



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT MEETING MINUTES August 18, 2015

PRESENT:

Douglas W. Lyon (Vice-Chair), Paul Vance, Cheryl Devoe, Vahan Sarkisian, Frank Anzalone (Alternate), Katharine Fischer (Alternate) and Gerry Coogan (Alternate).

ABSENT:

W. Michael Todd, Ann Bedard and Courtland Cross.

OTHERS in Attendance: Sandra Rowse and her attorney, Attorney Susan Hankin-Birke, Steve and Philomena Landrigan, Mary Beth DeAngelis (real estate professional with Sandra Rowse).

CALL TO ORDER: Vice-Chair Lyon called the meeting to order at 6:30pm.

ROLL CALL: Acting Chair Lyon called the roll. He said the meeting had been properly noticed. He asked the members if they had reviewed and are comfortable in being a voting member for the hearing this evening. Frank Anzalone stated he lives in the neighborhood, but is not an abutter, and he does not have a conflict. Cheryl Devoe said she had reviewed the materials.

New appointments to the Zoning Board were recognized. Gerald Coogan will be an alternate and Vahan Sarkisian is now a full member.

Acting Chair Lyon appointed the following to be voting members for tonight's discussion: Doug Lyon, Paul Vance, Cheryl Devoe, Katharine Fischer and Frank Anzalone. He explained that the other members are welcome to participate in the discussion.

REVIEW OF MINUTES:

Ms. St. John read into the record an email submitted by Robert J. Cricenti dated August 11, 2015 which asked the Board to amend the minutes pertaining to the Quinn discussion as follows:

I am writing to add information to the minutes of the Zoning Board of Adjustment's meeting that was held on July 27, 2015, a copy of which is attached to this email. My name is Robert J. Cricenti and I live at 43 Murray Pond Road, New London. I believe that I am the unnamed abutter to the Quinn property. I would like my name to be recorded and also that I was at the meeting in support of the Quinn's request. I'm also not in favor of the handling of that request. Regardless of whether a variance had previously been granted or not, the purpose of the Zoning Board of Adjustment would seem to be to hear requests for variances to matters that had been previously determined. Not to listen at all would be wrong. Thank you for your attention in this matter. Robert J. Cricenti

The ZBA discussed that Mr. Cricenti, didn't speak at the meeting, and that all members didn't know who he was, and the fact that he just came in and left the room as the ZBA decision was being completed. It was not known that he was there to support the Quinn application.

Michael Todd had submitted an email to staff, for the Board to consider the following amendment to the minutes pertaining to the Quinn ZBA discussion:

Mr. Todd said the variance application to enclose the deck should be dismissed. Following a hearing before the ZBA in 2005, a variance was granted to allow the deck to remain (after having been illegally constructed sometime before 2005) and contained the condition it not be altered or expanded. This variance addresses the same subject matter already decided in 2005. The period for appeal of the original decision has past. The present owners are in privity with the owners who obtained the original variance since they purchased the real estate from the original owners with all the rights and conditions that ride with the property. This satisfies the conditions in law that preclude the Board from hearing any further applications for variance on the deck under the principal of res judicata (the matter has been decided.)

Frank Anzalone asked that the following amendment be incorporated into the minutes pertaining to the Quinn ZBA discussion:

“Mr. Anzalone said they aren’t looking for a variance to the zoning, but a variance to a condition.” It should read: Mr. Anzalone said how can they be looking for a variance from our zoning for something that is allowed, they are looking for a variance to a condition set by a previous Board. Mr. Anzalone said the Town of Newbury requires a certified plot plan before anyone pours concrete.

Mr. Anzalone said that in certain cases the Town of Newbury requires certified foundation surveys after the foundation has been poured.

IT WAS MOVED (Paul Vance) AND SECONDED (Frank Anzalone) to approve the minutes of July 27, 2015 with the amended language as submitted by Frank Anzalone and Michael Todd. THE MOTION WAS APPROVED UNANIMOUSLY.

Rehearing of 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). The Motion for the Rehearing was granted by the ZBA at the July 27th meeting.

Acting Chair Lyon noted that the meeting was properly noticed and abutters notified.

Acting Chair Lyon provided an overview and asked all participants not to repeat any testimony they had previously given. Vahan Sarkisian said he didn’t know the whole case and thus he wanted to hear important facts.

Acting Chair Lyon explained that Landrigan’s appealed the Board of Selectmen building permit application and the ZBA denied their appeal at the July 2nd meeting. The ZBA then submitted a Motion for Rehearing, which was granted at the July 27th meeting.

He briefly explained that the Landrigan’s position is this is an accessory dwelling unit not a two-family dwelling, it can’t be expanded as proposed, it is a nonconforming use, and expanding the use into the now garage space is not permitted. He explained the ZBA motion for rehearing identified several questions for further discussion including- if an ADU can it be expanded, the issue of density and character of the neighborhood, and even if there is a finding there was a legal pre-existing nonconforming use as a two-family dwelling, without an ADU, the proposed renovations would constitute an expansion of that nonconforming residential use.

Public Hearing Open and testimony received.

Attorney Susan Hankin- Birke, attorney for Sandra Rowse provided a history of the property and referred to the memorandum that was submitted at the July 2, 2015 meeting.

- ✓ Since the 1700's this was known as the Crockett Farm and farm workers resided at the house, it was a boarding house, and operated as a tavern.
- ✓ There was an office in the house for many years.
- ✓ She wanted to clarify the misconception that was presented by the Landrigan that they reconfigured the land and subdivided the parcel. She noted that the deed refers to several parcels, there wasn't a subdivision.
- ✓ The garage is not a separate building, it is a two-bay structure that lead to the upstairs of the house and there is a cellar.
- ✓ Peter Stanley's letter of 2010 does not state or imply an accessory dwelling unit, and is clearly referred to going from three (3) dwelling units to (2) two dwelling units.
- ✓ The house has eleven (11) or more bedrooms.
- ✓ Sandra Rowse has had two nephews living with her.
- ✓ Sandra Rowse has met with Town staff, including the Jay Lyon, Fire Chief to bring the house into compliance with fire and other health codes.
- ✓ \$6,000 dollars spent on septic design
- ✓ \$750 dollars spent on the water line issue as requested by the Water Precinct
- ✓ Noted that the property is across the street from the Flying Goose, which is a restaurant, and this site is used for residential.
- ✓ A large family with 10 or more children of various ages could live there.
- ✓ Explained that letter from Peter Stanley noted that the office was illegally changed into a dwelling unit. Ms. Rowse's response to that was to remove the kitchen, however people were still living in there.
- ✓ She explained that Ms. Rowse applied to the Town and received a building permit to be able to refigure the space into two dwelling units, which started the whole conversation. The Board of Selectmen approved the building permit.
- ✓ Reiterated that at the last meeting the ZBA had decided it was a legal non-conforming building and the changes could take place because they weren't going outside of the building footprint.
- ✓ Commented that there has been a history of litigation between Ms. Rowse and Mr. Landrigan.
- ✓ Submitted for the record their calculation on the amount of living space and to address the provision regarding 50% Article XX B 3 b.2 on page 83 of the Zoning Ordinance.

Sandra Rowse commented:

- ✓ She removed the stove out to comply with Peter Stanley's letter and that she contacted the Town at that time to come back and "review it" but he nor anyone from the Town responded to her request. She thought what she did was ok, noting no specific follow-up by the Town at the time.
- ✓ Noted that the Landrigan may have visited her sister, but really don't have a clear or complete understanding of the layout of her house, and they are misrepresenting facts about the property.

Mary Beth DeAngelis (real estate professional with Sandra Rowse) commented:

- ✓ Provided some historical perspective on the property as she had been involved in several of the real estate transactions of this site over the years.
- ✓ She sold the property to the McGrafs and they ran a business from this location for 20.
- ✓ Office probably been there since the late 1970s.
- ✓ Ms. Rowse should never have removed the kitchen (stove), as required by Peter Stanley's letter of 2010, as the property has been really three (3) units, and included an office for many, many years.
- ✓ As many as 17, not college students, lived in the building at one time while still having use of the office.
- ✓ She noted this site has a long history of being occupied by many workers, was a boarding house, office/business, and tavern many, many, years ago.

- ✓ She noted that the office space was last used as an office in 2015.
- ✓ Discussed the overall layout of the house, office space, connectivity of the living areas and noted that the Landrigan' continue to misrepresent the historical use and layout of the property.
- ✓ Cautioned against showing prejudice against renting property to certain age groups of people in town as it is against the law, as there are Fair Housing Laws.
- ✓ This property was used by Streams Ministry and other more intense uses over the years.

Steve and Philomena Landrigan commented:

- ✓ That there was a subdivision and there isn't enough acreage for the use, as the lot lines have changes, and this land should had been retained.
- ✓ Believes Peter Stanley's letter of 2010 refers to it as an ADU and not two- dwelling units, and that were directed to remove the office. If they removed the office, then this is an expansion of a nonconforming use.
- ✓ Submitted for the record their calculations on how they believe the 50% provision of Article XX (B, 3. b. 2), would not allow the building permit to have been issued. He thinks that the living space expansion far exceeds the 50%.
- ✓ They try to be good neighbors to Ms. Rouse, but they have to pick up beer can which are left by the residents. He does pick up the beer cans and etc., and has left them on her property, hoping Ms. Rowse's gets the idea.
- ✓ Believes the Board is taking Peter Stanley's letter out of context.
- ✓ Said that the Zoning Administrator isn't doing her job, she is supposed to protect his property values. He commented that he has reviewed the Zoning Administrator's job description and she does not do her job.
- ✓ He objects to this project because it is not a two (2) family, it is an expansion of more than 50%, it is really a dormitory, it is rented to students (with no supervision), there have been raids by the Police Department, this is changing the character of the area, concern about the safety of the students living there, no adult living with the students and that the students aren't really "adults".
- ✓ People do not live in the space that is being proposed now for living space. The office space is not legal living space in his mind.
- ✓ He didn't feel this was a two family home; the second living space was rented out as an in-law apartment but he didn't think it was a two family home.
- ✓ He feared the building would become a dormitory and estimated there being about 10 people living in the building if they are allowed to proceed.
- ✓ Mr. Landrigan said when college kids were living there, that was when the problems with littering were apparent.
- ✓ He comments that the history of litigation that Attorney Hank-Birke referenced had nothing to do with this issue.
- ✓ Believes that they are misrepresenting facts about the layout and history of the property.
- ✓ When the Pellilin owned it there wasn't a kitchen stove.

Discussion by the ZBA members:

- ✓ Noted the rehearing was prompted by the question of the use the use and not the structure. The use in that zone had to be studied further to see if it was allowed.
- ✓ Need to determine if the multiple uses in the building (house) are grandfathered or not.
- ✓ What has the house structure been used for over the years?
- ✓ The ARR zoning change from 2 to 4 acres in 2004.
- ✓ Accessory dwelling unit (ADU) provisions adopted into the Zoning Ordinance in 2004.
- ✓ Would the adoption of the ADU requirements, imply or require an existing residential unit with an "in-law space, or two family to now meet these requirements? Staff suggested an existing unit

“in-law” which didn’t meet the adopted standards would be considered an existing nonconforming.

- ✓ What really is the difference between an “in-law” apartment and two-family dwelling?
- ✓ How many “in-law” apartments are really used as for in-laws, and how can the provisions even be enforced?
- ✓ Discussed the testimony of when the office space, how long it has been used as an office, and if the office was converted to some residential space, like a playroom, living room, how it this different from someone converting a garage to some other living space. Converting an office area to residential is not an expansion of a nonconforming use, as residential living space is a permitted use.
- ✓ Wouldn’t this be considered a nonconforming use and structure?
- ✓ If the third unit was not legal and how does the 2004 ADU provisions apply?
- ✓ Was there ever three (3) units and an office?
- ✓ Noted that there are numerous definitions in the Zoning Ordinance which needed to be considered including ADU, Dwelling unit, Two-Family and those related to nonconforming and nonconforming status.
- ✓ When does an ADU and a two dwelling home become one or the other, as the definition of dwelling unit implies an ADU is a dwelling unit?
- ✓ ADU is a permitted use by right in all Zone Districts, including the residential zones.
- ✓ This is a nonconforming lot, per the provisions of Article XX (C, 2).
- ✓ Need to understand the provisions of Article XX that discusses expansion. There is a requirement that there be no more than 50% space added as living space.
- ✓ The only space being added is the garage space. The upstairs of the garage is already living space.
- ✓ How could this ever be considered conforming because of the acreage, refer to the provisions of Article XX, item C. 2. Legal Nonconforming lots.
- ✓ If this is considered an ADU wouldn’t this then be an expansion of a nonconforming use, as the ADU requirements are quite specific.
- ✓ Discussion that the ADU requirement of one the dwelling units on the property must be the domicile often owner, and how can the Town even enforce this type of provision.

Vice-Chair Lyon felt they had highlighted the salient issues and they have exposed some confusion in the Zoning Ordinance as well. Acting Chair Lyon said he wanted to get back to the specific request that Ms. Rowse has made for expansion: to take the existing primary residence, ADU and office, and convert it into two dwelling units, which would change the exterior of the garage (not the footprint), and he felt the board needed to be comfortable that this is a permitted use in the face of all the confusion. They have heard that the primary residence, ADU and office pre-date zoning from 1958. They have heard that there have been times when people have been living in the office, and they have Peter Stanley’s letter saying that it is a two-dwelling unit.

Chair Lyon closed the public hearing.

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

Chair Lyon asked if the five voting members if they were comfortable to make a decision that evening or if they wished to take the matter under advisement and reconvene at another meeting. Is further discussion necessary?

- ✓ Mr. Anzalone didn’t feel more discussion was necessary unless they were looking for more facts. Mr. Anzalone said he is mostly concerned with the change of use, and the nature of the office use.

Can't rely on the details of the property cards, as historically they are not always correct or reflect the uses.

- ✓ Ms. Fischer said if it meets the ADU criteria before 2004, didn't that mean it was conforming to the criteria at that point? She feels that after seeing the facts, what they have now is considered an ADU. Chair Lyon said that argument would state that when Ms. Rowse bought the property, there was an existing ADU. That would mean that the expansion of the ADU would be the expansion of a non conforming use. The question is whether or not this is an expansion.
- ✓ Mr. Vance thought he could gain from hearing the discussion from other members of the board without having to make a decision that night. Chair Lyon said he was fine to continue the discussion that evening; he did not want to force a decision that evening. Mr. Vance felt it was a very complicated issue; it does seem like an expansion and he has heard about the prohibition of expanding a nonconforming use. He didn't think he knew enough about it to come to the conclusion that it could not be expanded. He would like to hear more about that. Is the provision that was adopted the exclusive restriction on expanding a non-conforming use? It was determined that structurally, there is not an expansion. However, from a usage standpoint, it did seem to be an expansion of a nonconforming use.
- ✓ Mr. Sarkisian insisted that all these uses were grandfathered. He commented that Peter Stanley's letter is subject to much interpretation, it is all over the globe. He believes the uses are all grandfathered.
- ✓ Ms. Devoe said they shouldn't discuss the potential number of people that could live there as that is another issue, the issue before the board is the use. This is not an ADU. The Board has looked at the details about the square footage and 50%.

Chair Lyon asked if the voting members of the Zoning Board were ready to come up with a motion. They were.

IT WAS MOVED (Doug Lyon) AND SECONDED (Frank Anzalone) that after rehearing the appeal, the ZBA denies the appeal and affirms the decision of the Board of Selectmen that the building permit issued was proper and is in compliance with the Zoning Ordinance for the following reasons:

- 1. The ZBA found that that the conversion of the office space to residential use is permitted.**
- 2. The ZBA found that the building was considered a two family residence prior to the zoning ordinances.**
- 3. The ZBA found that the home office use was abandoned and the office was permissibly converted to residential space.**
- 4. The ZBA found that based on the representation of the owner, the renovation affects less than 50% of the total usable area.**

MOTION WAS APPROVED UNANIMOUSLY

Other Business

Skype- The Board discussed a request from a future applicant who would like to appear at a hearing electronically via Skype. After consideration, it was determined that this was not something they wanted to get into.

Scheduled Sept 3rd meeting- Other business items will be discussed at another meeting. The ZBA scheduled a meeting for Thursday, September 3rd. The ZBA also discussed the need for a building inspector and code compliance enforcement. A suggestion was made to have a joint meeting with the Planning Board on these issues. The ZBA will discuss these issues at the Sept 3rd meeting.

Building Permit- Survey Discussion

The ZBA has submitted a memo to the Board of Selectmen requesting to discuss the issue of requiring surveys as part of the building permit process. Michael Todd and Katharine Fischer attended a recent Board of Selectmen meeting to discuss this issue. Frank Anzalone also commented he attended the BOS meeting, and the BOS didn't express support for this idea.

Motion to Adjourn. The meeting adjourned at 9:04pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London