

**Town of New London
Zoning Board of Adjustment
April 20, 2009**

Present: Bill Green, Chair, Laurie DiClerico, Courtland Cross, Jeff Horton

Also present: Peter Stanley, Doug Lyon, Doug Homan, Deena Bouwman, Amy Manzelli, Doug Atkins, Kate Phalen, Debbie Fuller, Morgan Degroot

Bill Green opened the meeting at 7:40 PM with roll call and stated that the meeting would be recorded. He asked those present to identify themselves for the record if they spoke. He then proceeded to the first item on the agenda, stating that the applicant would present their case and then he would ask for any testimony from people in favor or opposed, with rebuttal, and at the end, the Board would discuss and render a decision. Peter Stanley asked to make a point of order, stating that since the Board was down one member, Bill Green should ask if that was okay with the applicant(s) and to state for the record that there was one less Board member present. The applicant(s) agreed that it was all right that the Board had one less member present.

**Lake Sunapee Country Club
344 Andover Road**

Tax Map: 098 Lot: 027

Use Variance to the terms of **Article XX, Section A, 2** of the New London Zoning Ordinance to permit an existing non-conforming motel in the Agricultural Rural Residential Zone District to accommodate college students and staff in a supervised manner similar to a dormitory use during the school year, and to revert back to the original non-conforming motel use during the summer season.

Doug Lyon, Treasurer, Colby-Sawyer College, presented for the Lake Sunapee Country Club. He began by stating that they were there because the Planning Board, after much discussion and opinions about whether or not this was a change of use, decided to err on the side of caution and referred them to the Zoning Board of Adjustment with recommendations that the variances be approved. He stated that the real issue for them was that students had every legal right to rent the motel rooms now and given the likely housing shortage in the fall, they thought that would be the case and the College was a lot more comfortable if it was done in a supervised manner. He went on to say that it was the College's intention to rent the motel from the country club for the two semesters and to have two staff members in the facility to supervise its use. They also expect to have an interview procedure for any students that live in any off-campus housing and the students will have to apply to live at the Fairway Motel. The College would prefer to have upperclass students living at the motel and feel that it would be more attractive to the student internships for nursing and education students. He also said that the College did not know how much interest there would be, but would be exploring that avenue in the next few weeks. He then went through the application criteria and the accompanying reasons for granting the Use Variance:

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

- There would be no visible change from the current use while the occupancy rate would be higher during the off season, the type of use would be consistent with what is currently done, and consistent with motel use in general.
- There would be no physical changes to the building.
- Because the College would be monitoring the use of the facility, and would have a staff

member in residence, any concerns about student behavior would be alleviated. In addition, careful selection of upper-class students for residence will ensure the appropriate mix and temperament.

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

- It allows the Fairway to continue to serve the tourist industry in the important summer season, while making consistent use of the facility in the off season.
- It is not significantly different from the present use which has not caused issues or problems.
- It allows Colby-Sawyer College to have flexibility in housing students at a time when it is not ready to build new residence halls which has a beneficial effect on the town.

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

3a. The zoning restriction, as applied to the property, interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

- The property is uniquely set in a residential zone as a non-conforming use. There are a number of other non-conforming uses adjacent to this parcel. The property in no way resembles a traditional residential use. It has a golf course, driving range, and airstrip immediately adjacent and has been utilized in a “non-residential” manner for years. The land across the street is under a conservation easement and can never be built on. It sits at a well-traveled intersection that would not encourage more intense residential use, and there is only one home that could be described as being in reasonable proximity to the property. In short the property’s location does not resemble residential use. The proposed use is consistent with present uses and only the form of rental agreement and management differs from the presently allowed form of operation.

3b. That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

- The proposed “change in use” is really a change in operational form. The only “change in use” that is occurring is the leasing of the property by the College, not the actual presence of college students in the motel.
- The Planning Board has recommended the granting of the variance in recognition that the proposed and present uses are virtually identical and consistent.

3c. The variance would not injure the public or private rights of others since:

- The change in use is operational and no, or at most slight, actual change in the day-to-day use of the premises will occur.
- The College will exercise supervision over the use of the facility.
- The location of the property is a traditional non-residential use.
- There are few residences in proximity to the property, and the closest one is used as a summer residence.

4. Granting the variance would do substantial justice because:

- The proposed use is not significantly different than currently allowed.

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

- There would be no physical change to the building.
- The proposed use is consistent with other non-residential uses in the area of the existing and operating motel, including the golf course, recreational activities, country club, and

- air strip.
- The proposed use allows Colby-Sawyer College to appropriately manage and plan for its enrollment needs.

He stated that he had sent out letters to any abutters asking them to call with questions, but that he had not heard from anyone. However, he noted that there were people in attendance and would be happy to address any questions that they had. Bill Green asked Doug to point out on the zoning map approximately where the lot ran. Peter Stanley indicated on the projected map where the property lines were. Bill asked how many rooms there were and Doug responded that there were twelve rooms and that the two staff members would live in an additional apartment, which was currently occupied by a motel manager.

Courtland Cross asked what the philosophical difference was between the use of the property now and what the College envisioned in terms of residence by the students, stating that he was puzzled by where the difference really was. Doug responded by saying that several members of the Planning Board did not feel that there was a change in use because there have been students renting rooms at the motel before; however, he did not think any students had rented for an entire year so that would be a difference. Another difference would be that there would be more cars and that would require more parking. Laurie DiClerico asked if the College would monitor activities at the motel and Doug responded that the motel would be treated as College housing and subject to the same rules, so that there would not be any kind of fraternity environment.

Bill Green asked if there were any questions from anyone attending the hearing and Deena Bouwman, an abutting property owner, stated that she had copies of a letter she and her husband had written to the Zoning Board that disputed statements made by the applicant, and that they felt misrepresented their proximity to the motel and the full time/year round use of their residence, as well as the questionable hardship for Colby-Sawyer, the appearance of the use of the motel as temporary in nature, the vague use of the school year and summer season, and the notion that the motel is not in a residential area. The letter also listed arguments against the use variance, change of use listing: 1) lower surrounding property values due to lights, noise, and traffic; 2) a dormitory does not make consistent use of the facility as compared to a motel; 3) the current zoning in no way interferes with the use of the property as a motel, the zoning and restrictions exist to protect the residential rights of the neighboring properties, and the variance would injure the rights of others by the increase in traffic, people, parking, and the activities of students living on-site full time (nine months out of twelve) during the school year; 4) granting the variance would not do substantial justice because it is not occupied 100% for a continued stretch of time; and 5) the use is contrary to the spirit of the ordinance because the proposed use is not consistent with the other non-residential uses in the area, which are for temporary activities.

She went on to say that it was unclear to her regarding the temporary status of the use of the motel and that it appeared to her to be a permanent status. Doug Lyon responded that they were asking for the variance to be in effect concurrently, the concern being that the country club not lose its grandfather non-conforming use. Bill Green interjected that if the variance was granted, it would run with the property even if the College did not renew its lease. Doug Lyon stated that it was the College's preference to have its housing located on-campus, but at present it did not have enough housing for projected enrollment.

Bill Green asked if there were other questions and Amy Manzelli, attorney, representing Morgan McKenzie-DeGroot, abutter, stepped forward to state that her client opposed the application and gave the legal reasons for opposing the application; 1) inconsistent with the current use, that being students living there from September to possibly May while currently middle-aged

vacationers are using the motel for temporary overnight use and whose activities are quite clearly different from students; 2) there is the possibility of the transference of criminal activities from on-campus to off-campus and having staff onsite will not mean that there will be no problematic behavior; 3) the motel has its current status for non-conforming use because it was there before there were rules and it can stay that way unless it changes its use or expands its use and here it is asking to do both; 4) it is the applicant's burden to prove that all the criteria have been satisfied; 5) the applicant has not proven that the property values will not be decreased; 6) interference of reasonable use, i.e. by changing the non-conforming use, the applicant loses the grandfather clause; 7) no dorms are permitted in the ARR, and while the Planning Board has recommended approval of the variances, it is the Zoning Board's job to enforce the ordinances and the Board should not be influenced by the Planning Board to approve the variances; 8) it is an injury to the private rights of the abutters because of the decrease in their property values; 9) the proposed use is different from the current use and inconsistent with the residential character of the neighborhood and is inconsistent with the zoning ordinance.

