



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA)

MEETING MINUTES

Wednesday, July 11, 2018 at 6:30 PM

Whipple Hall, 25 Seaman's Road

At 5:30 p.m., prior to the meeting, members of the ZBA and the public met on site at Cottage Lane to tour the grounds and building with applicant Harry Snow for ZBA Case

5:30 PM Site Visit at parking/turn-around area at the end of Cottage Lane

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

MEMBERS EXCUSED: Katharine Fischer

STAFF PRESENT: Kimberly Hallquist, Town Administrator

1. Call to Order – Chair Lyon called the meeting to order at 6:30PM.
2. Roll Call – Chair Lyon called the roll. Heidi Lauridsen will be a voting member tonight.
3. Review Minutes from June 26th

IT WAS MOVED (Michael Todd) AND SECONDED (Anne Bedard) to approve the minutes from the June 26, 2018 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

4. PUBLIC HEARING for Case #ZBA18-07. Mascoma Bank/Barlo Signs, Applicant. Mountain View Shopping Center LLC, Owner. A Variance is requested for 277/259 Newport Rd., known as Mascoma Bank, from the provisions of Article II, Section 10 of the Zoning Ordinance, concerning signage, to permit one (1) internally illuminated ground sign; window graphics considered signage; and to exceed the number of signs permitted. The lot is located in the C (Commercial) Zoning and is identified as Parcel ID 059-008- 001, located in the C (Commercial) zone.

Chair Lyon reviewed the process. The board is required by law to make its decisions in accordance with the five variance criteria. This is not something they have discretion on. They look carefully at court cases and their interpretation.

Jenn Robichaud attended the meeting to represent Barlo signs on behalf of Mascoma Bank. Mike Sanderson, Branch Manager for Mascoma Bank was also in attendance.

They are seeking relief for two items. The application had an error that described an internally illuminated sign but it is actually an externally illuminated sign. The other item is the window vinyl which illustrates the hours of operation and above that is the Mascoma logo. They are seeking relief because zoning allows two wall signs or one wall sign and one ground sign. The bank currently has two wall signs. The bank is currently going through a rebranding effort and is looking to update the two wall signs with the new branding. These signs have already been permitted. One of the wall signs faces Newport Road and the other is under a canopy in front of the main entrance.

The request for a free standing ground sign would be near the entrance to the New London shopping center. The bank has been interested in obtaining this sign for a long time. The landscaping and trees hide the bank and this sign would allow people to slow down and turn into the bank parking lot and identify the bank to the public as they are traveling by. The sign will be externally illuminated and will have two posts with the sign in the middle and is 14.91 square feet in size. The vinyl sign is the other issue. If it just had the standard hours of operation it would be fine but due to the logo, it is considered a sign. The bank feels it is necessary to have the logo on there to help identify the main entrance.

1. The variance is not contrary to the public interest – this is a large parcel and the sign will help guide the public.
2. The Spirit of the ordinance is observed – the signage is not excessive and allows for proper identification of the bank’s business entrance.
3. Substantial justice is done – Allowance of proposed adequate signage for Mascoma Bank helps direct motorists entering this busy parcel. The public should not be harmed in the installation of clear signage that directs and informs them.
4. The values surrounding the property are not diminished - This is a commercial property and most individuals don’t know it is all one parcel since the bank gives the appearance of being on its own separate lot.
5. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship
Limitation of number signs is subjective and does not take into consideration building size or sight lines. A building may have sight lines that are seen from different approaches, which allows multiple signs to be complimentary and not too much. The proposed use is a reasonable one. The window vinyl cannot be seen from the roadway and can only be read by those at the bank. They are seeking relief for number of signs and not for size or height. A good part of the year, there is substantial foliage that blocks the bank. It will be beneficial to see the sign up ahead as opposed to seeing it out their side window.

