



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA)  
MEETING MINUTES  
Tuesday, January 4, 2022  
Whipple Town Hall, 6:30pm

**MEMBERS PRESENT:** Doug Lyon (Chair, voting) Michael Todd (Vice Chair, voting), Katharine Fischer (voting), Ann Bedard (voting), Frank Anzalone (voting)

**MEMBERS ABSENT:** Lauren Chadwick, Steve Root, Stan Bright, Heidi Lauridsen

**OTHERS PRESENT:** Adam Ricker, Zoning Administrator, Mag Francis

1. **Call to Order**– Chair Lyon called the meeting to order at 6:35pm.
2. **Public Hearing(s): Appeal of Administrative Decision**

**Case #:** #ZBA 22-01  
**Owner** Great Pines Homeowners Association & Public Service Company of New Hampshire d/b/a Eversource  
**Applicant:** Public Service Company of New Hampshire d/b/a Eversource  
**New Parcel ID** 058-033-0-0-0 & 059-013-0-0-0  
**Address:** Otterville Road (undeveloped land, Otterville Beach)  
**Zone(s):** Commercial (COMM) & Residential (R-2)  
**Overlay**

**Summary:**

- **#ZBA 22-01-** The applicant is appealing the administrative decision to require the property owner's signature on an application for a driveway permit to access their utility easement. The applicant feels as an easement holder they have the authority to sign the permit application.

Chair Lyon stated tonight they are going to discuss the appeal of administrative decision but the first issue to be dealt with is the question of whether the Zoning Board of Adjustment (ZBA) actually has jurisdiction in this case. Chair Lyon asked attorneys for the applicant to speak to just to the jurisdictional issue to get clarification. Jurisdiction means that the ZBA has specific regulatory authorities, and they can only make decisions about certain issues. The question is whether this is a particular issue that they have jurisdiction over. The question involves driveway permits which falls under the purview of the Planning Board, so the question is whether this is the appropriate place to hear concerns about driveway permits.

The attorney for Eversource stated he did speak with town council last night so is aware of the concern, but he does believe that the ZBA is the proper forum for this issue. Under driveway regulations 674:33 section VI A discusses an appeal to the Planning Board when a driveway permit has been denied or when the applicant believes it cannot satisfy the standards under the driveway regulation. In this instance, there were two temporary driveway permit applications that were submitted but were not denied or acted upon. The town took the position and decision that since the application was submitted by Eversource who is an easement holder in respect to these locations that these applications additionally

required the signature of the underlying fee owner. So, Part A is referencing an appeal to a Planning Board when a permit has been denied and procedurally that has not happened yet. It also states to appeal the decision to the Planning Board the applicant shall submit a statement in writing to the Planning Board when the standards could not be met. The attorney stated the question he brings to the board isn't a question of the standards, it's simply a question of when an application is made by a holder of an easement whether the signature consent of the underlying fee owner is required. This is an issue that he believes is wholly unaddressed by the driveway regulations and is appropriate for the Zoning Board to render a decision on. The issue has a much broader reach than just two temporary driveway permits. He can't come up with a policy reason why a different practice would be adopted with respect to an application for any permit or approval in the town of New London brought by an easement holder. For that reason, it is precisely the type of question of interpretation of our ordinances as to whether an easement holder is entitled to an application or permit approval.

There are two other places that reference this, and one is in part B which talks about going to the ZBA but it is limited to the circumstance where you are seeking a variance from the standards for driveways imposed in the driveway regulations. This has nothing to do with the question here which is whether the fee owners' signature on the application is required. Section F interpretation says in matters of judgement or interpretation of the above general requirements, the opinion of the Planning Board shall prevail. The general requirements are in large part dimensional and safety considerations and have nothing to do with the question being raised and is not addressed at all in the driveway regulations. The application form for the driveway permit has a caption by the signature line with the word "owner" but owner itself is not defined anywhere in the driveway regulations, in fact, it's not defined anywhere generally in the town of New London's zoning ordinance. The question doesn't fit into any of the avenues of appeal that the regulations stipulate to go to the Planning Board and it's not really the type of question that would typically be directed to a Planning Board whose area of expertise is consideration of compliance with dimensional requirements and whether uses are suitable for various zoning districts and is a question of interpretation of ordinances and their intent.

Chair Lyon asked if it would be simpler to just go to the Planning Board and ask what they mean by the word "owner". They wrote the regulations and one might argue that they are the appropriate person to explain what is meant by "owner". The attorney stated the unwillingness to act on the pending permits was a decision that was prudent and right for appeal to the ZBA and was an administrative decision. Part of the thought process was being cognizant of the fairly strict timeframes. In his experience, these types of questions of interpretations of ordinances are best judged by the ZBA, not by the Planning Board.

Michael Todd stated driveway regulations are not part of the zoning ordinance as it is presently written. Appeals as covered by 676:5 states that appeals of the board of adjustment concerning any matter within the board's powers as set forth in 674:33. 674:33 states the enforcement of any zoning ordinance pursuant to 674:16. If you go to the grant of powers listed in 674:16 they include the height, number of stories and size of buildings and other structures, lot sizes, density and population, location and use of building and structures. This does not in any way include driveways, temporary or otherwise. Mr. Todd stated he does not believe the ZBA has the jurisdiction to make a decision on this issue.

Chair Lyon stated when they look at the ordinance, they need to make sure they are not making decisions on issues outside of their purview. Chair Lyon stated there have been court

cases in the past that have said an easement holder has a right to exercise that easement and cannot be reasonably prevented from doing so. Chair Lyon believes they have a strong argument to make but they are making it to the wrong board. He suggested they go to the Planning Board with this argument. The attorney stated it is regrettable that they brought this issue was raised two months ago and they made it clear their intention was to bring this to the ZBA. It wasn't until last night that they were notified of this procedural matter. Chair Lyon explained this issue was raised with town council a while ago and initially they took the same position but after further investigation reversed it.

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

Chair Lyon commented that the ZBA has had substantial discussion about this but wanted to hear their perspective to fully understand where they were coming from. They also wanted the opportunity to express to them why the ZBA is taking this position.

**IT WAS MOVED (Doug Lyon) and SECONDED (Michael Todd) Section VI B of the Town's Driveway regulations does not provide the ZBA with authority other than to grant a variance to the terms of the Driveway Regulations. In fact, Section VI F provides the Planning Board with the authority to interpret the Ordinance. Because Eversource is not seeking a variance but seeking an interpretation of the Driveway Regulations and related permit application process, the Planning Board is the proper board to consider this application. Accordingly, the ZBA declines the appeal for lack of jurisdiction. THE MOTION WAS APPROVED UNANIMOUSLY.**

3. **Review of Minutes** – December 7, 2021

**IT WAS MOVED (Michael Todd) AND SECONDED (Katharine Fischer) to approve the minutes of the December 7, 2021 meeting with one correction. THE MOTION WAS APPROVED UNANIMOUSLY.**

4. **Motion to Adjourn**

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

The meeting was adjourned at 6:54PM

Respectfully submitted,

Trina Dawson

Recording Secretary  
Town of New London