

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
APRIL 9, 2007

ZBA MEMBERS PRESENT: Bill Green (Chairman), Russ Cooper, Cheryl Devoe, Laurie DiClerico, Brian Prescott.

ALSO PRESENT: Amy Rankins, Land Use and Assessing Coordinator, Peter Stanley, Zoning Administrator.

PUBLIC HEARING (1)

New London Hospital requested a variance to the terms of Article II §5 of the New London Zoning Ordinance in order to allow esthetic screening concealing the rooftop HVAC units to exceed by 6'8" the height limitation of 35' above average grade. The property is located in the Hospital/Institutional zone, Tax Map 072-016.

Bill Green opened the hearing at 7:30 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

Also attending this hearing: Bruce King, President and CEO of New London Hospital; Bill Helm, Chairman of the Board of Trustees for New London Hospital; Celeste Cook, Member Board of Trustees and New London Planning Board member; Lori Underwood, Senior Director, Planning and Projects New London Hospital; Architect Jeff Galvin of Lavallee/Brensinger Professional Association; Engineer Martin Risley of Clough Harbour & Associates LLC; Attorney Mark McCue of Hinckley Allen Snyder, LLP.

Applicant's Presentation

Bruce King reported that the Hospital has completed a year and a half of evaluation and consultation, and is now in process of presenting its plans for a \$21-million project to include renovation of the existing facility and expansion.

- o The completed project will add eight new rooms to the existing medical/surgical corridor (which, he noted, is sixty years old), and all rooms will now be private to include private bathing facilities as well as family sleeping quarters.
- o Specialty services as oncology and the cumidon clinic will be expanded.
- o The front, or older, section of the current medical office building will be removed, and replaced with additional parking spaces. Those medical offices will be relocated to the proposed new building.
- o Satellite services as pediatrics (now in Georges Mills), and physical therapy (now in the Stahlman building) will all be brought into the rear or newer section of that existing medical office building, so that all services will be united on the hospital campus.
- o The MRI unit currently housed in a separate trailer behind the hospital will be attached to the new building.
- o A Chapel will be constructed.
- o 100 new parking spaces will be added to the campus.

He went on to say that they presented the conceptual plan to the Planning Board, have returned to that Board twice since then, and will be meeting with them again on the 24th. The plans have also been presented to the Conservation Commission, and they will be meeting with the State regarding obtaining the Certificate of Need on the 19th.

Architect Jeff Galvin addressed the request for a variance to the height limitation, noting that in the packets the Board received, applicants indicated that, using the method of calculation for figuring the average grade as described in the ordinance (p. 25) and taking into consideration the sloping topography and the terraced (that is, multi level) design of the current building, they would need a variance of 4-inches for the façade itself, and 8' 8" for the rooftop HVAC units. He explained that since then, a couple of changes have occurred. A mathematical error has been corrected, and they have added some additional grading around the building so that the new proposed building proper will actually be 8' below the 35' height limitation; though after taking the average of the entire structure (current and proposed new), they will still need a height variance for the screening before the rooftop HVAC units—

those will exceed the 35' limitation by 6'8". He went into some detail about how they arrived at the average grade for the entire structure including both the existing terraced structure and the proposed new addition, noting that if the proposed new addition were a stand-alone building they would not even need a variance for the rooftop units' screening.

Peter Stanley reminded everyone that, as of March Town Meeting 2007, the HVAC units themselves are exempt from the height limitation. Thus, the only height variance this project requires now is for the screening over the HVAC units (again, that will exceed the 35-foot limitation by 6'8").

In referring to a color rendering of the proposed renovated and additional elevations, Jeff Galvin pointed out that this height overage is based on the mathematical average grade of the entire structure, not the perceived grade as the building is viewed from County Road.

Attorney Mark McCue distributed copies of the hospital's written review of the five criteria that that the Board must find to exist before granting this variance.

(1) The variance will benefit the public interest by permitting the Hospital, a tax-exempt organization, to expand its services within the Hospital/Institution zone, and to meet the increasing medical needs of the community.

(2) Literal enforcement of the ordinance (the height restriction) would result in an unnecessary hardship. The nature of the sloping property required that the existing structure be terraced. The addition which will fall within the height restriction must be attached to that building, and not be a separate stand alone structure. Because the zoning ordinance requires that the average grade of the entire structure be calculated—that is the calculations cannot be limited to just the new addition, but must include the entire structure, both old and new, the average grade is beneath the height of the screening for the rooftop HVAC units. A literal enforcement of this height restriction would interfere with reasonable use.

(3) The variance would be consistent with the spirit of the zoning ordinance. He reiterated that if the addition were to be a stand-alone building, this would not be an issue.

(4) Substantial justice will be done by granting the variance. The hospital has gone through the Planning Board process, and has subsequently taken a number of architectural steps to minimize the visual impact of the height of this addition. They have fit the addition in as well as possible with the nature of the environment and the surrounding properties

(5) The use will not diminish the value of surrounding properties. They have listened to feedback from the community and taken design measures to make the addition as esthetically attractive and consistent with New London architecture as possible, and they will continue to do that through landscaping and other measures.

