximately 3.1 +/- acres. Applicant proposes to construct a barn, which is an expansion of the nonconforming use of the site. The barn is proposed to be utilized for horses. Variances requested:

- Variance to Article XX, Nonconforming Uses, A. 2-Change or Expansion
- Variance to Article II, General Provision, 1 (e) Grazing, Care, Raising, or Keeping of Livestock

Dean and Pamela Larpen-ter were present to discuss the two variances they are requesting. Pam Larpen-ter said the reason she and her husband were before the Zoning Board was to seek approval to put a barn on their property on King Hill Road. The barn would not be used for anything to do with the business, it would just be used to house two draft horses. No equipment would be stored in the barn.

Mrs. Larpen-ter noted the business has been in that location for over 40 years, and is nonconforming because it is in a residential area. The Larpen-ter's plan to continue operating the business as it has been done the last 40 years, and housing two horses on the property will not change anything. Mrs. Larpen-ter added that they have improved the condition of the buildings and have upgraded the area. The values of surrounding property will not be diminished by having horses there. She noted the greatest hardship would be not having the ability to keep their horses on this property. The horses must be relocated from where they are currently being boarded in Newport. Mrs. Larpen-ter explained that their lot is over 3 acres, allowing 200 sq. feet for each animal. The area will provide a suitable enclosure. The horses do not need a pasture since they do not graze.

Chair Green asked how long the Larpen-ters' had owned the horses. Mrs. Larpen-ter replied since the beginning of September. She and her husband plan to show them next year. She feels putting a barn on the property is a reasonable use of the space. She and her husband changed their original plan in order to make the barn a separate building. She said these horses need an environment that is healthy and safe.

Mrs. Larpen-ter noted that horse waste will be stored in a concrete bin and removed regularly. There are no streams or wetlands, which will prevent spreading of manure. A fence will be put around the area so the horses cannot get loose. The Larpen-ters will provide the grain and hay. She felt noise from the animals would not be a problem. She commented that she and her husband would like to have the same opportunity as their neighbors to keep livestock on their own property.

Doug Lyon commented that this is considered a nonconforming use because it is a business in a residential area. He asked why the erection of a horse barn is considered an expansion of a nonconforming use. Chair Green asked board members to let Mrs. Larpen-ter finish her presentation before asking questions.

Pam Larpen-ter displayed site plans, noting where her property was located, and pointed out adjoining neighbors who currently have horse barns and horses on their properties. She noted that the Campbells, one of her neighbors, had sent a letter of support to the board.

Paul Vance asked how many acres the Larpen-ters had and she responded that it was 3.1. Mr. Vance asked if the neighbors with horses had more acreage. It was noted that Lot 10 only has two acres.

Mrs. Larpenner commented that they have a good relationship with their neighbors. She explained that their personal residence was not on this property, but it was where she and her husband spend most of their time. Right now they are traveling back and forth between New London and Newport three times a day to care for their horses, which is a considerable hardship. She and her husband feel the King Hill Road location would be the best place to house the horses and noted that livestock had been kept at this site historically and, therefore, was a reasonable use.

Chair Green asked for questions. Doug Lyon said that he was unclear about why building a horse barn is considered an expansion of a nonconforming use, since it is the business that is nonconforming. He feels the board should declare that building a barn is not an expansion of a nonconforming use. The board referred to the provisions of RSA 674:19, Applicability of Zoning Ordinance. There was discussion around the nature of a prevailing nonconforming use. Chair Green said he did not think having horses on the site is a change in the nonconforming use.

### **Public Hearing Opened**

Chair Green noted for the record correspondence received from several abutters, Allison and Eric Campbell, the Ambrose's, Valerie Mahar and Cheryl Fitzgerald. All written to express their support for a horse barn.

Chair Green asked anyone in attendance if there were comments. Mr. and Mrs. John Chowanski (Tax Map 129-018-000) who live at 1502 King Hill Road addressed the board. They noted there had been two fires on the property in five years. There are a number of buildings already on that site and feel a horse barn would make the property look crowded. Mrs. Chowanski stated she is concerned that the horses will lose their hearing because of the ongoing noise associated with the wood business.

