

**Town of New London
Zoning Board Meeting
March 16, 2009**

Present: Bill Green (Chair), Doug Lyon, Laurie DiClerico, Sue Andrews

Absent: Michael Todd

Also present: Peter Stanley, William and Nina Kozain, Dave Dunlap, Mr. and Mrs. McCabe

Use Variance: William & Nina Kozain, Map 117, Lot 21, 55 Page Road

Bill Green called the meeting to order at 7:30 p.m. with roll call and announced that this meeting was a continuation of the meeting on March 2, 2009 requesting a Use Variance for a Home Business from the provisions of Article II Section 15.b.2.a,c, and 1 of the New London Zoning Ordinance to allow for an increase in the number of employees, customers, and delivery people at a proposed wellness center facility. He stated that the continuance was so that the Kozains could determine the square footage to be used, number of employees, number of people attending the center, parking and number of hours of operation. He also stated that Nina Kozain had given the Board a letter outlining and covering that. He then turned the floor over to Nina Kozain.

Mrs. Kozain stated that they (the Kozains) appreciated the Board giving them the opportunity and time to think about the questions raised at the last meeting. She said that in particular the question of making money at the center was not the objective, that they would be offering the center for other reasons such as finding satisfaction in providing a service to the area and that it would not be a hardship for them to not have the center, but that it would be a shame not to be able to use that part of the house for that purpose. She said that to her understanding the parking issue would be decided by the Planning Board.

She went on to state that: 1) there would be no more than 2 employees, with an occasional speaker and that it would not be a full-time job; 2) the hours of operation would not be more than an hour and a half between 4:30 p.m. and 8:30 p.m.; 3) no more than one workshop a month from 9:00 a.m. to 5:00 p.m. on either a Saturday and/or Sunday; 4) perhaps in the months of June, July, and August, one class before 10:00 a.m. (during the week); 5) the room measurement is 500 square feet, which allows for a maximum number of 15 students, but the instructor usually has between 6 and 10 people; 6) the types of workshop classes offered would be parenting children, women's issues, patients needing de-stressing, those types of issues.

Mrs. Kozain also said that they had spoken with their neighbors and that for the most part, the neighbors did not have an issue with the center, but did have reservations about the number of cars that would be using Page Road and what would happen if the Kozains moved away. Bill Green asked Peter Stanley and Peter stated that if the variance was granted for this home business, it would run with the property unless the Board placed a

condition on the variance. Doug Lyon interjected that unless the variance had a sunset clause or a termination clause upon the Kozains leaving, the result would be that it would continue with the property. Bill Green said even if the clause was not included, the use would have to be the same as what the Board was granting the Kozains permission for. Doug Lyon interjected that this was so that someone else could not come in and run a different business, this wasn't a blanket approval for any business in that home, it is limited in the defined use as granted.

Dave Dunlap had concerns about the property continuing to have a business variance (he wanted to have some type of sunset clause included) and questioned if the property would be rezoned as commercial. Bill Green responded that it would not be rezoned or classified as commercial property, it would remain a residential property with this specific use permitted if the Board approved it. Doug Lyon stated that if the Board approved this with these specific criteria, then that is what the variance was for, which is why the Board asked the Kozains to go back and rethink the specific uses, because if the Board ends up approving this, it will be with these restrictions. Peter Stanley stated that the Board could establish any reasonable restrictions that it deemed appropriate, even though this (a sunset clause) usually was not one of them. He also said that the Board should say why so that it was part of the record and if the applicants agreed to it, that should be part of the record as well.

Dave Dunlap also questioned how long the variance would last if the business was not in use and Peter Stanley responded that the variance would lapse in one year if the business was not in use. He stated that there is a law now that states it must be by both action and intent and cited the examples that if illness happened for a year and a half, then the owner could resume after becoming well again and if someone bought the property, but did not use it as a business beyond a year, then it was presumed that they would not be allowed to use it as a business, unless they specifically bought it for that purpose. He stated that it depended upon how clearly the paper trail was that stated the intent.

Mrs. McCabe stated that her concern was that the character of the neighborhood would change and the increased amount of traffic and she asked if there was going to be signage used to advertise the center. Bill Green responded that one of the reasons the Kozains were there was that the ordinance limited the number of attendees to four and they were looking to increase that up to fifteen and because of that they definitely had to come before the Board. He asked Mrs. McCabe what her feelings were regarding that number and her response was that with the hours of operation, it would mean more traffic on the road and if they wanted to sell their property, one of the questions that would be asked was how much traffic was on the road (because of children being in the area). Bill Green responded that they were thinking then that (the fifteen people) would create traffic on the high side and the McCabes responded yes. Bill Green then read aloud a letter from James T. Cave that stated:

“In regards to the Kozain request for a variance to have a home business: We purchased our land on page Road because it was zoned rural agricultural and also the proximity to the town. We don't want to see a considerable increase in traffic or other activity. The

parts of the Kozain variance that we are willing to accept are one class for one and one half hours between 4:30-8:30 M-F and a limit of 6-7 cars. Also we agree with Mr. Dunlap that this variance not be transferable.

