

**Town of New London  
Zoning Board of Adjustments  
June 14, 2010  
APPROVED**

**Members Present:** Bill Green (Chair), Doug Lyon, Courtland Cross, Laurie DiClerico, W. Michael Todd

**Also Present:** Peter Stanley (Zoning Board Administrator)

Chair Green called the **MEETING TO ORDER** at 7:30pm.

Chair Green called the meeting to order and called the role. He said they would go over the minutes that were sent to them. He asked for any amendments to the minutes of the January 25, February, 15, March 29, and April 26 hearings.

**IT WAS MOVED** (Doug Lyon) **AND SECONDED** (Laurie DiClerico) **to approve the minutes of January 25, February 15, March 29, and April 26, 2010. THE MOTION WAS APPROVED UNANIMOUSLY.**

**SPECIAL EXCEPTION**

**Kenneth Miller & Ralph Lapham  
456 Elkins Road  
Elkins, NH 03233**

**Tax Map 077 Lot 028-000**

**PURPOSE OF REQUESTED WAIVER:**

The Applicants are requesting a Special Exception, as permitted by Article XXII, Section G. (3) of the New London Zoning Ordinance, to allow a reduction of the depth of the stream buffer on their lot in order to permit the demolition and redevelopment of the property and to provide continuous access to the dam and mill race for maintenance and repair.

Chair Green turned the floor over to Mr. Ken Miller to make his presentation.

Mr. Miller said he had little to say other than he and his partner owned the Billingsley's Place/MESA building. They had bought the buildings to protect what might happen there, knowing that it was zoned commercially. They were concerned that a lot of things could be done which were not in compliance with the character of Elkins. Mr. Miller felt that the MESA business worked out fine in that area. Since its closing, they have been trying to sell the building. It has become painfully clear that no matter who looks at the building, it is financially and physically prohibitive to try and save. One of the significant issues with the building is that it has a lot of asbestos. They have gone through the process with State and have had a certified inspector come to review the building and file it with the State. They hope to have a contract signed, after a hopefully positive outcome of the present meeting, to have asbestos abatement done and have the building come down.

Mr. Miller said that they would like to change the setback, given the nature of lot. They are happy to respect the side and back guidelines, but they will need some room to put any new building on that site. The building, as it sits now, has a zero setback. They'd like to propose a 10' space, should the Town follow through with taking over the care of the dam, so that they would have easy access to get to it for maintenance issues and renovation. He understands the setbacks indicate that there is a stream present. He opined that it really is not a stream but a holding pond that goes dry on a regular basis. Mr. Miller believed that the environmental situation would improve with what they are proposing. He added that if they invest in the asbestos abatement and demolishment of the building, that there would then be a building site that can be worked with.

Chair Green asked Peter Stanley, Zoning Administrator, if the new building would need to remain on the same footprint of the old building. Mr. Stanley said that this was not the case and that any building would only need to comply with the current zoning regulations. If they wanted to rehabilitate the building or shorten it, they would have to remain in the footprint.

Mr. Miller said that a good, solid foundation is needed to build any strong structure. It has been found that there are issues with the foundation as well, and all prospective buyers have found the building not worth repairing. He values the building as a historical landmark, but sees that it needs to come down.

Mr. Lyon asked if they would tear the building down and put something else there. Mr. Miller said that they do not plan to put anything there in its place. They want to create a lot that could be developed by someone in the future. Mr. Miller said they plan to remove the foundation, fill it in, landscape, and plant grass. He noted that his partner lives in Idaho.

Mr. Stanley said that if they follow the shoreline of the pond and stream, it should be a 100' setback, which is designed to allow vegetation to keep water cool to promote the reproduction of fish and aquatic species and plants and animals. This area has always been a developed site and not a place where either having trees or not was going to promote the growth of anything. This is because it has been so developed and utilized over the years.

Chair Green asked if there were sufficient side and front setbacks. Mr. Stanley said that there were and that any future building there could be built with the correct setback.

