



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Tuesday, February 12, 2015
6:30 PM**

MEMBERS PRESENT: William Green (Chair); Cheryl Devoe; Paul Vance; Ann Bedard; Michael Todd

MEMBERS ABSENT: Doug Lyon

STAFF: Lucy St. John (Planning and Zoning Administrator), Chris Work (Recording Secretary)

Chair Green called the meeting to order at 6:35 PM. He noted that Katharine Fischer, a new alternate is in attendance. Two other new members have been appointed, Frank Anzalone and Vahan Sarkisian.

Review of Minutes

No action was taken on November 20, 2014 minutes.

Public Hearing(s):

Special Exception Application for NH Kittens. Kristin Hubbard. Located at 102 Bunker Road. Tax Map 061-011-000. Zoned Residential (R-2), Residential. Article XXI, #4, Special Exception, (n) kennels as a commercial use for the breeding, grooming sale of cats and dogs.

Chair Green turned the floor over to Kristin Hubbard, who proceeded to make a presentation in support of her home business. She began by clarifying that this enterprise is not actually a "kennel" as noted above, it is a kitten rescue/boarding operation. She will keep and care for the cats until a suitable adoptive home can be found for each one. Ms. Hubbard explained that the kittens are found in various places around the New London and usually are orphaned, and in need of shelter and sustenance before being made available for adoption. No more than 24 cats will be housed on the property at one time.

Ms. Hubbard reviewed the details of her application. The hours of operation would be 9 AM to 7 PM. She explained the volunteers will assist but there are no employees. The staff hopes to be able to conduct a home visit before a kitten is adopted. Ms. Hubbard estimated that there would never be more than four different people per day coming by to pick up or drop off a cat, and they would be spaced to come one (1) hour apart, so she does not expect the business to generate heavier traffic in the area. Ms. Hubbard has a long, large driveway, so there would be no necessity for on-street parking.

Chair Green asked for questions and comments.

Mr. Todd asked Ms. Hubbard if she was covered from a liability standpoint and she replied in the affirmative.

Paul Vance asked Ms. Hubbard if state licensing was required for her business and she responded that the State Department of Agriculture will inspect her operation after she receives approval from the Zoning Board. Mr. Vance wondered if Ms. Hubbard is soliciting donations, and she replied that her business already has a website set up. There will be a "re-homing" fee charged when the kittens are adopted, but she expects to be funded primarily by donations. The business is currently applying for 501-C status.

Mr. Todd asked if the kittens being boarded would be feral. Ms. Hubbard responded that occasionally she gets a feral mom cat, but New London does not have a feral cat problem. He then asked if Ms. Hubbard had a standard procedure in place for the kittens before they are placed in an adoptive home. Ms. Hubbard replied in the affirmative and said all kittens will get rabies, leukemia and distemper shots, will be de-wormed, de-fleaed, and spayed. If a non-altered kitten is adopted, the new owner must promise to have the animal neutered. Adoptive families must also agree to keep the cats indoor for the rest of their lives.

Michael Todd questioned why Ms. Hubbard did not consider this operation a "kennel." She responded that there will be no breeding taking place, which is a function of a kennel. Mr. Todd speculated whether kennels should be considered a commercial use. Ms. St. John referred to the provisions of Article II, and Article XXI, Special Exception Use, (n) - Kennels as a commercial use for the breeding, boarding, grooming and sale of cats and dogs. The Board discussed that the provisions of Article II regarding the keeping of animals seemed to be more applicable to this since it addresses housing more than 12 small animals.

Mr. Todd asked if the fact that the petitioner is organizing a tax-exempt entity excuses this operation from being considered as commercial use. He noted the ZBA is trying to control things like excess noise and unnecessary traffic. He wondered how taking in and caring for 24 kittens at a time will not have an impact in both of these areas.

Chair Green felt that because the number of animals being boarded is more than would be housed in a normal residence, the business could be deemed commercial. Chair Green noted that he was not sure this undertaking had to meet all the requirements listed for a commercial business, however.

The Board reviewed definition # 33- commercial use. Michael Todd then asked if this business is considered non-commercial, will a Special Exception still be required. Ann Bedard and Paul Vance, referred to the provisions of Article II (1. d), noting that a special exception is required from the ZBA and Site Plan approval from the Planning Board. Ms. St. John explained that initially that the applicant appeared before the Planning Board for a conceptual site plan discussion, and was directed to the ZBA per the provisions of Article II requiring a special exception.