Ms. St. John explained that a sketch of the proposed barn location was discussed at the Planning Board meeting. Initially the plan was to have the barn attached to the existing building. Since that time and having heard the concerns of the abutters, the Larpenners have proposed to have the barn detached, and not connected to the existing structure.

Michael Todd asked the Larpenners where they live. Pam Larpenner replied that they live in Sunapee, but spend most of their time at the business in New London. She explained that the barn will be 30' x 34' which will allow them to provide box stalls for the horses. Paul Vance asked the distance between the kiln and the barn and Mr. Larpenner responded it was 60 feet.

Chair Green wondered about the noise issue. Mrs. Chowanski said she was concerned the horses would lose their hearing because the barn would be so close to the other buildings. She asked if the horses would be kept inside. She noted there are log piles, shag piles, and equipment piles all over the lot. There are also big piles of log waste. She cannot imagine putting another building there.

Dean Larpenner responded that they will have paddocks outside so the horses can run around; they will work them in the summer. He feels there is plenty of room in back where the field is located. Each horse has a paddock of 1,000 sq. ft.

Chair Green told board members he contacted the UNH Cooperative Extension Service regarding requirements for keeping horses. The person he spoke with at the Cooperative Extension explained to him, that what was proposed sounds like good animal care, but the Board should ask what the manure management practices are going to be. He noted that the Larpenners have already reported they will move the manure from the site. She also recommended there be an outside paddock, at least 50' x 50' per

horse. With the size of the paddock proposed by the Larpenters, and feeding and graining the horses as needed, the expert felt the animals would receive responsible care.

Mrs. Chowanski responded that she felt the property is an eyesore as it is. If she wishes to sell her house, she is afraid people will comment about this business being there. Having a horse barn and horses will make it look even worse. She asked board members, how do you know the building will be used as a horse barn? Who is going to check on it? She repeated that the property is not a nice-looking place.

Chair Green replied that this issue was not something the board would consider tonight, since it is a pre-existing property. Mrs. Chowanski asked if there were any laws regarding how many buildings there could be in a certain space. She worries another building will cause a fire hazard. She and her husband can smell the wood burning and there is always a lot of noise.

Dean Larpenster said he has had horses all his life. He is currently working with a nutritionist to give the horses the healthiest diet possible and he noted the horses have already gained 300 pounds in his care. As far as the business goes, he noted they purchased the property in 2000. At that time, it was an eyesore and he and his wife have cleaned it up tenfold. He noted the people owning the business before them cut wood seven days a week. He also noted that they consult with their neighbors before making any changes to the property. They understand they are a business in a residential area and they try to be considerate of their neighbors. Mr. Larpenster explained that the person now boarding the horses is moving to Florida, so he must find a new place for them. The closest place would be in Candia, NH.

Peter Messer, an abutter was in attendance to support the project. He said the barn is a separate issue from the business. He maintained horses do not lose their hearing from listening to noise outside. He conveyed a story of an old-time farmer who would sensitize his horses but taking them to an active railroad track, so they would not get skittish when they hear loud noises. He explained this is important for show horses not to get detracted.

Mr. Larpenster commented that the business had had two fires, the first one in 2008 caused by an electrical short in the kiln. They completely rebuilt the kiln. Just recently, there was another fire on the site. Mr. Larpenster said a welding company had put a new elbow in the furnace and the weld didn't take, which was the cause of this fire. Mr. Larpenster said it took two weeks to rebuild. They decided to put a concrete ceiling and sprinkler system in. They have purchased a new furnace. He emphasized that he and his wife have done everything they can to prevent fires. He noted the fire was contained within the structure. He had high praise for the New London Fire Department. Michael Todd asked if there would be any fire detection devices in the barn. Mr. Larpenster replied they had not considered doing this in the barn, but he thought it would be a good idea. Mr. Todd said that given the Chowanskis' comments, it might alleviate some of their concerns. Mr. Larpenster responded that these horses were very valuable and he would never jeopardize their safety.

**Public Hearing Closed.**

Chair Green asked for questions.

