



TOWN OF
NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, March 7, 2017
Town Office – Sydney Crook Conference Room
375 Main Street
6:30 PM

MEMBERS PRESENT: Douglas W. Lyon (Chair), Vahan Sarkisian, W. Michael Todd, Cheryl Devoe, Katharine Fischer (Alt.), and Ann Bedard.

MEMBERS ABSENT: Jerry Coogan (Alt.), and Paul Vance (Alt.- Voting Member), and Frank Anzalone (Alt.)

STAFF PRESENT: Lucy St. John, Planning and Zoning Administrator

OTHERS PRESENT: D'Orsey DeWispelaere, Owner/Applicant; Dale DeWispelaere, Owner/Applicant, Michel O., New London Resident; Deborah Hall, Owner/Applicant; Calum Ailu, Colby Sawyer Student; Victoria Markanan, Colby Sawyer Student; Chris Kessler, Pellettieri Associates; Ari Pollack, Gallagher, Callahan; Brian Sullivan, New London Resident

Call to Order: Chair Lyon called the meeting to order at 6:30 pm.

Roll Call: Chair Lyon called the roll.

Approval of Minutes

Lucy St. John noted the following changes to be made:

- Grammatical changes, i.e. missing an "and" in a few places.
- Replace "leech field" with "leach field".
- Replace the word "lot" with "zone" on page 1, paragraph 2.
- Including at the end Ms. St. John's discussion regarding maximum impervious of 20%.

IT WAS MOVED (W. Michael Todd) AND SECONDED (Cheryl Devoe) to approve the minutes of February 7, 2017, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.

Variance Application I

- **Hall, Arthur and Deborah Variance application.** Located at 333 Bunker Road. Tax Map 062-020-000. Zoned Residential (R-2) and Shoreland Overlay District (with frontage on Pleasant Lake). Variances requested to Article XVI, Shoreland Overlay District, Section D, to permit more than six (6) cubic yards of replenishment materials to convert an existing beach to a perched beach per NHDES Wetlands Permit 2016-03288. Plan prepared by Pellettieri Associates. Town received application February 1, 2017.

Katharine Fischer indicated that, by her understanding of the definition of Beach in the Zoning Ordinance, the variance does not include the perched beach. She inquired of the Board whether the Halls even need to request a variance. Much discussion occurred regarding this issue.

Chris Kessler presented the application. The proposal discussed the following:

- There is an existing beach located on the property that has been permitted throughout the years to have what is there today.
- Instead of redistributing additional sand on the beach, which has been washed away and migrated over the years into the water, an environmental improvement would be to raise the area where the sand is located above the water line of Pleasant Lake to prevent migration of sand in the future, which would also prevent invasive issues due to the sand entering the lake.
- The goal is to use weather feature stones and vegetation to create a wall, which would connect the area, and raise the elevation up about 1' to 1.5' above the water line of Pleasant Lake.

Mr. Kessler discussed the photographs taken of the location, stating they were taken on the 21st of March 2016 and the 18th of November 2016. He indicated that the DES watermark is at 803.8, and the Pleasant Lake watermark is at 804.4.

Mr. Kessler noted the steps taken to gain approval for the plan:

1. Conservation Commission (NLCC) - Submitted a letter of support that this is an environmentally friendly project
2. DES (Both Shore Lands and Wetlands Departments) - Approved
3. Planning Board (PB) - Approved access within the 50' buffer zone
4. Zoning Board of Adjustment - Awaiting approval

