

# Town of Newington, NH

## ZONING BOARD OF ADJUSTMENT

Meeting Minutes, October 15, 2019

- Call to Order:** Chair Matt Morton called the October 15, 2019 meeting at 6:30 p.m.
- Present:** Chair Matt Morton, Vice-Chair Ralph Estes; John Frink; Meredith Hoyt; Town Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Board members, Kathy Latchaw and Edna Mosher; Alternate Board member, Will Gilbert
- Public Guests:** Tom Cowgill; Attorney Tim Phoenix; Attorney Monica Keiser; Alex Ross with Ross Engineering; Mark Jacobs, Wetlands Scientist; Gary Spaulding of Advanced Onsite Solutions; Micaela Cowgill; Town counsel, Attorney Walter Mitchell; Ellen and John Wu; Jim Weiner; Rick Stern; Richard Spinney; Tom Rossi; Lea and John Lamson; Margaret Lamson; Cosmas Iocovazzi; Heidi Grandy; Will Gilbert and Lulu Pickering; Jane Hislop; Denis and Anne Hebert; Larry Haas; Russell Cooke; Chris Cross; Patty Borkland

**Public Hearing:** A request by **Thomas and Marie Cowgill** for a variance from Article VI to expand a non-conforming structure; a variance from Article VII-I, Table VII-I from front and side setbacks; & a variance from Article VIII, Section 6, Wetland Buffer for property located at **288 Fox Point Road, Tax Map 10, Lot 1**.

Chair Morton stated that the applicant had numerous opportunities to meet over the summer when the Town had a tent outside, but the weather had become too cold so now they were holding the meeting inside with masks and social distancing during the COVID pandemic.

Chair Morton added that the applicant had been informed that some Board members were not comfortable meeting inside during the pandemic, but the applicant accepted four acting Board members.

The applicant, Tom Cowgill's legal counsel, Attorney Tim Phoenix stated that rumors had been going around that Mr. Cowgill had only intended to build an artist's studio, and then decided to turn it into home, but Attorney presented a chain of emails between Mr.

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Cowgill and former Town Planner, Gerald Coogan and Town Building Inspector, Kevin Kelly showing that Mr. Cowgill and his wife, Marie wanted to build an eco-friendly home prior to the purchase of the historic cider mill property. Attorney Phoenix said the Cowgills determined that they couldn't afford to carry the cost of another house in Portsmouth, as well as renovate the cider mill for a studio without turning it into their home.

Attorney Phoenix stated that Mr. Cowgill had already removed ten tons of debris inside and outside of the site, including rotting car frames, and he believed that the cleanup alone would surpass any perceived impact.

Attorney Phoenix said they had done a presentation for the Conservation Commission in July 2020, and the commissioners sent a letter to the Zoning Board of Adjustment (ZBA) stating that they were not in support of granting the variance requests because the site was adjacent to Motts Pond that led to Knights Brook. Attorney Phoenix stated that Motts Pond was across the street, and that the advanced septic system they were proposing would not pollute the wetlands.

Attorney Phoenix stated that Planning Board Chair, Denis Hebert expressed concern that the system would fail as the Presby septic systems that were banned in Maine had, but this was not a Presby system.

Attorney Phoenix added that Mr. Hebert had also expressed concern that the hydrosolic soils would push effluents into the wetlands, but they would not because the system was above the hydrosolic soils in the wetlands.

Attorney Phoenix said they weren't disputing the presence of the prime wetland, but the stream behind the site was only intermittent with stormwater runoff from the road, but then it moved out.

Attorney Phoenix said the property was conveyed to the DeRochemonts in 1905, and probably never had a sanitary system on site, but the law allows updates to structures, and it would if the historic use as a cider mill continued.

Attorney Phoenix referred to the Simplex case, that required that the harm to the property owner be balanced with any harm to the community or the environment, and said that property owners were Constitutionally entitled to a reasonable use of their property in the Residential Zone.

