

**TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
NOVEMBER 7, 2005**

PRESENT: Larry Ballin (Chairman), Russ Cooper, Cheryl Devoe, Bill Green, Brian Prescott.

PUBLIC HEARING

Blanc & Bailey Construction representing owner Elaine Goldberg requested a variance to the terms of Article XX, §B-3-b of the New London Zoning Ordinance, in order to make substantial improvements to her property at 305 Forest Acres Road in the R-2 zone, within the 50-foot setback requirement.

Larry Ballin opened this 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.

Also present for this hearing were: John Caramore and representatives of Blanc & Bailey Construction, and abutters Robert and Emma Crane.

Prior to the hearing, ZBA members received black and white photographs of the structure and grounds, two to-scale drawings showing the current building with deck, and the proposed changes to deck and walkway, erosion control notes, list of indigenous vegetation to be planted. During the hearing, John Caramore presented color photographs of the property.

Applicant's Presentation

John Caramore of Blanc & Bailey summarized the proposed project which will:

- Replace the currently decrepit retaining wall, and plant the area between the house and water with indigenous plants.
- Remove the 20' x 30' ground level deck, and replace it with a four-foot deep deck along the entire width of the upper level of the house. The current roof which slopes down almost to the level of the second story floor will be cut back to allow the deck, and a straight wall for the second story of the house. In response to questions raised, he explained that the two alcoves shown at either side of the upper level of the current structure will be part of the new deck, i.e. those two ends will be deeper than four feet, but only four feet will extend into the fifty-foot buffer area. In other words, the new deck will be 34-feet long—all the way across the front of the house, and four feet deep in center, but slightly deeper at either end where it goes back into the alcoves. In total, they are removing a 250-square foot deck on the ground level and replacing it with a 250-square foot deck on the upper level.
- On the ground level, they propose a four-foot wide walkway located eight feet in front of the house (the area where the existing deck is now), and curving down around the retaining wall to the water line. The walkways will consist of 4" to 6" of sandy base, covered with a filter fabric, and topped with ¾" pea stone.

In response to concern raised by Peter Stanley, both John Caramore and other representatives from Blanc & Bailey confirmed that they understand that the walkway cannot be wider than four-feet. They offered to put plantings between the front façade of the house and the walkway there, to assure that there does not evolve an eight-foot wide walkway in that spot.

- They plan to completely circumvent the house with pea stone and crushed rock, to allow better filtration for the run-off. John Caramore noted that right now the ground around the house and beneath the deck is hardpan.

- In addition, they are going to relocate that drain pipe which is currently only a few feet from the shore and which now allows run-off to empty directly into the lake, to a new location thirty-feet inland. Its focus then will be through a rip-rap system to allow greater filtration before the run-off water reaches the pond.
- They are leaving the first floor intact, though there will be some interior modifications. A garage will be added to the rear but that is outside the buffer area, and not the concern of this hearing.

He noted that denial of this variance would result in substantial hardship to the owner. The alternative of moving the building back would not only be prohibitively expensive—around \$100,000, but would result in substantial disruption to the existing landscape.

They feel that granting the variance would not diminish property values, but rather would increase the value of both this property and those around it.

The proposal is in keeping with the spirit of the ordinance, particularly as they plan to substantially improve filtration of run-off by changing impermeable surfaces to permeable ones, and planting the area with native species as recommended in Article XVI §F-2-e of the ordinance. A detailed erosion control plan including location of silt fencing, hay bales, gabien stone, and backfill and grading processes, was included in members' packets.

He added that they met with the New London Conservation Commission on August 17, and have incorporated the Commission's suggestion in the plans presented tonight.

Russ Cooper asked to clarify how much of a transgression into the fifty-foot setback will result from the project.

John Caramore said they would like to maintain the current foot-print of the house; that extends four feet into the buffer. The second level deck will rest on the first story. They will not be creating more volume within the buffer.

Larry Ballin opened the floor to comments and questions.

Abutters Bob and Emma Crane said they support the improvements, noting that the contractors have talked to them about the plans, assuring that the new slope to the water will match theirs.

Peter Stanley said he was not at the Conservation Commission meeting, but has received input from that board to the effect that the Commission feels that the proposed plan will provide substantially more stabilization than currently exists there.

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

Deliberations

Zoning Board members found that granting the variance to the terms of Article XX, §B-3-b of the New London Zoning Ordinance, thus allowing the proposed improvements to the residence, would:

1. not result in diminution in value to surrounding properties as attested to by abutters in attendance,
2. as noted by the Conservation Commission, significantly improve protection of the shoreline, thus benefiting the public,
3. allow improvements to the property without the undue financial cost of relocating the building altogether and the extensive impact to the landscape that would cause,
4. allow substantial justice to be done, is supported by neighbors,
5. not be contrary to the spirit of the ordinance, but remain in keeping with the ordinance's objective of protecting the waterfront.

Brian Prescott moved to grant the variance. Bill Green seconded. No further discussion. Motion unanimously approved.

Peter Stanley reminded applicants that all erosion control measures must be in place before a *spoonful* of dirt is moved. Larry Ballin reminded once again that the width of the walkways cannot exceed four feet.

PUBLIC HEARING

Aristotle Souliotis and George Souliotis of Arigeo Realty LLC & Geori Realty LLC requested a variance to the terms of Article VII, §B-1 of the New London Zoning Ordinance in order to a construct a 24-foot wide, 36-foot long canopy over the gas pumps. The canopy would have less than the required front yard setback from Main Street. The property (formerly New London Texaco, now New London Mini-Mart) is located at 384 Main Street in the Commercial zone.

Larry Ballin 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.

Present at this hearing were applicants Aristotle Souliotis, George Souliotis, and Engineer Ross Stevens.

Prior to the hearing, ZBA members received the draft site plan, and at the hearing Ross Stevens presented a “Narrative in Support of the Variance Request of Aristotle Souliotis Pertaining to the New London Mini Mart,” summarizing the proposal and addressing the five criteria which must be met before a variance can be granted.

Applicant’s Presentation

Aristotle Souliotis presented some photographs of the style of canopy he is proposing to place over his gas pumps. It will not be a flat top, but will have a sloping roof. This variance is required as the canopy—24-feet wide and 36-feet long, will come within two feet of the right-of-way to Main Street.

Ross Stevens referred to his narrative which points out that the Ordinance requires either a thirty-foot set back from the right of way, or a setback not less than that of neighbors on either side. In this case, the neighbors are Aesthetics with a setback of 18.5 feet from the right-of-way, and C.B. Coburn with a setback of 18-feet from the right of way.

Aristotle Souliotis said he feels that denying him opportunity to provide a canopy over customers pumping gas would put him at a disadvantage in face of the two competing gas stations in Town.

He went on to describe the proposed lighting to consist of three lights, each of 175 watts, recessed into the canopy, thus focusing its illumination straight downward. That is in contrast to the 16 lights at Jakes, each of which are of much higher wattage, and not recessed.

Brian Prescott asked if the canopy will be free standing or extending from the façade of the building.

Aristotle Souliotis said it will be free standing, centered over the gas pumps. He noted that he will be adding one gas pump for a total of two.

Russ Cooper said that will make this the closest building to the street, of all those along Main Street.

Ross Stevens said it would be comparable to Woodcrest, though with Woodcrest, the proximity may be less noticeable as that does not have a paved front yard. He added that Woodcrest has its entire vertical structure that close to the street. In this proposal, it will just be a canopy that will come that close.

It was noted that the Jiffy Mart has a canopy over its pumps that is ten or eleven feet away from the right of way, but it is smaller than the one proposed here. Members conceded that it is a benefit to both Jakes and Jiffy Mart to have

the canopies over the gas pumps. George Souliotis added that he feels the canopy proposed here will not be intrusive.

Larry Ballin asked to confirm that they will retain the locations of the building and gas pumps. Aristotle Souliotis confirmed, and added that they are proposing adding a number of green spaces, and making improvements to the façade of the building and around it. There will be no disturbance to Main Street.

Cheryl Devoe asked if it would be possible to reduce the size of the canopy, and get the same benefit. Aristotle Souliotis said that may be possible. He expressed concern that the canopy adequately shelter customers when two cars are parked at the pumps at the same time.

Russ Cooper pointed out that people pumping gas are standing right next to the cars, and he suggested that a 24-foot width may not be necessary to cover them. Aristotle Souliotis agreed, and said he'd be willing to reduce that to a 20-foot width, that is, 10-feet to either side.

Larry Ballin opened the floor to discussion.

Hearing none, Russ Cooper moved that the Board close the public hearing, and enter deliberations. No further discussion. Motion unanimously approved.

Deliberations

Bill Green suggested the canopy may improve the look of that structure. Aristotle Souliotis said the entire building will get a substantial face lift when it becomes the New London Mini Mart.

Russ Cooper said he is not opposed to a canopy, but felt it could be smaller.

Larry Ballin expressed concern that it will change the look of the structure, and suggested that a canopy coming off the building and covering at least those customer pumping gas on that side of the pumps, would be better. He said people do not see Woodcrest protruding that close to the center line. The big concern here is that Main Street is a valuable visual asset to New London.

