

Town of New London
Zoning Board Meeting
March 2, 2009

Present: Bill Green, Chair, Laurie DiClerico, Sue Andrews, Doug Lyon, Michael Todd

Also present: Peter Stanley, Peter Blakeman, David Kidder, Chris Lizotte, David Dunlop, George Wohlford, William and Nina Kozain

Bill Green called the meeting to order at 7:30 p.m. with roll call. He stated that the meeting was being recorded and had been properly noticed in the InterTown Record and on the Town Hall bulletin boards. He then asked Peter Blakeman to give his presentation to the Zoning Board.

Peter Blakeman presented two requests:

1) Special Exception as permitted by Article XIII, Section E. (1) of the New London Zoning Ordinance in order to cross a wetland with a driveway and culvert to access the building site for a new single-family residence. The area of wetland disturbance for the crossing is +/- 900 square feet.

2) Variance to the terms of Article XIII, Section F. (1) of the New London Zoning Ordinance to permit construction of a septic/treatment tank 65' from a wetland where 75' is required.

**For the Special Exception:
Criteria 1 -**

**Map 112 Lot 007
Mountain Road**

XXI.G.1.a - the proposed driveway is a typical residential driveway off an existing Town road. The driveway needs to cross the wetland in order to access the upland, buildable section of the property. The impact of the driveway on the harmony of the surrounding area will be no more or less than driveways to all the other houses along the road. Beyond that, impact will be minimized by clearing the minimum necessary to create a safe, adequate driveway that meets New London Driveway Standards.

XXI.G.1.b - the driveway is proposed as it is to minimize the impact to the wetlands by crossing at the narrowest location possible. This driveway will not have any impact on the appropriate and orderly development of building lots in the surrounding neighborhood. Design criteria will be in accordance with New London Driveway Standards. Environmental impact will be further minimized by instituting proper erosion control measures that will be maintained until all exposed areas have been stabilized.

XXI.G.1.c - Crossing wetlands with a driveway is allowed by Special Exception, Article XIII, Section E. (1).

XXI.G.1.d - The driveway is intended to access a proposed house that will be served by an on-site septic system and well. The driveway crossing has received NH Wetlands Permit #2008-02297. Furthermore, the septic system for the proposed house has received NH DES Septic Approval #CA2009096112.

XXI.G.1.e - The driveway is for single-family residential use, which is compatible with the surrounding residential neighborhood and will not cause traffic congestion nor be detrimental to vehicular or pedestrian movement.

XXI.G.1.f - The proposed Special Exception for a driveway crossing of a wetland does conform to all other requirements of the Town Zoning. The overall project (house construction) requires a variance for placement of septic tanks within 75' of a wetland. This variance request has been submitted concurrently with the Special Exception.

XXI.G.1.g - The driveway is for single-family residential use, which is compatible with the surrounding residential neighborhood and will not be detrimental to the character or enjoyment of the neighborhood.

XXI.G.1.h - The proposed crossing is compatible with the spirit of the ordinance in that it is designed to be

the least impacting as practicable. Additionally, proper erosion and sediment control measures will be constructed and maintained to be sure the construction has no unintended impacts.

Criteria #2:

XXI.G.2 - discusses various conditions and safeguards that the Zoning Board may impose on the property. These are all items that the Board may evaluate during their deliberations.

Criteria #3:

XXI.G.3 - discusses financial ability to carry out the project. As this driveway crossing constitutes a relatively small project that will be completed very quickly, it would not seem to need Bonding to ensure its completion.

Mr. Blakeman stated that the shaded area on the submitted map(s) was the proposed area in the application submitted to the Conservation Commission and the Wetlands Bureau and was a permit by notification, which the Conservation Commission signed and found to be complete. A formal approval will be issued and a permit will be signed and posted onsite. He stated that it is a DES requirement of 20' off the property line, unless there is permission from abutters, which in this case was not granted.

Bill Green asked if any of the Board members or anyone present had questions regarding the application and there being none, Bill asked for a motion to discuss. Doug Lyon moved to discuss and Michael Todd seconded the motion. Motion passed unanimously.

Bill Green stated that the information submitted by the soil scientist for the wetlands crossing, it appeared to be in an area least disruptive to the wetlands on the property. He went on to say that it met the Board's requirements.

Doug Lyon - agreed
Laurie DiClerico - agreed
Sue Andrews - agreed
Michael Todd - agreed

Doug Lyon moved to approve the Special Exception for the crossing of the wetlands area for the purposes of putting in a driveway.

