

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

PRESENT: Larry Ballin (Chair), Russ Cooper, Bill Green, Caroline Newkirk, Brian Prescott.

1. Public Hearing

Jesseman Associates P.C., representing Molly and Domenic Ferrante, requested a variance to the terms of Article XX, §B-3 of the New London Zoning Ordinance, in order to do substantial renovations to an existing non-conforming structure located at 53 Lighthouse View Road, Tax Map 126-005-000, in the R2 zone.

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

Steve Jesseman introduced himself and Attorney Brad Cook, and turned the hearing over to the latter.

Brad Cook explained that the Ferrantes have recently purchased this building, historically known as the Lake Sunapee Yacht Club, and plan extensive renovations to the interior only—including some new interior supports and roofing, cabinetry, windows, etc., but involving no change to the exterior. All work will be done within State and Town requirements for work done near a lake. Again, all the work will be internal. Even the pilings will be done within the foundation.

He referred to Article XX, §B-3 in New London's Zoning Ordinance, which requires a variance for renovations to a non-conforming structure, if said renovations exceed 50% of the assessed value (noting that he had written "fair market value" into the application, and those are not always the same). He pointed out that the purpose of that section of the ordinance is to keep a more intrusive, more substantial non-conforming use from intruding into the fifty-foot setback. As stated in the application, all of the dimensions on the exterior of the building are going to remain exactly the same.

He noted an irony in that the ordinance would permit the owners to tear down the existing structure and replace it with one of any value as long as they stay within the footprint. In this case, however, the applicants wish to retain this historic structure. (Later in this hearing, Peter Stanley clarified that as of January 31, 2003, State law prohibits any volumetric increase to a non-conforming structure within the setback.)

Brad Cook said that the applicants believe that under the Simplex decision, which says if the spirit of the ordinance is kept, if there is no diminution of surrounding property values, and if strict application of the ordinance to a particular property would create an injustice, a variance would be in order. He feels it's appropriate to interpret the hardship provision (in that way), and to work out a just result.

Abutters Jim Black and Helen Black raised two issues:

- o Several years ago, abutter Jack Killian applied to renovate his house, and assurance was given that there would be no change to that footprint. In reality, the renovations substantially changed the footprint of the main building, the waterfront, added porches, extended the rock wall, and replaced an existing utility shed with one that is three times larger.
- o Also, there is currently a disagreement about property lines. The numbers given in the recent survey for the Ferrantes' property, the Cottrils', and theirs—the Blacks, would not, in reality, fit within the two fixed roads that are there. The Blacks would object if these proposed renovations further encroach on that (disputed) property line.

Steve Jesseman referred to interaction his office has had with the architect for this project, and can assure that all renovations will be within the footprint. There are no plans to change the outside of the building at all.

Zoning Board members and Zoning Administrator Peter Stanley ascertained that the renovations to which Mr. Black referred occurred long before the current Board's or Administrator's tenure. Peter Stanley pointed out that as of January 31, 2003, State regulations prohibit any volumetric increase to a building within the fifty-foot setback, including modification of a porch or deck into interior living space. Vigilance is much higher now.

He went on to add however that there is going to be a dramatic change on this property, in that the owners are going to build an accessory structure on the old roadway outside of the fifty-foot setback. Essentially it will be a house without a kitchen. It is outside the setback, and does meet the zoning requirements so therefore does not require a special exception or variance.

The Blacks said that old roadway is an easement. It was the road around the lake.

Peter Stanley said it does not show up as an easement on any of the Town's documentation.

Larry Ballin brought the hearing back to the variance which is being requested tonight. He suggested the Blacks discuss the other issues with Peter Stanley separately. He said this application is predicated on applicants not increasing the size of the footprint.

Brad Cook agreed, and suggested the Board grant only what is asked for and not add any additional restrictions. He suggested the Board make the variance approval as clear possible, stating that the renovations will stay within the footprint, in order to satisfy the Blacks.

Helen Black asked about the ancillary building which she said was added onto the main building a few years ago, and which juts toward their (the Blacks') property, and asked if the property line is litigated, and if it is found that the ancillary building does violate the twenty-foot setback requirement, would these renovations make that ancillary building more non-conforming?

Peter Stanley said that there is no recent record of there being an addition to the main building. If it turns out that part of the building is on someone else's property, that would become a civil as well as a zoning issue.

It was noted that the Ferrantes' entire structure is non-conforming as it is within the fifty-foot setback from the lake, but does meet the sideline setback requirements as shown on the plans presented tonight—based on the survey. The Board must proceed based on the information presented to it. If there is an error in that survey, that would have to be resolved at some point in the future, among engineers, surveyors, attorneys, etc.

The Blacks reiterated that the survey numbers do not add up correctly, and have not since the 80's. They noted that at some point, one of the iron pipes was removed.

Peter Stanley said the Zoning Board can only act on the information presented, and that information appears to be valid as presented in this application. There will be no expansion to the building, applicants are only working within the existing structure. If at some point in the future, they do wish to expand, that will be a whole different story.

Hearing no further questions or discussion, Larry Ballin asked for a motion to enter deliberations. Brian Prescott so moved. Russ Cooper seconded. No further discussion. Motion unanimously approved.

Deliberations

Russ Cooper said that both the written and verbal presentations of the application indicate that the variance would meet the five criteria required. He said granting the variance would be in keeping with the spirit of the ordinance.

Brian Prescott agreed.

Russ Cooper moved to approve this variance. Brian Prescott seconded. There was no further discussion. The motion was approved by unanimous vote of members Russ Cooper, Bill Green, Caroline Newkirk, and Brian Prescott. Members completed the Findings of Fact sheets for the record.

2. Public Hearing

Peter Schiess of Landforms LTD., representing Robert Ewing, requested a special exception as provided by the terms of Article XIII, §E-2 of the New London Zoning Ordinance, in order to create two ponds on property located off of Main Street, Tax Maps 096-010-000, 096-015-004, 096-015-005.

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

Peter Schiess presented a letter from Robert Ewing authorizing Peter Schiess of Landforms, LTD to act as his agent in this matter before the Zoning Board.

Peter Schiess presented the application, assuring that both ponds will be well into the interior of the property, and will impact a minimum amount of wetlands. The ponds will not be for drainage—one will be for watering horses, and the other for aesthetic purposes. Both will be filtered and have pump systems.

He said that the Conservation Commission has signed off on this, and the minimum impact expedited application is now before the State Wetlands Bureau. He anticipates that the State will have no objections to it, and that he will receive approval within thirty days.

Larry Ballin confirmed that there is no stream running through the area of the proposed ponds, and the soils there are wetland-type soils, but that the area is not a mapped wetland.

Abutter Bill Helm said he has no objection to the ponds as they are described in this application.

Larry Ballin read into the record a letter from abutter T.W. DeMille, also stating that he has no objections.

Bill Green clarified that the applicant is waiting for this Board's approval , as well as State approval before proceeding.

Larry Ballin confirmed that the applicant would have no objection to this Board predicating its approval upon approval being granted by the State Wetlands Bureau.

Hearing no further questions or discussion, Russ Cooper moved that the Board enter deliberations. Brian Prescott seconded. No further discussion. Motion unanimously approved.

Deliberations

Brian Prescott moved to approve this special exception predicated upon the application receiving approval from the NH DES Wetlands Bureau. Russ Cooper seconded. There was no further discussion. The motion to grant the special exception was approved by unanimous vote of members Russ Cooper, Bill Green, Caroline Newkirk, and Brian Prescott.

Peter Schiess asked for what sorts of reasons would the Town not grant a special exception for a pond.

Reasons could include substantial interference with wildlife habitat (if a large wetland area were to be flooded for example); and objections from abutters.

Other Business

- o Brian Prescott moved to approve the minutes of December 6, 2004. Caroline Newkirk seconded. There was no further discussion. Motion unanimously approved.
- o Caroline Newkirk will not seek re-appointment to another term as regular Zoning Board member, but indicated that she would be willing to stay on as an alternate. Larry Ballin said that in recent discussions with the Board of Selectmen and Citizens' Advisory Committee, the idea of rotating Chairmen was raised.

There were no volunteers for the position of Chair of the ZBA, and Larry Ballin said he would be willing to continue as Chairman.

- o Peter Stanley suggested that in the future, the Board discuss for the record, each of the five criteria required for granting a variance.

Meeting adjourned at 8:15 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary

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You are hereby notified that a Public Hearing was held on this date, at the request of Jesseman Associates P.C., representing Molly and Domenic Ferrante. Applicants sought a variance to the terms of Article XX, §B-3 of the New London Zoning Ordinance, in order to do substantial renovations to an existing non-conforming structure located at 53 Lighthouse View Road, Tax Map 126-005-000, in the R2 zone.

The Zoning Board heard testimony from the applicants' representatives, and from abutters. After confirming that all proposed work will be within the existing structure, will result in no change to the exterior and no volumetric increase to the existing structure, and reviewing the five criteria for granting a variance to the zoning ordinance, the Board voted unanimously to grant the requested variance. Members Russ Cooper, Bill Green, Caroline Newkirk and Brian Prescott voted. Chair Larry Ballin did not vote.

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You are hereby notified that on this date, a Public Hearing was held at the request of Peter Schiess of Landforms LTD., representing Robert Ewing. The applicant requested a special exception as provided by the terms of Article XIII, §E-2 of the New London Zoning Ordinance, in order to create two ponds on property located off of Main Street, Tax Maps 096-010-000, 096-015-004, 096-015-005, in the ARR zone.

The Board heard testimony from the applicants, as well as written and verbal comments from abutters. The Board confirmed that the proposal had been reviewed by the New London Conservation Commission, and will not impact a mapped wetland or a stream. After reviewing all facts presented, the Board voted unanimously to grant the requested special exception, provided that approval for the project is granted by the State of New Hampshire Wetlands Bureau. Members Russ Cooper, Bill Green, Caroline Newkirk, and Brian Prescott voted. Chair Larry Ballin did not vote.