Attorney Phoenix stated that they were not changing the footprint of the building, which only occupied 6% of the lot, but were adding a stairway to access the building on a steep hill, and a retaining wall to secure the foundation. He said the setback variance was to provide air, light, and septic treatment that would be underground.

Attorney Phoenix said they would not be discharging toward Motts Pond or Knights Brooks, but they did need setback relief from the wetland buffer. Attorney Phoenix pointed out that there were other dwellings nearby that had their septic systems near or closer to Mott's Pond.

Alex Ross, surveyor, engineer and septic designer stated that the structure was in danger of collapsing into the wetland to the rear of the property, and had been a

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dumping ground for years. Mr. Ross said Mr. Cowgill had cleaned up a lot of the debris, and he had been working with the owner to stabilize the building for two years.

Mr. Ross stated that the owner was only proposing a single bedroom dwelling with a state-of-the-art septic system. Mr. Ross said a typical septic system flowed to a tank for primary treatment before going to a leach field, but the proposed system would provide a secondary treatment. Mr. Ross stated that the State required a 75-foot setback from surface waters, and the leach field was 175 feet away. Mr. Ross added that different setbacks were required for different septic systems, and they were putting the septic system as far from the wetlands as possible.

Mr. Ross stated that the Conservation Commission expressed concerns with the northerly slope, but the septic system was placed on a flat area closer to the road.

Mr. Ross stated that Mike Cuomo, Septic Evaluator for Rockingham County Conservation District had reviewed the proposal, and sent a letter approving the system, saying that the leach field met the State's setback requirements.

Mr. Ross said they were aware that it was a sensitive area, and they intended to keep most of the surrounding trees, and only remove a minimum for the driveway as required by the Town.

Mr. Ross pointed out the location of Knight's Brook, and that the site was not on Knight's Brook.

He said there was a culvert in Fox Point Road, but there was no existing surface water on the site. Mr. Ross stated that the culvert on Fox Point Road conveyed runoff to the rear of the parcel flowing west to east. Mr. Ross said there were poorly drained soils in the intermittent stream that received the runoff during storm events.

Mr. Ross said they discovered that runoff from Fox Point Road had caused a lot of erosion to the foundation, so they designed a retention and treatment area in their stormwater management plan to protect the foundation and wetlands.

Attorney Phoenix commented that the effort was consistent with Newington's Master Plan that seeks to restore and preserve historic buildings, and this structure would not remain without restoration.

Mark Jacobs introduced himself as a certified wetlands and soil scientist, that also had experience in erosion control, practicing for 35 years. Mr. Jacobs stated that he submitted a report, on the site soils on October 7, 2020, and did an on the ground delineation in 2018 as was plotted on the plan.

Mr. Jacobs stated that the dominant soil textures on the site were sandy loam which was ideal for septic systems, and were better than most soils in Newington that were either, sand, clay or marine silts based on his prior experience as septic inspector for Newington in the 1980's.

Mr. Jacobs stated that there were wetlands on the property, but showed the prime wetlands that were actually not on the property. Mr. Jacobs said Broad Cove supported the salt marsh wetlands, but estuarine and tidal wetlands from Broad Cove were not on the property, and were 250 feet from the structure, and 200 feet from the septic system.

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Mr. Jacobs said he didn't believe that there would be any adverse impact on fresh or tidal wetlands at Broad Cove or Great Bay.

Mr. Jacobs agreed that some of the erosion issues in the intermittent stream were a result of a poorly installed culvert on Fox Point Road.

Gary Spaulding, owner of Advanced On-Site Solutions stated that they had been installing pretreatment septic systems since 1992, and this system was specifically designed for wetlands and islands, and they had installed over 1,300 systems in the New Hampshire Seacoast, and coastal Maine, and went through the specifications.

Mr. Spaulding noted that the original proposal was for a different pretreatment septic system, but they decided to upgrade the system to add a geomat as second treatment, reducing effluent bacteria by 95-99% when released. Mr. Spaulding stated that the tank allowed for 84 hours of treatment rather than the 21 days of treatment in a standard septic tank. Mr. Spaulding said the same system had been installed in the last house on Fabyan Point Road that was 34 feet from Great Bay, noting that their design was for a four bedroom, and not a one-bedroom dwelling.

Mr. Spaulding stated that only two feet of soil coverage was required over this leach field, and there was no need for exhaust mounds over the leach field with this system

Board member, John Frink asked if an air compressor was part of the tank. Mr. Spaulding replied that the compressor could be placed in a basement, garage, or shed.

Mr. Frink asked if there would be an odor from the gases that were released, and Mr. Spaulding replied that most gases would remain in the tank, and the remainder would go through the house stack.

Mr. Frink asked if an additional upland area was required if the system failed. Mr. Spaulding replied that New Hampshire Department of Environmental Services (DES) no longer required a reserve area, and that the system would be repaired in place.

Mr. Spaulding went on to say that the maintenance contract required an inspection every 2 years to check bacteria levels, change the filter, and provide a report with recommendations. Chair Morton asked if the Town building inspector would be notified, and Mr. Spaulding replied that they would if the Town required their building and health inspectors to follow up.

Mr. Frink asked if an auxiliary generator required for power failure. Mr. Spaulding replied that he had this system at the effluent pump would go dormant as would the well pump so it was not mandatory, but it would keep running if a whole house system generator was in place.

Mr. Frink asked if a standard septic system would support the site, and Mr. Spaulding replied that the applicant wanted the best environmental system in place.

The applicant, Tom Cowgill passed out statement that he read to the Board.

Mr. Cowgill stated that the mill site had been for sale for over the last decade, and no buyers showed any interest in restoring the site. Mr. Cowgill stated that he and his wife had devoted their time and savings to cleaning, disposing and recycling ten tons of debris from the interior and exterior at no cost to the Town over the last year.

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Mr. Cowgill stated that he had experience in the restoration of other historic properties including an eighteenth-century cottage in Ireland with a similar environmental septic system, not because it was required, but because he felt it was the right thing to do.

Mr. Cowgill added that he also received a grant and planted 7,000 trees on the boarder of Ireland and Northern Ireland as a buffer from agricultural runoff.

Mr. Cowgill noted that the old cider mill site was in a designated wetland buffer, which they were taking into consideration, but it was mostly a dry gully or swale behind the site with intermittent runoff from the road and the agricultural fields to the back.

The applicant's legal counsel, Monica Keiser pointed out that the ZBA's function was to evaluate the evidence, credibility, knowledge and conflicts for the Town in their review.

Attorney Keiser addressed the criteria for supporting the applicant's request, noting that granting the variances would not diminish the surrounding property values because the abandoned site would continue to be cleaned up, and the dilapidated historic structure would be restored and maintained.

Attorney Keiser submitted a letter from Olde Port Properties that stated that the proposal would not diminish the surrounding properties because it would clean up the site, and improve the property.

Attorney Keiser added that the owner was proposing to keep the same footprint on the small parcel, and would only be adding a retaining wall to prevent erosion to the foundation, stormwater treatment to collect and treat runoff before dispersal, a ramp and stairs for access, a suspended balcony off the back, and the smallest state of the art environmental septic system.

Attorney Keiser said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. Attorney Keiser cited the Malachy vs. Glen test on whether the request created unduly conflicts that violated the objectives of the ordinance to promote the health, safety, economic prosperity, general welfare and morals of the community, and the purposes of the ordinances, which the residential use in a residential zone did not.

Attorney Keiser stated that the purposes of the ordinance were not frustrated by the low impact use and septic system request, and the purpose of the ordinance needed to be balanced with an owner's constitutional rights to the use of their property.

Attorney Keiser noted that the Master Plan contemplated retention of Newington's rural charm, and the restoration of historic buildings, and illustrated other converted historic sites.

