



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

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**ZONING BOARD OF ADJUSTMENT (ZBA)  
MEETING MINUTES  
Tuesday, December 4, 2018  
6:30 PM**

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), W. Michael Todd, Katharine Fischer, Frank Anzalone, Stan Bright, Bruce Hudson.

**MEMBERS EXCUSED:** Heidi Lauridsen, Ann Bedard.

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

**OTHERS PRESENT:**

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 Minutes of November 14, 2018

Stan Bright wanted clarification regarding the condition that fire escapes that Mr. Snow agreed to install on all six units. Chair Lyon would like to amend for the record the motion in the minutes to approve the Snow variances; change the words “with the condition that the second floor apartments have fire escapes constructed on all six units” to “with the condition that the second floor apartments have fire escapes construction ACCORDING TO THE FIRE CHIEF’S RECOMMENDATIONS.” Frank Anzalone stated he is uncomfortable putting on conditions related to life safety issues. Chair Lyon replied that they only did it because the Fire Chief recommended it to Harry Snow. They both recognized that although it is not a formal requirement under fire safety, the Fire Chief felt it was important and Mr. Snow agreed to do it.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Stan Bright) to approve the minutes of the November 14, 2018 meeting with the agreed upon amendment. THE MOTION WAS APPROVED UNANIMOUSLY.**

4. PUBLIC HEARING for VARIANCE, **Case #ZBA18-27** for tax map 107-004-000, 133 Old Main Street, zoned R-2, William & Linda Minsinger/Applicant for William & Linda Minsinger Joint Trust/Owner. A Variance is requested from **Article V Residential Districts, Section C Yard Requirements, Item 2** (page 34) of the Zoning Ordinance to permit an addition to be built approximately 11-ft. from the side property line where a 50-ft. aggregate / 20-ft. minimum is required.

Chair Lyon stated when it comes to variances, there is five criteria that need to be evaluated. These are the only criteria on which they can make a decision.

William Minsinger is requesting a variance from setbacks on a house purchased on 133 Old Main Street in May, 2017. They purchased this house for retirement years because it is one floor living. They have begun interior renovations. The Minsinger’s have read prior zoning hearing minutes and are not trying to maximize on a return on property, but instead are trying to make the house functional as they age.

They'd like to maximize the property and use a one season porch on the back of the house which is currently not in good shape. It should be replaced and the only access is from a door from the garage. To make use of this they will make it into a room and will take some space from the garage. They would then like to take some space to make a two bay garage which would be 22 feet in width. This accommodates two 9 foot garage doors. This would be the present garage with an additional bay. This would get them into the setback which is presently 21.75 feet. To accomplish what they are proposing, they would need 11 more feet into the setback. The setback would end up being 10.75 feet. There is no other configuration that would work.

With regards to the setback, they asked a neighbor to see if they would sell them 15 feet of their property and that would give the proper setback. When Mr. Minsinger met with Adam Ricker and Nicole Gage, it was determined that the neighbor's property is only 2.05 acres as this would make that lot non-conforming so this is not a solution.

Dr. Minsinger then commented on the five variance criteria.

The variance will not be contrary to public interest – Dr. Minsinger stated they have two cars and they can park in the present driveway and it meets the setbacks. They are making an effort to not impact the public interest as they aren't altering the street access. They are purposely limiting the height of the building. They would like to keep the ridgeline of the garage below the ridgeline of the house.

The spirit of the ordinance is observed – Dr. Minsinger stated again that they tried not to come for a variance as they tried to purchase land so it met the setback. They limited the height and width of the garage. The present garage foundation has two or three inches of erosion and work will need to be done with that. They are trying to have minimal impact on the neighborhood. There are a variety of setbacks on Old Main Street.

Substantial justice is done – With the onset of winter, enclosed storage for a car is ideal. The addition of the northern side will abut a tree line and the building next door is a separate three car garage barn type structure. They will try to restore the contour of the land and will have a walkout basement. There is no requirement to update the septic tank and it was last replaced in 2005.

Value of surrounding properties is not diminished - Most of the houses in the neighborhood have two car garages. This proposal would not affect property values.

Unnecessary Hardship – Basically they are trying to make the maximum use of this house as they age. There is a family history of ALS and this condition could be a possibility for Dr. Minsinger in the future. On the side entrance to the garage they will have a walkway and a ramp. They want to be proactive and plan ahead for the future. The two car garage is not necessarily for two cars but if needed would accommodate a wheelchair van.

Frank Anzalone asked if Dr. Minsinger had consulted a builder. Dr. Minsinger stated he had not, as he has done a fair amount of building himself. Mr. Anzalone understands wanting a two car garage. He's having difficulty with expanding the garage closer to the street and the screen porch and family room being in the setback. He feels it could be relocated towards the back. The setback can be reduced by not adding the six foot entrance. They are increasing the depth of the house and setting it into the setback.

Chair Lyon stated one of the things the courts look at when considering a variance is whether all options have been explored. Dr. Minsinger stated the variance they are requesting is the easiest for construction and would look the best. Chair Lyon stated by law they are required to look at the

criteria and explore whether there are ways to get what you want without creating violations to the ordinances. Under the unnecessary hardship criteria, there needs to be something about this property that is unique and different from all the other properties in the area that suggests the need for a variance because it unjustly penalizes you because of the nature of the law. There are two supporting letters from neighbors.

Michael Todd is a neighbor and stated he is the closest neighbor. There is no doubt the purpose of the ordinance is to make properties conforming. Where there is a property that is pre-existing non-conforming there has to be a good argument made before they can allow a departure from the zoning ordinance. He feels the application fails on the Hardship criteria. He is unaware of any cases where an anticipated medical condition constitutes a hardship. Setbacks are designed in the ordinance to provide landowners with adequate access to the rear location of their lots. Further restricting existing setbacks is not in the best interest of the neighborhood at large. He does not support this request for a variance.

Chair Lyon stated one of the fundamental restrictions on a non-conforming lot is that you can't make it more non-conforming and what the Minsinger's are asking is to make the lot more non-conforming.

Stan Bright stated he would like to hear more about what other alternatives could be implemented. There is enough buildable area on this lot to do something different that doesn't involve invading setbacks. Bruce Hudson agrees and would like to look at alternatives to modify this application to give the homeowners something they can work with.

Chair Lyon suggested withdrawing the application and resubmitting it after Dr. Minsinger has done more research. Another alternative is to vote to continue this hearing until a date certain in the future and this would give Dr. Minsinger time to look at options and come back with a modified proposal. Frank Anzalone suggested Dr. Minsinger meet with a designer to help him look at alternatives.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bruce Anzalone) to continue this hearing until February 5, 2018. THE MOTION WAS APPROVED UNANIMOUSLY**

## **5. Other Business**

**Request for Rehearing, ZBA Cases 18-20, 18-21, 18-22, 18-23, 18-24, 18-28:** Chair Lyon stated there has been a request for a rehearing on the Harry Snow property. He has read through the motion for a rehearing and basically this restates the arguments presented at the hearing. Chair Lyon opposes a rehearing for the following reasons:

Contrary to the Public interest: There is a clear public benefit in having additional rental housing in New London. We heard testimony that the variance will do no harm because it will actually reduce population density by reducing the number of bedrooms and having two-bedroom apartments that have an average of 1.3 persons in them.

Spirit of the Ordinance: The ordinance is designed to limit population density and the testimony we heard suggested that reducing bedrooms from 12 to 8 in each building will lower density from what it was as a student dormitory. Two landlords supported the lower density of 2 bedroom apartments as about 1.3 persons.

Substantial Justice is done: Any loss to the individual that is not outweighed by a gain to the general public is an injustice. There is a significant loss to the applicant and no gain to denying this variance to the general public.

Surrounding Property Values: We heard testimony from residents that values would not be diminished, and property tax assessments have certainly not gone down with the higher residency numbers as a student dorm. ZBA members can draw on their own conclusions of property values in reaching a decision on this.

Unnecessary Hardship: What makes the property unique is that the we have expert testimony that the buildings are now “functionally obsolete”. The application would actually reduce population density, and thus relief can be granted without frustrating the purpose of the ordinance. There is no fair and substantial relationship between the purpose of the ordinance and the specific application to this property. AND the use is a reasonable one. Certainly 2-bedroom apartments are in demand while 6-bedroom apartments are not. The applicant did not create his own hardship because the changed circumstances of the college that made the apartments functionally obsolete were not of the applicants making.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to deny the request for rehearing for the reasons stated above. THE MOTION WAS APPROVED UNANIMOUSLY. The ZBA voted unanimously 5-0 to deny the request for rehearing**

Ms. Gage distributed the 2019 schedule. Chair Lyon would appreciate if members would let Ms. Gage know if they are unable to attend a meeting.

Ms. Gage stated that she emailed a proposal for a potential amendment for the Planning Board subcommittee to consider to the Chair and Vice Chair. This is for the part of the ordinance that has outdated RSA language for the appeal period.

## **6. Motion to Adjourn**

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

The meeting was adjourned at 7:52pm.

Respectfully submitted,

Trina Dawson  
Recording Secretary  
Town of New London