

TOWN OF NEW LONDON
ZONING BOARD OF ADJUSTMENT
MARCH 13, 2006

PRESENT: Larry Ballin (Chairman), Russ Cooper, Cheryl Devoe, Laurie DiClerico, Brian Prescott.

PUBLIC HEARING

Pellettieri Associates, Inc., representing Jane Brock-Wilson requested a variance as provided in Article XVI §C of the New London Zoning Ordinance in order to remove a failing concrete retaining wall and wood deck supported by that failing concrete, and to replace those with natural/sustainable materials. The property is located at 115 Lighthouse View Road in the R-2 zone, tax map 120-011.

Larry Ballin opened this hearing at 7:30 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded. Also present for this hearing were Zoning Administrator Peter Stanley, George Pellettieri, Conservation Commissioners Les Norman and Terry Dancy. Prior to the hearing, ZBA member received packets including the application for variance, several photographic views of the site, and several topographic worksheets and designer's plans.

Applicant's Presentation

George Pellettieri referred to the photographs in the packet showing the existing condition of the concrete bulkhead with its wood deck structure above it. He noted that the wood deck structure provides the anchorage for the seasonal dock. The applicant wishes to remove this construction and replace with natural/sustainable materials. The building permit for this work was denied pending variance granted by this Board. He added that they did meet with the Conservation Commission on September 21, 2005, and their minutes indicate that that Commission voiced no objections to the proposal as it was presented.

Specifically, the proposal calls for removal of both the failing concrete retaining wall and the wood deck above it, replacement of the retaining wall with a new one of natural stone, and the wood deck with a deck of natural sustainable materials. He acknowledged that regulations require that materials be replaced in kind, but by using material that will require no maintenance, preservatives, stains, etc, they will be enhancing protection of the lake quality. The project will also remove an existing upper retaining wall and steps, replace the wall in kind, raise the grade in that location in order to create a native planting terrace which will redirect runoff from the hillside. Finally, they will be eliminating the walkway that runs straight down the hill from the house, and replacing that with one that meanders down the hill, reducing runoff in that direction. Watermark will be doing the work from a barge on the lake. The net impact will be to reduce drainage into the lake, and to improve the property esthetically.

Larry Ballin opened the hearing to questions and comments from the floor.

Peter Stanley pointed out that if the wooden deck—a non conforming structure—is removed, it cannot be replaced. Both retaining walls could be replaced with just a building permit, providing that applicants landscape behind those. The issue here is the proposed patio area being created next to the water, behind the first retaining wall.

He also expressed concern about a storage area shown on the plan. He asked if intention is to grade there or in any way disturb the land there. George Pellettieri assured him that they would not. Kayaks, canoes, etc, will simply be put on the grass there.

Lastly, Peter Stanley expressed concern that on the plan, it appears that walkways will be substantially wider than four feet. They can only be four feet in width. George Pellettieri confirmed that they understand that.

In response to Conservation Commission Chair Les Norman's concern, George Pellettieri confirmed that they had reviewed this with the Conservation Commission, and the minutes included in tonight's packet indicate that that Commission saw nothing to oppose in the plan.

Brian Prescott asked if it is legal to put another dock anywhere one wants. Peter Stanley said yes, with a State permit. Larry Ballin confirmed that the permit application to DES is pending.

Brian Prescott asked if applicants really feel that is a retaining wall at the end of that dock anchorage. George Pellettieri said yes. Brian Prescott noted that there is a lot of natural shoreline on either side of the structure, and it appears that the concrete retaining wall was poured mainly to hold up the base of the dock. He agreed that that's a retaining wall behind the dock structure, but said he does not see the necessity for that patio replacement area, and thinks it will disturb more shoreline than is necessary. He observed that once the failing cement is removed, the replacement patio area would be creating a space that is not meant to be there. George Pellettieri agreed that the concrete retaining wall that is there right now is not holding up anything of substance at this time, but its original intent was that it would serve as a retaining wall. Without it, the near retaining wall would not stay in place. He agreed that there was natural shoreline there at one point.

Russ Cooper asked about the replacement material for the patio area. George Pellettier said the sitting area there is a grand-fathered, existing use. He said that the State is probably going to grant the installation of the retaining wall, and the applicants feel the deck would be a lot nicer if done with natural stone. Semi-permeable gravel will be placed there. Russ Cooper expressed concern that it appears that the project would be doubling the size of used shorefront there. George Pellettieri said they are giving up a four-foot-plus access on one side and replacing it with the one on the other. The only thing that is new is that access shown on the left side on the plan.

Peter Stanley asked if the dock could come off the sitting area instead. Is there a way to decrease developed area on the shore, and increase planted area? George Pellettieri said that Watermark evaluated conditions for maneuvering boats in there around several large boulders.

Russ Cooper asked how much further down they are going to build that retaining wall. George Pellettieri said they plan to build "off the natural boulders that are there."

