



TOWN OF NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

Thursday, July 20, 2017

Town Office – Sydney Crook Conference Room

375 Main Street

6:30 PM

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd, Vahan Sarkisian, Katharine Fischer, Paul Vance

MEMBERS ABSENT: Ann Bedard, Jerry Coogan (Alt.) and Frank Anzalone (Alt.).

STAFF PRESENT: Amy Rankins, Land Use & Assessing Coordinator

OTHERS PRESENT:

Call to Order: Chair Lyon called the meeting to order at 6:30 pm.

Roll Call: Chair Lyon called the roll.

Barbara A. Deming Trust Variance Application. Property located at 151 Forty Acres Road. Tax Map 038-001-000. Variances requested to Article IX, Forest Conservation District, (C). Yard Requirements and (D). Land and Frontage Requirements. Minimum lot size required is 25 acres. The new lot is proposed to be 12+/- acres. Minimum road frontage requirement is 400 feet. The minimum front yard requirement is 50 feet. Plan prepared by Pierre Bedard, LLS.

- The Deming case requires another hearing since it was not properly noticed. Chair Lyon recused himself as he is President of Ausbon Sargent Land Preservation Trust and the Deming property has an easement held by the Land Trust. Vice Chair Mr. Todd will lead the meeting.
David Burnham is represented on behalf of Pierre Bedard and has no objection to the hearing with four members present.
This property was placed in a conservation easement at a time when the relevant zoning for a subdivision was 10 acres. Subsequently, the zoning was changed to 25 acres and without a variance, the owner cannot exercise his reserve right and meet the terms of the easement. The variance was granted, but because of an error in notifying Wilmot abutters, it must be reheard. No abutters from Wilmot were in attendance On July 20.
- Mr. David Cook presented a letter to the board. Mr. Cook did not see the prior notice for the hearing so when he saw the Wilmot hearing he felt it was necessary to present significant relevant facts. At the time of the notice, Mr. Cook was not an abutter. Mr. Cook's concern is that at the entrance way from Forty acres road there is a turn-around. The property line of the Deming parcel went to the front of that turn-around. That is of concern as it leaves maintenance of everything inside up to the people who own the property. The highway department has done maintenance because they need a place to turn around during the winter months. They have cleaned this up and made it more usable for parking for people to use this area for hiking, walking and recreation. The town isn't maintaining the entrance to the trails, just the oval part of the turn-around. Mr. Cook has voluntarily taken care of the entrance area for fifteen years to keep it usable

for people, mainly senior citizens. He is asking that new property owners take some responsibility to keep this area maintained on behalf of Barbara Deming. Mr. Cook feels this area as important to those who use it. He would like it clarified who is responsible to maintain this area. People who use it, care about it and in no way damage or vandalize this area. He believes this is a wonderful thing that the Demings have made available to all. Mr. Cook would be happy to take anyone to the area if they wish.

IT WAS MOVED (W. Michael Todd) AND SECONDED (Vahan Sarkisian) to take this proposal from David Cook under advisement and issue a written decision within the 30 day period allowed. This will give time to research easements and provide a written decision to confirm or modify the initial variance that was granted. If it is to be modified to include conditions that Mr. Cook has suggested, we will meet to discuss and vote and modify original decision accordingly. THE MOTION WAS APPROVED UNANIMOUSLY.

- David Burnham will supply a current set of plans to Amy Rankins. These plans are complete with the exception of the far two corners.
- Katharine Fischer is concerned about what our jurisdiction is. She stated the planning board also has a role here as well.
- Doug Lyon made a comment that in the initial hearing, Ausbon Sargent had no objection to the variance request. They felt it was unfair to the property owner since the easement as it was originally written was appropriate to the ten acre zoning that was in effect at that time. By the town switching to the 25 acre zoning it has made the specifications of that easement virtually impossible to carry out. The easement contains restrictions on where the property can be subdivided and the owner would have to build 400 feet of road to comply with the new restrictions. Ausbon Sargent was in favor of the variance. They are supportive of the motion on the floor to research it carefully and would be glad to assist with that process and make it clear what is in that easement and what's required under the easement.

Dowd, John Variance Application. Located at 476 Route 103A. Tax Map 080-001-000. Zoned Residential (R-2) and Shoreland Overlay District. Variance requested to expand an existing nonconforming structure which straddles the 50' waterfront buffer. Variances requested to Article XX, B 2 and B 3, to expand the structure and height, no change in the building footprint.

