

TOWN OF NEW LONDON  
ZONING BOARD OF ADJUSTMENT  
JUNE 6, 2005

Public Hearing for Edgar and Kathleen Gerwig's request for an equitable waiver of dimensional requirement as provided by Article XXI, §H-1 of the New London Zoning Ordinance, in order to construct a covered entrance to their residence on Bunker Road (Tax Map 063-005-000), in the R-2 zone, within the required setback distance.

Members present: Lawrence Ballin (Chair), Russell Cooper, Laurie DiClerico, William Green, Brian Prescott.

New London Zoning Administrator Peter Stanley and Carl Williamson of International Design Group representing Edgar and Kathleen Gerwig, were also present for the hearing.

The Chair opened the hearing at 7:30 p.m. called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

When the building permit for the residence was obtained in 1990, an error was made in measuring its setback. That is, the foundation of the house met the setback requirement, but the roof eave and a bridge did not (setback should have been measured from the eave and bridge). The applicants would now like to obtain a building permit to construct a covered entranceway above the existing entrance, and are seeking an equitable waiver of the dimensional requirement (the setback that was incorrectly measured in 1990) in order to proceed.

Carl Williamson explained that the purpose of the covered entranceway is to protect guests from inclement weather, and to better define the entrance to the home.

In response to Brian Prescott's question, Peter Stanley said it will not bring the structure closer to the road than it already is, since the entrance to the house is on the side. He added that the equitable waiver would make the house a legal non-conforming use, and the proposed construction will continue the line of the building permitted.

Larry Ballin confirmed that the proposed construction will be more encroachment (on the setback distance); it will not be further encroachment.

Agreed.

Hearing no further questions or comments, Larry Ballin asked for a motion to close the public hearing and enter deliberations. Brian Prescott so moved, and Russ Cooper seconded. No further discussion. Motion unanimously approved.

Brian Prescott moved to grant the equitable waiver of dimensional requirement. Bill Green seconded. There was no further discussion. Motion unanimously approved, with Russ Cooper, Laurie DiClerico, Bill Green, and Brian Prescott voting.

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Regular Business

Russ Cooper moved to approve the minutes of April 9, Bill Green seconded. There was no further discussion. Motion unanimously approved with Laurie DiClerico abstaining.

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Public Hearing for Scott and Carolyn Ellison's request for a special exception as provided by Article XIII §E-3 of the New London Zoning Ordinance, in order to construct a residence with the required wetland buffer on property located on Forest Acres Road (Tax Map 105-010-000) in the R2/Conservation zone.

Members present: Larry Ballin (Chair), Russell Cooper, Laurie DiClerico, Brian Prescott.

Also present: Susan Hankin-Birke representing the applicants, Bob Stewart and Sam Voss of RCS Designs, Carolyn Ellison, residents Dick Cavallaro and Fred Kaufman, Zoning Administrator Peter Stanley.

Larry Ballin asked Attorney Hankin-Birke to confer with her clients to determine whether or not they wished to proceed with a four member Zoning Board.

The applicants agreed to proceed.

Larry Ballin opened the public hearing at 7:50, called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

#### Applicants' Presentation

Susan Hankin-Birke provided some background by reminding the Board that this lot does include a previously existing materials pit left over from the time Forest Acres was first developed. In 2003, the Zoning Board granted the Ellisons permission to continue storing materials on that site with two conditions: that the materials be used only for this site, and that they be limited to specific amounts. There is an existing access and drive onto the property for that purpose. Now the Ellisons would like to develop the lot for their residence.

She referred to the plan presented at this Hearing and made the following points:

- o The lot includes a great deal of wetland. Essentially, when the Town delineated its wetlands (March 13, 2001, after creation of this lot of record), it rendered the lot non-conforming.
- o The proposal calls for creation of a "natural boundary" to be constructed parallel to the line of the delineated wetland, to indicate and protect the wetland.
- o That required wetlands buffer of 100-feet, plus the required road and boundary setback of 25-feet, and the well radius of 75-feet as shown on the plan, all make fairly clear the limited area where the residence can be located.
- o There is an existing access and driveway which will be utilized in this plan.
- o In the proposed plan, RCS Designs has located the septic system including leach field in an area completely outside the 100-foot buffer. However, that leaves little area for the actual construction.
- o Thus, the proposed residence, including a future three-season porch, will be almost entirely within the 100-foot buffer of the delineated wetland. The corner of the house which will be closest to the wetland, will be 45-feet from it.
- o The plan presented tonight represents the best means of addressing the limitations of the lot.

She reviewed the eight requirements and standards which must be met in order for a Special Exception to be granted per Article XXI §G-1 of the New London Zoning Ordinance.

- a. The plan is in harmony with the surrounding area. The dwelling will be located in proximity to the existing access to the property, and that area of the property that has already been used. This will be a residence in a residential area.

- b. The planned use shall not adversely affect the environment, nor will it discourage appropriate and orderly development and use of land and buildings in the neighborhood, impair value thereof, or otherwise be detrimental or injurious to the neighborhood. She noted that the Board has already approved the use of some area on the lot to maintain raw materials, and that would seem to be a use least consistent with the surroundings. The proposed use is for a residence. It meets all setback requirements from road and boundaries.
- c. The use is specifically allowed as a special exception under the terms of this ordinance.
- d. There is nothing unusual about the proposed septic system. It meets all the state requirements and is a lawful sewage disposal system for the property.
- e. The site has already been accessed. That access is adequate and does not impose problems to traffic or pedestrians.
- f. The proposal conforms to all other requirements of the zoning ordinance.
- g. The proposal is for a residential use, and is consistent with the surroundings. It will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation or violation of that character.
- h. The significant wetlands delineation came into play after this had been created as a lot of record. The applicant does have a right to utilize the lot, and has made every attempt to be environmentally sensitive to the site, keeping the septic system outside the buffer, while still allowing a dwelling to be located on the property. The use is in keeping with the neighboring residential uses, and utilizes the lot as best as possible given the amount of wetland on it. Thus the special exception would be compatible with the spirit and intent of the zoning ordinance.

#### Questions from the Board

Larry Ballin asked for a description of the proposed natural barrier.

Bob Stewart said the Board could stipulate something if it wishes. It could be plantings or a stone wall, something consistent with the environment.

Laurie DiClerico referred to the requirement that an application for reduction of depth of a wetland buffer be referred to the New London Conservation Commission, the Soil Conservation Service and the New Hampshire Wetlands Bureau for review and comment at least 30-days prior to the Zoning Board's hearing (Article XIII §E of the New London Zoning Ordinance).

Bob Stewart said he believes that refers to wetlands crossings, and that no wetlands permit is required for this plan.

Peter Stanley pointed out that the requested special exception refers to a local regulation and that the Soil Conservation Service and NH Wetlands Bureau would not be interested. The application should probably be presented to the New London Conservation Commission for review.

He asked about the dimension of the requested reduction. (The point of the proposed construction which would encroach furthest into the required buffer is in fact 45-feet from the wetland.) He asked if it would be prudent for this special exception (if granted) to allow more of an encroachment. That would give the applicants room around the house to have a yard, do construction, and the things that are necessary. He suggested they have more of a reduction but have it be for a specific distance, for example, within in an area beginning 150 or 200-feet from County Road to a point about 400 feet from County Road. It would be practical to allow some operating room around the house.

Susan Hankin-Birke opined that “buffer” doesn’t mean you can’t walk on it, or mow it.

The ordinance prohibits any disturbance within the buffer.

So mowing would probably be out.

Larry Ballin agreed with Peter Stanley. A larger reduction would be especially helpful during the construction phase when backhoes and other pieces of equipment are on the site. The applicants do not want to get boxed in (by the dimensions of the encroachment being requested in the plan presented at this hearing).

