

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
OCTOBER 23, 2006

PRESENT: Larry Ballin (Chair), Russ Cooper, Cheryl Devoe, Bill Green, Brian Prescott.

PUBLIC HEARING

Laura Kiefer requested an equitable waiver of dimensional requirement as permitted by the terms of Article XXI §H-1 and H-2 of the New London Zoning Ordinance, in order to legalize the existing non-conforming structure, specifically a screened porch which was constructed in 1989, less than the required fifty feet from the property line. The property is located at 35 Sparrowhawk Road in Elkins, in the ARR zone., Tax Map 052-019-000.

Prior to the hearing, ZBA members received copies of the current EWDR application, the 1989 building permit application for the expansion, a lot plan, and a to-scale drawing of the existing house with screened porch.

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 tape recorded. Abutter Dan Saxby and New London Zoning Administrator Peter Stanley also attended the hearing.

Applicant's Presentation

The applicant did not attend. Peter Stanley reported that this violation was discovered when the applicant recently applied for a building permit to some renovations to her home. It seems that when the building permit for the screened porch was approved in 1989, the setback was measured from the road, when in fact it should have been measured from the property line, thus the screened porch does encroach fourteen feet into the required setback. He reported that there have been no complaints or notices of violations. The purpose in requesting the EWDR is to clear the property of any difficulty should the owner wish to sell in the future. The applicant understands that the EWDR would apply only to the existing screen porch, and would not encompass any future renovations or expansions.

Abutter Dan Saxby asked to clarify that the building permit recently applied for by the applicant, has nothing to do with this setback. Correct. Larry Ballin confirmed that the owner can not add anything within the setback.

Hearing no further comments or questions, Brian Prescott moved to close the public hearing and open deliberations. Bill Green seconded. No further discussion. Motion unanimously approved.

Deliberations

Members agreed that the request meets the criteria for an Equitable Waiver of Dimensional Requirement, specifically (per Article XXI §H):

- o The violation was not discovered by the owner until after (17 years after) the structure in violation had been substantially completed.
- o The violation was caused by a good faith error in measurement by a previous owner seventeen years ago.
- o The violation does not constitute a public nuisance or diminish value of surrounding properties, or interfere with present or permissible future uses of the property.
- o The cost of correcting the error so far outweighs the public benefit to be gained that it would be inequitable to require that the violation be corrected.
- o The violation has existed for more than 10 years, during which no enforcement action has been commenced, nor have any complaints been received regarding the violation.

Cheryl Devoe moved to grant the Equitable Waiver of Dimensional Requirement. Russ Cooper seconded. No further discussion. Motion unanimously approved.

PUBLIC HEARING

G2+1 LLC representing Samuel Rowse requested a special exception in accordance with the terms of Article XIII §E-1 of the New London Zoning Ordinance, in order to cross a wetland with a driveway access to the barn, and to realign an existing driveway. Property is located at 44 Sunset Shore Road in the R2 and ARR zones, Tax Map 103-23 + 24.

Prior to the hearing, ZBA members received copies of the special exception application, narrative explanation of the proposal, lot plan, agent authorization, and a color rendering of the site showing the proposed wetlands crossings.

Larry Ballin opened the public hearing at 7:45 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be tape recorded. Landscape Architect Douglas Greiner, owner Sam Rowse, and Zoning Administrator Peter Stanley were in attendance. No abutters attended this hearing.

Applicant's Presentation

Doug Greiner explained that this need for a special exception came to their attention while applicants were designing the landscaping for the site. During that process they learned that there is a legal limitation to number of accesses off the road, thus they are required to access the barn from their internal driveway. The proposal shown on the plan presented at this hearing, represents the least impact to wetland with which that can be accomplished. The driveway crossing will be 12' wide, and will include some slope work at the sides and installation of a culvert. About 500 square feet of wetland will be impacted. He noted that there is not a significant amount of flow in the area where the culvert will be. In addition, the proposed improvements to the site include realigning the driveway entrance to the garage, thus opening up the space in front of the house for landscaping. Although the wetland consultant has designated the area to which they wish to relocate that portion of driveway as wetland—about 350 square feet of wetland more or less, they are challenging that designation. That area has historically been maintained as lawn, been mown twice a month in the summer, and fertilized.

Larry Ballin asked if the Conservation Commission has signed off on this. Peter Stanley said Conservation Commission Chair Les Norman has seen it, and did not feel it requires review by the entire commission. He will sign the permit application when that is received. He will sign off on it as soon as the wetland application is received. Doug Greiner confirmed that they do have a "Permit by Notification." The application for signing will be available by tomorrow.

Brian Prescott asked if the two lots here have been merged. Peter Stanley confirmed that, these are now all one lot.

Cheryl Devoe asked if they are being asked to approve both special exceptions at the same time. Sam Rowse said there is really very slight change in that second area, so they asked to include it in tonight's considerations. Larry Ballin agreed that there appears that there will be minimal impact involved in the driveway realignment. Peter Stanley observed that at one point in time, there was a building in that location. That has since been removed.

