

Zoning Board of Adjustment
Meeting Minutes
August 20, 2007

Present: William Green (Chairman), W. Michael Todd, Courtland Cross, and Cheryl Devoe.

Others Present: Peter Blakeman, David Bond, Peggy Boland, Gordon Keeler, Howard McCollum, June Poliseno, Harry Snow, and Peter Stanley (Zoning Administrator).

PUBLIC HEARING 1

Blakeman Engineering, Inc., for Harry M. Snow, III, requesting a special exception to Article VIII §E-1 of the New London Zoning Ordinance in order to construct a new driveway in an approved subdivision that will cross wetlands in two separate locations. The two crossings will impact +/- 1,170 square feet of wetlands.

Mr. Green opened the hearing at 7:36 p.m., called the role, read the Notice of Hearing as posted, and announced that the hearing would be tape recorded.

Applicants Blakeman Engineering, Inc., for Harry M. Snow, III, both were present at this hearing. New London Zoning Administrator, Peter Stanley, also attended the hearing. Two abutters attended the hearing.

Applicant's Presentation

Mr. Blakeman advised the board that Mr. Snow was also present. He continued to add that during the process of scheduling the meeting the property had changed hands. He presented a letter from Mr. David Singleton or 87 Borough Road, Hill, NH 03243 stating that he gives permission for Mr. Harry Snow and Mr. Peter Blakeman to represent his interests at the hearing.

Mr. Blakeman said that the request is to have two culvert crossings to access the build able area of the lot in the Shaker Pines Subdivision, Shaker Pine Estates, on Wilder Lane. He told the board that when the lot was logged the logging company crossed the wetlands unintentionally. After being notified of that error Mr. Snow filed the wetlands impact permit by notification application and septic permit application; the septic permit application is pending the approval of the wetlands impact permit by notification application which is pending.

Mr. Blakeman added that the total request for impact to the wetlands is +/- 1,170 square feet, which puts this into the minimum impact category. The first crossing will be 970 square feet and the second being about 200 square feet.

Mr. Blakeman highlighted a meeting he had had with the Conservation Commission in regard to the wetlands minimum impact application. He told the board that the Conservation Commission had asked why they had not crossed the wetlands at the smallest possible area. He told the board that due to the fact that the loggers had already disturbed the land they felt that staying within that disturbed area would create less of an impact to the wetlands. He added that if he had had the chance to visit the property before it was logged that would have happened, but the logger began their operation and crossed the wetlands before it was marked.

Mr. Green stated that according to the plans there does not seem to be many other options for the home to be built on the lot. Mr. Snow agreed, stating that the lot was small and due to the wetlands the building area was limited.

Mr. Todd asked when the lot was logged. Mr. Blakeman said it was during the summer months. Mr. Snow added that it was about four years ago. Mr. Todd then asked that the wetlands had not been flagged at that point. Mr. Blakeman stated that his question was correct and that he had not seen the lot before the logging took place.

Mr. Cross asked if the proposed driveway was roughly in the middle of the road frontage or does it sit more to one side or the other. Mr. Blakeman answered stating that the driveway lies just about in the center of the road frontage. Mr. Cross then added that when he went to look at the lot there was an area cleared that appears to be closer to the south side. He continued to say that there was three stakes in the cleared area that did not have any marks on them and he could not make sense of what they may represent. Mr. Blakeman advised Mr. Cross and the board that one of the stakes is probably the survey station, which is situated right in the middle of the driveway entrance. Mr. Cross said that he had trouble trying to understand the plans and find the points of the lot. He added that the wetland seems to be more to the south of the lot than the north of the lot. Mr. Blakeman stated that the property had been surveyed by a licensed surveyor. Mr. Cross stated that he had problems trying to use the plans to figure out where everything was going to be on the lot. Mr. Blakeman showed the board a delineation of the wetlands in the entire subdivision, where the Polisenos' driveway is located, and where the culvert is located under the road. He also highlighted how the water flows on the property to the wetlands. Mr. Cross then asked about the delineation of the lots. He continued to say that having the subdivision lot number and tax map and lot number makes it somewhat confusing to understand the plan.

