

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
MAY 1, 2006

PRESENT: Larry Ballin (Chairman), Russ Cooper, Cheryl Devoe, Laurie DiClerico, Bill Green.

PUBLIC HEARING

Samuel B. Rowse requested a variance as provided by Article XX §B-3-b of the New London Zoning Ordinance, in order to make Substantial Improvements (exceeding 50% of the market value of the existing structure) to a non-conforming structure located at 47 Sunset Shores Road in the R-2 zone. (Tax Map 102-204-000)

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 recorded. Prior to the hearing, ZBA members received copies of the application, a summary sheet and detailed plans of proposed renovations. Zoning Administrator Peter Stanley, as well as the property owner Samuel Rowse and architect David Laurin of Banwell Architects, were present for this hearing.

Applicant's Presentation

David Laurin said that the improvements are essentially all interior including wiring, insulation, finishes, etc. He explained that as the insulation will be blown in, the finishes must all be removed and then replaced.

Chair Larry Ballin asked if the Town has any input on this. Peter Stanley pointed out that this request falls into the category of an "area variance" because it has to do with the setback from the lake which makes the house non-conforming. He reminded the Board that in order to meet the unnecessary hardship criteria for an area variance, the Board must find two things: a) that a special condition (in this case, the special condition is the house's location within the setback) makes an area variance necessary in order to allow an applicant to construct a development as designed, and b) applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose undue financial burden. He went on to point out that this is a well-established old lake house that has been renovated a number of times in the past, and needs to be renovated again. Obviously to reconstruct the house behind the fifty foot setback would present a tremendous financial burden. As they are presented, these plans will not result in any appreciable disturbance to the shoreline. And, as Mr. Laurin pointed out, this will be mostly interior work, with the exception of some door replacements, some minor modifications to a section of the roof, and possibly the addition of a dormer to the garage (that last is pending state approval).

Larry Ballin asked to confirm that the improvements will result in no additional encroachment into the fifty-foot setback from the lake. Peter Stanley confirmed, saying that there will be no change to the footprint at all.

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

Deliberations

Russ Cooper pointed out that this proposal does meet the five criteria for a variance.

Those are:

- o No diminution in value to surrounding properties will result from the granting of this variance, as there will be little exterior change, no change to the size or footprint of the building, and no further encroachment on the setback.
- o Granting the variance will benefit the public interest.

- o Denial would result in unnecessary hardship to the owner. Testimony was received from the zoning administrator to the effect that no other reasonably feasible method of completing these renovations is available without imposing undue financial burden.
- o For same reason, granting the variance will do substantial justice.
- o The use is in keeping with the spirit of the Ordinance, allowing necessary renovations to this well-established, old lake house, without resulting in any additional encroachment into the setback.

Russ Cooper moved to grant this variance. Cheryl Devoe seconded. There was no further discussion. Motion unanimously approved.

MINUTES-MARCH 13, 2006

Russ Cooper amended paragraph twelve on page seven to reflect that, in fact, he voted not to approve the motion to grant, with conditions, the special exception to the 100-foot stream buffer, as requested by Bo Quackenbos for his property located on Bunker Road. Also, a typographical error in paragraph five on page five was corrected.

Motion made, seconded and unanimously approved to accept the minutes as amended.

PUBLIC HEARING

Robert C. Stewart of RCS Designs, representing owner Thomas Kunher, requested a special exception as provided by Article XXII §G-3 of the New London Zoning Ordinance in order to locate a Clean Solution septic system within the 100-foot stream buffer, on property located at 464 Elkins Road in the R-1 zone (Tax Map 077-027-000).

Larry Ballin opened the public hearing at 7:45 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded. Zoning Administrator Peter Stanley, Bob Stewart of RCS Designs, and three abutters were present for this hearing.

Prior to the hearing, ZBA member received copies of the application, the plan as submitted to the NH DES, and copy of the DES approval dated September 28, 2005. During the hearing, Bob Stewart provided for the record a note from Mr. Kunher authorizing him (Bob Stewart) to represent him at this hearing. Mr. Stewart also provided during the course of the hearing, some explanatory information and test results relative to the Clean Solution septic system being proposed for this property.

Larry Ballin noted that there were separate postings for the special exception and the variance, to be heard at 7:45 p.m. and 8 p.m. respectively. It was agreed that applicant must obtain approval for both, not just the one or the other, in order to proceed with this project.

