

December 4, 2018

TOWN OF  
NEW LONDON

DEC - 4 2018

Town of New London  
Zoning Board of Adjustment  
375 Main Street  
New London NH 03257

PLANNING & ZONING

RE: ZBA Cases 18-20, 18-21, 18-22, 18-23, 18-24, 18-25, Harry M. Snow III Applicant

### MOTION FOR REHEARING

1. This motion pertains to the real properties known as 30, 33, 42, 54, 63 & 68 Cottage Lane. The signatories below are abutters of the referenced Cottage Lane properties. All references to "minutes" refer to the ZBA meeting minutes dated November 14, 2018. (copy attached)
2. On November 14, 2018 the Board heard the above captioned applications for variances from the requirements of zoning ordinance Article V, A1 and B3. The Board approved doubling of the population density by allowing one family per 5,000 sq. ft rather than the 10,000 sq. ft called for in the ordinance. Further, the Board allowed multi-family dwellings (4 families) in the R-1 Residential Zoning District which are not allowed currently.
3. The action of the board of Adjustment was unlawful and unreasonable, and it is respectfully requested that the board grant a rehearing on this matter for the following reasons:
  - I. Hardship has not been proven.

RSA 674:33 1, (b) (5) provides:

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(i) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

(ii) If the criteria in subparagraph (i) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of "unnecessary hardship" set forth in subparagraph a. shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

## DISCUSSION

Both sections (i) and (ii) of this provision require the board to initially consider and clearly decide on the record and make findings of fact on whether or not the property under consideration is subject to any "special conditions" that "distinguish it from other properties in the area." In its deliberation as described in the minutes of the meetings the board did not fully consider the basic issue of whether or not "special conditions" existed. This would mandate that the board engage in the analysis of the remaining subparagraph to make a determination whether or not an unnecessary hardship exists under either RSA 674:37 1, (5) (A) of B. The board merely voted to "Approve the six variances, as it satisfies the requirements of the unnecessary hardship provision" without making any findings of fact or providing a clear record of the reasons for the approval. The board's failure to fully consider, deliberate and make findings of fact with respect to the request for a variance denies the abutters submitting this motion any meaningful judicial review of the decision.

The applicant has not proven any special condition of the property which distinguishes it from other properties in the R-1 Residential Zone other than the existence of the buildings which he decided to build. There is nothing about the property or the buildings that deprives the applicant of the reasonable use of his property. It is the position of the applicant's counsel that these buildings are obsolete (minutes page 7, paragraph 1). If that statement is true, the obsolescence is self-created by the applicant's choice to construct Institutional housing in the R-1 Residential Zone.

Chairman Lyon stated "the thing that persuaded him was they couldn't just look at the land itself, they had to look at the existing property and the property included the buildings. In this instance, there is a special characteristic to this property in that there are buildings that are not functionally useful given their current setup." (See minutes page 9, paragraph 3).

The property was purchased in 2002 when the current ordinance was in effect. This means the hardship was self-created. There are no physical or unique characteristics of the land that distinguish it in such a way that the application of the ordinance would create the basis of a hardship or deprive the applicant of the reasonable use. If the fact that the buildings now exist is the basis of finding hardship it will erode the concept of hardship and totally undermine the concept of self-imposed hardship.

Applicant's current use is reasonable. Interpretation of the Ordinance does not require maximum return. The Board was presented testimony that the units are now producing income but not at the same level as when the college was the tenant. Financial hardship is not enough to claim a hardship under the Statute and the Ordinance. A hardship does not exist if it just relates to the personal circumstances of the applicant.

The Applicant and his counsel discussed at length "the economic impact that the college's decision has on his property" (minutes page 5, paragraph 3). "The college came back with a proposal but it was not financially viable." (minutes page 5, paragraph 3). Mr. Timbrell opined that the Cottage Lane units as they are currently configured are functionally obsolete as quoted by Applicant's counsel Mr. Hastings (minutes page 5, paragraph 5). Mr. Hastings further testified "it would keep the property from being utilized to its fullest potential".

The applicant's hardship is self-created. The Zoning Ordinance was in effect when the applicant built his buildings. It was the applicant's personal decision to build institutional housing in the R-1 Residential Zone. Moreover, applicant has other options for use of the buildings as they currently exist which he did not pursue. In the minutes (page 7, paragraph 4) Mr. Snow stated "he had an offer from the college and that they looked at various things." The applicant further stated, "that they were approached over the summer about the possible use of the housing for alcohol and drug offenders..."

Therefore, the applicant, by his own statements, proved that there was a reasonable use as the buildings currently exist which he rejected summarily. "He didn't feel this was a good option" (minutes page 7, paragraph 4). By allowing the applicant to reject reasonable options, it erodes the concept of hardship.

Chairman Lyon, according to the minutes (page 9, paragraph 2), stated, "For the hardship criteria, we know that the financial condition of the applicant is not sufficient to justify a hardship. We also know that the applicant is entitled to a reasonable return, not necessarily the maximum return."

The majority of the Supreme Court cases that have utilized the Simplex Hardship Test have found the test applicable to undeveloped land but not to developed land.

II. Granting the variance would not benefit the public interest.

Public interest is served by allowing the use of real estate consistent with zoning ordinances which the townspeople have approved. The ordinance allows the town to restrict the use of real estate when it is in the public interest. The increase in population density and reduction in square footage per family has a negative impact on the "village feel" of New London.

III. By granting the variance, substantial justice will not be done.

In this case, there is benefit to the public in denying this variance. It keeps the density requirements of the Ordinance intact. It fulfills the will and intention of the townspeople as reflected in the Zoning Ordinance. Denial of the variance will not result in substantial harm to the applicant. He currently has reasonable use of buildings and property. He himself has rejected other offers for use in its current configuration.

IV. The Use must not be contrary to the spirit of this Ordinance.

Doubling the population density of the land is a clear and obvious violation of the "spirit" of the R-1 Residential Zoning Ordinance. The board by approving these six variances is creating the largest apartment complex in the town. This size apartment complex would not be allowed in the R-2 nor in the commercial zone. In essence the board is de facto creating a new multi-housing zone which it does not have the authority to do.

The Applicant in his presentation and the board members in their discussion extensively spoke of the need for local affordable housing.

- "This property is suitable for future housing in the town and there is a statewide need for housing" (minutes page 5, paragraph 4).
- "The demand for rental housing in New London is at a record high" (minutes page 5, paragraph 5).
- "The proposed variance will increase the housing supply in the town which is in demand" (minutes page 6, paragraph 3).
- "He (Snow) feels this proposal is reasonable and there is a need for affordable housing in town. This type of property acts as a stepping stone for young people as well as older people that want to sell their house but still live in New London." (minutes page 7, paragraph 4).

- “We have heard that there is a need for more rental housing in New London.” Chairman Lyon (minutes page 8, paragraph 5).
- “This will satisfy demand we have in New London with no more impact on our environment than we have now”. Frank Anzalone (minutes page 9, paragraph 3)

The town and state-wide housing shortage is not dispositive nor germane to any of the five variance criteria. Its use by the Applicant and the board is prejudicial and distorts the proper application of the five criteria to the facts of these six applications.

The minutes of the meeting and the Notice of the Decision lack the requisite articulation of facts and the basis of the board’s decision. The minutes and the Notice of Decision are nothing more than a recitation of naked conclusions and without a factual basis elucidating the five requirements of Article 21, Section 1: 1-5.

**Chair Lyon stated we have heard testimony on the question of the spirit of the ordinance, substantial justice, property values, character of the neighborhood, hardship criteria and have been satisfied on the basis of the preponderance of the evidence that all five criteria have been met. (minutes page 9, paragraph 5).**

**In a vote 3-2, the Board voted to APPROVE the applications for the six (6) variances with the condition that the second floor apartments have fire escapes constructed on all six units and also that the applicant go to the Planning Board for full Site Plan Review and to get all required permits. Chair Lyon stated we have heard testimony on the question of the spirit of the ordinance, substantial justice, property values, character of the neighborhood, hardship criteria and have been satisfied on the basis of the preponderance of the evidence that all five criteria have been met. (Notice of Decision, November 21, 2018)**

The New Hampshire Supreme Court has strongly recommended, and has required in many instances, that specific findings be stated by a board of adjustment in consideration of an application for a variance. In the case of *Alcorn v. Rochester*, 114 N.H. 491 [1974], the Supreme Court remanded a decision of the board of adjustment stating that the failure of this board to disclose the real basis of its decision prevented the plaintiffs from making the requisite specification and thus denied them meaningful judicial review. " See: *The Board of Adjustment In New Hampshire, A. Handbook For Local Officials*, December 2017, NHOSI, Section 111-14. In that decision, the Supreme Court cited, as authority, *Anderson, American Law of Zoning* where it stated at 20.41 [1977]: "In general, a board of adjustment must, in each case, make findings which disclose the basis for its decision. Absent findings which reveal at least this much of the process of decision, the reviewing court

may remand the case to the board for further proceedings. Thus a bare denial of relief without a statement of the grounds for such denial will be remitted to the board for further action. A decision granting a variance will be remanded if the board fails to make findings which disclose a basis for its determination."