Larry Ballin asked about the steps leading down to the swimming area, shown on the left side of the plan. He observed that they appear to extend further down than where the concrete is. George Pellettieri repeated that the intent is to "build off the natural boulders that are there."

Brian Prescott expressed concern that it appears they will be creating twice as much recreation space on the shoreline. George Pellettieri said they could pull the steps back into line with the current retaining wall.

Brian Prescott asked about the new walkway. Peter Stanley said there is no limit on the walkways they can have, as long as they are no wider than four feet.

However, with respect to the patio, he agreed that they are spreading this developed area out. He suggested pulling the patio back to the existing deck, and plant that area instead (the area to the left on the plan where the patio is proposed).

George Pelletier agreed to amend the application to remove that entrance to the water shown on the left side of the plan, and pull everything (with the exception of the four-foot wide walkway) into the footprint of the existing wooden deck.

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

Deliberations

Russ Cooper said that with the amendment, and with confirmation that walkways will be no more than four feet in width, he would support granting the variance. Laurie DiClerico said she would also support the plan if the access

to the lake is changed, and that area where the access is shown on the plan above the retaining wall becomes a planted area instead.

Motion made and seconded to approve the variance with that amendment. Motion passed with Russ Cooper, Laurie DiClerico and Cheryl Devoe voting yes, and Brian Prescott voting no.

PUBLIC HEARING

George P. Quackenbos requested a variance as provided in Article XIII §F-1 of the New London Zoning Ordinance in order to locate a leach field within a 75-foot wetland buffer, and a special exception as provided by Article XXII §G-3 in order to reduce the depth of the stream buffer which is required by Article XXII §D-3. The property is owned by SAJP LLC, and is located on Bunker Road in the R-2 zone, tax map 063-009.

Larry Ballin opened this hearing at 8 p.m., called the roll, read the Notice of Hearing as posted, and announced that the hearing would be recorded. Also present at this hearing were Zoning Administrator Peter Stanley, Conservation Commissioners Les Norman and Terry Dancy, Pleasant Lake Protective Association representative John Wilson, owners Bo Quackenbos and Pam Perkins, abutters Ed and Cathleen Gerwig. Prior to the hearing, ZBA members received packets including the application, pertinent Board of Selectmen minutes dated February 6, 2006, narrative dated August 29, 2005 accompanying the wetland delineation conducted by Greg Howard of North Country Soil Services, plat and warranty deeds for the property.

Applicant's Presentation

Bo Quackenbos said he and Pam Perkins purchased this a year ago. Prior to that purchase, they walked the site with Terry Dancy, and ultimately with Ross Stevens. They noted that one of the streams covered under the Streams Ordinance was improperly mapped on the USGS topo—that is, the USGS shows that stream on an abutting property. In reality, that stream runs through this property. Ross Stevens retained wetland scientist Greg Howard to do a wetlands delineation on the property.

At tonight's hearing, they are requesting a special exception allowing a reduction in the stream buffer (to 20-feet) for cutting of trees along the stream there, in order to create a house site, and a variance to the required 75-foot buffer from the wetland to allow the proposed leach field. He pointed out on the map the existing leach field on the property which belongs to the abutters across the road. That leaves the current owners with the two knolls shown on the map, for their house site and their own leach field.

He went on to say that he did inspect the stream after the big storm in January and noted that it stayed within its banks and did not overflow. Drainage comes down off Hall Farm, across Bunker Road and into Pleasant Lake. He pointed out the existing driveway, and the location for the proposed extension off that, location of which was per Ross Stevens' recommendation, and designed to avoid having to cross the wetland in that area.

Russ Cooper asked about all the land in back of the proposed house site. Bo Quackenbos said that is very steep, and building back there would not only increase overall costs, but also would involve crossing the seasonal stream.

Larry Ballin asked how much clearing will have to be done. Bo said there are very few trees in that area. The project should not involve cutting a lot of trees. They will need room not only for the house, but for working, and equipment around the house.

Terry Dancy disagreed that this stream in question is a seasonal stream. He said it has water in it year 'round. He too referred to the incorrect USGS mapping—by 200-feet—of the stream; however, he noted that in tracing the stream back, they found that it does join up to another stream highlighted on the USGS map. It is clear that the intention in the mapping and ordinance is to buffer this stream. He spoke about why the Town approved the 100-foot buffers—a size being used by many towns around the country. He acknowledged that at the time the streams ordinance was passed, they did recognize that it would prevent some owners from using their property if a mapped stream exists on it. For that reason there is a provision allowing reduction of the 100-foot buffer by special

exception. However, he said that to go from 100-foot to a 20-foot buffer is extreme, and raises the question of why this wasn't considered before the property was purchased. It was known then, that the property included the buffered stream. He acknowledged that the 100-foot buffer along the stream in this property might be impossible to maintain if a house and driveway are to be located, but reducing that to 20-feet is unreasonable, particularly considering the type of erosion that takes place on that hillside. He expressed concern about setting precedent which throws out the window a lot of work which has taken place over a number of years to protect the watershed. The Lake Sunapee Watershed Committee has found that many towns have good regulations in place, but allow anything by variance or special exception, so they may as well not have the regulations at all. He concluded by asking if the buffer reduction could be less than the requested 80-feet.

