

**TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
JULY 11, 2005**

PRESENT: Larry Ballin (Chair), Russ Cooper, Laurie DiClerico, Betty Herrick, Stefan Timbrell.

ALSO: Bob Cricenti, Cheryl Devoe, Fred Kaufman, Yah Maguire, Bernice White, Sam Voss (RCS Designs), Peter Stanley (Zoning Administrator).

Public Hearing: Bernice and John White requesting an equitable waiver of dimensional requirement as provided in Article XXI, §H-1 of the New London Zoning Ordinance as it pertains to their existing screened porch on their house at 63 Murray Pond Road (Tax Map 045-003-000) with less than the required 20-foot side yard setback.

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.

Applicant's Presentation

Bernice White informed the Board that she and her husband purchased the house in 2003 in good faith, with its existing screen porch and deck. When they applied for a permit to repair and slightly extend the screened porch, they learned that it is in violation of the side yard setback requirement. In consequence, they no longer intend to request a permit to increase the size of the porch, but are applying for an EWDR in order to be allowed to keep it there (in other words, to keep the house as they purchased it in 2003). She noted that removal of the porch at this point, may cause issues of land sliding into the stream there.

Peter Stanley further explained that the building permit for the house was issued in error (with the side-yard setback violation) in 1987. What is currently the screened porch was at that time a deck. If the Board approves this EWDR, the porch would become legal.

Larry Ballin opened the hearing to questions from the Board

Betty Herrick asked if the Town has said anything about this over the years.

Peter Stanley said they only noticed it when the Whites applied for a building permit to expand the porch. There have been no complaints or action by the Town over the years. He added that it has been there for over ten years.

Stefan Timbrell asked to clarify that the side yard setback requirement is 20-feet, and this is 10-feet from the side property line.

Peter Stanley confirmed, and added that the original application (from 1987) indicated that the house would be about 18-feet from the side line. That was the year the zoning ordinance increased the side yard setback requirement from 15- to 20-feet.

Larry Ballin opened the floor to questions and comments from the public.

Abutter Bob Cricenti asked to speak on behalf of the Whites' request for an EWDR, saying that the porch on the house improves the quality of the house and neighborhood. He noted that there are not many residents down there.

Cheryl Devoe asked if the 1987 building permit was incorrect, but approved by the Town anyway. Or was the application (as approved) correct, and the subsequent building done in violation?

Peter Stanley said it was the former. The application itself reflected the violation, but was mistakenly approved.

Betty Herrick asked about the property next to the screened porch.

Peter Stanley said there is a mapped stream there.

Bob Cricenti said the nearest neighbors are the Schaeffers, and they are quite far from the house. There is no one in close proximity to the White's screened porch.

Larry Ballin asked Peter Stanley to address the earlier comment that it would be more damaging to the wetlands to remove this now.

Peter Stanley confirmed that, and added that the applicants plan to do some stabilizing landscaping there as well. He said he feels this does qualify for an equitable waiver of dimensional requirement.

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

Deliberations

Russ Cooper reviewed the following facts as had been presented during the hearing:

- o The porch has been there quite a while.
- o It is not interfering with neighbors or abutters.
- o It would do more harm than good to remove it now.

Board members concurred.

Russ Cooper moved to approve an equitable waiver of dimensional requirement allowing the Whites to retain their screened porch within the side yard setback. Laurie DiClerico seconded. No further discussion. Motion unanimously approved.

Public Hearing: Bernice and John White requesting a variance to Article V, §C-2 of the New London Zoning Ordinance, in order to retain an existing deck on their house at 63 Murray Pond Road (Tax Map 045-003-000), with less than the required side-yard setback. The deck was constructed without a building permit, in violation of Article XXV, §A-3-a.

Larry Ballin opened this public hearing at 7:40 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

Applicant's Presentation

Bernice White reiterated that they bought the house in 2003, and as far as they have been able to discover, the deck "has always been there." It is not a new structure.

Larry Ballin referred to a letter dated June 7 of this year to the Whites from Town Administrator Jessie Levine, which states that it appears that the deck was constructed on the rear of the house sometime between 1999 and 2000.

Bernice White said their carpenter assured her that it has been there quite a while, and abutter Bob Cricenti said as best as he can recall, it has always been there.

Peter Stanley said the difference between this application and the previous, is that the deck was built with no building permit whatsoever. A daughter of the previous owner has indicated that the deck was added to the house (without building permit) sometime in the mid-90's. The deck first appears on the tax card dated 2002. Again, the Whites purchased the property in good faith, and they have been paying taxes for the house with the deck.

