Town of New London
Zoning Board of Adjustments
November 17, 2009

Present: Bill Green (Chairman), Douglas Lyon, W. Michael Todd, Jeff Horton, Courtland Cross

Also present: Peter Stanley, Zoning Board Administrator

Chair Green called the meeting to order at 7:30pm and noted that the purpose of the first hearing was to hear the continuation of the September 28th hearing from Audrey Perry for a special exception, to article XIII, Section E.1 as explained below. He said that the meeting was being recorded and had been properly noticed. He asked those who wished to speak at the hearing to identify themselves for the record. Chair Green noted that at the last hearing, there had been more information requested with regards to drainage of the area in question.

SPECIAL EXCEPTION

Audrey Perry c/o Richard Burgess **Tax Map: 123 Lot: 016**
Fiarway Drive
New London, NH 03257

PURPOSE OF REQUESTED WAIVER:

Mr. Peter Blakeman came before the Zoning Board with a drainage summary for Perry property. For the study, he looked at the area contributing runoff to the Perry's property and they picked an evaluation point to prepare the pre and post-development runoff on the property, itself. This was designated as "E-1" on the map. The point he referred to was on the manmade ditch that runs across the Perry's eastern property line between the property and the 25' footpath. The total drainage area above that point is approximately 3.4 acres. There are two culverts across from Fairway Lane. The drainage three drainage areas were designated as P1, P2, and P3. There was an existing conditions map in the packet he distributed that shows these areas. In the proposed conditions (post-development) analysis, he broke up the drainage areas of P1 and P2 so the culvert under the proposed driveway could be modeled.

In looking at the property and what currently drained into the property, he noticed that Old Coach Lane had a drainage system that runs parallel and on the easterly side of the road. This system has a series of catch basins. Mr. Blakeman reported that at times there was runoff that ran down Old Coach Lane and jumped the catch basin and went onto Fairway Drive. He said that he omitted Old Coach Lane because there was already a drainage system there and felt that if it didn't work, it was because it was filled with leaves and sticks and that this was something the Town should take care of.

Chair Green asked which side of Fairway Lane the drainage system was on. Peter said it was on Old Coach Lane and runs right past the entrance of Fairway. Mr. Blakeman remarked that likewise, areas P2 and P3 do not change between the existing and proposed development. They stayed the same and the water passed through the property but they were areas that were adding water to the property so they were included in the analysis.

Mr. Blakeman said that on the post-development plan, the areas circled in the dashed red line were the three sub-areas. Symbols R1, R2, R3, and R4 were modeling components. The water in each sub area was collected at the lowest point. He explained that to pass water through the areas below it, it must be modeled. He said that it is almost like a ditch but conveys the water through the area. Those areas also stayed the same from the existing and proposed development plan. What was added was the driveway and the culvert. The driveway through the drainage area adds just under 2500 sq' of driveway surface (impervious area) under the site. Mr. Blakeman said that when he ran through the numbers, what he found was that the peak rates of runoff, which historically was how they examine runoff (in feet per second), it slightly decreased at E1 because of the culvert. In the summary that he handed out for pre and post development they looked at 4 different storms: 2 year, 5 year 50 year and 100 year storms. The rate for

the 2 year was: pre development and post development at 2.3 cubic feet per second. As the storms get larger, the culverts detain more water so that the water rate dropped.

Mr. Blakeman went on to explain that the water does not typically pass straight through a culvert. There is an energy loss at the entrance of the culvert. This is caused because of the rip-rap and the stone around the edge of the culvert. This narrows the water into the pipe and it loses energy and backs up water. The act of this meters the water so the same amount (or more) water goes through, but at a slower rate. This brings the discussion to the second point, which is the volume of water.

The volumes did increase slightly and that is strictly because they have added impervious material to the site. The software that was used is very sensitive such that any increase in impervious in the model will increase the volume. The increase in volume is relatively minimal and he believed that in the summary, looking at the 2-year storm volumes, the increase amounted to approximately .006 acre feet of drainage per foot, which amounted to 2,000 gallons of water. The storm, itself contributed about .192 acre feet or 69,000 gallons. This was about a 3% increase. Mr. Blakeman said that the software didn't account for when the water was detained above the culvert. In summary, they found an increase in volume and a decrease in the feet rate runoff. The only way to remove an increase in volume was through infiltration. In a driveway the only way to handle that would be to use a pervious surface. He said that looking at the numbers, the driveway was not lending a negative impact to the drainage. He understood that the Zoning Board may want them to look into pervious materials and felt that the owners would be happy do this.

Chair Green asked if any of the board members had any questions.

