



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Monday, July 25, 2016
The Tracy Memorial Library Meeting Room
304 Main Street
6:30 PM

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd, Ann Bedard, Cheryl Devoe, Frank Anzalone, Katharine Fischer (Alt.), Paul Vance (Alt.)

MEMBERS ABSENT: Vahan Sarkisian, Jerry Coogan (Alt.)

STAFF PRESENT: Lucy St. John, Planning and Zoning Administrator

OTHERS PRESENT: Paul and Linda Messer (applicants), Robert Stewart (RCS Designs), Bruce Parson (Designer), Regina Stevens (abutter) and her attorney Michael Malaguti (Ransmeier & Spellman), Babs Lightfoot (abutter), Dave & Karen Demers (abutters), William & Jane Hopwood (abutters), Sue & John Rogers, (abutters), Dianne Yelton (abutter), Bev and Dave Pane (abutter), Bruce Sanborn, Laura Lorio, Lyndsay Lund and Doug Sweet.

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

Roll Call: Chair Lyon called the roll. He said the meeting had been properly noticed.

Approval of Minutes

IT WAS MOVED (Michael Todd) AND SECONDED (Cheryl Devoe) to approve the minutes of June 27, 2016, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Katharine Fischer) AND SECONDED (Cheryl Devoe) to approve the minutes of July 14, 2016, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon asked the audience to sign the sign in sheet as it's passed around. Next he provided an overview of the ZBA's regular course of procedures. He then gave the floor to the Messer's representative, Bob Stewart from RCS Designs.

Chair Lyon appointed the following to be voting members for tonight's discussion: Himself, Michael Todd, Frank Anzalone, Paul Vance and Katharine Fischer.

Variance Application

- **Messer, Paul and Linda Irrevocable Trust.** Property located at 600 Bunker Road. Tax Map 076-031-000. Property zoned Residential (R-2), and Shoreland Overlay District. Variances requested to Article V, Residential District, C. Yard Requirements, C (1 & 2). Plan prepared by Robert Stewart, Jr., of RCS Designs. Public Hearing continued from the July 14th meeting.

Mr. Stewart explained that since the last meeting, he has revised the plan to include several additional measurements from various angles (a copy had been provided to the Board and projected for all to see, plan revision date July 22, 2016). He noted the location of the monument in the right-of-way, referring to survey details by Doug Sweet, of Bristol Sweet Associates. He explained, referring to the plan, how measurements were determined at right angles to the existing and proposed lot lines, not to the monument that is in the right-of-way. The projection of the lot line is at a right angle, and the monument is for the establishment to other lines. He explained that because of this (21.4 + 28.6 feet, totals 50 feet aggregate) they don't need a variance. He explained the intent of the plan, as presented is to bring any and all proposed changes into conformity, and thus not need the variance after all. He reiterated that as noted in previous meeting, they will be submitting a lot-line adjustment plan to the Planning Board for consideration.

Chair reiterated what Mr. Stewart said based on his argument that the line 21.4' is perpendicular to the property line and with the removal of the old steps this becomes the new perpendicular as 21.4 plus 28.6 (based on the modification) equals the needed 50' setback for the side lines. Therefore, a variance is not needed.

Mr. Stewart then referred to Article XX of the Zoning Ordinance regarding nonconforming structures, noting any changes made can be made without going to the Board as long as it makes it less nonconforming. By moving the platform, we have accomplished this.

Board Discussion:

The Board reviewed the setback requirements and definitions # 63 front yard and definition # 140 side yard. Chair said that at this point with the modifications made to the house, including the relocation of the porch and modification of the bedroom addition, they now have a 50' required arrogate side setback and do not need a variance.

Noting the number of people in attendance (staff counted, approximately 21 people, all may not have signed the sign-in sheet), the Board agreed that it would still be appropriate to hear any comments or concerns from abutters, prior to making a motion.

Chair Lyon then opened the public hearing.

