

**Town of New London  
Zoning Board of Adjustments  
October 18, 2010  
APPROVED**

**Members Present:** Doug Lyon, Laurie DiClerico, W. Michael Todd, Courtland Cross, Jeff Horten

Mr. Lyon called the **MEETING TO ORDER** at 7:30pm. Chair Green had recused himself from this session and so Mr. Lyon announced that he would be chairing the meeting. He indicated that the night's hearing was requested by Timothy and Karen Anderson, who were repealing an administrative decision, as stated below.

Chair Lyon noted that the meeting had been properly noticed and was being recorded.

**SPECIAL EXCEPTION**

**Timothy and Karen Anderson  
26 Beaver Point  
New London, NH 03257**

**Tax Map: 106 Lot: 008**

**PURPOSE OF THE REQUESTED WAIVER**

Appeal for an Administrative Decision as permitted by Article XXI, Sections E and F of the New London Zoning Ordinance regarding an order to remove parts of a deck that were originally constructed in violation of the zoning ordinance.

Chair Lyon said that Timothy Anderson was present to walk the board through the appeal and that after the presentation people who were present at the meeting would be entitled to ask questions. At this point, the board would make a decision.

Mr. Todd said that they have a letter of opinion from Peter Stanley where he has made certain findings based upon his review of the file. He said that it was his understanding that it was Mr. Stanley's finding that was being appealed. Chair Lyon said what was to be appealed was Mr. Stanley's conclusion based on letter from Sept. 7<sup>th</sup>. His only remedy was the removal of the offending deck, which was merely a suggestion and not an order. Mr. Todd said that in this capacity, the Zoning Board of Appeals sits in a de novo review, deciding this issue as if Mr. Stanley had never issued a letter. They must find certain facts based upon the presentation Mr. Anderson gives and the testimony from Mr. Stanley. They will review all evidence and findings and then they will issue a decision.

Mr. Anderson gave an overview of the situation. He and his wife live in Bedford, NH with their children. In September 2001 they bought the house from David Johnson at 26 Beaver Point as a vacation home. As the years have gone on and the children have gotten older, they have used the house less and less. In July of this year, they put it on the market. In late July, a prospective buyer went to the tax file and found these two contradictory things: in July, 2006 the owner was instructed to take down parts of a structure that exceeded his building permit, and in August, 1996 there was a building permit allowing the owner to build exactly what he had conveyed to them in 2001 in exchange for his removing a screened porch that ran about 17' to the shoreline. As Mr. Stanley said in his letter, there seemed to be a quid pro quo. This allowed him to have what he had already built for a deck. The prospective buyers asked Mr. Stanley what this meant and asked him to clarify the issue – basically, is the deck legal or not? Mr. Stanley contemplated on it a while and discussed it with Mr. Anderson. He came up with letter from September 7<sup>th</sup> in which said the only way to adhere to the July, 2006 letter was to take down the deck. The town and the Board of Selectmen had permitted the past owner to put up the deck or to keep it. Mr. Stanley wrote the letter and Mr. Anderson and his wife filed the appeal to clarify what the status of the deck was particularly for the purpose of the new buyers comfort level in purchasing the property. Mr. Anderson said at the time they bought the house, Mr. Johnson had reasonable belief that what was there was permitted by the town. Nothing ever came up. He added that Mr. Stanley's letter is a good statement of the facts as he understands them and he takes the facts that he has put in the letter as the facts of the case.

Mr. Anderson said that he wanted to run through the minutes of the Zoning Board meeting from July 30, 2006 to point out a few things and see why he is asking the board to modify Mr. Stanley's order to find that the removal of the screened porch, and circumstances around this case, satisfies the spirit of the ordinance.

Chair Lyon asked Mr. Anderson to clarify the porch arrangement as it stands now. He referred to the hand-drawn map that had been provided in the information packets. He questioned whether the 6' on either side of the porch are allowable. Mr. Anderson said that was his understanding. Mr. Todd had some photographs taken earlier that day, which he shared with the members of the Zoning Board. Mr. Anderson used these photos to show the details of the porch. Mr. Cross noted that the porch that comes out further than the limits of the roof were not allowable.

Mr. Anderson explained that on May 6<sup>th</sup> 1996, Mr. Johnson got the original building permit from the town. He was not to go beyond the limits of the existing deck. He went on to build more of that deck and at some point, according to Mr. Stanley, a neighbor complained. A Zoning Board meeting was set up for July 30, 1996. Mr. Johnson testified that he fully intended to get a variance before exceeding the footprint but due to time constraints with the builder and, for whatever reason, he thought he could get a variance after the fact. He was very apologetic in the letter and asked for the variance.

The second witness at the Zoning Board meeting was Dale Conly who felt the Zoning Ordinances were very important but that in this instance he was "tickled" that the Johnsons had enhanced the beauty of the property and felt that the property was far more attractive than when the Johnsons purchased it. Pam Lowe, who lived next to him concurred with Mr. Conly and said the deck made the house look less disjointed. Fred Kaufman testified that he had viewed the home from both land and pond side and fully supported the variance. The Romanoffs, however, sent their attorney to present a letter of objection and said that hardship is an element that they must find and that self-created hardship was not a hardship. This attorney offered to not appeal the findings and the granting of the variance, if Mr. Johnson took down the old porch that existed and if they settled a property dispute they had. Mr. Anderson felt that perhaps the Romanoffs were using this issue as a bargaining chip to settle a property dispute with Mr. Johnson. The Zoning Board went on to make a number of findings:

1. There would be no diminution of any of the properties due to the deck.
2. It would be in the benefit of public interest to keep the deck.
3. There were no special conditions in place that would allow Mr. Johnson to make a claim of hardship because he created it himself.
4. By granting the variance, substantial justice would be done because it would increase the protection of the shoreline.
5. It would not be contrary to the spirit of the ordinance because the deck was similar to others in that area, but it would be in violation of shoreline setbacks.

Mr. Anderson said that Mr. Johnson was to take down the deck and when he asked the Zoning Board when he would need to have it taken down by, he was told that the Board of Selectmen would determine that, but said that it would need to be done in a reasonable amount of time. Two weeks later, the town issued a building permit to keep all the deck he conveyed to them in 2001, in exchange for taking down an old portion of the deck.

Mr. Anderson said that he understood that they would need to make some findings about the deck. He felt that what happened is that he and his wife were unsuspecting buyers and are now finding out about this as they try to sell it. He said it is a beautiful deck and although that is not an excuse to keep it, but everyone who came to the meeting in 2001 was in favor of the deck and felt it enhanced the facility. He and his wife are seeking a modification of Mr. Stanley's order to find that under these circumstances, including the fact that Mr. Stanley said in the letter that he was not going to enforce his suggestion to take it down, that the issue could be clarified and finalized.

Chair Lyon said that when he reviewed the materials, he looked at the building permit and found it was May of 1996. He concluded that he had not been a Selectman at the time that the deal was struck with Mr. Johnson. It appears, however, that that conversation went on in July and maybe into August. To the best of his recollection, he thinks he was on the board at that time. Chair Lyon said he didn't remember the issue, but that if it raises any concerns for the members of the Zoning Board of Appeals or if it is conceived of a conflict of interest, he would disclose that. Neither Mr. Anderson nor the other members of the Zoning Board of Appeals had any objection.

Present at the meeting were Richard and Victoria Simek, who were the potential buyers of the Anderson property. Ms. Simek explained that they were trying to see what the listing sheet had on it, compared with what the town had on record. She talked to Mr. Stanley about some discrepancies and while he was researching the property, he uncovered this other issue.

Courtland Cross made a motion to discuss. The motion was seconded by Laurie DiClerico. The motion was approved unanimously.

Mr. Todd said that the ordinance in 1996 contained a provision for nonconforming structures. It said that expansion is allowed if the end result is something that is not more non-conforming. Secondly, at that time the ordinance included the Shoreland protection act. A single family residence was a permitted use as long as it was greater than 50' off the shoreline. The documents provided from the file show the porch is 33' from the waterline. Hence, they find it was a non-conforming structure. Mr. Lyon noted that the cottage itself is less than 50' from the waterline.

Mr. Todd said that the Board of Selectmen did issue a building permit with provisions listed, in which no sideways expansion was allowed. They also have photos and evidence showing that this was not what occurred. He suggested they take judicial notice of their own files that the variance that was requested after the fact was denied at a vote of 3:2. As a board sitting de novo they cannot overturn a previous decision from the Zoning Board of Appeals. They are concerned with the findings of their administrative official and to find or un-find his findings. They stand in his shoes and have no more authority than he had when he wrote the letter.

Mr. Lyon said they need to take notice that there was an agreement from the Board of Selectmen that Mr. Johnson relied on and took down an older section of the porch. Mr. Todd said that a 10' section of the porch was removed and the other thing they can find is that the entire deck still exists. The Board of Selectmen minutes were not part of their information packet, and he wasn't sure why. If they could find those minutes and review them, they could make a ruling within 30 days. Mr. Todd said that they have nothing in evidence of what the terms of that contract were at that time.

Mr. Lyon said that in Mr. Stanley's letter in the 4<sup>th</sup> paragraph, it shows that the owner approached the Board of Selectmen to make a deal. The Board of Selectmen approved the proposal and Mr. Johnson removed the section of the screen porch. Mr. Todd said that the letter, as written, is hearsay. Mr. Stanley must have reviewed the minutes himself, and the members of the Zoning Board of Appeals also needed to see those minutes. He noted that Mr. Stanley was not present at the meeting to testify as to where he got it, which was unfortunate.

Mr. Simek said that during their due diligence they were looking at the tax maps, and the date was several years prior. The deck was drawn out on the map as it currently stands, assuming it has been part of the tax record and assuming the value of it. While looking at that, his wife asked what the codes were and what they meant. The deck is stated as a certain size. Given that it has been there for so many years, and given that they are records that were present, he wondered if there was a statute of limitations for something like this. From a reasonable approach from a prospective buyer, all the documents available are OK are adequate. When can the tax maps become a system of record? Mr. Lyon said the tax map doesn't make anything legal or illegal. The problem is that both the codes the deck was in violation of were in existence prior to the deck being built.

Mr. Anderson said he understood that it is at his peril that Mr. Stanley was not there and he understood that Mr. Stanley was planning on attending the meeting. The fact was that they can take judicial notice of the actual permit that was granted on August 15, 2001 by the Board of Selectmen. Mr. Todd answered that the Board of Selectmen didn't have the power to grant this decision. He went on to say that on page two of the building permit states that the northwest corner of the deck should be converted to stairs. From the photos they are referring to, that part of the deck has chairs on it, not stairs. The railroad ties depicted on the drawing are still in place and were never converted to stairs. It makes no mention of reserving the lower deck. Mr. Anderson said that steps could not be created as they would go down into the ground. Mr. Todd disagreed. He said the Board of Selectmen didn't have the authority to make such a deal, but that they were not there to determine this; they need to determine if the administrator's decision should be amended.

Chair Lyon said that he reads the building permit a bit differently. Mr. Todd said he wanted to see the minutes from the Board of Selectmen's meeting from 2001. He said that the June 30<sup>th</sup>, 2006 minutes were read into the present

minutes by Mr. Anderson, but since they did not receive the beginning page of the minutes, they have no way of knowing if they were approved, amended or altered. At the next meeting they need to see if the minutes referenced were in fact, approved and had not been amended or changed, as often occurs.

Chair Lyon asked if the other members of the board felt they should be checking these various minutes at this point. If so, they could adjourn this meeting until such time they could find the information.

Jeff Horten thought there was enough information to make a possible ruling that evening.

Mr. Cross felt it was unfortunate that the Board of Selectmen overstepped their bounds or, unknowingly trying to be practical-minded. Here they are a bunch of volunteer citizens, and he is convinced that there is no malice at this point, but they are caught up with the fact that the Board of Selectmen overstepped their boundaries. It seems cumbersome for them to have to go through all this when there is no malice or forethought involved. The facts are the facts and that leaves no choice but to agree to examine these other records before they can make an informed decision.

Ms. DiClerico agreed with Mr. Cross and said she would feel much more comfortable seeing the minutes from the Board of Selectmen's meeting. It would make it cleaner and she thought they should take a look at it and make sure the Zoning Board of Appeals minutes were the approved version.

Mr. Lyon said that given there are three of the five board members who felt they needed more information, he thought they should adjourn the hearing at this point. He would make sure that they collect the information they need to reconvene the hearing and would make sure the Zoning Board Administrator, Peter Stanley, could attend. The same people would have to attend the continuation but it would not need to be noticed again.

The members of the Zoning Board of Adjustments decided to continue the hearing on Tuesday, October 26<sup>th</sup> at 7:30pm in Peter Stanley's office.

Mr. Todd explained that having this information is in the Anderson's best interest. If whatever ruling they make causes someone to be unhappy and they appeal it to Superior Court, they will be limited to the record that they present them. He wants the record to be the most complete that it can be.

Mr. Anderson agreed and said he could attend the continuance on October 26<sup>th</sup>. He indicated that correspondence should be made to him at his Bedford address, as he does not receive mail at the Beaver Point address.

The meeting was adjourned at 8:20pm.

Respectfully Submitted,

Kristy Heath, Recording Secretary  
Town of New London