

**TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
JULY 25, 2005**

PRESENT: Larry Ballin (Chairman), Russ Cooper, Laurie Diclerico, Bill Green, Betty Herrick.

Public Hearing: Marjorie and Murray Forbes requesting a variance to the terms of Article V, §A-1 of the New London Zoning Ordinance in order to continue the use of a second dwelling unit on property located at 37 Boulder Point in the R-2 zone, Tax Map 115-003-000.

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

Karen Baker, representing the Forbes', provided copies of the survey map of this lot and the abutting lot, explaining that both were once all one estate. The estate included the main house and a guest house, as well as a laundry and a barn. In 1967, the structure shown on the current map as "New House" was built in the northern corner of the property. In 1974, the 4.6-acre estate was subdivided by picking a point on the lake, and drawing a line straight back to create two equally sized lots of 2.3 acres each. Lot 1 now has the main house (plus a boat-house), while Lot 2, the subject of this hearing—the Forbes' lot, has the Guest House and the New House as well as the laundry and barn. The issue at hand is that both the older Guest House and the New House on this lot have been used all along as separate residences.

She referred to a letter dated March 25, 2004 from the Town of New London to the Forbes, informing the latter that, lacking any information to the contrary, the Board of Selectmen consider this to be a legal nonconforming use, and will therefore take no enforcement action against it, but advising that a future Board of Selectmen or abutter *could* challenge that ruling, and suggesting that a variance would provide a more definitive resolution. Karen Baker said that the Forbes have placed their property on the market, and a potential buyer is concerned that this issue be resolved before he proceed with improvements.

Larry Ballin asked how far from the boundary is the Guest House. Karen Baker did not have an exact measurement, but pointed out that it did receive subdivision approval in 1974.

Mark Kaplan clarified that he was not at this hearing in an official capacity as Selectman, but as an abutter to the Forbes'. He said he and his wife have been content with what has been going on there for the last 29 years, and feel it would be all right to continue.

Bill Green asked if the premise here is that this is a non-conforming use.

Peter Stanley said there is insufficient information to make that determination. Town Counsel has advised that any action on this should have been taken long ago, and at this point it would be better to leave it alone. The Selectmen are agreeable to not taking any action on this; however, if no action at all is taken, it will remain an open issue. Approval of a variance would allow this to continue forever.

Betty Herrick asked if this were grand-fathered.

Peter Stanley pointed out that the 1958 regulation limiting dwellings to one or two-family houses in all districts predates these buildings.

Mark Kaplan further explained that originally, there were two buildings on the estate: the main house which is his now, and the guest house. In 1967, the deck house (labeled on the map as "New House") was built, and did include

heat for use during ski season. Thus the estate then had a total of three houses. In 1974, the estate was subdivided by picking a point on the lake and drawing a line straight back.

Peter Stanley said at the time the deck house was built, it would have met the density requirements, had it been subdivided.

Bill Green asked if at any point in time, someone could challenge this.

Peter Stanley said yes, unless the variance is granted.

Karen Baker reiterated that the potential buyer would like the issue cleared up before going forward with improvements to the buildings.

Larry Ballin asked if there is a fifty-foot setback from the lake.

Karen Baker said the deck house ("New House" on the map) is somewhat closer to the lake than fifty-feet, and the potential buyer is aware that any improvements beyond general maintenance will require a building permit, and cannot exacerbate that setback violation.

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

Deliberations

The Board made the following Findings of Fact:

1. All members concurred that granting this variance will not result in a diminution of value of surrounding properties.
2. Members concurred that the variance will be of benefit to the public interest. Russ Cooper said the alternative would be to tear one of the dwellings down. (Or allow its status to remain vulnerable to challenges in the future.) Larry Ballin pointed out that the situation has been in place so long, that there are likely to be a number of legal issues surrounding it (which could potentially be raised in the future).
3. After some discussion, members agreed that denial of the variance would result in unnecessary hardship to the owner. Larry Ballin clarified that the hardship referred to is not financial but the fact that the buildings have been present for a long time, and are part and parcel of the property now. The owners have been paying taxes on the current buildings for years. Bill Green asked how (granting this variance) might impact consideration of other requests for additional density. Betty Herrick said the ZBA does not set precedent. Rather, each case should be considered on its own merits. Laurie DiClerico reminded the Board that Town Counsel has pointed out that there has been no intent on the part of the owners to violate the ordinance. Betty Herrick said she felt that denying the variance would result in unnecessary hardship to the owner. She reiterated that the Board has to take these issues on a case by case basis.
4. Members concurred that substantial justice will be done in granting the variance.
5. Members agreed that the variance would not be contrary to the spirit of the ordinance, though all agreed that Bill Green's point is well-taken. Russ Cooper pointed out that the subdividing line was drawn after the buildings were put up. Bill Green asked how many others are there in Town like this. Peter Stanley said about half a dozen similar situations exist, for which there is no clear historical information available. They are not legal non-conforming uses. Those that have come about more recently are clearly in violation. ZBA members agreed that the Forbes' property does not fit into that last category.