Mr. Todd asked if the Polisenos' driveway also serves as access to Mr. Snow's lot in the back. Mr. Blakeman disagreed stating that the lot in the back is not Mr. Snow's property; lot number nine is the Polisenos' and that the driveway in question only accesses their lot. Mr. Todd asked what the purpose of the right-of-way was. Mr. Blakeman said that when the subdivision was first planned the only purpose of the right-of-way was for the driveway and for an access off of Wilder Lane instead of Mountain Road.

Mrs. Polisenos stated that she is concerned about the wetlands and drainage. She continued to say that she would like to see where the drainage will be and how it may affect her property. Mr. Blakeman pointed out where the designated drainage areas will be and how the drainage will have minimal impact on her property.

Mr. Blakeman made the following points in defense of the special exception:

- The first crossing shows no real sign of flowing water and the second shows a scoured channel through it.
- The plans show that the contractor will cross the wetlands perpendicularly.

Hearing no further comments or questions, Mrs. Devoe moved to close the public hearing and enter deliberations. Mr. Green seconded.

Deliberations

Mrs. Devoe stated that according to the plans there would have to be some wetlands crossings to get to the building area. Mr. Green agreed. Mr. Todd referred Mr. Blakeman and the board to the plans that were submitted. He continued to say that if you look to the south of the first wetlands crossing you will see a large black dotted line with two little rows of circles; what are those? Mr. Blakeman said that those circles show where the stone will be at the end of the culvert.

Mr. Todd then said that Mr. Blakeman needs to explain to him how the plans show that you have crossed the wetlands in the least impacted area. Mr. Blakeman said that he and Mr. Snow had reviewed the plans and have tried to minimize the impact. Mr. Todd then asked that the existing route is offered because it was used before; when the wetlands were not marked. Mr. Blakeman agreed. Mr. Todd continued to say that it is the straightest, most direct route to get the wood from the forest to the road. Mr. Blakeman agreed.

Mr. Snow began to explain that the reason the driveway has been laid out there is because the engineers had taken into consideration what was going happening on both sides of the driveway. He continued to say that they had tried to stay away from the property lines. He added that if you had put yourself on the property when this was wooded the wetlands did not look like a wetland area, but when you cut the trees on a lot the wetland area can develop further to become more prominent. Mr. Todd asked if Mr. Snow would agree that setting this driveway away from the property lines would be better than setting it closer to the property lines. Mr. Snow agreed saying that taking the neighbors privacy into consideration this seems like an ideal spot. Mr. Todd then asked if there was a house on the lot that was closest to the proposed driveway. Mr. Blakeman said that there is a home on that lot. Mr. Todd then asked again that keeping the driveway away from the property line would be better than moving it towards one property line or the other. Mr. Snow said that when the lot was cleared they left a significant amount of trees to act as a buffer. Mr. Todd said that he sees Mr. Snow and Mr. Blakeman's point; he then added that he believes that there is a place to cross the wetlands that would create less of an impact on the wetlands. Mr. Blakeman then told the board that there are two crossings in question. He continued to say that the first crossing which is the larger of the two was chosen strictly because that is where the loggers had crossed the wetland. Mr. Todd then asked that that area was not chosen based on the fact that it had the minimum area of impact. Mr. Blakeman replied to Mr. Todd by stating that the law states the area that will create the least amount of impact, not the least amount of impacted area. He added that if you go farther to the south to cross the wetlands and then log around that area you will have more impact than if you stayed at the area that had already been impacted by the loggers. Mr. Todd then asked if the example that the board would be setting would be that if you send in the skidders first and make the impact, without identifying the wetlands and then use the argument that, 'well gee, if we changed it now we would impact the area so therefore we should stick with the original direct route to the road.' Mr. Blakeman then stated that he in no way said or implemented that. Mr. Todd then asked Mr. Blakeman how he should interpret that. Mr. Blakeman continued to say that he was not involved in the project until after the property was logged. He added that if he had been involved prior to the logging the project would have crossed the smallest area of wetland. Mr. Todd then stated that in his opinion the route selected does not cause the least amount of impact to the wetland. Mr. Blakeman said that the board needs to look at wetlands impact and overall area. He continued to say that if the board looks strictly at the blue areas (wetlands) on the plan then yes, Mr. Todd, you would be correct. Mr. Blakeman then added that if you look at the actual impact to the wetlands; why not use the area that has already been impacted. Mr. Blakeman continued to say that he understands Mr. Todd's question, which was also raised by the Conservation Commission, but this is the area that we believe will be less impacted by a crossing.