Board Questions/Concerns/Comments

- ✓ Where are you going to put the proposed beach?
- ✓ How are you stopping the water? Are you building a retaining wall?
- ✓ Is the "dam" going to be at the water line?
- ✓ Is the line of larger stones going to remain? Is that the height that you're going to?
- ✓ Are there any pictures of the spring and when the lake is at a higher level?
- ✓ In the pictures, where is that water level?
- ✓ How far are we looking at the stones out in front of the original stones?
- ✓ Why did you have to go to the Planning Board, and what was their jurisdiction for this project?
- ✓ Who pointed out to the landowner that adding more sand was having an adverse effect on the lake?
- ✓ The hardship that exists here is the limitation on the excess of 6 yards of material being deposited here, when you do the project. So, you need to explain why hardship is created that justifies 10 yards of material.
- ✓ Please define your replenishment materials.
- ✓ Because of the character of the land and beach, it needs the extra cubic yards to build what you need to build.
- ✓ All shore land has the same issue. What distinguishes this property and makes it stand out more than its neighbors for you to be able to put something to raise the level of the beach to hold it in, because if we do it here, we will have other people asking the same thing on all the lakes that are in New London?
- ✓ You mentioned that there's other properties where similar activities have been done to solve the same problem.

- ✓ The comment was made that nobody's done anything about adding sand in the past, so we don't have any information regarding the time it took for all the sand to wash away. How long does 6 cubic yards last?
- ✓ Town should consider moving from allowance of 6 cubic yards to 10 cubic yards of replenishment material, as the State permits.
- ✓ Do you meet the criteria for perched beach?

Chris Kessler presented the variance criteria, read from the zoning ordinance the variances needed, and explained other construction details of the project. The reason that the hardship is created is that there is a legal use that was created on the shoreline that is not being able to be utilized as it was originally intended. Sand was originally installed, and that sand has since been removed from the shoreline and drifted into Pleasant Lake. Every time sand is placed in this location, it will subsequently continue to be moved away. In order to create an environment where that sand will be maintained in a way that is both usable to the owner and not create an environmental detriment to the users of Pleasant Lake, a change needs to occur in order to fix that. This type of construction has been done at other locations, not around Pleasant Lake.

Deborah Hall indicated this beach was put in 20 years ago and it has never been refilled with sand.

Ari Pollock responded to the hardship issue. It deprives the owners of the reasonable use of the property, because the beach sands keep getting swept away. He also stated that the plans meet the criteria of perched beach.

Chair Lyon stated that applications are approved on a case-by-case basis, and we are not setting a precedent by approving or denying this application. Indicated that he heard a response to W. Michael Todd's issue, which is that the sand washes away, which is what distinguishes this from other properties.

Chair Lyon opened the Public Hearing.

No comment.

Public Hearing closed.

Motion

IT WAS MOVED (W. Michael Todd) AND SECONDED (Cheryl Devoe) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

The Board discussed and reviewed the responses of each of five variance criteria as noted in the application. The Chair concluded the following:

- The first four criteria have been addressed to make the area environmentally better than it would be, should it follow the current Zoning Ordinance.
- In his judgment, the variance application's not contrary to the public interest is served and the criteria have been met, as well as the spirit of the ordinance.
- Substantial justice has been done, as it has been approved by every Board that has been approached.
- He does not believe there would be a diminution of the value of the surrounding properties. In fact, it would enhance the value of the surrounding properties.
- There is no fair and substantial relationship between the general purposes of the ordinance and the application.
- The application improves the ordinance.
- Finally, the hardship is the fact that a strict interpretation of the rule would prevent the landowner from establishing an equal-sized beach that would be in the spirit of the ordinance to the same degree that their proposal is. Their proposal accomplishes the construction of the beach similar to

what they have now, in a more environmentally friendly manner, which has been endorsed by the NLCC, Pleasant Lake Association, PB, and the DES. It meets all five criteria.

Motion

IT WAS MOVED (Vahan Sarkisian) AND SECONDED (Cheryl Devoe) to grant the variance for 333 Bunker Road. THE MOTION WAS APPROVED UNANIMOUSLY.

Variance Application II

- **DeWispelaere, Dale and D'Orsey.** Located at 554 Otterville Road. Tax Map 041-003-000. Zoned Agricultural and Rural Residential (ARR) and Shoreland Overlay District (with frontage on Otter Pond). Variance requested to Article VI, ARR District, Section C. Yard Requirements- front setback of 50' feet required. Proposal to construct a storage barn with a 2-car garage under 25 feet from the road when 50 feet is required. Town received application February 3, 2017

Dale DeWispelaere, presented the application. The proposal discussed the following:

- The new structure would be coming out toward the road, approximately 26' from the road.
- The new structure would be composed of a storage barn on top and 2-car garage below, with a 4-foot walkway to go from level ground up.