Attorney Keiser noted that setback requirements were created to prevent overcrowding, to prevent the obstruction of light and air to other properties, and to prevent stormwater runoff to other properties, but those would not be affected by the restoration of the structure, and the subsurface of the septic system leach field would

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only be two feet high, would not obstruct views for pedestrians or motorists, and could be landscaped.

Attorney Keiser added that setbacks were also established to protect wetlands. Attorney Keiser stated that although there was a question on whether the State required setbacks from prime wetlands, the Town's requirement had been acknowledged with a setback request. Attorney Keiser noted that there was no need for a setback variance from Knight's Brook and Motts Pond that were more than 140 feet from the septic system.

Attorney Keiser pointed out that a side setback from the Rossi's lot line was no longer needed because the septic had been moved over, but a front setback was still needed for the front ramp and retaining wall, as well as relief for the buried septic structure, and leach field.

Attorney Keiser stated that the variance would not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public, because restoration would improve the existing structure, the advanced septic system would protect wetlands, and the wooded lot would be maintained.

Attorney Keiser said that denial would create a hardship for the applicant because there were special conditions in the shape, size, grading at the back, and placement of the entire non-conforming lot that within the 100-foot wetland buffer, as was Fox Point Road. Attorney Keiser noted that the property was probably larger in the past, but the road got closer to the lot line as Fox Point Road widened.

Attorney Keiser said it was not possible to do anything with the property without an access ramp, stairway, and retaining wall for stabilization of the foundation, all of which require relief. Attorney Keiser pointed out that even a studio wouldn't be possible without power, water and septic.

Attorney Keiser went on to say that another element of determining hardship was to ask if the proposed use was reasonable, and they believed that a small residential use in a residential zone with an advanced septic system was reasonable.

In summary, Attorney Keiser stated that denying the variance requests would not benefit the public as the restoration of a historic property was of a greater benefit to the town.

Vice-Chair Estes asked if building had been designated on historic register, and Attorney Keiser replied that it was not located in Newington's Historic District, however, the Newington's Historic District had documented history. Mr. Cowgill added that the age of the foundation of the mill had been cited by the Town historian, the cider mill had been included as an image on the town's historic quilts. Mr. Cowgill went on to say that apple orchards and cider mills were a large industry in Newington at one time, and a reference was included in a study done in 2000 on vanishing cider mills.

Vice-Chair Estes asked if anyone ever lived in the cider mill. Attorney Keiser said didn't appear that anyone had, but it had appeared as a separate lot since 1905. Mr.

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Cowgill noted that there was another cider mill on Old Post Road that had been converted to a dwelling.

Chair Morton opened comments to the public, and asked that no one repeat anything that had already been said.

Ann Hebert of Gundalow Landing said as a member of Newington's Board of Fire Engineers, she was concerned that there was no access if emergency vehicles were called to the location. Ms. Hebert said she was also concerned that there would be a safety issue with traffic backing up need the three-way intersection at the corner of Fox Point Road and Little Bay Road.

Ms. Hebert said it would still remain a historic corner even if the site wasn't cleaned up, but that she was more concerned with the environmental impacts if residential use were allowed.

Ms. Hebert also commented that granting this request would have more impact than the denial of an eight by eight foot shed on cinder blocks behind a stockade fence down the street that had been placed in the setbacks, and required to move.

Russ Cooke of Hannah Lane commented that he didn't believe that allowing a residential structure on a half-acre non-conforming lot near a steep embankment met the spirit of the ordinance, and suggested that it only be allowed as an accessory building.

Mr. Cooke also expressed concern with a failed septic system draining into wetlands.

Patty Borkland of Little Bay Road Extension said she felt strongly with supporting the ordinance requiring 200 linear feet of frontage to retain the town's rural character. Ms. Borkland said she wondered if the owner had looked into the ordinance before purchasing the property.

Heidi Grandy, also a resident wanted to know if the owner knew about the setback requirements before they purchased the property. Ms. Grandy went on to say that she felt that the owners created their own hardship if they knew about the setbacks before purchasing the property, and that they were now asking for forgiveness rather than permission prior to purchasing the property.