Mr. Todd explained that part of the variance analysis requires the petitioner to explain what the physical characteristics are that distinguish this lot from all the other commercial properties in the immediate area. He hasn’t heard any evidence of this so far. Absence of this information means they would have to deny.

Jenn Robichaud responded that those characteristics include that the plaza has multiple businesses in it, and the bank is close to the roadway and hidden by the landscaping. The characteristics around this building that separate it from the rest are that it is hidden behind trees and it is difficult to slow down in time to enter because the building is blocked and not visible. The Hannaford sign is visible and gives people plenty of time to turn into the parking lot. There is also no multi-tenant sign that a lot of plazas use to identify businesses in the area.

Mr. Todd asked what the effect would be of the sign on the visibility of people in the parking lot returning to the street.

The sign will have an effect in two different ways. It will help with safety as it will allow people to slow down and make the turn into the parking lot. By using their blinker, it lets the people who are pulling out know that these cars are pulling in. There will be no effect on people leaving as they are on the opposite side of the island. The sign will be at the same setback as the Hannaford sign.

Chair Lyon noted that in the application, it was stated that the signage is not excessive. Under the zoning regulations, it states two signs for each business and maximum of 15 square feet. He suggested putting up a monument sign and removing the one on the face of the building that is

blocked by trees. The question he would ask is if there is reasonable use under the current regulations. Another thing to consider is all of the other properties in the mall are similarly burdened by a two sign restriction.

Mr. Robichaud stated that he disagrees that the other tenants in the plaza are in a similar situation. The bank is stand- alone building. There is a 360 degree view of the building and no other business has that visibility. People coming from all directions need identification of the building. All the signs being requested are for different purposes. There is a need for more signage.

IT WAS MOVED (Michael Todd) AND SECONDED (Frank Anzalone) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon stated that the hardship criteria is the one that presents the most challenge. If all properties are similarly burdened by the regulations, then no hardship exists. Another thought is that it is possible to have the monument sign by removing the third sign. If they removed the sign on the building that is blocked six months of the year they wouldn't need a variance.

The spirit of the ordinance concern is that NL is very strict in regulating sign pollution and limiting businesses to two signs. If all properties were granted a variance for a third sign, there would be excessive signage in town. That would clearly be a violation of the spirit of the ordinance and would also argue it wouldn't be in the public interest either.

Under substantial justice, this is not an oppressive sign regulation and there are ways to solve this problem and stay within the rules and regulations.

Anne Bedard stated that one of the purposes of the sign regulation is to prevent hazards to vehicular and pedestrian traffic. Having more signage in a very busy area is a concern. They have been very firm on the sign regulation and it is there for a purpose. She is not in favor of granting this variance and feels it is a hazard to public safety.

IT WAS MOVED (Doug Lyon) AND SECONDED (Anne Bedard) that the sign request for a sign variance by Mascoma Bank be denied for the following reasons: It was not in the public interest to increase the number of signs. The spirit of the ordinance is to restrict signage, not increase it. Substantial justice is not an issue as the signage rule is not oppressive. There has been no testimony given on the values of surrounding properties. In the absence of any evidence we don't make any judgments about the values of surrounding properties. With regards to the Hardship criteria, every property in that area is burdened by the same regulations. It is not burdened in any way that is distinct from any other properties. The applicant has a solution that doesn't require a variance. THE MOTION WAS APPROVED UNANIMOUSLY 5-0.

5. PUBLIC HEARING for Cases ZBA18-08, -09, -10, -11, -12 & -13. Harry Snow III, Applicant/Owner. Six (6) variances are requested for 30, 33, 42, 54, 63 and 68 Cottage Lane from Article V, Sections A.1. and B.3. of the Zoning Ordinance to permit conversion of existing two-family dwellings to allow four-family dwellings, all within the existing footprints and buildings. The lots are located in the R-1 (Urban Residential) Zone and are identified as Parcel IDs 085-015-000, 085-016-000, 085-018-000, 085-019-000, 085-020- 000 and 085-021-000.

It was discovered earlier today that three of the abutters were not notified. This is not the fault of the applicant but a matter of a town computer error. Three of the properties for consideration met the requirement to notify abutters and three did not. At the request of Harry Snow, we will go ahead with the hearing for the properties that were properly noticed. Those properties are 33, 42, and 54 Cottage Lane. It is then Mr. Snow's intention to bring forth the applications for 30, 63 and 68 Cottage Lane.

Ari Pollack, an attorney with Gallagher, Callahan & Gartrell law firm in Concord, New Hampshire attended the meeting to represent Harry Snow. Mr. Snow is the owner and developer of the 6 lots on Cottage Lane. All six applications are identical in terms of the relief they are requesting, although only three will be reviewed tonight.

The lots were originally purchased and developed in partnership with Colby Sawyer College to house students. A site visit was conducted prior to this meeting. Under the agreement Mr. Snow had with the college, he developed the six lots with a duplex and each side of the duplex had a two floor apartment with six bedrooms. Only five of the bedrooms could be used because of NL's regulation on the maximum number of unrelated persons. The buildings comply with two family zoning, lot set-backs, parking requirements and have public water and sewer. Cottage Lane was developed as a private road that in prior years was maintained by Mr. Snow and the College but going forward, Mr. Snow will maintain the road. After the lots were built, the college assumed the role of being the master tenants and the manager of the housing units. They used the bedrooms as an off campus housing opportunity for the students and this arrangement existed for many years. Mr. Snow served as the landlord and paid the mortgage and the taxes and the college paid Mr. Snow a base rent. Due to declining enrollment, the college is now requiring the students to live on campus and has terminated their agreement with Mr. Snow and the Cottage Lane properties. The college is also preventing students from renting off campus so even if Mr. Snow wanted to go into the student housing market it would be closed to him. After unsuccessfully trying to negotiate, he will now need to repurpose the property. What is there now is not conducive to the general rental market as it is set up for the student population. The upstairs does not have kitchen facilities. To make the property more conducive to family rentals, Mr. Snow would like to convert each of the duplexes into a quadplex. He would take each individual building that has two units and make it four. He would do that by converting a second floor space into a kitchen that would serve as an upstairs apartment with a separate locked entry all working off a fire rated stair well. The exterior footprint and the parking would all stay the same.

The variances are necessary because the multi-family dwellings are not allowed in the R1 district where the property is located however, the two family dwellings that exist, were allowed. If the variance is granted, Mr. Snow will need to obtain the appropriate building permits and occupancy certificates for the adjusted units and would construct this according to the building code.

This proposal does not involve workforce housing and does not have age or income restrictions. Mr. Snow has been softly advertising the availability of the property in the local market and has received an encouraging response.

1. The variance is not contrary to the public interest – the variances will allow the redevelopment of the properties in a way that supports a diversity of housing type and a quality apartment housing option that is in short supply in the market.
2. The spirit of the ordinance is observed – both the ordinance and the master plan support the development of quality housing opportunities. The ordinance discourages the waste of use of land. This will give an attractive development a new lease on life while supporting important community housing goals.
3. Substantial Justice is done – the variances would enable repurposing a quality development after a prior use was not needed any longer. Times and needs changes so adjustments for those changes are reasonable.
4. The value of surrounding properties will not be diminished - The building aesthetics, footprint, landscaping and parking lot will remain the same. The impact on surrounding properties should be unchanged. Even parking and traffic should remain unaffected as student vehicles will be replaced families and working parents. A letter was obtained from a local broker regarding surrounding property values and stated that converting to quadplexes will not have an adverse effect on surrounding properties. This will be submitted for the record.

5. The hardship is created by the colleges' decision to terminate the agreement and by preventing the students from living off campus. If these apartments were offered as they are today, they could not collect the amount of rent needed to support the property. The duplexes are too large to be supported by the current rental market. The variance would allow for reasonable use of the property and does not waste the improvements that have been heavily invested in.