Russ Cooper asked if this is similarly situated as the screen porch; that is, would it be doing more harm than good to require that it be removed at this point.

Peter Stanley confirmed that, and suggested that if this is approved, it be conditional to there being no further development to the deck.

Larry Ballin asked if right now, it is simply a flat deck, without roof or volume.

Peter Stanley said yes, now it is a stable, flat deck, and he added that the applicants plan to do some stabilizing landscaping there as well.

Larry Ballin asked if that landscaping is permitted.

Peter Stanley said no permit will be required, as there will be no excavation.

Larry Ballin asked about abutters.

Peter Stanley said a stream and wetlands are closest to the rear of the house where the deck is.

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

Deliberations

Russ Cooper reviewed the five conditions which must be found before the Board can grant a variance to a provision of the ordinance, and said he does not see a reason to not go forward with this.

Betty Herrick agreed, and added that it would be more of a problem if it were pulled own.

Larry Ballin said typically he hesitates to approve variances to the side yard setbacks, as they tend to accumulate, but he pointed out that in this case, the deck is fairly inoffensive, and a variance would be a reasonable compromise.

Russ Cooper reminded the Board that approval should be granted with the condition suggested by Peter Stanley regarding no additional construction to the deck.

Larry Ballin agreed that a variance would carry the condition that no further structure be added to that portion of the deck which is in violation of the setback requirement; that is, no roof or other structure may be added which would create volume.

Laurie DiClerico so moved. Stefan Timbrell seconded. No further discussion. Motion unanimously approved.

Public Hearing: Frank and Karen Voellman requesting a special exception as provided by Article XIII, §E-1 of the New London Zoning Ordinance, in order to construct a 195-foot long boardwalk through the wetland buffer, and over a wetland, in order to access the waterfront on this property located at 101 Forest Acres Road, Tax Map 105-011-000.

Larry Ballin opened this public hearing at 7:50 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded.

Sam Voss of RCS Designs presented a letter from Frank Voellman, authorizing RCS Designs to represent him during these proceedings.

Larry Ballin asked to confirm that the Voellmans have recently purchased the property from the LaRivieres who are the owners named on the plat provided in the application packet.

Applicant's Presentation

Sam Voss presented the application, pointing out that the property is unique in that it is divided by a large wetland as delineated by Marceau Environmental Consultants in 2001, and that the applicant may only access his waterfront by crossing that. The proposal is for construction of a 195-foot long boardwalk which will be four feet wide over the wetland buffer, but six feet wide over the wetland itself. He said the angle at which the boardwalk is shown on the plan allows the walk to end at the dock at the upland portion of the shore, a location which will result in the least amount of impact to the wetland, and be compliant with the required 20-foot side yard setback. The boardwalk will be supported by 1½" galvanized pipes set 8- to 10-feet apart, and set 3-feet below the muck layer. The portion of boardwalk which goes over the wetlands will be elevated above the natural growth. Due to the density of that growth, and height of the growth surrounding the proposed boardwalk, the structure will be practically unseen from Messer Pond. As required by the ordinance, there will be no restriction to aquifer or flow, no expenditure of municipal funds, and it will be harmonious with the natural surroundings. The dock to which it leads will be forty-foot long, 20-feet beyond the three-foot depth of normal high water. He noted that this will be for recreational purposes, and per the zoning ordinance, is an allowed use by special exception.

Larry Ballin asked if the Conservation Commission has seen this.

Sam Voss said they submitted copies for Conservation Commission review, along with the entire packet, dated June 23.

ZBA members noted that the Conservation Commission has not met between that date and now, and no comments on this application have been received from the Commission.

Larry Ballin asked if applicants have applied for their State wetlands permit.

Sam Voss explained that due to the expense involved in the state application process, they wished to get a sense of this Zoning Board before proceeding to the State process.

Russ Cooper asked how high this will be.

Sam Voss said the construction company is Watermark. He did not have all the specs for this hearing, noting that those are not required for an application for special exception. He said that vegetation in that area is over 6-feet high, and much of the growth is between 10 and 12-feet high.

Larry Ballin asked how much vegetation will be cut.

Sam Voss said the vegetation directly beneath the boardwalk will be cut, but not stumped or rooted. It is ¾" to 1 ½" in diameter, all scrub brush.

Betty Herrick asked if machinery will be used.

Sam Voss said no, it will all be done by hand.

