

**Town of New London
Zoning Board of Adjustments
June 22, 2011**

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

Also Present: Peter Stanley (Zoning Board Administrator)

Chair Green called the **MEETING TO ORDER** at 7:30pm. He noted the hearing was being recorded and had been properly noticed.

He said they were gathered at the request of Ilene Wheeler & Jeffrey Blake, as described below.

ZONING VARIANCE

**Ilene Wheeler & Jeffrey Blake
130 Sutton Road
New London, NH 03257**

Tax Map: 023 Lot 028

PURPOSE OF THE REQUESTED WAIVER

Variance to the terms of Article VI, Section C, 1 to allow less than the required 25' side yard setback for a newly constructed landing and stairway.

Chair Green turned the floor over to the applicants to make comments for their case.

Ms. Wheeler explained that she and Mr. Blake purchased the old Messer Farm in August and in September they started demolition, which took about six weeks. They have since had a contractor come in to do more work, including putting up walls. It was a huge project and they are still not done. She brought her insurance representative, Mark, from Colby Insurance to comment on the issue should that be necessary. Ms. Wheeler noted that it was not their intent to do anything illegal. When they put clapboards on the south side of the house one of their subcontractors discovered there was a step that had rotted and pulled it out. The door on that side is 52" high and served as the access to the kitchen. In thinking about fire safety, they felt they needed a way to get out in an emergency. They also have five dogs that need to get out of that area from time to time, so they decided to re-build the stairs. They did not intend to change the footprint of the property or do anything other than restore it. Ms. Wheeler showed photos of the steps that had been built. She also had a letter from the insurance company noting that anything over 18" from a door-way requires stairs. She also had a letter from Sandy Rowse (abutter) explaining that the building of the stairs was not a hardship to her. Ms. Wheeler said she was apologetic that she had done something illegal.

Chair Green asked if the door was always there or if they had put it there during remodeling. Ms. Wheeler said that the door was already there. Mr. Blake said that while this door was always there, there were no pictures showing that side of the house from years past; it was the other side of the house that photos were generally taken of because this was the rear side of the home. He noted that Paul Messer recalls there being stairs there at one point, but that it was his grandparent's home and he couldn't be exact of their design in his recollection.

Chair Green asked how far it was from the threshold to the ground. Mr. Blake said they found that it was about 52" from the height of the top of the threshold. There was an existing door and screen door so it was an actual egress from the building at one point. Ted, one of the subcontractors through Patrick Middle, also noted that the steps were rotten and they should be ripped out and rebuilt. He repeated that they had no knowledge that this needed to be part of the application for the building permit.

Mr. Blake said there was clearly a rotted piece of wood lying on two flat stones, which was what the stairs were constructed on previously. Based on insurance requirements, they needed to have an egress from that side of the building. Anything over 18" requires steps. They built the steps very small so they'd be insignificant and they also checked with their neighbor, Ms. Rowse, to make sure it wouldn't be a hardship on her. It was not.

Mr. Stanley said there were no stairs present on any of the aerial photographs. He had no doubt that there probably were some stairs at some point but there was no evidence that there were any. Mr. Blake said that he saw the evidence and that the stairs were about 6' from the building. The evidence was three sets of flat stones and a long piece of rotten wood 6' from the building. Mr. Stanley said his aerial photos went back to 1988. All the other steps and landings are clearly visible on these photos. Again, he said his issue wasn't with the presence of the stairs but that he made it very clear to ask Ms. Wheeler when she was obtaining the building permit if she would be doing anything on that particular side of the building as it is too close to the boundary on that side. When he drove by and saw the stairs he was surprised. The building, itself is just about 25' from the foundation to the boundary, and the stairs are 23' at the closest point to the boundary.

Mr. Blake said that in their conversation about extending the building Mr. Stanley was clear, but that he thought it was the actual house, not the stairs. Mr. Stanley said that he never spoke with Mr. Blake, but only with Ms. Wheeler and that he said "footprint" and not "house." Ms. Wheeler said that when she thinks about "footprint" she thinks about changing the foundation or decks. She didn't think there would be a problem when replacing steps that were there previously. Mr. Stanley said that personally he has no objection to the idea of stairs and feels it is a necessity. It is entirely a process matter he was concerned with.

Mr. Todd said to approve a variance the applicant has to prove that there is a hardship by noting any unique characteristics of the lot. He felt that this could easily be done by looking at property.

Mr. Blake said based on conversations with Mr. Stanley, the first thing they would need to do is take up the problem with the abutter. If they have done something to create a hardship, they need to settle that. The next step is the Town. Ms. Rowse has written a letter saying it is not a problem with her. Secondly, on the lot they are close to the boundary. If they follow the deed back to the original version, there are some discrepancies here and there. Back then there were a lot of boundaries that had to be interpreted (description of rocks or trees), but they have to honor their neighbor's boundary and keep in mind what they need and what they've agreed upon. The deed was changed by Paul Messer when he changed a septic design on the property. Mr. Blake saw no hardship for the neighbors next to them. Mr. Blake said if they have to rebuild the steps they will have to go onto the neighbor's property to do it. If it was a landscaping scheme, it would be legal. He said that he is a mason and to build a similar structure made of stone it would be about \$3,700 in materials, at cost. The stairs that are there now were \$600. Mr. Todd indicated that hardship is not determined by dollars.

Mr. Todd asked if the dug well noted on the other side of the property line was being used. Ms. Wheeler said that it was not and that they are on town water.

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

Mr. Todd explained that the house had been there since the 1800's and that there is every reason to come to the conclusion that it was always that close to the boundary line before there was any regulation of any sort. There is also reason to assume that they had some method of exiting the house without falling on their faces. There had to have been some steps coming from that doorway. The steps may have included a porch on that side. In the past, it would have become a pre-existing, non-conforming condition. Their ordinance says that this cannot be expanded without some special approval. More troubling, Mr. Stanley's testimony says that as far back as 1988 there were no stairs visible from the air. If they have a non-conforming use and discontinue it for one year, it cannot be put back. It has been more than 20 years since any stairs have been there. They have to find all the factors necessary to approve a variance.

Mr. Blake asked them to take a look at the front steps on the opposite side of the house and the condition of them when they purchased the house. The steps were last updated prior to 1976. Marybeth Angelli (realtor) and Paul Messer would verify that for him. To look at an aerial photo from 1988 compared to 12 years prior, one could only imagine the condition the back steps would have been in. Mr. Todd said he understood, but that they had to look at the letter of the ordinance and apply it to the facts that are presented. They can conclude that there was an originally

non-conforming structure which was discontinued for at least a year. They have to get past that and find the elements required to be able to approve the construction that has been done.

Mr. Stanley said the Supreme Court has ruled that two elements are necessary to consider in a matter such as this: the timeline and the intent. If the stairs had been physically removed, the intent was to remove them. In all probability they decayed. The one year timeline has been passed without any question. It doesn't appear that they would go and physically remove the back steps. The building didn't get the proper maintenance the steps had rotted away.

Mr. Todd said that now they are back to the issue of the expansion of the original non-conforming structure. They don't know, however if it was just stairs that led to the door, or if it was what there is now, which is a landing. The hardship is placed on this applicant by the location of the property and the proximity of the boundary. Mr. Todd opined that the applicants are making the best out of an impossible situation.

Chair Green said that there was a letter from the abutter, Ms. Rowse saying that there was no hardship on her part because of the stairs.

Mr. Lyon said the petitioners are struggling with the various criteria within the ordinance but felt that Mr. Todd clearly stated for their purposes the hardship issue. The hardship is the location of the house on the property. It seemed to him that the five criteria had been met.

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to grant the request for variance as the five criteria for a variance has been met and approved. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Stanley said that this now establishes a new setback line for the house. This is by variance and does not give permission to build a deck next to the landing that comes out as far.

Next on the agenda was a request for a variance and for John and Delores Ryan, as indicated below.

ZONING VARIANCE
John and Delores Ryan
295 Lamson Lane
New London, NH 03257

Tax Map: 062 Lot 009

PURPOSE OF THE REQUESTED WAIVER

Variance to the terms of Article V, Section C, 2 to construct a garden shed to be built entirely within the 20' side yard setback.

Chair Green turned the floor over to the applicants to make their case. He read into the record from John and Kitty Wilson, abutters, that they were in favor of granting the variance. The lot is limited and there is no other place to put the shed. They supported the request.

Mr. Ryan said that Hugh Chapin, another abutter, had called him and said he also supported the request but was having internet trouble and could not get his letter to go through on time. He also indicated that Ms. DiClerico and Chair Green had come to look at his lot, which is narrow and not level. The one level spot is on the lot line. The only place they could legally put the shed would be in their front yard by their turn-around, which did not appear to be aesthetically pleasing. Mr. and Mrs. Wilson were the only ones who would really be able to see the shed. Mr. Ryan noted that the shed would get a snow blower off his back deck that is covered up there.

Mr. Todd showed an aerial photograph of the property. He wondered if a lean-to would be able to be built off of the garage instead of having a separate structure put on the property. Mr. Ryan noted that there was a buried propane tank in the area which would prohibit this sort of structure being built and used.

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

Ms. DiClerico said that she went and visited the property and felt that the suggested spot for the shed was the best place to put it. It was close to the Wilson's property line but there was some buffering (trees) present. She thought it was aesthetically much better for the neighborhood than it going anywhere else.

Chair Green said it was reasonable to him, as it was sloping and small lot.

Mr. Todd said that the side of the house would not be appropriate for a lean-to for reasons of temporary apron is used for storing trailers and the proximity of a buried propane tank. This shows further hardship aggravated by a drop-off and a retaining wall on the property. He felt they were making the best of a bad situation. Mr. Todd went on to say that he would not approve such variances predicated upon no disapproval from abutters. That would not be their entire reason, but to do so just due to no objection from abutters would be a dangerous precedent. The other factors involved justify the variance.

Mr. Cross said that each application is judged on its own merit. Having said that, he had no objection.

Mr. Todd said that they will not know about diminution of property was present until Mr. Wilson attempts to sell his property. Mr. Stanley offered that having a shed to house thing such a as a snowmobile and snow blower would be a better situation than having such things parked in the driveway or in the yard.

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to approve the request for variance for Mr. Ryan's garden shed. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Stanley said that even if it is a formality, they should read the five findings of fact. These two cases were pretty straight-forward and he had no objections to their outcome, but it should be done for the record. Chair Green agreed.

IT WAS MOVED (Laurie DiClerico) AND SECONDED (Doug Lyon) to adjourn the Zoning Board of Adjustment hearing of June 22, 2011. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:30pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London