



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT MEETING MINUTES January 2, 2014

Members Present: William Green (Chair), Doug Lyon, Laurie DiClerico, Nancy Rollins and Cheryl Devoe, Ann Bedard

Members Absent: Courtland Cross, W. Michael Todd

Also Present: Bob & Sandra Brown, Kim Hallquist (Town Administrator)

Chair Green called the meeting to order at 6:30pm. Roll taken. He referred to the public hearing notice regarding the variances requested. Robert Brown presented his application.

Robert and Sandra Brown. Tax Map 119, Lot 014. Property located at 449 Forest Acres Road. Zoned R2.

Mr. Brown explained they have owned the property for over 50 years. They would like to construct a new home with geothermal energy which would require the placement of the well within the waterfront buffer. He has talked with the Health Officer about the location of the well and septic. He would like to put a well within the 50-foot buffer from the waterfront and after speaking with local builders, has found that this is commonly done. He explained that they have revised their building plan several times, and are trying to comply with the local regulations. A garage on the property in 1963 was built within the now-enforced 25' setback from the road.

Mr. Brown explained that the lot is #14 and was annexed in 1991 from the lot next to it. He sold half the lot to his neighbor and both benefited from a larger lot and gave him a small tax relief. He referred to a site layout plan showing the proposed location of the house, geothermal and well. The lot is not very deep and so it is hard to meet all the setbacks. The well has been arbitrarily placed where it is, within the 50' setback. The 75' minimum distance between the well and septic system was important to him to keep. They'd like to move the well further towards the water as it would give them more distance to put the septic system on the lot. Putting the well further towards the water makes better sense to him. It is an area that has been filled in a long time ago and is gravel. No trees would need to be removed and it is easy to access. Plan B would be to move the well out to Forest Acres Road but he wasn't sure if they could put a well within the 25' setback from the road. This option would require a large amount of trees to be cut.

Mr. Brown referred to the information included in his application and photographs showing some of the details of the site including the area where he would like to put the well. They would like to make use of geo-thermal science, so having a good well is very important.

Chair Green asked where the septic system and leach field would go. Mr. Brown said they haven't done a perk test yet so he wasn't sure. The alternative to having it put directly on the lot was to put it across the road onto property he also owns. He didn't want to do this, however, as it would be costly.

Mr. Brown said the home would be two stories and about 2,000'. It would include a single car garage. He sees no requirement to have a bulk-head or an emergency exit. He would like, however, to put a bulk-head on the home which would partly be within the 25' setback from the road. He talked to Richard Lee (Public Works Director) about this and he did not see a problem. He commented that no trees within the

50' setback would need to be cut. He is trying to be as conforming as possible but it is hard with such a shallow lot.

Mr. Lyon said it sounded like there was a trade-off for the bulk-head with Mr. Brown removing an existing shed from the property, which is presently non-conforming.

Ms. Bedard wondered why he wouldn't go for his septic system permit first as this would help him know where he could put it. Mr. Brown said they have already put a lot of money into this and didn't want to put even more in for the Town to say they can't do it.

Chair Green said Article XVI, C2 says there must be a setback of a minimum of 10' from the buffer to accommodate land disturbance from the activities of building. This may have an impact on the corner where the garage is presently situated. So the reality is that the ordinance in New London isn't just 50', but 60'. They would require a variance as well, according to the ordinance.

Ms. Hallquist said they could re-notify everyone again about the need of an additional variance, or they could move forward with the discussion right then. Chair Green asked that Mr. Brown provide any further factual information about the site and then if they have any other questions, they could bring them forward. Mr. Brown said that the lot is challenging due to its shallow nature.

Chair Green suggested if the house was turned about 90 degrees. Mr. Brown said if they make the house longer and not as deep, they will have a problem getting the garage on the property. They have looked at a lot of different options with their builder, who has a lot of experience working with small lots.

Ms. Hallquist said if the construction people can insure that there will be no activity within the 50' due to special construction practices, there will be no need for a variance. The 10' buffer must be observed when the construction activity is likely to go into the 50' area. If everything can be kept out of the 50' Mr. Brown will not need further approvals or variances.

Ms. Rollins said perhaps Mr. Brown could eliminate the bulkhead and go in through the garage to the basement.

Chair Green asked Mr. Brown to read Article XVI, c:2 to see if he thought he could comply with special construction practices that would not create a disturbance so as to avoid going within the 50'. Mr. Brown said they would have to excavate from the inside out. He thought they could back fill the foundation with some planning. If he tells the construction company that this is how it has to be, that is how they will do it. Ms. DiClerico thought if they could put proper sediment control measures in place, it could work.

Mr. Lyon said he thought the proposed well-site and bulk-head were not deal-breakers with the group. The set-backs were not something they could waive, however. He added that part of his issue is that they would feel more comfortable to have some resolution as to whether the construction could be done to satisfy the particular setback requirements. He didn't hear from the board a significant objection to what he has asked for. It might make sense to get this resolved knowing that the board is likely to be responsive to the variance request. He asked for comments from his colleagues on his thoughts.

Chair Green agreed with Mr. Lyon but said there were four variance requests before them. If all four of them are "musts" it won't help if all of them aren't granted. He thought the corner of the house on the 50' buffer would need to be addressed and assured to the board that they wouldn't go within the setback.

Mr. Brown said they may be under 10' for the bulk-head and perhaps if they are a few feet shy, could they bring the rest of the house back a bit to relieve the tight situation on the corner where the 50' setback was. This could bring the corner away from that line about 2'. Mr. Lyon said that might solve the problem. He said that this lot was very difficult and that it was a hardship to be considered.

Mr. Brown didn't see an issue with the builders going within the 50'. Mr. Lyon said they may want to hear an assurance from a construction company about their not going within the 50'. Ms. Hallquist said this wasn't required at the meeting that night. They are not issuing a building permit that night but are considering variances. The Selectmen have to be satisfied with the facts before they will sign off on the permit.

Mr. Lyon summarized that the three variances that are needed are for the following three things: land disturbance within the wetland buffer, a well within the wetland buffer, and a bulkhead that impinges on the front setback. Those are the variances to be considered.

David Webster, an abutter, read from a letter that was submitted. As an abutter, they support what he wants to do with some considerations that need to be made with regards to receiving input from the Messer Pond Protective Association. Mr. Webster also read a letter from an abutter, the Constables. Mr. Webster also asked about the status of Messer Pond, as the Association is participating in a study. The letters from David and Janie Webster and the letter from Nancy Constable are included in the ZBA file.

There was some discussion regarding the disturbance for the well and house and that it would be up to Mr. Brown to make sure he doesn't disturb within the 50'. Why isn't the logic the same? Mr. Lyon said the difference is that there is a specific condition made with the regulation. Ms. Bedard said it is because a building is a structure and a well is not. That is why they were different.

Ms. Hallquist said the discussion for the variance with regards to the 60' setback couldn't be discussed that evening because they hadn't noticed it. Mr. Brown said he would definitely need this variance. He said if appropriate steps are taken, he could go right up to the 50' line without a variance.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to discuss.
THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Green said they would discuss the five criteria for a variance.

Article XVI, C- Permitted uses within 50' waterfront buffer.

The variance is not contrary to public interest: Mr. Lyon said in keeping with the comments of the abutters, they need to create a condition in any approval that any disturbance be remedied and put back the same way it was prior to the disturbance. Mr. Green said he didn't believe the well would alter the appearance of the neighborhood. He thought they should create a condition that installation should be done in a manner to insure that no runoff of any slurry, not only into the water but encroaching further into the setback area, be allowed.

Spirit of the ordinance: Mr. Lyon felt this was met as long as the buffer zone is rehabbed and put back in its natural condition. During construction, steps should be made to prevent or remedy any disturbances that are made. Chair Green didn't think the health or safety of the public would be impacted.

Substantial justice: Mr. Lyon said the land owner was struggling with a difficult lot. Chair Green thought given the overall plan the Browns have submitted with all the issues, along with the unique size and shape of the lot, he thought substantial justice would be done by granting the variance.

Values of surrounding properties: Mr. Lyon did not feel the values would be diminished. This is a modest house and would be keeping with the neighborhood. Chair Green did not think property values would be diminished. Assuring that the construction is done in such a way to not harm the environment, the values would be enhanced.

Unnecessary Hardship: Mr. Lyon said the lot presents extraordinarily difficult construction issues. The proposed use is reasonable and from his perspective, the petitioner has met all criteria for granting a variance for placement of the well within the buffer zone. Chair Green thought the applicant met the hardship case because of the unique characteristics of the lot's shape and size.

Chair Green commented that Mr. Brown's lot is fairly level, which is an advantage when constructing; many lots on the water are very steep.

Ms. Devoe thought the Browns had done due diligence trying to find alternative options. Ms. DiClerico agreed with all that was said and didn't think there would be any harm to the public, water quality and safety. She added that any temporary disturbance would most likely be put back in a better condition than when he found it.

Article XVI: G Disturbance to the waterfront buffer

Mr. Lyon said with regards to this review of the criteria for a variance, he would simply repeat what he said for the five factors above. He explained that this was an integral part of the well and felt the variance should be granted. Chair Green said that any disturbance should be covered with landscaping that would protect the watershed (no lawn). The rest of the board agreed.

Article V, Section C. Yard Setback Requirements, Bulkhead infringing on the front-yard set-back.

Mr. Lyon said he didn't think the variance would be contrary to the public interest. This was a modest disturbance and would provide a safe exit from the basement, which made perfect sense. It didn't violate the spirit of the ordinance in any way. Substantial justice would be done as it would mitigate safety concerns. Values would not be diminished. Mr. Lyon repeated that the lot presented many difficult construction issues and it would place unnecessary hardship on the owner if they did not grant the variance. Ms. DiClerico said she didn't think it would be visible to the public as it was only 36" high. Safety is of main concern and she thought the variance should be granted. The remainder of those on the board were comfortable with this variance being granted.

Motions:

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to approve the request for the variance to Article XVI: C. Variance granted with the condition that there be no runoff of slurry, it must be completely contained, that there be no runoff or pollution created by the actual construction of the well while under construction, and the applicant provide complete restoration of the land to protect the watershed. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the request for the variance to Article XVI: G, Variance granted with the condition that there be no runoff of slurry, it must be completely contained, that there be no runoff or pollution created by the actual construction of the well while under construction, and the applicant provide complete restoration of the land to protect the watershed. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) Variance granted with the condition that there be a restoration of the site after construction with natural ground cover. THE MOTION WAS APPROVED UNANIMOUSLY.

Approval of Minutes

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the minutes of June 17, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the minutes of July 24, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Motion to Adjourn

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting adjourned at 8:10pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London