Applicant's Presentation

Bob Stewart presented a picture of the property, pointing out the location of the natural stream there, and showing that the lot is totally encompassed by the stream buffer—thus the need to acquire a special exception to the 100-foot buffer in order to install a new septic system.

Larry Ballin asked if the property has been surveyed. Bob Stewart said not other than for the septic system, though they did find an iron pipe as well as other signs which allowed them to establish boundary lines. The right boundary line (as you face the building from Elkins Road) is shown on the map presented tonight. He added that they were able to use Pierre Bedard's site plan for Mesa to establish the right-of-way between that building and this. Also, he pointed out that the stream itself runs along the back boundary line. Peter Stanley further clarified that that stream splits—is essentially two streams, running along either side of the boundary line, with some high ground and a swale in between.

Bob Stewart went on to say that historically, this building was a print shop with the post office in front. Now it will be used as a single-family, two-bedroom residence, and the application tonight is to allow installation of a new septic system. For this size house, estimates are that 300 gallons per day will go through the septic system. He reviewed the requirements for a special exception as delineated in Article XXI, §G of the New London Zoning Ordinance.

He went on to say that applicants are proposing to install a “Clean Solution”® septic system. The system consists of three sections: a) the septic tank itself, b) the treatment chamber, c) the on site dispersal field. The last will be 75-square feet, and he noted that that is typical for a three-bedroom house. (A four-bedroom house would require a dispersal field of 100 square feet.) In response to question from Larry Ballin, Peter Stanley said that there are several of this type system being used in town, including ones of larger scale for multi-house subdivisions. Both he and Bob Stewart explained in some detail how the system works, using a compressor to force air into the chamber and assure aerobic activity to reduce (by 99%) levels of BOD and TSS in the effluent. The commercial property next door—Mesa, has had this type of system in place since 1995. Its dispersal field is under pavement, running toward the bandstand.

Referring to the plan presented, Larry Ballin asked about the well radius on the property. A 75-foot buffer around the well would encroach far onto surrounding properties and even across the road. Bob Stewart explained that an Equitable Waiver of Dimensional Requirement has been applied for and granted by the State of New Hampshire, after certified notification of all abutters, and opportunity for the abutters to respond.

Larry Ballin asked if the Town has any input. Peter Stanley said this is pretty straight forward.

Larry Ballin opened the floor to comments from the public in attendance. Harry Best representing the Messianic (*spelling?*) Association asked why they were notified. Members explained that the Board is required to notify all abutters within 200-feet of a subject property. The public hearing is opportunity for abutters and other members of the public to comment and ask questions.

Larry Ballin asked how confident they are in the road boundary as shown on the plan. Peter Stanley said this is a reasonable representation, noting that everything is very close there. Larry Ballin asked, as there is no legal survey available for this, are we sure we are on the property. Peter Stanley said yes, the Town does not require a survey for everything. They did find all the reference points for the boundary line with Mesa. Bob Stewart confirmed that, saying that they were able to use Pierre Bedard’s site plan for Mesa to find the right of way there.

Abutter David Cahill explained that historically, the water and septic system from his property at 468 Elkins Road has served this property at 464. His concern is regarding the discharge from this new system and its potential impact on the two brooks which are very valuable to the Town of Elkins. He asked who will be maintaining the system, who will be testing the water. He also expressed concern about the disruption that installation will cause to the earth, loose stones and wall in the area near his well and septic.

Larry Ballin asked how they will access the location for installation of the system. Bob Stewart said along the left side. David Cahill said they have to cross his property or Mesa’s to get to the back of this property. Bob Stewart said they will be using a tiny excavator, and in response to question of how deep they will excavate, he said 2.25 feet.

Dave Cahill asked about the possibility of the system malfunctioning while no one is there, and also expressed concern about who will maintain the system if the property is rented, and the owner is absent.

If no one is there, the system will not be used at all, and there would be no discharge. Otherwise, owner is required to sign and adhere to a maintenance contract including a complete testing every two years. The system does have an alarm in instances of any part of it failing, and if there is a failure, the system would stop. No one could use it, and there would be no discharge. Note made that in New London, there is usually immediate response to a failed

system. In addition, there is some follow up by the State. Peter Stanley said that anyone in this neighborhood who needs to replace or install a septic system would have to put in this type; it is subject to a higher level of scrutiny.