Russ Cooper moved to approve the variance. Bill Green seconded. There was no further discussion. Motion unanimously approved.

Public Hearing: Nancy C. Robertson-Allen requesting an Equitable Waiver of Dimensional Requirement in accordance with Article XXI §H-2, with reference to her home on Laurel Lane in the ARR zone, Tax Map 089-017-000.

Larry Ballin opened the 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.

Applicant's Presentation

Nancy Robertson-Allen explained that when she bought the house two years ago, she did not realize that it was in violation of the setback requirement. In fact, it is just one corner of the garage which comes to within 35-feet of the road's curb or right of way. That is, 15-feet of the structure are within the setback. (She noted that there are fifty-feet between that corner of the garage and the center of the road.) The violation was brought to her attention recently when she applied for a permit to remodel the garage into an artist's studio. They had also hoped to build an additional garage, but have put that plan on hold until this is resolved.

Peter Stanley said this is the first house in New London on Laurel Lane. Abutting houses are in Wilmot, and are equally close to the road. He reviewed Article XXI §H-2, of the Zoning Ordinance, and confirmed that the garage has existed this close to the road for almost twenty years, and he confirmed that the Town has not received any complaints regarding it.

Hearing no further comments or questions, Russ Cooper moved to enter deliberations. Laurie DiClerico seconded. No further discussion. Motion unanimously approved.

Deliberations

Laurie DiClerico moved to grant this equitable waiver of dimensional requirement. Russ Cooper seconded. No further discussion. Motion unanimously approved.

Other Business

- o Minutes-July 11, 2005
Russ Cooper moved to accept. Betty Herrick seconded. No further discussion. Motion unanimously approved.
- o Peter Stanley updated the Board on RCS Design's presentation to the Conservation Commission of the Voellman's proposed walkway over wetlands to Messer Pond. With the Conservation Commission's remarks in mind, the applicants will proceed to file their application for a State wetlands permit, and will return to this Board for a hearing on the special exception.

Public Hearing: Bicknor-Wilmot, Inc. requesting a variance to the terms of Article V, §A of the New London Zoning Ordinance, in order to allow a parking lot in a residential district. The property is located at 207 Main Street, Tax Map 073-080-000.

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.

Applicant's Presentation

John Howe explained that he has been to a preliminary consultation with the Planning Board regarding his proposal to remove the existing (since 1973) barn, and replace it with a similar building further forward on this property

within the commercial zone, and to use that space that the current barn occupies for parking. The Planning Board has required that he receive a variance for parking in the residential zone, before proceeding with his site plan review.

He referred to a map showing the area in question including the 1973 barn which is used for storage now, and which was grand-fathered in this residential district. As it is currently, the existing parking is an awkward combination of head-in parking and angled parking, and a number of fender benders have occurred. If he is allowed to have the parking in the area of the current barn, he will pave and line it (it's blue stone now), thus better directing where and how cars can park. An added benefit to moving that building is that it will allow them to do some grading in the area, improving the drainage there.

Laurie DiClerico asked how many new parking spaces will be created in the area where the current barn is now.

Five.

Bill Green asked if that will mean a net gain or loss of parking spaces.

John Howe explained that the current barn is not set back as far as it could be on the property now. Once that barn is removed, they will be able to put five spaces in that area. The new building which will also be used for storage, will take up some spaces in the commercial zone, so altogether the net gain will be four spaces. He said they are zoned for 38 spaces now.

Larry Ballin clarified that the only issue with which the Zoning Board is concerned is the question of parking spaces in the residential zone, however, he cautioned John Howe to assure that they will have adequate parking altogether before he tears the building down with the idea of replacing it further forward.

John Howe confirmed that they will be in compliance with the parking requirements for these three businesses and the storage barn (noting that the parking requirements for Jack's combine the needs of a take-out and an eat-in restaurant), and he feels they will be making it safer.

Peter Stanley confirmed that the applicant was sent to this Board by the Planning Board, and he pointed out that all around the proposed new parking spaces, parking already exists. To suggest that the area in question couldn't be parking would create an unnecessary hardship. That is the essence of the Simplex case.

Hearing no further comments or questions, Russ Cooper moved to enter deliberations. Bill Green seconded. No further discussion. Motion unanimously approved.

Deliberations

In considering the request for this variance, the Board made the following Findings of Fact:

1. There will be no diminution in value of surrounding properties.
2. The use will be a benefit to the public interest. Betty Herrick pointed out that this is especially the case, in that it will be making parking in that area safer. Larry Ballin said there is nothing to indicate that it would be contrary to the public interest.
3. Denial of the hardship will result in unnecessary hardship to the owner. Reference again was made to the fact that there is already parking in the surrounding area.
4. Substantial justice will be done in granting this variance.

5. The proposed use will not be contrary to the spirit of the zoning ordinance. Larry Ballin pointed out that parking is not something that is addressed in Article V, but it is pretty obvious that this is a parking area in that part of Town.

Russ Cooper moved to approve the variance. Bill Green seconded. No further discussion. Motion unanimously approved.

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Meeting adjourned at 8:25 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary