

Newton Board of Appeals  
2 Town Hall Road  
Newton, NH 03858

MINUTES OF THE MEETING of July 9, 2018

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

ROLL CALL: Chair Tom McElroy, Jack Kozec, Michael Connolly and Frank Gibbs.

Mr. McElroy appointed Frank Gibbs a voting member in Brad Cardoso's absence.

ACCEPTANCE OF MINUTES: A motion to accept the minutes of the meeting of June 11, 2018 was made by Mr. Kozec. Second by Mr. Connolly. Motion carries.

Public Hearing:       Variance of Newton Zoning Ordinance, Section X,  
Paragraph 4 (unregistered motor vehicles)  
Robert Ferrara  
43 Country Pond Road  
(Map 5-Block 1-Lot 1)

Attorney Derek Durbin presented on behalf of Mr. Ferrara. Mr. Durbin asked about the make-up of the Board. He was told there are five Board members and two alternates. There were three Board members and one alternate member in attendance at tonight's meeting. The property being discussed tonight is 23 Country Pond Road. The property is classified Residential A. The Applicant's situation is unique. The Applicant has owned the property since 1980. The Applicant has kept two or more uninspected vehicles on the property believing the use of his property did not violate the Zoning Ordinance. Mr. Ferrara registered all but one of his vehicles from 1980 through 2017. Working on antique cars is a hobby for Mr. Ferrara. When the Town of Newton sited him in violation of Section X, Paragraph 4, Mr. Ferrara stopped registering the cars. He stopped registering the cars because he was in a dispute with the town over the violation. Mr. Durbin said Mr. Ferrara was in compliance with the Zoning Ordinance, but then the language in the Ordinance changed. Per an agreement they reached with the Town they offered to present this to the BOA instead of litigating the matter. Currently there are six unregistered, uninspected vehicles on the property today. The cars are currently occupying approximately 650 sq. ft. at the end of his driveway. The applicant is proposing to build a 32 foot by 6 foot high fence across the driveway to eliminate the view from the West. The other directions are buffered by natural vegetation.

Mr. Kozec asked about the complaint. He referred to an email received from the Code Enforcement officer stating, "The complaint came from the Health Officer for the Town of Kingston and NH Department of Environmental Services. The Rockingham Superior Court did rule that Ferrara was in violation. Mr. Ferrara is making restitution to the Town for attorney fees." This email was in response to a question at the June 11<sup>th</sup> meeting by Mr. Gibbs. Mr. Gibbs asked if a complaint was made against Mr. Ferrara and by whom. Mr. Durbin was not

aware of what Mr. Kozec was stating. Mr. Durbin stated that that information was not disclosed to them concerning the violation process and who initiated the complaint. Mr. Durbin stated that the Town of Newton never mentioned the complaint. Nor was there a complaint of leaking oil/fluid. He stated they were told that Mr. Ferrara was in violation of the Ordinance. He stated that he was under the belief that the complaint was initiated by the Code Enforcement Officer. He stated he never saw the letter or complaint. He stated that the violation came to the Town in one way or another. He stated that the violation citation coincided with the change in the language of the Ordinance.

Mr. McElroy stated that according to the email that the Board received, there was also a complaint by DES. Mr. Durbin did not have any knowledge of a DES complaint. Mr. McElroy stated that the BOA did not have a copy of the complaint, so they do not know what the complaint was. Mr. Durbin wondered if the complaint that they were talking about was the same issue they were discussing tonight. Mr. Durbin spoke of the Disclosure Process and stated that this was never disclosed to him by the Town. He said the Town Attorney provided him with the back-up, and that there was no complaint as part of that back-up. Mr. Gibbs stated that the email/complaint was not about the cars. Mr. Durbin stated that his client isn't aware of any complaints from the State. He stated he has not received any complaints and is not sure what the Board members are talking about. He said there is a disclosure process and they were not aware of these complaints. Mr. Durbin states he thinks this is more a problem for the Town than his client. Mr. Kozec read from the email, "Mr. Ferrara is making restitution to the Town for attorney fees". Mr. Durbin stated that makes it sounds like his client already lost the appeal. Mr. Durbin stated this is possibly in violation with the Town settlement agreement. Mr. Durbin stated that this was all new to him and was not disclosed previously. Mr. Durbin stated that he felt this was a huge problem. Mr. Kozec stated that for the BOA it's not a problem, but Mr. Durbin said it would be difficult to make a decision based on the merits of the application. Mr. Durbin requested a recess to talk with his client. Mr. Durbin stated that the complaint that the BOA is referring to has nothing to do with the application being presented to the BOA tonight. Mr. Durbin stated he has a big problem with this. The Town should not be acting as an advocate.