**A MOTION WAS MADE (Doug Lyon) AND SECONDED (Cheryl Devoe) to discuss.  
THE MOTION WAS APPROVED UNANIMOUSLY.**

Doug Lyon again asked, why is this an expansion of nonconforming use? Under the criteria, this use has nothing to do with the business. If anything, he said, it makes it less nonconforming because there is a residentially-related activity on the property. Mr. Lyon noted the board came to the same conclusion regarding the Flying Goose Bar and Grille recently. In this case, Mr. Lyon says the applicants are not

even talking about a building that relates to the business. Paul Vance asked whether this then makes this a planning issue regarding the variance. If there was a one-acre plot in the agricultural zone with a pre-existing nonconforming building and someone wanted to put in a horse barn or house, wouldn't they go to the ZBA? Bill Green responded that he thought the person would apply for a building permit, would be denied, and the Selectmen would direct him to the Zoning Board.

Lucy St. John said her recommendation was that this was an expansion of a nonconforming use, so any buildings being erected on that site would normally be related to the business. It is unusual for a business to put up a building on the property and not use it for that purpose. She explained that Site Plan approval is needed because the use is a commercial use of the property.

Chair Green asked, if horses were not inside the building, but instead the applicant wanted to put equipment inside, would that be considered an expansion of use? He said he did not think so. Cheryl Devoe asked, if the lot was empty and the person wanted to put a barn on it would they have to go to the Zoning Board? Ms. St. John replied no as a barn is an accessory use.

Chair Green said they had to have a site plan because the Larpenters have a business on the property. Paul Vance asked, if we were to address this and say the Zoning Board has no jurisdiction as long as the barn is restricted to the use of the horses, does that eliminate the Zoning's Board jurisdiction? Doug Lyon responded that in this case, it is not an expansion of use. Cheryl Devoe asked whether the board could specify that the barn only be used to house the horses and Chair Green said yes – the board is allowed to add conditions. Ms. Devoe said she was fine with this restriction. Doug Lyon said the board would be saying in the instance of this particular request, this is not an expansion of a nonconforming use; however, the board is stipulating when the barn is built, it can only be used to house the horses. Michael Todd asked to what extent building a barn affects a sawmill? Is it a different manner of use? Mr. Todd says no, because it is unrelated to wood products. Mr. Todd also noted that other abutters also have horse barns on their property.

**A MOTION WAS MADE (Doug Lyon) AND SECONDED (Paul Vance)** that the Board finds that the new building (horse barn) is not an expansion of a nonconforming use, however to ensure that is the case, the horse barn can only be used for livestock and is not be used for any use associated with the New London Woods Products business. **THE MOTION WAS APPROVED UNANIMOUSLY.**

Ms. St. John noted that the second variance pertains to the grazing, care, raising or keeping of livestock. If one is supposed to provide 1.5 acres per animal for pasture, and quite a bit of the acreage is used for a business, are the applicants meeting this requirement? Ms. St. John noted that she gets lots of questions regarding this section of the ordinance. Many people find it difficult to understand and she will suggest that the Planning Board review these provisions as they address possible zoning amendments in the future.

Cheryl Devoe commented that she looks at the difference in grazing needs regarding the type of horses being housed in the barn and what the Larpenters are proposing to do, and has no objection. Bill Green said that he felt this was clearly an acceptable and reasonable way of dealing with the horses. There is more than one way to feed animals. Bill Green asked board members what their sense was in regard to this request matching up against the ordinance. Michael Todd said the petitioner appears to be in compliance.

**A MOTION WAS MADE (Michael Todd) AND SECONDED (Doug Lyon)** that the variance appears to be in compliance with the recommended guidelines of the Zoning Ordinance, and meets the relevant criteria for outside enclosure areas and shelter areas for the keeping of the

horses. The pasture requirements are not relevant for the keeping of Draft Horses because the draft horses will receive their nutritional needs per a feeding regimen developed by a horse nutritionist and will not derive their feeding requirements by grazing in a pasture. **THE MOTION WAS PASSED UNANIMOUSLY.**

**Other Business**

There was no further business.

**Motion to Adjourn** was made by Bill Green and seconded by Paul Vance.

Meeting adjourned at 8:03 PM.

Respectfully submitted,

Chris Work, Recording Secretary.