



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT MEETING MINUTES July 16, 2012

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

REQUEST FOR AMINISTRATIVE APPEAL

Harry M. Snow, III
Cottage Lane
New London, NH 03257

Tax Map: 085 Lot: 019 & 020

Chair Green called the meeting to order at 7:36pm. Since there were only four members of the Zoning Board of Appeals present, it was the option of the applicant to postpone the hearing or to hold it that night. The applicant asked to proceed. Chair Green said that the meeting was being recorded and had been properly noticed. He explained the purpose of the requested appeal, which had been previously denied by the Board of Selectmen, as described below:

PURPOSE OF THE REQUESTED WAIVER

The applicant is constructing two homes that will be housed by more than five persons, who are not legally related and are asking the Zoning Board of Adjustment to interpret the ordinance. The applicant believes that they are in compliance with the zoning ordinance because the individuals residing in the home are college students and domestic servants employed on the premises. Section III, Definition #49 of the ordinance states that “domestic servants employed on the premises may be housed on the premises without being counted as Family or families.”

Mr. Todd asked that before Mr. Snow gave his presentation, that he say something. Before the time the appeal was requested, there had been no actual decision given. Once the petitioner receives a decision they have a period of time to appeal the decision. The notice of hearing (without prior decision) was issued in error and he didn't feel that procedurally it was correct. The actual decision had just been made at the previous Board of Selectmen's meeting, which was held the prior Friday afternoon. He felt that holding the hearing at this point would be putting the cart before the horse. The normal mechanism is to allow the decision to have rested and the recipient to chew it over in their mind, to allow them to consult with counsel and decide to appeal to the ZBA. Only at that time is the decision a public matter and an appeal may be sought. He didn't think they should schedule a hearing, properly notice it and then get a decision handed to them just three hours before the meeting. Mr. Todd thought they should follow the procedures.

Ms. Hallquist said that Mr. Todd was right in that Mr. Snow had no decision at the time he handed in the appeal. He didn't understand at that time that he didn't have an official decision. When they realized there was no actual decision, Mr. Snow came to meet with the Board of Selectmen. They are talking about a few days difference and she didn't feel that anyone was at a great disadvantage if the hearing was held that evening. The biggest thing was that they would have had the meeting minutes to review from that Friday sooner than just that day.

Ms. Hallquist said that an administrative decision is any order made by an administrative official. In this case, it is the Board of Selectmen who decides whether or not Mr. Snow's plans are within the zoning

ordinance. Mr. Todd felt it was now the ZBA's chance to research the decision made by the Board of Selectmen, now that they have heard it. He felt that this would be beneficial for all concerned. He said they could hear the presentation and continue the hearing or they could take it under advisement.

Chair Green asked Mr. Snow how he felt at this point with a 4/5 board and the issues Mr. Todd had raised. Mr. Snow said he didn't want to make anyone on the board uncomfortable and thought if they wanted to do their due diligence, he understood. Ms. DiClerico thought it would be good to hear the presentation and then take it under advisement.

Mr. Todd suggested that they hear the presentation and then ask questions. As for deliberation, he would like to do so upon a continuance. Their job is to interpret the ordinance. He is happy to hear the facts but would like to deliberate on a later date. Ms. DiClerico agreed with Mr. Todd. Mr. Cross asked Mr. Todd if he would want Mr. Snow to repeat his presentation if they convene a second time. Mr. Todd said that a repeat verbatim would not be necessary as the presentation would be present in the minutes from the current meeting. Any new information may be shared at the second meeting.

Mr. Snow said he was fine to proceed. He explained that Cottage Lane is in the R1 zone which includes town water and sewer, and said that duplex housing is permitted. He has owned this property since the late 90's and put in the water sewer and road in about 12 years ago with the intent to put in multi-family housing. The property is very isolated with one way in and out and it wasn't conducive for single-family housing. It is also very close to the college. Mr. Snow said that they have been waiting for the right time to start to develop the property.

Mr. Snow noted that the college has expanded their enrollment and have had to purchase properties to lease to some of their students as they are running out of room for housing on campus. There have been some conflicts between the town and the college regarding safety issues with these properties, including egress and sprinkling. They are trying to design around these issues and take into consideration what would be needed for appropriate student housing. It isn't a dormitory but from a life-safety code they are approaching that level. The duplexes will have larger egress windows, two-hour burn ratings between the structures, use of high-tech materials, plaster in all the stairways, closed stairways, fire doors, lit exit signs, etc. They have also incorporated a sprinkler system with a big feed and multi-heads. Mr. Snow said that they have also integrated an alarm system that is the same system the college uses that ties in fire alarm, carbon monoxide alarms, and different mechanisms that can set it off. These alarms are monitored on a 24 hour basis.

