



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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**ZONING BOARD OF ADJUSTMENT (ZBA)
DRAFT MEETING MINUTES
Monday, February 22, 2016
6:30 PM**

MEMBERS PRESENT: W. Michael Todd (Acting Chair), Vahan Sarkisian, Cheryl Devoe, Paul Vance (Alternate), Jerry Coogan (Alternate), Katharine Fischer (Alternate)

MEMBERS ABSENT: Doug Lyon (Chair), Ann Bedard, Frank Anzalone and Courtland Cross.

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

OTHERS PRESENT: Pierre Bedard, Doug Lyon (abutter), Frank Anzalone, Christopher Bartlett (abutter), Elizabeth & Jeremy Kellert (abutters), Mary Shain (abutter)

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

Roll Call: Acting Chair Todd called the roll recognizing the members present. Gerry Coogan arrived shortly after the roll call. He appointed Katharine Fischer (Alternate) and Gerry Coogan (Alternate) to be voting members, in addition to himself, Vahan Sarkisian and Cheryl Devoe. Acting Chair Todd noted that Doug Lyon (Chair) and Frank Anzalone (Alternate) would not be participating in the meeting as members of the ZBA, they recused themselves and will sit in the audience.

Approval of Minutes

IT WAS MOVED (W. Michael Todd) AND SECONDED (Vahan Sarkisian) to approve the minutes of January 5, 2016 with an amendment to page 3 of 5, final paragraph: "...in a residential zone, parking lots are not permitted uses, and commercial parking is not an accessory use to that of residential.". THE MOTION WAS APPROVED UNANIMOUSLY.

Barbara A. Deming Trust. 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 of 400 feet. The minimum front yard requirement is 50 feet. Plan prepared by Pierre Bedard, LLS.

Pierre Bedard presented the application. He provided an overview of the property, details of the deed, the Conservation Easement deed and the reserved rights outlined in the deed, and explained changes to the minimum lot size from 10 acres to 25 acres that occurred in the Forest

Conservation Zoning District. He noted the language of the conservation easement deed affect how the proposed lot can be configured. Mr. Bedard noted that a conceptual plan was discussed at the Dec 15, 2015 Planning Board and then to the Conservation Commission, noting no objection were voiced at those meetings. He referred to the letter dated February 17, 2016 from Andy Deegan, Stewardship Manager for the Ausbon Sargent Land Preservation Trust.

Pierre Bedard explained that access to the proposed lot would be over the existing driveway to the current residence, and that no new road is proposed to be constructed. He said the owners did not want to build a 400 foot road into land that is already protected under the conservation easement.

Pierre Bedard then proceeded to review and read the responses included in the application for each of the five criteria needed to grant a variance. Mr. Bedard said the variance will not be contrary to the public interest; the spirit of the ordinance is observed; substantial justice is done; the value of surrounding properties are not diminished and literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. He further commented that:

- ✓ No one and substantial reason exist between the general public purposes of the ordinance provision and the specific application of that provision to the property.
- ✓ Granting these variances will be more in keeping with the ordinance by maintaining the protection as intended in the conservation easement.
- ✓ Not granting the variance would have unnecessary impacts on the natural resources of the property and be counter to the intent of the ordinance and easement. The proposed use is a reasonable one. The overall change is minimal as intended in 1993.
- ✓ The property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to establish a reasonable use of it.
- ✓ The location of this property at the end of the Town road with no other road frontage, creates a hardship for the reserved rights of the conservation easement deed relative to the requirements of the Zoning Ordinance. The condition of the reserved rights, as outlined in easement language, Section 3, was intended to maximize protection of acreage to locate any allowed improvements in a specific area; i.e. closer to public roads and away from most of the natural resources and features.

Acting Chair Todd asked if any members of the board had any questions about any of the materials presented.

