

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 18, 2007

Present: William Green (Chairman), Doug Lyon, Courtland Cross, Sue Andrews and Michael Todd.

Others Present: Gary Anderson, abutter

Chairman Green called the meeting to order at 7:39 p.m., called the roll, read the Notice of Hearing as posted, and announced the hearing would be recorded.

Hearing: Map 033, Lot 020 and Map 021, Lot 001

Applicant Peter Moore requesting a variance to the terms of Article IX, Section D.1 of the zoning ordinance to permit the creation of a new lot in the Forest Conservation District with less than the 25-acre minimum lot size. The property is located at 719 and 750 Little Sunapee Road in the R-2 and Forest Conservation Districts.

Mr. Moore stated he owns two pieces of property on Little Lake Sunapee Road, one across the street from the other. He has lived there since 1976. The lakeside house is rented out for part of the summer. The property on the lakeside previously belonged to his parents. Mr. Moore provided a brief history of the property. On one side of the road, there is an old 1910 unheated cottage, no foundation. Much later, the Forest Conservation zone was created. The property on the lakeside is about 1 acre and the property on the other side of the road is about 6 acres, two of those acres are in the Forest Conservation zone. Previously, a lot line adjustment was done with the Planning Board to put the boathouse with the old summerhouse it originally went with.

At the present time, Mr. Moore is asking the Board to allow them to create an R-2 lot of 3 acres with the summerhouse, the boathouse, and 250' of lake frontage. Mr. Moore would like to keep the Forest Conservation, which serves as a belt around this property and some of the original 6-acre lot. This would create two nonconforming lots, trying to make a conforming lot out of one and keep the rest of the land.

Mr. Moore feels that this request is in the spirit of the ordinance to keep this property where they have a garden, recreation area and where Mr. Moore conducts a landscaping business. The family situation forces them to create something that could be sold in order to keep the existing family home. They do not believe that they are diminishing surrounding property values by creating a more conforming R2 lot, and are interested in keeping the Forest Conservation land, just attaching it to the non-lakeside property. Mr. Moore anticipates that what was an old seasonal cottage before, would become a sought after building lot with a view of Mt. Sunapee and a boathouse on Little Lake Sunapee, enhancing the neighborhood. There will be no change in the use of the land or the original boundaries. He stated that it would be a hardship to try to move or sell off the property where he has had his landscaping business since 1976, and live on the lakeside on the 1-acre.

Mr. Lyon asked Mr. Moore to point out on the plan provided, what property would be transferred. Mr. Moore clarified the intent to make the lakeside property more conforming and the Forest Conservation lot that is currently nonconforming, would become more nonconforming.

Mr. Moore stated the lakeside house has been on the market for some time without successfully being sold. Mr. Cross inquired about the shared leach field. Mr. Moore stated he has inquired into the option of creating an updated septic and leach field – the soil percs very well and both homes are on town water. Mr. Todd asked for clarification on the wetlands. Mr. Moore pointed out that this property has only changed hands once since 1910, predating Forest Conservation zoning.

Mr. Todd inquired how this proposal would not diminish surrounding properties. Mr. Moore responded that the newly created R-2 lot would be more conforming, more improvable. Mr. Moore reiterated his interest in retaining the family home on the roadside, where he continues to operate his landscape business.

Members inquired and Mr. Moore pointed out where the neighboring homes were located in relation to his property.

Mr. Cross pointed out that the location of the proposed boundary is quite close to the leach field and members measured it to be approximately 20'. Mr. Cross inquired as to whether or not this would be in violation of the Shoreland Protection Act. Mr. Moore stated that Clayton Platt did the drawing. Mr. Green clarified with Mr. Moore that he does have an approved septic design for that property. It appears that the leach field meets the side setback.

Gary Anderson, abutter, was offered the opportunity to speak. Mr. Anderson reviewed the plans to better understand the line adjustments being proposed. The proposed plan was reviewed.

Mr. Lyon stated that it is the presence of the Forest Conservation land that boosts the area requirement – if this were all R-2, both lots would be conforming.

Mr. Anderson stated that one of the reasons he is here is to set a precedent with the Board, thereby taking land and cleaving off Forest Conservation land, making something conforming and hence more valuable, is an important precedent to set. Anyone who has been affected by the Forest Conservation district change from 10 acres to 25 acres, could cleave off a portion. Mr. Moore responded that he has only 2 acres in Forest Conservation and is not trying to change the nature of the zone, but are trying to hold on to it. Discussion ensued regarding properties that are partially in the Forest Conservation district.

Mr. Todd proposed the possibility of approving the variance with a notation that the property “not be further subdivided”. Mr. Lyon expressed support for this notation.

Mr. Lyon pointed out that anyone who wishes to do so can give to an abutter the portion of property in Forest Conservation, so long as the portion retained is conforming.

Mr. Todd suggested a condition of the approval with the limitation of the future building expansion. The Board did not further discuss.