Aristotle Souliotis agreed that Main Street is a valuable asset, and said he plans to capture the vintage look in the renovations of the building. It will be fronted with brick and more glass. However, he feels strongly that without a canopy over his gas pumps, he would not be able to compete. He had no objection to reducing the size to 20-feet in width and 30-feet in length.

Cheryl Devoe noted that the proposed green areas will balance the addition of the canopy in front of the buildings.

Brian Prescott said he would be okay with a canopy allowing customers to stay under cover while pumping gas, but felt it should be reduced in size to 20-feet by 30-feet. He said that is a necessary change, and would not really be bad to look at. People coming down Main Street are likely to look right under the canopy.

ZBA members reviewed the five criteria for granting a variance, and found that:

1. Granting the variance allowing the canopy would not diminish values of surrounding properties.
2. The canopy would benefit the public interest in providing a convenient and comfortable environment for fuel customers, and a better business establishment for the community.
3. Denial of the variance would result in unnecessary hardship to the owner, making it difficult for him to compete with the other gas stations in Town. This is a reasonable use which has been allowed on similar properties in similar circumstances.
4. Granting the variance would do substantial justice in allowing applicant to equitably compete with other businesses.

5. The use will not be contrary to the spirit of the ordinance, but proposes to continue the historic use of the property as a fuel service area.

Russ Cooper moved that the Board grant his variance, allowing the requested canopy, with the amendment that it be reduced in size to 20-feet by 30-feet. Bill Green seconded.

Brian Prescott asked if the lighting should be addressed. Peter Stanley said there is no regulation of lighting, but added that the Planning Board was pleased with this concept as it was presented at the preliminary site plan review.

There was no further discussion, and the variance was unanimously approved.

PUBLIC HEARING

Maria Dolder, Esq. of Herbert & Uchida Law Offices representing owner Howard Davis III, requested a variance to the terms of Article XVI §H and Article XX §B-3-b of the New London Zoning Ordinance, in order to construct a foundation for a cottage within the required 50-foot shore-land buffer and make Substantial (greater than 50% of the building's current value) improvements to the cottage. The property is located at 143 Lighthouse View Road in the R-2 zone.

Larry Ballin opened the public hearing at 8:15 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

Present at the hearing were owner Howard Davis and his representative Marie Dolder Esq, architect Harry Sidell, Engineer Ross Stevens, George Neuwirt of Neuwirt Construction, Landscape Architect Kevin Pelletieri.

Prior to the hearing, ZBA members received copies of the site plan, landscaping plan, and seven blueprint elevations detailing the proposed improvements to the cottage itself. During the hearing, members acknowledged receipt of a letter dated October 27, 2005 from abutters Allan and Mary Doyle expressing support of the proposal.

Applicant's Presentation

Harry Sidell made the initial presentation of this proposal, pointing out that the current structure extends 20-feet into the shore-land buffer, and is supported by large rocks and piers. He clarified that the house itself extends 9-feet, 6-inches into the buffer, the balance of that 20-feet is the porch with roof. Applicant's are proposing a new foundation under the existing building. They have met with the New London Conservation Commission and have incorporated their suggestions into these plans.

Engineer Ross Stevens went into the proposed work process. The building will be raised to allow construction of the new foundation. He referred to an existing and a proposed driveway, the location of a proposed temporary ramp for workers, and the direction of run-off away from the lake, and toward the center of the work area where it will be collected and pumped out. Orange construction fence will be placed along the fifty-foot buffer line and within that, erosion control socks. The building will comply with the FEMA flood plain requirements.

Larry Ballin asked to confirm that they will be adding no more footage in the front.

Maria Dolder confirmed that, and added that the project does include a modest sized addition, but that will be outside the buffer. However total cost, including the foundation, erosion controls, new interior windows, the addition, etc., will exceed 50% the current value.

Kevin Pelletieri said there are some significant sized trees in front of the house, and their trunks and root zones will be protected. He discussed briefly the planting plan using native plants, which require no maintenance.

Maria Dolder summarized the presentation by reiterating that there will be no further encroachment into the buffer and by reviewing the five criteria required for a variance. Specifically:

1. There will be no diminution of property values. Rather, the applicant's intent is to preserve this historic (1930's vintage) cottage. It is, she said, the finest example of such a cottage on Lake Sunapee.
2. The public interest will be served by its preservation, and the proposed work will not create a hazard or nuisance.
3. This is a unique property. The vintage cottage already exists partly in the buffer. Due to the slope behind it, moving it would not only be costly, but would result in greater disturbance to the land there. She added that the requirement here is for a dimensional variance. The planned addition is modest in size, and there are no reasonably feasible alternatives.
4. Granting the variance would do substantial justice for all of the above reasons. She added that the completed structure (exclusive of the porch) will (as now) extend only 9-feet, 6-inches into the buffer. The proposed addition will be outside the buffer zone. They will be adding no additional impervious surface.
5. The proposed project is in keeping with the spirit of the New London Zoning Ordinance in that it safeguards the buffer zone, which is one stated objective of the ordinance. The cottage is already partly in the buffer, and they propose no further encroachment into the buffer. The extensive erosion control plans will prevent harm to the water.

Peter Stanley asked if the addition of the foundation is going to result in additional living space. Howard Davis said no, that will be the basement, and will be used only for storage.

For the information of the Zoning Board, Peter Stanley said that the Planning Board is considering proposing some amendments to the ordinance which would allow foundations to be constructed under existing non-conforming buildings in the buffer as long as they result in no increased encroachment, or increased function. They are also considering some amendment to that regulation that requires a variance for improvements to non-conforming structures which will exceed 50% the current value.

No abutters or members of the public attended this hearing. Larry Ballin asked if there were any further comments or questions. Hearing none, Brian Prescott moved that the Zoning Board close the public hearing, and enter deliberations. Russ Cooper seconded. No further discussion.. Motion unanimously approved.

Deliberations

Zoning Board members referred to the review of the five criteria presented by Maria Dolder, and agreed that granting these variances would comply with those. Brian Prescott moved to grant the variances. Bill Green seconded. No further discussion. Motion unanimously approved.

OTHER BUSINESS

1. The minutes of October 10, 2005 were unanimously approved as drafted.
2. Larry Ballin reported receipt of a letter (undated, but received and stamped at New London Selectmen's Office on October 17, 2005) from Patricia M. Panciocco of Wiggin & Nourie, P.A., representing Michael Todd, requesting a rehearing of Mr. Todd's administrative appeal of the Selectmen's decision regarding the meter panel in front of his residence at 159 Old Main Street in New London.

Briefly, Ms. Panciocco presents two reasons why a rehearing is in order:

- First, she submits that the assertion made at the September 26 hearing, that the Zoning Board has the same authority in interpreting the zoning ordinance as the Selectmen have, is incorrect.
- Secondly, she submits that the meter panel does not meet the definition of structure as it is defined in the ordinance, but rather is incidental and subordinate to the house, and does meet the definition of "Essential Services" as that term is defined in Article III of the ordinance.

Larry Ballin made three points:

- The Zoning Board does understand its role in the process—that it is the ultimate arbiter of the meaning and application of the terms of the zoning ordinance. In this case, the ZBA found no error in the decision by the Board of Selectmen.
- The Zoning Board based its decision upon the definition of structure in the ordinance (Article III), and found that the electrical panel does fit that definition, and found that, in considering the meter panel, the Select Board correctly interpreted the term structure, as well as its need for a building permit.
- The structure in question is not an essential service as defined in the ordinance. That definition is a reference to governmental agencies and/or public utilities. The applicant is neither.

He suggested that the request for a rehearing be denied. Russ Cooper pointed out that the meter panels are permitted, but are not exempt from the requirement for a building permit. ZBA members agreed that the applicant can get a building permit for the meter panel, and a variance to keep it in its current location.

Bill Green asked to clarify that before a rehearing can be granted, the Board must find that an error was made, or that there is new information. Larry Ballin said that Attorney Panciocco submits that the Zoning Board used misinformation to guide its decision. Also, she submits that the meter panel is an Essential Service which is permitted in all districts.

Both Bill Green and Cheryl Devoe who voted in favor of approving the applicant's administrative appeal at the September 26 hearing, said that, though they did not see the meter panel in the same way that the majority of the Zoning Board did, they agree that the decision at that hearing was not based on misinformation.

Peter Stanley clarified that he is not a code-enforcement officer as Ms. Panciocco's letter suggests. He just advises. Nothing was approved or rejected on his say-so. The Selectmen listened to the information, and considering the definition of structure, made their decision.

Larry Ballin said it's a decision of the Board of Selectmen that this Board chose not to reverse. It's not the Zoning Board's decision that is being questioned, per se. He suggested the request for the rehearing by the ZBA be denied. Mr. Todd's issue remains with the Board of Selectmen.

Brian Prescott so moved. Motion seconded and unanimously approved, with Russ Cooper abstaining.

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Meeting adjourned at 9:15 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary