

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
JUNE 11, 2007

PRESENT: Bill Green (Chairman), Russ Cooper, Courtland Cross, Cheryl Devoe, Michael Todd.

PUBLIC HEARING

Applicant Harry M. Snow III is proposing a seven-lot subdivision of a 41.4 acre parcel (106-13) located on Bog Road and Messer Pond in the ARR and R-2 zones. For this Zoning Board of Adjustment hearing, the applicant represented by Blakeman Engineering, Inc. requested a special exception in accordance with Article XIII §E-1 of the New London Zoning Ordinance, to allow driveways for two of the lots to cross wetlands in four locations, and a special exception in accordance with Article XIII §E-3 to allow reduction of the 100' wetland buffer requirement on two of the lots.

Bill Green opened the public hearing at 7:30 p.m., read the Notice of Hearing as posted, called the roll and announced that the hearing would be recorded. He recommended the Board address one special exception request at a time in this order of procedure: Applicant's Presentation, Open Floor, Board Deliberations.

Applicant's Presentation (XIII A-1)

Peter Blakeman referred to a color rendering of the proposed subdivision including seven lots, four of which have frontage on Messer Pond. He pointed out the dividing line on this parcel between R2 and ARR zoning, and also pointed out that the R2 zoning requires two-acre lots, and the ARR four-acre lots. In this proposal, applicant has exceeded the larger acreage requirement with all seven lots. The parcel abuts Bog Road, Woodland Trace, Country Meadow, and at one corner Surrey Lane. He pointed out the location of the proposed road and cul de sac, as well as the proposed locations for the lots' driveways. All of the driveways will access off the proposed new road, which in turn will access off Bog Road, approximately across from the garage on Lot 106-1. He also pointed out the location of the proposed fire pond on Lot 1. That will be accessed off Bog Road, and available for the Town's use. He introduced Wetlands scientist Peter Schauer who delineated these jurisdictional wetlands, did the High Intensity Soils Survey and the test pits. Results of those are what determined the lots' configuration. He noted that per agreement with the prior owner, deed covenants establish a 200-foot no disturbance setback and a 300-foot no build setback from Messer pond, noting that these exceed New London's setback requirements. He informed the Zoning Board that they have had several preliminary consultations with the Planning Board, and at its January 9th meeting, the Planning Board remanded applicant to the Zoning Board for special exceptions allowing Lots 3 and 4 driveways to cross those wetlands, and allowing a reduction of the 100-foot buffer on lots 1 and 2.

Russ Cooper asked for clarification of those lots on Messer Pond. Peter Blakeman pointed to lots 1,2,3,4 all of which will have frontage on Messer Pond.

Peter Blakeman went on to discuss access. Originally, they had considered bringing the new road with cul de sac further into the property to lots 3 and 4, but settled on a shorter road with longer private dries in order to reduce wetlands impact. There will however, be three, possibly four, locations where the drives will cross those wetlands. They have submitted application to the NH Des Wetlands Bureau.

Open Floor

Bruce Stetson asked about the driveways' construction. Peter Blakeman said it will be typical driveway construction, bluestone, perhaps paved. Where the crossings are, there will be culverts—one on lot 3, three on lot 4—though he noted that of those, two cross seasonal storms, and there is some question of whether or not they will really need that third. Bruce Stetson asked who sized the culverts. Peter Blakeman said he did. Bruce Stetson asked, what criteria was used? Peter Blakeman said, just basic hydrology, determining how much water is coming down the hill, and basing that on a number of factors. He said that the Town requires 15" minimum culverts, and these proposed will be 15" to 18".

Several residents pointed out that there have been several 100-year storms recently, and Bruce Stetson asked if these proposed culverts would have washed out during those storms. Peter Blakeman said the Town requires that you design for a 25-year storm for all crossings like that. He said that you have to balance designing for typical storms and designing for the biggest storm that could ever happen. If you are going to design for a 100 year storm for every structure, most work would be too expensive. Bruce Stetson asked again if these proposed culverts would have washed out in the type of storms we have been having over the last two years. Peter Blakeman said he could not say right now, but he thinks not. He would suspect that, if anything, if the water got too high, it might go over the driveway. Bruce Stetson said but they might have washed out, and he asked why not just size the culverts a little bit bigger. Peter Blakeman said they can check the impact of a 100 year storm if that's what the consensus is. That is not typical, but they can certainly do that. Bruce Stetson said his concern in asking is that material, if and when it does wash out, ends up in Messer Pond. Bill Green said that is something that will be addressed at the Planning Board level. Peter Blakeman said that's correct, and said that one of the things Planning Board will require will be a full hydrologic analysis, for both pre- and post-development. He reminded everyone that these plans have been submitted to the State Wetlands Bureau, and Peter Schauer said they have received a letter from the State requiring some comments on three items.

Nancy Stetson asked for some clarification of the difference between Zoning and Planning Board issues. Bill Green said applicants are requesting from the Zoning Board a special exception for construction of driveways that will cross wetlands. Special exceptions are permitted per New London zoning regulations, provided applicant meets certain conditions. Several in attendance asked, what are those conditions? Bill Green said that primarily, the Board must determine whether or not a better alternative—one that would result in less impact, exists. Secondly, it must determine if the proposal is really in keeping with the neighborhood.

Harry Snow added that nothing can happen without the blessing of the State; there is a State permit process that is involved with this. Bill Green asked what the status of that is. Peter Schauer said they have submitted it, and have received some comments back, and they must address those. Peter Blakeman said that one of the issues for the State is how best to minimize impact to wetlands. The State asked if a common driveway would work (and that has also come up in Planning Board discussions). At this meeting, Peter Blakeman pointed out that though common driveways do work in some instances, in this case it would not. A common driveway for these two lots, in order to avoid other wetlands and buffers, would have to be located right in the back yard of lot 3. (A few minutes later in this discussion, this led to some explanation of the two types of wetlands that exist in that area.)

Before that, however, Bill Green asked about the status of the application before the Planning Board. Harry Snow said they have worked with the Planning Board extensively, and those discussions have gone well. They have incorporated Planning Board suggestions into the plans presented tonight. Peter Blakeman concurred that they have had several preliminary hearings on this with the Planning Board, and added that a Planning Board subcommittee did a site walk in January. The Planning Board has okay'd this in a preliminary fashion, and remanded them to the Zoning Board for this special exception.

Cheryl Devoe asked if the Conservation Commission has reviewed this as well. Peter Blakeman said the CC has reviewed the plans that were submitted to the Wetlands Bureau. Also, Peter Stanley was on the PB subcommittee that did the site walk. Cheryl Devoe asked if the CC gave an approval. Peter Blakeman said he does not think that is something the Conservation Commission would do. That's more under the Planning Board's purview.

The question of the common driveway and the difficulty that would present for this plan segued into some discussion of the fact that there are really two different types of wetlands in that area: poorly drained wetlands ("pd" on the map), and very poorly drained wetlands ("vpd" on the map)—including one broad area and a narrower tongue. Peter Schauer said they are very poorly drained for a reason—they are constricted so they are holding back water, so they are actually flood attenuators, and because they have greater depths of organic material, significant to certain types of amphibians and reptiles. Harry Snow observed that a lay person walking through the upper portion of the woods—where the poorly drained wetlands are, would probably not know there is a wetlands there; whereas

with very poorly drained, you would know right off the bat. Peter Blakeman pointed out that they sited the driveways to reduce impact to all of those.

Michael Todd asked to confirm that they have done the test pits in the vicinity of areas they have marked for potential leach field uses. He asked if the lots have been marked as well—he was referring more to house sites than lot lines. Peter Blakeman said the test pit locations would indicate the house sites, but they are not specifically marked out right now.

Michael Todd said he observed that some type of excavator had been out there. He asked how it got to lot 4. Peter Blakeman and Harry Snow said a very small machine was used so no cutting was required to get that into there, plus it was done in the middle of winter. Michael Todd asked to clarify that they did the test pit on lot 3 first, then went on to do the test pit on lot 4—so the machine never did really go in or out the proposed driveway from lot 4 to the cul de sac and road. He asked if that access has been cut out yet. No. He said, so they really wouldn't have been able to see the intended access to the lot. Peter Blakeman said they don't have any specific locations marked at this point.

Russ Cooper asked if they could take the driveway behind lot 3, and cause less impact. That would avoid three crossings. Peter Blakeman said that would mean hugging that wetland. He explained that there are different types of impact—direct impact and the type of impact that would result if they were to go right along the wetland. That area is all draining into that wetland. Russ Cooper said, but they are crossing the same very poorly drained wetland. Peter Schauer said it is always advisable to cross a wetland with a perpendicular, rather than run parallel to it for a long distance, because of salts and sands that come off the drive and road. Plus you'd have to cut all the way up along that edge of wetland. Russ Cooper said they already are very close to wetlands all the way down, so he does not think that argument works here. You don't have a clean wetland here; there are fingers all over the place. That once again led to a discussion of the different types of wetlands. Peter Schauer said they are trying to stay out of the vpd wetlands, and not impact adjacent to those areas. Bill Green asked for dimensions. From the top to bottom driveway would be 400-feet—that's a pretty severe impact through and along that buffer, whereas, the proposed crossing would mean hugging the wetland for 112 feet. The potential for sand and salt to get into the system is much less the way it is proposed. Russ Cooper said that with the fingers that stick out, they are just as close as they would be going the other way. Harry Snow pointed out that all those particular little wetlands or fingers are lesser (important) than the one being crossed. Cheryl Devoe asked to clarify that the one they are proposing to cross does not contain standing water all year, like the larger one. Peter Schauer agreed; they are talking about vpd versus pd wetlands. He said they are directed to do this the way shown on the plan, by the Wetlands Bureau.

Michael Todd asked if the cul de sac is a requirement. Peter Blakeman said either a cul de sac or a hammerhead is required.

Hearing no further comments or discussions, Cheryl Devoe moved that the Board close the public hearing and open deliberations. Russ Cooper seconded. No further discussion. Motion unanimously approved.

Deliberations

Russ Cooper expressed concern about whether or not this plan represents the least impact possible. He does not feel they have adequately taken into consideration the fingers of wetlands that are there. Cheryl Devoe said she feels that they have used their knowledge of wetlands and do meet the criteria specified in XIII E (1) of the ordinance. Russ Cooper confirmed that they do not have any comment from the Conservation Commission. Bill Green said they do have Planning Board minutes attesting to the fact that they did make a site walk.

Bill Green said he is less concerned after hearing Peter Schauer's comments. He feels that the request is in keeping with the neighborhood and the type of development that is there. It has gone through the Planning Board, and must meet State approval. Nor does he see an issue with traffic as a result of this. And he feels that this is in keeping with the requirements of the zoning ordinance.

Bill Green moved that the Board approve the special exception to Article XIII E-1 as requested. Courtland Cross seconded. No further discussion. The motion was approved in a vote of four to one, with Bill Green, Cheryl Devoe, Courtland Cross, Michael Todd voting aye, and Russ Cooper voting nay.

Applicant's Presentation (XIII E-3)

Peter Blakeman returned to the color rendering and he referred to Article XIII §G (c) requiring a 100-foot buffer from significant wetlands as shown on the New London Streams and Wetlands Protection Map as approved at Town Meeting March 13, 2001. He pointed out that the applicant has had a qualified wetlands scientist delineate those specific wetlands on his map—it is a semi circular “scrub shrub” in the southeast corner of the parcel, and they have color-coded the required 100-foot buffer around that. Peter Schauer went on to describe that particular wetland as a “scrub shrub” wetland. It is at the same elevation as the pond, and subject to the same water fluctuations as the pond, and serves as a very important filter for the pond.

Here's the rub:

Since passage of that ordinance relevant to the Wetlands Protection Map, a question of interpretation of that 100-foot buffer requirement has arisen. Should the buffer apply only to the wetland specified, or to all the wetlands that are attached? On this property that would entail all the fingers of wetland that go upland from the pond 700 or so feet. Peter Blakeman and Harry Snow pointed out that if you go with the latter interpretation, the buffer would go back upland indefinitely, would cross property lines, and be extremely difficult to enforce. In fact, almost all of the Town would be included in 100-foot buffers that eventually drain into the specially protected wetlands.

They have talked at great length with the Planning Board about reducing that buffer on this parcel, and ascertained what the PB would be comfortable with. On the site walk, the Planning Board was pretty comfortable with the general area of the house sites, and indicated that they would like to see envelopes (on lots 1 and 2), and once those are shown, they would discuss reducing that buffer. After considering a number of scenarios, applicant and PB settled on a suggestion from Zoning Administrator Peter Stanley who will be the one to enforce the building envelope and the buffer. He said he would like to see a straight line, and he proposed that that be marked as parallel to and 400 feet from the proposed new road.

Peter Schauer went on to justify that reduction by pointing out that as you go upslope, those wetlands become forested wetlands, similar to any others on the parcel. That is why they make the argument that those are not the same as the all-important scrub shrub, and therefore do not need the same buffer protection. Harry Snow reiterated that the scrub shrub corner is the only wetland (on this parcel) that is shown on the Town's 2001 map. The interpretation to include all attached wetlands was made after the vote on the ordinance. He said the Planning Board is aware that this is an issue, and will be addressing the wording of the ordinance in the future.

Bill Green referred to the Planning Board minutes of January 9, during which the Planning Board found this compromise acceptable, and remanded the matter to the Zoning Board.

Victoria Gage noted that the proposed new road crosses the wetland buffer. She asked where the proposed road begins in relation to some stakes she observed on Bog Road. Harry Snow said the stakes just indicate the location of some silt fencing they had there. He said the proposed road will access off Bog Road approximately across from her garage. Victoria Gage disagreed that that is where the garage is.

Bob Crane, representing Messer Pond Protective Association, was a member of the subcommittee that reviewed this with the Planning Board. At this hearing, he said that one of the things they looked at was the slope of the upland wetlands and found it to be 20 to 40 feet above the level of the pond, so it is a very different kind of wetlands. They felt this was a reasonable compromise. It is not the same kind of wetland that the 100-foot buffer is intended to protect.

Peter Blakeman also pointed out that there is a seasonal stream crossing Bog Road through a culvert, and flowing directly into the scrub shrub wetland. He said that in all the options they considered, they tried to maintain the buffer to that stream. This proposal does do that. Stanley Morono asked if when they say “seasonal stream,” do they mean it does go dry at times. Peter Schauer said (not clear: something about seven out of ten years). Stanley Moreno said that in the nine years he has lived there, it has not gone dry yet. Applicants agreed that that very possibly could be a perennial stream.

John Brimmell asked to clarify that the other blue areas on the map do not require the 100-foot buffer. Correct.

Stanley Morono asked if the special exception is approved, will the house be moved around within that area, and what about the fire pond? Peter Blakeman pointed out that they have shown a building envelope on lot 1—about an acre and a half on the eight acre lot. They will keep the house and related items as septic, yard, on that. The driveway can extend from the envelope to the road.

Cheryl Devoe asked if they “unbuffer” where requested, would the regular wetland setback requirements apply to that unbuffered area? Peter Blakeman said the only setbacks would be for septic systems, etc.

In response to Bill Green’s request, Peter Schauer gave a lengthy detailed description of the different wetlands on the site.

Victoria Gage asked about the relationship of the house and septic on that lot. Harry Snow and Peter Blakeman explained that it will be a pump system to avoid crossing the wetland.

Peter Blakeman went on to point out that if the 100-foot buffer were to apply to all wetlands attached to the one delineated on the 2001 map, it would go quite far back and cross many properties. Their question to the Planning Board was, how would that be enforced. Michael Todd said that the 2001 map and ordinance states that it refers to “general location,” and states that the boundary of a wetland on a specific site must be delineated by a qualified professional. He acknowledged that applicant has had that done. He added, however that the ordinance does not discriminate between prime, upland, etc. If applied literally, they’d lose the lot; the whole thing is not buildable. But if they draw the line as suggested by Peter Stanley, they would arbitrarily decide that that area outside the line is not subject to any of the restrictions that would ordinarily be in place. They can cut anything they want, they can do almost anything they want to that area. Peter Blakeman said the Planning Board has talked about various cutting restrictions that they have yet to get into. Harry Snow said they have already restricted the property more than any other property that has come before the Town for subdivision. Michael Todd said he is concerned about how significant those other wetlands are to the important scrub shrub wetland. He pointed out that it is all draining that way. He said he needs to understand how important all that is to the scrub shrub. Harry Snow said that upland wetland is no different than those shown on the upper lots. Michael Todd said, absent the fact that this wetland is connected to a scrub shrub that is contiguous to the pond. Harry Snow referred again to the understanding that was given relevant to the ordinance when it was voted on. Michael Todd asked if he is suggesting that the voters were not completely informed as to the impact of this legislation on their property. Harry Snow said they were informed as to the way it was supposed to be at that time but there was an interpretation put on the ordinance after the fact that is significantly different. Several people attending this hearing referred to that interpretation coming up in relation to a previous subdivision proposal in Town. Peter Blakeman said that subdivision never went forward; the property was sold all as one piece.

Bruce Stetson asked if the spring that makes the finger is wet all year round, or just a couple of months. Peter Blakeman said the definition of wetland is that the ground has to be saturated for a certain period of time in order to over time develop the soils that are poorly drained.

Harry Snow suggested they not lose sight of how far back they are from the pond. Look at the other side of the pond, and the lots on Sunapee.

Bill Green asked Bob Crane once again for his view of the proposed line. Bob Crane said he would describe it as a reasonable separation. Anyone who is not a specialist could see where there is a definite wetland and where there is a place where streams just come down. When they walked it in January, some of it was dry.

Victoria Gage asked if the fire pond is sitting right on top of a wetland or buffer. Peter Blakeman said fire ponds are not covered by New London zoning, but if they touch a wetland they do need to get permitted by the State. The location was determined because it offers a source of water, and it is not too far away from the proposed houses. There is a dry hydrant down Bog Road, but according to the National Fire Code that would be too far away from the houses. Harry Snow said they could do either a fire pond or a cistern, and felt this was the better, more esthetic approach. There will be grass all the way to the edge of the pond, and it is easily accessible. The Fire Department can use it even for needs that are off premises. The Town will have full accessibility. Bruce Stetson asked about the construction of the pond. It will be excavated, and be about 150' across and 13' deep. It will intercept water running down from the road. The hydrant will come up on Bog Road.

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

Deliberations

Russ Cooper said he has similar problems as he had before. He referred to the envelope with wetlands on either side of it. The area above it is indicated as being dry but they've got a fire pond right there, and the fire pond is going to fill up with water, so there must be water there someplace. Cheryl Devoe said wetlands doesn't mean it has to be buffered. There's a difference between regular wetlands and buffered wetlands.

Russ Cooper referred to Peter Stanley's line, and the idea of just saying: "That's it." Michael Todd said that is to serve the purposes of enforcement among other things. Cheryl Devoe said she is not sure if she is comfortable with that. Russ Cooper asked about the walk taking place in January when everything is frozen. Applicants said things were not frozen this past January. Cheryl Devoe ask if by giving permission to reduce the buffer to the proposed line, will the Board be giving them permission to do what they want within the building envelope, or within the entire area that will be unbuffered by the special exception. Harry Snow said if the line is drawn, they could cut above it, but not below. The actual wetland itself will remain untouched.

Courtland Cross asked if they are subject to the terms of the Shoreland Protection Act in terms of what they can cut and what they can't even in the wetland area. Yes. He noted that that is pretty well defined and pretty strict.

Michael Todd asked if there are aquifers. Peter Schauer said it is mostly hard pan there. There will be surface recharging at best.

Russ Cooper said he feels favorably in respect to the density—the number of acres, and the number of houses.

Victoria Gage asked if the laws pertaining to other ponds would apply to the fire pond. Bill Green said this would be smaller than those ponds.

Bill Green said that because of the Planning Board minutes, and Bob Crane's observations and comments, as well as the low density, he would favor granting this special exception.

Russ Cooper moved to approve the special exception. Bill Green seconded. No further discussion. The motion was approved four to one with Bill Green, Cheryl Devoe, Russ Cooper and Courtland Cross voting aye, and Michael Todd voting nay.

PUBLIC HEARING

Paul and Joanne Lazdowski requested a variance to Article XX §B-3 (b) of the New London Zoning Ordinance in order to make substantial improvements (cumulative costs will exceed fifty-percent of assessed value) to their home,

a legal non-conforming structure, located on Moyahs Lane, in the R2 and ARR zones. Applicants also requested a variance to Article V §C-2 in order to tear down an existing garage and replace it with a larger one that will not meet minimum side yard requirement for the R2 zone (aggregate width of 50-feet, with not less than 20-feet from any one side yard).

Bill Green opened the public hearing at 9 p.m., read the Notice of Hearing as posted, called the roll, and announced that the hearing would be recorded. (He and Paul Lazdowski corrected the notice so that it read as in the above paragraph.) As above, he suggested that the Board address one variance at a time.

Applicant's Presentation (XX B-3-b)

Paul Lazdowski said the home is over 100 years old, and he reminded the Board that about a year ago, they received approval to have it reset on a new foundation. Since then they have decided that its age does require more improvements including new roof, window replacement, new siding, new kitchen, etc. All work will be done within existing footprint, and will not change the use of the home. Neighbors are very much in favor of these improvements.

In response to Courtland Cross's question, he said that the house is inside the setback from the high water mark, so it is a (legal) non-conforming use now. The issue is that the improvements will cost more than 50% of the assessed value of the property. He does not have a precise estimate yet, but it will be over the 50%.

In response to Bill Green's question, he said they will not be taking the house down. In response to Courtland Cross's question, he said it is jacked up right now and shifted slightly to one side, as it is in the middle of getting the new foundation. It will be returned to its original position.

Michael Todd asked about new overhangs, entry etc.—will those go outside the existing footprint? Paul Lazdowski said those are there now. Everything that will be done new will stay within the existing footprint.

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

Deliberations

Bill Green reminded the Board that this request is for an area variance, and he reviewed the required criteria:

1. The variance will not result in a diminution of value to the surrounding properties because of the improvements that are being made to the property.
2. The variance will not be contrary to the public interest.
3. Special conditions of the property (he referred to current construction costs) make an area variance necessary in order to allow the development as designed, and the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden. The only alternative would be to do nothing at all.
4. Granting the variance will do substantial justice. It will be in keeping with the neighborhood and other improvements that have occurred there.
5. The use would not be contrary to the spirit of the ordinance.

Russ Cooper moved to approve the variance as requested. Cheryl Devoe seconded. No further discussion. Motion unanimously approved.

Applicant's Presentation (V C-2)

Paul Lazdowski said he believes this variance is needed because of the shape of the lot. He said the existing garage is about 20-feet from each side lot line. The proposed new garage, although it will be larger, will be 20+-feet from the side lot lines, but they won't meet the requirement for an aggregate of 50-feet.

Russ Cooper asked if the garage were turned, would it meet the setback. Paul Lazdowski said that would require that they put it in the wetlands. Bill Green asked about the little foyer proposed. It's about 4' by 12'. If they put that foyer on the other side, they'd still have the same aggregate problem. Russ Cooper suggested that if they put it on the down side, they would not. Paul Lazdowski disagreed.

Bill Green asked about the total width of the lot in that location. Paul Lazdowski said it's about 75-feet below, but it narrows above.

Russ Cooper asked if they changed to a one-car garage, would they be okay. Paul Lazdowski said they'd still have the same issue. The problem is not the size of the garage. Russ Cooper said the variance will make the non-conforming structure more non-conforming. He would not have a problem just replacing the same size building. Cheryl Devoe asked if he feels that way even though the additional size is not what affects the side setbacks.

Russ Cooper suggested that this would be easier to decide if the Board had more precise footages for the side-line distances for both the existing garage and the proposed garage. Bill Green suggested the hearing be continued, to give opportunity to obtain dimensions of existing building and set backs, and a plan showing the new proposed garage.

OTHER BUSINESS

1. Bill Green took an opportunity to thank Russ Cooper for his service. Russ will be resigning from the Board, and relocating. Bill welcomed the two new members, Michael Todd and Courtland Cross.
2. The Board approved the minutes of April 9.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Sarah A. Denz
Recording Secretary