Mr. DeWispelaere noted that all the stairs are difficult for his parents to manage, so the walkway would assist in utilizing all areas of the house. He's the original owner of the house, and there were no restrictions on the Building Permit when the house was originally constructed.

Board Questions/Concerns/Comments

- ✓ Where is the road?
- ✓ Is the proposed structure set into the hill?
- ✓ When this house was built, were there any restrictions on the Building Permit?
- ✓ Are you the original owner of the house?
- ✓ What physical characteristics of your lot make it such that that 50' setback denies you the reasonable use of your property? We're paving the way for more nonconformity, if we approve this Application. How is that not contrary to public interest? How is that consistent to the spirit of the Ordinance?
- ✓ Can you explain the subdivision that occurred on the property? Was it before the 4-acre requirement was put in?
- ✓ What is the size of the lot?
- ✓ How far from road to picket fence?
- ✓ Was the parcel established before the Zoning Ordinance?
- ✓ Why is something that's not allowed previously now allowed? Will this open the floodgates?
- ✓ How far is the house to the picket fence
- ✓ Regarding screening plantings, does that affect your access to the garage?
- ✓ Is there any other buildable spots on your property that you could do a detached garage?
- ✓ Is there a decking? Is the deck within the square footage? Deck is part of the building permit?
- ✓ Does it have to be 2 stories?
- ✓ Where is the boat going?

Dale DeWispelaere presented the variance criteria, read from the zoning ordinance the variances needed, and explained other construction details of the project. He indicated that the property is 25,700 sf (0.59

acre) with a 600 square foot house on it, from which he needs to build onto in order to remain within the various buffer zones. Subdivision of the property occurred prior to the purchase of the house. The fence is 13' from the road.

Vahan Sarkisian stated that he appreciates that the garage doesn't infringe on the area by the street. Considering the size and configuration of the lot, he's abiding by the rules of the regulations on the lakeside. It's convenient to have a garage there.

W. Michael Todd gave the history of the property, to include the original use, as well as the subdivisions. He said the lot was subdivided when it was residential. And then the area was rezoned to agriculture and rural residential, which carries a minimum land size of 4 acres. He explained the difference between being in compliance on its face, and now requesting variances.

Chair Lyon opened the Public Hearing.

Victoria Markanan informed the Board that she and her classmate were performing a resilience assessment on the college.

Brian Sullivan voiced his concerns regarding the nonconforming structure.. Discussed the history of the lot, who owned it, and reasons for not purchasing it. Said the house is perfectly conforming in its current state.

Chair Lyon explained the references to Peter Stanley, prior Zoning Administrator. One could always apply to ZBA for adjustment. ZBA can make any decisions it wants regarding any rules at all. We make decisions on the basis of what the law establishes by five criteria of which a variance can be granted. You're balancing an interpretation of the rule. Every case is different and no case here sets a precedent for the next case.

Michel O. indicated there's no visual blockage, because that's just a blank spot on the current structure anyway.

Public Hearing closed.

Motion

IT WAS MOVED (W. Michael Todd) AND SECONDED (Cheryl Devoe) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

The Board discussed and reviewed the responses of each of five variance criteria as noted in the application. The Chair concluded the following:

- This is a very difficult lot.
- It's not contrary to public interest.
- I don't think the neighborhood will be affected in any way. It doesn't affect lake quality. It could be argued that it affects visually the building, because right now there's a big blank wall there.
- The spirit of the ordinance is to try to deal with having appropriate setbacks from neighbors. There are no objections from the neighbors, and already have a structure that is further out and closer to the neighbors than the garage would be. A small house like this makes it very difficult to be considered anything other than a seasonal home. What is being asked for here is not unreasonable.
- Substantial justice is met here. I don't think the value of surrounding properties will be diminished.
- There are unique characteristics to this lot. It's tiny. It already has a building that occupies virtually all of the space that could be used for any sort of addition.
- The hardship that's created here is that the property owner can't exercise what is reasonable use of the property. The five criteria have been met.

W. Michael Todd said the 50' setback is consistent with the present character of the right-of-way and is part of the essential character of that right-of-way. The proposed structure is inconsistent with the ordinance, because space is important in the ARR zone. He's not sure the hardship test is met. He's not sure a garage isn't any more than a mere inconvenience to the landowner that doesn't have one. Since this is in a residential zone, there's no harm to the abutters, no damage to the wetlands. Denying the variance doesn't get the public anything. He also referenced the Leskiewicz court case. Conditions to consider:

1. No further footprint expansion and no further structures
2. Installation of rain gardens on garage gutters
3. Select plantings from the approved list of water within the 100' buffer, indigenous to the shoreline to screen the street.

Vahan Sarkisian agreed with what the Chair presented. Having the piece of property and living in it fulltime and not having a garage is a hardship, and it's a safety factor. It's not unreasonable. It would make the property more attractive, and would increase home values in the area. Even though the AR zone is 50' setback, the lot is a very strange configuration. We're here as the ZBA to give relief if we can, as long as it meets the criteria. He stated that he is in favor of the variance. In regards to the conditions mentioned, he suggested, on the street side, to plant shrubs and evergreens to block the view.

Cheryl Devoe pointed out that the owners would not be able to screen the entire section. There are no other buildable lots, so we don't need the condition. She is struggling with hardship. As far as the spirit of the ordinance, it's been spoken if you were zoned R-2, you are meeting the 25-foot setback, and concluded that the spirit of the 50-foot setback from the road was written for a 4-acre lot.

Dale DeWispelaere noted that unless they built another driveway, we couldn't completely screen it. He suggested putting vegetation in between the existing trees. There are no other areas to make a detached garage. The structure's dimensions would be 25'-wide and 25'-wide, including the decking.

D'Orsey DeWispelaere stated that she can never have her parents over, because her mother is in a wheelchair and can't access the living space. This structure would allow them that access. It's not unreasonable to add trees, because they desire more privacy. There is no actual blockage currently from trees.

Ann Bedard clarified that a fence isn't a structure. She mentioned that it feels like there's an anticipation that the owners are going to use the structure as living space. Clarified that the deck is included in the measurements. Suggested that the Notice of Decision be recorded with the plan received February 3, 2017, so that the restriction will be known by future buyers.

Motion

IT WAS MOVED (Chair Lyon) AND SECONDED (W. Michael Todd) to grant the variance for 554 Otterville Road with the following conditions:

- 1. No further footprint expansion or other buildings on the site are permitted except what is shown on the drawing dated Feb 3, 2017 and signed by the ZBA Chair and Owner (3-7-17).**
- 2. Roof gutters and rain gardens shall be installed to control roof runoff.**
- 3. The owner is to plant vegetation along the Otterville Road side of the property to provide screening to maintain the rural character and screening of the property. The planting materials shall be those as listed on the NH Department of Environmental Services (NHDES) Native Shoreland/Riparian Buffer Plantings for New Hampshire list per NHDES website.**

THE MOTION WAS APPROVED UNANIMOUSLY.

Other Business

Ann Bedard inquired regarding process of following up on Board requirements, i.e. recording of documents. She mentioned the ZBA hearing of August 22, 2016 regarding Pike Brook Road, and the Notice of Decision that was to include a final plan as well as a few other documents. She also asked if the Board has any requirements in voting, and suggested that they adopt individual voting, per criteria.

Chair Lyon responded that there are no rules to vote individually at this point, but that may change. We should have a Special Meeting to discuss the Rules of Procedure.

W. Michael Todd stated we should review and amend our Rules of Procedure.

Motion to Adjourn

**IT WAS MOVED (Ann Bedard) AND SECONDED (Cheryl Devoe) to adjourn the meeting.
THE MOTION WAS APPROVED UNANIMOUSLY.**

Meeting adjourned at 8:46 p.m.

Respectfully submitted,

Victoria O'Connor, Recording Secretary
Town of New London