Hearing no further comments or questions, Brian Prescott moved to close the public hearing and open deliberations. Cheryl Devoe seconded. No further discussion. Motion unanimously approved.

Deliberations

Russ Cooper said he felt the request was well presented, noting that it will have minimal impact. Brian Prescott clarified that the overage will be 6'8" for the screening. Laurie DiClerico and Cheryl Devoe also agreed that this would have a minimal impact.

Brian Prescott moved to grant the variance. Cheryl Devoe seconded. No further discussion. Motion unanimously approved.

PUBLIC HEARING (2)

New London Hospital requested a variance to the terms of Article V §A of the New London Zoning Ordinance in order to allow a portion of their proposed additional parking to be located in the R-1 zone, on property owned by New London Hospital. The property under discussion is located on County Road in the R-1 zone, Tax Map 072-016 and 017.

Bill Green opened the hearing at 7:50 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

Also attending this hearing: Bruce King, President and CEO of New London Hospital; Bill Helm, Chairman of the Board of Trustees for New London Hospital; Celeste Cook, Member Board of Trustees and NL Planning Board; Lori Underwood, Senior Director, Planning and Projects New London Hospital; Architect Jeff Galvin of Lavalley/Brensinger Professional Association; Engineer Martin Risley of Clough Harbour & Associates LLC; Attorney Mark McCue of Hinckley Allen Snyder, LLP.

Applicant's Presentation

Engineer Martin Risley said that after completing a parking study, his firm has made a recommendation to the hospital as to the number of spaces that would be reasonable for this new facility. Their objective is to have all hospital-related parking on campus. Later in the meeting, Peter Stanley explained that in fact the number of spaces being proposed exceeds the Planning Board's requirement; the Hospital is voluntarily providing what is needed, not just what is required.

Martin Risley referred to the plans showing the two properties owned by the hospital, and color coded to show existing as well as proposed parking, along with other topographical features, specifically wetlands, and the location of the boundary between the Hospital/Institutional zone and the Residential zone. He noted that even with the additional parking allowed by the redevelopment into parking of that space currently occupied by the older section of the current medial office building, they would still be short several spaces. He pointed out that the portion of the hospital's property which is in the current Hospital/Institutional zone is heavily developed and includes some wetlands, so the only other two possibilities for additional parking include a location that they may at some point in the future wish to have as an access road to the front of their commercially zoned lot, and the small existing parking lot behind the current hospital (just southwest of Clough center). If they were to expand the latter, a portion of it (about 17 spaces) would fall over into the R-1 zone, and it is for that they are requesting the variance. He noted once again that the hospital owns both parcels—the Hospital/Institutional and the Residentially zoned, and that the area proposed is well buffered, far from the boundary of the Hospital's entire property, protected by woodlands and wetlands, and would not be visible to any abutters.

Attorney Mark McCue distributed a hand-out reviewing the five criteria for granting this variance, pointing out that similarly with the height variance, this variance would be in the public interest in that it would allow the hospital to expand its services to better meet the medical needs of the community. He went on to say that this is a Use Variance, and that NH Supreme Court has added a few more requirements (for the hardship criteria), and the Court enumerated those in the *Simplex* precedent. Specifically:

(1) The zoning restriction in this instance would interfere with a reasonable use of the property. Without this variance allowing some parking in the R-1 zone, the hospital will not have sufficient parking for the addition, nor would it have convenient parking. The hardship is caused by unique features of the parcel rather than the district itself. Considering the locations of wetlands and the existing hospital facility there is no other reasonable, cost effective place to put the parking.

(2) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. Typically, in the R-1 zone, parking is designed to keep commercial aspects out (of residential areas). In this situation, this piece is in the middle of a large piece of property owned by the hospital. It is located far from the outer boundary of the hospital's land, and completely buffered from all other residential areas. It is the expansion of an already existing parking lot, and is consistent with the nature of the hospital's facilities.

(3) The variance will not injure the private or public rights of others. In fact, it will benefit the public by allowing them to easily park and access health care services.

Brian Prescott asked when this land was purchased, and if there were any stipulations incorporated into the purchase agreement. Peter Stanley said the property on which the hospital proper is located was purchased in the 1950's; the Dow, or additional property which falls into the residential zone, was more recent. There were no stipulations or limitations built into the purchase agreement. Lori Underwood added that it is the Hospital's intention to look at realigning those zoning lines, in consideration of the possibility of future expansion. They understand that adjusting the line between zones would require Town Meeting approval.

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

Cheryl Devoe said she is comfortable will granting this variance allowing the portion of additional parking in the R-1 zone, particularly in light of the abundant buffering that exists there. Laurie DiClerico agreed, and said there will be minimal impact on the surrounding residential zone. She noted that this is the optimal place for the additional parking in light of the topography particularly the wetlands located on the parcel. Bill Green asked how large the portion of this parking lot that falls over into the R-1 zone is. Martin Risley estimated 17 spaces.

Brian Prescott moved to grant the variance. Cheryl Devoe seconded. There was no further discussion. Motion unanimously approved.

LAKESIDE LODGE INC: April 2, 2007 Motion for a Rehearing of the Board's March 1, 2007 Decision regarding number of boats permitted at Lakeside Landing on Sunapee Lake.

As for previous hearings on this subject, Bill Green and Russ Cooper recused themselves from this discussion.

Prior to this meeting, ZBA members received copies of the Motion for Rehearing dated March 30, 2007 submitted by attorneys for Lakeside Lodge Inc., and copies of affidavits submitted by owners Perry Wheaton and Vahan Sarkisian. At this meeting, Amy Rankins distributed a letter dated April 3, 2007 from abutter Douglas Carroll.

Members were in agreement that they do not see a reason to schedule a rehearing of this matter. Laurie DiClerico moved to deny the request for a rehearing. Cheryl Devoe seconded. There was no further discussion. The Motion was unanimously approved, with Laurie DiClerico, Cheryl Devoe and Brian Prescott voting. (Bill Green and Russ Cooper recused themselves from these deliberations.)

OTHER BUSINESS

- o Russ Cooper moved to accept the minutes of March 19, 2007. Brian Prescott seconded. No further discussion. Motion unanimously approved.
- o Peter Stanley and Amy Rankins distributed copies of a handbook titled "The Board of Adjustment in New Hampshire," developed by the NH Office of Energy and Planning. They informed the Board that they plan to replace the current application form with those that are in this handbook.

Peter Stanley elaborated. Right now there is only one ZBA application form for everything. This handbook provides separate and distinct application forms for each of the various reasons people may come before the Board, as for example, application for a rehearing, for appeal, for equitable waiver of dimensional requirements, use variance, area variance, etc. Each form is set up so the applicant will be told exactly what information needs to be addressed in making his or her application, whether or not his or her use will qualify for variance, special exception, etc, and the questions applicants should be prepared to answer during the hearing. In that

way, applicants will be better prepared when they come before the Board, and better able to address the legal issues that are involved in their individual cases.

Amy Rankins went on to point out that the current ZBA application is very broad and that these applications are each very specific. While completing the forms, applicants will know exactly what the Board will be considering when they (applicants) present their case. Bill Green asked if the intention is to give the whole application packet to the applicant. Amy Rankins said the plan now is to do away with the current broad application, and use these more specific applications that are in this handbook. Each applicant will get the particular application form relevant to his or her request, and accompanying information.

Peter Stanley urged members to read this handbook. All the case law that has resulted from Supreme Court decisions is here. And the handbook shows the basis for why some decisions stand up in court, and why some do not.

He suggested that the Board could start taking a slightly different approach during its deliberations. A good decision is a decision that is legally supportable. He noted that 99% of the Board's decisions never get challenged, but the 1% that do end up being very costly to the Town. The handbook includes worksheets for the Board to use during its deliberations. He noted that many times, a Board makes a decision just because it seems reasonable—as the cupola that was granted last month. But, he said, reasonableness is not a test in law. The ZBA should be following the law to the greatest possible extent, and make supportable decisions. He pointed to the Hospital's presentation tonight. Those decisions to grant those variances are based on good reasons that the Board can stand behind if they are challenged by a neighbor. He suggested that during deliberations, the Board follow the worksheet format, deliberate collectively on each item, so that the record reflects that deliberation on each item.

Brian Prescott supported the assertion that decisions should be based on the facts of the case, rather than on emotion.

Eluding to the cupola that was granted last month, Peter Stanley pointed out that one decision doesn't necessarily mean that type case must be decided that way forevermore. Each decision stands alone.

Bill Green asked which part of the handbook applicants will get. Amy Rankins said they will get the application forms and the information they contain, but not all the case law and narrative contained in the handbook. Both she and Peter Stanley anticipated that the order of procedure will be that applicants will receive these application forms, then turn to Zoning Administrator Peter Stanley for further explication. At this meeting, he clarified that he is not there to advocate for anyone, but to provide information on the process, and insight into their own applications. He emphasized that he is not the applicant's advocate, but the applicants as taxpayers do have the right to information. The ZBA's role is to follow the law, and make the best decision it can.

Amy Rankins added that in light of new members coming aboard, this handbook will be particularly helpful in allowing them to become familiar with laws relative to zoning; especially if they have limited knowledge of the subject.

Members also received copies of an article from *Municipalis* containing an update on the hardship test for a use variance.

- o ZBA members observed that this is Brian Prescott's last meeting, and thanked him for his 21 years of service. Peter Stanley particularly commended his consistent upholding of the ordinance even in face of difficult odds, and ZBA members agreed.

The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Sarah A. Denz
Recording Secretary