- ✓ The Board discussed about how the property has no legal frontage to meet the setbacks and where the driveway would be accessed.
- ✓ Mr. Todd asked if this proposed development is consistent with the present use and if so why? Mr. Bedard said it meets the conditions of the reserved rights in the conservation easement and the zoning density will more than be exceeded under the current Forest Conservation zoning district.
- ✓ Mr. Anzalone asked if it was possible to create an easement in the front, at the end of the roadway so the new lot would have a frontage, as otherwise the proposed parcel would be a landlocked parcel. Mr. Bedard agreed that he would suggest to have a certain area not

public road and have sufficient frontage to access the current dwelling and the new lot and have the ability for the Town to have a turn around.

- ✓ Mr. Sarkisian asked if the Ausbon Sargent would be against a cul-de-sac at the end of the road for safety reasons or to create a legal turn-around area. Mr. Lyon said he was not prepared to answer this questions, as he is not the Ausbon Sargent Land Protection Specialist, and thus this issue would need to reviewed and discussed relative to the spirit of the original easement language when it was created.
- ✓ Mr. Todd referred to Public Work Director, Richard Lee's comment to staff that the stone wall at the end of Forty- Acres Road is where the road ends, the flat area is where they turn around, and this is on private property. There is just a verbal agreement to allow the Town to turn around, no formal agreement in writing. Mr. Todd is concerned there is no access agreement for the Town and the proposal is to not extend the road, so where is the required road frontage. Katharine Fischer noted that there are several other dead-end roads in Town.
- ✓ Mr. Todd asked Mr. Bedard to describe the proposed part. Pierre Bedard said part of it is cleared, there are some fruit trees, forested and ponds. He was asked how the proposed subdivision would change the character of the area.
- ✓ Cheryl Devoe asked if the conditions of the Conservation Easement applied to the whole parcel, including the proposed new lot. Pierre Bedard noted that the conditions equate to 60 acres per dwelling not the current zoning requirement of 25 acres.
- ✓ The Board asked what other lots in the area have conservation easements on them. Pierre Bedard noted that the Cook property has a conservation easement.
- ✓ Gerry Coogan asked can there be any further subdivision based on the language in the conservation easement. Pierre Bedard noted they are only hoping to create one new lot, as was intended when the easement was placed on the property.

Public Hearing Opened:

Ms. St John noted that the abutter notice address to Barbara Deming Trust was returned. Mr. Todd asked where the address came from. Ms. St. John said the abutters list is provided by the surveyor. Mr. Bedard said he acquired it from the Town records.

Doug Lyon, Chair of the Board of Trustee for the Ausbon Sargent Land Trust said they are concerned that not approving this variance would require the creation of a very strange lot which would impact the forest management plans for the property and wildlife habitat. He said the proposed plan causes the least impact and is consistent with language of the 1993 Conservation Easement. From their stand point; the only thing that meddles this up is that subsequent to the conservation easement the Town changed the zoning requirements for the Forest Conservation District from 10 acres to 25 acres. He said the change to the zoning district requirements is what created this problem, so they are proposing a lot which they believe is least damaging.

Christopher Bartlett, an abutter commented that there is not a cul-de-sac at the end of Forty Acres Road, it is just an unpaved (dirt) turnaround area. He explained that the turnaround area is actually on the Deming property.

Frank Anzalone asked why they aren't trying to create a 25 acres parcel as required by the Zoning Ordinance and how wide is the proposed lot. Pierre Bedard explained that there are limits as to what part of the lot could be developed.

Public Hearing Closed:

✓ MOTION WAS MADE (Vahan Sarkisian) AND SECONDED (Cheryl Devoe) to open discussion. THE MOTION PASSED UNANIMOUSLY.

Board Discussion on the Deming Variances requested:

The board discussed how no access renders the lot as land locked; how will frontage be determined if the lot isn't on a road; discussed the Town's Driveway Regulations, and appeal process included in said regulations; if some sort of agreement is needed to allow access to the proposed new lot; if there would be any change to the character of the neighborhood; if denied would there just be a lost to the owner or a gain to the public; if there is any net gain for the public; that no expert testimony was presented to document any diminution to surrounding property values; where would the potential house be cited on the lot relative to setbacks and what would be considered the front setback since it isn't on a road; were variances granted for any of the other existing nonconforming lots in this zoning district; the fact that the public road ends at its very boundary; the fact that the lot includes a conservation easement; the fact that the lot has unique topography (reviewed the drainage areas), unique open spaces and is partially forested land unlike any surrounding properties; applying the ordinance strictly it will result in a hardship; if there is a fair and substantial relationship which exist between what the zoning ordinance is trying to accomplish and its application to this property because of its unique physical characteristics. Mr. Coogan read statute RSA 674:33 I (b)(5) (A). The Board discussed the five (5) criteria that must be met to grant the variance for the acreage, frontage and setback requirements:

