



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT MEETING MINUTES June 17, 2013

Members Present: Bill Green (Chair), Courtland Cross, Doug Lyon, Laurie DiClerico
Also Present: Lucy St. John (Planning & Zoning Administrator)

Chair Green called the meeting to order at 7:30pm. He took the roll call and noted that the meeting had been noticed and posted in two public places. He said it was the applicant's option to move forward with a board of four people instead of the usual five. Mr. Jeff Wheeler said he thought his request was fairly straightforward and was fine to go forward with four board members.

Jeff Wheeler Tax Map: Lot:

Chair Green understood that both a special exception and a variance were being requested. Ms. St. John noted that the ordinance says that an applicant can expand a non-conforming structure but it also says that they cannot erect a new structure. It posed a confusing scenario as a deck didn't seem to be the same thing as a structure or a new structure. Ms. St. John said that the Zoning Board of Appeals (ZBA) can decide if Mr. Wheeler would need a variance or not.

Mr. Lyon said there seemed to be some confusion with regards to the streams conservation overlay district. It seemed that a special exception was applicable if the use the applicant wants to make is not normally allowed but is allowed and is a permitted use under certain circumstances.

Mr. Wheeler said they should consider the prohibited uses on page 91, which included the erection or construction of any new structures. He thought this was in regards to the 100' buffer that hasn't been disturbed already. Why otherwise would the ordinance also say that a permitted use would be an expansion of a legal, non-conforming structure? He said he is already in a legally non-conforming situation so felt he fit into the permitted uses list, which included the expansion of structures. Mr. Wheeler said that according to the ordinance, he could build the deck on the front of the house because it doesn't increase the non-conformity. He would, however, like to build a deck on the back of the house and will need a special exception because he would be making it more non-conforming and would be asking for a reduction of the stream buffer. He would be excavating three holes for posts, and putting treads on the ground for stairs. No trees are to be cut and the natural woodland buffer will remain exactly as it is.

Chair Green said the board should come to some consensus regarding the variance and whether it is needed in this case. Is the deck viewed as a new structure? If not, he wouldn't need a variance. Mr. Lyon felt the deck was clearly a new structure in his mind as it isn't an expansion of an existing deck. Mr. Lyon believed that the essence of the non-expansion provision was that they couldn't increase the footprint but could expand or enlarge by going up. Ms. St. John said that New London's ordinance reads that they can't expand a section of a non-conforming structure to make it more non-conforming, but they can expand a section of a non-conforming structure that is not non-conforming.

Mr. Cross said he visited the site and whether it is called a variance or special exception, the bottom line in his mind is that what is being proposed is not going to create any problems in terms of the

neighborhood. He offered that Mr. Wheeler owned a considerable amount of land on the other side of the brook that creates the wetland. Mr. Cross didn't think this would create any problems if Mr. Wheeler was allowed to build his deck using three sauna tubes.

Mr. Wheeler said that the ordinance fell short when specifying new and existing structures. Chair Green said that the language is not clear but thought it was the feeling of the board that a variance would be required. There was some discussion as to which portion of the ordinance the use variance could be granted from.

Ms. St. John said the hearing had been noticed as a request for Variance from Article XXII, Section E1, page 93 of the ordinance which is a prohibited use. Mr. Wheeler thought it should be Article XX, Section B2. Chair Green said it may be easiest to hear the request for variance first and then go on to the special exception. He wondered if the board felt that Mr. Wheeler needed a variance or just the special exception.

Mr. Lyon said he is bothered by the confusion in the ordinance. He suggested they have Bart Mayer (Town Counsel) verify this as they will surely run into this issue again. In the past they have said nothing can be expanded that would be non-conforming. They haven't, in general, approved a new structure that makes a building more non-conforming. He felt Mr. Wheeler pointed out, rightly so, confusion in the ordinance and thought it should be cleared up before they set precedence for future cases.