Michael Malaguti, attorney representing Regina Stevens an abutter. Comments and questions:

- ✓ Spoke to the legalities of the variance criteria, whether one was needed or not.
- ✓ Questioned the various measurements shown on the plan, and how would the Board measure the right angle of the north side of the property.
- ✓ Referenced the Zoning Ordinance, Article II, General Provision, # 9, Setbacks, which reads: In all zones the required setback shall be to the extreme limits of the building.
- ✓ Stated Article II appears to be at odds with the requirement for a right angle measurement. Stated that the conflict between the provisions, and under those circumstances, it is more important to look in resolving the conflict to the purposes of the ordinance and then to the structure and substance of the ordinance.
- ✓ The requirement for a right angle measurement, is not part of the General Provisions, it is instead in the Definition section, referring to the definitions of side yard and front yard. He would like to also submit that the placements of these provisions is a fact that the Board should consider.
- ✓ Pointed out if you adopt the applicant's measurement, you are in a certain way leading to an absurd result, which is that the north corner of the property is not captured and is in effect exempt from a side yard setback requirement. Submits that this "as between" area, the 90 degree requirement and the requirement for measuring extreme limits of the building, the latter is more important. Which

is consistent to the purpose of the ordinance; the side yard which protects abutters. Using that reading, at the 17.5' or 17.3' measurement, either case, it's a decrease in aggregate side yard setback requirements, going from 48.4' to 46.1'. That is problematic because that is a 2.3' decrease and shifting a substantial portion of the required 50' aggregate side yard setback measurement to his client's side.

- ✓ Privacy concerns.
- ✓ No specific mediation attempts have been made to address Ms. Steven's concerns. He noted that, in the initial application, there were mediations between the other neighbors but not with his client.
- ✓ Ledge provides some privacy (he attached a picture in his prior letter), which looks like it will be excavated to accomplish this project.
- ✓ Excavation concerns
- ✓ Suggest the addition is built to the rear and not to the side.
- ✓ Sympathetic to the idea that people have the kind of accommodations that are best for them as they age in place.
- ✓ Nonconforming lot. The nonconforming characteristics of these lots are quite pronounced, including the front setback.
- ✓ Reasonable as to what can be done as of right vs what requires a variance.
- ✓ Front setback issue and concern about the location of the stairs and the redirection of the use of the property, meaning the owners would be using the side of the property closest to his clients, which now isn't being used.
- ✓ Light pollution in that area given the distance between the two structures.

Bill Hopwood, abutter. He explained he has 27 years as a professional in the field of ecology and working on environmental projects. He noted that he, the Messers and others living around Pleasant Lake are all concerned about the lake and ecology. He commented that what the Messers were asking for is very minimal with no impact to the environment in the surrounding area. He expressed his support for the project, noting they are good stewards as well.

David Demers, abutter. He explained that they lived in the house when construction work was being done on their existing house (next door). He noted the Messers are good neighbors and have a long history in the Town (since the 1700s), and would like to remain in their family home (age in place), but to do so they need to make modifications to the existing structure (wheelchair ramp in the future) as the Messers are aging and have some health issues. For the proposed lot line adjustment which will need Planning Board approval, the change in square footage between the two lots, will make the Messer lot more compliant. He explained that lot has physical constraints, specifically noting the ledge (mound) behind the existing house, and that blasting would cause more environmental disturbance, if they have to build to the rear rather than to the side, as is proposed. This would also mean more heavy construction equipment in the area. This would also be costly, as they had similar issues on their adjoining property. Noted the attendance at the meeting, noting many neighbors are here to support the project.

Karen Demers, abutter. She explained that she has been a visiting nurse for 42 years and has conducted many fall risk assessment for patients. She spoke about how the proposed plan is trying to accomplish safety improvements, clear pathways, turning space for wheelchair accessibility, adequate space in the bedroom between the wall and bed, adequate space in the bathroom and closet space so living space is clear of clutter or things we could affect safe passage in the home. She noted the proposed house layout is very conservative with only space for essential possessions. She noted, like her husband, that when they lived in this house, it was compact living. The key to allowing older residents to age in place is to create a safe living environment to minimize the potential for fall and impediment of movement in the house.

Bruce Parson, the house designer. Photographs submitted and circulated, showing the vegetation between the two houses, and what is seen from the road. Noted, the boulder may or may not need to be moved. Trees will not need to be disturbed. Note Steven's house is significantly higher in elevation and cannot be seen through the trees from the applicant's residence. A door is being proposed to create a second means of egress, they are not proposing a hot tub or party deck, this is about making the house safe for them and more handicapped accessible.

Linsey Lund, stated she is a friend of Paul and Linda Messer. Noted she has spent a lot of time at this cabin. She wants to make a public comment that she understands that it is the purpose of the Zoning Board to protect the integrity of the lake and structures that exist. Many cottages have been bought and torn down, they are not building a mega house, or changing the landscape, they are keeping an historic cottage, and not many are left around the lake. They are just trying to make it more comfortable and meet their health and personal needs. These people are trying to protect the homestead that has been in their family for many generations. She feels that we need to give a little more thought and understanding to people who are trying to maintain the character of New London. She said from what she understands they are in compliance with the laws.

