



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA) MEETING MINUTES Tuesday, May 21, 2019 6:30 PM

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

MEMBERS EXCUSED:

STAFF PRESENT: Nicole Gage, Zoning Administrator

OTHERS PRESENT: Jennifer McCourt, McCourt Engineering Associates, Stephane Courtine, Everett Okma, Larry Ballin, Robert Dietel, John Langill

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 May 7, 2019**

IT WAS MOVED (Michael Todd) AND SECONDED (Heidi Lauridsen) to approve the minutes of the May 7, 2019 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

4. Case #ZBA19-08 - Appeal of an Administrative Decision Parcel ID 086-022-003, Hall Farm Rd. Zoned ARR

Samuel Drive LLC, Owner / Robert Dietel, Applicant

An Appeal from an Administrative Decision by a Town Official alleging that her interpretation of the New London Zoning Ordinance is in some way in error concerning Article II (General Provisions) Section 8.a, and Article XIII (Wetlands Conservation Overlay District) Section F.1, which set forth the setback requirements for the location of individual sewage disposal systems from wetlands.

Rob Dietel, an attorney with the Gallagher, Callahan & Gartrell firm attended the meeting. Also in attendance is John Langill, who is representing the applicant, Samuel Drive LLC and Jennifer McCourt, a civil engineer who has worked on this project for many years.

Attorney Dietel stated their requests for relief this evening are closely related as one is an appeal and the other is a variance request. He proposed that they proceed with the presentation of each application and the board reserve its deliberation until they've presented both. The reasons for this are that the relief they are requesting is duplicative and would be a more efficient way to hear both as arguments are applicable to both. Michael Todd disagrees and feels the

administrative appeal should be dealt with first and this is a de novo proceeding. Based on that decision, they either proceed to a variance application or the matter is decided. Chair Lyon agreed and would like to hear the appeal of administrative decision first.

The purpose of the presentation tonight is to deal with the site of a septic sewage disposal system and the setback requirements that apply. In April, 2019, they received a decision from the Zoning Administrator with respect to lot 022-003 that a 75 foot setback would apply. This lot is part of an 8 lot subdivision.

This was a change from prior interpretations with regards to this subdivision, a change from the standard applied when the subdivision was approved and a change from the standard applied to other lots in 2015, 2016 and 2018. This was a standard that was interpreted by a prior planning board, prior zoning administrator and in 2018, by the current zoning administrator.

This change is significant because there are vested rights that arise from the prior decision. The board should be aware that there was a lot of consideration from the outset about soil conditions on the site and the suitability of it for septic locations. When the property was brought before the Planning Board for subdivision approval, it had a troubled history. When it was under a prior owner it had gone through some logging operations which significantly disturbed the topography and soil conditions on the site. It created issues with wetlands and also issues with runoff that affected abutting neighbors. The design that came about was mindful about the site conditions. As part of a third party engineers review, it was noted that no further lot sizing was required for these lots, referencing the fact that the wetlands setbacks, from the town wetland mapping were not applicable to this site. What the Planning Board had in front of them was 8 lots addressing those conditions, proposed receiving areas for septic systems and proposed receiving areas that in several instances were under the 75 foot setback that is now being applied to this lot today. There are three approvals in 2015, 2016 and 2018 where consistently the setback was interpreted as a 50 foot requirement.

This is relevant because that interpretation is one that the applicant is entitled to continue under unless there has been some specific change to the zoning ordinance. There hasn't been a specific change to the zoning ordinance; there has been a change in interpretation of the zoning ordinance. There are three reasons they have vested rights.

1. There has been no change in the zoning ordinance
2. There is a state statute that says you are vested for a five year period following approval absent of any changes.
3. There were significant good faith investments made. They did not try to evade requirements of the zoning ordinance.

Administrative gloss is an issue here. There are three similarly situated lots that were all approved under an interpretation of 50 feet. When the 4th lot comes before the town, unless there has been an intervening change, it shouldn't be denied. This situation calls for a reversal of the administrative decision.

Mr. Todd asked if the design of the septic system had changed in the five year period. Attorney Dietel stated the receiving area for the leach field has changed. A few months ago the lot went under a purchase and sales agreement. They plotted the house on the lot and did a test pit behind the house and got a superior test pit to the one in front. So they opted to do use that site for the leach field which is within 75 feet of the wetlands but outside of 50 feet from the wetlands. The

plans that the Planning Board reviewed had a receiving area that was proposed based on the test pits done at the time. The location of that receiving area has changed but the receiving area that the Planning Board saw was also within the same setback that is being addressed now. The design and dimensions have not changed and they plan to install an Enviro System which can accommodate a 5 bedroom house.

Larry Ballin asked if the wetlands have been delineated by a soil or wetlands scientist recently. During the original permitting process, there was some argument about what were wetlands and what weren't. Jennifer McCourt stated that it was reviewed by a wetland and soil scientist and the original subdivision plans are stamped as of 2014. Ms. McCourt is an Engineer and septic designer and did the test pits. She feels the delineations still look valid to her. The site has been undisturbed since the initial restoration work was done and has been allowed to re-vegetate. If anything, the wetland areas would be shrinking rather than expanding.

IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) TO DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.

Frank Anzalone stated the town should look at categories of wetlands based on size.

Chair Lyon thanked Nicole Gage for bringing this to their attention. The original subdivision approval recognized that there wasn't a 75 foot set-back and that setback wasn't in place at the time of the original subdivision. It included a soil analysis that described the soils on the site and DES and the Planning Board all agreed that the 50 foot setback made more sense in those conditions. In addition, three other lots have been approved at less than a 75 foot setback over time. The applicant relied on all of these decisions in terms of the money and time spent.

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to overturn the decision by the Zoning Administrator and notify the applicant that they do not need a variance for constructing the septic system as he has set it up with the following conditions:

- 1. State approval is obtained**
- 2. The Septic System and leach field described in the plan be installed**
- 3. The septic plan noted on the property card be removed**

Ann Bedard disagrees. She is thankful that Nicole Gage caught this as it is in our Zoning Ordinance and should be brought to the attention of the Planning Board so they are watching for it. They have an option to go for a variance and have a strong argument for it. Just because it was previously approved, we shouldn't be held to that decision. Chair Lyon agrees that Ms. Gage did her job and this does not reflect on that in any way. He is simply trying to expedite the matter due to the fact that they have a strong case for a variance.

THE VOTE: Doug Lyon – Yes, Michael Todd – Yes, Katharine Fischer – Yes, Ann Bedard – No, Frank Anzalone – No. THE MOTION IS CARRIED WITH A 3-2 VOTE. A VARIANCE IS NOT REQUIRED.

5. Other Business

Nicole Gage announced that on Saturday, June 1, 2019 there is a state Planning and Zoning conference at the Grappone Center in Concord.

On Tuesday, May 28, 2019 at Whipple Hall, there will be a presentation at the Planning Board meeting about workforce housing.

There will be a facilitator training with the Planning Board on Wednesday, May 29, 2019.

The Zoning Board of Adjustment meetings scheduled for June 4 and 18th are cancelled.

6. Motion to Adjourn

A MOTION WAS MADE (Bruce Hudson) and SECONDED (Michael Todd) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 7:31pm.

Respectfully submitted,

Trina Dawson
Recording Secretary
Town of New London