



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## ZONING BOARD of ADJUSTMENT APPROVED MEETING MINUTES July 25, 2012

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

**REQUEST FOR AMINISTRATIVE APPEAL – CONTINUANCE of the July 16, 2012 Hearing**  
**Harry M. Snow, III** **Tax Map: 085 Lot: 019 & 020**  
**Cottage Lane**  
**New London, NH 03257**

Chair Green called the meeting to order at 7:30pm. He said that the hearing was being recorded. He explained the purpose of the continuance, which was for an appeal of an administrative decision. Their request for a waiver 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.”**

Chair Green explained that five un-related people can occupy a rental unit, per the zoning ordinance. If there are domestic servants, they will be in addition to the five but do not count towards the total number of people in the unit. The ordinance has no definition of whom or what a domestic servant is, so the challenge before the board is to define the term. Chair Green noted that Jeff Horten was present at the hearing although he was not at the previous hearing regarding this issue. He explained that Mr. Horten is familiar with the discussion of the first hearing after reading the minutes.

Mr. Todd said that the original meeting was confined to four members and the meeting was continued. Only the four who sat can continue the deliberations. He appreciated Mr. Horten's efforts but felt the meeting should be commented and deliberated on by those who were there at the first meeting. Chair Green disagreed. He said he did some research on this and found, after speaking to an attorney at LGC, that Mr. Horten was able to sit in at the meeting. Neither Mr. Todd nor Chair Green were able to cite any rules that could defend their stances on the matter. Ms. Hallquist said that this was still a hearing and they were not in deliberations yet. Mr. Horten should be allowed to continue with being a part of the hearing. Chair Green said that having Mr. Horten participate would help insure that there would be a majority vote.

Mr. Snow was given the floor. He noted Article III paragraph 49 of the zoning ordinance. This allows five members, unrelated, to live in the same dwelling unit and additional domestic servants are allowed to be employed on the premises. He felt that this was one of the few circumstances that this sort of arrangement could be duplicated. In many ways he opined that this ordinance was probably designed specifically for what they are doing. He said the Master Plan brings up the topic of the college's growth and their need for

housing. He felt that this part of the ordinance seemed tailor-made for the college and what they are trying to do.

Paul & Linda Messer were present at the meeting. They did not receive an abutter's notice for the first meeting because their property line is 25' away from where they measure to determine who is an abutter. They said that had they known, they would have been present at the first meeting.

Ms. Hallquist felt there was a creative argument from Mr. Snow saying that the ordinance was tailored to this situation. The term for those living with students is "RAs" not "Domestic Servants." Having people living together is not common, but young people trying to save money fall into this category. If voters wanted students to live in groups with RAs they would have made this clear. While no one disagrees that Mr. Snow builds quality buildings, because he does, if this is approved, it will be relevant to anyone living in any building in town; even buildings that are not built as safely as the duplexes in question. Ms. Hallquist added that the question the Board of Selectmen contemplated was if doing chores does/does not allow for the name "domestic servant." They didn't believe that this was enough to be called a domestic servant. Ms. Hallquist said that they should forget completely that they are talking about students because it isn't relevant at all. Just think about this pertaining to adults.

Chair Green wondered why the Board of Selectmen felt the way they did to vote in the fashion they did. Ms. Hallquist said that the Board of Selectmen didn't think that the work the student was being asked to do was enough for them to be titled as a domestic servant. They can't come up with a definition and don't agree that the definition is close enough to what a domestic servant was.

Ms. Linda Messer said she thought there were five building lots in the area Mr. Snow was developing. Mr. Snow said there were seven. She wondered how many of the buildings he was thinking of putting up. She calculated that there could be almost 100 people if there were seven duplexes built. Traffic would be a problem in that area. Chair Green said that while this question was a valid one, it is beyond why they were there that evening. Depending on their decision it will be because zoning permits it. It is an R1 zone and this density is permitted. Their assignment is to determine the term "domestic servant."