Larry Ballin noted that although Conservation Commission input was not required in this instance, it would have been helpful to have some. Peter Stanley said that typically the Conservation Commission embraces the “Clean Solution” type system. Bob Stewart noted that installation of this type system will enhance protection of the brooks. It will remove this house from the current shared system thus reducing load on that system, and discharge from this system will be fully treated.

David Cahill said his main concern was about the potential for harmful effects from the discharge, but he said that Bob Stewart has satisfactorily answered his questions during this hearing.

Harry Best asked if this system fails, would it be referred back to the zoning board. Larry Ballin said failure would be an issue for the Town Health Inspector and the state. There is a process in place to address failed systems immediately.

Laurie DiClerico asked about life expectancy of the septic system. Bob Stewart said that on a system like this, it’s really hard to tell. Peter Stanley, referring to the State’s oversight and design criteria, said that septic systems in general last longer than what their proposed life spans are, unless someone really abuses them.

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

Deliberations

Larry Ballin said he is troubled by how close everything is there, but pointed out that denial of this special exception would present difficulties for abutters who wish to install systems in the future. He noted that the State has approved this, and also that a higher level of vigilance will be required of the owner. He feels this a reasonable use—as a single family residence—for this property.

Russ Cooper, Cheryl Devoe, Laurie DiClerico, and Bill Green agreed that allowing this property owner to install the Clean Solution system with its more efficient operation and higher level of vigilance, would keep the same option open for other property owners in this location.

Larry Ballin asked if the Planning Board imposes any conditions regarding maintenance when it approves subdivisions with this type system. Peter Stanley said maintenance requirements are written into home-owners’ documents.

Russ Cooper moved to approve this special exception. Laurie DiClerico seconded. There was no further discussion. Motion unanimously approved.

Peter Stanley noted that before this work can begin all erosion controls must be in place, and he must inspect those, before work begins. Bob Stewart agreed.

PUBLIC HEARING

Robert C. Stewart of RCS Designs, representing owner Thomas Kunher, requested a variance as provided by Article XIII §F-1 of the New London Zoning Ordinance in order to locate a Clean Solution septic system within 75-feet of a wetland, on property located at 464 Elkins Road in the R-1 zone (Tax Map 077-027-000).

Larry Ballin opened this hearing at 8:30 p.m., called the roll, read the Notice of Hearing as posted and announced that the hearing would be recorded.

Applicant’s Presentation

Bob Stewart said he has covered most aspects of the proposal during the special exception hearing, and he reviewed the five criteria for granting a variance:

- o There will be no diminution of surrounding property values, as the system proposed is environmentally safe, and will improve protection of nearby wetlands and streams. The system that will be used, the “Clean Solution” discharges effluent that is 99% free of bacteria within the first 6-inches of soil.
- o The variance is in the public interest, increasing protection of the nearby streams and surrounding environment, as well as keeping open the option for owners of similar situated and sized properties to install the same type of system. The State of New Hampshire has approved this without conditions.
- o Denial would result in unnecessary hardship to the owner. This is a pre-existing, non-conforming building. Abutters would face the same hardship should they need to replace their systems. Peter Stanley added that this request is for an “area variance” and thus is subject to the lesser test for hardship. (The Board must find that the property’s special condition—its pre-existing, non-conforming size, makes the variance necessary in order to allow the applicant to construct a development as designed, and applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose undue financial burden.)
- o Granting the variance would do substantial justice for the same reasons. Denial would make it difficult for other property owners in the neighborhood to replace their systems in the future.
- o Allowing the variance would not be contrary to the spirit of the ordinance. The interest of the ordinance is to protect the environment. To that end, the Clean Solution system installed on this property will reduce the current load on the neighbor’s septic system, and will assure that effluent from the subject property is safe for the nearby streams and surrounding environment.

Hearing no further comments or questions, Cheryl Devoe moved to close the public hearing and enter deliberations. Russ Cooper seconded.

Deliberations

Larry Ballin said his feeling is pretty much the same here as with the special exception. Although it is not really desirable, if it is denied, then the whole neighborhood would be affected. This is the lesser of all evils. It will be nice for this property to have its own system, rather than be hooked into a neighbor’s. And this will give all the neighbors an opportunity to see that this type system is available. Members agreed that this is a reasonable use for a variance. Larry Ballin moved to grant the variance. Russ Cooper seconded. No further discussion. Motion unanimously approved.

Meeting adjourned at 8:50 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary