



Town of Newton, NH

Newton Town Hall: P.O. Box 378, Town Hall Road, Newton, NH 03858

Town Hall Hours: Monday - Wednesday, 8am - 4pm; Thursday 12pm - 8pm

July 25, 2016 Board of Appeals Minutes

Newton Board of Appeals
2 Town Hall Road
Newton, N.H. 03858

MINUTES OF THE MEETING of July 25, 2016

CALL TO ORDER at 7:30 PM by Chairman Tom McElroy

ROLL CALL: Chairman Tom McElroy, Vice-Chairman Alan French, Brad Cardoso, Jack Kozec, Alternates Frank Gibbs and Ken Pelletier (sitting in)

Absent: Michael Connolly

GUESTS: MSC engineer Corey Colwell, Joel Daly, Michele Daly, John O'Connor, Marjorie Butland, Larry Zurek, Julian Sosa, Stephanie Sosa

No guests present for Jamie Gibbs signed in.

Mr. Gibbs was made a voting member in the absence of Mr. Connolly.

ACCEPTANCE OF MINUTES: A motion to accept the minutes of the meeting of June 21, 2016 was made by Mr. Kozec. Second by Mr. French. All in favor. Motion carries.

PUBLIC HEARING for Michelle (O'Connor) Daly and John J. O'Connor
of Waltham, MA
for property at 10 and 12 Marcoux Road
Newton, NH 03858

(Lots # 001-01-002 and #001-01-003)

Regarding a boundary line adjustment (Town of Newton Zoning Ordinances: Section XV: Residential A Zone Area Regulations, Paragraphs 2 and 3.

Michele Daly thanked everyone for their efforts and the Board for allowing them to return to discuss the issues: the stairs, driveway, and the explanation of the hardship. Also, she pointed out that there were several abutters present who perhaps did not have the occasion to speak last time and would like to do so this evening. She also pointed out that 2 of the abutters who had been present last time were not able to come again this time to speak in favor of their request.

John O'Connor III then took the floor to speak on the points in question: the driveway, the stairs, and the hardship.

1. Driveway: the application had been filled in and turned in, but Mr. Pivero told them that the application and permit would be held up till some determination was made by the Board of Appeals. The lot line adjustment had to be determined first.

2. The issue of the steps was discussed by the engineer, Mr. Corey Colwell. The steps would be removed and then built on Lot 2...

3. Hardship issue: a supplemental explanation was passed out to everyone. Mr. Colwell gave the Board a moment to read and told them that he would be there to answer any questions.

Mr. Cardoso thanked them for the addition of "creating a lot line adjustment and creating two more equal parcels for estate planning purposes which action will have no effect on any public or private rights".

Mr. O'Connor asked to see if they could keep the voting from last month and deal only with the hardship issue.

Mr. Cardoso made a motion to keep the voting from last month (all had agreed that the first 4 Criteria had been met) and vote only on the final hardship point. Second by Mr. Kozec.

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Before voting, Mr. O'Connor asked that the neighbors be allowed to voice their opinions.

Neighbors from #14 (T. Tremblay), 7 (J. Sosa), 9, (M. Butland) 6 (L. Zurek), and 16 (?) Marcoux Road all attested that they had no problem with this adjustment.

The Board was in agreement that as per the information discussed last month, and this added paragraph from the supplement handed out today, the conditions had changed, and the specific purpose (need) was to create 2 equal parcels (lots) for the purpose of estate planning. This was sufficient reason to accept the hardship existing. This would be fair and substantial, and the use is reasonable.

Mr. Cardoso explained that he wanted in writing the purpose of 'why' they are adjusting the lots, so that this could be referenced in the future, if other cases arise. This was sufficient reason for him.

Board members agreed that this was sufficient reason and that this situation would not affect anything in the future.

Mr. French brought up the fact that the variances requested had not been listed. The distances had been listed, but not the variances requested. After some discussion, the engineer understood the need for specific numbers, and sat down to make the adjustments. He recalculated the 8 variances:

- **Lot area needed a variance of 50,069 sq. ft. for Lot 2, and**

A variance of 50,850 sq. ft. for Lot 3

- **Frontage needed a variance of 97.5 ft. for Lot 2 and**

A variance of 95.14 ft. For Lot 3

- **Lot width needed a variance of 62.25 ft. on Lot 2 and**

A variance of 64.25 ft. on Lot 3

- **Side setback variance of 10.25 ft. was needed on Lot 2 and**

A variance of 10.25 ft. was needed on Lot 3

Mr. Colwell submitted a copy of the plan where all the requests were indicated. Mr. McElroy accepted the plan.

With all this information, followed by the vote on hardship: all agreed that the criteria was met.

Mr. Cardoso made a motion to grant all the requested variances based on the information provided/ amended this evening (7-21-16) on drawing #47165.00 by Cory Colwell dated September 29, 2015, MSC Civil Engineers.

Hearing closes at 8 PM.

Review for Pamela Brown, 60 Wilders Grove Road, Newton, NH 03858 has been withdrawn.

**Review for: Jamie Gibbs
 87 Smith Corner Road
 Newton, NH 03858
 (Lot # 008-02-006)**

- **Administrative Appeal (Section IX, Paragraph 1) “Reconstruction”**
- **Alternative Variance Request**

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Mr. Frank Gibbs removes himself from the Board for this issue.

Present are Daniel Muller, attorney CBZ law (Cronin, Bisson, Zalinsky), Mr. Todd Fitzgerald, Mr. Jamie Gibbs, and 9 abutters (and/or interested neighbors) who had not signed in.

Attorney Muller explains the situation: Jamie and Danielle purchased the property in January 2016, with the intention of rebuilding the previously existing structure which had been destroyed by fire in 2002. The original structure actually encroached into one of the side-setbacks. They intend

to build a single family residence. The structure is now complying with the side-setback. The original position is that no variance is required to build a single family residence. Alternatively, there is the reference to the non-conforming use provision, or the non-conforming structure provision, leading to the alternative, a variance request.

There is a copy of the plan in the packet, a septic design and general foundation, the new foundation which is now adjusted so the foundation is no longer less than 25 feet from the side line.

Historically the property has been used for both residential and commercial purposes. The fire destroyed the residence, but did not destroy the business. The business has continued. The Selectmen back then made a determination that the business was a pre-existing non-conforming use. It was/is not a non-conforming structure. It is not prohibited as a non-conforming structure, and the fact that there is a business there should bear no relationship, since that is a pre-existing non-conforming usage.

Mr. Gibbs did get a permit for the foundation, and the foundation is in. The building permit in question was essentially to build the house on top of it.

There is a copy of the 1986 determination of the Board of Selectmen (Exhibit A) allowing non-conforming use.

Lot size is 1.598 acres and is zoned Residential A. It is non-conforming as it is half residential and half commercial.

Mrs. Lauren Roberts, a neighbor, requests the ‘specifics’ of a ‘pre-existing use’ and what that area is zoned for. Is there a way to get ‘specifics’ on a non-conforming use?

Question of having both the existing foundation and the existing new foundation on the plans?

Is the residential attached to the old garage? Yes. Garage was commercial? Now, the garage should be residential only.

The garage will remain the commercial building. The only residential building is the ‘residence’.

Mr. Cardoso asks them is they are indeed asking for an ‘administrative appeal’? Yes... It appears we “try to do something indirectly that cannot be done directly”.

The business is a non-conforming use, a residence is a permitted use. It is not a non-conforming use. It has nothing to do with the business. It is a permitted use in the zoning district. That’s what they are looking to build here and what they are trying to do, from our perspective, is control a vested right. Both the State Statute and State Constitution protect pre-existing uses. A residence is a permitted use.

You cannot expand a non-conforming use without an appeal.

Mrs. Pelletier comments that since they purchased their home in 1988, this business has grown tremendously. The permit says that this is a facility to repair heavy equipment and automobiles.

There is something more than that going on. It sounds like aggregate sorting. Whatever they are

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doing ‘shakes’ the dining room stuff. The china cabinet shakes (Mrs. Roberts agrees) and she is 3 or 4 properties away. The neighbors have no objection to building a house, but the business is doing more than they are allowed to do. The neighbors have filed petitions and voiced opinions to the Town officials. They are ready to go to the State at this point.

Mrs. Roberts adds that it sounds like they are crushing rocks. This is not on a rare occasion, this is practically every day for the last 4 years. We have gotten no satisfaction. This Board understands the concern, but this is too much detail. This is just a review of the materials to see if we can hear this case. The residents want to know what they need to do. “We’re not getting anywhere.”

Mr. French explains that this Board deals with measurements, anything other is not in their jurisdiction.

“Who does?”

“Six years ago this was not an issue. Now, there are no more woods left. It’s nothing but noise. “

You would need to go to Board hearings, or the Selectmen.

Mr. Cardoso explains that there is no control her. If it is a non-conforming use, they should not be expanded. There should be no changes, but can be maintained.

Attorney Muller adds that “With all due respect, common law does allow for some expansion.”

“Natural expansion” adds Mr. Cardoso.

“No necessarily”

Discussion on Section XI Paragraph 1 “Non-conforming structure” is what is being discussed, that’s different from non-conforming use.

Discussion on non-conforming structures...and being the title of the section...and what exactly we are dealing with... That’s what is sited in Section XI Paragraph 1 – Reconstruction of any non-conforming structure... Concept of non-conforming structures on non-conforming lots...

Mr. Cardoso is against hearing this appeal. Once changes are made, here to the foundation, that changes things. He feels it should go back to the Planning Board for Review. This is beyond the Board’s expertise and what should be done here. It is a Town Planning issue, not a dimensional variance... The non-conforming use situations should all go back to the Planning Board.

Attorney Muller continues, with all due respect, that this ‘review process’ is new to him, and that his client has a statutory right to ‘an administrative appeal’. Whether you agree or not, it should be heard. But to preserve the state of the record, thank you.

Statute 674.33 states that defines the Zoning Board’s powers. One of the powers is to hear ‘administrative appeals’. When it is an issue of construction, application, interpretation – that’s the Zoning Board.

The Board wishes to have the Planning Board contacted, and set up a joint meeting of the Planning Board and the Zoning Board to iron out some of these issues. The Building Inspector should also be in attendance. This appeal can be continued after this meeting.

Attorney Muller places an objection before the Board – one of the members of the Board is the husband of one of the ladies objecting and he sits there discussing things with another member of

the Board. He shouldn't be allowed to sit. Whether he is voting or not, it should not be allowed. Mr. Cardoso rebuts with similar discussion that took place earlier, with the father of the Applicant.

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Mr. Pelletier and Chairman McElroy explain that he was explaining the map and had removed himself from the voting before the meeting. Members of the Board think that it would be beneficial to discuss this with the Planning Board. An attempt would be made to do so before the next meeting. Attorney Muller wants it to go on record that he objects. The Board feels that it is in the best interest of the Town.

Review is closed at 8:40 PM.

NEW BUSINESS:

MEETINGS: The Board objects to having to change their meeting times and place. For years, and until their October meeting, they have had the 3rd Tuesday in the big hall for their meetings. The Selectmen needed the big hall for that meeting.

Now the Selectmen have changed and taken over that slot.

After much discussion, the Board members would like to set up a joint meeting with the Planning Board at their meeting, August 16, 2016 (which is the 3rd Tuesday). The secretary will see if the Board can be put on the agenda. Then, they will try to meet the 2nd Monday of the month, which would be September 12, 2016.

Board members told Mr. Gibbs and Attorney Muller that they should be ready to hear the appeal at that September 12 meeting.

At 8:45 PM, a motion to adjourn was made by Mr. Kozec. Second by Mr. French. All in favor. Motion carries.

NEXT MEETING will be Monday, September 12, 2016.

Respectfully submitted,
Jeannette S. Clark, secretary