Mr. Snow said that this doesn't have to be specifically college housing. The person living in the house doesn't necessarily have to be a student. He felt the bottom line was if they are looking at having five people within the same rental unit, perhaps it is a good idea to have someone on those premises to take care of that premises.

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

Chair Green thought that everyone on the board had had some time to research and digest the information from the first meeting. This issue has never come before the Zoning Board. He looked at a variety of different definitions of what domestic servants were. He read a couple of different definitions he found for "domestic servant" and then compared these definitions with the list of things provided at the last meeting that the student would be doing as a "domestic servant." He said they are taking the definition of domestic servant one step further and asking if that person residing in the unit meets the definition. He thought it did unless the person's role has been misrepresented and didn't see how they didn't meet the criteria. He didn't think the criteria level was not a very high bar to meet. Chair Green felt it was a pretty low threshold. His feeling was that unless there was total misrepresentation, he didn't know how the person defined wouldn't meet the definition of a domestic servant.

Mr. Cross agreed with what Chair Green said. The definition of domestic servant he found to be general and broad. The duties are consistent with cleaning and keeping the place neat. He agreed with Chair Green's conclusion on the subject.

Ms. DiClerico thanked Mr. Snow for his patience. She appreciated what he has done for safety considerations in his building. She had to think that the Board of Selectmen interpreted "domestic servant" in the traditional sense, which is someone employed by the household to perform domestic duties. She felt this was more of a residential advisor and doesn't fit into the description. The intent of the ordinance when written wanted someone employed by the household, like a nanny.

Mr. Todd stated that they, as the board must address this issue *de novo*. The ordinance does not address "domestic servant" and they have to first examine the language of the ordinance and where possible ascribe the plain and ordinary meanings to the words used. He looked at the definitions for the words "domestic" and "servants." Mr. Todd cited Black's Law Dictionary by reading that a domestic servant was a "...person hired or employed primarily for the performance of household duties, chores, maintenance of the home, care and comfort and convenience of the household." Also, the word "servant" was cited as "...one who is employed to render personal service to another otherwise in the pursuit of an independent calling and remains in control of the employer." Mr. Todd looked further and cited "Beaton's Manual of Household Management" (1859) Ch. 41.

In it, there are 11 categories of domestic servants, including butler, footman, coachman, stable boy, valet, chamber maid, dairy maid, nurse maid, sick nurse, wet nurse, etc... Each had specific duties to perform. Mr. Todd remarked that, although dated, "Emily Post's Etiquette" (1965) mentioned that "Complete Service" that is, service that is adequate at all times, required a minimum of three: a cook, a waitress, and a house maid. If there were children, a nanny would also be necessary. The lady of the house would hire the nurse, personal maid and cook, and the gentleman of the house would hire the chauffeur, footman, butler, etc. From this information, some general observations could be made: all servants are full-time employees of the man or woman of the house and provide personal services to individual members as directed. The servants' duties are not delegable to others, and they receive room and board and a small stipend. Uniforms are provided by their employers. The domestic staff (servants) do all the physical labor but it is the job of the mistress to direct the work.

Mr. Todd felt that there was an intimate relationship between the domestic servants and the master/mistress of the household. Beaton points out a further social point which may or may not have importance depending on how it is interpreted. Historically, people look down on servants. Beaton felt this is a mistake. "The sensible master and the kind mistress know, that if servants depend on them for their means of living, in their turn they are dependent on their servants for very many of the comforts of life; and that, with proper amount of care in choosing servants, and treating them like reasonable beings, and making slight excuses for the shortcomings of human nature, they will, save in some exceptional case, be with attached domestics... Families accustomed to such attendants have always about them humble dependents, whose children have no other prospect than domestic service to look forward to; to them it presents no degradation, but the reverse to be so employed; they are initiated step by step into the mysteries of the household, with the prospect of rising in service..."

Given this rudimentary understanding of the literature, Mr. Todd compared it to the definition provided by Petitioner to the Zoning Board in this case. The person would be hired by an institution, not by individuals, and would be part-time employees. Mr. Snow said that the college wouldn't be hiring the person. He would be compensating for it. Mr. Todd pointed out the information provided in the last hearing did not indicate this and that no new information could be brought forth as they were in discussion. Mr. Todd said that the college's idea of a "domestic servant" as described in the David Sauerwein letter dated July 16, 2012; [hereafter "DS"] would be part-time and not full-time. The student DS "coordinates" cleaning and maintenance as opposed to "cleaning and maintaining" the household.

The student DS would be responsible for “usual cleaning” which is not a specifically assigned list of tasks as directed by an employer. The student DS would serve as a liaison to communicate to the college the need for repairs due to damage. A domestic servant would actually repair the damage. The student DS would also be responsible to relay information about “behavioral concerns” to the college, which is not one of the tasks a domestic servant is responsible for in any of the literature he has read.

Mr. Todd said that this student DS would be socially equal with the other members of the household as they are all on the same level and are working towards similar career paths.

Mr. Todd summarized that a true domestic servant is a calling, not a means to a part-time end. That is what the framers of the ordinance had in mind. The job description of the DS rings true of an RA or a house-mother but not as a domestic servant under the ordinance.

Mr. Cross said that “full-time” applies to more than 20 hours per work week. Au pairs are compensated by room and board and are considered to be full-time.

Mr. Horten thought it an interesting topic. He kept thinking of full vs. part-time. He was trying to differentiate the two categories. Mr. Horten speculated that the cost for housing per student would be about \$7,000 per year. He speculated that the student would be getting some compensation for these services. He saw the hours involved and speculated that someone working full-time in that role would make between \$16,000 and \$18,000 per year. He concluded that 15% of their time might be allocated to that type of function which may be high in his recollection of college living. He concluded that this was a very part-time position. They are providing domestic services but are not a domestic servant. He saw them providing a service at a small percent of their time and would be more of a resident but not a servant.

Mr. Todd pointed out that the scope could be expanded in another situation. At the prior hearing the dean of students helped come up with the wording for their “domestic servant”, the DS. The descriptions all started with “the student...” although Mr. Snow has said earlier that evening that the domestic servant didn’t have to be a student. They have to use what was provided to them at that prior meeting and he bases his analysis on those things. Since they are in discussion, no new evidence could be heard.

Chair Green gathered that to be a domestic servant in Mr. Todd’s eyes, it has to be a full-time job. Mr. Todd answered in the affirmative and remarked that he has never had a domestic servant so has had to read up on it. Chair Green said that he has cited literature from 40 years ago. Mr. Todd said that being a servant is a traditional employment. It was noted that perhaps there are not any recent works of literature to draw from because even the term “domestic servant” was outdated.

**IT WAS MOVED (Michael Todd) AND SECONDED (Laurie DiClerico) to affirm the decision of the Board of Selectmen. THE MOTION WAS APPROVED, 3:2  
DiClerico: Yes, Todd: Yes, Horten: Yes, Green: No, Cross: No.**

Mr. Todd said that every ordinance, State or local, will have hoops Mr. Snow will have to jump through and each is a separate entity. Total compliance with each separate ordinance or regulation is required. New London’s ordinance is equally as important as all the other ordinances. He offered that while defining a term used in the Zoning Ordinance is an unpleasant position for them to be in, that is their charge as a board, in this appeal.

**IT WAS MOVED (Laurie DiClerico) AND SECONDED (Michael Todd) to approve the minutes of June 27, 2012, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.**

July 16, 2012

**IT WAS MOVED (Michael Todd) AND SECONDED (Laurie DiClerico) to approve the minutes of July 16, 2012, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.**

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

The meeting adjourned at 8:14pm.

Respectfully submitted,

Kristy Heath, Recording Secretary  
Town of New London