Ms. Grandy said she looked at the property, and it appeared that they would be placing their leach field on a cliff. Ms. Grandy said she was troubled with the idea of the ZBA setting a precedent by allowing dwellings and a septic system in a wetlands within a wetlands buffer, especially if the system failed.

Jane Hislop of Old Post Road, and Chair of Newington Conservation Commission said she was also concerned that granting the variance from the wetlands setbacks would set a precedence that could allow other lots to do the same, adding that her late father-in-law, Gordon Hislop would have said "buyer beware".

Denis Hebert of Gundalow Landing, and Chair of the Newington Planning Board passed out maps of the prime wetlands that the Conservation Commission asked the town to accept in 2003 in order to get certification from the State. Mr. Hebert said he

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was not sure if all towns had been informed that the State had since decided that they didn't want to enforce the setbacks, but it didn't matter because Newington still included them in their Ordinance. Mr. Hebert said he was concerned that effluent would release to salt marshes.

Mr. Hebert read from the Purpose of Zoning Ordinance was to prevent the development of structures on prime wetlands...and prevent changes to natural wetlands that prevented flooding. Mr. Hebert said current dryness of the gully didn't take the drought into account, or the runoff during a heavy storm event, so it wasn't just a matter of the wetland itself, but what fed into it.

Mr. Hebert showed photos of the foundation, a collapsed wall, and trees with bare roots along the gully behind the cider mill, and went on to say that the gully stream had been undermining the building with erosion for decades. Mr. Hebert said it would be a losing battle against nature even if the cider mill was rebuilt because water flow would always win, which he believed could jeopardize residents' health, safety, and welfare now or in the future. Mr. Hebert said substantial justice in protecting wetlands, water quality, and the protection of land from erosion were important.

Mr. Hebert added that he did not think it was a good idea to build on a ravine with increased storm events.

Mr. Hebert said the applicant was also proposing a driveway expansion that violated the parking ordinance, and there was no curb cut or turn around so they would be backing into a three-way intersection that would be a safety problem. Mr. Hebert added that the only space for emergency parking was on the road, and there didn't appear to be a space for snow removal.

Mr. Hebert also suggested that a maintenance contract be put on the deed for perpetuity if the variances pass for residential use because it was a high maintenance system.

Mr. Hebert referred to the topo map that showed an elevation of 100 feet at the base of the leach field, but then would visibly rise. Attorney Keiser reiterated that there would only be a two-foot rise above the leach field.

Mr. Hebert commented that slopes were typically 4-1, and it appeared that it would erode.

Mr. Ross said the plan called for a 2-1 system on the septic system, but they could put fill in and feather it out to create a 3-1 or 4-1 slope. Mr. Hebert expressed concern that it would be slanted toward the abutter.

Mr. Hebert said the use of the property was a cider mill, or barn, and he didn't believe that it was right to change the use that was there for public safety.

Mr. Hebert suggested that the ZBA obtain an expert consultant to review the applicant's paid experts.

Chair Morton asked how old the map was that Mr. Hebert passed out. Mr. Hebert replied that the map had been adopted by the Town in 2004.



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Chair Morton said he would be more concerned that there would be more traffic with a shop or studio, and either way it would still need a septic system. Mr. Hebert suggested that they could use a porta potty.

Chris Cross of Nimble Hill Road commented that there had been a long-standing history of nonconforming lot of record in town, and that the ordinance allowed upgrades or development if changes were in full conformance with the rest of the unit. Mr. Cross said the applicant was asking to change the property to residential use, but the applicant paid for the existing use and value of the property, so there was no loss.

Mr. Cross also agreed that the Town planner, building inspector and Town engineering consultant should review the information presented by the applicant's paid experts.

Abutter, Tom Rossi of Fox Point Road stated that his realtor told him that the proposal would adversely affect the value of his house that was up for sale. Chair Morton asked Mr. Rossi if he saw the other letter from another realtor that said the property values would not go down. Mr. Rossi replied that his realtor disagreed.

