



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT MEETING MINUTES March 12, 2014

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

Members Absent: Cheryl Devoe, Courtland Cross, W. Michael Todd

Also Present: Kim Hallquist (Town Administrator)

Meeting Opened and Roll Call: Chair Green called the meeting to order at 6:30pm, took the roll call and noted that the meeting had been properly noticed.

Bob & Sandra Brown. Tax Map/Lot (119-014-000). Located at 449 Forest Acres Road.

Chair Green gave the floor to Mr. Brown to present the application. Variances are requested from Article XVI, Shoreland Overlay District and Article V, Residential District.

Mr. Brown referred to the variances granted at the January 2, 2014 meeting. At that meeting they talked about the setback distance of the well, permission to disturb the land to dig the well, and permission to disturb the land to connect the well to the house. They talked about a basement bulkhead emergency exit partially in the 25' road setback. He thought the distance into the setback would be 7'. Mr. Brown said he should have said that part of the foundation would also be included in this, as the bulkhead was part of the foundation. It appears that because the setback line is at an angle, a corner of the foundation (18") is also within the setback.

Mr. Brown then discussed why additional variances are being requested. At the last meeting they talked about making precautions to insure there would be no disturbance within the 50'. He spoke with the contractors, who said they could do this. He explained that there are Department of Labor specifications on how laborers can dig a hole; they can't dig a hole straight down but have to step or bench it, which means about 81" would have to be tapered in and out which would be within the 50' setback. The northwest corner of the building will be right on the edge of the 50' but then tapers off. He explained that the area of disturbance would be mostly pine needles and compost and that no trees or rocks would need to be moved in this area. Mr. Brown admitted that this digging issue came as a surprise to him. It would be temporary, however, and while he understood that a foundation needed to cure about 14 days, the total disturbance would be about 30 days. After that point in time, everything would be put back to its normal state.

Mr. Brown said he has requested that if they get approval to do the bulkhead on the southeast corner and are allowed to disturb the land on the northwest corner, they would like to have the option to move the building a few feet to avoid having to have major land disturbance, should they run into ledge. This is why he asked that he be allowed to move as close as 15' to the side setback rather than 20'.

Mr. Brown said they have already received approval to dig the well and connect it to the home. The connection will probably come into the northwest corner. He wanted to be up front, and explained that the disturbance would be about four weeks in total.

Public Hearing Opened:

Barbara Troxell asked where the septic system would be located.

Mr. Brown said it was possible it would go in the southeast corner but he would be uncomfortable with having it there in the event it ceased to work. They do have a plan that has not yet been approved, to pump across the road to land they also own

Motion:

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

Mr. Lyon identified that a non-conforming structure on the property would be taken away, which was a benefit.

Mr. Brown said in 2008 one of his neighbors was granted a variance to build an addition within the 50' setback. He identified that his parcel isn't as deep as the neighboring parcels and that some of them have concrete piers and foundations within the 50' setback. Chair Green explained that since 2008, the Zoning Ordinance was amended and now includes language that all structures must be set back a minimum of 10 feet from the waterfront buffer to accommodate land disturbances, referring to Article XVI, Permitted Use (C, 2).

Mr. Brown explained that the home he wished to build would make use of solar power and would be almost "zero power."

Chair Green thought if Mr. Brown could slide the house to the sideline to avoid working within the 50' that would be his preference. He thought this may make things simpler moving forward. Mr. Brown said they were trying to be reasonable in his asking for the "wobble-room" in the side yard setback. He has been involved in forestry, land conservation and protection for a long time and didn't want appear to be asking for special treatment.

Mr. Brown agreed to withdraw variance request # 1.

Mr. Lyon thought Chair Green's suggestion made sense and commented that the applicant had made a trade-off in this regard for protection of the water and mitigating a non-conforming structure as the old garage would be taken down. He didn't see a dramatic adverse result from what he was asking for. Mr. Lyon wondered how they should proceed. They don't generally approve things that are this lacking in specificity and detail. Would they approve it as a range of approval? Chair Green wondered how long before the house plan would be plotted on the map. Mr. Brown said the map before them was the footprint of the home. He wondered if they could change the side setback to 15' instead of 20'. Chair Green said if they did this, they would not be dealing with their request to encroach within the 50' because they'd be pulling the building back. With regards to the front yard setback, he believed they had already approved the variance at the meeting on January 2nd.

Mr. Lyon asked if the public, present at the hearing, understood what they were discussing. There were no questions or comments from the public or the board.

Public Hearing Closed.

Motion:

IT WAS MOVED (Bill Green) AND SECONDED (Doug Lyon) to approve variance # 2, # 3 and #4. Variance #1 was withdrawn by the applicant. THE MOTION WAS APPROVED UNANIMOUSLY.

Mary Miller (represented by Russ Jewell). Tax Map/Lot: 077-025-000. Located at 490 Elkins Road.

Chair Green said the property, located in Elkins had recently had a house on it. The house was taken down and Mrs. Miller would like to build a new house on the property.

Chair Green gave the floor to Russ Jewell to present the application as Mary Miller's agent. Variances are requested from the Article XIII, Wetland Conservation Overlay District and Article XXII, Streams Conservation Overlay District.

Mr. Jewel said the first house, built at the turn of the century, was in bad shape. He explained the house was demolished, subsequent building permits were issued, and building permit extensions granted. Ms. Miller's building permit has lapsed and when they went to file for a new building permit she was informed by the Planning & Zoning Administrator of the current Zoning Ordinance provisions.

Mr. Jewell explained they are asking to reduce the buffer to 60' from Tannery Brook and Grist Mill. The existing cellar hole was filled in and they would dig it back out. It had been a stone foundation. There was a state-approved septic put in already. There will be a new well drilled beside the existing barn. She had been drawing water from the adjacent property but that will not happen any longer. There will be no tree disturbance. There won't be any run-off into the streams. He explained that Ms. Miller will go with a pre-fabricated home, which will fit in with the rest of the neighborhood. It was noted that both barns on the property would stay. The old home came off the existing barn and was within 5' of the Town road. The home she would like to build is smaller than the one that was there previously.

Mr. Lyon asked if there were state permits required for this. Mr. Jewell said the property is flat and mowed right now. Mr. Jewell explained that a flood elevation certificate has been completed showing the property is not in the floodplain(FEMA- Letter of Map Amendment) as there was some question about this. He offered that all of Elkins would be in a floodplain if the dam let go. Ms. Hallquist said a building permit could be issued within a floodplain if they get permission from the Zoning Board, and that the provisions of the Floodplain Overlay District provisions must be met to be a participating community in the National Flood Insurance program.

Public Hearing Opened:

Kipp Tyler, Catherine Newick (078-034-000) and Alan Mathewson (078-001-000) were there in support of Ms. Miller's plans. Mr. Mathewson said he understood the rules and regulations and wondered how it could be denied that Ms. Miller not be able to put her house back. She grew up in the house that was there and what she wants to put back is better than what had been there previously. Mr. Tyler reiterated that he was an abutter and had no objections.

Mr. Lyon said this was a good point and noted that the Zoning Board of Adjustment has to analyze each request and determine if it is within the spirit of the ordinance.

Motion:

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

Chair Green asked the Board to review the provision of Article XXII, Streams Conservation Overlay District, see pages 90 -93 of the zoning ordinance regarding the provisions requiring a variance and the provisions regarding a special exceptions to reduce the buffer. There is a variance required for disturbance of the natural woodland buffer of 100'. The applicant is asking for this to be reduced to 60'. Erection of any new structures is a prohibited use, so a variance would be needed. It was noted that this would be a reconstruction or replacement of a home that was already there on an existing lot. It would also be a

variance because it doesn't say that a single family house could be built. Chair Green said page 93 of the zoning ordinance, "G, 3" discusses that reduction of the depth of the stream buffer was available through special exception. He offered that compared to the way the lot is right now, having the home there wouldn't increase the amount of runoff.

Chair Green asked the Board to review Article XIII, Wetland Conservation Overlay District, see pages 49-55, on page 50 which states a request for variance is needed for construction of a new house. Residence is not a permitted use, which was similar to the reasoning above and the provisions requiring a special exception to reduce the buffer.

Public Hearing Closed.

Motion:

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) that granting these exceptions and variances wouldn't cause any diminution of the surrounding properties, was not contrary to public interest, that special conditions of the property made it necessary to make this kind of development, and that substantial justice would be granted as it would be more non-conforming than what was there initially. The septic system is new, there wouldn't be increased runoff. In each case, the use is ordinarily prohibited but allowed as a special exception and the conditions for special exception have been granted in each of those cases.

THE MOTION WAS APPROVED UNANIMOUSLY.

At this time, Ms. Bedard departed the meeting as she had a conflict of interest in the next case, where her husband was presenting.

Bailiwick Trust, Represented by Pierre Bedard. Tax Map/Lot: 043-012-000. Located at 35 Woody Point Road.

Chair Green gave the floor to Pierre Bedard to present the application as agent for the owner. Variances are requested from the Article V, Residential District; Article XX, Legal Nonconforming and Article XVI, Shoreland Overlay District.

Mr. Bedard said the Baileys would like to replace an existing non-conforming structure (a detached garage) and showed a plan to illustrate. This garage would be replaced with a two-story garage with space above. The old garage was only 9.9' from the sideline setback, which is 20'. The new structure would be less non-conforming, with a setback of 13.4' from the sideline. In addition, a small family room would be added to the existing dwelling that would meet the side yard setback. Mr. Bedard said the variance request came under provisions of several sections of the zoning ordinance, which he referenced. The second phase of this project was to upgrade the foundation of the dwelling with a concrete crawl-space. The current foundation makes use of wooden posts and a crawl space. They do not plan to change the grade or footprint of the structure. The existing dwelling is non-conforming due to it being within the waterfront buffer. They are requesting a variance to disturb the land within the waterfront buffer to allow access for replacement of the foundation. They would disturb 6' within the waterfront buffer and the area would be restored in kind when the job was completed. It was noted that the staff report states the property is located in flood zone. Mr. Bedard explained that he completed a flood elevation certificate that he provided for the file today. He determined this area was 4' above the floodplain.

Mr. Bedard said if they were to meet the setback, it would block off the driveway and access to the house. The leach field was a high-raised mound and is a well-functioning system. It was suggested that the septic system could be altered to get rid of the high mound. The owner said their grand-kids sled on it, calling it "Mt. Flush-More" and wanted to keep it.

Public Hearing Opened:

There were no questions from the audience.

Motion:

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

Ms. DiClerico thought the applicant was improving the setback of the sideline. It had been just 9.9' and is now proposed to be 13.4'. Mr. Lyon felt water quality would be preserved and the area, and the disturbed area would now become undisturbed. Ms. DiClerico felt moving the driveway would promote more disturbance than the plan Mr. Bedard was suggesting.

Ms. Rollins asked if there were any concerns from the abutters. Mr. Bedard said the applicants had discussed the plan with the family. There were no abutters present to speak to any of the issues.

Mr. Lyon refers to the application packet which included a response to each of five criteria for granting a variance, and agreed that the variance criteria were met.

Public Hearing Closed.

Motion:

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the variances as outlined and requested by Pierre Bedard. THE MOTION WAS APPROVED UNANIMOUSLY.

Approval of Minutes

IT WAS MOVED (Doug Lyon) AND SECONDED (Nancy Rollins) to approve the minutes of January 2, 2014, 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 7:50pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London