



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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Date: October 9, 2019
To: Zoning Board of Adjustment
From: Nicole Gage, Zoning Administrator
Re: **Case #ZBA19-17 - Variance**
Owner: Jacob & Mollie Messer / Applicant Jacob Messer
New Parcel ID 139-1-0-0-0 (Old Parcel ID 139-001-000)
41 Stonehouse Rd.
Zoned ARR, 0.71 Acres

Summary of the Case: Mr. (Jacob) Messer is seeking a Variance from the provisions of the New London Zoning Ordinance, Article VI, Section A to permit continued use of pre-existing non-conforming use. Per my verbal recommendation, Mr. Messer submitted a Variance application on 7/24/2019 (ZBA Case #19-13) but then withdrew the appeal prior to the hearing to have more time to prepare.

Since December 2017, I have visited the site, met with owner and the Planner and Town Administrator, and sent a letter stating that the town has received complaints that a business was being conducted that is not permitted in the ARR zone. Back in 2016, the former Zoning Administrator had looked into this same issue and met with the owners and stated that it was an “existing non-conforming use.” The town has not received enough information from the current owners to show that the activity did *not* stop for 12-months, and we do not have enough information from the current owners showing that the activity today is the same level as it has always been. We also do not have enough information from the owners showing that the use could be considered a “Legal Nonconforming Use” as opposed to a Nonconforming Use today. Therefore, I recommended to the applicant during our meeting in July to seek a Variance for use in the ARR.

Should the ZBA grant the Variance, next step may be to go for Site Plan Review with the Planning Board. The ZBA could also deem the Variance unnecessary. Should the Variance *not* be granted, the expectation is that business operations will have to cease on the property.

Summary of actions by the town, 2016-Present:

1. After the former owner of this property, (Jacob’s father, Joseph E. Messer), passed away on 9/22/2014 (SEE A-27), the town received multiple written complaints. The first written record I could find was received 1/22/2016 (SEE A-18 to A-20, and A-24) complaining that Joe Messer had a business named “King Hill Construction established in 1965, and that Joe’s son (applicant Jacob Messer, herein referred to as Mr. Messer) moved his commercial landscaping/plowing business “Four Seasons Outdoor Services” to the property without Site Plan approval or Zoning Board of Adjustment relief.
2. The Zoning Administrator at that time met w/ Mr. Messer on 1/28/2016 and reported that “*My understanding is that there has been all sorts of equipment on the property for many, many years. I talked with (the Public Works Director) and he conveyed the property has been used this way for 30-40 years. (The Chief Assessor) also noted that most if not all of the equipment has been there for years*” (SEE A-23). This 2/11/2016 report also summarizes Mr. Messer’s description of his father’s business activity as well as his own (SEE A-23).

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3. The town continued to receive complaints on:
 - a. 2/10/2016 (SEE A-22) regarding heavy equipment blocking sometimes blocking the roads, noise, traffic, and *“piles of sand that keeps getting higher and higher”* (SEE A-22); and on
 - b. 10/9/2017 with complaints about a potential *“change of use on a property from a grandfathered use”* (SEE A-17); and again on
 - c. 10/10/2017 (SEE A-16) with detailed descriptions of the former owner’s activities and intensity of use, versus Mr. Messer’s current activities and intensity of use.
4. I became the Zoning Administrator at the end of October 0217 and visited the site and spoke with Mr. Messer 12/4/2017 (SEE photos A-14 and A-15) and noted to Mr. Messer that I would be in touch.
5. On 6/4/2018, the town again received written complaints (SEE A-6 through A-13).
6. On 6/6/2018, I wrote to the owners of the property (SEE A-1) highlighting Article XX, Sections A.1 and A.2 of the New London Zoning ordinance, and asking that the owners arrange a meeting to discuss and to please be prepared to *“show evidence of the type of business being conducted at this location and the history of use”* (SEE A-1).
7. Mr. Messer quickly replied and we met with him on 7/3/2018 (SEE A-2). During our meeting, we asked if there was any documentation that he could supply to show that the business continued after his father’s passing. Mr. Messer responded by supplying to the town a copy of Joe’s “Installer Permit” with an expiration date of 12/31/2014; and on 8/29/2018 Mr. Messer supplied the town with various undated advertising documents for *“King Hill Construction,” “King Hill Excavating,” “King Ridge Excavating”* and *“J.E. Messer & Son Inc. Excavating”* (SEE A-3 thru A-5).

References to the Zoning Ordinance

Page	Article	Section	Part
35*	<u>VI*</u> <u>Agricultural and Rural Residential District*</u>	<u>A*</u> <u>Uses Permitted*</u>	
77	XX Legal Nonconforming Uses...	A Legal Nonconforming uses	1 Resumption after Discontinuance
77	XX Legal Nonconforming Uses...	A Legal Nonconforming uses	2 Change or Expansion
22	III Definitions		81 Definition of “Legal Nonconforming Use”
24	III Definitions		105 Definition of “Nonconforming Use”

*Appeal for Current Application

Description of Property:

The property is located at 41 Stonehouse Road in the ARR District (Agricultural & Rural Residential District) and was formerly known as 5 Stonehouse Road. The lot is approximately 0.71 acres and the Property Card from the year 2000 shows “no well, has water rights to abutters.” There is a house on the property built around 1900 with an effective square footage of 3,930 SF. The current Property Cards state *“no well, has water . . . 2nd & 3rd levels not used / portion of 1st floor not used. 5/13 some broken windows.”* The town assessing maps show a shed straddling the property line between this property and 131-006-000; that same shed is also straddling the line on the official subdivision recorded at the Registry of Deeds in 2014 (Plan #20254).

Land Use History:

- 10/2/1985: ZBA Case #85-6 - No vote taken by ZBA for an Application for Special Exception to change from “storage” to “6 dwelling units” because nobody showed up that evening to present the case. (SEE A-80 to A-83)
- 1972: ZBA Case #72-7. The ZBA GRANTED a Special Exception and Variance to change use of “boarding house, 6 or 8 families” to “convert to 2 apartments for own use one for renting” (SEE A-84 to A-87)

Attachments:

- APPENDIX A, Pages A-1 thru A-87: Copies of town records
- APPENDIX B, Pages B-1 thru B-32: Copies of town Property Cards