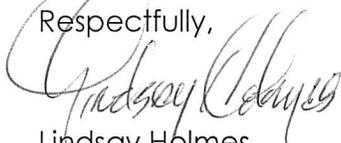
"General fairness to all parties concerned and reinforced by New Hampshire Supreme Court decisions, strongly indicates that the board should prepare a statement of its reasons. Since the decision of the board of adjustment is so important, it is necessary for both the appealing party and the municipality to have a clear record of what occurred. . . The board should state all the reasons for its decision to allow for proper review if that should be necessary. . . The reasons may be found defective if they omit an issue essential to the decision made by the board. The courts are generally unwilling to assume that a basic issue was resolved unless the reasons for the decision are clearly stated." The Board of Adjustment In New Hampshire, A Handbook For Local Officials, December 2017, NHOSI, Section III-1 5.

"Findings of a board of adjustment must be more specific than a mere recitation of conclusions, and board decisions will be reversed if it fails to adequately support its implicit or explicit findings." See, Cormier v. Town of Danville Zoning Board of Adjustment, 142 N.H. 775 (1998). The purpose of requiring a board to make findings is to provide the reviewing court with a means of determining whether the decision of the board is reasonable.

See, Foote v. State Personnel Commission 116 NH 145 (1976). A reviewing court needs finding of basic facts to understand administrative decisions and to ascertain whether the facts and issues sustain the ultimate result reached. Society of Protection of New Hampshire Forests v. Site Evaluation Committee, 115 NH 163 (1975).

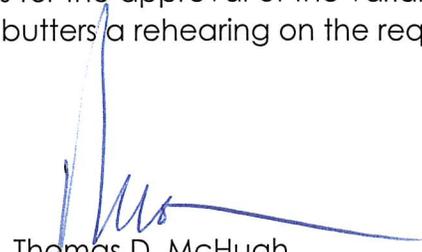
In this matter it is clear that the board did not fully consider and deliberate on the variance request; failed to make adequate findings of fact which support the granting of the variance and failed to state adequate grounds for the approval of the variance. Therefore, it is incumbent on the board to grant the abutters a rehearing on the request to deny this variance.

Respectfully,



Lindsay Holmes  
107 Gould Road  
New London NH 03257

Date: 12/4/18



Thomas D. McHugh  
107 Gould Road  
New London NH 03257

Date: 12/4/18



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA)  
MEETING MINUTES  
Wednesday, November 14, 2018  
6:30 PM

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), W. Michael Todd  
Ann Bedard, Heidi Lauridsen (Alt), Frank Anzalone, Stan Bright (Alt), Bruce Hudson

**MEMBERS EXCUSED:** Katharine Fischer

**STAFF PRESENT:** Nicole Gage, Zoning Administrator

**OTHERS PRESENT:** Joseph Kubit, Casey Biuso, Robert Kozikowski, Karen Bonewald, Tod Schweizer, Brian Vincent, Philip Hastings, Daniel Monette, Jack Sheehan, Patricia Sheehan, Paula Ross, Tom Toss, Sue Steubner, Ed Condict, Marianne McEnrue, Tom McHugh, Lauren Chadwick, Harry Snow, Joe Cardillo

1. Call to Order – Chair Lyon called the meeting to order at 6:30 pm.
2. Roll Call – Chair Lyon called the roll. Voting members tonight will be Douglas Lyon, W. Michael Todd, Ann Bedard, Frank Anzalone and Bruce Hudson.
3. Review Minutes

**IT WAS MOVED (Michael Todd) AND SECONDED (Ann Bedard) to approve the minutes of the October 16, 2018 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.**

4. PUBLIC HEARING for VARIANCE, **Case #ZBA18-18** for tax map 032-001-000, 813 Little Sunapee Road, zoned R-2 with Shoreland Overlay District, Tod Schweizer/Applicant for Susan R Schweizer Trust/Owner. A Variance is requested from **Article XVI Shoreland Overlay District, Section C Permitted Uses, Item 2** of the Zoning Ordinance to permit the placement of 8ft x 8ft premanufactured shed within the waterfront buffer at approximately 17.8 ft from the reference line to the closest wall.

5. PUBLIC HEARING for VARIANCE, **Case #ZBA18-19** for tax map 032-001-000, 813 Little Sunapee Road, zoned R-2 with Shoreland Overlay District, Tod Schweizer/Applicant for Susan R Schweizer Trust/Owner. A Variance is requested from **Article V Residential Districts, Section C Yard Requirements, Item 2** of the Zoning Ordinance to permit an 8x8 shed closer than 20 feet to the side property line. Currently shed roof overhang is 4.7 from property line.

Two official applications were submitted addressing different aspects of the shore land protection rules. The Zoning Board of Adjustment received three letters from the public, commenting on this proposal. One letter endorses the proposal and two letters oppose it. These letters are available for the public to review and have been distributed to the ZBA members.