Paul Vance asked how many employees or staff workers would be part of the operation and in the home. Ms. Hubbard replied that most often there is no more than one volunteer at a time. She also explained that she hoped to be using some high school students that want and need to have community service hours. The students would help in a variety functions. Ms. Hubbard noted there are no other businesses like this in New London. The other closest animal rescue services are in Enfield and Concord.

Chair Green opened the Public Hearing.

- ✓ Roberta Hollinger (Jeff Hollinger arrived later), an abutter who also owned the house before Ms. Hubbard, commented that she operated a private nursery school for several years out of her home. She had 25 families a day dropping off and picking up kids. She said that this home business would just be replacing kids with kittens and she didn't expect this to have any impact on the neighborhood. She noted that Dr. Konopka lives next door and has patients coming and going all day, so this particular area of Bunker Road has had lots of home businesses over the years. Mrs. Hollinger told board members that the neighborhood supported Ms. Hubbard's enterprise.
- ✓ Deborah Perkins, an abutter, said the public hearing notice mentioned dogs, so she assumed Ms. Hubbard was going to have both cats and dogs. Ms. Hubbard said no, just cats, and they would never go outside. Ms. Perkins was pleased to hear it.

Public Hearing Closed:

**MOTION WAS MADE (Michael Todd) AND SECONDED (Paul Vance) to open discussion.
THE MOTION PASSED UNANIMOUSLY.**

Discussion

Cheryl Devoe mentioned that she is concerned the term "kennel" seems too broad for this situation, that perhaps later, this designation would allow Ms. Hubbard to expand her operation. Chair Green suggested the board make it a condition that no dogs would be permitted.

Michael Todd said that based on the evidence presented to the board, he finds Ms. Hubbard is creating a home business. This home business is not commercial. Going to Article 2 1(d), he said Ms. Hubbard will have in excess of 6 cats, so it is implied that any excess animals would require a special exception and a site plan review. Paul Vance agreed, referring to Article XXI, Board of Adjustment, G. Special Exceptions (4, n). He noted that item "n" on page 87, is not clear. He opined that since this is an agricultural use, it would be appropriate in a residential setting. Ann Bedard commented that she knew the area well and thinks this is a suitable use as long as Ms. Hubbard restricts the home business to cats.

MOTION WAS MADE (Michael Todd) AND SECONDED to approve the special exception for this use subject to the following conditions:

1. The operation is limited to domestic cat rescue only.
2. The operation is limited to having no more than 24 kittens at any one time.
3. Subject to the review and approval of a Home Business by the Planning Board.
4. Subject to approval and receipt of any State licensing, including the NH Department of Agriculture.

THE MOTION PASSED UNANIMOUSLY

Variance Applications for Brian Byrne. Located at 1891 Little Sunapee Road. Tax Map 043-026-000. Zoned Residential (R-2), Shoreland Overlay District. Plan prepared by Everett Pollard, Northcape Design. The property abuts the State dam site on Little Sunapee Lake.

Everett Pollard presented the application. Brian Byrne, the owner of the property was also in attendance. Mr. Pollard proceeded to give background information about the problems the owner has faced concerning this piece of property. Last year, Mr. Byrne hired Northcape Design to design a new home on said property, which is west of the dam site on Little Sunapee Road. They received a building permit and State Shoreland permits from NHDES. In applying for these permits, they used the Town of New London's tax map to determine the property lines.

He explained that in November, 2014, a representative from the NH Dam Bureau came by the house and noticed the owner had put the new well on state property. Mr. Pollard explained the well located on state property has been capped and everything else that was placed on the state land has now been removed, including a generator. They also had to revise and resubmit to NHDES the Shoreland application, septic plan and tree cutting plans. They also revised the septic plan permit and are waiting for approval by the DES, The Planning Board recently approved a tree cutting, per the revised surveyor plan, point system for cutting trees.

Mr. Pollard noted that in his 30 years of doing business he had never come across a tax map that was so incorrect. Unfortunately, the error on the tax map was substantial costing his client a considerable amount of money, approximately \$30,000 so far. He noted that there is no requirement by the town to use a licensed surveyor when submitting a building permit or for any State NHDES applications. The owner

has since hired surveyor Raymond Critch to show the correct property lines. A copy of the surveyor plan has been provided to the Town.