Mr. Miller said that the building is 5,000 square feet in size and he didn't think anyone would want or try to create something of that size. If anything goes into that area, he assumed it would be a smaller building or a residential site. Once everything is out of there he wouldn't be surprised if it attracted a residential buyer. Mr. Todd confirmed that if they waived the setback for demolition, that they'd also be waiving the setback for construction. Mr. Miller answered in the affirmative. He said no one would want to be so snug and tight in that area.

Mr. Stanley said that they should keep in mind that in the future, someone has to have access to the dam all the time. It was asked who owned the dam. Mr. Miller said that he does. Mr. Todd asked who had the water rights. It appeared that no one had applied for these rights through FERC.

Meeting attendee, Connie Reece wasn't sure anyone would want to build a house there. She's changed her mind about tearing the building down but won't feel so bad because there is no village of Elkins any more. There are very few residents who even care about it. She felt it might be nice to do something with the land such as to have a park there and have the dam taken care of so the pond could be full of water all the time. Ms. Reece felt the dried up pond was an eyesore right now and has felt this way every summer for years. She added that in Elkins they have a public beach, a Post Office, a boat landing and a bandstand, which is mostly used by everyone in the area. When people come into town, the dried up pond is what they see instead of some water. Ms. Reece noted that this was the only building left from the Scythe Company. Mr. Miller indicated that the building used to go over the stream to the island.

Mr. Lyon said he had gone down to look at the property. His impression was that this would create an overall improvement to the current situation. With this plan, the Town would have access to the pond and if some money was given to the Town for such projects, the dam could be repaired and that site near the dam could become more valuable.

Chair Green reminded the board that they were there to agree on having a 10' buffer.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to discuss.  
THE MOTION WAS APPROVED UNANIMOUSLY.**

Mr. Lyon said that when dealing with a Special Exception, there were three fundamental questions to answer to be able to legally grant it. He believed that this case answered each of the three questions in such a way to see that granting the special exception was the right thing to do. He believed that the Zoning Board of Adjustment had the authority to grant this request, and also felt that its granting would be in the spirit of the ordinance. It would improve the current situation on the piece of property.

Ms. DiClerico agreed with Mr. Lyon. She added that creating access to the dam would be a huge improvement. Chair Green said his sense is more dictated by condition of the building. He understood that there was not much of an alternative and was not practical to upgrade building. The request made sense to him. Mr. Cross agreed.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Courtland Cross) to grant the special exception on the grounds that: it is the use that is proposed, a violation of the setback is ordinarily prohibited in the district, the use proposed is ordinarily allowed as special exception, and the conditions specified in the ordinance are met in the case, and it is in the spirit of the ordinance because it improves the property.**  
**THE MOTION WAS APPROVED UNANIMOUSLY.**

## VARIANCE

**Bruce Sanborn  
180 Burpee Hill Road  
New London, NH 03257**

**Tax Map: 071 Lot: 025**

Chair Green recused himself from this request for a variance. He asked that Vice Chair, Doug Lyon fill in for him as Chairman, and noted that Sue Andrews would be arriving in time for the hearing to take place in order to complete the quorum.

### **PURPOSE OF REQUESTED WAIVER:**

Variance to the terms of Article II, Section I, e, 2 of the New London Zoning Ordinance in order to erect a pig enclosure and shelter that the owner would like to place within the 100' foot setback for this zone.

Mr. Lyon indicated that a letter from one of Mr. Sanborn's neighbors, who was in favor of his petition, was sent in and had been circulated to the board members prior to the meeting. He then gave the floor to Mr. Sanborn to make his presentation.

Mr. Sanborn made reference to the map he had supplied to the board for review. It showed that he has three acres of land. Because of the shape of the property, finding a spot 100' of every property line put the pig pen "legal" in only one location; right in the middle of his lawn in front of his house. He did not find this location ideal. It would be visible from the road and the neighbors, and it would be close to his septic system, which would be just below the pen. Mr. Sanborn said that he lives on a hill and that the area the pen would have to go on tends to be a wet area and tends to pool water from time to time. He would like, instead, to put the pen back further in the field and close to his property line. The abutter to that portion of the property line is Ray Chacho. The letter that was sent in to the Town, in favor of the location of the pen, was from Mr. Chacho.

Mr. Sanborn said that he stopped by Mr. Chacho's home and talked to him about his proposal. They walked the property and he showed him where he'd like the pen to go. Mr. Chacho told him that he was fine with the location. Mr. Chacho is not planning to build anything anywhere near that line. Mr. Sanborn shared that he has gone around and talked to all his abutters except for one, who someone indicated had passed away. No one had any issues with his plans to have a pig pen.

Mr. Lyon noted that there were five criteria outlined for a variance. Mr. Sanborn had prepared on his handout a description of his responses to the criteria. Mr. Lyon suggested the board read through the responses to themselves and ask Mr. Sanborn any questions they may have.

Mr. Cross asked what would happen if Mr. Chacho sold his property and the subsequent owner took exception to the pen being so close to his property. Mr. Stanley said that the exception goes with the land forever. Mr. Lyon said that if a neighbor took exception to the location of the pen, he would have to do so before purchasing the property, as the variance goes with the land.

Mr. Todd asked how far Mr. Sanborn was proposing to put the pen from the property line. Mr. Sanborn guessed it would be about 30'. Mr. Todd asked if there would be no more than two pigs. Mr. Sanborn confirmed that two pigs would be the maximum. Mr. Todd asked what the total area was that would make up the shelter and exercise area for the pigs. Mr. Sanborn replied that it would be a total of approximately 300' feet. Mr. Todd said that if they

approve this exception, they would also be waiving the requirement that animal manure be stored less than 100' of the property line. The remainder of the board indicated that they understood this. Mr. Todd said that on the large map supplied, compared to the zoning map, the pen seems to be close to an intermittent stream that leads to Messer Pond. He said that in the ordinance, it says that they have to demonstrate that property values are not diminished AND they have to prove that there would be an unnecessary hardship if the exception were not granted. He didn't think that, as addressed in the application, Mr. Sanborn had met all of these requirements. Mr. Todd wanted Mr. Sanborn to explain why his piece of property was so vastly different than any of the other properties in his neighborhood, and that there was no basis between this ordinance and this property. Mr. Sanborn said that if he could re-shape his property, the pen could be put in a location that was totally unobjectionable to others. However, due to the shape of his property, he was not able to do this.

Mr. Todd asked if Mr. Sanborn's proposition was that the only relief he could get is sticking the pen on a downhill area of property where his neighbor has no objection to it. Mr. Sanborn answered in the affirmative. Mr. Todd said that he couldn't speak for the rest of the board but sees a rational bias between this activity and the law. Everyone else has the same restriction. Mr. Sanborn said the topography of the land doesn't work well for pigs. He did not want the pen on a hill. He said it was an experiment on his part to try and take care of some of the waste from his restaurant.

Mr. Cross opined that the location Mr. Sanborn has chosen is the least visually obtrusive. Mr. Sanborn's lot is open and the neighbor's lot is wooded. Given the site and configuration, he thought that Mr. Sanborn made a good consideration of where it has been situated.

Mr. Todd noted that the stream is mapped and therefore has to be at least 100' from the stream. Mr. Sanborn said that the stream goes through a nearby horse pasture. He described his pig enclosure (which has already been built) as fenced-in on four sides, with a lean-to for the pigs to get out of the sun and weather. Mr. Todd asked if the pigs' excrement would travel downhill. He believed it would soak down into ground and seep into the stream. The distance from stream did not seem to be very great, and New London was not known for having very porous soils. He wondered what the impact was on the stream. Mr. Sanborn said that it would be only two pigs and that everything would stay in the pen. He noted that the soils there were good, as his septic system was on the same plane. Mr. Todd said the soils under the pig pen were not prepared as a septic system was; he questioned the adverse impact due to the project.