Chair Lyon informed all in attendance that the law requires the ZBA to review any application for a variance on the basis of five criteria stated in the ordinance. Those are the only issues upon which they can make a decision. If the applicant can satisfy all five criteria than the variance can be granted. If they fail to satisfy any of the five requirements, the application will be denied.

Daniel Monette attended the meeting representing Tod Schweizer. Mr. Schweizer purchased an 8X8 prefabricated shed to store seasonal items on his property. The shed is on skids and doesn't have a foundation. There are unique characteristics of his lot which is located on a peninsula on the North side of Little Lake Sunapee. There is an old historic cottage on the lot with very little storage space onsite. He placed the shed without cutting trees and in an area with very little vegetation. The spot best fits the site and can store equipment that he would like to keep secure including trash containers and a barbeque grill.

The issue is that the shed is within 17 feet of the reference line because the entire lot is within the shore land overlay district and there is less than 30 feet of legal, buildable area on the lot. There is a pump station on the area that is buildable but there is a steep slope and there is a retaining wall. The town zoning offset for buildings is 60 feet and this is why they are seeking a variance. They have spoken with New Hampshire DES shore land and have obtained approval for the shed. For storm water management they are proposing a hand dug stone drip edge on either side of the shed.

The other element of the proposal is for an enclosure around an outdoor shower, which is basically a fence. It is connected to the main structure but is a privacy blind. Chair Lyon clarified that Mr. Monette is stating this shouldn't require a variance because it is a fence and a fence doesn't require a building permit. Mr. Monette stated this is correct and likened it to a blind around a propane tank.

They are seeking two variances. One is for the setback to the lake. The town has a 60 foot building setback and they are proposing a structure that is 17.8 feet away. The other variance request is for being near the side setback. The roof overhang is 4.7 feet away from the property line. They looked for alternative places for the shed that are further away but there isn't an ideal spot without cutting trees or disturbing vegetation. The shed was installed without the proper permits in late August.

Mr. Monette addressed the five criteria:

The variance will not be contrary to the public interest – The shed is within 20 feet of a non-buildable sliver of land between route 114 and Little Lake Sunapee Road. The shed is small and discreet and cannot be seen from the road unless you are looking for it. It doesn't block views, access or impact the public interest in any way.

The spirit of the ordinance is observed – The spirit of the ordinance is to prevent the close proximity of structures and provide buffer areas between properties. The sliver of the abutting land is not buildable and the shed should not affect value of abutting property or restrict its use. The shed is small and the lot is restricted.

Substantial justice is done – The existing lot is small and uniquely compromised by zoning setback requirements. It leaves no realistic building areas. The shed will only be of benefit by making the property tidy and preventing trash and other objects from blowing into the lake. The request is modest and reasonable.

The values of the surrounding properties are not diminished – The shed is mostly hidden from view and there is no foreseeable negative impact to any surrounding properties or the neighborhood as a whole.

Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship – The unique characteristics of the lot make any modest or reasonable outdoor storage options impossible without relief from the zoning ordinances. The property was purchased in 1985 when the ordinance was in effect. Mr. Todd stated since the zoning ordinance was in effect this means it was a self-created hardship. Mr. Monette stated it is still a hardship whether it was self-created or not. This is a reasonable request to want to make the lot tidy and protect items from theft. Mr. Todd would like to know what physical characteristics of that property make it so unique that the application of the ordinance to it would deprive him of the reasonable use of his property. Mr. Monette responded the lot is on a peninsula, there is no

buildable area and no storage space outdoors. Mr. Todd noted the size of the lot is not necessarily a governing factor in whether it is unique enough to create hardship. Everyone on the shore of Little Lake Sunapee is bound by the same restrictions. How is it that this property should be granted a variance when all other properties around the lake are subject to the same restrictions? Mr. Monette stated every lot is not the same. This lot has no place for storage and the road setbacks infringe on the lot. Mr. Todd feels if this variance is granted, it will erode the concept of hardship.

Chair Lyon stated that one of the things the courts have suggested to consider is what would be the impact on the neighborhood if variances were granted for all lots in the area. Clearly the ordinance is designed to restrict structures in the waterfront buffer. One of the letters objecting to the proposal ended with the comment "if you approve this application, please allow this letter to serve as our application to build a shed on our property too." This is the kind of issue the courts have suggested that ZBA's need to consider. The spirit of the ordinance is to prevent structures being built.

Mr. Monette responded the entire lot is within the shore land buffer so there aren't a lot of options to comply with the ordinance.

Mr. Todd noted that not having a shed or outdoor shower still allows for reasonable use of the lake front property.

Jack Sheehan a resident of Checkerberry Lane which is adjacent to Little Lake Sunapee attended the meeting. He does not believe this application is in the public interest and stated it will have an adverse impact on Little Sunapee Lake. He has been involved in water quality testing on Little Lake Sunapee for the past 35 years. The water quality has deteriorated over that time period and the primary source of that is shore land development. Due to this, the state and the Town of New London implemented regulations to control shore land development. This case is exactly what those regulations were intended to prevent. Structures add impermeable surface immediately adjacent to the lake which adds run off into the lake and removes the natural vegetation which is intended to protect the lake. Individually, a project like this may seem small but collectively if you do it all around the lake the impact will be significant. He would like the application to be denied.

Pat Sheehan, also a resident of Checkerberry Lane read a letter urging the ZBA to deny this request as well.

**IT WAS MOVED (Michael Todd) AND SECONDED (Bruce Hudson) to DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.**

Ann Bedard stated it was unknown if any vegetation was disturbed when the shed was placed but it definitely changes the runoff and prevents any natural re-vegetation to that area. There are four lakes in this town that we are desperately trying to protect against numerous issues.

Michael Todd commented that the cumulative effect of multiple variance approvals such as this could have significant detrimental impact on the quality of the lakes.

Mr. Monette noted that the shore land protection act itself is not in place to prevent development of the shore front, it is in place to ensure if there is development, measures are put in place to treat the storm water and make sure it doesn't get into the lake. They are doing that in this case by digging a stone drip edge around the shed and promoting infiltration of all the shed roof runoff.

Chair Lyon stated he is having difficulty with two of the criteria. The first is the spirit of the ordinance and since the spirit of the ordinance is to prevent development in the shore land district, any development in that area is against the spirit of the ordinance. The second one is the hardship criteria. All properties on Little Lake Sunapee are faced with the same requirements and have the same restrictions on their property. The courts have stated that ZBA's need to consider the potential impact of granting similar variances to all properties. He is not convinced there would be a

diminution of property values or that the character of the neighborhood would change but all five criteria need to be met.

Frank Anzalone stated that although this is a unique lot, it is clear they have been able to use the property and have lived without a shed for many years.

**IT WAS MOVED (Michael Todd) AND SECONDED (Doug Lyon) to deny the application for two variances on the grounds that it failed to meet the parts of the variance dealing with hardship and spirit of the ordinance. THE MOTION WAS APPROVED UNANIMOUSLY. The application was denied 5-0.**

6. PUBLIC HEARING for VARIANCE, Case #ZBA18-20 for tax map 085-015-000, 33 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

7. PUBLIC HEARING for VARIANCE, Case #ZBA18-21 for tax map 085-016-000, 63 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

8. PUBLIC HEARING for VARIANCE, Case #ZBA18-22 for tax map 085-018-000, 68 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

9. PUBLIC HEARING for VARIANCE, Case #ZBA18-23 for tax map 085-019-000, 54 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

10. PUBLIC HEARING for VARIANCE, Case #ZBA18-24 for tax map 085-020-000, 42 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

11. PUBLIC HEARING for VARIANCE, Case #ZBA18-25 for tax map 085-021-000, 30 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

There are six separate applications; however, the same issues apply to each of the six properties so they will be considered as one application.

Philip Hastings, an attorney representing Harry Snow attended the meeting. Supplemental materials were distributed to the ZBA board members including a market study, photos, a traffic analysis and economic data. Chair Lyon commented it is difficult when this information is submitted last minute and sufficient time is not given for the board to review it. Mr. Hastings stated he will go through it and answer questions.

The property consists of six separate lots on Cottage Lane located in the R-1 district. Each lot is generally the same and contains a two family, duplex style residence. Each unit contains a five

bedroom apartment designed for student housing and built to life safety code. Student housing has been the primary use since they were created six years ago. Because of the way they were built, they were ideal for student housing, but not for a normal rental population. Colby Sawyer College recently ceased leasing the buildings for student housing and has prohibited its students from living off campus. Due to the limited demand for five bedroom units, Mr. Snow wants to convert each existing unit into two, two bedroom units. This will increase the unit density from two units per lot to four units per lot. It will reduce the bedroom density from ten bedrooms per building to eight bedrooms. Because the zoning ordinance restricts this type of housing in the R-1 district, these variances are required.

Mr. Snow provided a background and history of the property, the economic impact that the college's decision had on his property and explained what his plans are.

In 2011 the college was experiencing increased enrollment and had outgrown on campus housing. Mr. Snow met with the President and Vice President of the College regarding the adjacent property he owned. It was felt there was a unique opportunity to create additional housing for the College on that property. A proposal was presented to the college and was accepted on a two-fold basis. The first was that two duplexes (four units) would be built that would house 10 students per duplex. This would be built first to see how it worked. At the end of the first year, it was decided to continue and 8 more units were built. In the course of the lease another unit was built and there is one remaining lot. The intent from the beginning was that the college would purchase the property and felt it was an asset to the school.

About two years ago, the administration at Colby Sawyer College changed and the relationship with the Cottage Lane units changed as they were looking to reduce cost. Mr. Snow provided examples of several ways they tried to help the college. A year ago, the college instituted a policy that limited future students entering the college from going off campus. This was not a direction they were previously going to take but ultimately decided to. The College came back with a proposal but it was not financially viable.

The units are large (2350 sq. ft) with five bedrooms and there is very little demand in the normal rental market for them. This property is suitable for future housing in this town and there is a statewide need for housing. This would give the opportunity to take an existing project that is now obsolete and make it usable again.

Mr. Hastings addressed the market analysis. Mr. Snow hired Stefan Timbrell of Caldwell Banker to give his professional opinion with respect to the functionality of the units as they currently sit. Mr. Timbrell is a real estate broker with 20 years' experience. His findings support what Mr. Snow has discussed. The demand for rental housing in New London is at a record high. Several letters were submitted from other real estate brokers in town that are consistent with this conclusion. Mr. Timbrell also concludes that the Cottage Lane units as they are currently configured are functionally obsolete. Rental units of this size are not in demand. Tenants are looking for 1-2 bedroom units and in his opinion, this proposal would be good for the neighborhood and the town. Based on average statewide occupancy rates, the current occupancy is at 1.3 persons per unit. At this rate, this would translate to 32 occupants. For the College use, there were 60 bedrooms, one occupant per bedroom which equates to 60 occupants. Fewer occupants are proposed with this than what the current use has been and this results in reduced traffic. Tenants will potentially be older and quieter than the student population. The proposed use will be in keeping with the mixed use nature in the neighborhood and will not result in a diminution of value to surrounding properties.

Allen & Major, an Engineering firm in Manchester looked at the potential traffic impact for the proposed use. For current existing use according to ITE standards this would result in total daily trips of 189 vehicles. Under Mr. Snow's proposal to convert these units, the proposed total daily

trips would be 176 vehicles which is a 7% decrease. They concluded that due to the way these projects were built initially, access to and from the buildings is more than sufficient for the change in use.

Mr. Snow has had discussions with fire and police department officials and they have not raised any objections to the proposed conversion. Chair Lyon noted that when he spoke with Fire Chief Jay Lyon, they discussed the increased usage and the requirement for an additional fire escape in the back. Mr. Snow replied that he would be willing to put an additional fire escape on the second floor. He doesn't feel it would be required by statute because they have sprinklers, egress windows and a fire proof stairway but he has agreed to do it.

The first two standards are that the variance will not be contrary to public interest and that the spirit of the ordinance is observed by granting the variance. These two analysis are closely connected. Does granting the variance unduly and to a marked degree conflict with the ordinance such that it violates the basic zoning objectives. This is determined by looking at whether the variance will alter the essential character of the neighborhood or threaten the public health, safety or welfare. In this case, the proposed use is consistent with the character of the neighborhood. The property is uniquely situated next to conservation land, single family residents, multifamily residents, commercial property and the College. This shows it is in a mixed use neighborhood. The proposed variance will not result in an increase in traffic, light, noise, nuisances or increased demand on public services. The population density will be reduced over the prior use. It is also consistent with our master plan. The master plan clearly recognizes the need for safe, adequate and affordable housing and encourages smaller, more functional rental units. The proposed variance will increase the housing supply in the town which is in demand.

Substantial justice is done – The test for this standard is whether the harm to the applicant of strict conformity to the ordinance will outweigh any benefit to the public. The guiding rule here is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. In this case there is no benefit to the public by denying the variance and denial of the variance will result in substantial harm to the applicant. It would keep the property from being utilized to its fullest potential. Denial will preclude Mr. Snow from getting a reasonable return on his investment. It would be unfair to deprive Mr. Snow the opportunity to use this property for multifamily use.

Values of surrounding properties will not be diminished by granting the variance – Based on evidence heard, there will be no diminution in the value of surrounding property. The neighborhood is already a mix of different uses.

Hardship – the statute says for the hardship criteria to be met, literal enforcement of the provisions of the ordinance would result in unnecessary hardship because special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property. In this case, the characteristic of the existing buildings are relevant to determining if the property is unique in its environment. This property is not the same as the other property owners in the area due to its configuration which makes it functionally obsolete.

The second prong of the hardship standard is whether literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the proposed use is a reasonable use. As long as the proposed use is a reasonable use, this prong of the hardship criteria is satisfied. Denial of the variance would affect the applicant's ability to receive a reasonable rate of return and the proposed use is consistent with the neighborhood as a whole. It won't alter the neighborhood's essential characteristics given the existing nature and location of the property. Conversion to multifamily use is a reasonable use.

Mr. Hastings addressed the self- created hardship and stated this is a non- dispositive factor to be considered by ZBA's and should not justify denial of a variance. In this case, the condition is not self- created as Mr. Snow could not have foreseen that these buildings would be rendered obsolete within 5-6 years of building them.