- Five board members are in attendance.
- Jeremy Bonin from Bonin Architects was in attendance representing John Dowd. This is a small piece of property. The lot is a quarter of an acre. It is a long narrow house that is in about every possible set back it could possibly be in. It is an existing non-conforming property. The family would like to expand their living space. They are not adding a bedroom so they are not increasing the septic load. They would like to eliminate the two back bedrooms and have one bedroom in the back and one in the front. So it would be eliminating one and making one larger by extending a second story over an existing one story section of the house. In speaking with Lucy St. John, when trying to sort out what sections they were seeking a variance from, they did not come to an agreement. She asked him to list B2A and B3. B3 is obvious but B2A is applicable but sends you back to B1A. Mr. Bonin would have just listed B1A. The portion of the variance they are seeking in article 20 is the vertical expansion of the existing footprint. In a few discussions with Lucy St. John at that time it was felt it was in somewhat of a gray area of current zoning. Knowing this was an odd situation, we are not changing use, or increasing area of the site but are hoping to increase the square footage of the house by 380-400 square feet by taking that first floor level that's pointing towards the lake and extending it upwards to match the height of what's already existing non-conforming within the buffer.

- Chair Lyon wanted to clarify that it is to extend the roofline out over the shoreline. So virtually 80% of the house is in the buffer right now. The height is 28'8 measured from grade. Katharine Fischer wanted clarification that the sides would be continuous. The building is not overhanging. Jeremy Bonin stated there is no increase in the width of the house. The variance is from the language that says "no footprint change or vertical expansion of the existing structure should be allowed". The no vertical expansion is the issue because the footprint isn't changing so it's the piece in reference to B1A that needs the variance. There is a little bit of room for expansion of the house. The client would prefer not to increase the impervious space and would like to just increase master bedroom space. This will not impact property values, its current use is the correct use, residential use and any detriment to the neighborhood would not be outweighed by the benefit to the user.
- Jeremy Bonin was unaware of the abutter letters that were submitted and not in support of the variance. He was given copies at the meeting and reviewed them briefly. The uniform statement through all of them was concerning septic. The bedroom count is the same so no increase in septic use.
- Deborah Langner, Health Officer, attended the meeting to address the septic issue. She stated that there are no plans for the septic system with this house so it is questionable what is there. If it is approved at this level, it will be addressed at the building permit level. To do this addition, any additional expansion of use will require a new septic design. They could require them to install whatever design is done and take out what is there. The worst case scenario would be if the lot is too small they could say we will not allow an expansion of use. All of these issues will be addressed at the building permit level. Chair Lyon wanted to know if the fact that there is no existing plan for the septic system should be of concern regarding its viability. Ms. Langner said not necessarily. With the electronic systems now, anything before 1990 is in the paper archives and not easily located. DES places a 20 year timeline on a septic system. If the system is more than 20 years old and the lot is less than 5 acres then with any expansion of space a new design is required. The owners possibly have something but there is nothing on file at the state. The owner does believe that it is less than 20 years old.
- Chair Lyon is concerned about the visual impact. Looking from the side it will have a substantial increase in the visual impact of that roofline and from the front will have the billboard effect. Mr. Bonin stated that from the street, it is an extension of a roof line that is there. From the main road, you can't see the house due to trees and it being heavily wooded. From the lake you will see it but the existing height is already there. The windows that will be in the wall are going to be very short.
- Mr. Bonin also wanted to address the argument that the bettering of the home will increase taxes so is a detriment to the abutters. He feels if you reverse this and say we want all of our homes to become run down so taxes go down isn't what the purpose of a zoning ordinance is. The neighbors stated that it would be negative to them. As an argument against the variance it implies that the intent of the zoning is to keep taxes down by not improving properties.
- Mr. Todd stated that some of the abutters had expressed concerns about the recreational uses associated with the owners of this property. He is sympathetic to their arguments. He is concerned that an increase in square footage of a bedroom could mean more people visiting. There are safety concerns as well as noise concerns. Mr. Bonin stated that the noise concerns were related to the construction phase. Increasing someone's bedroom space should not be tied to lake use. There is buildable area on that lot. Mr. Bonin questioned whether this would be better as it is by right, allowed? Doing this addition doesn't equate to more people waterskiing. Mr. Todd feels it means increased usage, increase occupation. More space, more people. Concerns have been raised in the past. Mr. Todd is concerned about the cumulative effect. He would like

to know why this isn't contrary to the public interest. Mr. Bonin stated that there is nothing in our zoning that prohibits year round use for these properties. Mr. Todd stated that the neighborhood is mostly older boathouses and this property is already out of character.