Mr. Todd asked Mr. Blakeman if the development would not reduce runoff or keep it the same. Mr. Blakeman said that neither of those things would be true unless they infiltrate. He noted that there was nothing they could do on a piece of property to *not* increase the volume of water when using the drainage software. It models real life situations the best it can. He said that it was very sensitive and increases water volume if anything at all is added to the property. In summary, Mr. Blakeman opined that the driveway would not have a negative impact on the land.

Chair Green said the question that the board had was that if they approve the driveway, to what extent would it increase water runoff. Mr. Blakeman said that it was his belief and opinion, after running the numbers, that the added 2,000 gallons of water (calculated from the model) would not be noticeable. He noted that a two year storm would be modeled as a little less than 3" of rain during a three hour period. He said that there would be ponding as well as a slight increase in the volume. When he looked down stream there was a low area adjacent to the Ellison's property on the footpath which traps water. There was a slight ditch along Fairway Drive down below, which takes water and runs to the eastern end of the road. He felt if they were struggling over the impact of that volume of water, the only way to get past it was through the use of a pervious driveway. Chair Green asked what type of surface was considered impervious. Mr. Blakeman said that it would need to be porous concrete or asphalt.

Mr. Todd asked about the infiltration option. Mr. Blakeman said that the impervious option was the infiltration option. Mr. Todd opined that there would be a negative impact if they pave the driveway. Mr. Blakeman said that it would be in impact, but he didn't feel that it would be negative. Mr. Todd felt that even though the driveway may not be an impact to the land and surrounding areas, a house with a pervious roof would certainly increase the drainage problems. Mr. Blakeman said that he was there only to discuss the driveway. He said that the drainage paths would not be changed and water would leave the property in the same way with both pre and post development.

Cort Cross said that if a pervious driveway appeared to be a viable solution to the problem why wasn't this sort of driveway 21the recommendation. Mr. Blakeman said that he was approaching this idea with Mrs. Perry and family and believed they would accept the installation of a pervious driveway if it was necessary. Mr. Blakeman said that a pervious driveway wasn't the recommendation because he didn't think that an impervious driveway would create a negative impact. Anything added that to the property that was impervious would affect the runoff of volume. He said that personally he didn't think it was needed or required but that he wouldn't eliminate the possibility.

Mr. Lyon said since there were lots of neighbors there, it would make sense to summarize the situation and so he went on to report the following:

The proposal was to build a driveway on the property which included the installation of some culverts on the property. The project would disturb 2500 sq. of impervious area or currently pervious land if it was paved with an impervious material. On a two year storm there would be approximately the same amount of runoff and a slightly higher volume of water (2,000 gallons), and the installation of culverts would slow the runoff. As the intensity of the storms increase, the runoff figures were slightly better under the post-development because the driveway would slow the runoff. The volume would increase but Mr. Blakeman's conclusion was that the driveway installation would not affect the runoff or volume of water. If the Zoning Board required that a pervious driveway be installed, it would have no impact from the current situation. That would be the deal only with the driveway, which is the only issue that is before the Zoning Board currently. Neighbors are very concerned with the property. If a driveway is going in, someone will want to build a house there. As Mr. Todd has pointed out, the erection of anything more than a driveway, would create even more problems. A question explored at the last meeting was whether the Zoning Board had the authority or oversight over future potential houses or building on the property or if it something that would have to go to the Planning Board for the site plan review.

Mr. Stanley said that what the Zoning Board decided at their hearing is where it ended. Their decision was subject to any conditions they set at the meeting. Mr. Blakemen said that he wanted to add that if the Zoning Board, in their deliberations, decided that they need to consider the possibility of a house being built on the property in the future, that they could set a condition of the use of Low Impact Development (LID) techniques for the construction. He said that he didn't believe that this would be part of the review but he didn't want the approval to get hung up on this part.

Chet Ellison, resident of New London and abutter to the Perry property, presented a signed petition from most of the residents who abut or live near the property in question. The petition explained how the neighborrs felt about the issue. He understood Mr. Blakeman's report, which concluded that the driveway would not have an impact, but he didn't agree with what was presented. Mr. Ellison distributed some copy to the Zoning Board, which was given to him by his sister-in-law who was on the Zoning Board in Bow, NH. He had high-lighted the relevant parts of the document which explained about possible contamination of his well should there be construction of any kind on the Perry property. He urged them to take the information into consideration because he couldn't believe that there would be no impact on his property due to this driveway. Mr. Ellison went on to say that when a house and driveway are installed on a lot, and the trees have been removed and the rain hits the land, many contaminants can run from the road into his property. He noted that his well is about 60' from where a house would be built on the Perry property and that if you look at what the experts were saying, there is a tremendous amount of impact that this sort of construction would have on his property.

