

Town of New London
Zoning Board Meeting
February 2, 2009

Present: Bill Green, Laurie DiClerico, Doug Lyon, Courtland Cross, Michael Todd

Also Present: Robert Stuart, Jim Ward, Ray Ettenborough, Mike Fassett, Patricia Ettenborough, Joyce Ettenborough, Peter Stanley

Bill Green opened the meeting at 7:30 p.m. with roll call and announcing that the meeting was being recorded. He stated that the meeting had been noticed in the InterTown Record, in the Town Hall, and at the Post Office and that the Board had met its obligation.

PURPOSE OF REQUESTED WAIVER: Tax Map: 072 Lot: 027

Special Exception as permitted by Article XIII, Section F, (2) of the New London Zoning Ordinance to fill an existing man-made drainage ditch for the purpose of developing a site for a new home.

Jim Ward gave a brief recap of last month's hearing at which he presented his request to be granted a special exception to fill in a man-made conveyance that had been on the lot for approximately 20 years. About 5 years ago the Town moved the drainage ditch down to the side of the lot when they put in a sewer line and were supposed to fill in the old ditch, which they only did partially. The Town never maintained the wetlands and/or the ditch, causing clouded/stagnant water to accumulate and invasive species to take hold in the ditch. He had come before the Board and was told he needed to incorporate a new location on his site plans for the replacement of the wetlands that would be filled in and he had done that. He also stated that the Conservation Committee had no problem with his project and he submitted a copy of the meeting minutes that verified that.

Bill Green asked for questions and/or comments from the Board members and the audience. Patty Ettenborough stated that she was still concerned about the elevation and the runoff from that as well as the displacement of the wetlands. Michael Todd showed her on the site map where the new placement would be for the wetlands.

Bob Stuart stated that invasive species had come into the area and cut into the water table and with the area being very flat, it collected water which for the most part was stagnant and a breeding ground for mosquitoes, creating a health hazard. Courtland Cross asked where the new drainage would go and Bob responded that it would be in southeast corner of the lot. He stated that it would be a real benefit by adding protection and treatment from the drainage swale that it does not have right now by creating a water garden to catch the extra nutrients. The area is currently 367 square feet and the new area will be 385 square feet.

Ray Ettenborough asked what the pitch was across the property and Bob Stuart responded that it slopes to the east and south east, and doesn't slope to either side. Ray asked if the pitch slope would be solved before or after building a house on the property and if building a house should create a problem, who would be responsible to fix it? Bill Green asked if Ray was stating that filling in the old ditch/wetland would create a problem and if so, what would be the consequence to either neighbor and Ray responded yes.

Bob Stuart asked to address this issue by stating that during any building process the foundation drain is directed through gutters and in this situation, can further advance the success of the plantings in the new swale, and in a runoff, the water would flow naturally to the rear of the lot where it could be directed to the new swale. Doug Lyon stated that he thought the new swale area would enhance drainage in the existing ditch put in by the Town and would improve the lot and not cause an additional headache.

Peter Stanley commented that the Town had no standards or process for requiring anyone to drain anything. The only way for the Zoning Board to regulate the application process is for the Zoning Board to make conditions of approval. Doug Lyon asked if there was a regulation in place that stated when building on a lot, the flow of water

off the lot could not be increased and Peter responded that only applied to new subdivisions or waterfront property. Michael Todd stated that it was not unreasonable to direct the downspout water and the perimeter drain exit toward the man-made swale. Ray Ettenborough asked if the builders were aware of the amount of water that comes down to the culvert during the rainy season and stated that if there was the slightest mistake in grading the property, it would impact the abutting properties and who was going to fix it? Bill Green asked what impact did Patty Ettenborough's building have on either adjacent lot and Ray responded that it had extended the wetlands somewhat.