Courtland Cross asked for clarification regarding any College regulation to prohibit students from making arrangements with the motel to live there and Doug Lyon responded that there was not anything to prevent that and no reason why that could not happen and that was precisely why the College went to the Fairway Motel to suggest this arrangement so that the College could control the use of the motel. He also said that if there is an enrollment issue, it is quite likely that students will choose to live in the Fairway Motel. Court asked if the College was concerned with any liability issues and Doug responded that if the College was not leasing the motel, it wouldn't have any liability issues, but they are always concerned about being good neighbors.

Court commented that he assumed that there was nothing in the non-conforming framework that would prohibit the Fairway Motel from any time constraints in terms of how long a tenant could stay there and Doug Homan responded that they rented by the week, month, year and had all types of availabilities.

Deena Bouwman stated that while she appreciated having received a letter from the College, she had not had enough time to read and understand everything the letter proposed. She said that she thought having the motel designated as a dormitory was quite different from having a couple of students renting rooms on their own.

Doug Homan wanted to clarify that there would be restrictions as to room uses and Doug Lyon stated that cooking would be prohibited and the College was in a position to enforce restrictions. He also stated that he found it insulting to have the students at Colby-Sawyer characterized as criminals; they volunteer for various programs and do a tremendous amount of free work around the Town and it was unfair to characterize them in such a way. He also pointed out that the College had purchased the yellow house on Seamans Road and had students living in it and the property values have not been lowered and it had not created a disturbance or a problem.

Debbie Fuller, an abutter, asked who would take care of the disposable trash and Doug Lyon responded the College had an agreement with Lake Sunapee Country Club to have a dumpster there for that and they would share the plowing. Debbie asked if there were issues, should the neighbors go to the College for recourse, not Lake Sunapee Country Club and Doug assured her that would always be the College's preference. Debbie commented that their concerns were as property owners and that they have always had a good relationship with the Country Club, but they were thinking this would be a temporary arrangement and revisited in a year. Doug Lyon responded that if it causes problems, the College didn't want to continue it, that the College was not opposed to a variance that was temporary and if that was the neighbors' concern, the College

would be happy to see it done on a temporary basis.

Peter Stanley stated that the Board could make it a condition of approval to be revisited in one year if they choose to apply it.

Morgan McKenzie-DeGroot stated that she felt it wasn't realistic to say that the students wouldn't create more disturbance than what was currently the case with the people who used the motel. Doug Lyon stated that pool use would be prohibited. Morgan responded that her point was that she could hear conversations quite clearly and she was concerned that it would not be good to have college-age students living near small children. She stated that she felt it was the Zoning Board's responsibility to protect the residents from the increase in traffic and the added danger to the intersection in the neighborhood as well as a change in the activities going on there and the standard of living.

Kate Phalen stated that the Country Club was concerned about safety as well. She agreed that there would definitely be an increase in the number of people, but she would argue that the tenants would be vetted and it was probably a much safer situation. She stated that they had rented the motel to bikers, fraternities and sororities, to transients who come and go, and bachelor parties where all kinds of things happen. She pointed out that it was a much more controlled atmosphere with college students living there, and that just as with the pool restrictions, there could be restrictions about the field areas surrounding the motel. Doug Homan commented that it was 450 feet between the motel and the abutting yard(s), but that sound does carry as in any neighborhood. Doug Lyon stated that the College would be happy to place safeguards on the uses, but that if the neighbors weren't happy with it and the Lake Sunapee Country Club wasn't happy with it, then the College wouldn't be happy either.

Courtland Cross asked if the College only needed five rooms, would it have an exclusive arrangement with the motel to not rent nightly to transients and Doug responded that they didn't think it would work as a mixed use. Doug Homan had already turned down bookings for next year and Doug Lyon said that if they were going to make the transition, it seemed to him that they needed to do it as they had described it.

Bill Green moved to discuss it among the Board members and Laurie DiClerico seconded the motion.

Criteria # 1 -

Courtland Cross - stated that was one of the key questions, that some of the neighbors thought it would be by virtue of the additional noise and activity, but he was persuaded a little by Doug Lyon's willingness to do this on a temporary basis and if it turned out that the neighbors were negatively impacted by what went on, the College would back away, so short term, he would say that it would not and with the provision that if there was a difficult situation, the College would change their stance.

Jeff Horton - key question for him as well; he believed the property values were impacted by having the motel next to them and Route 11 as well. He said that he didn't have enough data to draw a conclusion one way or another.

Bill Green - stated that the Board had always been mindful of the neighbors input offered at any hearing. In the overview of this question, there is nothing that he is aware of that would prohibit the individual students from going down and renting these rooms directly from Lake Sunapee Country Club and he thought the right approach was taken here by the Country Club and the

College coming to the Town with a plan. The property owner has the right to rent out the rooms and the diminishing of property values is not measurable.

Laurie DiClerico - agreed

Criteria #2

Laurie DiClerico - stated that she didn't think it would be contrary to the public interest.

Bill Green - the key element is the property right of the motel and having it organized and monitored by the College is better than students just renting on their own. He didn't see it as being contrary to the public interest.

Jeff Horton - there's no question that there is an abutter's interest, but the public interest is bigger than just the abutters' interest and having the students in a consolidated area and having the College manage it is better; he thought that the public interest here swayed to the greater good as opposed to the individual good.

Courtland Cross - agreed

Criteria #3a

Jeff Horton - he's already being allowed to operate in the fashion described, so it seemed to him that this question did not apply and it did not interfere.

Bill Green - agreed

Laurie DiClerico - agreed

Courtland Cross - agreed

#3b

Bill Green - use of the property is so similar and he sees the benefit of being organized, monitored, and consistently managed by the College staff living on the premises.

Jeff Horton - agree

Laurie DiClerico - agree

Courtland Cross - agree

#3c

Laurie DiClerico - do not think it's an injury to the rights of the public

Bill Green - agree

Jeff Horton - agree

Courtland Cross - agree

Criteria #4

Laurie DiClerico - agree to grant for one year

Bill Green - agree

Jeff Horton - nothing to add

Courtland Cross - nothing to add

Criteria #5

Courtland Cross - for the reasons already discussed, he had no problem with that.

Jeff Horton - he supported this under the temporary one year use

Bill Green - agree

Laurie DiClerico - agree

Bill Green moved to vote to grant the request for a variance to Article XX, Section A,2, of the New London Zoning Ordinance to permit an existing non-conforming motel in the Agricultural Rural Residential zone district to accommodate college students and staff in a supervised manner similar to a dormitory use during the school year and to revert back to the original non-conforming motel use during the summer season and this variance will expire June 1, 2010. Laurie DiClerico seconded the motion.

The **MOTION** was **APPROVED UNANIMOUSLY**.

**Lake Sunapee Country Club
344 Andover Road**

Tax Map: 098 Lot: 027

Use Variance to the terms of **Article XX, Section A, 2** of the New London Zoning Ordinance to permit expansion of a parking lot serving a non-conforming motel in the Agricultural Rural Residential Zone District to provide both additional parking spaces and better access to existing parking spaces. There will be no change in the number of rooms or sleeping capacity of the motel itself.

1) the proposed use would not diminish surrounding property values because:

- There would be only a slight alteration of the existing parking lot. There are currently 21 spaces and we would need not more than 26.
- The changes would be a slight enlargement and better definition of the existing space.
- There would be no visible change from the current use. While the occupancy rate would be higher during the off season, the type of use would be consistent with what is currently done inconsistent with motel use in general.

2) granting the variance would not be contrary to the public interest because:

- The configuration of the current lot works fine for current volume but needs some expansion and definition to serve a higher volume of traffic safely.
- It allows the Fairway to continue to serve the tourist industry in the important summer season, while making consistent use of the facility in the off season for the student use being requested.
- The proposed parking lot is not significantly different from the present one, which has caused no issues or problems.
- It allows Colby-Sawyer College to have flexibility in housing students at a time when it is not ready to build new residence halls, which has a beneficial effect on the town.

