



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA) MEETING MINUTES

Tuesday, September 3, 2019

Town Office, Sydney Crook Conference Room

6:30 PM

MEMBERS PRESENT: Douglas W. Lyon (Chair), Frank Anzalone, Stan Bright (Alt), Heidi Lauridsen, Ann Bedard, Katharine Fischer

MEMBERS EXCUSED: W. Michael Todd, Bruce Hudson

STAFF PRESENT: Nicole Gage, Zoning Administrator

OTHERS PRESENT: Daniel Monette, Fuss and O'Neil

1. **Call to Order** – Chair Lyon called the meeting to order at 6:33 pm.
2. **Roll Call** – Chair Lyon called the roll.
3. **Review Minutes of August 20, 2019**

The minutes from the August 20, 2019 will be reviewed and approved at the next meeting.

4. **Case#ZBA19-14 – Variance**

Parcel ID 126-008-000 61 Lighthouse View Road

Zoned R-2 with partial Shore Land Overlay

Owner/Applicant: Marc-Andre Giguere & Michelle Gibbs

A variance is requested from the provisions of the New London Zoning Ordinance, Article V Section C, Side yard setback of an aggregate of 50 feet with a minimum of 20 feet from any one side property line, to permit a 10-foot side setback in order to replace the existing garage and construct a new garage with a smaller footprint. The purpose of the reduction is to correct a found property line infringement.

Daniel Monette from Fuss and O'Neil attended the meeting to represent Marc- Andre Giguere and Michelle Gibbs. Mr. Monette went through town records and provided some history related to this property. Nicole Gage, Zoning Administrator, sent out a memo prior to the meeting tonight. Mr. Monette found that the previous owner had applied for a variance to the side yard setback, however in 1994, the ordinance allowed a garage in the rear quadrant of a property to be within four feet of the property line. This has since been changed. They also made a ruling during that hearing that the front of the property on a lake front lot is the road side which is no longer the case either. During that hearing, they also ruled that they didn't think a variance was even required but they went through the process and approved the garage. It was supposed to be ten feet from the property line but it wasn't built that way. The sketch provided at the hearing was hand drawn and it had approximate boundary lines that apparently were not accurate.

When the new owners purchased the property, they asked Fuss and O'Neil to do a certified boundary survey and in that process they found out the existing garage overhangs the property line by a foot. They want to correct the issue but wanted to focus on building the house first so went through the permitting process to get the house, driveway and septic designs done as well as storm water

management plan and tree cutting. The house is currently under construction right now. Looking at positioning the garage, they felt the least amount of impact on the site would be in the same spot as much as possible. They won't be cutting any more trees and will maintain the drainage they already designed on site. The driveway and septic design would still work. It also least impacts the abutter as it is a smaller footprint.

Ann Bedard asked if the non-conforming garage is still standing and Mr. Monette stated yes. The back roof overhang is 18" to 2 feet. They want to replace this garage because they are building a new house and the existing garage is 25 years old. They want it to match the new house. The old garage was 37.5' X 24' and the new garage will be 24' X 28'.

Chair Lyon noted that the new garage will actually have a smaller footprint than the old garage. It will be over the side set back but now brought within the property line which solves the problem of encroachment on the neighbors land. This is a substantial improvement.

1. The existing garage has been there for 25 years and there have been no complaints during that time from abutters about the overhang so this change to the garage will be an improvement. It is not contrary to the public interest at all. They are benefitting the town, the property owner and the abutter by doing this change. The structure will be smaller which is a benefit for storm water quality to the lake as drip edge and drainage features are being added to the garage to treat any runoff from the roof. There is a net reduction of the overall impervious area on the lot and a reduction in square footage within the side setback.

2. Spirit of the Ordinance is Observed - If the location of the garage is changed in a way other than what is proposed, they will crowd the driveway and makes it more difficult to maneuver, reduce potential access by fire apparatus and increase the disturbance of the site. There would be more of an impact to the protected shore land buffer and a privacy concern if trees are removed. The driveway would need to be redesigned. They would be correcting the property line infringement.

3. Substantial Justice is Done - What the owner is requesting is reasonable and modest. They will now meet the original dimension of relief approved in 1994.

4. The values of surrounding properties are not diminished - the new garage will now be entirely within the property boundary and should increase the abutter's property value. The garage will be smaller and at the same level of quality and detail as the new house so it should increase their value.

5. Unnecessary Hardship - the current garage encroaches on the neighbor's property. This fact was not known at the time of purchase and was discovered when the current owner had a certified boundary survey done.

There was conflicting information from 1994. One file says that a variance was granted and another says that a variance wasn't required. The proposed garage is a smaller footprint and is an improvement from existing conditions for the abutter, town and property owner. It is hardship to suggest that the proposed garage be completely repositioned within the side setback as this would reduce driveway access, maneuverability and is the most logical position. It will create very little disturbance and is the only logical place which was noted in town documents in 1994.