Ms. DiClerico agreed with Mr. Lyon and said they have to think of the intent of the ordinance, which is to protect water resources. If they set precedence here, it could impact the water resources in other cases even if it isn't being threatened in the Wheeler case.

Mr. Wheeler thought "new structure" meant a completely new structure that was built in an area that had not yet been violated. Mr. Lyon said this was an interesting idea and perhaps Mr. Mayer would agree with this definition, but they needed to get some answers before going further. There was no definition of "new structure" in the ordinance.

Chair Green said the setback included an extensive amount of land (100') and guessed the entire structure was within the setback. Mr. Wheeler agreed and noted the whole house is within the setback, was built in 1964, and is considered legally non-conforming.

Mr. Cross suggested Mr. Wheeler put in a tile patio at ground level. Mr. Wheeler said that this could be done without permission as it is considered landscaping and not a structure. Mr. Wheeler went back to his idea of what a new structure was and asked that the ZBA let him proceed with either a special exception or a variance; whichever they preferred.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to continue the hearing until legal counsel has been consulted. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Green said that for a special exception, there is required review and comment 30 days prior to the hearing from the Conservation Commission and the Soil Conservation Commission. Ms. St. John said she would present this to the Conservation Commission, but that the SCS was now the NRCS and they would not comment on this as they do not have the time to review cases such as these. She added that the NRCS won't comment on things unless an application has been submitted to them.

Mr. Wheeler said he would like to get the advice of his own attorney as well. Chair Green said that this was fine and that his attorney was welcome to attend the continuation of the hearing. He added that a date for the continuance should be planned that evening so another notice to abutters would not be necessary.

He wondered if it was realistic to assume that an answer would be forwarded from Town Counsel within one week's time. Ms. St. John said that she had not had experience working with Mr. Mayer yet but would have to consult with the Town Administrator on a realistic timeline. She doubted that one week would be sufficient time to get a response from Mr. Mayer. The hearing continuance was scheduled for Monday, June 24th at 5:00pm. If legal counsel had not yet sent in a written response, the hearing would be continued to another date. Ms. St. John noted that she would not be present at the meeting as she was scheduled to be away.

At this point in time, Mr. Wheeler departed the meeting.

Review of Minutes

May 20, 2013

IT WAS MOVED (Doug Lyon) AND SECONDED (Courtland Cross) to approve the minutes of May 20, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Other Business

Ms. St. John indicated that another application has come in for a similar to Mr. Wheeler's request. The people want to add an arbor, which is a structure, and they have to comply with several different buffers.

There was discussion with regards to what Mr. Wheeler wanted to do and how it seemed like a small issue. Unfortunately, this sort of thing could set precedence and create problems in the future. Mr. Cross recalled that when the park 'n ride was converted from a small grassy area that could hold just a few cars, to a much larger area that was blacktopped and finished, the runoff from it increased a once-small stream into a great amount of runoff that had negative impacts to abutters. When these kinds of things are allowed, there are repercussions that need to be considered.

Ms. St. John said she had suggested to Mr. Wheeler to apply for both the special exception and the variance because if he got to the ZBA and it was found that they were both applicable because of the confusing language, both options would need to be discussed by the board. Chair Green felt it was illogical that someone who wanted to put up a 10' x 12' deck would have to go through all of this.

Mr. Lyon felt that in the past, the board had been good at looking at individual situations and considering the spirit of the ordinance, but they can't put a stamp on everything that comes in that seems reasonable. This issue bothered him in terms of finding the appropriate interpretation of the law. He thought Mr. Mayer would have some useful information on this.

Chair Green said that the ordinance needs to be cleaned up through the Planning Board. Ms. St. John said that piecemeal approach to planning can cause a lot of confusion. She is going to provide the Planning Board with the top problems in the ordinance that need to be fixed as they are aware of the confusion to some extent.

Ms. St. John said she would forward several memos that she had provided to the Planning Board in January regarding changes she felt were needed in the ordinance.

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

The meeting adjourned at 8:32pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London