

**Town of New London  
Zoning Board of Adjustments  
November 4, 2009**

**Present:** Bill Green (Chairman), Douglas Lyon, Laurie DiClerico, and Cheryl Devoe

Also present: Peter Stanley, Zoning Board Administrator

Chair Green called the meeting to order at 7:30pm and noted that the purpose of the hearing was to hear the request by Mr. and Mrs. Charles Lawson for a special exception, as explained below. He said that the meeting was being recorded and had been properly noticed. He asked those who wished to speak at the hearing to identify themselves for the record.

**SPECIAL EXCEPTION**

**Charles & Cynthia Lawson  
1549 Little Sunapee Road,  
New London, NH 03257**

**Tax Map: 030 Lot: 007 & 024**

**PURPOSE OF REQUESTED WAIVER:**

Area variance to the terms of Article XVI, Section J.1.a and J.1.b of the New London Zoning Ordinance in order to permit an increase in the existing roof pitch, adding a new 2<sup>nd</sup> floor living space and a covered balcony. Most of the existing house is within 50' of the Little Lake Sunapee reference line, and no extension of the existing drip edge is being requested within that line.

Mr. Charles J. Lawson came before the board to explain his request. He apologized that his wife was not able to attend the meeting, as she was out of town taking care of her ill father. Mr. Lawson introduced Kelly Gayle, an architect, who had been working with him on the project. He noted that he and his wife had been living in the area since the 60's and the house used to belong to his parents. Mr. Lawson noted that he and his wife are both members of the Lake Sunapee Protection Association, and that they bought the property in April of 2009 from his parents. Mr. Lawson said that he would like to upgrade the house and make it more up-to-date. The property, which includes a separate tax lot across the road, is constrained as to where additions could be made. They want permission to make a modest expansion of the house to make it more alike the current type of structure in the area and that could take advantage of the location. Mr. Lawson said that they would keep the new structure within the drip ledge to protect the lake. He believed that the addition to his house would be an asset to the town of New London.

Chair Green asked Mr. Lawson to go through his answers from the application.

1. The proposed use would not diminish surrounding property values because:

The resulting property will be more valuable and more in keeping with the typical architecture found in the immediate neighborhood.

2. Granting the variance would not be contrary to the public interest because:

The resulting house will be contained within the existing footprint. The increase in roof height will not impact neighboring sightlines, and it will not exceed the 25' overall height restriction for lakefront properties. To accommodate the proposed increase in living space, a new septic system will be relocated further away from the lake, to the other side of Little Sunapee Road on property also owned by the applicants. This 0.24 acre lot will be legally joined to the residence property.

3. Denial of the variance would result in unnecessary hardship to the owner because:

a) The following special conditions of the property make an area variance necessary in order to allow the development as designed:

The property boundaries and setback requirements due to lake frontage, road, and neighboring property significantly constrain the opportunity to add living space outside of the 50' setback from the lake reference line. Any attempt to do so would result in additional impervious surface on the property, disruption of the land due to construction, reduction of natural vegetation, and a very awkward and costly addition.

b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

Analysis by structural engineers indicate that the existing roof pitch and frame structure is inadequate for the potential snow and ice load found in this area, with a recommendation that the roof pitch should be raised and reinforced regardless. Utilizing this new area for living would be the least costly means of adding the desired living space.

4. Granting the variance would do substantial justice because:

The proposed design conforms to New Hampshire State regulations regarding lakefront property improvements. The renovation will also include a significant upgrade to the energy efficiency of the house.

5. The use is not contrary to the spirit of the ordinance because:

It will enable the property owners to improve their property with a beneficial impact on Little Sunapee Lake, neighboring properties, and the town of New London.

Mr. Lyon asked Mr. Stanley why the Lawson case was being brought before the Zoning Board. Mr. Stanley said that it was because the structure was within the 50' shoreline setback. Also, they were requesting to increase the volume of the home. He said that if they were just changing the pitch of the roof, they would permit the addition without a variance because it would be a structural improvement to the roof. In this case, however, they would be adding some living space which triggered the denial even though the footprint would stay the same. Mr. Stanley said that consistent with Mr. Lawson's remarks in #2, if approval was granted, it should be contingent upon the merging of the two parcels and the new septic system being designed and installed. Mr. Lyon said that if they were going to have a larger home, they would most likely need to have a new septic system. Mr. Stanley said that they are normally not required to build the new system but only to have planned it. He added that they should go forward to make two non-conforming lots into one less non-conforming lot.

Mr. Green asked Mr. Stanley about the theory of vertical expansion and why it triggered the denial. Mr. Stanley said that State law adopted this regulation for one year but decided to rescind it the next year. The Town adopted the regulation at the same time as the State, but did not rescind it as the State did. Mr. Stanley explained the rationale behind keeping the regulation was that when volume of a home is increased, the impact on the lake is also increased. More bodies in the space causes more impact to the lake. Ms. DiClerico asked if other properties in New London were included in this category. Mr. Stanley said that many similar cases have been approved; at least three with regards to an increase in volume.