At 7:47 PM Mr. Durbin took a short recess to confer with his client. At 7:51 the Public Hearing continued.

Mr. Durbin said he spoke with his client. He said he's never been involved in a case with the Town. This application has nothing to do with the 2015 complaint that was spoken about tonight and that when Mr. Ferrara spoke with the former Code Enforcement Officer it was simply related to the number of cars on the property. He said he's never been involved with any restitution claims. Mr. Durbin said he was not sure what this is about and he does not believe it is valid.

Mr. Durbin said he would be more than willing to submit a joint letter with Attorney Sumner Kalman, the Town Attorney. Mr. Durbin said the complaint from the Code Enforcement was very straight forward. Mr. Ferrara was in violation of the Newton Town Ordinance Section X, paragraph 4.

Mr. Kozec made a motion to continue the public hearing until the next BOA meeting August 13, 2018. Second by Mr. Connolly. Motion passes with unanimous vote.

Public Hearing:       Variance Newton Zoning Ordinance, Section XV  
Paragraph #3 (location on lot)  
Joel and Michelle Daly  
12 Marcoux Grove  
(Map 1-Block 1-Lot-3)

Mr. Joel Daly appeared before the Board. Mr. Daly thanked the Board for their time. He told the board members he has a long history with the Town and community. He is a Sanborn graduate. The property is located at 12 Marcoux Grove. It's a non-conforming lot/non-conforming structure.

They are looking to replace the existing structures and will maintain the character of the neighborhood with the new proposed structure. The Daly's are asking for a ten foot, two inch variance on the South side of the property; and an eight foot, eight inch variance on the North side of the property. The lot is sixty feet wide.

They have consulted with a wetlands expert and the structure will be fifty feet, one inch from the lake. Mr. Daly presented the Board with letters of support from three of his neighbors. Neighbors that showed up at the meeting said they had no problem with the Daly's plans.

The Board members reviewed the Variance Standards (also known as criteria). Board members unanimously voted "yes" on each criteria standard.

Mr. Kozec made a motion to grant the appeal based on the plot plan prepared by Civil Construction Management, dated April 16, 2018, drawn by D. Nally, MSCE and checked by Dennis Quintal, PE (license number 8401). The variance granted is ten feet, two inches on the South side of the property and eight feet, eight inches on the North Side. Mr. Connolly second with unanimous vote.

**Review:               Variance Newton Zoning Ordinance, Section XI Non-  
Conforming Lots, Structures and Uses and Expansion Non-  
Conforming Structure  
Rachel and Jude Petillo  
7 Whittier Street  
(Map 6- Block 9-Lot 34)**

The Board members reviewed the site plan. Mr. Petillo told the Board members he's already been approved for an accessory apartment by the Planning Board. He is now looking for a six foot, five inch variance. Mr. McElroy stated that the application was complete and the Petillo's appeal will be placed on the August 13th Board of Appeals meeting.

There is/was no old business or correspondence.

At 8:26 PM, a motion to adjourn was made by Mr. Kozec. Second by Mr. Connolly. All in favor. Motion carries.

Meeting adjourned at 8:26 PM.

NEXT MEETING will be Monday, August 13, 2018 at 7:30 PM.

Respectfully submitted,

Gail M. LeBlanc, Secretary  
Board of Appeals