



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

June 21, 2016 Board of Appeals Minutes

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

MINUTES OF THE MEETING of June 21, 2016

CALL TO ORDER at 7:29 PM by Chairman Tom McElroy

ROLL CALL: Chairman Tom McElroy, Vice-Chairman Alan French, Brad Cardoso, Michael Connolly, Jack Kozec, Alternate Frank Gibbs
Absent: Ken Pelletier

GUESTS: Atty. Justin Pasay, MSC engineer Corey Colwell, Joel Daly, Michele Daly, John O'Connor, Pam Brown, Marjorie L. Butland, Donna L. Madore, Raymond Madore, Victor Daly, Larry Zurek, Julian Sosa.

ACCEPTANCE OF MINUTES: A motion to accept the minutes of the meeting of May 17, 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.

The Hearing began with Attorney Justin Pasay, of DTC attorneys of Exeter, NH on behalf of Michele O'Connor Daly and John J. O'Connor of Waltham, MA, giving his presentation. He pointed out that there were family members and most of the abutters present. He gave his 'quick overview' on what the point of this meeting was, and the goal desired, to grant a 20,000 foot variance.

He pointed out that there were 8 variance requests, 4 requests for each of the 2 properties. The properties being discussed are #10 and 12 Marcoux Road.

Both of these properties abut Country Pond. Tax map #001-01-002 and 001-01-003. Lots 2 and 3 are those to be discussed. Lot 2 is 30% larger than Lot 3. The side lot setback on lot 3 is significantly less than lot 2.

Attorney Satay pointed out on the map both the existing and the proposed boundary lines. There is need of 4 dimensional variances for each of the two properties: lot area, frontage, side setback, and lot width. The metric for each of these are to be found in the application.

Attorney Satay then explained that the property had been in the O'Connor family for generations, and that Michele and John wished to keep it that way for oncoming generations. The goal here is to have the 2 lots similarly situated and similarly laid out.

The attorney then explained the standard for the 'hardship' law as it exists in NH today. The law says one needs to show that due to special circumstances of the property, there is no fair and substantial relationship between the Zoning Ordinance and the land, and that the use is reasonable.

The special circumstances of these properties is that they pre-date the Zoning Ordinance. The structure and the lots themselves were there long before there was a Zoning Ordinance in Newton.

Application of the Zoning Ordinance to almost any part of the property is almost impossible. Those are the special circumstances, and as it is very relevant in the criteria, nothing will change with regards to the appearance of the neighborhood, the essential character of the neighborhood, and it will remain precisely as it exists today.

Michele was next to speak. She thanked the Board for hearing this today. The property, next year, will have been in the family for 100 years, and it is "part of who we are. We have grown up here, our neighbors are like family...so much so that I married the boy next door." Now the owners have their own families, their parents have passed away and left them these properties, and they are looking at making estate plans for their own families. They want their children to grow up here and be able to pass it on to future generations. That's what they desire, and their neighbors are all there in support because they know how important this place is to them.

John also thanked the Board members and the neighbors. He told the Board that they had spent this last weekend on the property and he had the opportunity to see how deeply their root run.

These are not just neighbors, they are family. He hopes that the Board will grant this request.

Questions were next. 1. Are these 2 separate lots? Yes, replied Mr. Pasay and that raises a point.

Per the tax map referenced, they are taxed as 2 lots, but in the history the deeds, there are 5 lots. The title history is a mess. There are 5 distinct parcels. The goal here today is to get these properties divided properly so that they are more equal. We need to get relief from this Board, and then go to the Planning Board to get a lot line adjustment. The goal would be to structure the deeds and fix the titles. The owners could each take a parcel, but one is substantially larger than the other. It makes sense to have a common boundary, essentially equidistant on the two properties. They are seeking a dimensional variances in order to adjust a lot line, as per the Planning Board. That is the only use being contemplated. No one is talking about anything else happening on these properties.

Attorney Pasay then went on to discuss the Criteria. The analysis of the first two criteria go together, as they are essentially the same thing. The Supreme Court has made up 3 basic tests. The first is whether or not the proposed variances would violate the basic objectives of the underlying zoning ordinances. We are talking about Articles 15, 2 and 15, 3, which are articles that apply to property in the Residential A Zone, and it includes all the dimensional requirements. The purpose of the ordinances is to control density, to control growth, and to control congestion. With regards to this first test the Supreme Court has given us, do the variances requested frustrate those purposes? No. Because if the variances are giving, nothing will change.

The second test: the Supreme Court has said, and again we are analyzing the first 2 Criteria, will there be change to the neighborhood. No.

The third test the Supreme Court said 'will granting the variances detriment the public health and welfare? No, obviously.

#3 – Is substantial justice done? Balancing the needs of the individual and the needs of the Town.

Benefit to Michele and John is significant. There is no detriment.

#4 – Any diminishment in property values? No – these new changes will make more sense.

#5 – hardship? Is this the only use for the property? The explanation in the application correctly summarizes what the Supreme Court said. The applicant must establish that because of the conditions of the property, the restriction, as applied to the property, does not serve the purpose in a fair and substantial way. Since the purpose of the underlying Zoning Ordinance has already been established, to manage density, manage growth, and manage congestion. Due and owing to the circumstances of this property, which existed well before the ordinances, are those provisions fairly applied to these properties? No. If the Application is denied, growth and density will not be preserved. Granting the variances, everything will stay the same.

There is no relationship between the ordinances and these properties. The ordinances apply to new properties being developed in town.

Is the use a reasonable use? No change from the use right now. Still remains residential.

The granting of these variances will give Michele and John the opportunity to clear up the title history, convey properties that are more equal for the benefit of their own estate planning.

