



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD OF ADJUSTMENT (ZBA) MEETING MINUTES Wednesday, February 21, 2018 6:30 PM

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), W. Michael Todd, Katharine Fischer, Ann Bedard, Vahan Sarkisian and Paul Vance (Alt.) and Frank Anzalone (Alt.).

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

**OTHERS PRESENT:** Susan Chiarella, Mike Chiarella, Peter Hill

- **Call to Order:** Chair Lyon called the meeting to order at 6:30 pm.
- **Roll Call:** Chair Lyon called the roll.

### Minutes

**IT WAS MOVED AND SECONDED to approve the minutes from the December 28, 2017 meeting with one change. THE MOTION WAS APPROVED UNANIMOUSLY.**

#### ZBA Case #18-01, Peter Hill, Applicant / Wesley & Nina Royce, Owners

Located at 1590 Little Sunapee Road, Tax Map 030-019-000. Zoned Residential (R-2) in the Shoreland Overlay District. *Request for an Equitable Waiver of Dimensional Requirements* from Article V, Section C.2. of the Zoning Ordinance for relief from the minimum 20' side yard setback, whereas the existing foundation is 17.9' in the southeast corner only.

Peter Hill attended the meeting on behalf of Wesley and Nina Royce. Mr. Hill is requesting an equitable waiver of dimensional requirements from Article V, Section C.2. He is requesting relief for the 17.9 foot southeast corner as opposed to the 20 foot requirement on the side yard setback. The rest is in compliance and it has been surveyed by CLD Engineering. This request is for a 2.1 foot relief in the southeast corner only as the balance of the foundation meets all the setback standards.

The non-conformity was discovered shortly after the pouring of the concrete walls for the house. He realized the southeast corner of the foundation encroached upon a baseline which was established prior to the pour. The encroachment was then verified by CLD Engineering. Michael Todd asked if anyone checked the baseline before the pour was made. Mr. Hill stated that he had, but in one area they ran into granite and had to blast twice. During that process, benchmarks got moved. The pin got moved and the pour was made.

*The violation was not an outcome of ignorance of the law or ordinance.*

Mr. Hill states that it was not and is not.

*Failure to inquire resulting in misrepresentation or bad faith on the part of any owner.*

Mr. Hill stated that wasn't the case either. He felt he had done his due diligence in laying and plotting it out. During the blasting process, one of the key benchmarks was moved and tilted the whole structure on the diagonal, 2.1 feet.

He was aware of the zoning setbacks established for zone R2 in the shoreland overlay. The mistake made was the result of having blasted in an area of the northeast corner of the foundation. As a result of the blasting and excavation to remove the additional material, one of the benchmarks was altered without Mr. Hill being aware that it had been disturbed. The northeast benchmark was shifted which resulted in the southeast corner of the foundation being moved 2.1 feet into the 20 foot setback.

*Physical dimensional violation does not constitute a public or private nuisance nor diminish the value of other people's property in the area or adversely affect any present or permissible future use of any such property.*

This corner encroaches on Frank Tewksbury's property. Mr. Tewksbury was at the last meeting and is fine with this. A note from Mr. Tewksbury will be included in the file stating this.

Paul Vance asked if one corner was off, were they all off? Mr. Hill stated they ran string lines and measured from there to the proposed setbacks. His benchmark was correct but at some point got moved. He is unsure how it got shifted.

Vahan Sarkisian asked what time of year the foundation was poured. Mr. Hill stated April of last year. It was the initial footing pour that was skewed and caused everything else to be.

Ann Bedard asked what happened to the benchmark. Mr. Hill replied that it was put back. He's guessing someone ran it over. A benchmark is a steel pin used by concrete people and by surveyors that is painted orange. This is used for cross taping to ensure it is square. It was used in the shifted position which resulted in the 2.1 foot error.

Mr. Todd asked if someone had taken a measurement before the forms were placed it would have been detected? Frank Anzalone stated this is not common. He had his marks and laid out the foundation based on his marks.

