

TOWN OF NEW LONDON  
ZONING BOARD OF ADJUSTMENT  
JANUARY 28, 2008

Present: Bill Green (Chairman), Cheryl Devoe, Courtland Cross, Doug Lyon, Michael Todd.

The meeting convened at 7:30 p.m., and the Board heard two appeals this evening.

**PUBLIC HEARING 1**

Robert W. Ewing Jr. represented by Charlie Hirschberg of CLD Consulting Engineers, Inc., requested a special exception in accordance with Article XIII, Section E (1) of the New London Zoning Ordinance in order to allow a 14-foot wide shared driveway to cross wetlands at their narrowest points. In order to reduce impact to wetlands, the driveway will be shared by two proposed building sites. This property is located off Main Street, Tax Map 096, 015, in the ARR zone.

Bill Green opened this hearing at 7:30 p.m., called the roll, read the Notice of Hearing as posted, announced that the hearing would be recorded. Also in attendance were Charlie Hirschberg, Zoning Administrator Peter Stanley, three abutters.

Applicant's Presentation

Charlie Hirschberg said Mr. Ewing has received conditional approval from the Planning Board for a three lot subdivision of this 16-acre parcel. The two conditions were that they obtain a State wetlands permit, and the special exception from the ZBA. He pointed out that a total of 626 square feet of wetland will be impacted, and they were able to apply for a minimum impact permit. He reported that by the time of tonight's hearing, they have obtained that State wetlands permit.

He went on to say that the driveway in question will serve two of the parcels (they made it a shared driveway to reduce impact) of 4.4 acres and 7.2 acres respectively. The driveway will be 14' wide and will end in a hammerhead. The first crossing will involve a 30" culvert with a supplemental 12" culvert installed to address any potential overtopping that may occur during a high intensity storm. (Installing a single culvert larger than 30" would require the proposed grade of the driveway to be raised an excessive amount and result in greater impact there.) The impact to wetlands there will be 261 square feet. The second crossing will involve a single 24" culvert. The impact there will be 365 square feet.

He said these are both intermittent streams; that is, seasonal run-off coming from the direction of Colby Sawyer, running through the Ewing property and ultimately toward Lyon Brook. Both these streams are dry most of the year, and when they are flowing, much of the run off is absorbed into the ground before it reaches Lyon Brook.

Stone headwalls will be constructed at each end of the culverts to minimize disturbance. A small amount of large diameter rip-rap will be placed at the outlets of the culverts, and natural vegetation will be planted at the ends of the rip-rap sections.

He referred to the criteria for granting a special exception per Article XXI, Section 1 of the New London Zoning Ordinance.

- This is a shared driveway rather than two in order to reduce wetland impact. They will be crossing wetlands at the narrowest points, in the least intrusive way possible. They have addressed both safety and environmental concerns.

\*Amended and approved by Zoning Board of Adjustment on April 14, 2008.

- For those reasons they have eliminated possibility of having any adverse affect on the surrounding neighborhood.
- Wetlands crossings are allowed as special exceptions under the terms of the ordinance. The proposed use is not contrary to any other terms of the ordinance, nor is the subdivision itself.
- They have sized the culverts to handle peak flows, and assure proper operation.
- They will not be altering existing drainages.
- There will be no impact to habitat.
- The proposed subdivision will not alter the character of the neighborhood; rather, it is in keeping with the surrounding neighborhood, and if anything, will have less environmental impact than existing development.

He added that they have met with the Conservation Commission and that Board did sign off on the State wetlands application.

#### Board Comments

Bill Green asked if the Town has any comment. Peter Stanley said this application did get a full Planning Board review, and was subject to rigorous LID requirements. This is a small subdivision on a large parcel, and its design provides an extraordinary level of protection. In the R 1 and 2 zones, applicant could have proposed something with much higher intensity.

Michael Todd asked about the reference to a 15-foot Conservation Commission right-of-way at the bottom of the map. Charlie Hirschberg said this is all part of the 100-acre DiLorenzo parcel purchased by Mr. Ewing. Mr. Ewing is now in the process of negotiating a conservation easement on much of the land there—land that is essentially land-locked, and this will be the access to that easement. The idea is not to create a clear walkway there.

