

**TOWN OF NEW LONDON  
ZONING BOARD OF ADJUSTMENT  
FEBRUARY 13, 2006**

**PRESENT:** Larry Ballin (Chairman), Russ Cooper, Cheryl Devoe, Randy Foose, Bill Green.

**PUBLIC HEARING**

**Jesseman Associates P.C representing Molly and Domenic Ferrante requested a variance to the terms of Article XX §B-1 and –2 of the New London Zoning Ordinance, in order to make renovations to their residence which exceed those approved with variance by the Zoning Board of Adjustment on April 11, 2005. The proposed work will include changes to the footprint and configuration of the existing non-conforming structure. The residence is located on Lighthouse View Road in the R-2 zone. (Tax Map 126, Lot 5)**

Larry Ballin opened the 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

Steve Jesseman briefly recapped the history of the building. It was originally the Sunapee Yacht Club, but has for many years been used as a residence. The main house is for the most part within the fifty-foot setback—an existing non-conforming use. At the April 11, 2005 hearing, the ZBA granted a variance allowing substantial improvements to it; those were to be mainly interior work, with no change to the footprint.

More recently, the Ferrantes have had some concern regarding the fact that the living portion of the residence is on the second floor with only one means of egress—a wooden staircase from one of the porches, while the sleeping quarters are on the first floor—currently the floor of entrance and egress. He described the terrain including a hill and low area below that, which was conducive to the Yacht club using the lower area for its boats, and the upper for the club itself. Now that it is a residence, for esthetic and safety reasons, the Ferrantes would like to add two egresses to the second floor living quarters. Those are shown on the plan as two “bridges” extending from that second floor. Both bridges would be six feet wide, and would extend easterly from the main building for twenty feet. The bridge proposed for the southeast corner of the façade (the side of the building away from the lake) would lead from the second floor kitchen over what is now a mechanical or utility room on the first floor. The wooden roof of that utility room would be removed to make room for the bridge, thus reducing the amount of volume in the main structure. The second bridge is proposed for the opposite corner, that is the northeast corner of the same façade, and would extend out from the second floor living room over the terrain's low spot. The choice of “bridges” over other options will result in less disturbance to the terrain in that area. Though the house and part of the deck is in the setback area, the bridges will not be within the setback area. In other words, the footprint of that portion of the structure which is within the setback area will not change.

Referring to the five criteria which must be met before a variance can be granted, he spoke to the third specifically: “Denial of the variance would result in unnecessary hardship to the owner.” He pointed out that if the variance is denied, the owners would face a hardship in providing safe egress from the second floor, and would have to have everyone entering and existing the building through the sleeping quarters on the first floor. He opined that no surrounding properties would be hurt by this plan.

Larry Ballin opened the floor to discussion.

Attorney Don Gartrell of Gallagher, Callahan & Gartrell represented abutters to the south of the Ferrante property: James, Robert and Cheryl Black. The Black family has owned their property for generations, and are concerned about a title issue having to do with the boundary between his clients' property to the south of the Ferrantes'—that is, the Blacks' northern boundary, the Ferrantes' southern boundary. He said they have filed a petition regarding this with Merrimack County Superior Court, though the Ferrantes may not yet have been notified of the filing, as that was done on the same day that they (the Blacks) learned of the Ferrantes' application for this variance. The

Blacks have asked the Court to resolve the boundary issue, and to enjoin any action that would alter the use of the property impacting that boundary. He added that he recognizes that addressing boundary disputes is not a function of the Zoning Board, but in this case, the title dispute is germane to what is before the Board tonight. He provided to ZBA Chairman Larry Ballin a copy of the pleadings and order of notice that have been filed with the Court.

He offered a brief history of the boundary question. When the Yacht club ceased to exist, it sold the property to the Browns who used it as a private home, keeping all the buildings pretty much as they were then, perhaps with the addition of the decks that are seen there now. At that time, there was a small outbuilding which was separate from the main building and located on the side of the property facing the Blacks' property.

The definition of the boundary line between the Blacks' and the Browns' was at one time with reference to distance from the face of the Browns' building in the direction to the south along the shore, and the Blacks' title ran by a certain dimension, from a monument on the southerly side of their lot, up the shore. There were several deeds back and forth in the Brown chain of title, including two to an Archibald Black, grandfather of the current owners. It is apparent that both the Browns and Blacks were aware of some question regarding the location of the line dividing their properties. In 1977, Mrs. Brown had Bob Bristol do a survey. When he submitted his preliminary plan to Mrs. Brown he included a letter in which he said that there were several alternate scenarios for locating the boundary monument that divided these two properties at the lakeshore. The description originally said that the Brown/Black property line ran in a southeasterly direction, had a specific bearing, ran for a specific distance, and then on the same course, to the monument at what was then the northeast corner of the "shore lot" (?) of the Black property—that would be a point on the old road that leads to the Yacht Club's wharf at the north end of the now-Ferrante property. That line would be roughly parallel to the southerly boundary of the Black property, so would seem to make sense. In his letter to Mrs. Brown, Bob Bristol advised her that the question should be resolved in writing with a Boundary Line Agreement in accordance with the statute, and recorded at the Merrimack Country Registry of Deeds. At that point, he said, he (Bristol) could establish that line on the plan, and record the deed. In her responding letter, Mrs. Brown indicated that rather than do that, she would like that boundary line which is most favorable to them (the Browns) to be marked. She indicated that she would put a fence along that, and "see what happens." In his responding letter to Mrs. Brown, Bob Bristol informed her that he had so placed a monument and wooden stakes along that line as she'd requested, but the plan remained unrecorded. In that letter, Mr. Bristol informed Mrs. Brown that if and when the Blacks and Browns record a written Boundary Line Agreement, he would certify the plan and record it.

As it turned out the fence was never erected, and no Boundary Line Agreement was ever made. The property has changed hands three times since then. When Mrs. Brown conveyed the property to Elaine Killian, the deed then used the old description of the property with the boundary measured from the face of the building on her side of the line. That deed said that the property was conveyed excepting and reserving that property conveyed to Archibald Black through ... (here mentioning two deeds in particular). Those two deeds are directly involved in the chain of title to the Blacks' property. In the two subsequent conveyances of the property—from Elaine Killian to an educational trust, and from the trust to the Ferrantes, the exception and reservation was omitted from the deed, and seems to have fallen off the chain of title altogether. Each of these conveyances was a warranty deed, and Don Gartrell said he did not know if the Ferrantes are even aware of this issue.

That boundary marked out with wooden stakes by Bob Bristol upon Mrs. Brown's request, but which was never certified or recorded, is the line being used for the plan presented tonight. The Blacks' position is that it is not the correct line, that in fact, the correct boundary may be a bit further north than that. They have petitioned the Court to quiet the title and establish the correct boundary.

Don Gartrell went on to address more recent events regarding the property, and raised two issues specifically:

- o He reminded the Board that last April a variance allowing substantial interior improvements to the building was granted, with the understanding that the footprint would not change. He pointed out that the incorporation of the former utility shed into the main residence does enlarge the footprint. He said that in this case, where most

of the building is already within the setback, the prohibition to granting a variance should be more absolute that it would be in another location.

- o He referred to the five criteria for variance, addressing #1 specifically: “There will be no diminution of value of surrounding properties as a result of granting this variance.” He said that any further enlargement or permanent change to this building in proximity to that disputed boundary, will directly impact the Blacks’ property. The side yard setback requirement is 20-feet, but at this time they do not know where the boundary is.

Larry Ballin asked for the width dimension of the area that is in dispute. Don Gartrell said it is not certain. The dimension from the Blacks’ southwest corner along the lakeshore was stated in one deed as being 180 feet from a point to the southwest (corner of the Blacks’), and he thinks that can be established. The distance coming down from the building on the Browns’ property to reach the dividing line was stated to be 50-feet south of that face of the building nearest to the Blacks’ property. Since Bristol’s plan shows the width of the building as 41½ feet, one can use that as a scale, and go toward the lake for fifty feet, and arrive at a point that is less than 180 feet from the Blacks’ southwest corner. In conclusion, by reference to the two deeds conveyed to Archibald Black, it would seem that the claim of the Blacks to property north of the monument that was set there is clearer than any claim that the Browns and their successors could make. He added that this is speculation. The Court has latitude and discretion as to how it will determine where the boundary is.

Larry Ballin clarified that applicants are not alleging that the structure and proposed bridges are within the Blacks’ property, but may possibly be within the required side yard setback. Don Gartrell said that depending on how that boundary gets determined, that shed which has now been incorporated into the dwelling, may already be in the setback.

Larry Ballin asked when the shed was incorporated into the main house. Steve Jesseman said that Jack Killian connected it by foundation to the main house. Jim Black said that was done as recently as three years ago. He said Mr. Killian took it off pilings and poured concrete.

Zoning Administrator Peter Stanley informed the Board that the timeline regarding the incorporation of the shed into the building – after adoption of the 1992 Shoreland Ordinance, has only recently been brought to his attention. If that timeline is correct, enlarging or altering that shed within that footprint would have been illegal. He suggested the Board refrain from making a decision on this application until he can find out if there was a building permit erroneously issued for alteration of the shed, or not. He added that if he finds that this incorporation of the shed into the building thus enlarging the footprint within the setback is illegal, the owners would have to seek some remedy as a Variance-After-the-Fact, or an Equitable Waiver of Dimensional Requirement.

Steve Jesseman requested a continuation of the hearing to allow for research into that question. Larry Ballin said that the Court’s resolution of the boundary line question may take longer than allowed for a continuation of a hearing. Steve Jesseman agreed to withdraw the application altogether, with the understanding that applicants may reapply upon resolution of the boundary and shed questions. Re-notification will be required.

## **PUBLIC HEARING**

**McGray & Nichols representing Townsend and Ann Marie Thomas, requested a variance to the terms of Article XVI §C-2 of the New London Zoning Ordinance, in order to install a sewer ejector pump and line from a cabana within the 50-foot setback from the lake, to the septic system used by the main house located on Route 103A in the R-2 zone. (Tax Map 103, Lot 18)**

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

### Applicant’s Presentation

McGray and Nichols explained that right now the cabana on the lake has a changing room and a toilet. Applicants would like to eliminate the metal distribution tank adjacent to the cabana and tie the toilet by two-inch pipe to the main house's septic system further back from the lake.

Bill Green asked how much disturbance will occur to the vegetative buffer within the setback. McGray & Nichols said they will use a small excavator on soft pads for removal of the old 5-foot x 2½-foot metal tank, fill in its space, and install the new pipe.

Peter Stanley reported that the Conservation Commission has reviewed this, and feels it makes sense to move the septic disposal further away from the lake. It will involve only a one-time disturbance to the buffer.

He clarified that this structure is not a summer cottage as indicated in the application and notices, but a cabana. It cannot be altered to a residence. The Zoning Board and applicants agreed to amend the wording in the application and notice. Also, Larry Ballin corrected the applicant's name as it appeared on the Notices of Hearing.

Hearing no further comments, Randy Foose moved to close the public hearing, and enter deliberations. Russ Cooper seconded. No further discussion. Motion unanimously approved.

#### Deliberations

Zoning Board members made the following findings of fact:

1. The variance will not result in diminution of surrounding property values.
2. The variance allowing the septic disposal for the toilet in the cabana to be moved further back from the lake is in the public interest.
3. Denial of the variance may result in unnecessary hardship to the owner.
4. The variance will allow substantial justice to be done.
5. The application which will involve a one-time-only disturbance to the vegetative buffer in the setback, but which will permanently enhance protection to the lake, is in the spirit of the Zoning Ordinance.

Randy Foose moved to grant the variance. Cheryl Devoe seconded. There was no further discussion. Motion unanimously approved.

#### **OTHER BUSINESS**

The January 16, 2006 minutes were unanimously approved.

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Meeting adjourned at 8:10 p.m.

Respectfully submitted,

S.A. Denz  
Recording Secretary