Mr. Todd questioned when Mr. Snow sought the exception related to the domestic servant section of the ordinance, and wasn't it his reasoning that he couldn't obtain a reasonable return on his investment with only 10 people in the building. He sought the exception so he could have an additional individual in the building. Mr. Snow responded that he didn't seek or apply for a special exception. He came to the board for an interpretation of the ordinance. Mr. Todd noted that as result of that interpretation, he was limited to the 10 occupants and still went ahead and built three more units.

Michael Todd asked if occupancy is going to be restricted to older families or to families without children. Mr. Snow stated no. They will follow certain parameters fit for a two bedroom unit. They have mixed use in terms of demographics to include retirees, young families, working couples and singles. Currently all the first floors are rented and the unit with college students is occupied on both floors. Mr. Todd expressed a concern about clutter and density. Mr. Snow stated he takes pride in that development and doesn't think that be a problem at any of the units there. They do have large full basements and tenants can store items there.

Bruce Hudson asked if any other options have been looked into if this variance doesn't go through. Mr. Snow stated they have looked at various things. They were approached over the summer about the possible use of the property for residential housing for alcohol and drug offenders. He didn't feel this was a good option. He feels his proposal is reasonable and there is a need for affordable housing in town. This type of property acts as a stepping stone for young people as well or older people that want to sell their home but still live in New London.

Ann Bedard asked if Mr. Snow has been before the Planning Board for a site discussion about potential for this property. Mr. Snow responded that the intent was that if this variance was approved, the next step would be to go to the Planning Board. Ms. Bedard stated when these were granted he met the density for the acreage but now going to a quadplex means it doesn't meet the density requirement for that number of family units. She would like their thoughts about the density of the lot and a conceptual discussion. Mr. Snow noted that there will be a reduction in the use and the function and they are dealing with a different clientele.

Marianne McEnrue and Tom McHugh presented testimony in opposition of the Snow variance and read from a spiral bound booklet on file in the ZBA office.

Mr. Hastings responded that the issues that Ms. McEnrue and Mr. McHugh addressed seem to be less about the variance request and more about the fact that these buildings exist. The board needs to take the property as it stands now, not how it might have been in 2010. There is also a clear insinuation that Mr. Snow has violated certain provisions of the zoning ordinance and that is false. Mr. Snow has complied with all applicable requirements and has received no notices from the town regarding any violations. Mr. Hasting also addressed the ad in the Shopper that was run by the opponents. It clearly was written in a way that insinuated that the town was opposed to this variance application. Mr. Snow had several people call him suspecting that the town was prejudiced against the application due to the way the ad was written. Chair Lyon pointed out that all the ad did was tell people where they should send comments and everyone has a right to do this. Mr. Hastings isn't denying that but thinks it created a misleading impression among residents.

Lauren Chadwick commented that she owns four rental properties in this area and each time she posts a listing, within three days she has 20-30 applicants. These applicants are young, working people you would want to attract to this town. She is in favor of converting these units to provide housing that is much needed.

Joe Cardillo lives near the property. He didn't feel there were any problems when the college students were there and having them there didn't change the feel of the neighborhood. He encourages people to go there to see what a great project looks like. Granting this proposal will not diminish his property value but having vacant buildings will. The buildings are there and they are attractive and should be a model of what we might want in other areas. There needs to be growth for the town to flourish and to do this we need places for people to live.

Tom Ross is currently a resident in one of Mr. Snow's rentals on Cottage Lane. He stated the apartments are very nice. He is almost at retirement age and looking to downsize. He noted that Mr. Snow drives through the neighborhood to check in to see if they need anything. He thinks this is very thoughtful.

Anne Marie Appel, a real estate agent with Better Homes and Gardens Real Estate commented that she attends many state conventions and one of the most serious issues that we face in our state is the lack of affordable housing. She agrees there is not a market for a five or six bedroom apartment building. There aren't enough rentals in our area to support people that want to live here and property values are so high that young people can't afford to buy houses here. To take a 5 or 6 bedroom unit and turn it into two smaller units that will appeal to a wider variety of people is beneficial to everyone. It is needed in the entire state.

**IT WAS MOVED (Frank Anzalone) AND SECONDED (Michael Todd) to DISCUSS. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Lyon stated that good cases have been made on both sides of this argument. Both parties can state court cases to demonstrate their position which means there is conflicting opinion in the courts about what these criteria mean. We have heard that there is a need for more rental housing in New London. The fundamental objection for those who oppose the variance is that is a violation of the R-1 zoning and that it will change the character of the neighborhood which relates to the spirit of the ordinance criteria.