#### Open to Public

Abutter Michele Holton said that Mr. Ewing did meet with each abutter to review the plan, and they are extremely pleased with his sensitivity to the drainages in this area.

Hearing no further comments or questions, Doug Lyon moved to close the public hearing and open deliberations. Courtland Cross seconded. No further discussion. Motion unanimously approved.

#### Deliberations

Doug Lyon reminded the Board that in order to grant a special exception, it must make the following findings of fact:

1. The use is one that is ordinarily prohibited in the district.
2. The use is specifically allowed as a special exception under the terms of the ordinance.
3. The conditions for granting a special exception are met in this particular case.

If the Board makes those three findings of fact, it is compelled to grant the requested special exception.

He added that in his opinion, this proposal is one that will have the least impact to the wetlands, environment and surrounding neighborhood, and he was pleased to receive the positive feedback from abutters.

Cheryl Devoe, Bill Green, Michael Todd and Courtland Cross concurred that all three conditions for a special exception are met in this case. Since all three criteria are met, Doug Lyon moved to grant this special exception. Courtland Cross seconded. No further discussion. Motion unanimously approved.

#### PUBLIC HEARING 2

J&F Realty requested a variance to the terms of Article VII Section B (1) of the New London Zoning Ordinance in order to construct a handicap ramp on the existing building with less than the required front yard setback. The property is located at 394 Main Street, Tax Map 084, 001, in the COMM zone.

Bill Green 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 recorded. Tina Barton represented owner J & F Realty, and Zoning Administrator Peter Stanley was also in attendance at this hearing.

#### Applicant's Presentation

Tina Barton explained that the initial project was to put in a new entrance—actually a double door serving both businesses that are located at that end of the building. While in process, they were informed by the builder that the new entrance would have to be made ADA compliant—thus the handicap ramp was placed and that serves both businesses.

Bill Green asked to clarify what the setback requirement for this is. Peter Stanley said that in the commercial zone, the front yard must be 30-feet deep, or no less than either of the two neighbors. He reminded the Board that the canopy over the gas pumps next door is much closer to the road, but as that was only permitted with a variance, that cannot be used as the standard of measurement.

Doug Lyon asked how far into the setback this intrudes. Peter Stanley said all of it is within the required setback; that is, the construction is not only closer to the road than 30-feet, but also closer than either of the neighbors. Doug Lyon said, in that case, the issue before the Board is that by putting that ramp in, they have actually moved closer to the street line than either of the two neighbors, and that is what triggered the violation. He asked to confirm that when the new entrance permit was granted, that conformed to the regulations. However, if there is a handicap ramp added, that would not conform, but the handicap ramp is required by ADA regulations. Peter Stanley confirmed all of that. He said that the front door to this building lets on to interior steps, and they could have done steps on the other side the same way (within the same amount of setback intrusion), but they did not specify that in the building permit. He and Tina Barton discussed the grade there.

Courtland Cross pointed out that if the ramp were put on the side of the building, there would be no setback problem. Peter Stanley said in that case, they would lose a walkway (which they'd have to replace) and lose some parking, but there would have been no set back issue there. He opined that in order to have the correct slope, a ramp on the side would take away at least two parking spaces there.

Michael Todd asked to confirm that the ramp is complete now. Yes, this is an after-the-fact application. Michael Todd said, then the appearance there is complete. Tina Barton said they have not stained it yet.

For winter they have put down some non-slip carpeting. Ultimately, they will complete it with a non-slip finish. Michael Todd asked if the owners plan to hide the base of it in any way. Tina Barton said the owners have not discussed anything like lattice or other. The tenant puts out flowers or other seasonal decoration.

Courtland Cross asked if they contemplated the ramp when they applied for a building permit. Peter Stanley said no. Courtland Cross asked to confirm that had it been included in the building permit application, the permit would have been denied. Yes. Michael Todd asked why the building permit was issued. Peter Stanley said the building permit application was just for a new entrance door. There was no plan included, and no mention of stairs or ramp.

No abutters or other concerned parties were present at this hearing. Hearing no further comments or questions, Doug Lyon moved to close the public hearing and enter deliberations. Cheryl Devoe seconded. No further discussion. Motion unanimously approved.

### Deliberations

Board members reviewed the criteria which must be present in order for them to grant an area variance.

1. There will be no diminution of values of surrounding properties.

Courtland Cross expressed concern that showing favoritism to this applicant might prompt other people to say, "If they can do it, why can't we?" So it might result in some diminution of value of surrounding properties in that sense. Cheryl Devoe noted that though abutters were notified of this hearing, none attended or submitted concerns about this.

Doug Lyon said given the appearance of that area of Town, he did not feel that the appearance of the ramp would necessarily diminish surrounding values, though he pointed out that the Board did not receive evidence of that one way or the other. He acknowledged there is a potential for this sort of application to set precedent, but he did not think this particular use would.

Bill Green noted that the architectural era of all the buildings on Main Street render them within required setbacks. This Board has heard other applications from Main Street owners, and has not found that surrounding values were diminished by the granting of those variances.

Cheryl Devoe agreed with Bill Green and Doug Lyon.

Michael Todd said he understands how the owners got to this point, and he acknowledged that they cannot escape the federal ADA regulation. However, he said, he could not find that surrounding values would not be diminished. He expressed concern about the potential look of Main Street, should every owner decide to put in a new entrance or door—though he acknowledged that most Main Street buildings are level with the street and therefore would not require a ramp to become ADA compliant. But, he pointed out how 210 Main Street did meet this compliance requirement with a look that is aesthetically pleasing and that does not extend the pre-existing intrusion into the setback. In that case, he noted, owners did have to give up some of their interior retail space. He observed that that may not be a possibility for the building in question at this hearing as it is two-stories high.

2. The variance would or would not be contrary to the public interest.

Cheryl Devoe said despite the fact that it is not very attractive, the new entrance does render the building more useful.

Michael Todd asked for some clarification of the different entrances on this building. He said certainly the public is served by having a handicap access, but not convinced (this is the best solution).

Bill Green said installing a handicap access is required, and not contrary to the public interest.

Doug Lyon agreed with Michael Todd and Cheryl Devoe regarding the appearance, but the handicap access is required by law, and for that reason, he also agreed with Bill Green that this would not be contrary to the public interest.

Courtland Cross said owners did have the option of putting this on the side rather than on the front. It would have been less intrusive there, and would not have had a setback issue. He said it is too bad that it was finished without getting approval first. He reiterated his concern about precedent.

Cheryl Devoe asked why the work did not stop once they realized it was a problem. Tina Barton said they looked for the least intrusive way to accomplish this, and did not realize until too late that they needed an area variance.

3. Special conditions exist such that literal enforcement of the ordinance would result in unnecessary hardship.

Bill Green said putting the ramp on the side could be an option, unless one considered the elevation of the first floor there. He opined that that is the special condition. Peter Stanley agreed that to construct a ramp with a 12/1 slope would require that it begin way back by the ice cream shop.

Doug Lyon also pointed out that putting the ramp on the side would cost at least two parking spaces. Peter Stanley said that site already has more than the required number of parking spaces there, so that could not be considered a hardship.

Bill Green asked if owners would consider dressing up the ramp to make it more pleasing in appearance—perhaps with some lattice work and balusters. Cheryl Devoe agreed that that would help, but was not sure it would render the construction compliant with this area variance condition.

Courtland Cross said he was not impressed with the elevation argument against putting the ramp on the side. He reiterated his wish that this had come before the Board before construction, and suggested that there are at least two options here: putting it on the side or putting it on the interior of the existing structure.

Doug Lyon referred to Part ii of this criteria which states that the Board must find that the benefit cannot be achieved by some other method reasonably feasible. He answered that by pointing out that putting the ramp on the side would require a switch-back design and be more expensive. It would also cost two parking spaces. He was inclined to think that those are special conditions on the property that would allow the Board to grant this area variance.

Michael Todd disagreed. He said this is right on Main Street, in the middle of Town. It affects the appearance of that area, the visual impact of the front of that building and traffic patterns. He asked, isn't that why they have an ordinance, to prevent such encroachments? He pointed out that by putting it on the side they would be talking about the potential loss of a couple of parking spaces, and he suggested that sometimes sacrifices have to be made. He suggested that at the very least, they ought to have this discussion and to see some scale drawings to see exactly how much parking would be lost. To not do so would set poor precedent. He said he felt it was not too late to fix this.

He asked the applicant if these owners have other retail/commercial properties in Town. Tina Barton confirmed that they do. Michael Todd pointed out that they are therefore aware of the value of their retail/commercial properties including those on Main Street, and are familiar with the regulations that pertain to those.

On the other hand, Bill Green said this is not new territory for the Board either, and he referred to the new porch covering at the funeral home and the canopy over the gas pump at New London convenience. Michael Todd said, but those were thought out ahead of time.

Bill Green suggested the Board consider this application as though it were new—that is, as though the ramp had not already been constructed. Michael Todd said in that case, there was no question that he would require applicant to look at a side entrance with ramp there. Bill Green said there would still be the elevation problem. Cheryl Devoe said that if this were a new application, she would also hesitate to approve it without seeing options.

She observed that creating two separate businesses there with the two doors (though one handicap ramp serves both) does benefit both tenants and owners. Michael Todd agreed: J & F is a rental business, and this is a business decision. Tina Barton said the owners do not realize any increase in the rental income as a result of there being two businesses there.

Doug Lyon asked if the contractor alerted owners to this problem. Tina Barton said no. Doug Lyon suggested giving the owners an opportunity to demonstrate to the Board that this criteria for hardship is met, and that there is really no other feasible way to accomplish this. He noted that there was testimony presented at this hearing that there is an alternative, and he suggested the owners could be given opportunity to present evidence to the contrary.

Peter Stanley clarified that the planning board waived the requirement for a site plan review, as the project does not add additional square footage to the business. They typically do waive site plan review for this type application. He suggested that had there been a site plan review, some of these questions would have been asked. There should be more oversight for this type of issue. He said he would be willing to present to the Planning Board the ZBA's idea that a site plan review should be required for this type of application.

Bill Green said it was too bad a plan was not presented with the building permit application; that would have headed off this problem. At this point he asked applicant if the Board should go ahead to a vote, or would she like to withdraw the application and talk about this with the owners.

Peter Stanley suggested the idea of doing a landscaped retaining wall further out from the building with walkway and entrance almost at grade. A walkway is not considered a structure, nor would a railing or fence be. No permit would be required. It would be expensive, but he pointed out that putting the ramp on

the side of the building would require more as well. There would need to be exact measurements of the drop on the side of the building, and how far a run would be required to get in there, and there would be other impacts such as the need to add another walk there. But Courtland Cross pointed out that once that is done, then the access to all three businesses would be taken care of.

Doug Lyon moved that the Board continue this hearing to a later date since it did not have enough information at this time to determine:

- a) whether or not special conditions exist such that literal enforcement of the ordinance would result in unnecessary hardship;
- b) whether or not an area variance would be needed to enable the applicant's proposed use of the property given special conditions;
- c) whether or not the benefit sought by the applicant could be achieved by some other method reasonably feasible.

Bill Green seconded the motion.

Peter Stanley confirmed that the Board must set the date for the continuance at this hearing, and that date cannot be further out than thirty days. After some discussion, it was determined that thirty days out would present a conflict for both the applicant and several Board members.

Peter Stanley and Board members reviewed the other options.

- a) The Board could approve with conditions.
- b) The Board could deny this application, in which case the applicant could reapply with a new plan, but not with the same plan.
- b) The applicant could withdraw application, and reapply with the same plan but include more evidence supporting the premise that the use would meet the criteria for the area variance. In response to Tina Barton's question, Bill Green confirmed that that would be a new hearing, with all incumbent costs.

Tina Barton said she would withdraw the application at this time.

The hearing adjourned at 8:35 p.m.

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Doug Lyon moved to accept the minutes of January 7. Bill Green seconded. No further discussion. Motion unanimously approved.

The meeting adjourned at 8:40 p.m.

Respectfully submitted,

Sarah A. Denz  
Recording Secretary