Mr. Green acknowledged Mr. McCollum who stated that he has walked the lot in question and at no point in the lot can you see through the woodland buffer to the neighbors' home. He continued to say that there are two areas of wetlands on the property and no matter where they build on the property the owner will have to cross the wetlands. Mr. McCollum continued to say that he believes this hearing is insignificant. Mr. Blakeman then added that Tim and Diane Singer had to write a letter to the Department of Environmental Services because the second wetland crossing is closer than 20 feet to the property line; they submitted the letter with no objections to the proposed plan.

Mr. Green then said that if the wetlands were marked before the logging was started then yes, the route would have been different. He added that he disagrees with Mr. Todd's comments saying that it makes sense to him to keep the crossing where the wetland impact has already taken place. Mrs. Devoe stated that she agreed with Mr. Green's comments.

Mr. Green asked for a motion to vote, which was moved by Mr. Cross and seconded by Mrs. Devoe. There was no further discussion and the special exception was granted three to one.

PUBLIC HEARING 2

Robert Schoff requesting a variance to Article XX §B-3-b of the New London Zoning Ordinance in order to permit the modification of the existing nonconforming cottage to add a partial second story and an unheated entryway on the first floor. The proposed addition will total 727 square feet. The building is nonconforming because it has less side yard than is required by Article V §C-2 of the New London Zoning Ordinance. The proposed changes will not increase the degree of nonconformity.

Mr. Green opened the hearing at 7:10 p.m.

Applicant Robert Schoff was present at this hearing. New London Zoning Administrator, Peter Stanley, also attended the hearing. Three abutters attended the hearing.

Applicant's Presentation

Mr. Schoff began by advising the board that the cottage in question 15 year old structure on a nonconforming lot. He continued to say that the cottage is situated in the center of the trapezoid-shaped lot and lays parallel to the lake. He added that when he and his wife constructed to garage the Town setbacks were 10 feet and that he and his wife had to move the house away from the lake to construct the foundation. He continued to say that it would be hard to move the house again as the foundation now exists and he believes that changing the roof line would not impose on the neighbors.

Mr. Green then questioned how Mr. Schoff will change the roofline. Mr. Schoff advised Mr. Green and the board that the current roof line runs north to south; he would like to change it to run from east to west while keeping the house as short as possible.

Mr. Green acknowledged Mr. Keeler. Mr. Keeler told the board that he is an abutter to the north of Mr. Schoff's property. He continued to ask if the board knew when the building would become a year-round residence. Mr. Schoff stated that he does not know when the home will become a year-round residence; he assumes it will be when he and his wife retire.

Mr. Green acknowledged Mr. Bond. Mr. Bond asked what the total height of the new roofline will be. He added that the height of the roofline will impact abutters, especially during the winter. Mr. Schoff stated that the northern abutters will see less of a shadow even with the small height increment of the roofline. Mr. Keeler then asked how the impact could be less if the roofline will be higher. Mr. Schoff stated that he did not know the exact angle of the sun in relation to Mr. Keeler's question. Mr. Bond then said he would like someone with a solid understanding of the project to answer the questions regarding the overall height and impact of the project. Mr. Green stated that the project, as proposed, will stated below the 35 foot height restriction in the New London Zoning Ordinance.

Mr. Bond then asked Mr. Green if the abutters could question the interior space of the structure. Mr. Green told Mr. Bond to continue with his question. Mr. Bond cited the plan which shows a bedroom, hobby room, and television room. He then asked how the Town will know if the rooms are being used for other purposes like bedrooms. Mr. Green asked Mr. Stanley for clarification. Mr. Stanley advised Mr. Bond that the Town Assessor's visit homes and lots every five year by state law. He continued to say that this year the building permits will be revised to include any renovations or changes of use to the interior of the building.

Mr. Stanley added that in conversations with Don Bent, the Town's Health Officer, they had decided that Mr. Schoff would have to provide the Town with a new septic plan which would be sufficient in holding the extra sewage if need be. Mr. Cross said that the plan does not show any additions to the sanitary facilities. Mr. Stanley advised the board that the state does not go by the number of bathrooms in the home, but by the amount of bedrooms when designing a septic plan. Mrs. Devoe asked how the Town knows that the current system will not be sufficient. Mr. Stanley said that the Town does not know but, the septic system was designed and installed in the 1972 when the state restrictions were less strict.

Mr. Todd asked if the nonconformity was due to the structure being too close to the lot line and whether or not the board needed the enclosures in which they did not receive. Mr. Green said that the board did not need the enclosures. Mr. Todd then asked Mr. Schoff why he did not move the structure away from the lot line when they moved it back from the lake. Mr. Schoff said that when they proposed the project the Town said they had to move the structure away from the lake, not mentioning the side yard requirement. Mrs. Devoe then asked Mr. Schoff how far back he had moved the structure. Mr. Schoff advised the board that the structure had been moved 2 feet from away from the lake.

Mr. Todd then asked if the sunlight that the abutters' receive would be diminished by changing the roofline. Mr. Stanley advised the board that he did not believe that changing the roofline would diminish anyone's sunlight; he added that the major impact would be seen from the lake.

Mrs. Devoe asked if the lot is wooded on either side. Mr. Schoff stated that the lot used to be heavily wooded, but during the ice storm much of the wooded area was thinned.

Mr. Todd said that as he understands it, one of the criteria for this variance is that the applicant must show the board that if they were to deny the variance it would cause unnecessary hardship to the applicant. He added that he had not heard about how the denial would cause unnecessary hardship to Mr. Schoff. Mr. Schoff explained to the board that he could continue with the project if he moved the house and the garage to the center of the lot. He continued to say that he believes it would be a considerable hardship to move both structures and foundations. Mr. Todd said he was curious as to why Mr. Schoff had gone through the expense of moving the structure once, but did not move it to make the lot conforming to the New London Zoning Ordinances.

Hearing no further comments or questions, Mrs. Devoe moved to close the public hearing and enter deliberations. Mr. Cross seconded.

Deliberations

Mr. Green asked Mr. Stanley if the Town had any further comments regarding this hearing. Mr. Stanley stated that the Town would like to see a condition stating that the applicant must design a modern septic plan that is state approved and on file with the Town.

Mr. Green advised the board that the reason they are here is because the lot is nonconforming and the proposed improvement to the property is estimated to cost more than 50 percent of the assessed value of the building. Mr. Green added that with current cost for materials it is not hard to have a project that will cost more than 50 percent of the assessed value of the building.

Mr. Green continued to say that in his view after listening to the questions and comments is that the structure to be changed has a setback on the side, front, and back yards of 24 feet. He added that it is the garage that is closest to the road which has a setback of 12 feet.

Mr. Green then advised the board of the five findings of fact associated with an area variance. They include:

1. The variance will not result in a diminution of surrounding property values.
2. The variance will not be contrary to public interest.
3. Hardship must exist.
4. Granting the variance would do substantial justice.
5. The variance will not be contrary to the spirit of the ordinance.

Mr. Green then spoke to the five findings of fact.

1. The variance will not result in a diminution of surrounding property values.

Mr. Green told the board that he believes that the building height will not prohibit the sunlight any further than the trees do. He continued to say that it is hard to imagine a great impact on the sunlight to surrounding properties as there are fairly tall trees which already impede on the sunlight. He finished by stating that in his opinion there will be no diminution of surrounding property values.

2. The variance will not be contrary to public interest.

Mr. Green stated that often time on water front property the encroachment falls into the wetland or there is concern about the impact that the expansion may have on the wetland; this project falls within the setback regulations concerning wetlands. Mr. Green finished by stating that in his opinion there will be no downside or concern regarding public interest.

3. Hardship must exist.

Mr. Green stated that with an area variance the benchmarks that the board must abide by state that the zoning restriction as it applies must interfere with the landowners' reasonable use of the property considering the unique setting of the property and its environment. He added that the lot in question at its widest is 108 feet. He continued to say that the lots are very narrow making it easy to understand that the width of the structure compared to the lot size is nonconforming. Mr. Green added that the applicant is making this request to add 750 square feet of living space, which seems like a reasonable request in use of the property. He continued to highlight the relation between the zoning ordinance and the specific restrictions on the property. He continued stating that the lot is fairly narrow with an existing structure that is nonconforming; the portion of the structure that is going to be enlarged is still 24 feet from the property line and the minimum in this district is 20 feet. He added that the residence its self is off by an aggregate amount of 50 feet.

4. Granting the variance would do substantial justice.

Mr. Green told the board that it is his belief that substantial justice will be done by granting this variance; both to the abutting owners and the zoning regulations in general.

5. The variance will not be contrary to the spirit of the ordinance.

Mr. Green stated that he feels that the use contemplated by the applicant as a result of obtaining this variance will not be contrary to the New London Zoning Ordinance.

Mrs. Devoe told the board that she agreed with Mr. Green's statements in regard to the five findings of fact.

Mr. Todd stated that substantial improvement over 50 percent of the assessed value of the home require more stringent analysis or less stringent analysis. Mr. Green told Mr. Todd that it require the applicant to receive a variance. Mr. Todd continued to say that he does not understand that if the Town has a setback that's not going to change how it's no more conforming if you make it taller. Mr. Green asked Mr. Todd to clarify his question. Mr. Todd reiterated his question asking how in raising the structure in height in its nonconforming state doesn't make it more nonconforming. Mr. Green stated that the issue of nonconformity deals with the setback of the structure from the property line.

He continued to say that the request is not a request to enlarge the building hence reducing the setback. Mr. Todd agreed and then said that the purpose of the setback is to create space between the building and the property line; he then asked if making the building taller will change the nonconformity. Mrs. Devoe told Mr. Todd that the proposed addition does conform to the height ordinance, but the structure does not meet the setback requirements. Mr. Todd said that he is trying to ask if raising the height affects the nonconformity of the setback of the lot. Mr. Stanley advised the board to read Article XX §B-2. Mr. Green read the paragraph to the board and those present. Mr. Stanley then added that the issue is not the height; it is the substantial value change. Mr. Green advised the board that the substantial improvement is the cost of the improvement being more than 50 percent of the assessed value of the building.

Mr. Todd stated that the board had not heard any direct testimony that there will not be any restriction in sunlight to the neighbors; we have heard testimony that one cannot see another due to the mature hemlock growth on the property. He continued to say that the public interest is addressed by the proposal that the color of the building would be changed from a lighter color to a darker color after completion of the project. He added that he is not completely sure that undue hardship has been adequately addressed, but he is fairly certain that justice would be done provided that the board creates conditions in the approval to include those characteristics set forth on the front page; more specifically adding a condition that clearly states the building color must be changed. Mr. Green then asked Mr. Todd to point out the section that he is referring to. Mr. Todd explained that he is referring to the memo in the packet that the board had received. Mr. Todd then asked Mr. Schoff who owns the hemlock trees. Mr. Schoff advised Mr. Todd and the board that the hemlocks on the south end of the property are owned by him and the hemlocks to the north are owned by Mr. Keeler and himself. Mr. Todd continued to say that the second condition would state that no substantial change to the existing landscape and driveway could take place. He added that the board had cited that as an example of how the project will not disturb the surrounding property values; adding this condition would help to protect the value of the abutters. Mr. Schoff told the board that the plan for the new septic system states that eight hemlock trees will have to be removed for the septic system to be installed. Mr. Todd asked in taking the eight hemlocks down would Mr. Schoff be diminishing the value of the abutters' property. Mrs. Devoe then asked if the board were to implement that condition would they be implementing a condition that could not be fulfilled. Mr. Cross asked how the Town would enforce the requirement. Mr. Todd stated that the Town could then send out the Zoning Administrator to make sure all conditions of the variance would be fulfilled. Mr. Green then asked Mr. Todd if he was against Mr. Schoff moving his driveway. Mr. Todd said no; he was opposed to Mr. Schoff removing vegetation. Mrs. Devoe asked if it would be okay for the Schoff's to create gardens and plant shrubs in the future with this condition. Mr. Todd stated that he does not have a problem with adding vegetation or shrubbery, but he does have a problem with the Schoff's removing the vegetation. Mrs. Devoe told Mr. Todd that she is only asking to make sure that the wording of the condition is valid.

Mr. Green asked Mr. Todd about the condition regarding the color of the structure asking what would happen if the Schoff's sold the property and the new owners wanted to change the color, would they be bound by this condition. Mr. Todd said that yes, it would be the same situation if the board approved the variance with a condition stating that the structure could not extend beyond a certain height, every owner from then on would be bound by the condition. Mr. Stanley agreed that if the board made a condition of approval stating that the building must be an earth tone the from that point forward it the buildings color would have to be an earth tone. Mr. Green said that it may be hard for the Town to enforce such a condition 20 or 30 years from now.

Mr. Todd said that the point he is trying to make is that if the board decides to make it a condition that the owner must try and reduce the visibility of the structure then the color will need to be addressed. Mr. Green stated that it would be hard for the Town to mandate and uphold such a condition; he continued to say that he does believe that reducing the visibility is a key component. Mr. Cross then asked in who would dictate whether or not the visibility has diminished. Mrs. Devoe agreed with Mr. Cross' question. Mr. Todd agreed with Mrs. Devoe and Mr. Cross; he then asked the board if they could at least agree that there needs to be a condition stating that the owner must reduce the visibility. Mr. Green told the board that he could agree with the condition as long as it was worded appropriately.

Mr. Stanley told the board that when the building was raised the install the foundation many of the trees between the structure and the lake were cut down. He continued to say that the condition could state that the owner must plant three or four trees to help diminish the visibility from the lake; that way the board gets away from creating a condition that specifies color. Mr. Todd and Mrs. Boland agreed and thought Mr. Stanley's idea was a great suggestion. Mr. Green asked if Mr. Schoff agreed with Mr. Stanley's suggestion. Mr. Schoff told the board that he agrees with Mr. Stanley's suggestions and finds them to be adequate and fair.

Mr. Todd then asked the board if there should be a condition regarding the visibility of the structure that states that the point of the trees is to reduce the visibility of the structure. Mr. Green told Mr. Todd that the structure can barely be seen from the road, but is quite visible from the water. Mr. Todd said his greatest concern is preserving the property values of the surrounding neighbors. Mr. Green said that he had never seen a project that had diminished the value of the surrounding properties. Mrs. Devoe stated that she believes it is the board's job to keep the project from diminishing the surrounding property value; it does not state that the board must preserve the values of the surrounding property. Mr. Todd stated that he believes the condition would help the abutters who look at the property from across the lake. Mr. Cross said that the condition would be hard to enforce. He continued to say that the Town would be faced with a difficult task of telling a property owner what color their house can or cannot be. Mrs. Devoe stated that the objective for the board is not to create more conditions; it is to approve or deny the conditions and project that are set before the board.

Mr. Todd made a motion to take the request for the variance under advisement and issue the applicant a written decision in 30 days after we have had ample opportunity to view the property and make the appropriate recommendation. Mr. Green asked for a second; there being none Mr. Green asked Mr. Todd if he would like to amend or withdraw his motion. Mr. Todd said that he made the motion because he would like more time to view the property to make the appropriate decision. Mr. Todd did not amend his motion.

Seeing and hearing no further discussion Mr. Green made a motion to approve the variance to Article XX §B-3-b of the New London Zoning Ordinance; conditioned upon the applicant designing and receiving state approval for a modern septic system and maintaining the position of the driveway as it currently exists. The motion was seconded by Mrs. Devoe. There was no further discussion and the variance was granted three to one.

Correspondences Reviewed:

- Local Government Center – Brochure promoting a lecture series on Municipal Law. Members of the Board were instructed to call Amy Rankins if they would like to attend.
- New Hampshire Office of Energy and Planning – Letter in regard to the Fall Planning and Zoning Conference. Members of the Board were instructed to call Amy Rankins if they would like to attend.
- Upton & Hatfield – Letter regarding the Lakeside Lodge, Inc. v. Town of New London and Town of New London Zoning Board of Adjustment; Docket #07-E-0222.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Kelsie M. Lee
Recording Secretary