Chair Lyon discussed the spirit of the ordinance and limiting density in the R-1 zone. There is conflicting testimony regarding this. Those in opposition have submitted statistics that if all the apartments are built out to their maximum, there will be an increase in density. There is testimony from Stefan Timbrell and supported by one landlord that states the density would decrease based on data in similar kinds of two bedroom apartments.

There have been traffic arguments and have received expert testimony that traffic would decrease. This is based on the assumption that the overall density will decrease given the average occupancy of similar kinds of apartments.

There is conflicting testimony about whether this will change the character of the neighborhood. Clearly this neighborhood contains mixed use.

Chair Lyon has not noticed that there have been any decreases in the assessments made on properties in any neighborhoods recently so a strong case can't be made that there would be a diminution of property values.

The hardship criteria is the most difficult. Many of the properties in the area have non-conforming uses and already exceed the density.

Chair Lyon is persuaded that the character of the neighborhood would not change, that real estate values will not be diminished, and because substantial justice and character of the neighborhood are so closely related, feels this criteria is met. For the hardship criteria, we know that the financial condition of the applicant is not sufficient to justify a hardship. We also know that the applicant is entitled to a reasonable return, not necessarily the maximum return. Based on these reasons, Chair Lyon is inclined to grant the variance.

Frank Anzalone has experience as a landlord and has apartments in New London as well as surrounding towns. He stated that with regards to the units on Cottage Lane, they are out of sight yet still in walking distance of the town. This will satisfy a demand we have in New London with no more impact on our environment than we have now. He is agreement with granting the variance. Michael Todd discussed the unnecessary hardship criteria. He does not see what physical characteristics of that land distinguish it in such a way that the application of the ordinance would deprive the applicant of the reasonable use. He would deny based on the hardship criteria. Chair Lyon stated the thing that persuaded him was they couldn't just look at the land itself, they had to look at the existing property and the property included the buildings. In this instance, there is a special characteristic to this property in that there are buildings that are not functionally useful given their current set up.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bruce Hudson) that the variance be approved for all six properties with the condition that the second floor apartments have fire escapes constructed on all six units and also that the applicant go to the planning board for a site plan and to get the required permits. THE VARIANCE WAS APPROVED BY A 3-2 VOTE.**

**Chair Lyon stated we have heard testimony on the question of the spirit of the ordinance, substantial justice, property values, character of the neighborhood, hardship criteria and have been satisfied on the basis of the preponderance of the evidence that all five criteria have been met.**

12. Motion to Adjourn

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bruce Hudson) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting was adjourned at 9:35pm.

Respectfully submitted,  
Trina Dawson  
Recording Secretary  
Town of New London



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

ZONING BOARD OF ADJUSTMENT  
(ZBA)

NOTICE OF DECISION

Public Hearing held Wednesday, November 14, 2018

PUBLIC HEARING for VARIANCE, Case #ZBA18-20 for tax map 085-015-000, 33 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

PUBLIC HEARING for VARIANCE, Case #ZBA18-21 for tax map 085-016-000, 63 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

PUBLIC HEARING for VARIANCE, Case #ZBA18-22 for tax map 085-018-000, 68 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

PUBLIC HEARING for VARIANCE, Case #ZBA18-23 for tax map 085-019-000, 54 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

PUBLIC HEARING for VARIANCE, Case #ZBA18-24 for tax map 085-020-000, 42 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

PUBLIC HEARING for VARIANCE, Case #ZBA18-25 for tax map 085-021-000, 30 Cottage Lane, Harry M. Snow, III Applicant/Owner, zone R-1. A Variance is requested from Article V Section A1 & B3 of the Zoning Ordinance to permit the conversion of a two-family residence into a four-family residence within the existing building.

**In a vote 3-2, the Board voted to APPROVE the applications for the six (6) variances with the condition that the second floor apartments have fire escapes constructed on all six units and also that the applicant go to the Planning Board for full Site Plan Review and to get all required permits. Chair Lyon stated we have heard testimony on the question of the spirit of the ordinance, substantial justice, property values, character of the neighborhood, hardship criteria and have been satisfied on the basis of the preponderance of the evidence that all five criteria have been met.**

Nicole Gage, Zoning Administrator  
Town of New London, Nov. 21, 2018

Variances and Special Exceptions shall be valid if exercised within two (2) years. Refer to RSA 674:33, Powers of the Zoning Board of Adjustment, for the specific language. Persons who are aggrieved by the decision of the ZBA are advised to seek legal counsel as they deem appropriate and to review applicable laws including but not limited to RSA 677 Rehearing and Appeal Procedures; RSA 674:33 Powers of the Zoning Board of Adjustment; RSA 676:5 Appeals to Board of Adjustment; RSA 676:3 Issuance of Decision and other NH State Statutes and Laws which may apply. This notice is for general informational purposes and in no way shall convey any legal advice.