Peter Stanley said that Bob Stewart has assured him that no trees will be cut within the 50-foot buffer. How much cutting to allow in the wetland itself, is the Board's call. The buffer and wetland are two different things.

Stefan Timbrell asked why the boardwalk is going to the high point.

Sam Voss said they found that that is the area which will have the least impact.

Question was raised about the six foot width of the walkway. Laurie DiClerico pointed out that the Shoreland Overlay District ordinance allows walkways with a maximum width of four feet.

Peter Stanley said that would apply to the portion of the proposed walkway which is within the fifty foot buffer of the wetland, but the decision to allow a six foot width over the wetland itself is up to the Board.

Larry Ballin opened the hearing to questions and comments from the public in attendance.

Fred Kaufman, representing Messer Pond Protective Association, asked if there will be handrails along the walkway. Will they, or the height of the elevated boardwalk itself, inhibit wildlife crossing there?

Sam Voss said he speculates that the boardwalk will have a hand railing, but said he did not feel it would inhibit wildlife's ability to cross there.

Fred Kaufman said keeping that in mind, and the assurance that the walk will not be viewed from the pond, he does not have an objection to it.

Larry Ballin asked for more specifics regarding the railing.

Sam Voss said he is not building the boardwalk, but assumes that there would be some type of railing. He pointed out that the specifics of the construction are not required to be presented in an application for a special exception. The applicants must show that the use will not impact the wetland.

Russ Cooper pointed out that depending on the height of the railing, there is a potential here for visual impact.

Sam Voss reiterated that the growth in that area would prevent visual impact.

Larry Ballin said he thinks the dimensions of the boardwalk (and railings) are of interest to the Board.

Sam Voss reiterated that the walk will be 6-feet wide over the wetland, and 4-feet wide over the buffer. He assumes that the railings will be a standard height for safety purposes.

Stefan Timbrell asked about lighting.

Sam Voss said no lighting or any electrical line is planned for the walkway.

Yah Maguire asked about deer, bear and moose crossing. Won't the handrail interfere with that? She said that other than that, this (proposal) really would not affect anyone.

Sam Voss said no fencing is planned. He said the animals will be able to cross there.

Betty Herrick said she would be interested in input on that question from the Conservation Commission.

Fred Kaufmann asked if that portion of the boardwalk which is not over the wetland, will be elevated with a guard rail.

Sam Voss said the proposed dock will be at ground level.

Peter Stanley said it's all (the length of the boardwalk) over wetland.

Cheryl Devoe asked about the wetland ecology beneath the walk.

Sam Voss agreed that vegetation which requires more sunlight, will not grow back beneath the boardwalk. He pointed out that some animals might shelter under the walk. Otherwise, applicants anticipate rapid re-growth of the vegetation in that area, considering the species that are there.

Cheryl Devoe asked if there are any other walks similar to this in Town.

Peter Stanley said there is one on Pleasant Lake. He suggested that approval of this be subject to applicants obtaining the State permit, and to input from the Conservation Commission. He speculated that the Conservation Commission might question the six foot width of the boardwalk.

Larry Ballin referred to Article XIII, paragraph E requiring referral of the application to the Conservation Commission, Soil Conservation Service, and NH Wetlands Board for review and comment at least 30-days prior to the Zoning Board hearing.

Sam Voss reiterated the concern re: cost .

Russ Cooper suggested that at least, input from the Conservation Commission could be obtained.

Larry Ballin said he would prefer that the process as written in the regulations be followed.

Betty Herrick said she is not comfortable without that input.

Larry Ballin again said the Board would benefit from having all the dimensions.

Sam Voss said they did provide dimensions for the walk and dock.

Larry Ballin suggested that applicants could withdraw the application and resubmit after it has been reviewed by the Conservation Commission, and after applicants have made application to the NH Wetlands Board. At that point, it may be possible for the ZBA to approve with the condition that the Wetlands permit be obtained.

Sam Voss agreed to withdraw the application until further information is received. He asked if a diagram will be required, again pointing out that is not required in the special exception ordinance.

Larry Ballin suggested that a schematic showing the elevations of the walkway with railing be provided. He agreed that it is not specifically required in the ordinance, but it might alleviate some of the concerns of the Board and abutters.

Fred Kaufman suggested that a representative of the construction company be present at the next hearing on this application. Sam Voss asked if that is not possible, would it be required.

Larry Ballin said if it is not possible for a representative of the company to be present, it will not be required.

Other Business

The minutes of June 6, 2005 were unanimously approved.

The meeting adjourned at 8:40 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary