



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

Thursday, August 3, 2017

(Continuation of the July 20, 2017 Hearing)

Town Office – Sydney Crook Conference Room

375 Main Street

6:30 PM

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

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

STAFF PRESENT: Kimberly Hallquist, Town Administrator

OTHERS PRESENT:

Call to Order: Chair Lyon called the meeting to order at 6:44 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.

Mr. Lyon is the chair of the Ausbon Sargent Land Preservation Trust (ASLPT), which holds an easement on the Deming property and so he recused himself. ZBA vice chair Michael Todd conducted the hearing.

This is a hearing continued from July 20, 2017 so that the ZBA could research issues brought up by David Cook, a non-abutter, who wanted to clarify issues of who is responsible for the maintenance of the area, specifically the cul-de-sac that the Town plow trucks use to turn around. After researching the easement language, Mr. Todd distributed a proposed Notice of Decision that read as follows.

Barbara A. Deming Trust. Property is located at 151 Forty Acres Road. Tax Map 038-001-000. These applications for two variances were heard before the Board and decided on February 22, 2016. Subsequently, it was brought to the attention of then Zoning Administrator St. John, that abutters in Wilmot were not noticed for the original hearing. Following proper notice to six Wilmot abutters, this hearing was held. When the matter was called at the hearing, none of the noticed Wilmot abutters appeared. However, a non-abutter, David W. Cook, 79 Whitney Brook Road, Elkins, appeared and asked permission to address the Board regarding the existing trail network under the current conservation easement, and the parking area on the property at the end of Forty Acres Road where certain trails terminate. Permission to address the Board was granted.

Whilst we acknowledge the issues raised by Mr. Cook, such matters concerning establishment and allowed pedestrian access to trails, and construction, management, use and maintenance thereof are set forth in the Conservation Easement Deed between the landowner (Deming) and the monitoring organization (ASLPT) dated December 14, 1993.

We note the terms of our original decision include the condition that “a recorded legal access acceptable to the Planning Board be provided for the new lot...” Following that approval by the Planning Board, issues concerning Town vehicles’ use of private property at the end of Forty Acres Road for turn-around purposes and other activities are properly resolved by the Selectmen and the owners of record of the parcels involved.

We AFFIRM our decision of February 22, 2016.

W. Michael Todd, Acting Chair

New London Zoning Board

- Mr. Todd asked the Zoning Board if they have any questions regarding this notice of decision. Paul Vance wanted clarification on the fact that due to a failure of notice, does that invalidate the July 20th meeting? Mr. Todd answered that no, it does not. If any of the six abutters came and objected in person or by mail perhaps they would have to re-notice the whole thing. But since they did not appear, and no issues were raised, other than Mr. Cooke, we would affirm which is the decision that was made. He wanted to make sure that the decision that was reached on February 22, 2016 was valid. Mr. Lyon agreed that according to legal counsel it is. Mr. Vance also wanted to confirm that the board didn’t have any jurisdiction to do what Mr. Cooke was asking. It wasn’t in the original pleadings and it isn’t a power we hold. Mr. Cook’s concern was who was going to maintain that area.
- Mr. Lyon in his role as chair of ASLPT met with Mr. Cook to determine exactly what his concerns were. Mr. Lyon stated he would contact Richard Lee to see if he would be willing to do attend to the maintenance issues raised by Mr. Cook. He feels they would probably do this since it is beneficial to the town as well.

IT WAS MOVED (Katharine Fischer) AND SECONDED (W. Michael Todd) to adopt the draft Notice of Decision. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Lyon then resumed the chair for the next hearing.

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.

- Mr. Lyon summarized that at the last meeting, we went through the voting procedure, and decided to grant the variance. Subsequently; a note was received from Mr. Dowd and also a note from Jeremy Bonin in which the window issue was addressed. The abutter who raised the issue stated that it was not his intention to have no windows on that side of the building, but to have them modified in terms of sight line which Mr. Dowd agreed to do.
- There was a motion made at the end of the meeting that stated that, in addition to the condition that there be no windows on the north side of the building, that another condition be that there is no further increase in impermeable area.

IT WAS MOVED (Doug Lyon) AND SECONDED (W. Michael Todd) that we approve the variance with the condition that there be no further increase in impermeable area on the property. THE MOTION WAS APPROVED UNANIMOUSLY.

- Chair Lyon circulated Bart Mayer's comments about the concerns that were raised after the last hearing. Mr. Todd's concern was that Chair Lyon had created a situation in which essentially we approved a variance subject to the owner's approval. Mr. Mayer agreed it was inappropriate. In the future, we will listen to the testimony and make a decision. If the petitioner has sent an architect that isn't able to make a decision on behalf of the owner, then it's up to the architect to withdraw the application, or accept the decision. If the landowner subsequently objects to it, he has the right to appeal. The ZBA does not want to get in a situation in which we pass with conditions that are then approved or not approved by the petitioner. Ms. Fischer asked if we could simply grant a continuance to halt the process so they don't have to withdraw and resubmit and pay fees again. Mr. Todd feels that if it was that important, then the landowner should be there in person to make the decision. Mr. Vance feels that when a substantial condition is decided upon, we are creating a take it or leave it environment. There is concern that once a condition is imposed there should be an opportunity for the person to get a continuance to do the research to make an informed decision. Ms. Fischer's concern is that if the petitioner isn't there and an issue comes up that could not have been anticipated, they should be able to have a continuance.
- Chair Lyon will consult with town council on this issue. He's like to know what other ZBA's do in these types of situations. He feels that granting a continuance so a petitioner can do some research to make a decision should be allowed. We need to come up with a way to handle this in the future. What is the best practice? Many people who come in often represent themselves. To impose a condition on people who haven't thought about all the ramifications of what they are trying to accomplish seems unfair. We want to leave the applicants feeling comfortable they've been heard and have had enough time to make reasonable decisions. In most of these cases, people are trying to end up with a result that is better for water quality than what they have.

Mr. Todd feels we need to be vigilant about pre-existing, non-conforming, waterfront buffer and shoreline overlay. Chair Lyon feels we need to look at these on a case by case basis to determine whether what the applicant is trying to do is a plus.

There is also concern about serial variances. An example would be when someone comes in and gets a variance and then two years later comes in and gets another variance. Mr. Vance feels they should "get one bite at the apple". Chair Lyon feels this is something we should think about when we review the cases. Mr. Todd stressed that it's important to know what the history is of variance requests that have been submitted on these properties.

- There was discussion about voting. Mr. Mayer suggested we don't go down the criteria one by one and vote on each. They can be discussed but we will just make a final vote. There was legislation before the New Hampshire house to require the method of voting on each but it was vetoed.
- Chair Lyon also asked Mr. Mayer about whether he can see draft minutes ahead of time that he can edit and then submit to the Board. He said that is fine. As long as board gets to vote on the final version of the minutes then the process by which those edits occur is not relevant.

Approval of Minutes

IT WAS MOVED (Doug Lyon) AND SECONDED (Paul Vance) to approve the minutes of July 20, 2017, as presented. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 7:31pm.