Bo Quackenbos said that the stream does have a very steep course in the back of the land, but then it bends around, and has rocks on both sides. It moves so swiftly toward the lake that it really does not go over its banks. There is very little erosion; very little has gone into the lake. He said that with a 20-foot buffer, and a house set maybe 30-feet from the stream, but with a little room to maneuver during construction, his sense is that there would be virtually no impact on that stream. The flowage from where they would locate the house is down through another buffer (he referred to the deed covenant requiring a 100-foot setback from the road in which only selective cutting is allowed), so there is ample protection between the house located 100-200 feet from the road, including the road buffer, and the lake. Also, he pointed out that the proposed house site is nowhere near the existing leach field which also has a (separate) wetland behind it, from which water runs down into the stream and across the road to the lake. By locating the house and driveway where they show on the plan, they eliminate additional affluent getting into the lake.

Terry Dancy said the (runoff from) the roof of a house 20-feet from the stream will increase the velocity of water (in the stream) especially under storm conditions. He said depending on the house design, they ought to be able to get at least a 50-foot buffer from the stream. Bo Quackenbos said gutters and diverters can prevent runoff from the roof getting into the stream.

Larry Ballin asked why that house site is cast in stone. Bo Quackenbos said it does get the best view of the lake—it's the high point of the property, and he said that Ross Stevens recommended the driveway site in order to avoid crossing the wetland.

Peter Stanley said he has inspected the site. Behind the proposed site, the terrain drops off fairly steeply into a ravine. Applicants are trying to take advantage of the area which is fairly level. If they move the house back ten feet, that is, keep it 30-feet away from the stream, and if it is an average sized house, it would then be well down into that ravine. That would require a tall exposed foundation, more fill, etc; it would create more issues during construction. He agreed that the amount of clearing should be minimized. He suggested the Board consider two conditions:

- o Creation of a building envelope, that is delineating exactly where in respect to the road, the buffer reduction would begin and end, rather than allowing a buffer reduction along the entire length of the stream within this lot.
- o Assurance that the finished grading is such that all drainage ends up in that closed wetland, rather than in the stream.

He said that to go further back up the site would probably create more erosion issues, and probably require more stream buffer reduction. The lot gets skinnier as you go up. No matter where you go on the lot, you would be dealing with the stream buffer issue.

Larry Ballin asked if this proposed driveway siting will encroach the required 100-foot buffer from the road, as spelled out in the 1965 deed covenants. Peter Stanley said yes, that that will require review and approval by the Planning Board. He referred to that (covenant Four in the 1965 warranty deed): "A portion of said property, being a strip of land one-hundred (100) feet wide having for its northerly boundary the southerly sideline of Bunker Road,

shall be maintained and preserved as a sylvan area or green belt, so-called. No structure shall be located within said strip; and said strip of land shall be used only for the purpose of growing trees thereon. Any cutting of trees on said strip shall be by selective cutting in accordance with approved forestry practices, provided, that nothing herein shall prevent the cutting and removal of brush and undergrowth in any convenient manner. No more than one access roadway, which shall not exceed 50-feet in width shall be constructed on or over said strip of land.” Peter Stanley said that the “selective cutting” referred to in that wording must be reviewed and approved by the Planning Board.

Larry Ballin read into the record a letter dated March 13, and forwarded by e-mail to Amy Rankins, from abutters Sally and Burton Jones expressing their feeling that the 80-foot reduction in stream buffer is excessive and suggesting that the proposed dwelling site be moved north and west to minimize the requested buffer reduction.

Brian Prescott asked, no matter what clearing limit is established, how close can the house itself be to the stream. Peter Stanley said once you reduce the buffer, anything goes within that reduction.

Bo Quackenbos clarified Peter Stanley’s suggestion of the possibility of keeping the water from flowing into that buffer, of forcing to go down the other side.

Russ Cooper asked if it were better to go into the wetland than into the stream. Peter Stanley said yes, because that wetland does not empty; it’s like a detention facility.

Russ Cooper asked about locating the house to the upper right of the plan. Peter Stanley pointed to the contours on the plan. It gets steeper and steeper there, plus you get closer to the stream there.

Larry Ballin asked about bringing the house down into the crook of the proposed driveway. Bo said then you get into trouble with the deed restriction and cutting 100-feet back from the road.

Brian Prescott asked to confirm that there really is only 40-feet in the proposed house site that is level. Peter Stanley said that they will need room not only for the house but around it for the construction, and also to create a grade change to divert water away from the stream.

Peter Stanley suggested:

- o beginning at a point on the property 80-feet in from the property line at the road, reduce the stream buffer to 60-feet to allow cutting for the driveway, and maintain that reduced buffer to a point 140-feet from the road,
- o at that point 140-feet from the roadway, further reduce the stream buffer to 20-feet to accommodate the house site, and maintain that reduced buffer to a point 250-feet from the road,
- o at that point 250-feet from the road, return to the required 100-foot stream buffer.

Larry Ballin said that would mean a reduction to 20-feet for a total distance of 110 feet. Peter Stanley said yes, that would be preferable to reducing it all along the stream as it crosses the property.

Brian Prescott asked where that would end up on the map—he said he was thinking about view. Peter Stanley agreed that it would reduce the view, but they can go to the Planning Board and seek permission to do some selective cutting to enhance the view. Brian Prescott expressed concern that the whole swathe along the road not be cut out just for a view.

Larry Ballin asked why stretch the buffer reduction that high up on the property—250 feet back. Peter Stanley said to allow space for parking, construction machinery etc.

Peter Stanley reminded everyone that this is a four acre lot, and when they adopted the stream ordinance, they recognized there would be situations like this. The intention was not to create a lot of unbuildable lots, but to have some control over what happens around those streams. They knew some reasonable concessions would have to be made.

He also pointed out that one of the intentions of the stream ordinance is to protect streams in such a way as to keep the water temperature down so as to not preclude wildlife from reproducing. This proposed construction and cutting is all on the west side of the stream and will allow trees to remain on the east side, thus protecting the stream from sunlight. The issue on the table here concerns runoff.

Abutter Ed Gerwig said that they have observed a tremendous amount of water coming down in that stream for which the reduction to 20-foot buffer is proposed. There is erosion on both sides of the street. There is a heavy flow of water from that wetland area off the property into a culvert under the road, and it spreads out over the Coles' lawn, and goes into the lake. He opined that regardless of all the complications inherent in this lot, a reduction to 20-feet is excessive, and would set an unhealthy precedent. Reducing the leach field setback is also a dangerous precedent. He requested the Board take into account the 1965 deed restrictions, most significantly the one limiting tree cutting 100-feet in from the property line on the road. Finally, he requested that strict enforcement regulations be applied to the building, to assure that the stream and lake are not damaged.

Larry Ballin asked to confirm that it is their (the Gerwigs') leach field that already exists on this property. Ed Gerwig confirmed that. Larry Ballin asked how far that is from the wetland in that area. Bo Quackenbos said the Gerwigs' leach field is about 20-feet from that wetland.

John Wilson presented a statement from the Pleasant Lake Protective Association, beginning by reiterating Terry Dancy's point that the error on the government mapping does not obviate the intent of New London's ordinance to buffer this stream. He referred to the meeting of applicants with the New London Conservation Commission during which "it was decided that the Conservation Commission is not interested in relaxing buffer zones." He quoted the definition of variance as a "relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest" He noted that though the soils around the area of the proposed leach field are poorly drained and thus require the 75-foot rather than the 100-foot buffer, it is upgradient from a jurisdictional wetland, and would drain into that wetland which in turn empties into Pleasant Lake. He asked if having a leach field in the proposed location is in the public interest of keeping a healthy Pleasant Lake.

Regarding the proposed house location, he said the reason given for that location is that it provides the best view, and he asked if that constitutes "hardship." He quoted the definition of Special Exception as a "use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to the number, area, location or relation to the neighborhood would promote the public health, safety, order, comfort, convenience, appearance, prosperity or general welfare." He said that given that in this case, Pleasant Lake is the neighborhood, would allowing a reduction of the buffer to 20-feet "promote the public health, safety, etc., of Pleasant Lake and its watershed. Would this special exception be beneficial or detrimental to the health of Pleasant Lake?"

He concluded by recommending that the Zoning Board conduct a site visit to this property.

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

Deliberations

Brian Prescott said he is not convinced that the house could not go somewhere else on the lot. Peter Stanley said it would be pretty difficult, and substantially more invasive. They are not going to find a spot to get further away from the stream; they can't fill in the wetland, or somehow fill in the ravine. Laurie Diclerico expressed the same concern, and Peter Stanley said he really does not see how they could put the house anywhere else. He pointed out that behind the house, you come down into a ravine, and then a wetland. Also, regarding the driveway, it can't be moved over. They don't want to put that right along the stream, and don't want to send it down around the leach field and up over the wetlands, and they don't want to fill in the wetlands. They are trying to achieve a balance here. Going further back on the property would accomplish nothing, and putting the site right along the road runs into the deed restriction.

Larry Ballin asked how far back the proposed house site is from that 100-foot buffer (from the road). Bo Quackenbos said it is about 150-feet from the road.

Brian Prescott moved that the Zoning Board grant the special exception with the restrictions proposed by Peter Stanley regarding the beginning and end points for the buffer reductions. Peter Stanley reminded them also to require that drainage should all be directed away from the stream, and suggested that the conditions require that plans including for erosion control be submitted with the building permit application.

Terry Dancy asked if another 10-feet could be added to the buffer from the stream.

John Wilson said that shifting the drainage to the wetlands is going to make that smaller uncharted stream that runs down behind the present leach field a far more significant item, and that should be considered.

Larry Ballin asked about bumping that reduced buffer up to 25-feet instead of 20-feet. Bo Quackenbos said that would be agreeable.

Larry Ballin asked if the plan encroaches on the 100-foot setback from the road. Peter Stanley said yes, but pointed out that if they can't cut anything there, then they can't put any driveway in there. He referred again to the specific wording of that deed covenant.

In conclusion Larry Ballin said the motion with those changes would allow owners use of the property and provide an equitable compromise.

Brian Prescott withdrew his motion. Larry Ballin made the same motion with the 20-foot buffer amended to read 25-foot buffer.

Specifically, the motion is to approve the special exception with these conditions:

1. The required 100-foot stream buffer will be reduced according to the following dimensions:
 - o beginning at a point on the property 80-feet in from the property line at the road, the stream buffer will be reduced to 60-feet to allow cutting for the driveway, and that 60-foot buffer will be maintained to a point 140-feet from the road,
 - o at that point 140-feet from the roadway, the stream buffer will be reduced to 25-feet to accommodate the house site, and that 25-foot buffer will be maintained to a point 250-feet from the road,
 - o at that point 250-feet from the road, owners will be required to return to the required 100-foot stream buffer.
2. All drainage should be directed away from the stream, and the application for building permit must include erosion control plans.

Brian Prescott seconded the motion. There was no further discussion, and the motion was unanimously approved.

Applicant's Presentation

Bo Quackenbos went on to address the requested variance to reduce the setback from the wetland from 75 to 50-feet relative to the proposed leach field site. He confirmed that they intend to use Clean Solution system designed for a four bedroom house. The pipe from the house will run down the driveway and then below the wetland and back up. He noted that the State's requirement is for a 50-foot setback. It is the Town's regulation which requires the 75-feet.

John Wilson asked if that would be a "forced main." Bo Quackenbos said he was not sure of the design. John Wilson cautioned that the Clean Solution system is a high maintenance system requiring complete maintenance

every two or two and a half years. When they fail they totally fail. Larry Ballin said septic system maintenance does not fall under the purview of the zoning board.

Hearing no further discussion, motion was made and seconded to close the public hearing and enter deliberations.

Deliberations

Russ Cooper moved to approve the variance. Brian Prescott seconded. No further discussion. Motion unanimously approved.

PUBLIC HEARING

Jesseman Associates representing Molly and Domenic Ferrante requested a variance as provided by Article XX §B-1 and -2, in order to expand the scope of work approved by the New London Zoning Board of Adjustment on April 11, 2005. Specifically, with this application, applicants proposed construction of a single bridge six feet in width and 28-feet in length from the north corner of the east façade (the side away from the lake) of the residence in order to allow safer and more convenient egress from the second floor living quarters. The residence is located at 53 Lighthouse View Road in the R-2 zone.

Larry Ballin opened this hearing at 8:50 p.m., called the roll, read the Notice of Hearing as posted and announced that the hearing would be recorded. Also present at this hearing were Steve Jesseman and Attorney Susan Manchester representing the applicants, abutter Helen Black and Don Gartrell representing the Blacks, Zoning Administrator Peter Stanley, McGray Nichols representatives Louise Bonfiglio and Ed Lavallee. Prior to the hearing, zoning board members received packets including the application, narrative detailing the criteria for a variance, plans for the proposed bridge.

Applicant's Presentation

Steve Jesseman briefly recapped the February 13 public hearing during which applicants requested a variance to construct two "bridges" from the second floor living area of their residence on Lighthouse View Road. He referred to the plan indicating that the fifty-foot setback line from the high-water mark falls very close to the rear wall of the home, and passes through an attached mechanical or utility room on the south side of the residence. The proposed bridges would have been outside that fifty-foot setback, however. At that hearing on February 13, Attorney Don Gartrell representing abutters James, Robert and Helen Black, raised questions about the appropriateness of the building to which the bridges will be attached, as well as the boundary line between the Blacks' and the Ferrantes'. At that time, applicants withdrew the application that was on the table at that time.

Since that date, the Ferrantes have agreed to have that boundary line surveyed. Field surveying has been finished, but they are not ready to discuss it at this hearing. At this time, he asked Attorney Gartrell if his clients would be willing to meet with applicants in order to arrive at a boundary line agreement, rather than conduct that discussion in a public forum. Don Gartrell responded that that would be agreeable, and added that he has spoken to the Ferrante's surveyor about his (the surveyor's) acquiring a copy of the survey that they (he and the Blacks) have.

Steve Jesseman reminded the Board that because of those questions, he withdrew the application on February 13. Until those questions can be resolved, applicants are dividing the proposed work, so that tonight's hearing addresses only the bridge proposed to be constructed from the north corner of the east façade of the house. This is the bridge which will attach directly to the house, rather than to the deck.

He went on to recap the history of the residence, originally the Sunapee Yacht Club, and to explain the arrangement of sleeping quarters on the ground floor and third floor, with the living quarters including kitchen area and fireplace on the second floor. The only access to the living quarters is through the entrance to the ground floor sleeping quarters. The proposed bridge will extend from the second floor living quarters, over a dip in the land, to join with the more level parking area on the property. He said that this will provide a more amenable and convenient

arrangement for the Ferrantes, but that their chief concern is to enhance the safety by providing that additional egress from the second floor living quarters.

He concluded by saying that they have addressed the five criteria for granting a variance in their application packet; those remain the same as those presented with the original application for the bridges in February.

Attorney Gartrell reminded the Board that at the February 13 hearing, he apprised the Board, Mr. Jesseman and the Ferrantes' attorney, Susan Manchester, that they (the Blacks) had filed a "quiet title" action to resolve a boundary dispute. They believed that the proposal before the Board at that time had the potential of impacting that boundary line. He referred to Mr. Jesseman's comments on the arrangement of the building as being the primary reason for creating the bridges – to provide additional access.

Mr. Gartrell referred to the variance granted by the Board on April 11, 2005, and stated that they had been able to obtain written minutes for that hearing—which were approved by the Board in June, 2005, but they feel those minutes are somewhat "lean" on some of the language that was reported and presented at the time. He said his clients requested tape recordings and were told that the tape for that hearing could not be located, and they haven't heard any other explanation for why those tapes don't exist today. They would like to have had copies of them.

Mr. Gartrell went on to quote extensively from those minutes. He pointed out that the minutes do not reflect that evidence was given to show that the application met the tests for granting a variance, and noted that at the conclusion of meeting under "other business" Mr. Stanley recommended that the Board review those five criteria for granting a variance.

He noted that at that February 13 hearing, Jim and Helen Black raised two issues:

1. When Jack Killian applied to renovate the house, assurances were given that there would be no change in the footprint. At tonight's hearing, Mr. Gartrell said that the shed shown on the Bristol survey has been attached to the main structure since passage of the Shore-land Protection act (though perhaps before that became a provision of the New London zoning ordinance). The attachment of the shed (referred to as "utility room" or "mechanical room") did increase the size of the footprint of the main building. Also, there was some cutting of the roof and creation of a deck in that area, and though that work occurred within the footprint, they were substantial changes to the exterior of the building. Mr. Gartrell suggested that if the Board were to go out and take a look at the residence it would observe that substantial changes to the exterior have taken place, and have not been replaced—notwithstanding representations to the contrary that have been made to the Board. He noted that at the April 11, 2005 hearing, Mr. Stanley indicated that there would be other changes to the property though not to the structure within the setback. The other changes will be to another building which stands to the rear (or east) of the main residence and which will become a "house without a kitchen." The two bridges proposed to be constructed from the second floor of the main building (subject of the February 13, 2006 hearing) and the one bridge that is being proposed at tonight's hearing, would extend in the direction of that accessory building.
2. Mr. Gartrell reminded the Board that at the April 11, 2005 hearing, the Blacks also brought the question of the boundary line to the Board's attention, and he referred to the minutes indicating that the Board determined that the boundary line dispute falls outside its purview. He pointed out, however, that the bridges proposed on February 13, 2006 may encroach on the disputed area.

Mr. Gartrell went on to say that the current proposal is for a change which applicants have deemed necessary since the April 11, 2005 hearing, and that raises a question of law: Has there been any presentation by the applicants that what is being applied for now represents a material change in circumstances from what existed at the time of the prior application? Mr. Gartrell pointed out that this residence—originally the Yacht Club—has been a residence for many years, and everyone who has occupied it has left it in essentially the same configuration with sleeping quarters on the ground floor, and living quarters on the second story. The question is: Has any presentation been made to the Board to demonstrate that there has been a material change in circumstances? He cited case law in which the Court

made this comment: “When a material change of circumstances affecting the merits of the application has not occurred or the application is not for use that materially differs in nature and degree from its predecessor, the Board of Adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finale to proceedings before the Board of Adjustment. The integrity of the zoning plan would be threatened and an undue burden would be placed on property owners seeking to uphold the zoning plan. The burden of proving a material change of circumstances before the Board of Adjustment lies on the part of the one seeking the variance.”

Mr. Gartrell said the Blacks are feeling somewhat put upon here. An application came before the Board, and the Blacks made it clear at that time as they had on earlier occasions to the parties and to this Board, that there is a dispute over a boundary line. There were repeated assurances by the applicants that what was going to occur on that property would be entirely within the structure, and there would be no material change to the exterior of the building. While that application for variance (the April 11, 2005) didn't extend to this kind of structural addition—the bridges that will extend to the rear of the property—this presentation is being made on a premise that clearly was unchanged since the time they (the Ferrantes) bought the property in 2004. The living arrangements and sleeping quarters in this building have not changed in all this time.

Mr. Gartrell said the Blacks have a serious question about the propriety of the previous owner's attaching the shed to the main structure in the face of the Shore-land Protection Act, and now see this current application as a further chipping away at the principles of maintaining a non-conforming structure consistent with the zoning regulations of the Town, so that it (the non-conforming structure) isn't being expanded, and isn't additionally encroaching on the rights, values or enjoyment of the property owners surrounding it. He and the Blacks think it is inappropriate for the Board to take up this proposal. There has been no material change in circumstances, and there's been no presentation to suggest that there is. He said the applicants could have asked for this a year ago, but were making assurances at that time that haven't been borne out. If this were such a safety factor, why wasn't this raised a year ago, and deliberated so that all the tests for variance could be properly evaluated, and so that findings could be made on each test. He said this looks like a chipping away at the limits, and that applicants are pushing the envelope without the justification that the law requires.

He concluded by saying that he and his clients will work out the boundary line question with the Ferrantes, but he feels that is a separate issue than the one before the Board tonight.

Steve Jesseman said he made very clear on April 11, 2005, that applicants would upgrade the windows and siding, and that was covered in the building permit. The point made at that April 11, 2005 hearing was that the dimensions of the outside of the building would not change. He objected to the term “chipping away.” He feels applicants have been very up front. They have come in tonight looking for a second point of egress for the home's living level. He acknowledged that it was an afterthought on the part of the Ferrantes, but they feel it is important. He pointed out that though the setback line does come almost to the rear wall of the building, the bridge being proposed tonight does not further infringe into that setback.

Attorney Susan Manchester representing the Ferrantes, said the case and principle of law cited by Mr. Gartrell is not a principle here. This is more akin to an amendment. She questioned whether or not applicants really even need to be here tonight, as the bridge will comply with the ordinance. She said the applicants are only here tonight because previous representations had been made to the Board that there would be nothing on the outside. She said it is fully within this Board's jurisdiction to entertain an amendment to a previous approval, just as it is for the Planning Board. Applicants cannot predict everything at once, and for that reason, zoning is a fluid process. Applicants who play by the rules come back to the Board when there are changes. She reiterated that the case cited by Mr. Gartrell is not applicable here. If it were, there would never be amendments to any zoning approvals, ever.

Louise Bonfiglio pointed out that they were the ones who first brought the safety concern to the attention of the Ferrantes when work began. Currently, the only access and egress to and from the living quarters is via an interior stairwell. Fires generally begin in stairwells, and should one occur here, there would be no egress from the second floor. She added that the egress from the third floor sleeping quarters is via that same stairwell.

Susan Manchester added that applicants have met the standards for a variance, and the Board can use independent judgment regarding diminution of surrounding property values, attractiveness of the bridge and all that. Fundamentally, the requirement for a dimensional variance is, What is reasonable? This proposed second egress is a reasonable use for this property.

Brian Prescott asked her to clarify her suggestion that this proposal may not even need to be brought before the Board tonight. Susan Manchester conceded that some may disagree, but pointed out that this particular structure complies with (here she sought reference to a section in the ordinance). Steve Jesseman said that applicants do not dispute whether or not it is necessary to hear this. Brian Prescott pointed out that this will be a change to a non-conforming building. Peter Stanley agreed: this is a non-conforming structure, and the proposed bridge would be a modification of this non-conforming structure. He reminded applicants that agreed on April 11, 2005 that they would do nothing more than that (what was proposed that night) to the non-conforming structure. The bridges were not part of that plan. That is the reason the building permit for the bridges was denied. He pointed out that had that April 11, 2005 hearing not occurred, and had applicants simply come in for a building permit to add the bridges and that was the only change, the building permit would have been granted. However, at this point, they have far exceeded the 50% rule for substantial improvements to that non-conforming building. This (the bridges) exceed what the Board approved at the April 11, 2005 hearing. Steve Jesseman agreed that they were obligated to come back for this hearing.

Mr. Gartrell said he had the understanding that the question of access and egress was raised at that prior hearing, and it had to do with some kind of a stair onto the deck on the lake side of the building. He said he felt it was pointed out to applicants that they would have to do it within the deck to maintain the footprint. Steve Jesseman said that the deck was not proposed at that time; that wasn't a consideration at that time. Larry Ballin clarified that they are talking about two different decks. There is a deck on the lake side. Peter Stanley said they could put a stairway on the deck on the water side of the building, with a building permit.

Helen Black said that representations were made at the April 11, 2005 hearing that changes would not be made to the exterior except windows and siding, and that there would be no additional changes to the exterior. There was at that time, no discussion of bridges—or “flying buttresses” to be built off this lovely old construction. She said they (the Blacks) will look directly at the bridges from their home. The Blacks relied on the representations made at that meeting. She said that she sees bad faith here, if the Board based its variance on a certain representation, and that representation turns out to be—in the worst case—a misrepresentation.

Russ Cooper asked if there are more changes projected. Steve Jesseman said the two changes projected are the bridges and removal of part of the roof over the mechanical room which will reduce the volume of the structure. He noted that they have found that the attachment of the mechanical room to the main structure did receive a building permit in May, 1999. Applicants agreed to apply for just the one bridge until the boundary line question is settled. He did point out, however, that the one bridge--subject of tonight's hearing, is in the same vicinity as the interior stairwell, and does not entirely satisfy the concern for safety. Thus, they will be returning for a variance for the second bridge.

Larry Ballin asked if he has ever built a two story house with a type of egress other than a bridge. Steve Jesseman said when there is a space between the second floor and the earth as exists here, the only type of egress would be a bridge. Larry Ballin asked if every time they build a house, a bridge to the second story is necessary. Steve Jesseman said generally there are two means of egress from the second story to the outside. He pointed out that living spaces with stoves and fireplaces are more conducive to fires. Larry Ballin asked Fire Chief Peter Stanley how many houses in New London have bridges from the second story. The round house on Pleasant Lake was the only example that came to mind. Louise Bonfiglio noted that not many houses have a second floor living space. Also, the land configuration here is unique. Helen Black said the bridge being projected will be built well into the hillside and it is going to be a long bridge, not a simple little bridge as shown in the drawing. Ed LaVallee said the bridge will be 28-feet, 4-inches in length from the house. Helen Black pointed out if the concern is for fire safety, shouldn't the bridge be something other than wood. Peter Stanley said the outside is the last to burn.

Cheryl Devoe asked if there is a limit to number of changes they can apply for. No.

Larry Ballin said he still has a question as to the need for this for safety reasons. Is there a solution within the existing footprint? Peter Stanley said they could put a stairwell on one of the outside decks on the opposite end. McGray Nichols pointed out that would still leave difficulty of egress for the sleeping quarters on the third floor.

Cheryl Devoe asked if the bridge could be shorter. Steve Jesseman said a shorter bridge would require filling in the space below it somewhat, and they are trying to avoid disturbance and erosion to the hillside.

Russ Cooper asked if this is truly for egress, or is it just to provide an entrance from the front, so one wouldn't have to walk around. Steve Jesseman said it is for both.

Peter Stanley asked if there is any isolation between the floors. No, the interior staircase is open all the way up. Peter Stanley pointed out that in that case, if there is smoke in the area of the staircase, one would have to pass through that area anyway, to get to the bridge. There is no separation of atmospheres. If applicants are truly interested in creating a safer situation, they would isolate the second floor from the access to the first floor. Louise Bonfiglio pointed out that is the reason they will return for the second bridge. Peter Stanley said that could in fact be accomplished with a stairwell down from the deck. Applicants agreed.

Hearing no further questions or comments, the Board agreed to close the public hearing, and enter deliberations.

Deliberations

Russ Cooper said the fact that the bridge is outside the 50-foot setback supports an approval of this variance. On the other hand, it was not part of the original plan which received the variance. He said he can understand the concern of the neighbors regarding the appearance of the bridges.

Cheryl Devoe said she felt that if applicants are not required to think of everything at the time of their first application for variance, than the fact that this came up later, should not be an issue.

Brian Prescott referred to Attorney Gartrell's comments regarding the April 11, 2005 tapes, and said there was no intentional loss of tapes. He said he was present at the April 11, 2005 hearing, and his decision to approve the variance requested at that hearing was based on applicant's representation that there would be no changes to the external footprint. He does not think the situation in the building has changed in the last 90 or 100 years, and everyone has managed to get in and out of it. He does not think a variance for this is warranted.

Russ Cooper referred again to the proposed bridge's location outside the 50-foot setback. Brian Prescott said that the bridge would be a change to a non-conforming building, and he does not see the hardship necessitating it.

Larry Ballin and Laurie DiClerico both agreed that there does not seem to be hardship to justify granting the variance, and Russ Cooper referred to Larry Ballin's earlier question regarding egresses from other two story houses, and the fact that only one other in Town has a bridge.

Larry Ballin said the real need here is for convenience and that should have been thought of at the time of the original presentation. At that time, April 11, 2005, the Board allowed for substantial changes, but not for a volumetric increase. He said he feels the Board should stick to its original decision, and deny this variance.

Russ Cooper asked if the bridge's placement outside the setback bothers him. Larry Ballin said no. The requirement for hardship has not been met. Also, he noted that the Board has received testimony from an abutter regarding the bridge's diminution of values of surrounding properties, and the applicants did not provide proof to the contrary. He said those are good reasons to deny this variance at this time.

Brian Prescott moved to approve the requested variance. Larry Ballin asked that those members in favor of approving the variance, to state that by saying aye. The motion to approve was unanimously denied.

Larry Ballin asked those opposed to the variance to state that by saying Aye. Motion to deny was unanimously approved. The variance was denied.

OTHER BUSINESS

The Board approved the minutes of February 13, 2006.

The meeting adjourned at 9:50 p.m.

Respectfully submitted,

S.A. Denz
Recording Secretary