Ms. St. John noted that a letter has been received from James W. Gallagher, Chief Engineer for NHDES dated Feb 3, 2015. The letter discusses the error in the tax maps and that the State has no objections to the variances requested.

Mr. Pollard reviewed the details of the variances requested, noting they will have to put in a temporary access road in the buffer zone to drill the new well and will put down fabric, then gravel, and will revegetate the site in the spring. He explained that the proposed well site shown on the plan is the only location on the property which is suitable for a well, due to required distances from the septic. He also noted due to the revised property lines, the house was constructed too close to the side setback and Mr. Byrne will need a variance for 8 feet.

Chair Green asked for questions and comments.

Ann Bedard said that her first question is why was the new house not sited on the envelope that exists on this particular tract of land? She noted it is a shore front lot and a nonconforming lot, and she does not understand why more due diligence was not observed before construction commenced on the site. Mr. Todd echoed that sentiment.

Mr. Byrne responded that he had purchased the land first and hired an attorney to do a title search. The attorney went back three transactions regarding the property lines, and the measurements were consistent with what is on New London's tax map today. When Mr. Byrne got a construction loan, the bank also researched the property lines, so he thought the property lines were correct and then proceeded to layout the site for a new house, septic and well. He thought all the necessary title practices had been observed.

Mr. Pollard said the surveyor who did the work for Northcape was even confused by the lot lines. Michael Todd asked why no one thought to compare the legal descriptions of the deeds with the distances shown on the tax map.

Ann Bedard asked how the original septic system got placed on state land – they must have had a record of these boundaries? Mr. Pollard said the septic designers relied on the New London tax map. Paul Vance inquired why the bank did not require a survey. The answer was that NH banks do not always compel borrowers to get surveys done in order to grant a mortgage and Mr. Pollard confirmed that this was the case.

Chair Green opened the Public Hearing.

- ✓ Jack Sheehan, is not an abutter but lives on Checkerberry Lane, was present. He noted his concerns pertain to the protection of Little Lake Sunapee and compliance with the local Shoreland Overlay Protection District requirements. He is chair of the Water Quality Committee of Little Sunapee Lake Protective Association. He does not object to the variance allowing the drilling of a new well, and also is in favor of granting a new setback requirement, but he says this reluctantly. He feels the location of the new well will adversely impact the quality of the water in the lake. Mr. Sheehan said this situation is the result of sloppy project management. He noted that the town passes zoning ordinances to protect their lakes and natural resources, but then these regulations are ignored. The town does not practice due diligence to be sure it is protecting what it's got. He suggested that natural resources are being adversely affected. He believes the Town needs to enforce the Town regulations.

- ✓ Pat Sheehan, is not an abutter but lives on Checkerberry Lane, was present. She noted that she is president of the Little Sunapee Lake Protective Association, however, she was not speaking officially, but personally. She welcomed Mr. Byrne to the neighborhood and encouraged him to get involved in one of the volunteer programs. She urged board members to pay more attention to the Shoreland Protection Act. Before granting building permits on the lake, the board must check to make sure due diligence has taken place before construction/renovation begins. She suggested that perhaps the town needs to require everyone to submit a survey with a building permit. Mrs. Sheehan also warned that the town is not paying enough attention to silt barriers. She noted that the lake is a valuable asset to the Town and area.
- ✓ Ms. St. John noted for the record receipt of the letter from James W. Gallagher, Chief Engineer for NHDES dated Feb 3, 2015. The letter discusses the error in the tax maps and that the State has no objections to the variances requested.

Ann Bedard asked Mr. Pollard if they could get a waiver from the NHDES regarding the distance of the well to the septic field. Mr. Pollard said NHDES will not grant a waiver.

Ann Bedard questioned the location of the new garage, which now does not meet the required setbacks. She asked if the garage were to be removed, could it still fit on the lot on the other side of the house in the building envelope footprint, and still meet all the required setbacks. She also suggested that the Board discuss possibly putting limitations for further development or construction on the lot on the other side of the house. She noted that other lakefront owners have had to meet the setbacks and other State requirements, and without further restrictions for other development on this site, this would give this property owner some advantages that others hadn't received.

Public Hearing Closed.

MOTION WAS MADE (Michael Todd) AND SECONDED (Cheryl Devoe) to begin discussion. MOTION PASSED UNANIMOUSLY.

Discussion

Chair Green began the discussion by noting that these variance requests are after the fact, which is unusual.

Michael Todd commented that he did not have a problem with the location of the well conceptually, since it looks like that is only place to put it. However, he thinks the other setback issue might more properly fall within the Equitable Waiver of Dimensional Requirements provisions of the RSA and Town Zoning Ordinance. Mr. Todd said certain factors would have to be found to make it work. He referred to Article XXI, Board of Adjustment, item (H), pages 87-88 of Zoning Ordinance which discusses the provisions for granting an equitable waiver of dimensional requirements. He suggested that the Board could rule on one of the variances and remand the other, asking petitioner to submit an application to hold another hearing on the setback. He referred to (H, 1. A-d), noting that the Board would need specific findings of fact to meet conditions. He did not think the board was prepared to do that at this time.

Ms. St. John explained that the applicant has inquired about submitting an application for an equitable waiver of dimensional requirements. She has discussed this briefly with the Town Administrator. Ms. St. John noted that the applicant was advised that she didn't think it met these requirements. The applicant decided to submit the variance request. She noted that the variance criteria are certainly stricter.

Chair Green said that the request for a variance is the strictest requirement the ZBA has. The board could approach this from the standpoint of dealing with the request for the variance first and depending on what the board decides, then perhaps the applicant has an option for the equitable waiver as a second course of action. Ms. St. John discussed the provisions to consider for granting an equitable waiver, including (H. 2), which pertains to a violation which has been in existence for 10 years or more. This does not apply. She reiterated, that she did not believe the applicant met the requirements, as item (b) states: "That the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, but was instead was caused by either a good faith measurement or calculations....." She noted that all applicants are advised they should know where their property lines are, and correctly depict this on the building permit application. She noted that the applicant was advised that it is always best to have a survey or be sure they know where their property lines are before building or doing any site improvements. She does not verify property lines in the field when a building permit is submitted. It is the owners' responsibility to know the location of the property lines or to seek the advice of a licensed NH surveyor.

Lengthy discussion ensued on the requirements for an equitable waiver vs. a variance. It was agreed that not enough evidence has been presented tonight to consider an equitable waiver. Chair Green opined that the main problem was that a survey was not done. Ms. St. John noted that the Tax Map Correction project has been discussed by the Town in the last several years and additional funding is needed to complete that project.

Michael Todd suggested the ZBA ask the Board of Selectmen to investigate this matter and make some suggestions as to how to prevent this situation from happening in the future. Mr. Pollard explained that Hogg Hill Design did the septic design and took care of permitting. He said they never saw the deed.

Ms. St. John commented that generally a copy of the deed is part of the property account file, which is public information. She noted that often members of the public come into the Town Office review a respective file, including reviewing deeds and other information contained in the file. Hogg Hill Design certainly knew the Town property account file is available for review. The deeds for this property are in the file.

Michael Todd recommended that the Board rule on the variance with respect to the well and continue the hearing for the purposes of addressing the second variance and consideration of an equitable waiver of dimensional requirements. He advised Mr. Byrne to get representatives from Hogg Hill Design to the next meeting, and at that point, the board could decide whether to grant relief under an equitable waiver, or decline to hear it and rule on the second variance and impose conditions. Mr. Todd suggested that the applicant research the conditions A through D regarding the equitable waiver in order to be prepared at the later hearing.

Paul Vance commented the discussion on the equitable waiver is really about (H. 1 a and b), as it appears that items (c and d) are not an issue, referring to pages 87-88 of the Zoning Ordinance.

Ann Bedard said she would rather grant an equitable waiver instead of a variance because it is a lesser ruling, and she feels strongly that due diligence was not done. This is an undersized lakefront lot and people who own lakefront property are jumping through hoops to get anything done. She feels the board needs to take a stand about how it is going to deal with these "oops" situations.

Cheryl Devoe stated that she agreed with the rest of the board members and felt that the applicant needs to really address items (a and b), as it appears (c and d) aren't really an issue.

A question was asked about the Planning Board's involvement and if a Certificate of Occupancy (CO) was granted. Ms. St. John commented that the Planning Board reviewed the tree cutting application. She also explained that when a NHDES Shoreland application is submitted, this information is included on

the Town's website, and is identified on the Planning Board's – agenda attachment list. Only under certain conditions would an application actually be reviewed by the Planning Board, for example the provisions of Article XVI, Shoreland Overlay District, item (I), Impervious Surfaces require some review by the Planning Board. She also explained that the Town does not issue a CO for a single family residential home.

