



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD OF ADJUSTMENT MEETING MINUTES May 19, 2014

**Members Present:** William Green (Chair), Doug Lyon, Laurie DiClerico, Nancy Rollins, Ann Bedard, Cheryl Devoe

**Members Absent:** Courtland Cross, W. Michael Todd (came in later in meeting)

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

**Meeting Opened and Roll Call:** Chair Green called the meeting to order at 6:30 PM, took the roll call and noted that the meeting had been properly noticed. Cheryl Devoe, alternate, will serve in W. Michael Todd's absence.

### **Bob & Sandra Brown, Tax Map/Lot (119-014-000). Located at 449 Forest Acres Road. Zoned Residential – R2.**

Chair Green explained that Bob and Sandra Brown had attended the March 12, 2014 Zoning Board of Adjustment meeting to ask for five variances from Article XVI, Shoreland Overlay District, and Article V, Residential District. However, said meeting had not been properly noticed – not all abutters received notice of the meeting – and therefore, that hearing is considered not to have taken place. Chair Green noted we would start over from scratch and turned the floor over to the Browns.

Ms. St. John referred to her staff report dated May 14th and other information which was posted on the Town's website. She also noted that an email was received from William G. Constable Friday, May 16, 2014 and another abutter Doug Adamian (412 Forest Acres Road) has contacted her with questions. The Board had been provided a copy of this information.

Chair Green invited those in attendance with questions or comments to feel free to make them during the presentation.

### **Public Hearing Opened:**

Mr. Brown asked if Chair Green was working from the application of the March 12 meeting. Chair Green said he was working from the posted notice of today's meeting. Mr. Brown answered that he thought we were going to re-discuss the previous application, but Chair Green noted they are all the same variances except for #5. Chair Green repeated that we are sitting here tonight as if the March hearing never took place. Mr. Brown noted that he did not have all the copies of the maps he brought to the March meeting.

Lucy St. John asked Mr. Brown to go through the same information he provided for the March 12 meeting, plus the fifth item he had discussed with Kim Hallquist, Town Administrator. Ms. St. John provided Mr. Brown copies of all the necessary paperwork (application materials) for his presentation.

Doug Lyon noted there are things that could not be visualized without a map, and if anyone at the meeting needed assistance, to please come up and look at the big map displayed at the front of the room. Chair Green said this was the most recent map of the area in question.

Mr. Brown reiterated much of the same discussion from the March 12, 2014 meeting emphasizing the following points, and discussed the 5<sup>th</sup> variance requested for this hearing:

- Setback distance of the well.
- Permission to disturb the land to dig the well, taking out stumps by the well, so that is a temporary disturbance.
- Permission to disturb the land to connect the well to the house.
- Basement bulkhead emergency exit partially in the 25' road setback. With regard to the emergency bulkhead, there were another 18 inches of the actual foundation, but that did not seem to be a big concern with the Board since the bulkhead was part of the foundation. Just the corner was an issue.
- Precautions to insure there would be no disturbance within the 50'. Mr. Brown noted there is an OSHA regulation that holes cannot be dug straight into the ground, just stepped.
- Building footprint, we usually think of the foundation.
- Stream on the property is not included on the Town's Streams and Wetland Overlay District map. From the edge of the stream is 56 feet, 2 inches. Everyone studied the map.
- Excavate and not within the 60', but will be in the 50'.
- Variance # 5- the existing garage is 20' wide and 24' deep. The shed is 8 feet on the edge. Mr. Brown would like to extend the shed about 2 feet because he has a machine he uses which he would rather keep inside. The back 10 feet is within the 50'. That would make everything out of the way. Doug Lyon asked, penetration of garage does what to the set-back? Chair Green said it encroaches into the 50-foot by one or two centimeters. It is heavily wooded in there.

Chair Green asked if there were any other points or comments.

Ann Bedard asked if Mr. Brown had gone to the State with any of the water issues. Mr. Brown said he had made all applications – septic is done, easements in process, shoreline takes a few more weeks – building is coded. He is ready to go. Chair Green wanted to confirm the leech field is going across the street. Mr. Brown said he is getting a letter from Richard Lee, Public Works Director, but this is routine.

John Doyle (Messer Pond Association) indicated that he had some concern about the relocation of the culvert by the house. He referred to the Town's Streams and Wetlands Overlay District map as the stream on Mr. Brown's property is not included on the Town's map. He wants to make sure there is no extra erosion. There was another question about the garage – does Mr. Brown expect any run-off due to the pitch of the roof? Mr. Brown said that would be taken care of.

Ms. St. John explained that the existing Streams and Wetlands Overlay District map was one of several draft zoning amendment discussion items brought forth by staff for discussion during the 2014 zoning amendment process. She explained the zoning amendment process, petition amendment process and if they had any further questions about this to contact her.

**Motion:**

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

Chair Green summarized the five variances requested and as advertised for this meeting.

