

**TOWN OF NEW LONDON
ZONING BOARD MEETING
JANUARY 12, 2009**

PRESENT: Michael Todd, Laurie DiClerico, Bill Green, Doug Lyon, Sue Andrews
(Alternate for Courtland Cross)

Also present: Rob Tappen, Linda Rosenthal, Peter Stanley, Brian Prescott, Helen Tucker

Bill Green called the meeting to order at 7:24 p.m. with a roll call of Zoning Board members and he announced that the meeting was being digitally recorded. He stated that the hearing had two requests:

REQUESTED: Equitable Waiver of Dimensional Requirement

PURPOSE OF REQUESTED WAIVER: To allow an existing garage constructed in 1989 to encroach 2' into the 20' minimum side yard. The garage was built with an approved building permit and there has been no complaint of violation made since the original construction.

and

REQUESTED: Area Variance

PURPOSE OF REQUESTED WAIVER: Variance is requested to the terms of Article V, section c, 2 and is to allow an addition to an existing garage resulting in a side yard depth of 9' in a zone where the required minimum side yard depth is 20'. this addition was constructed without an approved building permit sometime after 2002, and exacerbates an existing side yard encroachment of the garage (the garage without the addition is 18' from the east side property boundary).

Bill Green stated that to make the hearing simple, the Committee would deal with the equitable waiver first, and then go on to the Area Variance.

Brian Prescott, speaking on behalf of Robert and Emily Foehl, stated that Mr. and Mrs. Foehl had bought the property without knowing anything about the garage encroachment and saw it as a non-issue, but he was willing to answer any questions that the Zoning Board members might have about it. He went on to say that he didn't think it affected the spirit of the ordinance or property values or any of the other criteria of the ordinance. Doug Lyon said that the garage for which the area variance was being requested was built with a legitimate building permit (by the previous owner). Bill Green interjected that the garage had probably been there for ten years and the reason they were here was because it was 2' into the setback. He stated that the Board had these before and asked if everybody had a good feel as to what the facts were with this garage and the pertinence of the request.

Motion to discuss - Doug Lyon

Second - Bill Green

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

Doug Lyon stated that having read everything and looked at the pictures included, the thing that was of overriding significance to him was the garage (not the addition) was built with a legal building permit issued by the Town of New London and the person who built it was within their legal right to do so. Mr. Foehl had bought the property without the knowledge that that was a non-conforming issue, so he (Doug) was inclined to grant the equitable waiver.

Bill Green agreed with Doug on the garage, since obviously something that was done some time ago and that there was no apparent indication that it was intentional. He also stated that there had been other requests that were similar in this regard and he (Bill) was in favor of granting the waiver, also.

Laurie DiClerico agreed with nothing to add.

Michael Todd agreed with nothing to add.

Sue Andrews agreed with nothing to add.

Bill Green asked for a motion.

Motion to grant the equitable waiver for the garage as constructed in 1989 - Doug Lyon
Seconded - Laurie DiClerico

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

Bill Green then opened the floor to Brian Prescott for his presentation on behalf of Mr. and Mrs. Foehl regarding the second request item of the area variance for the addition (on the garage). Mr. Prescott gave some background regarding the character of Mr. Foehl, stating that he was one of the nicest people, the type of person who turned a \$500,000 property into a million dollar property, and who was a very generous, organized man. He stated that Mr. Foehl 'was bored, had water issues at the back of the garage, which flooded every spring, and where he had Peter Bianchi put in drainage to try to solve that issue. Mr. Prescott stated that Mr. Foehl wanted some dry storage and decided he was going to do it himself. Mr. Prescott stated that he never thought to question if Mr. Foehl had a permit because Mr. Foehl 'would have gotten a permit to get a haircut because he's that kind of guy'. Mr. Prescott stated that Mr. Foehl had built the addition eight or nine years ago, raised it so that he could store golf clubs and stuff in there and never thought another thing about it. Then he (Mr. Foehl) had the property sold and shortly before the closing, there was an issue about the deck possibly being too close to the water. Peter Stanley interjected that it was purely chance that he had been involved; the assessor had asked him to go over to the property because the assessor had some questions about some of the things done. Mr. Prescott responded that Mr. Foehl had had the deck remodeled and enclosed with screens, both done with building

permits and Peter Stanley stated that while reviewing the file, he noticed that the addition wasn't on the garage before. Mr. Prescott continued on to say that the issue had been given two weeks to be straightened out and when it couldn't be, the buyer withdrew. Mr. Foehl told Mr. Prescott that he would tear the addition off and sell the property next spring, but Mr. Prescott thought that, considering the shape of the lot, the amount of water in that area, and the septic on the other side, and that Mr. Foehl had a legitimate case for a variance. Mr. Prescott reiterated that Mr. Foehl did not intentionally build the addition without a permit, that he probably left it up to the builder to get one. Mr. Prescott stated that Mr. Foehl shouldn't have to spend another \$500 to tear the addition down as it can't be seen from the road, and the adjacent land can't be used for anything without tearing down the garage on the abutting property, the only thing that could be put in there was a driveway and there was already an existing driveway. Mr. Prescott stated that he thought it was a perfect case for the Zoning Board to relax the ordinance and was willing to answer any questions the Board might have.

Bill Green asked Mr. Prescott to lead the Board members through the five criteria:

- 1) The proposed use would not diminish surrounding property values because:
The structure is not visible from anywhere by abutters except standing in the woods near it. Mr. Prescott also stated that it looks nice, it cannot be seen except in the dead of winter from the proper angles, it certainly adds value to that property, and doesn't in any way diminish the surrounding property values because it will never impinge on an abutting piece of land, in his opinion.
- 2) Granting the variance would not be contrary to public interest because the abutting land is a narrow strip of woods that will never have any use by an abutter. Mr. Prescott stated that he did not think there was a citizen in the Town of New London that would be affected by this due to the lot configurations. As a former member of the Zoning Board, he had always thought that any lot with such a narrow configuration, the only other option would be a freestanding building that would be more unsightly on that lot and crammed next to the driveway as compared to what Mr. Foehl did.
- 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; this garage and driveway are on a narrow (75 foot lot). In seeking dry storage, there is no other practical spot off the existing garage to locate this structure. Mr. Prescott stated in the past, hardship used to be based just on the lot configurations, but in this case, it certainly figured in the loss of the sale of the home.
 - b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because: see above, could have built a free-standing shed somewhere else on lot, but would have been unsightly and impractical for intended use.
- 4) Granting the variance would do substantial justice because: this type of addition

although encroaching on side lot in no way affects use of abutting property now or in the future.

- 5) The use is not contrary to the spirit of the ordinance because: this addition was not intended to violate the spirit of the ordinance; the abutting woods has no possible future use due to its narrow width.

Helen Tucker, owner of the property abutting 1028 Lakeshore Drive, 1038 Lakeshore Drive, stated that everything Mr. Prescott had said regarding the Foehls was true and that Mr. Foehl probably didn't think he needed a permit to just stick on this addition to the garage. She stated that she had a couple of questions: 1) will the variance affect the value of her property; 2) would she have a hardship if a buyer posed the problem of wanting her to reduce her asking price because of the encroachment? She stated that it was not her intention to hurt the Foehls in any way, but she did have to look out for her interests, too.

Michael Todd asked if her property was abutting on the south and Mrs. Tucker responded that it abutted on the east and that the house was built very close to the boundary line.

Doug Lyon stated that her lot was the one being impinged by structure and she responded that was correct. She stated that one of her sons had gone up there to look at the property and told her that a drainage duct was behind the addition and she asked Peter Stanley if that drainage was on her land. He responded that it was on both.

Bill Green asked Peter Stanley if he had any other comments and Mr. Stanley stated that Mr. Foehl had gotten and signed three prior permits for work that was done on the property (in 1998, 1999, and 2005), so he surmised that Mr. Foehl understood that a permit would be required. Mr. Stanley went on to say that there was an alternative location for this addition (on the street side of the building) that could have been used and would have been legal.

Michael Todd stated that for the record permits in 1998 and 1999 were issued to and signed by the petitioner. Mr. Prescott responded that he assumed that Mr. Foehl had gotten a permit and as for the drainage issue, Mr. Foehl had spent a lot of money to fix that. He stated that the drainage runs right between the two houses. Michael Todd commented that belied the assertion that Mr. Foehl was relying on his builder(s) to get the permit(s) and Mr. Prescott agreed, stating that he couldn't make an excuse for him, Mr. Foehl had made a mistake. Mr. Prescott also stated that as far as Mrs. Tucker's questions, looking at that lot, at where that garage is located, he didn't think anyone in their right mind would ever want to locate a driveway there unless they were forced to.

Michael Todd stated that it was an after-the-fact and the Board's analysis should be, would they have granted a variance in the first place? If Mr. Foehl had come to the Board before constructing the addition, after looking at all the facts and evidence, would they have granted the variance to add this shed on the back facing the property line? He went on to say that Mr. Stanley had demonstrated that there would not have been sufficient hardship to have put it on the street side, it would have been legal, and would have solved Mr. Foehl's problem of dry storage.

Bill Green asked for a motion to discuss.

Motion to discuss - Doug Lyon
Seconded - Laurie DiClerico

Bill Green asked Michael Todd how he felt about the first criteria and his response was that the Board had to make some judgment based upon the evidence presented and from the testimony of the abutter about how uncertain she was regarding the affect on her property value would be. This raised the question of diminution of her property value and he did not think the petitioner had met the burden to prove that there would not be any diminution of surrounding property values.

Bill Green asked Laurie DiClerico how she felt about the first criteria and she stated that she agreed with Michael Todd. She also stated that she knew that Mrs. Tucker was worried about it even though there was no evidence yet to prove that diminution.

Bill Green stated his sense of the five criteria: 1) he thought it unlikely that this addition would affect the value of Mrs. Tucker's property. Mrs. Tucker interjected that she had written and signed a statement that this addition did not hurt her view, wasn't unsightly and, unless it adversely affected any monies or her financially, she was all for it. Bill Green responded that it might have an affect if the encroachment was in more proximity to her home or something like that.

He then asked Doug Lyon how he felt about that and Doug responded that he tended to agree with Michael and Laurie on this one and he added that in cases the Board has had before like this, one of the real issues for him is whether there's any concern on the part of the neighbors and since he senses a concern here, he's inclined to suggest that the evidence is not in against the diminution of property values.

Bill Green asked Sue Andrews how she felt about it and Sue responded that she thought the values of these lots built close to the lake front and to each other didn't affect the neighbor's property and didn't think it diminished the value of the neighbor's property.

Bill Green asked Sue Andrews how she felt about criteria #2 and she responded that she couldn't see how it would be contrary to public interest. She stated that she had walked around the property that day and she couldn't see any reason why it would be contrary to public interest.

Bill Green asked Doug Lyon how he felt and Doug responded that clearly it doesn't have a huge impact on the Town or the public as a whole, but he had the same concerns about the unease of the abutter. He stated that was a strong issue for him and all of the ones that occur like this.

Bill Green asked Laurie DiClerico how she felt and she responded that she agreed with Doug and stated the Board had not granted variances similar to this one before and she couldn't see

granting one now.

Bill Green asked Michael Todd how he felt and Michael responded that he thought the public interest in this instance related to the stated setbacks for these lots and that the ordinance was intended to protect the lake area from overcrowding and to allow this variance would have an accumulative and detrimental effect downstream.

Bill Green asked Michael Todd how he felt toward criteria #3a and Michael responded that when all the property owners are subject to the same restrictions as is the case here, there can be no variance. On each of these lots (all roughly the same shape) they all have an aspect ratio of 7 to 1 meaning they are all roughly 75 feet wide and upwards of 600 feet long and are all subject to the same setback requirements. He stated that he had not heard sufficient evidence before the Board as to the specific characteristics of this particular lot which would allow the Board to grant the variance in this instance since they are all subject to the same conditions.

Bill Green asked Laurie DiClerico how she felt and she responded that she thought there was an alternative, that the addition could have been constructed on the back of the garage and she didn't see where there was absolutely no other place and the conditions were special and nothing else could have been done.

Bill Green asked Doug Lyon how he felt and he responded that he felt the same way.

Bill Green asked Sue Andrews how she felt and she responded that she agreed that it could have been done some place else.

Bill Green stated that criteria #3b had been answered by the above reasons.

He then asked Doug Lyon how he felt about criteria #4 and Doug responded that he didn't think this was one in which the homeowner is under any substantial burden and he would hazard one other comment, that is, he also knows the Foehls a little bit and he thought that if Mr. Foehl was aware that his neighbor had any concerns, he would prefer to eliminate the addition rather than upset his neighbors. That's the kind of person Mr. Foehl is.

Bill Green asked Laurie DiClerico how she felt and she stated that she agreed with Doug Lyon.

Bill Green asked Michael Todd how he felt and he responded that he agreed as well.

Bill Green asked Sue Andrews how she felt and she responded that she agreed too.

Bill Green asked Sue Andrews how she felt about criteria #5 and she responded that it would be contrary to the spirit of the ordinance if there was another way to do it that didn't violate the ordinance. Doug Lyon stated that he agreed and that there was an alternative and that the setbacks on this are important. Laurie DiClerico and Michael Todd agreed.

Bill Green asked for a motion.

Motion to deny the application for area variance for a variety of reasons stated that it does not meet all of the criteria required by the Board to grant this variance - Doug Lyon
Seconded - Laurie DiClerico

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

The meeting adjourned at 7:57 p.m.

Respectfully submitted

Camille Holmes
Secretary, Town of New London

Reviewed by

Bill Green