*The cost of correction far outweighs any public benefit to be gained.*

Mr. Hill stated that the cost of correction would be great. The existing concrete foundation would have to be demolished, removed and disposed of. A new foundation would have to be installed. He estimates this would be approximately \$45,000 to redo the work. There would be no public benefit to be gained by the extreme cost of any correction, plus the added environmental impact to dispose of the existing foundation, and the added impact of the additional site work of the construction.

Mike Chiarella attended the meeting to represent the Tewksbury's. He discussed the gravel road shown on the plans. There is a shed at the end of the gravel drive and the note that Mr. Tewksbury submitted stated that he has no issues with this waiver, but wants an easement to be able to get to the shed. Chair Lyon stated this could be included as a condition.

Mr. Hill stated that during the application process, the town requested there be a survey. Nicole Gage replied that they were looking for a survey but the foundation was already poured at that point. The survey was requested after the permit application.

The permit was held up due to a delay related to septic design. It took three weeks to redo the survey and Mr. Hill had the concrete company already lined up. If he had waited he would have been delayed for over a month.

Chair Lyon asked if he had waited until the permit was done, would the error have been picked up. Mr. Hill stated no he wouldn't have gone back to check the benchmarks as he thought they were correct.

**IT WAS MOVED AND SECONDED to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Lyon feels the facts are clear related to the four criteria that need to be met. The struggle is the question of whether the criteria that demands that the mistake was made because of a measurement mistake versus a mistake that's made because of negligence. The Supreme Court has ruled that it must be a mistake of measurement and not of negligence.

Mr. Todd stated a measurement had to be taken. It was in that process that an error was made. The failure to take a measurement is not the same as taking a measurement and miscalculating. For that reason, he doesn't see that part C of the criteria has been met.

Chair Lyon stated that it wasn't that a measurement wasn't taken, it was taken and at the time it was accurate. Subsequently a pin was moved. Is that an error in measurement or negligence on someone's part?

Mr. Todd has an issue with the fact that when you lay out a foundation it has to be square. So if you start in the wrong place, you will have three other corners in the wrong place. That is negligence and incompetence.

Mr. Vance suggested it's possible that the benchmark wasn't moved at all, but instead the house was rotated. So when the calculation was done, a mathematical error was made. He thinks it is more about whether it was done in good faith or not.

Chair Lyon stated there is general agreement that three out of the four criteria have been met.

The fourth criteria comes down to measurement vs. negligence. Mr. Vance has suggested that it is possible that the pin was never moved so it was an error in measurement. Chair Lyon stated that it is a judgement call where measurement errors leave off and negligence starts.

Chair Lyon asked the board to vote on whether the equitable waiver should be granted.

**IT WAS MOVED AND SECONDED that the equitable waiver be granted with the condition that any future construction would meet the 20 foot setback or whatever future setbacks might be established by law. THE MOTION WAS APPROVED 3-2. The Equitable Waiver will be granted.**

### **Spring Planning & Zoning Conference, April 28th in Concord**

Nicole Gage stated that there will be a Planning and Zoning Conference in Concord on April 28, 2018. If there is interest, she can help with registration and it would be reimbursed by the town. This is geared toward members of Planning and Zoning Boards.

She also has copies of the new handbook for Zoning Board officials.

### **Subcommittee to Update Rules of Procedure**

Chair Lyon and Mr. Todd have developed a draft and are reviewing it and once that is done it will be given to Nicole Gage and Cary Lagace. It will then be circulated to the Board for comment.

Mr. Vance has agreed to chair a small subcommittee to consider potential changes to the zoning laws. He has a draft that he will circulate.

Mr. Anzalone discussed the need for clarification with regards to Alteration and Expansion.

After much discussion, it was decided that more work needs to be done on this.

### **Other Business**

Ann Bedard is working on a research project on behalf of the zoning board and is putting together a digital list of zoning cases.

### **Motion to Adjourn**

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

The meeting was adjourned at 7:56 pm.

Respectfully submitted,

Trina Dawson  
Recording Secretary  
Town of New London