Margaret Lamson of Little Bay Road passed out a copy of her statement in favor of Cowgills proposal on the property that had been in her late husband's family, and abutted her son Robert Lamson's property.

Ms. Lamson reviewed the history of the property that changed hands from the DeRochemonts to the Lamsons.

Ms. Lamson noted that the Master Plan advocated preservation of historic structures, and the cider mill had been part of Newington's history and rural charm, and expressed concern that the Ordinance disagreed with the Master Plan.

Ms. Lamson reviewed the NH Supreme Court Simplex vs. Newington case that ruled that the ZBA must grant relief if all five criteria were met board must grant as outlined in NHRSA 674:33.

Ms. Lamson said that the cider mill predated the ordinances, and the non-conforming property was grandfathered, and that the setback ordinance was designed to convert the village to suburbia. Ms. Lamson added that a residential use was reasonable in a residential zone.

Ms. Lamson stated that literal enforcement of the ordinance would result in an unnecessary hardship owing to the special conditions of property that distinguished it from other properties in area.

Ms. Lamson added that the advanced septic system proposal would provide secondary treatment of effluent in a way that everyone should upgrade to protect the quality of water everywhere.

Bessie Palmisciano of Little Bay Road stated that she lived across from the property in question and agreed with Ms. Lamson that it would be a service to the town to restore the site.

Ms. Palmisciano added that the placement of a septic system was an acceptable and realistic function for a structure.

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John Thompson of Little Bay Road said he wouldn't support the placement of a new structure on the lot if it didn't already exist, but he had watched the old cider mill fall further in disrepair over the last ten years, was glad that the Cowgills were interested in restoring it, and he thought that they would be an asset to the neighborhood.

Mr. Thompson added that he didn't see how a dilapidated property would devalue surrounding properties, and he didn't believe that a one-bedroom home would put a burden on municipal services or schools.

Mr. Thompson went on to say that there were numerous properties in town that were close to water or within setbacks, so he didn't see that as setting a precedent.

Lulu Pickering of Little Bay Road stated that she lived in an old farmhouse with old agricultural buildings, and knew how difficult and expensive it was to restore buildings. Ms. Pickering said she viewed the proposal that would restore the historic site at no cost to the town as being an additional benefit to the town by adding to the property value base, and contribute to tax revenues that would help all taxpayers. Ms. Pickering said that in contrast, everyone would lose if the restoration did not go forward.

Ms. Pickering agreed that the preservation of historic buildings was part of the Master Plan, and that she was sure Barbara Lamson Scarponi would have liked to restore the site, but Mr. Cowgill was offering to do it.

Ms. Pickering said she was sorry that the Rossi family was concerned that the restoration would affect their property value, and couldn't see how it would be diminished. Ms. Pickering said the only reason she could imagine was the perception that a smaller home would devalue a larger home, but she thought that was wrong because Newington's housing market was diverse, and it was a mistake to think that McMansions were necessary to retain property values.

Ms. Pickering said she had served on Pease restoration and PFAS contamination review boards for a couple of years, and believed that everyone was advocating the protection of drinking water and water bodies, and DES had approved the septic system, but everyone should look at the relative risk, and not be afraid of a septic system for a one bedroom dwelling.

Ms. Pickering said the owners and operators of the mill probably lived in the Old DeRochemont site where the Rossi's live today, so there would be no need to live in it then. Ms. Pickering said that there was a double foundation beneath the building to keep it solid, and they would remove a minimal number of trees to retain the slope.

Ms. Pickering said she served on the ZBA when Simplex requested a change of use, and were denied because it was determined that they couldn't subdivide for a profit, but this was a reasonable use for the property.

Mr. Ross said that zoning boards had to review requests the special conditions of buildings and lots on a case by case basis, and their decisions did not set a precedence for other applications.

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Mr. Ross went on to address to the objections, noting that the parcel was a lot of record for over two hundred years, and was less than two acres like many others, but it was incorrect to say that did not have 200 feet of frontage because it did.

Mr. Ross noted that many homes in town, including the abutter did not have extra parking for emergency vehicles, and added that there was adequate room to pull in and turn in the gravel driveway, however.

Mr. Ross said the Town needed to do maintenance on the culvert on the corner of Fox Point Road lacked proper maintenance to handle significant rainfall runoff that had caused erosion to the property, but occupying and maintaining the property would also benefit the property.

Mr. Ross said the non-conforming building and lot were pre-existing, and it was reasonable to require utility and sanitation connections for the minimal use of a one-bedroom home in a town where there were many three- and four-bedroom homes.

Mr. Ross said he didn't understand the suggestion that restoration of an abandoned, deteriorating building would diminish the abutter's property, and restoration of the site would also protect the wetlands from further erosion.

Mr. Cowgill added that the damage to from water coming off road had caused the front of the foundation to collapse in the center, and water had traveled to the northeast corner. Mr. Ross said he was also a structural engineer, and had examined the foundation.

Mr. Jacobs stated that he was a certified in in erosion and sediment control, and agreed that the structure was not crumbling from the intermittent flow at rear of property.

Mr. Jacobs added that it was news to him that the State was not enforcing setbacks from prime wetlands, but he would look into that assertion.

Attorney Keiser continued to respond to objections, noting that "buyer beware" was factually incorrect because reasonable use of a property was a Constitutional right, and there was nothing that said that someone couldn't apply for relief to use that property, or that purchasing a property with challenges was creating their own hardship that would automatically be met with denial.

Attorney Keiser said that Mr. Cowgill had approached the Town planner several months before being interviewed about the historic cider mill, and it was not a bait and switch.

Attorney Keiser said agricultural use of the site as a cider mill had not been active for a long time, and the use would become abandoned after a long time. Attorney Keiser added that it also would not be possible to use the property as a cider mill without utilities or a septic system.

Attorney Keiser also pointed out that that the ordinance did not allow an accessory structure without a primary structure as had been suggested, and even home occupation use would not be possible without a home.

Attorney Keiser clarified that the site was not in the wetlands, but existed in the wetlands buffer like many homes in Newington, that also existed in the shoreline

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protection buffers, and that the setback requirements had been reviewed by former Town planner, Gerald Coogan, and the current Town planner, John Krebs.

Attorney Keiser said the septic system had been reviewed by the Town's septic engineer, Mike Cuomo, and approved by DES so it didn't need another review by other experts because the applicant was not applying for a subdivision development.

Chair Morton commented that he had served on the Zoning Board for 35 to 40 years, and had served on the Planning Board before that, and thought that this was the most informative presentation by a professional group that he had ever seen.

Vice-Chair Estes asked Mr. Cowgill if he was aware that the lot was undersized when he requested the variances. Mr. Cowgill replied that he spoke with Mr. Coogan before he purchased the property, and Mr. Coogan explained that little could be done to the property the way it was, which seemed like a blind answer without any details. Attorney Keiser said that Mr. Coogan made it clear that variances would be required. Attorney Keiser said a building permit had been received for structural stabilization, but that was the only activity taken before going forward.

Vice-Chair Estes asked if they had been given any indication that they would be able to go forward. Attorney Keiser said the ZBA has only authority to give permission to go forward.

Vice-Chair Estes asked if the Cowgills had indicated to the plan they that wanted to live there. Attorney Keiser replied that they there was a series of correspondence between the Cowgills and Mr. Coogan going back to 2017, and that they needed to restore the site and put in utilities, but they were not asking for permission to live in a structure in a residential zone.

Vice-Chair Estes commented that they had purchased a non-conforming lot. Attorney Keiser responded that they had, but they didn't create non-conforming lot, so it wasn't the same as someone who created a non-conforming lot with a subdivision, which was a self-proposed hardship.

Mr. Frink said everyone understood that it was a cramped lot, but there was no way to make the lot any larger, and he didn't understand why there wouldn't be emergency access from the road considering there were other small lots in town.

Mr. Frink commented that many pre-existing lots that were not on two-acre lots as had been stated, but there was nothing more historic that retained the rural character than the historic cider mill.

Mr. Frink said he heard there were concerns with erosion, but he thought the erosion was a result of neglect.

Mr. Frink said the existing use was nothing more than a dumping ground that would be left to rot if it weren't restored, and he couldn't see the sense in discarding the property, and he didn't think delaying a decision for a site walk would help further understanding of the value of the surrounding property any better.

Board member, Meredith Hoyt reiterated that the ZBA didn't set precedent because they looked at each case individually.

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Chair Morton said he liked modern things, but he also appreciated historic properties, and also appreciated it if someone had the funds, time and patience to restore them.

Chair Morton said the applicant was staying in the footprint of the existing non-conforming property, and was not looking to put an addition or a second story on the building, staying in footprint. Not worried about erosion or septic system failure and resident wouldn't allow to be washed out.

Chair Morton noted that it was 9:45 p.m., and asked Town legal counsel, Attorney Walter Mitchell if the Board should postpone the hearing. Attorney Walter Mitchell replied that it was up to the Board if they wanted to make a motion to close the public hearing for deliberation, return later in the evening, or return another evening.

Mr. Krebs said he was concerned that it took six months to schedule a public hearing, so his preference was to plow through rather than schedule another hearing, and have everyone return in two weeks.

*John Frink moved to grant the request by Thomas and Marie Cowgill for a variance from Article VI to expand a non-conforming structure; a variance from Article VII-I, Table VII-I from front and side setbacks; & a variance from Article VIII, Section 6, Wetland Buffer for property located at 288 Fox Point Road, Tax Map 10, Lot 1, with Meredith Hoyt seconding the motion.*

*John Frink amended the motion to add the following conditions.*

- That the septic system company would inspect for compliancy every two years, maintained, and that a report would be submitted to the Town Building Inspector*
- That the septic system inspection, maintenance, and reports would be recorded at the Registry of Deeds as an obligation by successors as well.*
- That sufficient space for a turnaround be created in the driveway to prevent vehicles from backing into the Town right-of-way.*

Mr. Frink began the review of the five criteria, and said granting the relief would not diminish surrounding property values despite the comments from the abutter's realtor.

Mr. Frink said the variances would not be contrary to the public interest or spirit of the ordinance. He said even though the property was in the wetland buffer, most of the water running to the property was runoff from Fox Point Road, the culvert and the abutters, and he thought that that riprap should be installed in the culvert egress.

Mr. Frink said he also believed that restoring the historic structure would preserve the rural character in the Master Plan

Vice-Chair Estes said he thought that granting the variance would set a precedence. Mr. Frink said a lot of record makes it stand alone, so it was not the same as putting a shed in the setback on a house lot. Chair Morton agreed and said the ZBA existed to

# Town of Newington, NH

## ZONING BOARD OF ADJUSTMENT

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provide relief to individual cases when warranted. Vice-Chair Estes said he was willing to grant relief but not redesign the ordinance.

Mr. Frink said that Gerald Coogan, the previous Town planner had informed the applicant that the property could not be used without a variance.

Mr. Frink said denial would result in an unnecessary hardship because the property was a lot of record with special conditions of size and topography, and he didn't think that anything else could be done with less of an impact than a single bedroom dwelling.

*The motion passed 3-1 with John Frink, Meredith Hoyt, and Matt Morton voting in favor, and Ralph Estes objecting.*

**Minutes:** *The Board decided that they would postpone approval of the September 15, 2020 Minutes to the next meeting.*

**Adjournment:** *Meredith Hoyt moved to adjourn. Ralph Estes seconded the motion and the meeting adjourned at 10:05 p.m.*

**Next Meeting:** Thursday, October 29, 2020.

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