3) denial of the variance would result in unnecessary hardship to the owner because:

3a. The zoning restriction, as applied to the property, interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

- The property is uniquely set in a residential zone as a non-conforming use. There are a number of other non-conforming uses adjacent to this parcel. The property in no way resembles a traditional residential use. It has a golf course, driving range, and airstrip immediately adjacent and has been utilized in a “non-residential” manner for years. The land across the street is under a conservation easement and can never be built on. It sits at a well-traveled intersection that would not encourage more intense residential use, and there is only one home that could be described as being in reasonable proximity to the property. In short, the property’s location does not resemble residential use.

- The small requested expansion of parking is necessary to accommodate a few more cars in an organized and regulated configuration and to improve traffic flow.

3b. That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

- The proposed expansion of the parking lot is minor.
- The Planning Board has recommended the granting of the variance in recognition that it is necessary to support the change in use which it also recommended.

3c. The variance would not injure the public or private rights of others since:

- The change in the parking lot will be small, and the increase in the number of cars is minor.
- The college will exercise supervision over the use of the facility.
- The location of the property is a traditional non-residential use.
- There are few residences in proximity to the property, and the closest one is used as a summer residence.

4. Granting the variance would do substantial justice because:

- The proposed expansion is minor and necessary for the change in use.

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

- The change would still be consistent with the property's current use.
- The proposed expansion is still consistent with other non-residential uses in the area of the existing and operating motel, including the golf course, recreational activities, country club, and airstrip.
- The proposed use allows Colby-Sawyer College to appropriately manage and plan for its enrollment needs.

Doug Lyon stated that they would have to go back to the Planning Board with an application supporting the same criteria as well as a site plan. He indicated on the zoning map where they could add more gravel to extend parallel parking to the left or adding spaces on the end, stating that they only needed to add five spaces in either location. He highlighted the areas that needed more definition and expansion and said that criteria #3, 4, and 5 contained the same arguments as had been in the first request. Courtland Cross asked if this laid out in performance with the Town regulations and Doug responded that with Peter Stanley's help, they had measured out the area and that was how they had come up with the twenty-one spaces and that was in accordance with the State's requirements with the Town. He said that what they needed to do was to determine whether they could move spaces out and still have the appropriate headway or move the spaces onto the perimeter of the lot. They had allotted 24 spaces for students and 2 spaces for the staff.

Deena Bouwman commented that it would have been nice to have the impact more clearly defined and said that she was confused on the application regarding Criteria #3.

Bill Green clarified that the question was that they were requesting the ability to install five more parking spaces and would or would that not result in an unnecessary hardship. Deena responded that in their current use, she didn't think there was any hardship for them if there weren't more parking spaces. Jeff Horton asked if there were any provisions for limiting spaces and Doug responded that they thought the best way to restrict parking would be by limiting the number of spaces available. Doug Homan stated that there had been times when there were 25 or more cars onsite that had parked on the grass and he stated that he was nervous about restricting the number of cars to 26, but that he thought it would be all right to restrict the number of parking spaces to

26. Debbie Fuller asked if there was access to additional parking on occasional use and felt that if they needed 26 spaces just for the students, why weren't they addressing the need for even half that many guests to have parking spaces since there was room on the property to accommodate that many more. She also asked if there was going to be a traffic flow with signage. Peter Stanley interjected that it was a discussion for a site plan and for the Planning Board to determine. This hearing was for the concept of allowing the physical parking lot to be expanded beyond its current capacity in terms of the number of spaces. Doug Homan asked if the Board had to approve a specific number since parking is not a use, the motel is a use and if you approve the use of the motel, the parking is ancillary to that and therefore is assumed to be approved. Doug Lyon interjected that the reason they had not come with a parking plan was that they were given to understand that needed to be presented to the Planning Board. Bill Green asked Peter Stanley if the Planning Board had recommended that a variance be requested for the parking and Peter responded that counsel had advised it along with the Planning Board because this constituted an expansion of the non-conforming use in a residential area and in order to accommodate more cars, it needed a zoning variance. Jeff Horton stated that realistically he thought it would require more than 26 spaces. Peter Stanley said that it was up to the Zoning Board to grant the expansion. Courtland Cross interjected that it would be difficult to do without a parking plan. Doug Lyon reiterated that it was their understanding it wasn't the purview of this Board to approve a parking plan, but the Zoning Board could approve an expansion of parking subject to an approval from the Planning Board of a specific site plan.

Bill Green asked what the requirement was for each room and Peter Stanley responded that it was 1.5 spaces per unit, which measuring the length (190 ft. divided by 9) comes out to 21 spaces. Because it is an expansion of the existing non-conforming use, the Zoning Board needed to grant a variance. Bill Green asked Doug Lyon if they were requesting to specifically expand it five spaces and Doug responded that was what they thought they needed and that was what they put in the application.

Amy Manzelli commented that the expansion was significant and that there was no data to prove the impact will not be detrimental to property values. She asked that the Board consider some sort of limitation in order to avoid having indiscriminate numbers of cars parking on the property, which would have a definite negative impact on the surrounding properties. Bill Green stated that perhaps it could be a condition on the lease. She went on to clarify that they could only have the non-conforming use they were entitled to before the rule was implemented, i.e. if the use they had before the rule was implemented was 50 cars a day for one day a year, then that was all they get moving forward. She said that it was not clear to her how often that amount of use happens. She reiterated that all five of the criteria needed to be satisfied and especially with regard to the impact on property values.

Doug Homan stated that they were putting the additional parking spaces in the area where the old putting green used to be because it was completely screened and was the most logical place.

Bill Green moved to discuss and Laurie DiClerico seconded the motion.

Criteria #1 –

Laurie DiClerico - spaces need to be put in front of the motel and if that is done, she supports the change in use.

Bill Green - because of the size of the lot, 4+ acres, and the road frontage it has on Rte. 11 and the screening in front of the building is incredible, if there is a stipulation that the five additional paces be located between the motel and Rte. 11, he didn't think it diminished property values.

Jeff Horton - nothing to add
Courtland Cross - agree

Criteria #2 –

Courtland Cross - if that restriction was put in, it would seem to be the best answer.
Jeff Horton - he felt that in periods of excess, there should be some dialogue on how to handle that.
Bill Green - we can address that by having a condition or provision in the lease that prohibits large gatherings/parties and monitor the use of the property.
Jeff Horton - that answered his concerns.
Laurie DiClerico - agree

Criteria #3a –

Bill Green - with how the property is screened and the size of the property, it is a reasonable request and reasonable use of the property.
Jeff Horton - agree
Courtland Cross - agree
Laurie DiClerico - agree

#3b -

Laurie DiClerico - it needs to be consistent with the other approval
Jeff Horton - agree
Courtland Cross - agree
Bill Green - agree

#3c -

Courtland Cross - the reasoning used before applies here
Jeff Horton - the constraints placed on it takes it off the table
Bill Green - agree
Laurie DiClerico - agree

Criteria #4 -

Laurie DiClerico - supports the changes already approved
Jeff Horton - nothing to add
Courtland Cross - agree
Bill Green - agree

Criteria #5 -

Courtland Cross - thought it was approached in a reasonable fashion and that there was a fallback if it doesn't work out and in the overall picture it was a positive spirit.
Jeff Horton - nothing to add
Bill Green - there are a lot of safeguards in place and the College's suggestion to try it for a year and then come back to the Board; if there are issues in the neighborhood, that is as good a safeguard as possible.
Laurie DiClerico - nothing more to add

Bill Green moved to approve the applicant's request for five additional spaces with a stipulation that those spaces are located as we outlined which are located between the existing motel building and Rte. 11 and also there is a proviso in their lease agreement that the College will manage/monitor and that there will be no large gatherings or parties where there is excessive

parking overflow. Courtland Cross seconded the motion.

The **MOTION** was **APPROVED UNANIMOUSLY**.

Bill Green moved to approve the minutes of the March 2nd and March 16th. Laurie DiClerico seconded the motion.

The **MOTION** was **APPROVED UNANIMOUSLY**.

The meeting adjourned at 10:05 p.m.

Respectfully submitted,

Camille Holmes
Recording Secretary, Town of New London