



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT DRAFT MEETING MINUTES September 17, 2012

Members Present: Chair Bill Green, Courtland Cross, Laurie DiClerico, W. Michael Todd, Jeff Horten

REQUEST FOR: Re-Hearing from the July 16 and July 25, 2012 Hearing

Harry M. Snow, III

Tax Map: 085 Lots 019 & 020

Cottage Lane

New London, NH 03257

Chair Green called the meeting to order at 7:30pm. He said that the hearing had been noticed and was being recorded. He called the roll and explained the purpose of the hearing, which was for a request for a re-hearing of the appeal of an administrative decision. The Zoning Board will decide to either grant the re-hearing or deny the request. Discussion at the meeting will be amongst the board members only. They have to consider if, at the previous hearing, they made a mistake and will decide if they should grant a re-hearing. If a re-hearing is granted, abutters will be notified and they will schedule a time for a re-hearing.

Chair Green added that John Arnold, the applicant's attorney who was present at the meeting, had dropped off some information, which the board members had received and reviewed. He explained that while there may not have been a procedural error or mistake, they need to decide if their decision was based upon the definitions they were given for a "domestic servant" at the previous meeting. They had cited some examples from the 1800's and mid-1960's when the position of "domestic servant" was more common. Chair Green said that the question he has asked himself is if that is reliable information for the decision they rendered on July 25th. He wondered how the board felt about the decision they made on this matter in July, 2012

Mr. Horten said that he read the documents provided by the petitioners and felt that, for him, it still came down to the same decision. There is no disagreement that they are talking about five or six unrelated people living in a dwelling. In the ordinance the sixth person who is allowed to reside in a dwelling is called a "domestic servant." Mr. Horten recalled that Michael Todd had given some definitions and examples of what a "domestic servant" was. In his mind, that position is "full-time." The new reference the petitioner is making to the position as being a "caretaker" is new verbiage. He still goes back to the ordinance, which refers to the sixth person being a "domestic servant." Mr. Horten opined that their job is to interpret the ordinance and he feels that a "domestic servant" is a full-time job. In disagreement with David Sauerwein, Dean of Students, Mr. Horten said that what they are asking the student to be is more of a Resident Assistant (RA) and, in his experience being an RA in the past, he recalled that it is only a 3-4 hour/week commitment.

In summary, Mr. Horten said that being a student is the full-time position and the student would be given a stipend to make sure the building is properly cared for. He did not believe that this position could be considered "full-time" by any means. He said that his mind hasn't changed and still feels the same as he did the last time they met about this issue. He encouraged the Town to re-write the ordinance to state that six unrelated people could live together and not specify that one of them had to be a "domestic servant."

Mr. Cross felt that semantics was the hang-up in this situation. He respectfully disagreed with Mr. Horten and felt the work the people would be recruited to do would constitute it being a full-time job. He kept with the decision he made at the last hearing and thought the student could be considered a “domestic servant.”

Mr. Todd said that in making their decision to hear or not re-hear the case, they are limited to the information provided by the petitioner. There were attachments provided prior to that evening’s meeting, further describing certain topics covered in their prior deliberations. The standard for granting a re-hearing, according to case law, is that: a) there must be some compelling reason or evidence now available that was unavailable at the last hearing, b) that some dramatic change or circumstance has come about, or c) that there has been a technical error made on behalf of the Zoning Board of Appeals.

Mr. Todd explained that in an effort to decipher the language in the ordinance, they went to the dictionary and read the words. Semantics aside, they are charged to interpret the words in the ordinance. They have to go to other sources to interpret the text as it is given to them. He did not see any technical errors that were made in this case. The Zoning Board sought to find an explanation of what the definition of “domestic servant” was. They went back to times when the position was more common in an effort to find out what a “domestic servant” was and what they did. In the pleading, the applicant as cited various internet sources that talk about “domestic servants.” He noted “Exhibit E” in the information provided by the petitioner, which was a paragraph on upper servant staff. He submitted that the first paragraph included is taken verbatim from Beaton’s Manual which he had cited at the previous hearing.

Mr. Todd said his understanding of the definition of “domestic servant” has not changed. New Hampshire Practice Series states that a compelling reason must be made to grant a re-hearing, but that a re-hearing should not be granted because evidence, which *was* obtainable but was not produced due to the applicant’s lack of preparation, is now being made available. If the applicant was not as prepared as he should have been, they should not grant the re-hearing.

Mr. Todd opined that the argument could be made that the petitioner was not prepared at the prior hearings. He added that after the last hearing the building permit was pulled and it was found to have been issued six months prior. It says on the permit that the dwelling would be limited to five unrelated individuals. Therefore, the petitioner knew this detail when the permit was issued and yet he waited until sometime in August (just one month before the buildings were to be occupied), and sought an appeal of the administrative decision. He sought a meeting with Board of Selectmen and produced no written description of the “domestic servant” at that time. On the Monday after their meeting with the Selectmen, the petitioner convened with the Zoning Board and came in with a written description of duties for the “domestic servant.” Now they have filed for a re-hearing and are prepared with an even more descriptive list of duties for the “domestic servant.” He felt that the applicant was not prepared at the initial hearing and for this reason he was not in favor of granting a re-hearing. Mr. Todd felt that the Zoning Board’s decision was sound and well-thought out. There was no reason to use the Town’s resources to re-do the hearing.

Ms. DiClerico said that they were charged with simply defining “domestic servant.” They spent a lot of time thinking about and discussing the issue. They may have agreed slightly differently in their findings, but in the end the majority agreed that it was more of a Residential Advisor (RA) position than that of a “domestic servant.” She stood by her original decision.

IT WAS MOVED (Michael Todd) AND SECONDED (Laurie DiClerico) to deny the application for a re-hearing. THE MOTION PASSED 4:1

Michael Todd: Yes, Laurie DiClerico: Yes, Jeff Horten: Yes, William Green: Yes, Courtland Cross: No

Approval of Minutes

July 25, 2012

IT WAS MOVED (Laurie DiClerico) AND SECONDED (Courtland Cross) to approve the minutes of July 25, 2012, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

August 20, 2012

IT WAS MOVED (Jeff Horten) AND SECONDED (Michael Todd) to approve the minutes of August 20, 2012, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

With no further business, Chair Green called for a motion to adjourn.

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

The meeting adjourned at 7:50pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London