Peter Stanley said maybe go to thirty feet (away from the wetland), but not allow that for the entire length of the lot. They should do it for what they need. He suggested that the Conservation Commission would not have problem with a buffer reduction which is sensible, and not greater than is needed.

Questions and comments from the public in attendance.

Fred Kaufman of Bog Road, asked why, since the Ellisons have stripped the lot of all the trees, the proposed dwelling is so far from County Road. Why not put it closer to the corner? That may bring the septic system further from the wetland.

Note made that forestry is a permitted use within the buffer. Regarding the septic system, Larry Ballin pointed out that it is not an issue, as it is going to be located entirely outside the buffer. Regarding the location of the proposed residence, he suggested Mr. Kaufman may discuss that with the applicants privately.

Referring back to Peter Stanley’s suggestion, Bob Stewart agreed that the actual physical construction phase may require an additional fifteen to twenty feet around the building. He added that the notes on the plan regarding restoration (of the buffer) would still apply.

Susan Hankin-Birke said to define that a little better, it might be expressed as a space around the dwelling ... say, twenty feet, so that the maximum point of encroachment would be 25-feet from the wetland.

Someone suggested that be referred to as a “footprint of disturbance.”

Peter Stanley asked if that is enough yard for the Ellisons. He suggested that a reasonable yard be defined around the house, something the Selectmen’s office can refer to, so that it will not become an enforcement issue later.

He suggested creating an envelope in which activity on the wetland buffer would be allowed, by specifying beginning and ending points (of said envelope) from County Road.

Applicants said the activity around the house will consist only of replanting trees and vegetation, which is allowed in the buffer.

Russell Cooper asked if this buffer reduction would be permanent or required to be restored after the dwelling is built.

Peter Stanley suggested it should be permanent in order to allow the Ellisons to have a reasonable yard.

Larry Ballin asked if it would be easier to simply delineate an easement not to extend more than 25 feet from the house.

Brian Prescott likes using the distance from County Road, whatever distance they decide on tonight. That would give applicants a yard, and the ability to put a porch on later, without having to come back to the Board.

Susan Hankin-Birke suggested defining an envelope starting 125 feet from County Road.

Sam Voss said it should probably extend to the other end of the property, since that end of the property is already in use now.

Peter Stanley said that specific uses are allowed in that area, but not unlimited uses.

After conferring with the applicant and designer, Susan Hankin-Birke amended the request for a special exception to allow encroachment into the wetland buffer within an envelope defined by a beginning point 125-feet from County Road and an ending point 400-feet from County Road, said encroachment not to exceed 20-feet around the house (so closest point to the wetland would be 25 feet).

Larry Ballin said approval of the special exception would be contingent upon a new plan being submitted, and review by the Conservation Commission.

Susan Hankin-Birke clarified that if the amended application is approved at this hearing, applicants need not return to this Board.

Larry Ballin said that is correct; the Conservation Commission's remarks would not have a bearing on this Board's decision.

Hearing no further comments or questions, Larry Ballin asked for a motion that the Board close the public hearing and enter deliberations. Brian Prescott so moved. Russ Cooper seconded. Motion unanimously approved.

Brian Prescott moved to approve the special exception as amended.

As stated above, the amended special exception would allow a reduction of a wetland buffer not less than 25 feet from the delineated wetland (that is, to allow an area of disturbance of 20 feet around the house) within an envelope defined by a beginning point 125-feet from County Road and an ending point 400-feet from County Road.

Russ Cooper seconded. There was no further discussion. The motion was unanimously approved.

Larry Ballin reminded applicants that the approval is contingent upon review by the Conservation Commission, and submission of a final plan.

The meeting adjourned at 8:35 p.m.

Respectfully submitted,

S.A. Denz  
Recording Secretary