



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA)
MEETING MINUTES
Tuesday, April 5, 2022
Whipple Town Hall, 6:30pm

MEMBERS PRESENT: Katharine Fischer (voting), Ann Bedard (voting), Frank Anzalone (voting), Lauren Chadwick (voting), Steve Root (voting), Heidi Lauridsen

MEMBERS ABSENT: Doug Lyon, Michael Todd

OTHERS PRESENT: Adam Ricker, Zoning Administrator, Caroline Leonard, Eric Schultz, Marilyn Soper

1. **Call to Order**– Frank Anzalone called the meeting to order at 6:30pm.
2. **Review of Minutes** – January 4, 2022

IT WAS MOVED (Ann Bedard) AND SECONDED (Katharine Fischer) to approve the minutes of the January 4, 2022 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

3. **Public Hearing – Application for a Variance**

Case # ZBA 22-02
Owner Eric and Susan Schultz
Applicant Eric Schultz
Address 148 Old Main Street
New Parcel ID107-01*9-000-000-000
Zone (s) Residential (R-2)
Overlay

Summary:

#ZBA 22-02 – The applicant is applying for a variance of the front yard setback as required by Article V, Section C., 1. of the Zoning Ordinance. The property owner is proposing to build a pole barn that would be located partially within the required 25-foot front yard setback.

Eric Schultz attended the meeting to present his application request for a variance. Mr. Schultz explained the reason for the variance is the proposed building lines up with the existing house that is already in the set back. It is not a change in the footprint in the structures on the property. He shared the whole purpose of the proposed building is to house a tractor that he just purchased and to store materials. Just past the septic field the land drops off drastically and is sloped. There was an alternate location identified but putting it in that area would ruin the value of the property as it would be out of place. It is also the only lawn area on the property as everything else is field and forest behind it.

The Board received information from abutter Michael Todd that stated that the functionality and look of the property and neighborhood is not deterred by the proposed location. Although he has not heard from all neighbors, Mr. Schultz stated the feedback he has gotten so far from abutters regarding the location has been positive. This will allow him to tidy things up on the property as well. It makes the most sense and is the most functional place for the structure. He provided pictures of the proposed location.

Mr. Schultz presented the following to support the criteria required for the variance:

1. **The variance will not be contrary to the public interest** – As previously stated, the property that it will be on is already in the setback in question and the new structure will be in line with the set back of the original structure. Putting the new structure five feet further back would look very awkward.
2. **The spirit of the ordinance is observed** – The new structure will not change the look of the neighborhood, because being an older neighborhood, most of the structures are within the 25' setback already.
3. **Substantial justice is done** – Allowing this variance will have no adverse consequences to my neighbors or the public. He also noted that his neighbors across the street just got the same variance.
4. **The values of surrounding properties are not diminished** – On the contrary; the whole purpose of the new structure is to make interior storage space for equipment, tools and materials needed for his business. They are presently creating an eyesore. The tree screen and stone wall that runs along that part of the property will remain in place to further diminish the structure visual impact.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**
It has taken a long time to be able to afford a tractor and he would like to put it under cover and it won't fit in the garage. He is not able to do things with his property that he needs to do. If he pushes the new structure 5 feet closer to the septic field, it will not be worth the cost to build the structure.

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

Moving the new structure away from the original structure's setback by 5 feet will not only make 140 square feet of the very limited level ground unusable but will look out of place and make it hard to use the new structure for the use intended without driving on the septic.

Frank Anzalone responded that although a variance was issued to the neighbor across the street, each case and each property is looked at individually. Mr. Anzalone stated in a yard setback, the key thing to know is what the setback is (what is the dimension from that property line to that structure). If a variance is being requested, we would need that dimension.

Mr. Schultz responded that it is stated in the zoning that his house is 20 feet from the setback. The proposed structure would also be 20 feet from the setback. The required setback in R-2 zone is 25 feet from the front yard. Mr. Schultz stated he tried to get a surveyor to come out prior to this meeting but they were unable to.