## **Discussion**

Variance #1 - Chair Green said the board would like to keep construction out of the 50-foot mark and he believes Mr. Brown has agreed to that and withdrawn the request. Lucy St. John confirmed that at the March 12<sup>th</sup> meeting the applicant has withdrawn this variance request.

Variance # 2 - Chair Green noted it is part of construction and the ground would be returned to an unfinished state and all necessary construction techniques would take place to prevent erosion, siltation fences would be used, so that is reasonable. All agreed.

Variance # 3- The front yard is setback from street to house. This is a very small lot and a small house. This is a reasonable request.

Variance # 4- The side line was a better place to do a setback. That seems the most reasonable and logical and prudent move.

Variance # 5- Laurie DiClerico noted there will not be a foundation, so that helps. It will not be a detrimental to the stream. She opined that the alternative of having the bobcat equipment out front might be a worst alternative. Chair Green noted there is a stream on the property. Even so, not all streams are part of this overlay district. He commented that most streams in New London are in this overlay district, this one is not. That is the reason this stream is as significant an issue.

Ms. St. John read into the record the definition of stream, # 146 of the Zoning Ordinance.

Ann Bedard noted that her concern was with sauna tubes, stating that on a construction site it is hard to control what's thrown around. She suggested that the sauna tubes holes be hand dug. Mr. Brown said that is the plan – he will do it himself.

Chair Green asked Mr. Brown what sort of treatment he was going to use under the eaves. Mr. Brown said half-inch stone – water runs through it and it does not erode.

Ann Bedard asked if the addition was in Mr. Brown's shoreland application, or was it an addition to the addition. Mr. Brown said he would have to check that. He said this would be another 20 sq., feet at most and would not have a significant impact. Ms. St. John referred to the State Shoreland application that has been filed and refer to the project description included in that application. She suggested that Mr., Brown may want to amend his State Shoreland application, to reflect this discussion, as the 20 feet are not in it. Ann Bedard asked Bob Brown if any trees would be taken down. He replied no. Chair Green said other approvals are subject to getting Shoreland approval from NHDES. Nancy Rollins said it's definitely not on the application.

## **Public Hearing Closed:**

### **Motion:**

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to grant variances 2-5 with the condition that all required permits from the town, state and Planning Board must be received before construction is started. Variance # 1 was withdrawn by the applicant.

Discussion on the motion: Doug Lyon said the Board appreciates the fact that the Browns have worked hard to accommodate the Zoning Board with a difficult site. Board members have all

visited and looking at the five criteria and there is no diminution to the surrounding properties. Most important is number 3 and there are innumerable conditions. We have spent extensive time looking at alternatives and there are no other reasonable methods. By granting this variance, substantial justice would get done and the use contemplated by petitioner would not be contrary to the ordinance. THE MOTION WAS APPROVED UNANIMOUSLY.

### **Approval of Minutes**

IT WAS MOVED (Doug Lyon) and SECONDED (Ann Bedard) to approve the minutes of March 12, 2014, as circulated, with the exception of the Brown hearing. THE MOTION WAS APPROVED UNANIMOUSLY.

**Board Member – recused** Nancy Rollins recused herself from the meeting and left the building.

### **St. Andrews Church. Tax Map 084-014-000. Property located at 52 Gould Road. Zoned R-1. Sign Variance.**

Chair Green explained that St. Andrews Church is requesting a variance to Article II, General Provisions, Signs (10), (g) (2), as advertised. Ms. St. John also noted her staff report dated May 14, 2014.

Becky Rylander, warden at St. Andrews, Rector Jay MacLeod and sign designer, Peter Maurer, were in attendance. Ms. Rylander informed the board that the church would like to mount a sign on the back of the parish hall that would face Main Street. She showed a picture of the sign. Both ends of the sign are rounded, it would be cream-colored with burgundy lettering and the cross would be gold, to identify the church's location. The church wants to dispel the idea that one has to be a member to find the church. The sign would be 20 sq. feet, which is a significant increase over what is allowed in a residential area. Ms. Rylander noted that the church serves a number of groups besides those involved with the church: AA meetings, mother and child meetings, tots playtime, music and memory sessions, yoga classes, meditation, sometimes Scouts, so it is essential that people from the whole area are able to find the church.

#### **➤ W. Michael Todd arrived and participated in the discussion for the rest of the meeting.**

Ms. Rylander said they thought the sign design was fitting for New London and the area, and is in proportion to the size of the wall it would be mounted on. They have talked to a couple of the abutters, including Dan Wolf, and no one objects. Doug Lyon asked, what is sq. footage for residential signs? Answer was 2' x 2'. Bill Green asked Ms. Rylander to review each of the five criteria which must be met to grant the variance

Ms. Rylander then proceeded to view their application, and provided a response to each of the criteria as outlined in the application.

Chair Green asked if anyone in attendance had comments.

### **Public Hearing Opened:**

Rector Jay MacLeod said this is not a church that's identifiable as a church. The sign needs to be that big so people on Main Street can read the sign. We simply want to be identifiable.

Mr. Todd asked, how far off the ground is the sign. Ms. Rylander replied about 6-1/2 feet. Mr. Todd asked if there were any parking restrictions adjacent to it and Ms. Rylander said no. Mr. Todd asked, if you are driving down Main Street, how long are you going to be able to see the sign? Ms. Rylander responded “from when you get to the town offices until the end of the skating rink – seasonably. So, Mr. Todd remarked, this is not an unobstructed view. He asked, why do people say they have difficulty finding the church? The Rector said it happens often. Mr. Todd asked if the church was only accessible via Gould Road. Ms. Rylander answered yes. Cheryl Devoe noted people could park on Main Street and walk to church, which Miss Rylander confirmed. Mr. Todd remarked that these days most people use Smart phones and GPS, but Ms. Rylander disagreed, saying most people who are retired do not. Mr. Todd asked Ms. Rylander if she had Googled the church to see what comes up and Ms. Rylander responded that she had not. The Rector noted that St. Andrews is a church that is kept open, so that people walking through town might see it and want to go in.

Mr. Todd stated the church is asking for a substantial deviation from the sign ordinance and the Zoning Board has to look at not just the church’s purpose, but the cumulative impact of many such variances. Many other people would like to have this type of variance. He said the Zoning Board has traditionally limited the signage to 4 sq. feet for good reason: it tends to repress the impact of advertising. He noted that once people have found Gould Road, it is pretty hard to miss St. Andrews Church. He repeated that the church wanted to increase the sign size by 5 times the limit.

**Public Hearing Closed:**

**Motion:**

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

Chair Green said he was just going to make a couple of comments. He agreed with so much of what Ms. Rylander was saying. He acknowledged the 2’ x 2’ size is small. The commercial district can have signs up to 25 sq. feet. On the other hand, he said, the problem was not with the church’s request, it’s the fact that almost everyone would like to have a larger sign – like every other church in town, unless they were grandfathered. What’s lacking is a special situation that St. Andrews has that is different than what other people have when making the same request. Chair Green sees the issue and the problem. However, if the Zoning Board granted the church’s request for the reasons outlined, he can see there would be other requests that they would have a hard time not granting. He suggested the church approach the Planning Board about sizes of signs. Laurie DiClerico stated she is concerned about the precedent here. She agrees many other businesses could come to the Zoning Board and ask for larger signs. She emphasized the Board has to be consistent. Doug Lyon said he struggled with the criteria. He thinks some people would complain. He understands the rationale, but it does not serve the spirit of the rule. There is nothing unique about the property. He does not think the small sign constitutes an unnecessary hardship. He urged Ms. Rylander and the church to investigate other ways to increase visibility.

**Motion:**

IT WAS MOVED (Doug Lyon) AND SECONDED (W. Michael Todd) to DENY the variance request for the reasons stated. IT WAS APPROVED UNANIMOUSLY.

Doug Lyon commented that the Board can only make a decision based on the five criteria, not on the fact that St. Andrews has been a wonderful neighbor.

**Question on Sign Ordinance:**

Ms. Rylander then inquired about how the sign ordinance can be amended. Lucy St. John explained the zoning amendment process, the petitioned amendment process and also explained that the church can send a letter to the Planning Board and request they re-look at the sign regulations. She noted that if they have any further questions, to please contact her.

Colby-Sawyer College approached its sign issues by seeking clarification and discussion about the Town's sign policy.

**Other Business**

Chair Green asked Board members not to be late to meetings. He said if someone is not present at the start of the first hearing, an alternate will be appointed to sit in. It was clarified that an alternate can participate in discussion and ask questions but not vote. Tonight Cheryl was appointed to sit in for W. Michael Todd.

A question was asked about whether the alternate stepping in for a Board member has the right to comment and/or vote? Ms. St. John noted that they can take part in the discussion. Doug Lyon responded that Kim had told him alternates couldn't participate in the discussion. Ms. John Lucy will look into this issue. Ms. St. John then referred to the Board of Adjustment – Handbook for Local Officials dated Nov 2013 referring to page I-3, RSA 673:11 Designation of Alternate Members. She also noted that the ZBA Rules of Procedure should be reviewed and updated.

Ms. St. John will provide some draft language on the ZBA Rules of Procedure for the Board to review.

Ms. St. John provided an update on the seven (7) zoning amendments approved by the ballot vote in May. She noted that she anticipates that the Planning Board will continue discussion on other zoning amendment ideas in 2015, as the Planning Board had established several subcommittees at that time, and the subcommittee recognized that the Zoning Ordinance needs to be reviewed as there are sections of the ordinance that could use further clarification.

Chair Green said we should spruce up the ordinances we have before adding new ones. Mr. Todd suggested we raise the ZBA fees as other towns and cities have higher fees and it is more difficult in some other communities to get a variance and or special exception.

**Motion to Adjourn**

IT WAS MOVED (Doug Lyon) and SECONDED (Laurie DiClerico) to adjourn the meeting.  
THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting adjourned at 7:42 PM.

Respectfully submitted,

Chris Work, Recording Secretary  
Town of New London