Mr. Todd wanted to address whether the model used by Mr. Blakeman accounted for the construction of the driveway and the removal of trees to do so. Mr. Blakeman answered in the affirmative. He said they had to account for this when taking a wooded area out of the model and adding in the driveway. Mr. Blakeman added that there was no regulation against the landowner going in and cutting every tree on the property. Mr. Todd understood this but noted that trees, being a vascular organism, draw water into the ground. He was having a hard time getting past the notion that cutting trees and putting the driveway in wouldn't increase the runoff. Mr. Blakeman explained that the difference was because of the culvert. If everything is taken out, including the culvert, and if the three drainage areas are taken out, when the culvert and the driveway is added in, it creates a small dam where the water that once flowed freely through the area has a pinch point, and it slows the rate down. It doesn't change the volume but slows the rate. Mr. Blakeman said that it does not impact the water table because it is not ponding for a long enough period of time.

Michael Gelcius, a resident who lives on Fairway Lane had a comment. He said that he didn't live that close to the property but is familiar with it. It seemed to him that if they look at the property, it is quite low and is very wet all the time. The intent going forward has to be for a house at some point. Personally, he didn't see why a driveway would be approved unless it was approved with the contingency of how a house would impact the neighborhood. He said that it was a back-door and sometime later maybe they'll put a house in there. He opined that there was no

point in putting in a driveway if they are not going to build a house. He felt that this fact should be analyzed and reviewed before any approvals were made.

Chair Green said that this was the second hearing on this case and that the lot met the zoning requirements, so that was not part of the Zoning Board's responsibility. Specifically in the request was that they wanted to put in two culverts in a wetlands area. That is why their focus was on the driveway. Mr. Todd said that there was nothing keeping them from attaching contingencies to the approval regarding the building of a house. The property met town requirements and States requirements, and is an existing lot.

Ms. _____ (?) said that the Conservation Commission commented that if a house was built on that property, that they could not have a lawn or any plantings. She felt that any people who decide to live on the property would have to be very interested in mosquitoes because it was a very buggy lot. She wondered why the Town would think that granting this approval would be a good thing. She didn't feel that it was a good idea to put a house on this "swampish" land. Chair Green said that whenever Fairway Lane was subdivided, the Town approved all the lots, including this one, as a building lot. Ms. _____ felt that it was immoral for the Town to permit this construction and feared for the innocent people who may buy it and realize what they are living on. They will think that they are buying a new house and can do things like put in a lawn or plantings. She summarized that there would be a house sitting in a wetland.

Peter Stanley said that the Conservation Commission has no authority to place conditions on anything. They did not approve or sign off on the wetlands crossing permits that were sent to the state of New Hampshire. In those discussions it was fairly obvious that the area remaining for the possible construction of a house was a fairly limited area. That size limitation made it difficult to have the normal amenities involved with a house, like a lawn, because of its proximity to the wetlands.

Ms. Jensen, resident, who lives at 243 Fairway Lane, said that her property was the lowest level property in the area. She mentioned that she used to put in artesian wells, so she has some knowledge on the subject of wells. She commented that any construction above them, even just a driveway, and especially an eventual house, would cause her to foresee a problem with their well. She said that it has got to affect her well in a negative way either by having runoff from the new house or from the driveway. It was going to be a definite increase in water runoff and that there was no way there couldn't be. She and Mr. Ellison's home is at the bottom of the hill and their property was the site of the eventual puddle.

Richard Reed said that he has spoken to the Zoning Board as a group and to others who were reaching decisions on this issue. He said that he understood that at previous meetings, discussions have been put on the table about everyone's concerns relating to drainage difficulties on the property. He said that in the past few months when there have been rainy periods, if they went down on the street where the property fronts, and looked right into what is in front of them, it is a running stream of water and it does not move quickly. It sits there and slowly seeps into the ground. If you obtain a permit to build housing, someone may be satisfied, but at some point, they will be back to some authority in the Town looking for approvals to add more fill into the lot. He said that it was a wet lot and it wouldn't clean up over night.

Mr. Blakeman said that he would agree as far as the fact that the wetlands in that area do pond the water. The wet area closest to the Ellison property is pretty flat where the wetland itself is and that before it goes out to the ditch there is a three to four foot rise where water does pond. He added that it was similar closer to the road where the wetland is flat. Mr. Blakeman went on to state that the property is well-defined and has been mapped and that the only areas allowed to be filled are those that have been approved in their plan. He wanted to point out that there are other lots in New London that sit directly adjacent to wetlands. The discussions being brought forth are something that someone buying a property has to look at. He doesn't doubt that there are a lot of mosquitoes there, as it is a wet neighborhood.

