

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
OCTOBER 16, 2006

PRESENT: Larry Ballin (Chair), Russ Cooper, Cheryl Devoe, Bill Green, Brian Prescott.

PUBLIC HEARING

James Schust representing Sonja Philips, requested a variance to the terms of Article V §C-3 of the New London Zoning Ordinance, in order to add a new master bedroom to her residence at 752 Pleasant Street, in the R-1 zone, Tax Map 049-005-000. The addition would encroach on the required 25-foot side yard setback for a corner lot.

Larry Ballin opened the public hearing at 7:30 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be tape recorded. Abutter Bruce Avery also attended this hearing.

Prior to the hearing, ZBA members received copies of the variance application, building permit application, agent authorization, and to-scale drawings of the proposed addition. During this hearing, Larry Ballin read into the record a letter from abutter Barbara Avery opposing the granting of this variance.

Applicant's Presentation

Jim Schust representing Sonja Philips, explained that approximately five years ago, the applicants added a new screened porch on the back of the house. During his presentation, he presented photos of the property, and drawings of the proposed addition. They have found over the years that the choice of location is not optimum, as the master bedroom in front of that screen porch has become something of a general access or family room leading to the screened porch. Now they would like to make that the family room officially, and add another room on the south side of the house, to be the master bedroom. They have found that there exists a thirty-foot wide right-of-way on the abutting property on that side and their proposed addition will encroach, by five feet, on the required 25-foot setback there.

He went on to point out that the right-of-way is used now by one neighbor to a boat launch, and by another to a summer camp. He opined that the right-of-way is used more like a driveway. If it were in fact only a driveway, the side yard setback requirement of 20-feet would pertain, and this proposed construction would not need the variance. Peter Stanley agreed, but pointed out that this right-of-way is identified as such on the deed with meets and bounds marked, thus this lot (the Philips') must be treated as a corner lot, and the 25-foot setback pertains. Larry Ballin confirmed that the right-of-way is actually on the abutters—the Rockarts'—lot.

Jim Schust went on to say that they have looked at alternatives. If they put the new addition in on the back of the house, it would require that they tear down the newly built screen porch. On the front of the house it would come too close to the road. On the north side of the house, it would interfere with their driveway and access to their garage. If they construct the addition on the side where it is proposed in this plan, but adhere to the 25-foot setback, they will end up with a very narrow master bedroom, like a train car.

Bill Green asked to clarify exactly how many people use this right-of-way. Abutter Bruce Avery said that originally, the three front lots—his, Barbara Avery's, and Edith Miller—used the right of way (in addition to the owners, the Rockarts). Since then, he has combined his front lot with his back lot, making one, so that makes two plus the Rockarts using the right-of-way. Peter Stanley said that technically, his lot still has access to the right-of-way, so there really are three plus the Rockarts who can use the right-of-way now. Larry Ballin asked to confirm that unless the zoning for that area changes, no further lots will be created that could potentially use this right of way.

Hearing no further questions or comments, Russ Cooper moved to close the public hearing, and enter deliberations. Bill Green seconded. No further discussion. Motion unanimously approved.

Deliberations

Russ Cooper agreed that this is a right-of-way, but it seems to be used only as a driveway. He noted that they are talking about a five-foot variance; disruption will be minimal. The only alternative is to move the bedroom around back.

Larry Ballin said that the Board must look at all the alternatives, and the possibility that the applicant could create room for this without a variance. He said he feels that putting it in the back is an option, though he acknowledged it would involve changing the screen porch.

Bill Green also agreed that this seems like a minor request, but he was not sure if it meets the hardship test. There is the alternative of putting the new room around back.

Jim Schust reminded the Board that that would involve the expense of tearing down the screen porch to put up a new master bedroom. In addition, they are currently putting a deck around that now, so changing these plans would involve substantial expense.

The Board explained that they cannot consider financial hardship as meeting the hardship test for a variance. Brian Prescott pointed out that there is really nothing unique about this property that would preclude their putting the new construction in a location where it would meet the requirements.

The Board reviewed the five criteria for granting a variance, and found:

1. There would be no diminution in value of surrounding properties as a result of granting the variance.
2. The variance would not be of benefit to the public. The Board acknowledged receipt of one letter from an abutter who pointed out that “The New London Zoning Ordinance is reasonable and well thought out. It serves to protect all of us, and it is important to abide by it.”
3. Denial of this variance would not result in unnecessary hardship to the owner. The Board agreed that allowing the reduction in setback for the proposed construction would be more of a convenience to the owner, than a necessity.
4. Granting the variance would not do substantial justice. The Board noted during the hearing that there is nothing unique about the lot that would prevent the owner from locating the new construction in a location that would meet setback requirements..
5. Thus, the proposed construction encroaching the setback, as presented at this hearing, would be contrary to the spirit of the ordinance.

Brian Prescott moved to grant the requested variance. Cheryl Devoe seconded. There was no further discussion on the motion. The motion to grant the variance was unanimously DENIED.

PUBLIC HEARING

Gary and Valerie Suprenant requested a variance to the terms of Article VI §C-1 of the New London Zoning Ordinance, in order to demolish an existing cinderblock garage and replace that with a new garage on the same, but reduced footprint, within the required 25-foot side yard setback. The property is located at 85 Bog Road in the ARR zone, Tax Map 107-021-000.

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

Prior to the hearing, ZBA members received copies of the variance application, building permit application, drawings of the existing garage and house showing well, leach field, and trees, and of the proposed new construction, as well as elevations of the proposed new building.

Applicant's Presentation

Gary Suprenant explained that the 26-foot wide, 48-foot long, existing garage is of cinderblock, rather dilapidated, set 89-feet back from Bog Road, only four feet from the side property line, and four feet from the house (the latter dimension disallows easy access to their back yard). They are proposing tearing that down, and building a newer, but smaller garage on the same footprint. The new 26-foot wide, 28-foot long garage would be 109-feet back from the road, and 28-feet from their house. It would be lined up with their current driveway, and manage to avoid getting too near the leach field, the well and a venerable old maple tree, but will still be only four feet from the side property line, hence the request for this variance. He clarified that that would mean a reduction from the current 1248 square foot garage to one of 728 square feet. Note made that they will also be adding a farmer's porch on the side of the garage that is well outside the required 25-foot side yard setback line.

Larry Ballin asked to confirm that there will be absolutely no further encroachment on the side yard setback—no roof overhang, or anything else. Applicant confirmed.

Brian Prescott asked to confirm that the chicken coop that extends off the back of the existing garage is going to be removed as well, and the back of the new garage will be in the same place as the back line of the existing garage (less that chicken coop). In other words, there will be 20-feet less of an encroaching structure within the side yard setback. Applicant confirmed; it is the front of the new garage that will be moved further back on the existing footprint.

No abutters attended this hearing. Hearing no further questions or comments, Brian Prescott moved to close the public hearing and enter deliberations. Bill Green seconded. No further discussion. Motion unanimously approved.

Deliberations

Zoning Board members agreed that this will actually be an improvement as it reduces the amount of building that is encroaching on the setback. They reviewed the five criteria for granting a variance:

1. The proposed new and more attractive garage, set further back from the road, but no closer to the side yard than the existing structure, will not result in any diminution in value of surrounding properties.
2. The proposed use will benefit the public interest, bringing the structure further back from the road, and improving the property overall.
3. Given the unique shape of this lot, as well as the location of leach field and well, denial of this variance would result in unnecessary hardship to the applicant.
4. For the same reason, substantial justice will be done in granting this variance.
5. The proposed use is not contrary to the spirit of the ordinance, as it does not increase the encroachment into the required setback. Rather, it decreases the size of the non-conforming structure.

Cheryl Devoe moved to grant the variance. Bill Green seconded. No further discussion. Motion unanimously approved. Larry Ballin once again cautioned the applicant to take care that there is no additional encroachment such as a roof overhang, into the setback.

PUBLIC HEARING

Jesseman Associates P.C., representing Colby Sawyer College, requested a variance to the terms of Article XX §A-2 of the New London Zoning Ordinance, to allow expansion of a non-conforming use at their maintenance site—specifically construction of a 26' x 21' roof over existing sand and salt storage bins, located on Main Street in New London, in the R-1 zone, Tax Map 084-005-000.

Larry Ballin opened the public hearing at 8 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be tape recorded.

Prior to the hearing, ZBA members received copies of the variance application, building permit application, agent authorization, abutter list, and applicant's memorandum reviewing the five criteria for granting the variance.

Applicant's Presentation

Steve Jesseman, representing Colby Sawyer College reminded the Board that the commercial/residential line runs across the front of the maintenance building on this site. A few years ago, for esthetic reasons, the College relocated the fuel tanks and the sand and salt storage bins to the back of the site, so that those are now a non-conforming use (a commercial use) within the residential district. They are requesting the variance allowing an expansion of that non-conforming use; specifically, they would like to cover the salt and sand with a 26-foot by 21-foot roof structure.

Cheryl Devoe asked if this would be creating a non-conforming building. Peter Stanley explained that the maintenance building itself does conform. The sand and salt are stored in piles against a wall of concrete blocks. Erecting a roof structure over the piles would not be creating a non-conforming building, per se.

Cheryl Devoe asked to confirm that the use itself is not changing. Applicant confirmed that, and pointed out that this site has been used commercially for years and years.

No abutters attended the hearing. Hearing no further comments or questions, Brian Prescott moved to close the public hearing, and enter deliberations. Russ Cooper seconded. No further discussion. Motion unanimously approved.

Deliberations

Larry Ballin pointed out that if this starts being used for something else, it may be a violation. He suggested a condition of approval stating that the use be continued as proposed, nothing more.

Board members reviewed the five criteria for granting a variance, and found that:

1. Allowing construction of the roof structure would not result in a diminution in value of surrounding properties, but may in fact improve the appearance of the storage areas.
2. For the same reason, granting the variance will be in the public interest.
3. Denial of the variance may result in unnecessary hardship, as it would prevent applicant from protecting road treatment materials from the elements.
4. For the same reason, substantial justice will be done in granting this variance.
5. A roof structure constructed over existing salt and sand storage bins would not be contrary to the spirit of the ordinance, as it would not change the use, or increase the amount of non-conformity of the current use.

Russ Cooper moved to approve this variance. Bill Green seconded. There was no further discussion. Motion to grant this variance with the condition that there be no change in the use, was unanimously approved.

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Cheryl Devoe moved to accept the minutes of July 24 as drafted. Brian Prescott seconded. There was no further discussion, and the motion was unanimously approved.

Meeting adjourned at 8:20 p.m.

Respectfully submitted,

Sarah A. Denz
Recording Secretary