



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
July 27, 2015

**PRESENT:** Douglas W. Lyon (Vice-Chair), W. Michael Todd, Paul Vance, Frank Anzalone, Ann Bedard, and Katharine Fischer.

**ABSENT:** Bill Green (Chair), Cheryl Devoe, Courtland Cross and Vahan Sarkisian.

**STAFF PRESENT:** Lucy St. John, Planning and Zoning Administrator and Kristy Heath, Recording Secretary.

**OTHERS in Attendance:** Froncie and Michael Quinn, Sandra Rowse and her attorney, Attorney Susan Hankin-Birke, David Guion (abutter to Landrigan/Rowse), and unnamed abutter to Quinn property.

**CALL TO ORDER:** In the absence of Chair Green, Vice-Chair Lyon called the meeting to order at 6:30 pm. Acting Chair Lyon asked Katharine Fischer to sit as a full board member.

**ROLL CALL:** Acting Chair Lyon called the roll. He called the roll and said the meeting had been properly noticed.

**REVIEW OF MINUTES:**

- IT WAS MOVED (Michael Todd) AND SECONDED (Ann Bedard) to approve the minutes of March 11, 2015 and July 2, 2015 as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

**Variance application for Michael and Frances Quinn.** Property located at 63 Murray Pond Road. Tax Map 045-003-000. Property zoned Residential, R-2.

Mr. Todd said the variance should be dismissed due to Res judicata. Mr. Todd said that from materials provided the variance is addressing the same subject matter already heard in 2005. At that time, an application was entertained for a deck for which no permit had been attained. A decision was rendered by the Board to approve the deck with certain conditions. The principles of Res judicata prevents them from having to make a decision again on the exact same issue. The parties are in privity with the original petitioners as they own all the rights and conditions that ride with the property. The decision in 2005 was filed and not appealed.

**IT WAS MOVED (Michael Todd) AND SECONDED (Doug Lyon) to dismiss the application as the ZBA had previously acted on granting a variance on this property on July 11, 2005 subject to conditions and the application would have violated the conditions placed on the property by the ZBA in 2005.**

Vice Chair Lyon said he recalled the original application presented after-the-fact because no permit had been attained for the construction of a deck. The condition was whether the deck had to be removed or not. They decided the deck could remain but could not be expanded or modified. He asked if the first decision was whether the deck could stay or be removed, is it the same question as to whether the deck could be modified or expanded. Mr. Todd said the decision of the Board in 2005 precludes them to making further decisions with regards to this part of the property.

Ms. Fischer referred to the July 11, 2005 Notice of Decision (Scarrington Ltd).

Mr. Vance asked if there is a process whereby a variance of a condition can be made. Mr. Anzalone said they aren't looking for a variance to the zoning, but a variance to a condition. Mr. Todd said the board made the decision for a reason and it wasn't appealed at that time. They need to accept the decision at face value and let it be final. Vice Chair Lyon said he has been on the board a long time and has never had a party come back to modify a condition of a variance. Mr. Todd said that the Superior Court says that the principal decisions should remain.

Ms. St. John noted that she had previously explained to Ms. Quinn, the conditions of the ZBA decision of 2005 and that she could apply for a variance, as she isn't aware of any other avenue the Quinn's could pursue. Ms. Quinn has come in to inquire about a building permit, and Ms. St. John informed her of this ZBA action of 2005. Ms. Quinn then opted to apply for a variance.

Vice-Chair Lyon said he would not be apt to dismiss a condition put on a variance 10 years ago.

Mr. Quinn said there was a decision made that was not a matter of public record and there was no reference in the land records that indicated limitations on the property. Mr. Quinn said they felt they had done their due diligence prior to purchasing the property, title search and etc., but the ZBA decision was not found in the title search. They didn't learn of the 2005 ZBA decision until after they brought the property. He explained that they purchased the land in good faith and then came to the Town to get a building permit for the proposed work. Mr. Quinn conveyed there were some zoning amendments in 2014 which may have allowed to do some things prior owners were not allowed to do, involving enclosures.

Ms. St. John said she didn't recall any specific zoning amendments related to this issue, but the Quinn's may be referring to the current Zoning Ordinance provisions, Article XX regarding nonconforming structures, B (2).

Mr. Todd believes the conditions placed on the property per the 2005 ZBA action trumps the zoning ordinance. He added that a review of the property tax files would have disclosed the variance. Ms. St. John left the meeting to get the property account file, the ZBA 20005 Notice of Decision was included in that file.

Vice-Chair Lyon said a condition was placed on the variance that the deck not be expanded or altered. He asked if there were any further comments on this issue of whether they should dismiss the application. There were none.

Vice-Chair Lyon asked for a vote on the motion:

**THE MOTION WAS APPROVED UNANIMOUSLY.**

**Motion for Rehearing Request from the New London Zoning Board of Adjustment regarding the ZBA decision of July 2, 2015 to deny the Appeal from an Administrative Decision of abutters Steven and Philomena Landrigan regarding Tax Map 122, Lot 002 (Sandra Rowse property).**

Vice-Chair Lyon asked if they decide to reconsider the decision would abutters and land owners need to be notified.

Ms. St. John referred to the ZBA Handbook for Local Officials, Chapter IV. ZBA members have a copy. She referred to RSA 677:2 and 677:3. She explained that the abutters and landowner did not need to be notified for this meeting, but would be notified if a rehearing is granted. Ms. St. John explained that as a courtesy, she did inform the Landrigans and Sandra Rowse of this meeting.

Ms. St. John also read into the record an email that she received Monday, July 27 from the Steve and Phil Landrigan, the email:

“We appreciate that you notified us about the ZBA meeting being held Monday, July 27, 2015. At the meeting would you please thank the zoning board member who researched the previous decision and articulated much better than we concerns for the legality of the addition to 18 Sutton Road. Thank you to all board members for their consideration of this issue. We hope that there is enough support for a rehearing. Unfortunately we are out of state and not able to be present this meeting.”

Vice-Chair Lyon said they would not be taking testimony that evening, just making a decision whether or not to rehear the case.

Michael Todd explained that the brief requesting the rehearing was prepared by himself and Katharine Fischer, a joint effort. Mr. Todd said he came across a provision for a zoning board to request a rehearing on their own. He referred to the ZBA Handbook, page IV-2 which states a board may reconsider their decisions provided it is done within the statutory 30-day period of the original decision, the case references 74 Cox St. LLC v. City of Nashua (September 21, 2007). Mr. Todd felt there was something they may have missed. He concluded there was sufficient evidence that there was one dwelling and an accessory dwelling unit. It is a preexisting non-conforming use of the property. This cannot be expanded. The petition was to expand the use and expand the size of the accessory dwelling unit. He thinks if they look at it that way, they have to deny part of the application; the portion that expands the dwelling area. The upgrades to the water main and fire escapes, etc. were fine otherwise.

Vice-Chair Lyon said that he too, had some reservations after the last meeting about the decision the ZBA made, noting it was a difficult decision. Chair Lyon commented that the Landrigans presented a lengthy case but some of the issues were not relevant to the case they were making. Both sides presented issues that the Zoning Board didn't have clarification on. He felt he misinterpreted information on use and building structure. He noted that he didn't have time to review and understand the material that Attorney Susan- Hankin-Birke submitted at the meeting on behalf of Sandra Rowse. He was confusing the issues of use versus structure, and needed to better understanding when the other unit was established and recognized by the Town as a use.

Mr. Todd said he supports the case for a re-hearing. He hasn't made up his mind one way or the other, but feels they need more clarity.

Mr. Vance said a rehearing can only be requested by a party of interest. He wondered if they had the power on their own to rehear the case. He noted that he read the Cox vs. City of Nashua case and the

details are not the same. Vice-Chair Lyon said he feels they have the right to request a rehearing even though the case referenced in the handbook is not exactly the same as the case before them.

Ms. Bedard reminded the Board that at the July 27<sup>th</sup> meeting, the Board referred to the letter in the file from Peter Stanley, the former Planning and Zoning Administrator, and decided it was a legal non-conforming structure designated as a two-dwelling unit and everything was to stay in the existing footprint. She noted the Board discussed that an accessory dwelling unit (ADU) was decided to be a dwelling unit, as the Board had reviewed the definition of dwelling unit. She said did some further research on her own and in fairness to all parties concerned they should re-open this to get more answer to their questions.

Vice-Chair Lyon asked for motion to reconsider and schedule a rehearing.

**Motion for Rehearing** from the New London Zoning Board of Adjustment regarding the ZBA decision of July 2, 2015 to deny the Appeal from an Administrative Decision of abutters Steven and Philomena Landrigan regarding Tax Map 122, Lot 002 (Sandra Rowse property). **MOTION PASSED UNANIMOUSLY.**

Rehearing request granted and a public hearing will be scheduled and posted.

Mr. Vance asked if the Town asks for the rehearing, do they pay for the notices? It was thought the Town would but Ms. St. John would look into this.

Acting Chair Lyon encouraged both sides to speak with Ms. St. John to be sure the issues they have confusion about are clearly laid out. If there is material to be presented to the board he asked that it be presented well before the night of the hearing.

Ms. Fischer asked if the parties understood the confusion of the Town. Vice-Chair Lyon said the brief that Mr. Todd and Ms. Fischer put together regarding the case, which notes the confusion, has been made available to both parties. He said a significant issue is the number of dwelling units and accessory dwelling unit. A second issue is this a change in use. A third issue is whether or not this is an expansion. He asked if the accessory dwelling unit definition preceded the sale of the property to the Graf's, and was it a single family unit with an accessory dwelling unit at that time. He asked if a change in use from an accessory dwelling unit to a two-family unit is a change in use. He asked if this is really an expansion of the accessory dwelling unit, and is this permitted.

Mr. Vance added that they should consider the use of previous non-living spaces were changed into living space.

Ms. Bedard said the current tax card says it is a 7-bedroom unit, not 10. She asked if the information on the property account card is controlling or is it the occupancy. She also asked if they have a septic system to support the current and proposed uses at the site.

Mr. Anzalone said a septic doesn't have to be put in, but a new one has to be designed for when the system fails so it can be put in. Vice-Chair Lyon said this is an issue the applicants will have to argue.

Mr. Todd said there is no burden of proof for an appeal of an administrative decision. Their job is to decide the right answer regardless of the strength of anyone's arguments. They have to find the facts and use the ordinance.

The Board agreed to a rehearing. Ms. St. John will contact the ZBA members tomorrow to determine a date for the meeting, and a second date should the meeting need to be continued. She asked Board members to respond as quickly as possible.

#### Planning Board Update

Ms. St. John explained that the Planning Board is reviewing ideas for possible zoning amendments. A sign subcommittee has been established. They are also reviewing draft ideas to combine the various overlay districts on one map, discussing accessory dwelling units and other provisions of the Zoning Ordinance. She noted that if the ZBA has any ideas or areas which they believe need clarification they should let the Planning Board know.

Vice-Chair Lyon said he has struggled with the definition on whether a building that is non-conforming can be expanded. Currently, the ordinance reads that as long as a non-conforming structure doesn't further impinge on a lot line, anything else is permissible. In reality, it should state the exact approved development of the structure that is permissible. Mr. Todd said the Shoreland Overlay District also has provisions regarding nonconforming issues and asked why other overlay districts (wetland, streams and others), don't have similar provisions. The Board asked Ms. St. John to ask the Planning Board to review the provisions of the Zoning Ordinance regarding nonconforming issues as clarification is needed.

Mr. Vance reflected on a recent ZBA case regarding a barn for horse (New London Wood Products case) and that the Ordinance really didn't address this issue. Ms. St. John also reference the ZBA cases on the Flying Goose. She also noted, that the issue of expanding nonconforming structures should be reviewed, as the intent in many ordinances is to eliminate nonconforming issues, and thus not allow expansion or limit the expansion. The ZBA agreed that the nonconforming issues should be discussed by the Planning Board as they look at potential zoning amendment language for consideration.

#### Rules of Procedure:

Ms. St. John reiterated the need to update the 1991 Rules of Procedure. The Board discussed establishing some set meeting dates when they update the rules of procedure. Katharine Fischer thought the Board should establish a set meeting schedule. Ms. Todd said denials or approvals with conditions should be recorded so they would be found on a title search, this too could be included in the Rules of Procedure. The Board agreed this needs to be done soon, and to include this on the next agenda for discussion.

#### Notice of Decision:

Mr. Todd suggested that the Notice of Decision include another statement at bottom, to inform the property owner that the decision can be appealed, and that if they proceed they are proceeding at their own risk.

Ann Bedard asked if the Notice of Decision for the Byrne case was recorded. Ms. St. John said she didn't recall but would look in to it.

#### Information submitted to the Board:

The Board discussed the need to get information, such as the brief submitted at the July 2<sup>nd</sup> meeting from Sandra Rowse' attorney in advance of the meeting. They discussed 10 days, 5 days or establishing a

certain number of days. Some thought that the board always has the right to continue a meeting if new information is submitted at the last minute. It was noted that the Board can decide if the information is helpful or take it under advisement. Vice-Chair Lyon said this was a good idea as it is too much pressure to accept long documents the applicants are planning on to prove their case the night of a hearing. Ms. Bedard thought requiring submission of materials 10 days before the hearing was too long.

Survey and Building permit discussion:

Ms. Bedard said that per the previous ZBA discussion on survey plan requirements, she had worked on a motion to present to the Board of Selectmen with regards to what they should request as part of the building permit process.

Mr. Todd said applicants need a “to scale drawing” other than the town’s tax card map.

Ms. St. John noted surveys and the building permit process and enforcement was discussed at a recent Planning Board meeting, in response to the Byrne’s property. She explained that requiring a survey could be part of the Zoning Ordinance or a separate Town Ordinance or a Town policy when submitting a building permit. She is reluctant to require having a survey as part of the building permit process included in the Zoning Ordinance, because if someone didn’t provide a survey, they would need to apply for a variance. She thought it might be best to consider a town policy on what is required when submitting a building permit.

Vice-Chair Lyon said he doesn’t know how the Zoning Board can make decisions on applications without a survey because some of the cases involve very exact measurements.

Ms. Bedard asked if these provisions should be for waterfront property only, for all property, only for new construction or for altering the footprint of a building, or if the Board of Selectmen can waive a survey requirement.

Mr. Anzalone said the Town of Newbury requires a certified plot plan before anyone pours concrete.

The Board discussed making it a requirement to get a certified, recordable survey as part of a building permit for new construction or expansion of footprint.

The Board asked that a memo be prepared for the Board of Selectmen and that this be included and discussed at the August 17<sup>th</sup> Board of Selectmen meeting. Several members will plan to be there including Ann Bedard, Michael Todd, and others.

**IT WAS MOVED (Ann Bedard) AND SECONDED (Michael Todd) to ask the Board of Selectmen that as part of the building permit application the Town require a certified boundary survey by a licensed NH surveyor for altering an existing footprint or new construction. THE MOTION WAS APPROVED UNANIMOUSLY.**

Motion to Adjourn: The meeting adjourned at 8:15pm.

Respectfully submitted,

Kristy Heath, Recording Secretary  
Town of New London