

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
DECEMBER 11, 2006

PRESENT: Larry Ballin (Chairman), Russ Cooper, Cheryl Devoe, Laurie DiClerico, Caroline Newkirk.

PUBLIC HEARING

Relevant to the Flying Goose Pub-Four Corners Grille, located at 40 Andover Road, in the ARR zone, owner Millstone Realty requested variances to Article XX §A-2 of the New London Zoning Ordinance to allow expansion of an existing, legal non-conforming use, and Article VI §C-1 of the New London Zoning Ordinance to allow the expansion to further encroach into the front yard setback. The application proposed to (1) construct a roof over an existing staircase at the rear of the building, (2) to construct a 4' x 12' woodshed within the fenced area behind the building, and (3) to add a 6' x 8'9" space to each side of the existing entrance.

Larry Ballin opened the hearing at 7:30 p.m., 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 variance application, the building permit application, agent authorization, and a drawing and plat of the property. Douglas Long of Long Brothers Construction represented the owner at this hearing. New London Zoning Administrator Peter Stanley and abutters Walter and Marlene Graf also attended.

Applicant's Presentation

Note: the proposal consists of three separate parts: (1) construction of a roof over an existing 8' long staircase at the rear of the building, (2) construction of a 4' x 12' woodshed within the existing fenced area behind the building and (3) addition of a 6' x 8'9" space to each side of the existing entrance. The third part of the project will further encroach on the front yard setback. Doug Long pointed out that this is a legal non-conforming building as it has been used commercially since prior to the enactment of the zoning ordinance. He began his presentation by discussing #3 first.

He described the current entrance that consists of a canopy which will not be changed with this project, two doors the first a double set of steel doors (which he described as being in "very poor shape now"), and a single door which has been recently replaced. There is a breezeway between those, that extends six feet out from the main building. Both sections of the breezeway have a gable roof, only the second of which is in line with the main roof. They are proposing to remove that 6' x (about 10' to 12' wide) "knuckle" and bring the existing roof line out the whole six feet. They will be picking up roughly 6' x 8'9" of space on each side of the entrance. At this point, they have not decided whether the ceiling within each of these two small wings will be flat or vaulted. Essentially the expansion is to keep people who are waiting to dine, out of the parking lot outside the restaurant, and out of the lane of traffic between the kitchen and the two dining areas inside the restaurant. He emphasized that this a safety issue; the two new wings on either side of the entry will not be used as additional dining area. At the current time, they do not propose to heat the new wings, but he asked what would be necessary if they do choose to put an "air lock" in there in place of the double doorway.

Russ Cooper asked to confirm that the awning will stay where it is. Doug Long confirmed that, and said that he thinks that for the most part, they will not be disturbing the awning. They will unhook it from the "knuckle", dig the foundation (for the new wings), and pour the frost walls.

Larry Ballin asked, hypothetically, if the purpose of this is to increase safety, would it not be better to remove the awning, and do something that would not enter the parking lot quite so much. Doug Long said they have not discussed that with the owner. At this point, there is landscaping on either side of the awning, and two benches beneath it.

He went on to discuss the proposed roof over the existing staircase at the back of the building (#1 in the application). He said that the staircase projects slightly less than eight feet off the back of the building, and to either side of that stair is a second story landing (that is, two landings, one on either side of the staircase, making the total width 15'). Employees use the landings and stairs to go to and from the dumpster as well as to unload from trucks parked at the dock just to the south of that stair and landing area. He noted that right now, the stairs and landings are subject to ice and snow falling off the roof, and become hazardous for those employees. The proposal is to protect that area with a roof only. They do not propose to enclose the area with walls. It will just be a protective roof, keeping the existing roof pitch which at that spot is pretty shallow. The roof will be held up with tubes as posts, and tied into the back of the building. Larry Ballin asked to confirm that it is simply a roof structure proposed, they are not proposing enclosing that. Doug Long confirmed, adding that this will remain open. They may improve the existing handrails.

He went on to discuss the proposed wood shed (#2 in the application). Right now, they are storing their wood for the fireplace in front of the building. When it is delivered, it is dumped into the handicapped parking space, and has to be thrown out of the way. Referring to the footprint drawing in the packets, he pointed out the existing fenced area behind the building and an 8' wide opening in that through which the dumpsters are accessed. It is in that same area that they are now proposing a 12' x 4' woodshed, without concrete floor, but sitting on railroad ties. Wood delivery trucks will be able to back right up to that. He noted that the woodshed will not be visible from the roads, and probably not even from the restaurant.

Hearing no more questions from the Board, Larry Ballin asked for comments from abutters. Marlene Graf said they have no objections. She said this sounds like a good idea.

Larry Ballin asked if the Town has any comments. Zoning Administrator Peter Stanley said there are no issues with the two parts of the project behind the building, but he noted two facts about the proposal to the front entrance:

(1) The building itself is not parallel to the property line; that is, as one proceeds north, the building and the property line converge. He noted that he has not found any record of a variance or building permit for that canopy, but even disregarding the canopy, the actual hard structure of the building is getting closer to the property line. The building is being made more non-conforming, if only slightly. He conceded that it is only a matter of inches, but it does come to less than the required setback.

(2) He noted that behind the building, the roof over the staircase and the woodshed will not have any affect on how much business they can do at any particular time, but the expansion of the front entrance could be perceived as an expansion of the non-conforming use.

Russ Cooper asked about the safety issue which was mentioned. Peter Stanley said he felt this was more of a convenience issue for patrons than a safety issue.

Larry Ballin referred to the five criteria that the Board must find existing in order to grant a variance. Doug Long began reviewing those, and Larry Ballin asked how the hardship issue could be addressed here.

Larry Ballin asked if there is any other place within the building that could be used as a waiting area for patrons so that the owners would not be continually expanding the non-conforming use. He went on to point out that if the objective is to increase safety, the canopy which currently projects quite far out toward the parking lot, could be removed. That would reduce the overall footprint, but still allow expansion of the two "knuckles" where patrons will be asked to wait.

Russ Cooper suggested the possibility of shortening the canopy to keep the look of it, or moving the entranceway altogether, more toward the south side where the bar is. Doug Long described the location of the kitchen and the three doors to that, and the shallow hallway. Russ Cooper clarified that his suggestion was to move the entire entrance, to have people come in through the bar. Cheryl Devoe said there is a door on that side now. Doug Long said that for that matter, they could also move the entrance four inches to the left, and it would still be a non-conforming building, but would meet the setback requirements. However, that would require tearing the existing

roof structure off. Larry Ballin added that moving the entrance all the way to the south side of the building might also generate ADA issues. Doug Long said he will speak to the owner to see if he would be willing to remove the awning. Laurie DiClerico suggested he may be willing to do that, now that he will have more space inside for people to wait. She said she would feel much more favorable toward this expansion if the canopy were removed. Doug Long said he did not install the canopy so is not sure what would be involved in shortening or removing it. Russ Cooper suggested another option might be to put the canopy laterally along the front of the building. Cheryl Devoe asked for the dimensions of the canopy. Doug Long said he thinks it is about 9 or 10 feet wide, and about 12 or 14 feet long. He said he does not feel that what they are proposing is going to affect anything else there—canopy, landscaping, benches, etc. He does feel that the canopy is the focal point of the building, and it does keep the Flying Goose sign at a reasonable height—that is not up above the ridge of the gabled roof. If the canopy were removed, the sign would have to be pushed up another 8 or 10 feet.

Larry Ballin asked to conclude the discussion about the two projects behind the building. No one had further questions or comments on those.

He asked if there were any quid pro quo that could be achieved relevant to the new entrance in the front. Doug Long said if removal or shortening of the canopy were made a condition of approval, he would have to go back and negotiate that with the owner.

Larry Ballin raised the question of whether or not expanding the entrance is considered an expansion of the non-conforming use. Peter Stanley said clearly the building will be getting closer to the property line, so it is non-conforming as far as the setback is concerned. Regarding use, he said that, at face value, this will expand the area devoted to the business. Whether or not this will result in better utilization of the interior facilities—(the Town) doesn't control the interior. Larry Ballin pointed out that there is a limit on seating capacity; licensing dictates that. Peter Stanley agreed, but said there is the question of whether or not having more space for people to wait will result in more turn over there is up to the Board to determine. If the Board wants to say this is not an expansion of a non-conforming use, it can do that. Doug Long said that right now, most of the space in the existing entry consists of shelves for brochures for local businesses, and he imagines that will be the same in the new entry. The view was not to put benches or seats there. In addition, with non-smoking issues (inside the restaurant), the new entry will be one more space for people to do that.

Russ Cooper asked to confirm that the addition will be within two inches of the required setback. Doug Long said he wasn't sure what the plus or minus on the engineering plan means. Peter Stanley said this is already too close. The required setback is fifty feet, and this is maybe thirty feet to the property line. Once again, he agreed that this would make it only inches more non-conforming. He noted that if the new construction were to come out only 5'6" or 5'8", they would be in compliance with Article XX, B-2, by continuing along the line of the existing non-conforming setback.

Regarding use, he said that neither he nor the Selectmen should be in a position of having to decide how much bigger they can make a building before it is an expansion of a non-conforming use. Larry Ballin reiterated that licensing dictates the number of seats. He suggested that a condition of approval be that there be absolutely no seating in this area, that the number of seats in the restaurant not be allowed to increase as a result of this expansion. Marlene Graf expressed concern that "no seats" would mean that there could not even be a bench for people who are waiting to sit down. She asked about handicapped people. Larry Ballin pointed out that they have benches available now. The condition would simply say that in the new space that is created there can be no more seating, because that would start to create an expansion of a use. Doug Long confirmed that right now there are chairs against the wall, but it is congested. Russ Cooper clarified that the condition would not prevent people from sitting there waiting; it would prohibit the addition of café tables or serving drinks, etc., in the new space. Peter Stanley added that the purpose of clarifying all this on the record now, is so that it can be available should someone in the future want to do something more with the building.

Doug Long asked if in the future, owners decide to take out some of that interior partition between the proposed air lock and the existing restaurant, and heat that area, would that require another building permit and energy audit.

Peter Stanley said it would make sense to get the energy audit now. Doug Long asked if the owners wished to do that, would that require coming before the ZBA again? Peter Stanley said not necessarily, as long as they are not attempting to create more seating for dining. If it involves changing a structural wall, or heating a space that is presently not heated, it would require a building permit.

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

Deliberations

Larry Ballin asked to confirm that members are in favor of approving parts 1 and 2, that is, the roof over the rear stairs, and the construction of a woodshed behind the building. So confirmed.

Regarding #3, Russ Cooper said the proposal will create more nonconforming space, but if it is used only for waiting, and not for increasing the capacity for diners, he would not object to it. He asked if, from the standpoint of safety, would the awning be a bigger issue. For people driving by, it sticks way out there. Laurie DiClerico said she would be more comfortable with the proposal if the awning were taken back somewhat. Cheryl Devoe said she did not feel that taking the awning back would change the space that is used. She pointed out that the landscaping and the benches are still there, and the awning actually makes that area more visible to people driving through there. Russ Cooper agreed that the awning does define that space, and in that sense may even make it a little bit more safe for drivers going through. Larry Ballin said he would not feel comfortable with the Board predicating its decision on shortening or removing the awning, but he does feel it is a suggestion that could be taken back to the owner, especially if it collapses anyway during construction. He suggested the owner might want to look at some change in the flow there. Doug Long said that whole area is curbed; the curbing offers some protection of that area. Peter Stanley added that the owner should also look into the history of that awning. It is not clear at this point whether or not any of that occurred legally. If not, it is all questionable anyway, and subject to challenge at any point. It's an undiscovered violation.

The Board reviewed the five criteria for granting a variance, and found that:

1. The variances requested, if granted, will not result in a diminution of surrounding property values. The Board has not received negative comments from abutters. Those abutters in attendance at the hearing expressed approval of the proposal.
2. The variances will be of benefit to the public interest, allowing more waiting space protected from the elements, as well as from the flow of foot-traffic inside the restaurant.
3. Denial of the variances would not necessarily result in hardship; however, the Board agreed that the proposal is for a very minor expansion, and the approval would be on the condition that there be no seating for food service in the expanded area. The record will reflect that there will not be any sort of service in the new entry area.
4. The question of whether or not granting the variances would do substantial justice did not generate discussion.
5. Granting the variances will not be contrary to the spirit of the ordinance. The building is already a large non-conforming use, and the proposed construction will not be creating a huge increase in that.

Russ Cooper moved to approve the variances, with the condition that the project will not result in additional seating for dining. Cheryl Devoe seconded. No further discussion. Motion unanimously approved.

The hearing adjourned at 8:20 p.m.

Respectfully submitted,

S.A. Denz

Recording Secretary