- ✓ *Variance is or is not contrary to public interest. All board members agreed it is not contrary to public interest.*
- ✓ *Spirit of the ordinance is observed. All agreed that it had.*
- ✓ *Substantial justice is done. All agreed.*
- ✓ *Values of surrounding property are not diminished. All agreed it does not.*
- ✓ *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The Board agreed that due to the fact that the public road ends at its very boundary, it's covered by a conservation easement and its unique topography, unique open spaces and partially forested land unlike any surrounding properties, applying the ordinance strictly it will result in a hardship.*

Motion:

IT WAS MOVED (Acting Chair Todd) AND SECONDED (Vahan Sarkisian) to approve the variance to reduce the minimum lot size from 25 acres to 12+/- acres with the condition that there be no further subdivision of either parcel (038-001-000)

and the proposed new lot; the conditions of this Notice of Decision be included as a note on the Subdivision Plan and that the Subdivision Plan be recorded at the Merrimack County Registry of Deeds. Variance granted to not require the minimum 400 feet of road frontage with the condition that a recorded legal access acceptable to the Planning Board be provided for the new lot, and that the 50 foot front setback be maintained along the proposed front lot line. PASSED UNANIMOUSLY.

Sherman Barrett, Property located on Shaker Road. Tax Map 098-017-000. Property zoned Agricultural and Rural Residential (ARR). Variances requested to Article XXII, Streams Conservation Overlay District, (D), Natural Woodland buffer and (E). Prohibited Uses. Applicant proposes the development of the lot with a three (3) bedroom dwelling and on-site septic system and well. Plan prepared by Pierre Bedard, LLS.

Mr. Bedard presented the application and provided an overview of the property as includes in the application materials. He explained the NHDES septic system approval for construction expired. He said at the time when the septic system was approved for construction, and when the Town reviewed it they found that they were in violation of the Town zoning ordinance requirements. He then proceeded to review and read the responses included in the application for each of the five criteria needed to grant a variance. He further commented that:

- ✓ The Spirit of the ordinance is observed. The lot meets the conditions of Article XX (C.2). The stream channel, identified as being part of the overlay stream district, is well over 100 feet away.
- ✓ Values of surrounding property are not diminished instead it will benefit from the additions of a new structure in the neighborhood.
- ✓ Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- ✓ By denying the variance, the use and value of the lot will greatly be reduced.
- ✓ Special conditions of the property that distinguish it from other properties in the area are its size and geometry make it impossible to meet the regulations.
- ✓ The proposed use is a reasonable one. The proposed impacts to the site are to build a house and septic, they would be meeting all other setbacks requirements.
- ✓ If the criteria discussed are not established than an unnecessary hardship will be deemed to exist, if and only if owing to special condition that distinguish it from other properties in the area the property cannot be reasonably used and in strict conformant with the ordinance and a variance is therefore necessary to enable a reasonable use of it.

Public Hearing Opened:

Mr. Kellett, an abutter, asked a procedural question about one of the maps being used as part of their decision making. He was informed that any maps, plans and other information presented or discussed are part of the application file. Acting Chair Todd said that if they approve the variance they could say they approve the variance conditioned upon the drawing that was presented at the hearing. Ms. Kellett is also concerned about the wetlands, as the boundaries may

change, and soil conditions may change. He asked how the Board can grant a variance if changes may occur at the site.
Ms. Shain, an abutter, had several concerns- proximity to her well, how to prevent any septage from going onto her property, the proposed distance of the septic system to her property line, the site is wooded and she would like to have it remain undeveloped, she thinks a house on the lot would diminish her property values, she doesn't like the five variance criteria, she thought the Town granted the septic approval not the State and how can a lot be grandfathered.

Public Hearing Closed.

✓ MOTION WAS MADE (Jerry Coogan) AND SECONDED (Vahan Sarkisian) to open discussion. THE MOTION PASSED UNANIMOUSLY.

Board Discussion on the Barrett variances

- ✓ The board received and entered into evidence a scale drawing titled, "Individual Sewer Disposal System prepared for Sherman Barrett dated Dec. 3, 2015 by Pierre Bedard, to be referred to as Exhibit A. The Board reviewed the limits of the proposed fill, distances to the property line, the grade of leach field, the finished grade and the limited area on the lot.
- ✓ Acting Chair Todd answered that when dealing with real estate, the application of a grandfather clause is different than when dealing with a personal license. Real estate is here, it's fixed and for that reason a grandfather rule exist, not so with personal license. The Board noted that this lot was created in the 1960s and that abutters should have known and expected that at some point in time someone would want to develop it, as each of their lots are developed as house lots. There should be no expectation from an abutter that if a lot is wooded, or vacant that it would remain that way, as people have the right to develop their property. The abutters were asked if they considered purchasing the lot, maybe each buying half, if they didn't want it developed.
- ✓ The provisions in the Zoning Ordinance for septic location are stricter than the State's. It was noted that the variance has a 2 year limit if not acted upon, though a variance runs with the land.
- ✓ More discussion on how the septic designs worked to control and keep fluids in that location were made clear.
- ✓ The board discussed the natural woodland buffer of 100 feet. The building can't be within 100 feet from the ordinary high water mark and the drawing showed the structure was within 75 feet. The septic system in the wetland buffer needs to meet a distance of 75 feet. This lot is larger than the abutting lots, and each of those lots were permitted a septic system and house.
- ✓ The property owner has only a small portion of the site in which to build upon because of the setbacks, which reflect the current Zoning requirements.
- ✓ Ms. Devoe asked if the Town has setback requirements to the side property line for the placement of a septic system. Ms. St. John answered that there is not a setback for the Town, it is a State regulation. The system is underground.

- ✓ Acting Chair Todd quoted ---- evaluation of real estate where he said that a house next to a vacant lot is worth more than a house next to a house.

The Board discussed the five (5) criteria that must be met to grant the variance for Article XXII, Streams Conservation Overlay District, (D), Natural Woodland buffer and (E). Prohibited Uses.

- ✓ *Variance is or is not contrary to public interest.* All board members agreed it is not contrary because essentially there is no change in the character of the neighborhood.
- ✓ *Spirit of the ordinance is observed.* All agreed it is.
- ✓ *Substantial justice is done.* All agreed.
- ✓ *Values of surrounding property are not diminished.* 4 out of 5 agree; Michael Todd – opposed.
- ✓ *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.* All board members agreed it is a hard lot because it is close to the stream, soils are not consistent, its 3500 sq. ft., its pre-existing nonconforming, its small for the present standards in the ARR zone and therefore the zoning restrictions as applied interferes with the reasonable use of the lot. All agreed.

Motion:

IT WAS MOVED (Acting Chair Todd) AND SECONDED (Vahan Sarkisian) to grant the variance to reduce the Natural Woodland buffer for the placement of the septic system, which is shown on Exhibit A, the plan titled- Individual Sewage Disposal System (ISDS) plan prepared for Sherman Barrett by Pierre Bedard dated December 3, 2015, so that the base of the fill line be not less than 55 feet from the back property line and the distance from the back of house to the back property line is not less than 85 feet, all other dimensions consistent with the plan, and that the house be positioned on the site, as shown on said plan known as Exhibit A. PASSED UNANIMOUSLY.

THE MOTION PASSED UNANIMOUSLY.

Motion to Adjourn:

IT WAS MOVED (Paul Vance) AND SECONDED (Michael Todd) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

Meeting adjourned at 9:04 pm.

Respectfully submitted,

Dianne Richtmyer, Recording Secretary
Town of New London