Mr. Sanborn said that this area was founded on small farms. He wants to raise two pigs, not 36. Mr. Todd said this ordinance was created in the 1950's and it is pro-agriculture. But they have to abide by the ordinance. If they don't like the way the ordinance is written, they can go to legislative session and change it in Town Meeting. Mr. Sanborn said he wouldn't be making this request for a pig pen if he lived on Job Seamans Road. He is requesting a pen to be placed in an area that is even further away from his neighbors than if he placed it in the one spot that would fit the ordinance. He didn't feel that two pigs would create a quagmire of manure. Mr. Todd commented that he had a problem that the pig pen was already erected and that the only thing that makes it legal is that there aren't any pigs in it yet.

Mr. Sanborn said he talked with Mr. Stanley before he started the project. Mr. Stanley did tell him it had to be 100' from his property line. He misunderstood what Mr. Stanley meant regarding the 100' from his neighbor. Mr. Sanborn said he stopped building after Mr. Stanley called him to ask about why the pen was so close to the property line.

Ms. Andrews said that she drove by the property and felt it made more sense to put the pen where Mr. Sanborn did, than in the middle of the field where it is 100' from the property lines. Mr. Lyon said that given the topography of property, it makes the most sense where he has chosen to put the pen.

Ms. Andrews suggested that they could approve the exception contingent on if it was 100' from the stream. If they did it this way, Mr. Sanborn wouldn't have to come back to meet with the board again. If it wasn't far enough away from the stream, he would have to re-set it anyways. In that case, there would have to be a special exception granted to reduce the stream buffer.

Mr. Lyon said they have an open question on the stream which is a new issue that Mr. Sanborn didn't address in his comments. He admitted that he hadn't thought of this detail either. Mr. Todd said he understands that the property is unique in its topography and shape and that this information helps to satisfy his argument about the ordinance.

Mr. Green noted that he was appearing at the meeting as an abutter and a member of the public.

Mr. Stanley used a map to scale the distance from the pig pen to the stream. It seemed to be at a distance of more than 100'.

**IT WAS MOVED (Laurie DiClerico) AND SECONDED (Sue Andrews) to discuss.  
THE MOTION WAS APPROVED UNANIMOUSLY.**

Mr. Lyon explained that they have stumbled upon the issue of the pig pen needing to be at least 100' from a mapped stream. He asked if the board was comfortable with the measurement that was taken by Mr. Stanley. Mr. Cross said that he saw no problem with it. Ms. Andrews agreed and felt that the logical place to put the pen was chosen and she thought it made sense. Ms. DiClerico agreed and felt it was the logical choice of location because of topography and shape of the lot.

Mr. Lyon asked to go through the five findings:

**1. Variance will not be contrary to public interest:**

Mr. Cross said that the only question in his mind would be whatever concern the closest abutter would have and the assurance they've received by him ameliorates the problem. He didn't think it would be contrary to public interest. Mr. Todd said that the applicant has elected to place his pig enclosure downwind of his residence and upwind of no other residences. The ordinance includes phrases like noxious fumes, etc. and the applicant must be mindful of these things. He opined that Mr. Sanborn has placed the pen in the best area.

**2. Spirit of the ordinance is observed:**

Ms. Andrews said that she thinks the spirit of ordinance is observed. As he indicated, the ordinance is trying to get the animals away from the neighbors in the best possible location. In his situation, locating the animals 100' from every property line is not the best location as it puts the sty in the middle of his lawn. She thinks in moving it that he is actually observing the spirit of the ordinance. No one else had anything to add.

**3. Substantial Justice is being done:**

Ms. DiClerico said that she thought that they do have a limit on the property of what they could do to follow the ordinance. Relaxing the ordinance with regards to placing things of this nature closer to the property line would be the best way to go. There were no further comments from the board.