Chair Lyon stated that one of the issues under the hardship criteria is reasonable use and clearly one use is to rent them as two family as opposed to four family. The board is allowed to hear that economically that is not possible but no evidence has been submitted of that fact. The difficulties are that zoning is established to prohibit more than a two family. All of the properties in that area are similarly burdened by that regulation. It boils down to whether the zoning requirements are reasonable and therefore, a violation of that can be argued that it's not in the public interest or the spirit of the ordinance. Reasonable return is not maximum return. The property was constructed with full knowledge of the regulations so it could be argued that the owner has created his own hardship. Chair Lyon is sympathetic for the need for rental housing.

Mr. Pollack explained that there are some special conditions of this property. It is served by a private road. It is presently improved with use that would suffer waste if it was inefficiently used. While he agrees that maximum return is not a goal of the ordinance, a reasonable return would be a goal. There is a significant concern about the inability to rent these units. The property would not be sustainable and the owner would operate at a loss if they are not rentable. There was an expectation that there would be a long term plan with the college.

Mr. Todd stated that when Mr. Snow built the first few units, he came before the Selectmen and they made a decision that he could only have so many students in each unit because of the density requirements. They sought relief from that and it was discussed that if only 5 students were in the units there wouldn't be a reasonable return. The decision was upheld not to allow more students and yet, Mr. Snow built three more buildings. So to argue that he can't rent these units as two family units because it's not a reasonable return is a problem.

Mr. Pollack responded that one situation doesn't have anything to do with the other. This is based on their experience now going out to market with what they can convert, not what was available several years ago. He'd like everyone to take a fresh look at it.

Mr. Snow stated that he never came before the zoning board to ask for a hearing. He asked for an interpretation of the ordinance. He felt after reading the ordinance he wanted clarification. Having six people in the units would have been ideal. He didn't argue or present a financial hardship burden at any time.

When this was originally set up, the college was in it for the long haul and the end goal was for the college to purchase the property. There were a number of modifications made specifically for them. Six or seven years ago the school was busting at the seams and students were all over. There were issues with policing and this was an attempt to work with a partnership with the college. The land was ideal for college housing and was a natural fit. They were paid on a per student basis. \$8,250 per student X 60 students was \$495,000. Expenses came out to \$370,000.

There will be definitive financial hardship on him and his family if he can't proceed with the increased use they are proposing.

Chair Lyon clarified that the financial hardship of the owner is not an issue under hardship. What can be discussed is the reasonable use.

Anne Bedard commented that multi-family housing is limited in New London. She wanted comments from the Fire Department to discuss what issues are involved with multi-family living.

Jay Lyon, New London Fire Chief, responded that calls are based on weather and numbers of people. In any structure with multiple individuals, sprinklers are very important. They worked with Mr. Snow initially regarding the sprinkler systems and fire alarm system. Mr. Snow has indicated that he is willing put a secondary means of egress on the second floor.

Mr. Todd stated that this would effectively double the residential density on these three lots.

Mr. Pollack responded that no, they are taking one unit, and splitting it into two units. There are no additional bedrooms, in fact, you lose bedrooms. There is no additional occupancy. If 60 students were living there previously, it is likely there will be 60 people or less in the after scenario. Mr. Todd also asked about vehicular traffic. If the students are replaced with families, what is the effect of the singular egress/ingress street? Mr. Pollack stated there is an abundance of parking. He speculates it could mean fewer cars in the redevelopment scenario. Cottage Lane is not a heavily traveled road. Mr. Snow agrees there should be less overall impact. It will be mixed use that could include retirees, young families, police officers and commuters.

Mr. Pollack feels there are unique characteristics that this suitable for multi-family. It is surrounded by wetlands and conserved land. It really constitutes a large development track. Considering the width of the site, it almost is necessary to put in a private road. It pushes the buildings to the maximum set-backs. Looking at the entire site, it could be argued there is a reasonable use for multi-family regardless of the prior history. It is conducive for what it is being used for.

Chair Lyon stated two letters were submitted to the board opposing the application.

John McKenna commented that businesses in town have a hard time finding employees due to lack of housing.

Maryann McEnrue stated that currently multi-family housing is not allowed in the R1 district for a reason. It is to preserve the character and feel of the town. The Planning Board has been reasonable in identifying that restriction in the R1 district. An approval of this endeavor would put the zoning guidelines in jeopardy. If these apartments are not market worthy, why is the automatic thought to double the units? Why not modify them to remove the two bedrooms on first floor and make them more spacious and appealing. The sight lines are not safe, coming and going on Seaman's road. The five criteria have not been met and the zoning ordinances are clear that they must be met. The fact that Mr. Snow took a market risk was his decision. The market changed but it is not the town's responsibility to compensate him for his market risk.

Lindsay Holmes stated that she lives directly behind this development. They have been the most affected by that development. Mr. Snow discussed what it was like to build this development and the history but she would like to share what it was like for her. Her grandparents built their house in 1952 built on a dirt road. It was a quiet neighborhood. When the students came, it was horrific. The noise, parties, trespassing through their yard, the garbage and the police activity has been awful. Mr. Snow stated this will attract a different kind of tenant but he can't guarantee that. All he can guarantee is that there will be more people there. There will be a traffic impact. The density issue is the most important issue. He undertook this construction knowing full well the property was zoned R1.

Thomas McCue stated that the application does not answer the five questions but rather are rhetorical answers without factual basis. No evidence has been given that these units can't be rented as town house type apartments. The hardship argument has not been met.

He feels Mr. Snow is asking for ways to get out of a bad financial situation. In essence, they are asking for a bail out at the expense of the town, the neighbors, and the neighborhood.

Mr. Snow stated this is not true. If it is left as one unit (2 per duplex) it is an extremely difficult and not financially feasible space to rent. It would be much more user friendly and affordable situation.

Mr. Pollack responded that this is an opportunity for a new lease on life for this property. This is an opportunity for Mr. Snow to recapture the property and to provide professional management. The property can be rented in its current situation, albeit at a loss. This will give Mr. Snow an opportunity to make the money he needs to reinvest in the property.

Mr. Snow addressed the safety concerns coming out of Seaman's road. It meets all of the sight line setbacks and there have been no accidents.

He addressed renting the units out as one unit and stated converting it to a two story single family unit would mean not being able to charge the rent required to cover the cost. The market won't support it. Maryann McEnrue clarified that she meant making modifications to each side to make them two family units. Why is the default to go from two to four units? She isn't suggesting making single family units.

Mr. Snow also stated he never received any calls or complaints from neighbors.

IT WAS MOVED (Michael Todd) AND SECONDED (Heidi Lauridsen) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon stated this was a unique situation due to a glitch in the town's computer system. It split the application into two because all neighbors were not notified. One alternative for the applicant is to withdraw this application and submit all six at once.

Another option is to hear this and make a decision if that is what the applicant chooses. Frank Anzalone stated that it puts the applicant at a disadvantage to not hear all six. A decision made tonight may alter the decision of the other applications. He would like more information on traffic.

Mr. Pollack asked that they table this application until a date when all six could be heard at the same time.

Mr. Anzalone stated that if it was tabled, it is the same application that exists. If it is withdrawn, they can come in with a different application. This would give an opportunity to address concerns. Mr. Pollack agreed and asked to withdraw the application and will resubmit. A hearing will be rescheduled to discuss all six properties.

6. Other Business

The upcoming schedule of meetings was discussed.

7. Motion to Adjourn

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

The meeting was adjourned at 8:11 pm.

Respectfully submitted,

Trina Dawson
Recording Secretary
Town of New London