Deborah Reed, resident from Old Coach Road said that she was curious about the culverts and the drainage. She wondered if there would be any impact on the Town as to their responsibility to move debris from the drainage system that is currently plugged. Chair Green said that the culverts they were talking about were just the ones being proposed for the new driveway and for those, the Town would not be affected.

Allen Coop, resident, said that the engineer had one point of view regarding the property, but that the people who live there have another view. He wondered how the proposed construction of a driveway would not have a negative impact on the abutters and anyone who purchases a future home on the lot. He opined that the Zoning Board could step up and act to help.

Peter Stanley said that if they decide to put conditions on the approval, they should have an opportunity to discuss those conditions, should that be the case so that they are referring to something that is clear that everyone could understand. Mr. Todd said they should take it under advisement to discuss the conditions.

Mr. Todd asked Mr. Blakeman if the wetland survey had been conducted by another office other than his own. Mr. Blakeman answered in the affirmative and specified that it was done on July 29, 2009. Mr. Todd asked if the modeling was done in the office or in the field. Mr. Blakeman said that it was done in an office and that this wasn't the sort of situation where they would identify points on the physical lot and then go and measure flows after a rainfall. He confirmed that all modeling was done in the office and that it was based on surveying that had been done with regard to slopes and contours of the land. He added that that level of detail, as far as going out and engaging a stream flow, would never be done on a lot like this because there is no constant stream base. Mr. Todd asked Mr. Blakeman how many times he had visited the property since the last meeting. Mr. Blakeman answered that in the last few weeks he had been there on several occasions. Mr. Todd asked Mr. Blakeman if he had consulted with the Lake Sunapee Country Club regarding possible access to the property via their shared pathway on the eastern side of the existing ditch. Mr. Blakeman said that he had not, and that looking at that area he has seen it to be a low area on that side of the road. Mr. Todd affirmed that there had been no efforts at communication with LSCC about that possible use. Mr. Blakeman answered again in the negative.

Ms. Jensen said that something seemed to keep getting missed and that was that the land is always wet. To illustrate her point, she noted that they had just recently placed a tomato stick in the ground on the other side of the lawn near the Perry's property, and because the ground was so wet, it had rotted and broke off. She explained that she was worried about their home being devalued by this possible construction. Her concern was that they will end up with a total impact of problems because of the driveway and what will come thereafter. She added that both sides of the lots are wet, not just one.

Mr. Horton asked Peter Stanley, as it relates to a possible house or building, would it have to go through a building permit process and if so, what was the normal sequence of events for getting clearance. Mr. Stanley said that if there was a notice of decision with specifics contingencies associated with it, those contingencies would be reviewed at permit time. They would look for specific plans that would incorporate those features. If there were no such plans they would be bound to a septic design that met the States' requirements, or to build with no fill in the wetland. The Board of Selectmen would give a permit for the Perry's to build anything they wanted while keeping to the typical setbacks or height restrictions set by the Zoning Ordinances. Mr. Blakeman noted that any building to go on the lot would be tied into the Town's sewer system and would not have its own septic system. To summarize, Mr. Stanley stated that if they put a condition on the special exception it would be reviewed at the time of submittal for the building permit application.

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

Chair Green said that what he felt was that the circumstances, as he saw them, were that there is a small, preexisting lot surrounded by other small one-acre lots that are. He said that he understood what Mr. Ellison and Ms. Jensen were concerned about. People who have small lots tend to build to the back of the lot, and so the houses can be unavoidably close. Chair Green went on to note that the lot in question meets Town requirements for building permits. It also meets State requirements and they have received appropriate approvals. He added that if any one from the board or audience were coming before the Zoning Board and met the existing requirements that were out there, his feeling would be, as a property owner and someone respectful of property rights, that he'd be able to build or add on to his house if he wished to do so. If circumstances were different and the process was more involved than just having to get a special exception, or if it was infringing on other requirements set by the State, he would

feel differently. From the facts he has seen and heard, it all boils down to the fact that there will be more runoff but it would not a substantial increase. He wasn't sure how they, as a board, would be able to deny the request.

Mr. Cross commented that this was a thorny question. The sympathy and emotional reaction from this case made it hard to separate what the abutters were saying from the statutory considerations they are bound to be governed by. He remarked that it was not an easy decision and that the statistics that Mr. Blakeman had come up with were models from a set of tables and was not based on the pragmatic experience of doing it and in the real world. He said the flow in the real world could be different. Mr. Cross explained that one hates to eliminate the concerns of the neighbors and that if he was one of them, he'd have the same concerns. There they, however, are bound by the rules that the Town and State have set.