Laurie DiClerico seconded the motion.

Motion approved unanimously.

For the Variance:

**Map 112 Lot 007
Mountain Road**

Mr. Blakeman restated that the wetlands onsite map was done by Peter Schauer and subsequently located by Clayton Platt, Surveyor. Upon offsetting 75' on the wetlands site map, they discovered that there was just one area in the eastern edge of the property that could meet the 75' setback requirement. He went on to say that he designed a "Clean Solution" system which is a proprietary system that includes the septic, treatment, and pump all in one tank. The leach field is really a water disposal field that is a considerably smaller and is filled with 12 inch tubes that disperse the water. It will be maintained ten feet off the property line (for that disposal area) which is why each pipe has a different elevation.

He then read each of the criteria for the Variance:

Criteria #1:

The proposed use would not diminish surrounding property values because:

The surrounding properties contain single family residential construction of similar size and quality as that planned. Such construction of this property would not diminish values of these neighboring properties. In fact, this lot is a portion of the same original "Shaker Pine Estates" subdivision as the neighboring properties.

Criteria #2:

Granting the variance would not be contrary to the public interest because:

The proposed construction is on a property that was duly approved in 1976 for single-family housing by the New London Planning Board and NH Department of Environmental Services. See Town of New London Approval #480 on July 13, 1976 and NH DES Approval #10354. The public interest is benefited by allowing the owner to build on an approved lot within that subdivision.

Criteria #3:

Denial of the variance would result in unnecessary hardship to the owner because:

a) The following special conditions of the property make an area variance necessary in order to allow the development as designed:

While the property is covered by approximately 30% wetlands, it is the shape and location of the wetlands that presents the problem with maintaining the 75' setback required by Article XIII.F.1. There is only one small spot on the property that meets this 75' setback from the wetlands. This spot is proposed to be occupied with the water disposal field needed with the proprietary "Clean Solution" system. There is no location, however, where the septic/treatment tank can be placed 75' off the wetlands. The design has maximized the distance from both of the wetlands to the tank. The enclosed "tax Map Sketch" shows all wetlands as mapped on the subject property as well as wetlands on nearby property which further restrict the area available on the property.

b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

There is only one location on the property that meets the 75' setback to wetlands. This area is proposed to be occupied by the disposal field for the "Clean Solution" system (CSS). The CSS treats the wastewater in a concrete tank of similar size as a septic tank and then disposes of the water in a reduced size disposal field, this case 100 SF. A conventionally sized leach field would take up 900 SF and would not be able to be placed where it could meet the 75' setback. By going with the CSS, the owner only needs a variance for the septic/treatment tank. There is no other method available for treating the residential wastewater that will achieve greater compliance with the Zoning than that which has been designed.

Criteria #4:

Granting the variance would do substantial justice because:

Granting the variance will allow the owner to build a house and septic system on an existing town and state approved building lot.

Criteria #5:

The use is not contrary to the spirit of the ordinance because:

The ordinance is intended to offer protection to the natural environment of New London. Through proper construction, including sealing the tank watertight, the wetlands will not be unduly impacted by granting this variance.

Peter Stanley recommended approval based on a conveyance being included on the property deed requiring future owners to keep a regular maintenance schedule for this system as long as it is in use. Peter Blakeman responded that a maintenance agreement is required and included in order to obtain State approval and covers two areas: 1) there is an air compressor that needs regular checking (every 2 years) to ensure it is functioning properly and replaced every 5 years; 2) look at the treatment media and make sure it is not clogging up.

Bill Green asked if the Board had any questions and Michael Todd asked if they were making a statement on the deed of review on initial sale or language thereof? He felt that there were problems of incomplete mapping and it should be subject to approval. Peter Blakeman suggested having it be included in the building permit and Peter Stanley stated that that was okay with him. Michael Todd interjected that the issue was ensuring that the proper maintenance was done regularly. He went on to say that he was less concerned with that and more concerned with letting any new owners know that it was a requirement. Peter Blakeman stated that the maintenance system was contractual for a limited amount of time (a signed agreement that went to the State and was valid for five years) and was not an undue amount for any new owners and suggested that it could be included in the purchase approval. Michael Todd responded that in exchange for relaxing the rule regarding the setback, there would be disclosure and some assurance that the maintenance will occur because without it, the wetlands would be impacted and that would be contrary to the spirit of the ordinance. Bill Green interjected that with this system, if it is not properly maintained, the owner(s) will have a house that is not functioning properly, requiring them to fix it, and it will be evident prior to any incident that would impact the wetlands. Michael responded that if the system failed, it wouldn't run back into the house, but would run out onto the ground someplace. Peter Blakeman responded that the pump has an alarm system and the owner(s) should be notified that it would go off in the event of any failure. He went on to say that he didn't know of any mechanism in place in the Town to do what Michael was asking. Doug Lyon interjected that it sounded as if the failure of the system was going to alert the owner(s) inside the house before it impacted the wetlands.

Bill Green asked for a motion and Doug Lyon moved to discuss. Laurie DiClerico seconded and the motion was approved unanimously.

Criteria #1:

Doug Lyon stated that there was no evidence that granting the variance would diminish surrounding property values.

Sue Andrews - agreed

Laurie DiClerico - agreed

Michael Todd - pointed out that this was not a use variance scenario, and so this relaxation of the setback requirement he did not believe would diminish property values.

Bill Green - agreed

Criteria #2:

Michael Todd stated that given this lot in the present situation this is one way in which they can enforce the ordinance to the extent possible which is not contrary to the public interest.

Doug Lyon - agreed

Sue Andrews - agreed

Laurie DiClerico - agreed

Bill Green - agreed

Criteria #3:

Bill Green stated that sections a and b have been met by the fact that the construction of the CSS system was the best effort as was humanly possible.

Sue Andrews stated that they had shown there are no other alternatives.

Laurie DiClerico - agreed

Doug Lyon - agreed

Michael Todd - agreed

Criteria #4:

Laurie DiClerico - agreed

Bill Green - agreed

Sue Andrews - agreed

Doug Lyon - agreed

Michael Todd - agreed

Criteria #5:

Michael Todd – agreed
Doug Lyon – agreed
Bill Green – agreed
Sue Andrews – agreed
Laurie DiClerico – agreed

Bill Green asked for a motion. Michael Todd moved to approve the Variance subject to the condition that the deed/conveyance contain language describing the unique characteristics of this disposal system and its limitations and the requirement that it have routine maintenance throughout its life to function properly or words to that effect and that the approval of this Variance is subject to this condition Bill Green seconded and the motion was approved unanimously

SECOND HEARING – KEARSARGE COMMUNITY CENTER – REPRESENTED BY CHRIS LIZOTTE, SMP ARCHITECTURE

PURPOSE OF THE REQUESTED WAIVER

**Map 073 Lot 073
224 Main Street**

Area Variance to the terms of Article V, Section A of the New London Zoning Ordinance to allow for community center uses, including a theatre and arts-related education.

Chris Lizotte presented for Kearsarge Community Center and stated that the primary goal is to convert the 1941 building space (first floor area only) to an auditorium/ theater which will seat approximately 272 people and to put in restrooms, etc to accommodate the public space. He went on to say that they had approached the Planning Board about a month ago and were recommended to the Zoning Board for a use variance because the building is in an R1 zone and the Community Center is not an allowed use for that zone.

Criteria #1:

The proposed use would not diminish surrounding property values because:

- a) The use continues the same uses historically associated with the property for sixty years.
- b) The use prevents the now vacant building from continuing to deteriorate.

Criteria #2:

Granting the variance would not be contrary to the public interest because:

- a) The use would “protect and promote the general welfare of the Town’s inhabitants..” as stated in the preamble.
- b) The project would preserve a meaningful town landmark.
- c) A community center is beneficial to the public, both physically and economically.

Criteria #3:

Denial of the variance would result in unnecessary hardship to the owner because:

- a) The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:
 - 1) The use continues the same uses historically associated with the property for sixty years, classrooms as classrooms and auditorium as auditorium.
 - 2) The site continues to be used by the JRSD for educational purposes and will do so for the foreseeable future.
 - 3) South & West sides face the commercial zone; East lot lines face a large wetland that will never be developed; North lot lines face the R1 zone.
 - 4) The suse supports the Master Plan principles of Recreation, Historic Preservation, Cultural &

Social Environment, Economic Development and a Walkable community.

- b) That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:
 - 1) This is a quasi-public use that would be allowed if it were publicly vs. privately funded.
- c) The variance would not injure the public or private rights of others since:
 - 1) The variance would allow the uses that were previously taking place on the property; these activities did not injure the public or private rights of others.

Criteria #4:

Granting the variance would do substantial justice because:

- a) Similar tax exempt organizations are currently allowed recreational use of the property without review.
- b) The applicant simply wishes to continue the same historic activities previously allowed while expanding the age range of the users served and financing the activities privately vs. publicly.

Criteria #5:

The use is not contrary to the spirit of the ordinance because:

- a) The use, in the old school building, would “protect and promote the welfare of the town’s inhabitants by preserving the Town’s rural charm”.
- b) Granting the variance puts control over this important Town building under the purview of the Town vs. the District.

Bill Green asked if anyone had questions and in particular, Peter Stanley, who responded that the presentation was accurate. Bill also stated that the Zoning Board had received a copy of the Planning Board minutes that suggested the Zoning Board grant the use variance, and showed them as being supportive of the community center effort. Doug Lyon asked how SMP Architecture anticipated having access to the theater and Chris Lizotte responded that there would be two entrances, one on Main Street and the other would be a side entrance, allowing egress directly to and from the gymnasium. Doug asked if the old corridor to the cafeteria would be blocked off from public use and David Kidder responded that it would not be used. Michael Todd asked if it would still be used as a middle school and David Kidder responded that it would be used for gymnasium purposes only. Bill Green asked if there were questions and Lee Morse stated that it sounded like it could become a restaurant. Chris Lizotte responded that was not what is intended at this point in time and Bill Green interjected that if they wanted to do that, they would have to come back before the Zoning Board for a new use variance. Chris stated that the whole property is intended to be used as a community center. Lee Morse stated that the piece of land being next to the SAU building being sold should not be allowed for parking use. David Kidder responded that that piece of property was not included in the property for the Community Center.

Lee Morse stated that his concern was the west side of the building where there was no parking available, stating that it was grass now and he objected to it becoming parking. Bill Green responded that they were not familiar enough with the SAU building and that anyone would have to conform with the zoning ordinance for that building.

Michael Todd clarified that the Zoning Board was deciding whether or not to grant a use variance to use this property as a community center and that was the extent of the description that the Board had to work with. As a matter of record, he stated that he knew the community center was not in the definition of its own ordinance and had not been addressed anywhere. Bill Green interjected that that was the exact reason they were at the hearing, because if it had been addressed anywhere else, they wouldn’t need this hearing.

Bill Green asked for a motion to discuss, which Doug Lyon moved and Sue Andrews seconded. The motion was approved unanimously.

Criteria #1:

Michael Todd pointed out for the record that there was not one scintilla of evidence that it would or would not diminish the surrounding property values, they had heard no testimony on that fact and this is a substantial change to the property.

Doug Lyon stated that his reasoning was that it was substantially less use than has been the case, there would be less traffic, less people, and instead of the building falling into disrepair, will actually be used and he thought that was the biggest thing for the area.

Bill Green – agreed

Sue Andrews – agreed

Laurie DiClerico – agreed and stated that she thought it was a good use of the property.

Criteria #2:

Doug Lyon stated that, during the time he was a selectman, there was overwhelming support for this project and there has been positive public interest.

Bill Green – agreed and stated that in the long term, he hoped that the community center would be able to become financially stable and secure.

Michael Todd – no added comment

Sue Andrews – agreed

Laurie DiClerico – agreed

Criteria #3:

A) Laurie DiClerico stated that it has a unique location and setting in the center of Town

Sue Andrews – agreed

Bill Green – agreed

Doug Lyon – agreed

Michael Todd – nothing to add

B) Michael Todd – no comment to add

Doug Lyon - agreed

Sue Andrews – agreed

Bill Green – agreed

Laurie DiClerico – agreed

Criteria #4:

Sue Andrews stated that she felt it would provide a use for the building that the Town needed

Laurie DiClerico – agreed

Bill Green – agreed

Doug Lyon – agreed

Michael Todd – nothing to add

Criteria #5:

Bill Green stated that he believed the use was in keeping with the spirit of the ordinance

Laurie DiClerico – agreed

Sue Andrews – agreed

Doug Lyon – agreed

Michael Todd – no comment to add

Bill Green asked for a motion. Doug Lyon moved to approve the variance as requested by the Kearsarge Community Center as outlined in the proposal by SMP Architects and Laurie DiClerico seconded the motion. The motion was approved unanimously.

**THIRD HEARING – APPLICATION FOR A USE VARIANCE SUBMITTED BY WILLIAM AND
NINA KOZAIN
Map 117 Lot 021
55 Page Road**

Scheduled to reconvene in two weeks, March 16, at 7:30 p.m. with the same Board members present and so that the Applicants can determine:

- 1) Square footage in use
- 2) How many employees will be onsite
- 3) How many attendees will be onsite
- 4) Parking
- 5) Hours of operation

Respectfully submitted,

Camille Holmes
Secretary, Town of New London