- Chair Lyon stated that generally speaking when an applicant comes to the board, it is more common to have abutters approving and supporting the variance than it is to object to it. When there is opposition, we have to be careful to consider each of the criteria. If we don't, we are open to appeals. Four is an unusually high number. The board needs to think seriously about how the character of the neighborhood is going to be changed. When we look at this house, compared to the rest of the neighborhood, it is already different and the applicant is suggesting we make it more so. Mr. Bonin stated that he spoke with Mr. Dowd today and his neighbor supposedly had no objection. In several letters, two from the same family, it states that they do not oppose the request for the variance. They're asking about septic, taxes and noise during construction. Most of the opposition isn't related to the height of the building which is what the variance is requesting. Mr. Bonin feels this is less impact to the lake because there is no impact in terms of impermeable area. As an architect, his job is to look at all the solutions for the client. He looks at what will have the least impact for both construction and the site and in this case it is the same thing. All options are weighed but in this case it makes the most sense.

Chair Lyon asked for a motion to discuss, motion by Paul Vance, seconded by Vahan Sarkisian. Motion to discuss approved unanimously.

- Chair Lyon suggested that the board go down the criteria and vote on each.
 1. Diminution of Property Value of Surrounding Property – Several letters made the opposite argument. Based on the evidence before us, each need to vote that it would or would not be a diminution on the value of surrounding properties. Unanimous vote by the members that there is no diminution on Value of Surrounding properties.
 2. Would not be contrary to public interest. Mr. Todd stated that there was some evidence in the abutter letters of what they think the public interest is from the lake side. Based on those letters, there may be. There is abutter concern about increased activity. The vote was 3/2 on this criteria.
 3. There is a fair and substantial relationship between the Zoning ordinance provisions and its application to this property. The vote was 3/2 on this criteria.
 4. Substantial Justice – Does the public realize a gain if this variance is denied? The vote was 4/1 on this criteria.
 5. It would not be contrary to the spirit of the Ordinance – The board voted 3/2 on this criteria.

Based on the votes on each of the five criteria, the majority are in favor of the variance. Mr. Vance interprets that 3/5 people have to say yes to grant the variance. No one can say yes if they haven't found all five. Chair Lyon does not understand it to be that interpretation. He stated that his understanding is that the majority of the board has to concur on each of the five criteria. All five members don't have to concur positively on all five. Legal counsel should review. Based on Chair Lyon's interpretation, what we have done is that on each of the five questions, a majority of the board has granted in favor of the variance. He will consult legal counsel on this issue to determine for sure that is the appropriate interpretation.

- Mr. Todd stated that the vote has been tabulated and the variance has been granted but does the board want to impose any conditions on the granting of said variance?

- Mr. Sarkisian asked Mr. Bonin if there was a possibility of not putting windows on the wall on the North side. Mr. Bonin stated that they would agree to not put any windows on that wall.
- Chair Lyon is encouraging the board to leave the septic issue to the planning board so to not put any restriction on it with regard to the Septic.
- Mr. Todd would like to impose the condition to preclude further construction on the lot, even in the buildable area.

IT WAS MOVED (W. Michael Todd) AND SECONDED (Paul Vance) that in addition to the condition that there be no windows on the North side of the building, that another condition be that there be no further increase in impermeable area. The hearing will be continued until August 3, 2017 at which time the owner will decide if he wishes to withdraw his application. THE MOTION WAS APPROVED UNANIMOUSLY.

- Jeremy Bonin stated that he is unsure how to answer that as he doesn't have the authority for his client. The board does have latitude to impose restrictions.
- If this is approved, the client has a right to appeal this decision. Mr. Bonin is questioning if his client is not agreeable to these conditions, what are his options?
- Chair Lyon suggested that if we are asked to continue this hearing, Mr. Bonin can consult with his client and the Board will set a date certain for this continuance. Mr. Bonin asked for a continuance. The meeting will be held on Thursday August 3, 2017 at 6:30pm.

Approval of Minutes

IT WAS MOVED (W. Michael Todd) AND SECONDED (Katharine Fischer) to approve the minutes of June 15, 2017, as presented. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:59pm.