Mr. Anzalone stated in these situations the first thing he looks at is to see if an alternate location could be found for the structure. In the presentation, Mr. Schultz found another place to put it and he may want to work on other reasons why it doesn't fit there. There are guidelines that the ZBA must follow and just simply stating "it wouldn't look good there" doesn't fall under that. Mr. Anzalone stated the property does drop off and having a surveyor provide elevations would be helpful. Knowing the exact location of the septic is also important. Katharine Fischer agrees that more information is needed. Steve Root stated they need to know what the property line is, so they know where the set back is. They need data as a board that supports their decision.

Ann Bedard stated what she is hearing is that Mr. Schultz would like them to approve the continuation of non-conforming use on the property and they are no longer doing that. Not having the exact dimensions makes it hard for them to grant approval.

Mr. Schultz stated it is clear to him that without more precise information, this is not going to move forward. He is willing to continue this to a future meeting.

Caroline Leonard, an attorney representing the McElwee's attended the meeting. She clarified that although Mr. Schultz mentioned he has spoken to abutters and they are in favor of this proposal, that is not true. She stated her clients are opposed to Mr. Schultz' variance request. She stated a letter dated April 2, 2022, from Realtor Bo Quakenbos has been shared. In his letter, Mr. Quakenbos shared that "this has always been a scenic neighborhood and the proposal will alter the character of the area. Old Main still represents what you would expect with the name of the road, Old Main Street. The proposed structure is not in keeping with the neighborhood. It is my opinion that the values of the neighborhood will be adversely affected by the structure not being in conformity with the existing structures. The reduction in value would approach between 3-5% for the abutting properties. Based on the standards written in the ordinance, this application does not meet the spirit of the ordinance and they will be diminished value to the abutting properties". The Schultz' variance is contrary to the public interest because it would alter the essential character of the locality. The hardship factor is the hardest one that the board must assess and based on the discussion this evening it is evident that the board has concerns. Primarily the value of a tractor does not qualify as a hardship. There is case law and statute that spells out what is needed to satisfy the hardship criteria and it hasn't been demonstrated here. Ms. Leonard stated she reviewed the Schultz tax card and they already have three accessory buildings on the property. The applicants noted in their submission that this new structure is for interior storage space for equipment, tools and materials needed for his business, but he already has storage space on the property. She also added that New London zoning ordinances discuss home businesses and there may need to be a future discussion about that. She would like to flag this for the Boards attention as there is equipment and materials visible. Ms. Leonard stated the spirit of the zoning ordinance is to keep properties conforming and to create situations where the ZBA isn't making properties more non-conforming. If you grant this variance as it stands, it will continue to make the property more non-conforming which goes against the spirit of the zoning ordinance. In conclusion, Ms. Leonard would like the board to deny

the variance request as the applicant did not meet all five required criteria needed to grant the variance.

Mr. Schultz responded that if he moved the structure into the front yard area and closer to the neighboring property that would be a better solution? Mr. Anzalone responded yes, as long as it met all the zoning requirements.

Marilyn Soper stated she has not indicated support or opposition to the proposal but asked if he chose to relocate the pole barn closer to the driveway side of the property, what is the side setback from the property line? Adam Ricker responded in R-2 the minimum of 20 feet, but the two sides have to add to 50 feet.

IT WAS MOVED (Steve Root) AND SECONDED (Ann Bedard) to continue the hearing until Tuesday, May 3, 2022. THE MOTION WAS APPROVED UNANIMOUSLY.

4. Other Business

Adam Ricker had a discussion with the Zoning Board regarding communication protocol among board members. If you are party to an application and are on the board, any public comment input should go to him or Chair Doug Lyon. This would be treated the same as regular public comment from anyone who is not on the board and posted with the meeting materials or would be circulated to the board. Communication via email among the board should be kept to discussing meeting logistics only.

5. Motion to Adjourn

IT WAS MOVED (Frank Anzalone) AND SECONDED (Ann Bedard) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 7:36PM

Respectfully submitted,

Trina Dawson

Recording Secretary
Town of New London