Questions:

Reason you're not using the current tax line now? How does that restrict you? One side yard very narrow, and the other extensive, and one lot is significantly bigger than the other. The reason is to create a side yard? Yes.

That is nowhere in the Application.

One Board member cannot see how the zoning laws is restricting the use of these properties.

What is the restriction?

There is no law saying that we must prove that the zoning law is restricting the use of the properties, but is there a fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance to the property? And, is the proposed use a reasonable one?

The next step would be to create accurate deeds for the two equal properties. That's the whole point.

Question about the 'steps'. They will be abandoned, or removed. Looking at the location, they would be made impassible as they are good erosion control for the embankment. Attorney Pasay suggests a condition on a variance grant that says that these steps are to be made impassible.

**The main thing is it's non-conforming use...a non-conforming lot...
They will remain non-conforming. They are not anywhere near what the minimal lot size is now – 60,000 square feet. Both these lots together would still be non-conforming.**

**Chairman McElroy asks if the abutters have any questions or comments.
Raymond Madore, 8 Marcoux Road, told the Board that when bought the house in 1977, the seller had to put 5 deeds together to create this lot.
Mrs. Butland said that they had been there for 53 years and also had the same problem.**

Mr. Gibbs questions a driveway entrance for the new lot. No paperwork is to be found for a driveway permit. No one has applied yet. It can be handled one of 2 ways: apply for a permit, when it doesn't make sense unless the boundary line adjustment is granted. The second way is an easement, which does not require Board approval.

The Board will go through and vote on the Criteria.

- 1. Public interest – all agree**
- 2. spirit of the ordinance – all agree**
- 3. substantial justice – all agree**
- 4. values – all agree**
- 5. hardship – 2 agree (McElroy, Kozec) 3 not in agreement (Cardoso, Connolly, French)**

Reasons: vague, not enough detail, does ordinance impose burden? Equitable manner? Not enough detail...

Is this a benefit? Or a convenience?

Example of a porch... burden, not enough space... this is a negative change... proven everything that is required in the application...

Mr. Cardoso needs more of an explanation for #5..

Mr. French still concerned with the steps. They were/are to be removed.

They will amend the plan.

Chairman McElroy asks if they should schedule a continuation.

**Mr. French feels that they need to come back with applications for wells, septic, driveway...
The Board is not concerned with the water or septic. Even a driveway. Those things are usually done afterwards. All that is necessary is to add a caveat, if necessary.**

Michele requests that the Board recap that which is necessary... Steps to be removed... erosion control... easement for steps and driveway, regardless of location on lot...

- **Easement**
- **Driveway**
- **Proof of ordinance/ imposing burden/ to be explained in writing...**

Mr. O'Connor emotionally explains how this is a real burden financially.

Board members try to explain that this will probably set a precedent, so everything must be included.

Mr. Kozec makes a motion to continue this Hearing at the next meeting. Second by Mr. Cardoso. All in favor.

Hearing closes at 8:30 PM.

**Review for: Pamela Brown
60 Wilders Grove Road
Newton, NH 03858
(Lot # 002-04-011)**

Applicant is seeking to install a screened-in porch on an existing concrete patio pad.

- **Expansion of Non-Conforming structure: Section XV Residential A Zone Area, #3 – Location on Lot. (Setbacks shall be 25' from lot lines...**
- **Section XXVII, #8b: 50 feet from any poorly drain soils (pond).**

Ms. Brown explains that she lives on Country Pond and what she proposes doing on her patio pad.

Then she explains that she has 2 abutters and they are in favor (shown by 2 attached letters).

The previous owner had a tent type screen house. She wants something a bit more permanent.

Mr. French suggests something free-standing. One of the main reasons for this enclosure is that she has 2 rather large exotic birds, and she would like to be able to safely give them a bit of fresh air.

She explains the construction screens/windows/ skylights. The roof will be flush with the existing roof of the house. Overhangs aligned with existing overhang of the house. She has contacted the State about the wetlands rules.

Does not need a wetlands permit, nor a shoreline permit.

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The pad is attached to the house, a part of the house. It is a 4" slab and the proposed enclosure would be bolted to both the slab and the house.

Mr. French and Mr. Gibbs are concerned that it is to be attached to the house.

Mr. Gibbs said that such a slab needs a foundation and needs to be 4 feet deep, since the enclosure would be bolted to the house. It needs a more concrete slab. Any occupiable area needs to be reinforced for frost.

Mr. Cardoso reminds the Board that this is the Building Inspector's area. This could be a safety hazard.

She has a denial on the location, not the structure.

Mr. Cardoso suggests a 'mat Slab' (reinforced slab) and her engineer could do that. It would resist frost heaves. This is still Building Dept.

This Board deals with dimensional variances, nothing with building.

A retractable awning was another suggestion.

Ms. Brown will try to get everything done for the next meeting.

Review concluded at 8:40 PM.

OLD BUSINESS: None

A motion to adjourn was made by Mr. Kozec. Second by Mr. Cardoso. All in favor. Motion carries.

Discussion on absences at the next scheduled meeting. Since 3 members would be absent, they decided to reschedule.

Also, the question of "why we are meeting in this back office. Why are we no longer in the hall?

Have we been demoted?" Mrs. Clark explained that the Selectmen have moved their meeting to our Tuesday meeting evening, and they generally need a larger room. Mrs. Clark made the decision that it would be OK to meet in the back office when there are no scheduled Public Hearings. Now, it has come up and the Board has not been happy with meeting in this back office.

They want to go back to their regularly scheduled room. Mrs. Clark will confer with the Secretary to the Selectmen to see if this is possible.

NEXT MEETING will be Monday, July 25, 2016.

**Respectfully submitted,
Jeannette S. Clark, secretary**