The proposed use is a reasonable one because the proposed use is equivalent to the existing use however, it makes the structure more conforming and the garage will now be constructed where it should have been constructed 25 years ago. It isn't unreasonable to have a place to store a boat on a lake front property. Granting this request will allow the use to be continued.

Chair Lyon thanked the engineers for a well prepared proposal and summarized the following:

In terms of the variance criteria, it is not contrary to the public interest because it reduces the impermeable area, it is less non-conforming than the existing structure and moves it further away from the property line which corrects the errors made in the previous variance applications when it was over the property line.

The spirit of the ordinance is all about reducing the impact in the area around the water. The new septic system, better drainage, better storm water runoff, a smaller non-conforming structure and more permeable area is all very positive.

Substantial Justice - Given the slopes, amount of granite and what would have to be done in order to do anything different, it is clear that this landowner is limited in terms of how he can design this. Chair Lyon believes based on what he has read and heard tonight, that they have done the best they can in terms of being able to accomplish what they want.

Chair Lyon does not see how the value of surrounding properties can be anything but higher given the changes that will be made.

If the ZBA tried to literally enforce these provisions, it would create an unnecessary hardship. Because the landowner has made an exceptionally good faith effort to improve the property and met the spirit of the ordinance, Chair Lyon feels they have met the hardship requirement as well. Chair Lyon recommends approving this application.

IT WAS MOVED (Doug Lyon) AND SECONDED (Ann Bedard) TO DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.

Frank Anzalone agrees that there is no other location that makes sense. Putting it elsewhere would cause much more impact than leaving it where it is.

Katharine Fischer agrees and stated it will improve the objectives of the zoning ordinance.

Ann Bedard stated the landowners are doing the right thing by getting it off of the neighbor's property.

IT WAS MOVED (Doug Lyon) AND SECONDED (Ann Bedard) to approve the variance as requested with the condition that the acknowledgement of the shore land impact is received and on file. THE MOTION WAS APPROVED UNANIMOUSLY.

5. Other Business

Nicole Gage received a request from the Outing Club to waive the zoning application fee for an application that they are currently working on. At the last meeting, the Planner and the Zoning Administrator advised them to seek a variance to expand a legal non-conforming use. At the last minute, the town found decisions from the 1970's and as a result, suggested a special exception application would be more appropriate. The amount to waive would be a \$150.00 general application fee. There is also a \$56 newspaper notice fee and a \$4 per abutter fee but Ms. Gage suggested not waiving these. There was no objection to this by the board and they agreed to waive the general application fee.

6. Updating Rules of Procedure

Chair Lyon has reviewed the red lined version of our current rules and appendix A of “Suggested Rules of Procedure for Local Boards of Adjustment” provided by Nicole Gage. Chair Lyon noted that the discussion of members and alternates is omitted in our rules and procedures and all agreed that it should be incorporated.

Chair Lyon discussed the five day rule for posting decisions. Chair Lyon wondered if there was any flexibility under this RSA. He advocates for additional time as it has been tight at times. Nicole Gage stated that this is an RSA requirement and cannot be changed. Ann Bedard stated the way we can buy time is to not make a decision the night of the hearing.

If further information is required to render a decision the ZBA may continue the matter to a date certain and abutters would not have to be re-noticed. Chair Lyon stated he feels strongly about this especially when he wants to seek advice from town counsel on a case. Chair Lyon noted that if it is continued, board members that were there that first night would have to be there the next time. Nicole Gage stated that although this board is well filled, it may not always be possible for the same members to be in attendance. She wonders why they would require themselves to be stricter than state laws. An alternate’s job is to stay abreast of what is happening or if someone is out, it is their job to look at the minutes and the record and be prepared at the next meeting.

Katharine Fischer wanted to add that the board, at its discretion, may announce its decision at the hearing, however, if the board determines that further information is required or if it too complicated to render a decision, they may continue that matter without a finding and reschedule the hearing to a date certain.

There was also a discussion about amending minutes. There was an instance where the board decided to change the language of a decision to be more specific and this was done by amending the minutes. Chair Lyon stated that according to Bart Mayer, Town Counsel, the board has the right to amend minutes but Chair Lyon asked Nicole Gage to get clarification about this.

Nicole Gage would like to bring back these suggested continued amendments as she needs to check with counsel and do some statutory reference checking. She sees some other potential issues with the draft that Michael Todd has put together. Chair Lyon suggested that the next step be another red line draft with all of the things discussed tonight including the areas Ms. Gage has identified and plans to research.

7. Motion to Adjourn

The Zoning Board agreed to cancel the September 17 2019 and the next meeting is scheduled for October 1, 2019.

IT WAS MOVED (Frank Anzalone) AND SECONDED (Doug Lyon) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 7:58PM.

Respectfully submitted,

Trina Dawson

Recording Secretary
Town of New London