Bill Green stated that to clarify the issue before the Board: 1) it is a pre-existing lot; 2) Jim Ward was not looking to subdivide the lot; 3) Jim Ward was before the Board looking for a special exception which by definition is the use of the property permitted within the zoning providing the applicant meets certain criteria. He went on to say that one of the criteria that was missing during the first hearing was the replacement of the wetlands that were going to be filled in. He also stated that in his perspective, the lay of the land was running downhill as compared to running off to either neighboring property.

Ray Ettenborough asked if a normal size house fit on that lot without having to go through this (hearing)? In other words was this being created because of the design of the house? Bob Stuart responded that presently there was a 50x70 foot building envelope within the setbacks and if they start from the wetlands and go forward there's fifty feet and a little over seventy-one feet across, so that his answer was that a house could be built within that area.

Michael Todd said that was not what had predicated Jim Ward's appearing before the Board and that the building permit was for a duplex which would encroach upon that wetlands area. Peter Stanley clarified that the building itself would not encroach on the wetlands, but the building process would possibly cause an impact on that area. Michael Todd responded that the Board's decision was somewhat predicated on Jim Ward's wanting to build something that was going to impact the shaded area (the wetlands). Doug Lyon stated that the Board did not have the right to limit what Mr. Ward could do with the lot, they did not have any authority in the case of the special exception except to decide three questions: 1) that he's not ordinarily prohibited in this use of filling in the wetlands; 2) is the use specifically allowed as a special exception under the terms of the ordinance; 3) are the conditions specified in the ordinance for granting the exception. As he recalled, the only thing missing was the issue a mitigation of equal amount of square footage on the other side of the lot which he has now accomplished. His reading of the law was that having met all those conditions, the Board did not have a choice except to grant the request.

Michael Todd stated that the Board could impose any conditions that it chose to, and Doug responded that was true but he didn't think they should get into the issue of what kind of house was being built and all those types of issues. He thought that they needed to say that drainage should be directed towards the swale that is there because that seems to be the best place to put it and other than that, he didn't think they should be dictating what type of house should be built. Michael Todd responded that what he was saying was that the Board had the option of imposing the condition that the structure be a single family if they chose to do so.

Bill Green asked for a motion to discuss. Doug Lyon moved to discuss and Courtland Cross seconded.

Doug stated that he didn't think the Board should get into the business of restricting the owner of a house as to what type of house can be built, he thought that was really over-reaching what the Board is designed to do. Laurie DiClerico agreed.

Bob Stuart stated that the lot was in a zone that allowed for different types of structures and they were there for a special exception to fill a ditch. He went on to say, that in his opinion, to take away the right to build what you are allowed to in that zone is unreasonable.

Bill Green stated that he understood the runoff issue was a legitimate concern, and his sense of what was being asked about filling in the wetland, he thought the plan covered that as far as the ordinance goes, but more importantly, he thought that the change in any water runoff as a result of somebody utilizing the property, the more important issue was the impact to the surrounding property at the most would be minimal because of the topography of the land that is here. He went on to say that he thought the suggestion made by Bob Stuart about the natural course of the water to go in the course that Mother Nature directed was a good one. Other than that, he thought it pretty much meets the requirements that the Board is governed by to base their decision on. He then asked

Courtland Cross if he had any comments, to which Court responded that he thought Bill had stated it logically and he agreed with what Bill had said. Doug Lyon commented that he thought the plan was presented with improved drainage under the existing conditions and as far as drainage once the house was built, he thought it was reasonable to suggest that the builder direct the drainage in a most appropriate way so as to prevent any outflow to adjoining properties. He stated that he felt Jim Ward had met all the requirements for the special exception.

Bill Green added that if it wasn't for the Town's work that they had done on this property, he doubted they would be there tonight.

Laurie DiClerico agreed and stated that she thought the conditions for the special exception for the lot had been met.

Michael Todd moved that the Board approve the special exception subject to the following condition: that the surface runoff be directed toward the man-made swale on the eastern side of the property which was abutted by the Proulx property and, not limited to surface runoff, gutters and downspouts be directed toward that man-made swale to the extent that is reasonable. Doug Lyon seconded the motion. The motion was approved unanimously.

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Camille Holmes
Secretary, Town of New London