



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD OF ADJUSTMENT (ZBA) MEETING MINUTES

**Tuesday, February 19, 2019  
6:30 PM**

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

**MEMBERS EXCUSED:**

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

**OTHERS PRESENT:** William and Linda Minsinger, Spec Bowers, Jeremy Bonin

1. Chair Lyon called the meeting to order at 6:30PM

2. Roll Call – Chair Lyon called the roll. Michael Todd is an abutter and will recuse himself on the first case. Bruce Hudson will be a voting member.

3. January 15, 2019 minutes

**IT WAS MOVED (Michael Todd) AND SECONDED (Heidi Lauridsen) to accept the minutes from the January 15, 2019 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.**

#### **4. Case #ZBA18-27**

##### **Public Hearing**

**Continuation from 12/4/18**

**William Minsinger, Applicant**

**A variance is requested from Article V Residential Districts, Section C Yard Requirements to permit an addition.**

The property being discussed is on 133 Old Main Street. The last time the Minsinger's were here, the ZBA made suggestions to make changes and subsequently the Minsinger's hired Jeremy Bonin to assist them in this process.

William Minsinger stated he appreciates the rehearing and commented in the past they spoke with the neighbors to the North to try to purchase land so they wouldn't have this variance issue but that wasn't possible. They are trying to maximize the use of their house as they age. They hired Mr. Bonin to develop a new plan to try to maximize the use of their current buildable property with a decrease in the request for the square footage of the variance.

Jeremy Bonin stated they are requesting a variance from article 5 sections C1 and C2 which are front and side yard setbacks. They are seeking a dimensional variance, not a use variance. The residence is existing and permissible under current zoning. The goal is to make the house functional as the occupant's age. There is a family history of ALS and this condition is a possibility. While this is not a current disability, there is a 50/50 chance so that makes it authentic and relevant. This new application has reduced the square footage of the total of the setback from 462 to 250 square feet.

Based on the ZBA minutes from the December 4, 2018 meeting, Mr. Bonin would like to address the following concerns:

~ That all options have been explored

- ~ hear other alternatives as there is enough buildable area that doesn't involve invading setbacks
- ~ look at alternatives to modify this application to give the homeowners something they can work with
- ~Setbacks are designed to provide access to the rear of the lots
- ~There needs to be something unique from all other neighboring properties
- ~The application fails on the hardship criteria as an anticipated medical condition does not constitute a hardship
- ~One of the fundamental restrictions on a non-conforming lot is that you can't make it more non-conforming and the Minsingers are asking to make the lot more non-conforming.
- ~There is no doubt that the purpose of the ordinance is to make properties conforming.

Mr. Bonin took those statements and looked at what was originally presented and then looked at what was possible with the least impact. The focus had to be the northwest corner of the lot as it is already an impermeable area. It is currently parking, the driveway and the current garage area so the aesthetic won't change much. It is also good to try not to increase impermeable areas on small lots. There is no increase in runoff and they could potentially decrease runoff. The selected location has less setback issues than the previous application although the setback issues are now both front and rear. It is also keeping with the front yard setbacks of the abutting properties. The abutting properties have already set the standard that is in the neighborhood.

It was their conclusion that the least impact would be to work with what is there. One thing that would change is that there would be two garage doors instead of one. This property is only one of two lots on Main Street that has 100 feet of street frontage. The average street frontage of the 30 properties on this street is 427 feet. This lot is 1/4 the size of the average property on this street. A high percentage of the abutting properties have structures that do not conform to the front yard setback, specifically the two abutters to either side of the Minsinger property. This supports keeping with the characteristics of the neighborhood.

RSA 674.5 states any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship to allow a person with a recognized physical disability to reside in or regularly use the premises. The existence of such an article within our state regulations is acknowledgement of the importance of such a condition and while it may not be directly applied it should be a consideration in the review of this in its entirety. They really are seeking to make this property more accessible.

In general, any variance creates a non-conformity. The non-conformity on this lot is actually the side lot setback encroachment that is already there. They aren't further increasing the encroachment into the abutter's property to the South.

Land use and Zoning began due to arbitrary growth and the subsequent loss of land values. Eventually conditions such as topography or unusual lot shapes required providing flexibility.

In conclusion, what they are presenting is something that it's within the character of the neighborhood and isn't posing any harm. The abutter to the North provided a letter stating they don't have any objection to this but the abutter to the South does object to this.

Ann Bedard was concerned about access to the existing septic tank if it has to be replaced. Mr. Minsinger supplied pictures of how this would be possible.

Nicole Gage noted that she asked the Public Works Director for comments because it is a reduced front setback. He did not have any issue other than making sure that the property owner is aware of the no parking street ordinance.

Michael Todd stated he is not in favor of this as there is nothing that distinguishes this property from the others to create a hardship. All of the properties on the street are subject to the same requirements. There would have to be something unique considering the setting of this property in its environment that would cause the application of the ordinance to be a hardship. For fifty years, retired couples have lived in this house with a single garage. Denying the variance will not deprive them of the reasonable use of their property.

A motion was made by Frank Anzalone and seconded by Ann Bedard to DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon stated that they have to look at the various variance criteria to see whether it meets the criteria. As usual the hardship provision is the most difficult. He doesn't see that there is a public benefit in this case that outweighs the difficulty that the landowner has with converting the property. The spirit of the ordinance is to create situations where we don't make properties more non-conforming but clearly the reason that there is a variance criteria is to make reasonable exceptions to that. The property owner in this case has gone to some difficulty to come up with a proposal that substantially reduces the setbacks in terms of the total square footage. With regards to substantial justice, this does not cause harm to the general public and there is no reason why surrounding property values would be diminished since most of the property on the street intrude much further on the front setback.

For the hardship criteria, this lot is distinguished from other lots due to its much smaller size. That means that to enjoy the property to the same extent that others can a variance would be required. He is inclined to support this variance request. They have made a good faith effort to minimize what they are trying to accomplish and have taken all steps possible to minimize disruption.

Ann Bedard agrees and since they are using the same area that is already being used for parking there is little impact. She also stated that houses these days usually do have a two car garage and that is a plus.

Katharine Fisher also concurs. They have pared down the encroachments and they are reasonable.

Bruce Hudson feels comfortable accepting the application for a variance.

Frank Anzalone raised a concern that by granting the variance, would they then be able to continue expanding along the new reduced setback without a variance in the future. Should we place a condition on this approval? Ms. Gage noted that by granting this variance, they are not creating a "legal non-conforming structure;" they are creating a structure with a variance. She pointed to the definition of "legal non-conforming structure" as something that existed prior to adoption of that setback, and so any expansion of this building going forward would not fall under Article XX, which is only for legal-non-conforming structures. Chair Lyon asked Mr. Anzalone to review and if he agreed with this interpretation. It was agreed that any future requests for expanding into the setbacks on this side of the building would have to conform or require a Variance.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) to grant the variance due to the facts presented that supports that each of the variance criteria have been met. THE MOTION WAS APPROVED UNANIMOUSLY 5-0.**

## **5. Case #ZBA19-01 – Variance**

### **Public Hearing**

**Rehearing of ZBA Case #18-02, denied 4/17/18 and 6/11/18.**

**Parcel ID 041-001-000, 1876 Newport Road**

**Pertaining to the rebuild of a cottage damaged from fire. Request for a variance from Article XX, sections B.1.a, B.1.c.iii and B.5.a to permit a vertical expansion of the structure, a 1 foot overhand of the second floor on the front side (away from the lake) and an increase in the number of bedrooms.**

There has previously been a lot of discussion regarding this project. Town Counsel has been involved and the case was remanded back to the ZBA by the Court so the ZBA will be rehearing this as if it is a new case.

Spec Bowers provided new information to the Zoning Board of Adjustment. Mr. Bowers is requesting a variance from two parts of the zoning variance, article XX, section B.1.a to permit a vertical expansion by adding a second story, and section B.5.a to permit adding a bedroom. He is not asking for a change in footprint or a change in drip line. Nicole Gage asked for clarification that he is no longer asking for a Variance from article xx section B.1.c.iii because the footprint and dripline will not change, and Mr. Bowers said yes.

The following is a quote from the Simplex decision which was a Supreme Court case. "Inevitably and necessarily there is a tension between zoning ordinances and property rights as courts balance the right of citizens to the enjoyment of private property with the right of municipalities to restrict property use". Mr. Bowers asked that the ZBA keep this in mind and to balance his right to enjoy his property with the right of the town to restrict property use.

The first two criteria for granting a variance are closely related. For a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, granting it must violate the ordinance's basic zoning objectives. There are two methods to answer this question. The first is to examine whether granting the variance would alter the essential character of the neighborhood and secondly examine whether granting the variance would threaten the public health, safety or welfare. To be contrary to the public interest, the variance must unduly conflict with the ordinance such that it violates the ordinance's basic zoning objectives. One way to ascertain this would be to examine whether it would alter the essential character of the locality. Another way would be to examine whether granting the variance would threaten the public health, safety and welfare. In this case, there are other buildings within 100 yards of the property being discussed that are two and three story buildings. When considering a variance you must examine the neighborhood. Mr. Bowers provided several examples of neighboring properties to the ZBA. Granting this variance would not alter the character of the neighborhood in the slightest. Adding a second story while remaining in the same foot print and staying under the zone's height restriction would not be a threat to the public's health or welfare in any way. The New Hampshire Department of Environmental Services is charged with protecting the water quality of the state's public water bodies. DES allows vertical expansion without a permit. Mr. Bowers stated that his request of vertical expansion will not threaten the public health, safety or welfare. Since granting the variance will not alter the character of the neighborhood, and will not threaten the public health, safety or welfare, it satisfies these two criteria.

The third criteria is substantial justice and is described as the benefit to the applicant should not be outweighed by harm to the general public. The project is appropriate for the area and does not harm its abutters or nearby wetlands so the general public will realize no appreciable gain from denying this variance. The addition of a second story will not alter the character of the area, will not harm any abutters, the lake or in any way cause harm to the general public.

The fourth criteria relates to the values of the surrounding properties. In this case there is no question that it won't affect surrounding property values.

The fifth criteria is the hardship criteria and historically this criteria is the most difficult. Applicants for a variance may establish unnecessary hardship by proof that a zoning restriction as applied to their property interferes with their reasonable use of the property considering the unique setting of the property in its environment. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction of the property and the variance will not injure the public or private rights of others. Under Simplex, applicants no longer must show that the zoning ordinance deprives them of any reasonable use of their land. They must show that the use for which they seek a variance is reasonable considering the property's unique setting in its environment. The test for hardship is whether the proposed use is reasonable. If an ordinance interferes with a property owner's constitutional right to reasonable use of his property, that is a hardship. The question is what is reasonable? What matters is

what a neutral fact finder would think is reasonable. Mr. Bowers stated that the facts are that this board has repeatedly stated that it would be reasonable for him to rebuild a one story cottage. That means it would be reasonable to build a foundation, it would be reasonable to build a first floor and to put a roof on it. All of these things would be reasonable so to argue that the proposed plan is unreasonable you must explain how inserting a second story would turn a reasonable project into one that is suddenly unreasonable. The new cottage would be in the same footprint, the same drip edge and under the zoned maximum height. It would fit in with the character of the neighborhood and not threaten the public's health and welfare and not threaten the quality of the lake water. Considering case law and the facts, Mr. Bowers submits that his request easily satisfies the five criteria of a variance.

Ann Bedard asked about the foundation and basement space. Mr. Bowers stated he is planning poured concrete walls and two or three foot stud walls on the steeper parts up to the first floor. There would be two or three feet of crawl space underneath. Mr. Bowers stated the building will be 24.5 feet in height. Ann Bedard asked if Mr. Bowers had spoken the state or town about the disturbance to the waterfront buffer since he will be digging a foundation. Mr. Bowers stated he spoke with Nicole Gage asking if he might have to request a variance but it is his understanding that as long as the excavator stays within the footprint of the building it is fine.

Frank Anzalone expressed his concern about ensuring the foundation is poured in the original location. Mr. Bowers stated he is working with a professional engineer who surveyed the existing footprint before and after demolition. He will work to make sure it is put back in the same place. Mr. Anzalone would like a condition placed on the approval that once the foundation is poured it is surveyed and compared to the original.

Chair Lyon stated that Mr. Bowers provided a good summary.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to approve the variance from Article XX, B.1.a and B.5.a with the condition that all appropriate and relevant permits be received prior to New London issuing a building permit and following the instillation of the foundation, prior to framing, that a survey be done to ensure that it is in the correct location as before and the footprint is not expanded. THE MOTION WAS APPROVED UNANIMOUSLY 5-0.**

#### **5. Other Business**

The next meeting will be on March 5, 2019 at Whipple Hall at 6:30PM. This will be a joint meeting with the Planning Board.

Nicole Gage stated the annual Planning and Zoning conference will be held at the Grappone Conference Center in Concord on June 1, 2019. All are encouraged to go.

#### **6. Motion to Adjourn**

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

The meeting was adjourned at 8:13pm.

Respectfully submitted,

Trina Dawson  
Recording Secretary  
Town of New London