Mr. Green asked Mr. Lawson to explain the dashed line that was present in the plan he distributed regarding the addition. Mr. Lawson noted that the dashed line represented the porch. He said that there is an existing three-season porch at the main level. There would be an enclosed balcony above the porch. Increased living space would be from the enclosure of the porch.

John Tucker, a resident from 1580 Little Sunapee Road asked about the changing of the septic system from the present location near the lake to the other side of the road into the other property. He hadn't had a chance to ask Mr. Lawson personally, but wanted to know what permission was needed from the State to, or what assurance he had already obtained, that this could be done. Mr. Tucker said that this issue hadn't been addressed and he was curious. Mr. Lawson said that he had spoken with the firm that put the original septic system in and they said they wouldn't swear that it could be done, but that it looked that it could be feasible to get the septic moved to the new location across the road. Mr. Stanley said that they may need to dig a trench and that they may need to get a bond with the

State. Chair Green said that if the board decided to approve the construction, conditioned upon the approval to put the septic across the road, it would be up to the applicant to get permission from the State and to build it.

Mr. Tucker asked if the term “trench” meant digging up the road and filling it back in rather than burrowing under the road. He assumed that approval of the project would be contingent upon getting approval for the change in the septic system.

Chair Green said that there were two sections in this proposal which seem to be “all or nothing.” Mr. Stanley said that the Zoning Board could modify their approval as they see fit. They could negotiate with the applicant and it was their right as a board to do so. Mr. Green said that if they felt like approving one part of the request but not the other, or vice versa, could they modify the applicant’s request. Mr. Stanley said that they could modify or amend, approve in whole or part. It wasn’t “all or nothing.” Mr. Stanley said that the applicant may wish to withdraw because he was not getting what he wants, but that was up to him.

Chair Green asked if there were any further questions.

**There being none, Mr. Lyon MOVED TO DISCUSS. Ms. DiClerico SECONDED THE MOTION. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Green said that they would review each criteria and look at both parts of the proposal (to be called “1a” and “1b”) at the same time.

#### **Would the proposed use diminish property values?**

Mr. Lyon said that the improvements that Mr. Lawson was suggesting would put the house closer to the look of others in the areas so it would enhance rather than diminish property values. He felt the same for both 1a and 1b. Ms. DiClerico thought that the proposed addition would actually increase property values. Ms. Devoe agreed.

#### **Granting variance would or would not be contrary to the public interest?**

Ms. DiClerico said that there was nothing specific that would be contrary to the public interest for either 1a or 1b. Chair Green said that the property was a modest little structure that was in need of refurbishing if not some updating. Where the property was maintaining its footprint, and as long as the septic wouldn’t be overloaded or extended, the vertical expansion was something that he found interesting. He thought that it would be keeping with public interest. Ms. Devoe agreed and thought that they should discuss the new septic system requirement as contingent for approval, as well as joining the lots. Mr. Lyon commented that special exception was not contrary, but was in the public interest. He said that it maintains the original footprint, makes a more attractive dwelling, and moves the septic system further away from lake. For all those reasons he felt the special exception was in keeping of the public interest.

#### **3. Denial would or would not result in unnecessary hardship to the owner.**

Chair Green said that the property was a small, tight lot with an existing structure on it and thought that the other benefit was that it had a separate lot on the other side of the road for which the septic would be moved. He thought the property’s characteristics were a feature and a benefit. Mr. Lyon, Ms. DiClerico and Ms. Devoe agreed. They felt that the characteristics of the lot were unique.

#### **The same benefit cannot be achieved by any other reasonable method**

Chair Green commented that the request wasn’t to expand outward or more towards the lake. In any event it is going up, and it seemed reasonable to him and a practical solution to upgrade and expand the house. Mr. Lyon, Ms. DiClerico and Ms. Devoe agreed.

#### **4. Denial of the special exception would not do substantial justice**

Mr. Lyon said that because there was a substandard house on the lot, granting the lot to be developed in a reasonable way would allow for greater protection of the lake and improves the area. For all those reasons, Mr. Lyon felt that granting the exception does substantial justice. Ms. DiClerico said that it was a gain to the public to move the septic system. Ms. Devoe agreed.

#### **5. The use is/isn’t contrary to the ordinance**

Ms. DiClerico said that the use was not contrary. She said that it was a residential area and they were improving the house, moving the septic system, and combining lots. Ms. Devoe asked about section b. It says that decks and porches may not be covered or enclosed. The spirit of the ordinance goes against this change. Mr. Lyon said that in his view it was in keeping with the spirit or the ordinance because the ordinance was designed to prohibit over development or pollution of the lake. This would provide enhancement of appearance, safety from moving the septic away from the lake, and that they should request that the property owner merge the lots to create a less non-conforming lot. Chair Green agreed. If this was only 1/3 of an acre and didn't have the lot across the street, it would be a different story. In that case it may not be in the spirit. The land across the street, Chair Green felt, was keeping with the spirit of the ordinance.

Mr. Stanley said that the Zoning Board of Adjustments shall have the power to allow for variances, and in exercising its powers, they may reverse or reform as they see fit. He said that they really have the ability to do whatever they want to.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to approve the application for area variance with the following conditions: 1) the homeowner will merge the two lots into one, and 2) the septic system's proposed design that goes on to the second piece of property be approved by the State and installed. THE MOTION WAS APPROVED UNANIMOUSLY.**

### **Zoning Board Application Fees**

Peter Stanley discussed the increase in zoning application fees. He said that the Budget Committee wanted to either cut costs or increase revenue. In response to that they looked for areas where there could be reasonable areas for increases in revenue. Applicants currently do not pay for staffing time. They only pay for the ad in the Kearsarge Shopper and postage for mailings. His proposal was to cover the cost for the meetings and no more.

Mr. Lyon said he had done a lot of thinking on this subject. The issue he was thinking about was that everyone who applies before the Zoning Board is a tax payer. Through those taxes, they have paid for services within the Town. Chair Green said that this would be layering another expense on people who have already paid for things in the Town. Mr. Lyon said that the more he thought about it, the taxpayer, in general, who is not coming before the board was supporting Town government. The Town raises funds to pay for the cost for the Zoning Administrator, the Land Use Coordinator, the building, etc. When the tax payer comes to the Zoning Board with an additional request, this incurs an additional fee. Mr. Lyon felt that it was reasonable to ask the taxpayers who are coming to the board and making requests, to pay that extra expense. He felt the fee request was reasonable for those reasons. Mr. Stanley said a lot of people who come before them will own the land in the future and don't own it yet. This is an investment for those applicants. Sometimes they will be taxpayers, but a lot of the people who come aren't actual tax payers yet. Mr. Green said that his feeling was that someone who comes in generally wants to do something with a structure and not land. It is one thing to charge \$100 - \$150 but he wondered how much people would be paying to the Town for other expenses stemming from their project. This included building permits, etc. He agreed that there were ample justifications for each fee but he didn't want to "over-fee" the people. Mr. Stanley agreed and so did Mr. Lyon.

Mr. Lyon added that this is the price that has to be paid when living in a state without a broad-base tax. He said the money either has to come out of property taxes or fees. For someone typically coming before the board, there is a multitude of fees that they will incur. Mr. Lyon said that someone would typically start with building permit application which was \$50 +.25/sq' for modification to a structure. They may then have to come to the ZBA, which they would like to charge \$150 plus postage and advertising fees. Mr. Stanley explained that if there weren't any variance requests, he wouldn't be there. Amy Rankins (Land-Use Coordinator) wouldn't work on these cases, and they wouldn't have to have a secretary. They could choose not to help applicants and have them come to the board with no knowledge or input whatsoever. He felt that he helps the applicants get ready for their hearings and helps the board to make decisions.

Mr. Stanley said that people usually ask how much the Town charged for zoning hearings and are surprised to find that there is currently no charge. He said that the fees depend on the town and where they are in determining their fees. Mr. Lyon said that from the perspective of someone who sits on many boards, there are some very large fees

charged. For example, to hook up the new hospital to the Town sewer it was a fee of \$30,000. He felt the fees suggested by Mr. Stanley were reasonable.

Chair Green said that each fee by themselves wasn't a big deal but that accumulative fees add up.

Mr. Stanley said that a public hearing was necessary to be able to go forward with the raising of the fees and to adopt the new fee schedule and to hear from the public. He said that if they want to go ahead with the fees, they would need to vote on it.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to approve the fee structure proposed by the Zoning Administrator and to hold a public hearing as the next step in the process. THE MOTION WAS APPROVED UNANIMOUSLY.**

Mr. Stanley said he'd like to circulate the new variance law to the members and the alternates that were not present at the meeting. He suggested that they get together with him to discuss what everyone thinks it means and make it clear as to what it means. He said that there was no case law to fall back on in this respect as it is a new law. Mr. Stanley said that area variances will go away after January 1<sup>st</sup>, 2010. He thought everyone should think about this and discuss it. Mr. Lyon suggested that Bart come in to discuss it as well.

Mr. Stanley said that he would prepare something in writing to get the process started.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to adjourn the Zoning Board of Adjustments hearing of November 4, 2009. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 8:25pm.

Respectfully Submitted,

Kristy Heath, Recording Secretary  
Town of New London