Mr. Lyon said that he was trying to sort out in his own mind to what extent they have to respond to the requirements and standards required for a special exception. His understanding was that they have to determine that the conditions specified in the ordinance for granting a special exception are met in the case. The use is ordinarily prohibited in the district. The use to allow for a special exception for the crossing of a driveway is permitted. There were a lot of other factors that need to be considered. He read off several of the factors. He was struggling with how in the light of all the discussions they've had, that it currently creates headaches in the neighborhoods. Any change in the use will have an even more adverse reaction. They have to take into account the conditions listed in the ordinance.

Mr. Todd said that he wanted to explain his understanding of the thresholds one has to go through, starting with a vacant lot and ending up with a residence on that lot. While it is true that this is a building lot and while it is true that it may have received State approval for whatever reason, and it may have gone through the subdivision process, those are thresholds that are independent. They find the property now in front of the Zoning Board. Mr. Todd explained that it is their job to apply the law of the Town of New London, with respect to its land usage. He said that it is their job to apply those laws the Town has voted on and apply them to this parcel in the context of the wetlands crossings. The fact that it has passed the other hurdles causes no momentum with the Zoning Board. They apply the law as they see it taking in all the factors.

Mr. Todd went on to state that the New Hampshire Supreme Court does not have to submit the conclusions of Peter Blakeman, the expert. They take testimony from abutters, personal knowledge, and value, and weigh the evidence and apply the law as they understand it. What stands in the way of this development is this ordinance. They are the ones who have to apply that. They are back to the criteria of a special exception. With respect to the wetlands crossing, no other layout that does not cross a wetland was created. There is no evidence that this particular crossing creates the least impact with no other options available. Mr. Todd explained that had Mr. Blakeman contacted the Lake Sunapee Country Club about the option of crossing over their footpath, his burden would be proven. He asked if it the landowner had rights to the walkway. Some attendees who live on Fairway Lane said that they did. Mr. Todd explained that they then have a partial interest in that right of way. He noted that this right of way could be used to enter the property on a preexisting ditch. They have not met that first burden and didn't feel that they had to go on to the other issues since they had not passed the first. Mr. Todd felt that the first objective hadn't been met.

Mr. Horton commented that he found himself torn on many levels. He felt for Audrey Perry who bought the property 40+ years ago and has been paying property taxes all along. The people in the area all bought property in a low-lying area that was wet. Is the fact that they all bought the property in the area and have discovered that it is wet isn't Audrey Perry's fault. They are suggesting making her pay the price for something the Town and State had said was "do-able." The Zoning Board has been asked to look at a set of criteria for this type of crossing. Certain possibilities exist for other access areas. He does believe they could put constraints on the driveway to be made of a pervious material, but there is still the fact that they are probably going to build a house on the lot.

Mr. Cross asked if the right of way was used, would it preclude this being a buildable lot if the approach to handling the drainage was not approved by the Zoning Board. He wondered if it was possible that some other technique may be used (such as the right of way) as opposed to the things they are asked to consider now.

Chair Green said that everyone in Fairway Lane has rights to the 25' walking path. He asked if everyone in the room would give permission for the owner of the Lake Sunapee Country Club to give permission to use the walking path as a right of way onto the Perry property. Chair Green said that they have to respond to the petitioners' request of

where the driveway is currently proposed. Mr. Todd remarked that the petitioner knew that this notion of using the shared right of way as an entrance point to the property was raised at the prior meeting. They were on notice to make the proposed crossing the only viable option. They would have had to say that the Country Club would not allow for this. It has not been proven that there are no other access points to the property that have less impact than what they are putting forth in their proposal. He reiterated that the burden had not been met.

Mr. Lyon noted that the proposed structure and or use should be compatible of the spirit and intent of the Zoning Ordinance. He said that he has great respect for the fact that the owner bought the property a long time ago, but that it is clear to him that the whole notion of the Zoning Ordinance is to prevent the kind of building they are talking about on substandard lots. He wondered if it was compatible with the spirit of the Zoning Ordinance. Mr. Lyon explained that when they talk about spirit and intent, it is not to create building lots that create headaches in the neighborhood. From all the testimony heard from neighbors, it is clear that even the undeveloped property creates problems and that development of it would cause even more.

Mr. Todd asked if granting the variance would threaten public health and the safety of the neighbors. If so, the variance would have to be denied.

Chair Green said that he was looking beyond the hearing at other wetlands crossing hearings. Mr. Lyon agreed that similar lots in New London have been heard in the past, but that they didn't have a room full of neighborhood complaints. He concluded that it was a small lot, and he conceded that as some of the lots come up, to date, they pass without any objection or concern. Each time they consider this specific case, there is an outpouring of neighbors saying that there is a problem already with the drainage. Under any existing thinking about this lot and in today's Zoning Ordinance, it wouldn't have been approved. Chair Green said that most of the Town wouldn't be approved in today's Zoning Ordinance.

IT WAS MOVED (Michael Todd**) AND SECONDED (**Doug Lyons**) to take the case of the Perry's wetland crossing special exception under advisement with a written decision with or without conditions, approval or denial as the board decides, within 30 days. THE <u>MOTION PASSED with 3 in favor and 2 opposed.</u>**

Chair Green stated that the Zoning Board would render their written decision within the allotted timeframe. He added that this was actually the fourth hearing on property. He wondered what additional light could be shed on matter. He said that he didn't feel that they needed to take more time to make a decision.

Mr. Cross said that obviously people on both sides of the issue were entitled to the Zoning Board's best consideration and best thoughts. He remarked that there had been information presented at the meeting that they had not had a chance to read. He would rather err on the side of being more considerate than less.

Mr. Lyons opined that this was the toughest case he's seen on the board so far. He would like a little more time to think about it.

Appeal of Administrative Decision

R. Peter Bianchi & Kathleen Bianchi
381 Bunker Road **Tax Map: 062 Lot 023**
New London, NH 03257

Chair Green called the second hearing to order at 9pm. The purpose of the requested appeal is to challenge the position of the Board of Selectmen that the home business operated by R. Peter Bianchi must be on the property where he resides (as his domicile).

Peter Stanley gave some background on the case, as some of the Zoning Board members may not be familiar with the rules governing this sort of case.

Mr. Stanley said that per RSA 674:33, in exercising its powers, the Zoning Board may reverse or affirm wholly or in part, or may modify the order requirement or decision as it ought to be made and shall have all the powers of the administrative official from whom the appeal is taken.

This being said, Chair Green turned over to the floor to Mr. Peter Bianchi.

Mr. Bianchi said that they were appealing the decision that they were in violation of zoning rules by operating the business he has operated for 32 years. In 1978 he started his home business. The ordinance at the time addressed home occupations. He gave a copy of the 1979 home office statute. The regulation mentioned the use of residence for doctors, engineers, etc. His business, at the time, did not seem to fall under those descriptions. In 1997 the zoning ordinance was updated. Those regulations distinguished between a home office and a home business. One change mentioned in the Town's notification to him was that a home occupation must be on the lot where the home or operator resides. Assuming that was true, this would mean that prior to 1997 when these new zoning ordinances were adopted, it must have been okay to do what they legislated and okay to allow the condition of operating a business on a lot that they do not reside in. The fact was that between 1978 and 1997 this was never an issue. This was substantiated by the fact that when he started his business, he was not in violation. It was a pre-existing use of the lot. The 1997 the regulations spelled out conditions never mentioned previously that would have made his operation in violation. In 1997 it became illegal to store any equipment or vehicle with more than two axles on yours or any other property. The remedy would be to move the equipment to his lot, which was 381 Bunker Road. Mr. Bianchi agreed that right now, he wouldn't be able to start his business now because of existing zoning laws which were adopted in 1997.

Another point Mr. Bianchi wanted to mention was that in the notification the Town sent him, it mentioned at least three times a notion of ownership of the lot. He talked to Peter Stanley about what he was in violation of. It was not the ownership of lot but the fact that he stored or did partial business on an adjacent lot. It seemed to him that the fact that he does not own but did own the adjacent lot was not the issue at hand. In summary, he wanted to restate that the business started in 1978 and was legal with the then zoning regulations. His business has not changed in scope and he has been unaware of any zoning regulations he was going against. He felt he was not in violation. He felt that the Town was in error for sighting him as a violation with what he has done on the lot. Mr. Bianchi noted that he lived on one lot, and had ownership of it for many years. He noted that the other lot was a family lot and that his brother owned it now. He reported that sometimes he stores things on the lot. The violation he had was that there was stored property on 363 Bunker Road. There was no advertising, no signs, and no people coming in. He stated that it was only a part-time storage of property on an adjacent lot that he used to own.

Mr. Stanley explained that what had precipitated this was that based on an exchange that had occurred between Mr. Bianchi and Ms. Levine, he was asked to investigate. Mr. Bianchi had complained about comments coming from Ms. Levine and the Board of Selectmen asked him to look at the property to see if there were any zoning violations. Mr. Stanley read from the 1969 Zoning Ordinance. "Home offices may be used for architects, engineers, doctors, dress-makers, etc… and shall not number more than two persons in addition to the owner or the tenant and parking must be provided off-street." That was the regulation in place in the inception of zoning until 1997. It was assumed okay, and he operated his own business for 25 years. It was assumed that the business was operated on property on which he resided. Mr. Stanley went on to say that there were many people who had businesses like this in their homes. But the ordinance clearly stated that "Residences may be used to house"…the business. He added that they have evolved with a more specific regulation but that they always focused on the home. When the comment was made that he gave up his ownership, by not owning it, there would be the assumption from passers-by that that the complex was Mr. Bianchi's home. When going back to the date of inception, Mr. Bianchi lived next door. The business spanned the two lots, which in fact, was a violation at the time, though undiscovered. The fact is that the business did occur on a lot that was not his residence that was not his property. He would need to have two variances. One variance would be need to allow his business to continue and one variance for the property to become a commercial use. The Zoning Board agreed that this was the proper course of action.

Mr. Todd asked if Mr. Stanley had seen the information provided from the 1982 ordinance and he asked if it was the same as that spelled out in the 1978 version. Mr. Stanley said that he had seen it and that it was the same.

Kathy Bianchi, Mr. Bianchi's wife, asked Peter Stanley if the original ordinance language said "home occupation." She said that her feeling was that they have debated it and, in fact, the business is run and always has been run out of 381 Bunker Road. The business, meaning the bookkeeping, record keeping and billing is done from 381 Bunker Road. The excavation is not done at that location. It was later on that the zoning was changed and expanded and became more specific and at that point they included the restriction of having vehicles on your own property. She wanted to make that distinction in her mind between home occupation and business.

Peter Bianchi said he didn't want to belabor the point but one of the reasons they were there was because he was being accused of having violations and doing several things. He wrote a letter and it was not his intent to bring it up, because he was twice falsely accused of things such as digging within the shoreline protection area, and having zoning violations. At that particular time and until the notification from the Town, he knew of no violations because he was doing things before the regulations were so restrictive. Until August 13, 2009 when the notification of the Town was given, he had no knowledge of any zoning violations he had. When he started his business, there were several other businesses on Bunker Road.

Chair Green noted that he had received a letter from Richard Kellem stating to the Zoning Board that he would not be able to attend the meeting but wished to inform them of his wholehearted support for the variance so that Mr. Bianchi could continue his home business. Mr. Kellem was a neighbor.

Donald Ballou attended the meeting. He stated that both he and his wife have live at 335 Bunker Road, and were adjacent property owners to Paul Bianchi's lot, which was adjacent Peter Bianchi's lot. He said that they were very much against any changes to the basic codes restricting commerce. At the present time, the lot in question, along with his, is a residential property and they don't wish for that to be changed. He stated that Peter Bianchi is a good friend of theirs and they have sat down and come up with a solution they'd like the Zoning Board to consider.

The solution was that Mr. Bianchi should be allowed to continue business as he does until December 31, 2012. At that date or anytime prior, Mr. Bianchi would either retire from his business or cease to store his business equipment on the premises under discussion. Mr. Ballou noted that this was not a perfect solution on either side but was an equitable solution for both.

Judd Donehey, was a resident living at 370 Bunker Road, across from the Bianchi's. He noted that they have lived at their present address for about eight years and have never been bothered by the Bianchi's family running his business across the street. He'd like to see them continue running their family business the way they have been for years. Mr. Todd asked Mr. Donehey how he felt about the restriction Mr. Ballou approved. Mr. Donehey said that he wouldn't feel bad if he went another 5-10 years.

Mr. Ballou said that it wasn't the business he had a problem with but the storage of equipment. Mr. Bianchi said that he understand what Mr. Ballou said. If they look at the variance application, that was a condition that they accept. They have to decide whether in fact the letter was in violation. Mrs. Bianchi joked that she could personally guarantee that Mr. Bianchi would be finished with his business in three years.

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

Chair Green said that he had visited the property so he could get things squared away and get a sense of the lay out. His feeling about the property was that unless you go down the driveway you can't see the garage. Mr. Ballou was the only one who was most affected by the garage. He noted that over the years there have been similar types of hearings that involve commerce. He said that these cases interest him in that in every one they can remember, the neighbors are overly supportive or the opposition is not great. His sense was to cut to the chase. The business has been there for 30 years +/-. He would say that for whatever reason a point comes up after 30 years, he finds it fascinating. Chair Green didn't want to know the details but for 31 years the business didn't bother anyone. He added that in view of Mr. Bianchi's age, what he is doing is reasonable and felt that Mr. Ballou's idea was terrific for limiting the duration of the business to three additional years.