Bev Pane, an abutter. Stated the Messers are conservation minded and very thoughtful. She would like the cottage to be occupied and lived in. She doesn't think the Messers are asking for much. She supports the application.

Linda Messer, applicant. Linda Messer proceeded to give a heart-filled presentation reading from her notes. She referred to the photographs which were circulated earlier in the discussion, showing the lay of the land and its vegetation. She said she would be more than willing to add more vegetation on the Steven's side of the property and they would be willing to remove the window from this side of the house, to afford Ms. Steven's more privacy. She stated their primary home is no longer suitable for them to live in given Paul's health issues (severe arthritis), and she is getting older as well, making it difficult to move about. They want to remain in the family homestead (been in family five generations), as it is one-floor living, a modest house. They don't want to tear it down, like so many others have done along the lake. Their goal is to preserve the cottage's design and character. They plan to improve the drainage on the site, as well as keep the existing cottage from further deterioration.

Board comments and questions:

- ✓ What are Ms. Steven's concerns?
- ✓ Has a State Shoreland permit has been submitted yet, and what area would be disturbed and percent of disturbance? Mr. Stewart said the percent undisturbed in the woodland buffer is currently 42% undisturbed and what is required is 25%.
- ✓ If the existing vegetative buffer on the Messer's side setback (Steven's side) were left alone or enhanced, would this satisfy Ms. Steven's privacy concerns or is the real issue they don't want any change whatsoever to this area?
- ✓ Summarizing, Attorney Malaguti client rejects any changes.
- ✓ Side setback of the existing house on the Steven's property is only 18 feet as shown on the plan, and itself does not meet the current setback requirements.
- ✓ Side setback on the Messer lot (adjacent to Steven's property), is more the minimum 20 foot required.

Public Hearing Closed

Chair asked if there were any additional comments from the audience. There were no other. He then asked the board for a motion to discuss.

Motion:

**IT WAS MOVED (Michael Todd) AND SECONDED (Cheryl Devoe) to discuss.
THE MOTION WAS APPROVED UNANIMOUSLY.**

Board Discussion

- ✓ Noted there has been a considerable amount of time spent discussing the Zoning Ordinance provisions, and acknowledged potential for conflict in the provisions.
- ✓ Using the right-angle, 90 degree as a means to measure setback lines has been well established and used in other ZBA cases, and was likely included in the Zoning Ordinance language to avoid the kind of discussion we are having tonight and to ensure that down the entire length of the lot you had adequate setbacks.

Motion:

Chair Lyon made a motion that the petitioner has presented a case that they have the aggregate 50 feet total side setbacks on both sides and does not need a variance for these changes. That over all, the proposed changes to the building will make the building more conforming, essentially less nonconforming. Motion seconded by Michael Todd. **Discussion on the motion:**

- ✓ Consider the provisions of Article II, General Provision # 9 Setbacks or the Article III, Definitions of front yard (# 63) and side yard (#140) measured at right angles.
- ✓ Zoning Ordinance creates this anomaly and feel uncomfortable denying the case the petitioners have made based on the definitions of the setback.
- ✓ If the northern setbacks were not as tight as it is they could reduce the setback to 20 feet. The privacy issue is not something to consider.
- ✓ Encourages the Messers to work with their neighbor to add more vegetation for preserving their privacy. Wouldn't need to add to a motion, if the Board agrees a variance is not needed.
- ✓ Discussion based on the revised plan dated July 22, 2016.
- ✓ Messer lot is an existing nonconforming lot, it did preexist the zoning. The facts of this case are important and singular to this case, as each variance application needs to be based on the facts of said property.

Chair said it is the Board conclusion that the petitioner doesn't require a variance for the changes as presented here. Board Discussion Closed.

Vote on the Motion: Voting in favor, that a variance is not needed: Chair Lyon, Katharine Fischer, Frank Anzalone and Paul Vance. Voting no- Michael Todd. The applicant does not need a variance as the 50' aggregate setbacks have been met per the details shown on the revised plan dated July 22, 2016. Motion approved 4-1. THE MOTION PASSED UNANIMOUSLY

Other Business

The Board discussed the ZBA appeal process briefly, noting if the case is appealed to the Court, it is likely the Court would remand it back to the Town. The Board also discussed various other definitions and provisions, and noted that as previously discussed, this is another section of the Zoning Ordinance which needs attention by the Planning Board, and amendments should be considered.

Motion to Adjourn

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

Meeting adjourned at 7:55 pm.

Respectfully submitted,

Dianne Richtmyer, Recording Secretary
Town of New London