**4. Value of surrounding properties not being diminished:**

Mr. Lyon said that with reference to this one case in particular, the petitioner has not only moved the pen in an area that makes the most sense due to topography, but moves it away from neighbors and concerns of property value, and is talking about a limited number of animals. Therefore, he felt that there was significant evidence that surrounding properties would not be diminished. If neighbors do not have a problem, they are not concerned with property values. Mr. Todd felt it important to add that they only received one letter of one abutter without objection, so they cannot prove that all abutters were okay with this scenario.

## 5. Nature

Mr. Lyon said that throughout the course of the discussion they learned from the petitioner and Mr. Stanley that this lot is irregular in shape (long and narrow) and is on a side hill, sloping downwards down the narrow section. These two factors, along with the location of the two abutters, and the visual of open space, make the property unique enough so there is no rational meaning between applying this ordinance and not considering the property to be special. It is okay in this instance; there would be hardship to take the ordinance literally and apply it to this lot. Therefore, they can relax the standard.

Mr. Stanley said that for the record, if this is approved and they are keeping this to just two pigs as proposed, this factor should become a condition of the approval. Mr. Lyon commented that they also believe, based on the map that the pen is at least 100' from the map stream and it meets the requirement.

Mr. Todd asked how they would limit this operation to two animals. Mr. Stanley suggested using the wordage "two pigs for slaughter only."

Ms. Andrews addressed stream issue further. She thought they had discussed it quite a bit but his last statement was that the location was "further away, dryer, and better suited for pigs." If they find the stream is 98' away, they should address it. She believes that the steeper section where he is allowed to put the pen is worse for the stream than where he wants to put it. Ms. DiClerico noted that if the pen was within the 100' they would need a special exception.

Mr. Lyon felt that they needed to check the 100' measurement and grant permission with contingencies in case it didn't meet the 100' buffer.

**IT WAS MOVED (Michael Todd) AND SECONDED (Laurie DiClerico) to approve the variance with the conditions that it would be for no more than two pigs for slaughter only, and that Peter Stanley will check the distance from the stream which must be 100' or more from the pen. If the distance is less than 100' Mr. Sanborn will give petition for a special exception to move forward with the project. Mr. Sanborn's project will be held in suspense until the special exception is approved.**  
**THE MOTION WAS APPROVED UNANIMOUSLY.**

Vice chair Lyon stepped down and Chair Green returned to the board.

Ms. Andrews was excused from the meeting.

## VARIANCE

**SDB Investments  
1876 Newport Road  
New London, NH 03257**

**Tax Map: 041 Lot: 001**

### **PURPOSE OF REQUESTED WAIVER:**

Variance to the terms of Article XVI, Section J, 1, a, to allow for an alteration of the outside dimensions of a nonconforming structure located in the Waterfront Buffer of Otter Pond. This alteration of dimensions will result in an increase of the volume of the structure of approximately 60 cubic feet, more or less.

Mr. Spec Bowers was present at the meeting, as he is the owner of SDB Investments.

Mr. Bowers indicated that there is a narrow gap in the middle of the building; an unusual situation. The one foot gap was under his roof and between a bedroom and a screened porch. The bedroom had window facing the screen porch. Similarly, the screen porch had screened window facing the bedroom just one foot away. He was trying to make his building better and wanted to eliminate the window, which was not only un-functional, but leaky as well. He planned to take out the window, which was the full width of the wall and re-build the wall one foot beyond the

previous wall. Mr. Bowers said that he was doing this to get rid of a one foot gap. In all, this renovation added eight square feet, seven feet high. He thought it was a unique situation and doesn't believe many people have a gap under their roof like this. Mr. Bowers said that what the State considers important is that when rain comes down, they want the ground to be able to filter the water and then go down. As it was previously, it was not helping this process at all.

Mr. Stanley said that he contacted the State and they have no objection to this renovation. He said that it is not a problem because of the existing roof and the fact that he is only filling in space under the roof. The end of the gap is in the middle of the building. Mr. Lyon asked how it happened that this gap was left in the building. Mr. Stanley said they must have built the porch later on and joined the trim to enclose the entire building.

Mr. Todd asked about the photo that was emailed to them. The photo is attached to these minutes. Mr. Stanley said that the photo showed the roof that was over the entire area in question. He had no further comments.

Mr. Bowers said that in his mind, he was fixing the roof. He did a temporary patch on it two years prior and it didn't last. He did a very good patch again, which failed and decided to fix it right. In the process of taking the roof down, he noticed that the previous owners had patched it twice before him. He wasn't aware that fixing a roof needed a permit. As long as he was fixing the roof, he thought that he may as well replace his windows. He put some energy efficient windows and insulation in. Again, he didn't know that window replacement required a permit. Mr. Todd asked how Mr. Bowers was found to be doing this work without a permit. Mr. Stanley said that he drove by the property and noticed the changes. He didn't fully realize that the home was in New London. Mr. Bowers owns the company and he rents the houses out as year round rentals.

**IT WAS MOVED (Courtland Cross) AND SECONDED (Doug Lyon) to discuss.  
THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Green said that there were criteria established and asked the members of the Zoning Board of Adjustments to make comments as needed.

Mr. Bowers added that he would be very surprised if anyone who was even very familiar with the cottages would notice the change he made. If he had to undo his change, it would cause more disruption than if they left it as is.

**1. Will or not be contrary to public interest:**

Mr. Cross said that he went over and looked at the property. He opined that the public isn't going to see it unless they were in a boat. The work is not currently finished because of the cease and desist order but he found it to look neat and clean and noted that it has nice, new windows. He didn't feel it to be detrimental to the public. The remainder of the board agreed.

**2. Would the spirit of the ordinance be observed:**

Mr. Lyon felt the spirit would be observed. The whole purpose of this part of the ordinance is to protect water quality. There have been no changes in impervious surfaces. The addition of this tiny change is insignificant. The remainder of the board agreed.

**3. Would substantial justice be done:**

Ms. DiClerico said that Mr. Bowers was trying to improve the property and she didn't think it would be detrimental to the water. Mr. Lyon said it is in conformance with state law, which was a plus. Mr. Todd said he hoped the petitioner has gained an understanding of what is required when making modifications to structures. He added that water quality is foremost in the mind of the Town for recreation and taking care of water bodies. Although they are not in the position of posting "after-the-fact" fines, this should serve as good notice for the future.

**4. Value of surrounding properties would not be diminished:**

Mr. Cross said there aren't any surrounding properties until the other side of Otter Pond Beach. He thought it was a non-applicable question from the spirit of the ordinance. He said the value of the surrounding properties would

absolutely not be diminished. The remaining board members agreed. Mr. Todd added that there was no evidence one way or another, but that it was consistent with what they'd heard.

**5. Fair and substantial relationship existing between the general public's purpose of the ordinance and the provision of that to the property:**

Mr. Todd said that he didn't think there was a problem with this proposal. It was a very tiny lot with one structure on it. The remainder of the board agreed.

**IT WAS MOVED (Michael Todd) AND SECONDED (Courtland Cross) to grant the variance for SDB Investments for the reasons described in the criteria, above.  
THE MOTION WAS APPROVED UNANIMOUSLY.**

**Rules Update:**

Mr. Todd attended the most recent OEP presentation in Nashua and had subsequently been working on the rules following their last meeting. From attending the presentation, he picked up some more things to put into the rules.

1. They need to formally state in the rules of how they will deal with fax and email correspondence, communications and materials received for hearings. If they will rely on those materials, the applicant will need to state that fact. They need to determine if there is there a timeline or set of rules in place for sending things in and accepting things. Mr. Lyon asked if the issue was that they ought to have enough time to review the materials. Chair Green said that anything to do with a hearing goes through Amy Rankins, Land Use Coordinator. Mr. Todd asked if for the purposes of completing an application, does the arrival time determine if the information is present on time. Mr. Stanley said that the fact that something is discovered late or at the meeting even, they can always adjourn and meet again. Mr. Cross said that the sender has no guarantee that what they are sending has been received. Mr. Stanley said that Ms. Rankins meets the notice deadline and explained that a notice has to go into the newspaper and be posted a minimum of so many days before the cases are heard. Any subsequent information that is provided is still legal and can even be presented at the meeting. Mr. Stanley said that the board is not allowed to communicate by email amongst themselves or with anyone from the Town Office. They can't talk about things ahead of time or review the facts. They can't convene a meeting by email.

Mr. Lyon said he agreed with what Mr. Todd said, that the information should come to the office as a written document (not electronic).

2. Mr. Todd said that if they continue a matter, at the follow-up hearing there should be the same members who sat for the initial hearing. If one is absent they have to continue again until they are all there. Mr. Stanley said that if a member is absent and the applicant doesn't mind, they can continue without the missing person.

3. Mr. Todd said that they need to be enabled to charge fees at the expense of the other party for expert opinions in some cases.

4. Mr. Todd said that they need to beef up their rules and incorporate the Supreme Court's description when it is required for someone to recues themselves. Mr. Stanley said that generally, if nothing is to be gained, they allow the person to stay on the board.

Mr. Todd said that he would draft a copy of the rules and give it to Mr. Stanley for review.

**Notice of a Public Discussion**

Chair Green asked the board to consider what the adequacy of a split-rail fence was in meeting the requirements of Article II, Section 16, b, of the New London Zoning Ordinance. This is in regards to the property located at 30 Maple Lane, New London, NH 03257; Tax Map 129, Lot 003.

Chair Green reminded the board that a swimming pool was put up with the contingency of a fence, and they didn't put up the fence. Now they have put up a 3-rail split fence. He noted that everyone was sent an email by Ms. Rankins that came from Mr. Stanley to Doug Homan on May 18, 2010. A copy of this email is attached to these minutes.

Mr. Stanley said that this has gone on and on and they are at the point of handing the case off for enforcement unless he and Bart Mayer (Town Counsel) decide that it doesn't meet the intent of the ordinance. He thought it appropriate to bring this issue to the meeting since there had been a complaint. The main question in the case is: Do they think the split rail fence fill the bill?

Chair Green asked what the role of the Zoning Board of Adjustments was in this issue. Mr. Stanley said that they serve as an advisory to the Board of Selectmen to make sure personalities come out of this and if they agree with the fence, he'll walk away from it. If they feel the fence does not meet the requirement and the letter of the ordinance as written, it will be carried out. He needed to know for clarity whether this does or does not meet the requirement. Chair Green said he remembered during the hearing that what constituted a fence was something "to keep out small children." Mr. Cross asked that if the fence was 4' high with continuous split rail fencing from one end to the other, would that be okay? Chair Green asked what constituted "small child"? Mr. Todd said that it is a child that cannot appreciate the danger associated with things such as a pool. Chair Green said that going forward the ordinance needs more work done to make things like this more specific.

Mr. Cross asked if the Homan's have been told about the fence with the mesh added, as Mr. Stanley had described had been put up by another person in Town. Mr. Stanley said that he had told them about the fence but they did not want to do it. Mr. Lyon said that the remark in the email that said the requirement was not anything except "a 4' fence" bothered him. It states that the fence should keep children out.

Mr. Stanley said that it sounded as if their consensus was clear; that this doesn't meet the terms. It was clear to him, however, that they need to do some work on this provision for the future. He said that this requirement was adopted into the ordinance in 1997 and hasn't talked to anyone about how it came about. Ms. DiClerico said that she thought it came about during the time that Tomie DePaola put his pool in.

**IT WAS MOVED (Courtland Cross) AND SECONDED (Laurie DiClerico) to adjourn the Zoning Board of Adjustment hearing of June 14, 2010. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 9:35pm.

Respectfully Submitted,

Kristy Heath, Recording Secretary  
Town of New London