Thank you

James T. Cave”

Mr. McCabe then voiced a concern regarding the proposed leach field and Mr. Kozain responded that there is a huge area behind and beneath the barn that would be large enough (60’x 80’length and 50-60’width) for that use. He also assured the McCabes that there would not be any signage.

Bill Green then brought the topic back to the traffic concerns and Mr. McCabe stated that it was not just the traffic, but the seven days a week activity that they were concerned about. He said that he would prefer it to be limited to one and a half hours five days a week without a morning class those three or four months in the summer and no classes on the weekends. Nina Kozain responded that there would most likely be only one class a night.

Peter Stanley stated for clarity sake that because the Kozains were exceeding both the number of people that are committed in a class (L in the zoning ordinance), and the ten customer/client/delivery services per day by having a targeted total of fifteen, that if what they are suggesting is a class once a day and one weekend a month, then that is what it should be limited to and not to three or four weekends a month or seven days a week. He advised the Board that it should be very distinct and not to be misunderstood. As for the number of cars, Peter stated that that was something almost impossible to control, but it would have to be resolved with the Planning Board and that part of that issue would be to provide adequate parking space. He also stated that the Zoning Board could make their approval contingent upon the approval of the Planning Board and any (parking) restrictions they might have.

Bill Green informed those attending the hearing that even if the Zoning Board approved the variance, the Kozains would have to go before the Planning Board for a site plan review and one of the primary issues would be parking. Mr. Kozain commented that the intent was not to have traffic coming and going during the hours of business; participants would arrive, attend class, and then depart. Mrs. McCabe stated that quite a few people use this road for walking and they would notice any increase in traffic on Page Road and that it is not a through road (for trucks, etc.).

Bill Green asked for a motion to discuss and Doug Lyon moved to do so. Laurie DiClerico seconded the motion.

Laurie DiClerico asked if there would be more than two employees and it was determined that there would not be. Mr. McCabe asked if what they were saying with the variance was that there would be 10 people coming and going per day and Sue Andrews

responded that was what it said, but no more than four students could attend a class. Peter Stanley stated that it meant that: 1) no more than ten customer/client/delivery services per day so that ten clients was all you could have if you followed that provision; 2) if you wanted to have more than ten, then you had to request more than ten. Sue Andrews said that if they could guarantee car-pooling (which she wasn't sure that was possible), then they would meet the current traffic conditions and Peter Stanley responded that traffic was meant as people, not vehicles, to which Sue responded that she was reading it as cars. Peter Stanley said that regardless, it stated ten people (in ten vehicles) and if they wanted 15 people, then they would have to have a variance to allow 15 vehicles, as they could not guarantee car-pooling.

Doug Lyon stated that one of the things in these types of variances that he took into consideration was the concerns of the neighbors and that this was a big deal to him. One of the things that he wanted to point out was that when he was involved in the Baker Hill golf course planning, one of the issues was the increased traffic on that road and it had been reported by neighbors that it had not increased dramatically at all and there was a lot more traffic on Baker Hill Road than Page Road. He was not sure that the difference between the allowed ten and the requested fifteen was a significant issue and that he suspected that there wouldn't be a class every day of the week due to the nature of the business. But when there were concerns from neighbors, he was hesitant to pass the variance because it seemed to him that they were asking for trouble if they passed variances that created problems in the neighborhood. He went on to say that he would like to see folks here agree on numbers that everybody could live with.

Bill Green stated that before they got to the numbers, he wanted to run down the list of what the guidelines were for the Board and were basically what the Kozains were requesting:

- A) non-resident employees including subcontractors not permitted in association with the home occupation; they have stated that there will be only two employees, with Nina Kozain being one of the two, so he saw that as no issue.
- B) no on-premise sign advertising of the business; they are not looking for a sign, and since they were not it was moot, so there was no issue. Sue Andrews interjected that it could become an issue and Peter Stanley stated that it could be handled by making it a condition of granting the variance that no signage be allowed.
- C) no customer/client or employee traffic exceeding ten per day; that was part of the hearing on the requests for the variance.
- D) no additional off-street parking; they are going to have to provide parking as there is a law that states specifically no on-street parking.
- E) no more than two company vehicles; they are not going to have any company vehicles.
- F) occupation shall be conducted within a dwelling unit or in an enclosed accessory structure. The area of the intended structure used by the home occupation business shall not exceed 25% of the total area of the dwelling unit or a maximum of 750 square feet, whichever is less. They have measured 500 square feet and does not appear to be an issue.
- G) the home business/occupation shall not be permitted out-of-doors on the property; that is not an issue.

At this point, Peter Stanley interjected that Bill was reading from the wrong section and Bill started over with:

- A) employees - covered
- B) the numbered and size of signs - moot point
- C) a home business shall not generate customers/clients or traffic which is excessive to the roads providing access and as a guideline, the home business will generate no more than ten customers/clients/delivery service per day; it had just been discussed and was one of the things the Board was focusing on.
- D) adequate off-street parking shall be provided; already covered that.
- E) no more than three company vehicles; not an issue.
- F) the home business shall be conducted within the specified dwelling areas; already covered that.
- G) size of area seems sufficiently covered because they are requesting 500 square feet.
- H) all business shall not be conducted out-of-doors; not an issue.
- I) the home business shall not involve the use and storage of heavy vehicles; not part of their request or plan.
- J) the home business shall conform to the nuisance provisions outlined in the first paragraph of Article 2; not an issue.
- K) no activity shall be allowed to interfere with radio or television reception in the area; not an issue.
- L) the home business is the type in which classes are held or structured so that no more than four students are present; one of the issues to be considered.
- M) the home business shall be compatible with residential uses; to be considered.
- N) the home business shall not detract from the residential character of the neighborhood; this type of home business is all interior and has no equipment or full time employees and is low-key and seems to be something in keeping within the context of the neighborhood.
- O) if there is change of ownership of the property where a home business has been approved by the Planning Board, then the new property owner must conduct the home business in the same manner and under the same conditions as originally approved by the Planning Board or must re-apply to the Planning Board for a new site plan review. This covers the sunset clause that was asked to be included.
- P) if the final site plan review application for a home business is approved by the Planning Board, the home business approval is limited to the application submitted and approved. If the terms of the application are exceeded, then the applicant must return to the Planning Board for approval of an amended site plan review. This is how it's being addressed if for some reason the Kozains sell their property.

Bill then went on to say that his feeling was that as a Board, it boiled down to how they felt about C and L; his feeling on C goes back to the traffic: for this sort of business, some days there would be little or no classes; the increase in traffic would be minimal; and on L, (the number of students), his feeling was similar; that for both, he felt that even though they were over the limit(s), he saw them as being minimized in usage. If the Board wanted to limit this to the Kozains' ownership as opposed to perpetuity, he would be comfortable with that and as requested and presented to the Board this night with the additions.

Sue Andrews asked if the one class in the morning during the summer months would be every day and Nina Kozain responded that she wasn't sure, but thought that it would probably be one in the morning and one in the evening during those months because it was very warm during the day and more comfortable to have class in the early morning and evening to avoid the heat of the day.

Laurie DiClerico stated that she would be more comfortable with just one class per day, either in the morning or early evening and Doug Lyon agreed with that as well. Laurie asked if the neighbors were comfortable with fifteen people or less and Mr. McCabe stated that they weren't as concerned with the number of people so much as the amount of traffic/cars that would be using the road.

Bill Green reiterated that the request in front of the Board was to allow an increase in the number of students from four to fifteen and he stated that the Board should assume the most extreme end of the amount of cars, that being one car for each student. Doug Lyon agreed with Bill, but said that he was uncomfortable with the neighbors' concerns and did not want to set up the Board with a weekly complaint. If the neighbors were saying that they were not comfortable with more than ten vehicles, then it seemed to him that it spoke to limiting the number of attendees to ten. Bill asked if that included at the same time to limiting of one class per day or would the Kozains have the option to have two classes in the summertime? Dave Dunlap stated that he thought it would be agreeable to allow fifteen people, but limited to ten cars, and one class per day.

Doug Lyon stated that what he was hearing was:

- 1) fifteen people, 10 cars, one class a day.
- 2) limit to that one room area in the barn.
- 3) two employees or less.
- 4) one weekend a month.
- 5) this variance would be limited to the property as long as the Kozains own it.

Peter Stanley informed that group that according to RSA 674:33.II , 'in exercising the powers of paragraph one, the Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify in any order, a requirement or any decision(s) or determination(s) appealed from and make such order or decision as ought to be made and to that end shall have all the powers of the Administrative official from whom the appeal was taken'. He reiterated again that the Board could set all the parameters that they wanted and send it forward to the Planning Board.

Bill Green asked for a motion and Doug Lyon moved that the Board accept the request by Nina and Bill Kozain for a variance on their property as outlined in their proposal with the following restrictions:

- 1) that the space to be used is the identified space in the barn of approximately 500 square feet
- 2) that there is a limit of two employees.
- 3) that attendees are limited to fifteen.

- 4) that cars are limited to ten.
- 5) that classes are limited to one per day and workshops are limited to one per month.
- 6) that no signage be permitted.
- 7) that the variance lasts only as long as the Kozains own the property and if they sell the property, the variance lapses.

Laurie DiClerico seconded the motion.

The motion passed unanimously.

The meeting adjourned at 8:25 p.m.

Respectfully submitted,

Camille Holmes