Discussion Ended.

MOTION WAS MADE (Bill Green) AND SECONDED (Paul Vance) that the variance for the well should be discussed on its own merits. MOTION PASSED UNANIMOUSLY.

Discussion- Variance for the Placement of Well in the Waterfront Buffer and Disturbance of the Buffer.

Board members agreed that since this lot was substandard and nonconforming, and thusly the well could only be placed on the site in the location shown, and to construct the well the 50 foot waterfront buffer area will have to be disturbed.

The Board discussed the five (5) criteria that must be met to grant the variance:

- ✓ Variance is or is not contrary to public interest. Board members concur that locating the well in that space is not contrary to public interest.
- ✓ Spirit of the ordinance is observed. All agreed that it had.
- ✓ Substantial justice is done. All agreed that it was.
- ✓ Values of surrounding property are not diminished. Board members agreed the value should not be diminished as other properties on the lake have existing well within the waterfront buffer or in the 250 feet shoreland overlay district. Michael Todd noted the aesthetic impact would appear not to be adverse.
- ✓ Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The Board agreed that due to the fact that the lot is a nonconforming, and the shape of the lot, that the proposed well location is the only possible place for the well, this is a hardship.

MOTION WAS MADE (Bill Green) AND SECONDED (Cheryl Devoe): The public hearing was continued to Wednesday, March 11, 2015 for the variance to reduce the setback for the garage structure and for the applicant to provide a response to meet the criteria for consideration of granting an equitable waiver of dimensional requirements. The variances were granted for the construction of the well in the waterfront buffer and temporary disturbance for the installation of the well subject to the following conditions:

1. The installation of the well is to be completed when the ground is frozen.
2. No runoff of slurry and the slurry must be completely contained.
3. The slurry from the well installation shall be removed off the property once the well is completed.
4. The site shall be restored with native vegetation and other ground cover per the New Hampshire Department of Environmental Resources (NHDES), planting list, and shall not include any invasive species.

MOTION WAS PASSED UNANIMOUSLY.

Mr. Pollard reiterated that his crew will take all precautions to contain the slurry by pumping it to a retention basin. The natural berm will prevent it from getting into the lake.

The Board requested, Mr. Pollard will ask a representative from Hogg Hill Design to attend the meeting on March 11 to discuss the original septic placement and present a response to consider granting an equitable waiver. Chair Green advised that the applicant submit a completed equitable waiver application in advance of the meeting. Ms. St. John advised that it be submitted in a timely fashion so it can be posted and provided to the Board in advance of the continued public hearing date of March 11th. The applicant was advised to include arguments about why the garage was placed where it is currently located and why it should be allowed, and not be required to be moved to the other side of the house, and meet those setback requirements.

Other Business

Chair Green asked board members for input on how to avoid this surveying issue. He suggested there be a requirement that a current deed be reviewed when someone applies for a building permit. Ms. St. John commented that she does not review the deeds in detail, as it is the owner's responsibility to know where the property lines are located and to provide a correct sketch with a building permit application submitted. She explained that it is publicly know that the Town has been discussing the Tax Map Correction project for several years.

Chair Green feels that somewhere in the permitting process, a comparison should be made between the NH tax map and the deed description and most importantly to locate the boundaries of the property. If measurements are not the same, the applicant should be required to have the property surveyed. The survey would then be used to site the house and septic system.

After brief discussion, board members agreed that someone from the ZBA should approach the Board of Selectmen and ask them to adopt the procedure outlined above. Ms. St. John commented that she anticipates that public will not be happy if they must submit a survey plan when submitting a building permit.

Paul Vance suggested the board ask local banks not to lend construction or mortgage money without an up-to-date survey in hand. Chair Green suggested a certified boundary plot plan might work. Michael Todd agreed to appear before the Board of Selectmen to bring this matter to their attention and get their input.

Meeting Dates –Public Hearing of the Byrne application continued to Wednesday, March 11th at @6:30 PM

Motion to Adjourn

Motion to Adjourn was made by Bill Green and seconded by Ann Bedard.

Meeting adjourned at 8:58 PM.

Respectfully submitted,

Chris Work
Recording Secretary