Hearing no further comments or questions, Cheryl Devoe moved to close the public hearing and enter deliberations. Brian Prescott seconded. No further discussion. Motion unanimously approved.

Deliberations

Brain Prescott moved to approve the special exceptions for both uses. Bill Green seconded. There was no further discussion. Motion unanimously approved, pending approval by the Conservation Commission.

OTHER BUSINESS

- o Russ Cooper moved to accept the minutes of October 16. Bill Green seconded. No further discussion. Motion unanimously approved.

- o The Zoning Board received a letter dated October 20, 2006 from Sonja Philips requesting a rehearing of her October 16th request for a variance to Article V §C-3 to construct an addition on her house on Pleasant Street, within the required 25' setback from the side road. In her recent correspondence, Ms. Philips cites two pieces of information that were omitted from the public hearing on October 16: specifically, that the addition would allow more space for visits from the expanded family, and also that the poor drainage on that side of the house can be addressed by installation of tiles alone, but accomplishing excavation for both the tiles and the new room at the same time would be cost effective.

At this meeting, the Board raised the following questions: Does the information in Ms. Philips October 20 letter meet the criteria for “new information?” Is there anything in Ms. Philips’ October 20 letter that would motivate the Board to change its October 16 decision to deny the variance? Was the Board in error in denying the variance?

Peter Stanley submitted for the Board’s consideration, the most recent Supreme Court’s decisions to divide variances into “use” and “area variances”, and to further delineate the definition of “hardship” for consideration in an area variance. He pointed out that Ms. Philips’ application was for an “area variance.” The Board can grant the area variance if it finds that a literal enforcement of the ordinance would result in unnecessary hardship as established by the following: (a) There are special conditions of the property that makes the area variance necessary in order to allow the applicant to construct the development as designed. (b) The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose undue financial burden. So financial burden is actually a consideration now, in an area variance only. Denial of the variance allowing the Philips’ to construct their addition in the location proposed, would impose financial hardship on the applicants, as they would then have to tear down a portion of the structure that is already there (on the rear of the house) in order to build an addition in that direction.

Larry Ballin pointed out that that raises a question of how to define “undue.” Several Board members said they still feel that, as the applicant has several options for locating the construction, a variance allowing the applicants to construct the addition in that particular location would be more of a convenience than a necessity. Bill Green asked if it was the current owners who did the recent renovations. Yes, the current owners put the porch on the end of the house, and the porch is complete.

Regarding Ms. Philips’ concern regarding the drainage on the south side of the house, members noted that that will not be alleviated, and may even be exacerbated by an addition in that location.

Brian Prescott moved to deny the request for a rehearing. Bill Green seconded. There was no further discussion. Motion unanimously approved.

PUBLIC HEARING

Ken and Laurie Jacques, and Rick Kidder, co-owners of Twin Lake Village Inc., requested variances to the terms of Article V §C-1 and Article XVI §C-2 of the New London Zoning Ordinance in order to demolish an 11’ x 17’ storage structure which is located within the required 25’ front yard setback and the required 50’ shore line buffer, and replace it with a 16’ x 12’ pavilion style storage and picnic table structure, 15’ to the west and few feet to the north, also within the front yard setback and shore line buffer. The proposal includes some grading, filling and vegetating of the footprint of the structure which will be removed, as well as some grading and filling of the area beneath the proposed new pavilion. The property is located at 885 Twin Lake Villa Road in the R-2 zone, Tax Map 032-003.

Prior to the hearing, ZBA members received a copy of the building permit application, narrative explaining the proposal, lot drawings showing dimensions and setbacks of both the old and proposed new buildings, and photographs of the site.

Larry Ballin opened the public hearing at 8 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded. The property owners and Zoning Administrator Peter Stanley were in attendance. No abutters attended this hearing.

Applicant's Presentation

Ken Jacques said that the current 11' x 17' storage structure has been in this location since 1960. The problem they are trying to address now is the ongoing erosion of the area around it, and of its flooring, every time heavy rains flood the lake or nearby creek. He noted that this year, the State did some work on Route 114 including changing a culvert, some dredging and with the material from the dredging, building a berm between the road and the Jacques' property. Whether or not that berm will be effective in preventing flood water from running across their property has yet to be tested. He added that the building is vulnerable in winter to expanding ice. The Lake Association does let the lake out in fall, but only about a foot. Then in spring, there is no place for the lake to take the extra flood water. The result is that the current building has suffered much erosion.

The current proposal is to first demolish this building, and grade and fill in its footprint with loam, and to seed that with a conservation mix and allow it to grow naturally; secondly to construct a new structure in a better location 15' to the west and a few feet north (i.e. further back from the lake). The new structure will be 12' x 16', open sided; that is, it will consist of six poles and a roof, and will be turned 90-degrees so that it is parallel or horizontal to the road and lake, rather than perpendicular. The area under the proposed new pavilion will require some grading and fill—no more than ten yards, probably of crushed gravel. Rick Kidder pointed out that they feel that as the new structure will be open sided, allowing sun in, natural vegetation will grow in that area as well. The new structure will be primarily for the same use—storage of beach supplies when those are not in use, but it will also allow placement of a picnic table in the shade.

Russ Cooper confirmed that the distance between the lake and the building would be increased from the current 21' to 42'.

Larry Ballin asked if the roof overhang is considered in these dimensions. He clarified then that the Board is looking tonight at expanding a current non-conforming use by about five or six square feet. He added that there is something to be said for the fact that the proposal calls for the new building to be set further from the lake than the current building.

Brian Prescott raised the question of use. He asked if this variance is more for a change in use than expansion of non-conforming use. The Jacques said that it will still store whatever beach provisions people choose to leave under it at night, or when they are not using the beach. Currently, they have placed a picnic table under trees for shade. The new pavilion would allow space for a picnic table. Russ Cooper asked how the storage would work if it is an open sided pavilion. Laurie Jacques reiterated that guests will store things there. They do see the proposed new building as having storage value. Regarding the question of change in use, Bill Green said he sees this as consistent with their current business operation. He does not really feel it is a change in use from a zoning standpoint. Applicants pointed out that they are really trying to improve the situation. They could rebuild the structure where it is, but that would not alleviate the erosion situation.

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

Deliberations

The Board reviewed the five criteria for granting a variance, and found that:

1. Neither of the variances requested would result in a diminution in value of surrounding properties.

2. There would be some benefit to the public. Erosion in that area will be controlled, and the new structure will be further back from the lake.
3. Larry Ballin asked whether the hardship question comes into play here. Brian Prescott reminded the hearing that the Board must find hardship in order to grant a variance. He said he is fine with the concept of the project, and thinks it's the right thing to do, but the Board is required to find hardship before granting a variance. The question again: are these use variances or area variances that are being requested? Larry Ballin pointed out that the applicants have claimed that they are not changing use, so these are area variances. Peter Stanley again reviewed the definition of "hardship" to be used when considering an area variance. Specifically, the Board must find that a literal enforcement of the ordinance would result in unnecessary hardship if (a) there are special conditions of the property that make the area variance necessary in order to allow the applicant to construct the development as designed, (b) the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose undue financial burden. Larry Ballin said it seems that the erosion around the current building, as well as erosion damage to the floor of the structure in the current location reduces its potential to be used for storage. Ken Jacques added that dealing with what happens in front of that building every time (every time that the lake or brook floods in), dealing with that plume of sand there that goes into the lake, is a nightmare. They are not allowed to go into the lake to fix it, and they are not allowed to add more sand to the beach to fix it. The Board agreed that hardship does exist.
4. For the same reasons, substantial justice will be done in granting these variances.
5. The variances will not be contrary to the spirit of the ordinance. Rather, the proposed use will reduce erosion near the lake, and replace an existing structure with one that is set further back from the lake.

Peter Stanley pointed out that when they remove the existing structure, they will be filling its footprint and seeding it over with conservation mix. He asked to confirm with applicants that that will be free-growing and not be mown. Applicants confirmed. Peter Stanley said that will stabilize that site, and that is an element which should be part of the ZBA's approval.

He asked applicants to confirm that the new site will have some material added to the ground immediately underneath the pavilion—not a floor, but some built up material. Ken Jacques confirmed that they will build that up enough to keep it high and dry. Larry Ballin asked if they can require that the type fill used there be approved by the Conservation Commission. Peter Stanley said that will be part of the construction process, and so has to be part of the ZBA's approval. He said that although applicants are eliminating disturbance where the old building is, they will be creating new disturbance where the new building will go.

Russ Cooper asked how the material under the new pavilion will be held in place. Ken Jacques said he doesn't see it going anywhere. He would envision raising it up so there will be perhaps a 3/1 slope on the sides of it, and so that the water that comes off the roof will run down. He agreed that it will be a lower area around it. Rick Kidder said they would be open to suggestions on that. Larry Ballin said that's why he suggested seeking approval from the Conservation Commission. He asked about using rocks, something that won't wash away. Ken Jacques said that using rip rap or rocks would require at least a foot of some clay based material.

Russ Cooper clarified that his question was, how will they hold the material under the new building in place—the specific type material, or some kind of boards around the sides to hold the material in? Rick Kidder said they will have to see what will grow under the new pavilion. With light going in there, something will grow. Larry Ballin again suggested letting the Conservation Commission help them with that decision.

Likewise with the footprint under the building that is going to be removed. He said it is obvious they will use the accumulated material around that old building to partly fill the footprint. As for the rest, whatever is agreeable to the Conservation Commission will be fine with this Board.

Brian Prescott moved to grant the variances. Cheryl Devoe seconded. There was no further discussion. The Board approved both variances, predicated upon any addition of fill or any site work being done in conjunction with approval or at the suggestion of the Conservation Commission.

Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Sarah A. Denz
Recording Secretary