

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – November 3, 2014

**Call to Order:** Chair Matt Morton called the November 3, 2014 meeting at 6:30 PM.

**Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Jim Weiner; Planning Board Representative, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, Recorder

**Public Guests:** Attorney Bernie Pelech, Joe Calderola, Doug LaRosa with TriTech Engineering; Alan Wilson; Attorney Chris Mulligan, Edna Mosher, Mike Marconi; Dave Mueller

**Minutes:**

*Ted Connors moved to accept the Minutes of September 29 and October 30, May, June and July 2014 meetings. Ralph Estes seconded the motion.*

John Frink said he had not had a chance to go back and read the May, June, July and October 2014 meeting minutes and he would like to read them again before approving them.

*Ted Connors withdrew his motion and moved to **accept** the Minutes of the **September 29, 2014** meeting with corrections as discussed. Ralph Estes seconded the motion and all members except Justin Richardson voted in favor.*

1) **Public Hearings:** Request by **Beane Farm, LLC** for a variance from Article XIII of the Zoning Ordinance in order to permit the expansion of a non-conforming structure at **233 Nimble Hill Road, Tax Map 17, Lot 4.**

Attorney Bernie Pelech said although many towns do not require a variance so long as the addition complied with the setback, Town counsel had sent an email saying a variance was required for an expansion on a non-conforming structure at 40' from Nimble Hill Road, although it was not encroaching the setback.

Attorney Pelech reviewed the five criteria for granting the variance, stating that the existing home was beyond the setback and would not substantially alter the character of the neighborhood and would not be contrary to the spirit of the Ordinance. He added

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that traffic would not be intensified with the cul-de-sac so there would be no threat to the public safety, health or welfare.

Attorney Pelech said it was an old house that was in compliance with the setbacks so substantial justice would be served in granting and there would be no benefit to the public in denying the variance. He said no abutters would be adversely affected and there would be no diminution of surrounding properties.

Attorney Pelech said there were special conditions to the property that created a hardship for the applicant because the existing home was non-complying as it had been there since the 1700's or 1800's before zoning. He said there was no fair and substantial relationship between the intent of the ordinance as applied to the property and it was a reasonable and allowed use.

Planning Board representative, Justin Richardson said it didn't pertain to the variance, but he wanted to be clear that they were aware that they had to meet the requirements for the front yard setbacks on both streets where a property abuts multiple streets. Attorney Pelech said they understood.

Board member, Ralph Estes asked if the addition would be for one big house and the developer, Mr. Joe Calderola said he planned to renovate the existing house along with the attachments and would add a second unit to look like a big barn with an attached garage. He said it would not mimic the existing house, but would be in keeping with the historic look of the house that was prominently featured at the front of the lot.

Mr. Frink said it was not in the Board's purview, but wondered if there could be a requirement in the homeowner's association to guarantee that the aesthetics of barn façade would remain. He also wondered if potential buyers would want to live in or maintain a structure that looked like a barn. Attorney Pelech said there would be a homeowner's association agreement, but it didn't say the structure had to always look like a barn, although they would be willing to discuss it.

Mr. Calderola said he would have architectural review of all changes and then the homeowner's association would also review them. He said this unit would have one-sixth of the association's vote. He said substantial changes would require changes to the floor plan and although the barn windows were incorporated into the floor plan and an owner could ask that they be bigger, he would prefer that they not so he could put that stipulation in the covenant.

Mr. Richardson noted that the screen porch for Unit #2 was not shown on all the plans and renditions and Mr. Calderola said it was an oversight. Mr. Richardson said it was not problem because it was not encroaching the 40' setback, but asked about the bump out from the house. Mr. Calderola said he would remove and replace the existing front porch with a smaller one. Mr. Richardson recommended that he also show the existing footprints on the plans.

Attorney Pelech said they had no problem with a condition to shelve the screen porch change or adding a stipulation for architectural approval and maintenance of the barn appearance in the homeowner's association agreement.

Mr. Richardson said there was some confusion as to who the applicant was and Mr. Calderola said he was the principal member of Dennet Farm, LLC and there were no partners.

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Chairman Morton asked Mr. Calderola if he was planning on living in any of the units, and Mr. Calderola said he and his wife were considering it.

Mr. Alan Wilson of Nimble Hill Road said he lived on the other side of the road and he was fine with the proposal so long as it was in keeping with the neighborhood's appearance, but he was concerned with how close it was to the other abutter's side yard. Mr. Calderola said they would be 40' from the abutter on the right with the porch and 54' without the porch.

Ms. Edna Mosher of Nimble Hill Road said she believed in property owner rights, but expressed concern that the historic house was being turned into a duplex, taking up all the frontage and crammed up to the abutter on the right. Attorney Pelech said duplexes were an allowed use and that was not the application before the Board of Adjustment at this time.

Mr. Richardson expressed concern that the view of the front would be too dominating from the street. Mr. Calderola said the additions would step back and back to avoid overwhelming the view. He said they would also keep one of the ash trees in the front along with the stonewall.

Mr. Frink said he thought a condition for approval should refer to the fourth criteria that the addition be in keeping with the surrounding area. Chairman Morton suggested a deed restriction. Mr. Morgan said he didn't see how they could enforce a subjective view of what was in keeping. Attorney Pelech said the condition could reference the rendering submitted. Mr. Frink asked if a rendering would be considered a legal document. Chairman Morton said it was not uncommon to record designs and make stipulations in deeds to restrict owners from doing certain things to the exterior of buildings, but condominium owners could still change the interiors.

Mr. Calderola said there would be a homeowner's association agreement that affected everyone living in the development as well as a condominium owner's declaration. Mr. Richardson said the Board could review the documents, but they were part of the condominiumization that was defined in the subdivision, which the Planning Board could require as part of their approval, along with the architectural style. He said the devil was in the details because there were extremes in condominium association ownership from buildings to driveways to mailboxes so they would need to send a message to the Planning Board to clearly define and maintain the architectural style. Attorney Pelech said he didn't think the ZBA had the authority to kick the can down to the Planning Board, but they could attach a stipulation for approval.

Chairman Morton asked about the status of the shared driveway. Mr. Richardson said it was not a shared driveway, but was a cul-de-sac designed to meet the criteria as a town road. Town Planner, Tom Morgan said his view was that the Town eventually owned all such roads. Mr. Richardson said the Planning Board made it clear that the Town would not take over the road. Mr. Morgan said he shared their sentiment, but said the Board of Selectmen eventually accepts every development road. Mr. Frink said the cul-de-sac was created to meet the 200' frontage requirement.

Mr. Estes asked if the homeowners association would be responsible for the upkeep of the road and Attorney Pelech said they already submitted a maintenance agreement to Town counsel, Attorney John Ratigan.

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Mr. Estes said one driveway appeared extremely long and Mr. Calderola said it was 500'. Chairman Morton asked if it was buildable considering how wet the area was. Mr. Richardson said the Planning Board had not resolved the issue of the long driveway being built right up to the 25' no disturbance or cutting buffer.

Chairman Morton asked if the association would maintain the roads and Mr. Calderola said he wasn't prepared to commit who was responsibility for what to whom at that point because they were only before the Board asking for a variance that was limited to the plans submitted so far.

Chairman Morton asked what price range they would be asking for the condominium units and Mr. Calderola said they would be in the \$600,000 range. Questions were raised as to the pertinence of the question and Mr. Weiner said he thought the pricing was germane to market values of surrounding properties.

Mr. Mike Marconi of Coleman Drive said he understood it was not part of the application, but he was concerned with wetlands overflowing because he was an indirect abutter that could be affected.

Mr. Marconi also said as a real estate appraiser he understand Mr. Frink's concern and wondered what the City of Portsmouth's Historic District would do to protect the historic value of the house. Mr. Connors said the question was irrelevant because the house was not in the Newington Historic District. Chairman Morton agreed, adding that the applicants could tear the house down and rebuild just as happened to the historic house on Fabian Point. Mr. Morgan said he was sympathetic to that point, but he agreed with Ms. Mosher's statement that there were few historic houses in Newington and he was uneasy with trying to lock into the current design because he thought there might be some things that could be changed to keep the structures more historic looking. Chairman Morton said it was not up to the ZBA to decide and Mr. Morgan agreed, but said the entrance along the stonewall had not changed since 1830 and the developer might be open to suggestions.

Mr. Wilson said he could not find the old farmhouse on the National Register of Historic Homes. Mr. Morgan said they were eligible to be on register, but the developer was not proposing to use any Federal funding so not they would not be subject to Federal guidelines.

*Ted Connors moved to **grant** the request by Beane Farm, LLC for a variance from Article XIII of the Zoning Ordinance for the side yard setback in order to permit the expansion of a non-conforming structure at 233 Nimble Hill Road, Tax Map 17, Lot 4 and Ralph Estes seconded the motion.*

Mr. Frink suggested they add a condition that the rehabilitation of the existing structure would be an aesthetic improvement. Mr. Richardson said it would be too difficult to enforce and suggested the condition say the following:

- 1) That the building footprint be limited to areas as specifically approved by the Planning Board on the subdivision plan*
- 2) That they revise the plan to show the 14' x 14' porch on the Unit 2 floor plan*

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- 3) *That the applicant provide condominium agreements to maintain the architectural character of existing buildings to be approved by the Planning Board.*

*Mr. Connors agreed and Mr. Frink moved to **amend** the motion to include those conditions.*

The Board discussed the criteria for granting the variance. Mr. Weiner commented that the variance would not be contrary to the public interest because the historic house and the conditions of non-conformance were known prior to purchasing home. Mr. Richardson clarified that the spirit of the Ordinance was expressed in the conditions of the variance and not the look of the home, which was not in the historic district. Mr. Estes added that the variance was a benefit to the public because they could have leveled the historic building completely.

Mr. Richardson said even if the applicant was stringing more buildings onto the existing structure, duplexes were allowed so should only ask if the changes altered the essential character of the surrounding community or were consistent with the existing building, which they were and created greater conformity.

Mr. Richardson said the application would be in the public interest and there was no threat to the public because they were expanding to the back.

Mr. Richardson said substantial justice would be served by granting and the loss by not allowing would be greater than any gain by prohibiting because they were trying to modify the house to fit affordable market needs and historic houses would go away if they were over regulated.

Mr. Weiner said the value of surrounding properties would not be adversely affected, but Mr. Estes wondered if they would. Mr. Richardson said there was a burden of proof that property values wouldn't be diminished, but they could consider the kind of development being proposed. Mr. Connors said the drawings showed an improvement and Mr. Estes agreed.

Mr. Weiner said he didn't think the hardship to the applicant was outweighed by any benefit to public because the home was purchased with the knowledge that it would need a variance for development. Mr. Richardson added that the house didn't have hardship because it was pre-existing. Mr. Estes said he didn't think the applicant was trying to pull anything over on anyone just because the existing, non-conforming house needed a variance. Mr. Frink agreed that the hardship had to do with the area and dimensions.

Mr. Richardson added that the statute said "no fair and substantial relationship existed between the general purposes of the ordinance and the special application of that provision to the property" and a literal reading of the ordinance might suggest no aspect of the building could be changed, but he did not believe that was the intent and there would be an injustice in locking the owners into the same footprint forever.

Mr. Estes said the proposed use was a reasonable one, which met the setback requirements.

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*The motion **passed**, 4-1 with Mr. Weiner opposing.*

**Discussions:**

Mr. Morgan said he would speak to the Board of Selectmen regarding the number of members sitting on the Board and voting.

Mr. Morgan passed out a letter from Attorney Chris Mulligan representing Bruce Belanger who owned the property on the corner of Fox Point and Nimble Hill Road and would come before the Board on November 12, 2014. Mr. Morgan said the Board would need to decide whether to grant a rehearing and pick a date or not. He suggested waiting until they considered a legal opinion. Chairman Morton agreed that they could think over. Mr. Richardson said he would recuse himself again because he .

Attorney Mulligan said he thought they had 30 days from the 29<sup>th</sup> to make their decision, but Mr. Morgan said they should confirm the deadline.

Mr. Connors recommended tabling a decision to the next meeting.

Mr. Connors inquired on the status of the house being built on Hannah Lane because of the year and a half time limit. Mr. Marconi, Vice-Chair of the Planning Board said the Planning Board was considering making similar time limit stipulations as the ZBA had been doing. Mr. Dave Mueller from the School Board said the property owner claimed they were residents and their children were attending the school

**Adjournment:**      *Ted Connors motioned to adjourn, and Ralph Estes seconded. All were in favor, and the meeting adjourned at 8:05 p.m.*

**Next Meeting:**      Monday, November 12, 2014

**Respectfully  
Submitted by:**      Jane K. Kendall, Recording Secretary