When and if economic considerations are weighed in on the Board’s decision were briefly discussed. If a request is granted, restrictions on the waterfront property setbacks become more restrictive than they are now, if going from an R-2 District to a portion in the Forest

Conservation district. Mr. Todd pointed out the uniqueness of this property as “an island cottage” stating a condition of no further subdivision would be appropriate and warranted. If the decision was granted, it would be creating a new conforming lot out of the lakeside parcel and taking an existing nonconforming R-2 lot and attaching it to the Forest Conservation land and substantially increasing the requirements for subdivision and building. [Recorders notes for clarification: Map 21, Lot 1 starts with 6.28 acres (2.1 in Forest Conservation) and ends with 2.94 acres – Map 33, Lot 15 starts with 1.33 acres and ends with 4.67 (3.34 including 2.1 Forest Conservation taken from Map 21, Lot 1.)]

Chair Green read into the record a letter received on August 30, 2007 from Pat Kelsey as follows:

“I got the variance notice about Peter Moore’s property. I’m not going to come and speak against it at the meeting but I find it interesting that you are willing to change your Zoning rules for Peter when I was forced to tear down my historic farmhouse in order to build my present house because the town would not allow me to “create a new lot” and I have more acreage than Peter wants to do it in. Very strange – Depends on who you are I guess. So much for ordinances. Pat Kelsey”.

Chair Green commented that Ms. Kelsey’s situation was much different, very simply she was denied two houses on one lot. In this scenario, there is no change in the number of dwellings or lots.

Mr. Todd commented that he has not heard sufficient evidence on the contrary to public interest or unnecessary hardship. Mr. Moore responded that he felt it would not be contrary to public interest, as there is no change in the use or the original boundaries. He did point out that he is self-employed, having operated a landscaping company out of this property since the 70’s, desiring the continuity to use the property as he has been doing. Mr. Todd inquired as to how this is the least restrictive way to accomplish the goal. Mr. Moore pointed out the hardship to sell the 6-acre lot that he works out of. He also stated that the gain to the public at large is the opportunity of improvement of this property, and that is much more in keeping with the area.

Chair Green made a MOTION to discuss, seconded by Ms. Andrews, unanimously approved.

Deliberations: The Board went through the area variance questions.

Diminution in value. Since the likelihood is the property would be improved, the property would likely become more valuable with no diminution to surrounding properties.

1. Granting the variance must not be contrary to the public interest. The property being more valuable is a benefit to the Town at large. No injury to public interest is apparent.
2. Unnecessary Hardship. (a) The first prong to the question of an area variance is needed to enable the applicant’s proposed use of the property, given the special conditions of the property. The uniqueness of the property exists in that a number of properties share both R-2 and Forest Conservation land. This is unique in the physical characteristics of the lakeside property and that the owner owns an abutting property that is nonconforming to become conforming. (b) The second prong to the question is whether or not you achieve

the same benefit by other reasonably feasible method. The alternative would require the owner to move his business, as his request is to allow him to append to this lot to continue to carry on his livelihood. It would seem that if he did find an abutter to annex the property to, he would still have his two lots and not need to be here – it could be achieved some other way, but reasonably? Uniqueness is a forested hillside, wetlands and past and future anticipated use of the property for his business and residence. The Board concluded there appears to be no other reasonable method.

3. Substantial Justice. A guiding rule according to counsel “any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Given the discussion, it was the opinion that justice would be done. Mr. Moore has a potential loss that holding him to the ordinance would not be a gain to the general public.
4. Contrary to spirit of the ordinance. Keeping in spirit with the ordinance is a benefit as it is bringing a property more into conformity than present and creates a fully conforming R2 lot. The Forest Conservation district was designated long after these lots were defined. This is not affecting the Forest Conservation district in that the Forest Conservation land remains in tact. The spirit and intent of the ordinance states to protect and promote the general welfare by preserving its rural natural heritage. There is nothing in this proposal that does not agree with the spirit of the ordinance.

Mr. Lyons MOVED to approve the variance, seconded by Mr. Cross. Mr. Todd amended the MOTION to approve the proposal with the condition that there be no further subdivision to Map 33, Lot 15, meaning that the 4.6 acre lot created by the annexation of these two pieces of property. Mr. Lyons seconded the amended motion for purposes of discussion. There was some discussion that the property would not qualify for subdivision. Ms. Andrews inquired as to how this condition is enforced? The response was that the plan will have a notation and recorded with the Merrimack County Registry of Deeds.

Chair Green called for a vote on the amended MOTION, unanimously approved. Chair Green called for a vote on the APPROVAL of Mr. Moore’s request for a variance Article IX, Section D.1. of the Zoning Ordinance. MOTION carried unanimously.

There was a brief discussion regarding the “Findings of Fact” form and whether each member should complete the form or if one form could be completed as a group, signed by the Chair. The Board decided on the latter – one form was completed.

Minutes

Chair Green called for a MOTION to accept the minutes as drafted of the August 20, 2007 meeting. Mr. Todd seconded the motion, unanimously approved.

Respectfully submitted,

Deborah McGlew