Mr. Todd asked what the issue was at this moment. Was Peter Bianchi in violation of the zoning ordinance from 1978? Was the Selectmen's conclusion in the letter valid? They need to put themselves in place of the administrative officer in this position and apply the ordinance as was written, just as they did. He was appealing it to them. He stated that the facts were that their building and machinery were on the land that he does not and did not reside on in 1978. Mr. Bianchi agreed. Mr. Todd added that the 25x25 garage he uses is on part of the land on which he does not reside. Mr. Bianchi answered in the affirmative and added that it was used in part and only during part of the year. Mr. Todd said that they have to look at the intent of the ordinance and not construe phrases. If words are not defined specifically in the ordinance, they have to take their plain meaning. "Residence" is the place where they live, rather than their domicile. He stated that he does not live and never has lived on that property. It was hard to give a qualification on whether it is a profession, trade or occupation. If they can conclude that they had this activity that was not on their residence, the Board of Selectmen were correct in assuming there was a violation on the property. He concluded that he felt the Board of Selectmen was correct and did not find the ordinance vague. He added that there was no indication that Mr. Bianchi was a tenant of the property.

Mr. Horton asked if they agreed that he was in violation, could they still say it was okay for him to stay until 2012. Mr. Todd answered in the affirmative and said that this was the variance.
Mr. Lyon said the operative term here was that he didn't think the issue of "home occupation" or "home business" was the issue. This ordinance was designed for people to own and run a business. The restrictions have gotten stricter over time. He agreed with Mr. Todd that there was a violation and the Selectmen ruled properly.

Mr. Cross said that he agreed with both Mr. Lyons and Mr. Todd. He didn't see any other conclusion that could be drawn and whether the violation was protected or acted upon was moot. The violation was in place and even though it was ignored or not picked up on, didn't change the fact that there was a violation.

IT WAS MOVED (Michael Todd**) AND SECONDED (**Cort Cross**) that the Zoning Board find that there was a violation in the use of the property, and that the Board of Selectmen ruled properly.**
THE MOTION WAS APPROVED UNANIMOUSLY

Mr. Todd said that now that the Board of Selectmen has been considered correct from 1978, they would have to consider this variance based on what they would have said based on the ordinance in 1978. He wondered if they would have to apply the ordinance from that time when they rule on Mr. Bianchi's variances. Mr. Stanley said that the elements were the same between the current and past zoning. He summarized that the equipment was stored on the lot he did not reside on and that he also stored equipment on the lot next door.

Chair Green asked Mr. Stanley if this was the only zoning violation found at the site. Mr. Stanley said that there was another violation on the Paul Bianchi property, which had no bearing on the case at hand, whatsoever.

The request by the Bianchi's for a variance to the terms of article V, section A of the New London Zoning Ordinance. Applicant seeks the variance in order to permit a commercial use (the home business of his brother Peter, who resides on the abutting lot) on a residential property in the R-2 Zone.

Mr. Bianchi said he thought everyone already knew his thoughts. He re-stated that he had owned and operated this business for a number of years and didn't think it would not be contrary to the spirit of the zoning.

Chair Green asked Mr. Stanley if the Town had any comments. Mr. Stanley said that there were two zoning variances and that they had no issues with this. He cautioned them to state motion clearly to reflect both variances.

Mr. Cross asked if the agreement to cease and desist said anything about the possibility of the Bianchi's selling their business to someone else. In the meantime, would they be back talking about the variance being extended to accommodate the wishes of a new owner. Mr. Lyon said that they would state the variance conditions in such a way that would prohibit this.

IT WAS MOVED (Bill Green**) AND SECONDED (**Doug Lyons**) to discuss.**
THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Lyons said that most of the points do not meet criteria for meeting the variance. The proposal that they could sunset the variance makes him okay with approving it. He didn't think that a variance was appropriate for this use, however he was very comfortable with agreeing to a variance for a limited time. He wondered how he could work his way through this. Mr. Todd said that if everyone was agreeable to the conditions, no one would appeal so it wouldn't matter.

IT WAS MOVED (Doug Lyon**) AND SECONDED (**Bill Green**) to approve the variance with the condition that the variance is valid only until December 31, 2012 and that the variance expires at that time for these properties and the variance is for this owner of the property only.**
THE MOTION WAS APPROVED UNANIMOUSLY.

Approval of Minutes from November 4, 2009.

IT WAS MOVED (Doug Lyon**) AND SECONDED (**Cort Cross**) to approve the minutes of November 4, 2009.**
THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 9:51pm
Respectfully Submitted,

Kristy Heath, Recording Secretary
Town of New London