Mr. Snow said that the two duplexes he has built are substantially complete. One is all plastered and there is quite a bit of finish work being done. The other isn't too far behind. They anticipate being ready for occupancy in about six weeks.

Mr. Snow explained that they looked at the Zoning Ordinance and how it relates to the town's Master Plan. He referenced a few excerpts from the Master Plan. One was regarding the importance of the college to the town. It was obvious to him that from a planning standpoint there would be increased enrollment at the college. They have a unique property that is surrounded by the college, making it a perfect place for student housing.

In the Residential Land Use portion of the Master Plan, it noted that development should be concentrated within the village center to make use of town water and sewer. Mr. Snow said that this is what they are doing and he noted there are only a few places left in the center of town that could be developed in this way.

Mr. Snow also indicated that the Master Plan suggests that an effort be made to attract a more balanced mix of residents and age groups and to consider accommodating these needs in the center of town. The use of rental units was to be considered as was housing over businesses or in the commercial district, and the conversion of large single family homes into multiple units.

Mr. Snow said that there have been a number of houses that were purchased by the college, rented to students, and there are multiple issues where it is virtually impossible to bring them up to a safety standard appropriate for students to be living in them. Some of the buildings should just be torn down and rebuilt as it would be easier.

Mr. Snow indicated that he had been using the Master Plan as his guide. He also used the Zoning Ordinance, which says that one or more persons may occupy a single unit and unless they are related, and then there should not be more than five people. Domestic servants employed on the premises do not count towards the total individuals in a dwelling. Mr. Snow felt that this clearly states that they could have domestic servants employed and housed on the premises. He also noted that there is no defined number of servants specified. The maximum occupancy is, however, defined by the size of the building.

Mr. Snow said that by the design of the building and from a safety standpoint, they are limited to a maximum of eight people per side. They need, on premises, some kind of domestic servant to deal with the day to day duties of the household and to have someone there who is responsible.

Mr. Snow said they are talking about the college at this time but the buildings could be leased out to a number of different organizations who need housing. He has been talking with the college about this domestic servant and the description of what they would do.

Dave Sauerwein, Dean of Students, helped to come up with the wording of the servant description.

1. The student would receive a reduced room rate and compensation, and perhaps special parking accommodations
2. The student would be responsible for coordinating cleaning and maintenance, and to keep common areas of the apartments orderly
3. The student would be responsible for usual cleaning, including weekly vacuuming, cleaning of the refrigerator twice per term, bathroom cleaning, and coordinating damage repairs
4. The student would be responsible for relaying behavioral concerns to the college if/when necessary

Chair Green said there was no definition of “domestic servant” in the Zoning Ordinance. Defining this is their major task as well as to decide if, within the use of the property, it would be appropriate. Mr. Snow said that the Board of Selectmen specifically asked for a domestic servant job description in writing be brought to the ZBA.

Mr. Todd said when they get to the point where they would deliberate, their standard of review is “de novo” (from the beginning). They have to make their decision based on what the Board of Selectmen had for information at the time of their decision. If they do this, they can’t consider the job description before them because it wasn’t what the Board of Selectmen had. Chair Green disagreed and felt an applicant can bring and present any information they have that is available which may have not been earlier prior. Mr. Snow said the information was presented at the Board of Selectmen meeting orally but he had been asked to put it in written form. Mr. Todd noted that the Board of Selectmen made their decision even though the domestic servant description was given to them orally.

Mr. Cross said he had trouble getting around the fact that they possibly won't be able to consider the written job description before them. Ms. Hallquist said that Mr. Snow had said the same things in the selectmen's meeting that Friday, which was that students would be responsible for domestic duties. Mr. Cross felt they should consider the written description.

Fire Chief Lyon said that it is considered a room and lodging house at the number of residents they are requesting currently. Chair Green said it was common to have someone at the college who was a student who had roles to play in the dorms. They have to consider the definition of a servant. Chair Green found no definition. He looked it up in the dictionary and found that a servant was "one that performs duties about the home for a master or employer" or "one who is privately employed to perform domestic services."

Mr. Snow said that they have a substantial investment and they are looking at having these people living there to protect the investment. It will have an upscale appearance and a lot of effort has gone into the project. The students will be fully compensated for performing these domestic duties.

Chair Green said that there is a limitation of five unrelated people in rentals. The rationale of permitting servants is that if the person was providing a service and was employed and tied to the property there would be a higher level of responsibility and the property would run at a much better fashion.

Mr. Cross was troubled by the Board of Selectmen's decision saying that the additional people do not fall within the meaning of domestic servant. Ms. Hallquist said she wrote the word "meaning" in the minutes because there is no definition in the ordinance. The ZBA needs to decide on the definition of a domestic servant.

Ms. Hallquist noted that the safety issues and the design of the duplexes were not relevant to their deciding if the students should be considered domestic servants or not. Their issue is solely: what is the meaning of domestic servants? It is nice that it is very safe and that the town likes the college, but does it fall within what the voters decided in the zoning ordinance regarding the number of people allowed to reside together in a rental unit. Mr. Snow opined that the safety issues are important in considering the need for a domestic servant.

Mr. Todd asked Chief Lyon about the rules on numbers of people in Rooming Houses. Chief Lyon said that for every structure in the State of New Hampshire, unless adopted by local ordinance, the definitions are based upon the Life Safety Code 101. They look at these regulations when monitoring places of assembly, hotels and motels, and places of businesses. That is where the definition comes from. Mr. Todd understood that the code is an overlay over the zoning ordinance. Chief Lyon agreed.

Chair Green asked, in the way that the building is constructed, how many could it safely hold. Chief Lyon said up to 15 people. 16 or more would require some slight changes. Instead of going off of domestic water, Mr. Snow put in greater flow rates. Based upon the layout of the building, they could have three people on the first floor (a single and two doubles potentially) and five people on the 2nd floor (three singles and a double). The issue is the enclosure of the stair well. The breezeway would need doors added (which Mr. Snow has made provisions for if needed), and hazard areas (such as the boiler) would need to be compartmentalized with a one-hour burn rate.

Mr. Todd brought the conversation back to "what is a domestic servant." Mr. Cross said that the name "domestic servant" makes him think of a maid. "Domestic Servant" has a broader connotation in this sense in that it, in his reading, refers to a representative from the college being compensated by

conscientious discharge of the duties. They are there to keep the students in line and the building maintained.

Mr. Todd asked if a building permit was issued. Mr. Snow said it was issued at the end of April. Mr. Snow said that there were six bedrooms per side. He added that he had met with Peter Stanley and they discussed the project. They went over the different situations with inclusion of a domestic servant. Mr. Stanley's suggestion was to apply for the permit and that five people were allowable but he would need to apply to the Board of Selectmen for an interpretation of the "Domestic Servant."

Mr. Todd asked if they had all the duties written down in their description. Mr. Snow said they did, at this point. Mr. Todd asked if Mr. Snow was bound by a lease. Mr. Snow said he was and it was for five years. Mr. Todd wondered where the duties of the Domestic Servant would be performed. Mr. Snow said they would be performed on the premises. Mr. Cross asked if the lease included anything about domestic servants. Mr. Snow said there was nothing that included specific duties.

Mr. Todd asked who determines who gets to live in the duplexes. Mr. Snow said that interested Juniors and Seniors will be put into a lottery. Mr. Todd asked who would make repairs to the structure. Mr. Snow said that he would make repairs to the outside of the structure and the college is responsible for anything to do with the interior. Mr. Todd asked who would deal with policing the buildings. Mr. Snow said that Colby-Sawyer College's campus security would patrol and they would have a NOX Box on the outside of each building so the Fire Department could gain access to the buildings if needed.

Mr. Todd asked if there would be a full kitchen in each duplex. Mr. Snow answered in the affirmative. Mr. Todd asked if the students living there would be required to purchase a meal ticket. Mr. Snow said they would not. Mr. Todd asked if the domestic servant would be responsible for doing the laundry of the students in the duplex. Mr. Snow said that he wasn't sure but didn't believe so. They will have laundry facilities on-site. Mr. Todd asked if the domestic servant would be responsible for cooking for the other students. Mr. Snow said that was something the students would decide.

Mr. Snow said that he thought there would be a minimum of six students per side and doubted it would go above seven, including the servant.

Chief Lyon said that through Colby-Sawyer College, Resident Directors and Resident Assistants go through extensive training, which includes fire safety instruction. The trainings generally last between three and five days.

An abutter, Yvette _____ wondered where students would park their cars. Mr. Snow said that each unit was a separate lot and there is adequate parking space on the back and sides of the buildings.

There were no further questions from the board. Chair Green said they need to determine what a Domestic Servant is and how it applies to this property. Mr. Todd wanted to continue the meeting after they have had time to think about the information that was brought before them. They could take it under advisement and issue a decision in 30 days, make a decision that night, or continue with another meeting.

**IT WAS MOVED (Laurie DiClerico) AND SECONDED (Bill Green) to take the issue under advisement and continue to July 25th at 7:30pm.
THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 8:46pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London