



TOWN OF  
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT MINUTES  
(ZBA)

Wednesday, July 18, 2018 at 6:30 PM  
Town Office, Sydney Crook Conference Room, 375 Main Street

**MEMBERS PRESENT:** Douglas W. Lyon (Chair), W. Michael Todd, Katharine Fischer, Ann Bedard, Heidi Lauridsen, Bruce Hudson, Stan Bright (Alt.)

**MEMBERS EXCUSED:** Frank Anzalone

**STAFF PRESENT:** Nicole Gage, Zoning Administrator

**OTHERS PRESENT:**

Mike Black, Continuum  
Wayne Morrill, Jones & Beach Engineering  
Attorney James Callahan  
Sarah Adams, Marketing Director  
Mark Wheeler, Project Architect

1. Call to Order – Chair Lyon called the meeting to order at 6:30PM.
2. Roll Call – Chair Lyon called the roll. Heidi Lauridsen and Bruce Hudson will be voting members tonight and Chair Lyon will recuse himself as he is the Chairman of the Board for the New London Hospital. Vice Chair Michael Todd will lead the meeting.
3. Review Minutes from June 26<sup>th</sup>

**IT WAS MOVED (Michael Todd) AND SECONDED (Anne Bedard) to approve the minutes from the June 26, 2018 meeting with one change. THE MOTION WAS APPROVED UNANIMOUSLY.**

4. PUBLIC HEARING for Case #ZBA18-06. Applicants Mike Black of Continuum Development & Attorney James Callahan and Owners New London Hospital Association request a Variance for Height per Article II, Section 5 of the New London Zoning Ordinance to permit buildings to exceed the 35 foot height limitation in connection with a proposed development for a senior living community (planned unit development). The lot is located on County Road in the R-1 (Residential) zone and is identified as Parcel ID 072-017-000.

Nicole Gage distributed two documents for the Board to review. One was a letter from Roger Paquin and the other was a letter from Whitney Associates, an appraisal firm.

**IT WAS MOVED (Michael Todd) AND SECONDED (Anne Bedard) to recess the meeting to review these documents. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting reconvened and was called to order to review a variance for height per Article II Section 5 of the New London Zoning Ordinance.

There was concern that a proper abutter notice had not happened. Chair Todd asked to review the abutter list. There was concern that Lyon Brook was not noticed. It was listed under a trust so it was mailed to that address. A handwritten notice was sent this time to the association office but in the past it has gone to the address of the trust. The mailing address needs to be updated so the association office appears on the list. Nicole Gage stated they were notified in the proper amount of time.

Attorney James Callahan attended the meeting representing Continuum. Mr. Callahan is an attorney from Peterborough, New Hampshire. He provided an overview of the intended Senior Living Facility project. Mr. Callahan then addressed the variance criteria as follows:

1. The variance is not contrary to the public interest – Public interest regarding public expenditure for water, sewer, roads and life safety will not be impacted. It will be paid for by the applicant. The hospital invited Continuum here. There is a community need as they have closed the Clough Center which provided care. A number of elder residents are relocating to other communities which provide a greater range of services. It's important for the vitality of the community and the hospital to have these services in town and it is in the public interest. When residents leave the area, you lose vital members of the community and also potential donors that help with the sustainability of these operations.
2. The Spirit of the ordinance is observed – The two functions served by a height restriction are a life safety function and an aesthetics function. Mr. Callahan stated that from a life safety perspective, the buildings won't have any adverse impact and won't violate the spirit of the ordinance. The building will be equipped with a sprinkler system and will have fire rated walls. They will be accessible to fire apparatus.

The height will be 47 feet which exceeds the ordinance by 12 feet. The width of the gable is 56 feet. They understand this will have an impact on the aesthetics in the area. The topography of the site is sloping and it is the right side of the building that exceeds the height restriction. When you drive into the driveway, it doesn't look overwhelming due to the slope. It is a difficult site to develop due to the wetlands and varied topography. They have done several site revisions.

If the building was built with a flat roof they wouldn't need a variance. Wayne Morrill went to the site and floated a balloon to the height of 47 feet. There is a thick canopy and vegetation buffer. The balloons weren't visible from most areas but they would be from Lyon Brook.

Mr. Callahan stated a meeting was held with Lyon Brook today to talk about issues affecting Lyon Brook and have agreed in principle to come up with a memorandum of understanding to address concerns that were raised. Continuum wants to be good neighbors and will be managing the healthcare aspects of this project. The memorandum

of understanding will have bullet points to address lighting, draining, and landscaping. It will be an evolving process.

Mr. Todd commented that one of the criteria for the spirit of the ordinance is whether or not it will alter the essential character of the locality. Mr. Callahan stated that given the proximity of the hospital which is a substantial building, there is a lot of commercial activity. It won't alter the characteristics. On Parkside Drive, it is more wooded and residential but they are zoned properly for the use. He feels it will blend and not be overwhelming.

Mr. Todd asked if this project would increase the population density in any measurable way. Mr. Callahan stated it would increase the density of this lot since there is nothing there. As a taxpayer in New London, this is the type of project you would want.

Fire Chief Jay Lyon commented that there are several buildings in town that are taller. One concern is being able to reach the roof for the purposes of ventilation. Continuum intends to put a sprinkler system in the buildings so his concerns are greatly reduced. It's not the height of the ladder that is the issue, it is the reach. There is a maintenance road planned so the apparatus would be able to have 360 degree access. In this case, the ladder truck would reach the windows of the top level, but not the roof.

Chief Lyon does not have an issue if the variance is granted. There is not a threat to the health, safety and welfare of the community.

3. Substantial justice is done – The question is would the public benefit of not allowing this project be outweighed by the hardship. There has been more than a year of planning to develop this site. Given the financial models that affect the development of this site and the need for this building, there are tight margins. If this building doesn't work will it have an adverse impact on the viability of this project? Mr. Callahan stated it is an important factor.

Mr. Doug Lyon added that one of the aspects of the projects is that it has to be saleable and marketable to the public. If a flat roof is put on the building, it will be substantially less attractive and will not market. Flat roofs aren't great in New Hampshire and one of the issues is that it needs to be an attractive building. A redesign would be a big deal and may not work.

4. The values surrounding the property are not diminished – A letter was submitted from a licensed appraiser and came to the conclusion that this project wouldn't have an adverse impact on the value of surrounding properties.
5. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship-

Chair Todd clarified that this is a dimensional variance, not a use variance.

Part a 1 asks if there is fair and substantial relationship between the general public purposes of the ordinance and the specific application of that provision to this property. Mr. Callahan stated that this was covered in the spirit of the ordinance section where it

talks about the purposes of this ordinance are to identify life safety concerns and Chief Lyon addressed that. The site itself has varied topography with a lot of wetlands. One of the other considerations was the geotechnical components of the property. They have optimized the site as well as it can be. The height is critical to house people in one location for healthcare reasons and underground garage parking.

In preparation for this meeting, Mr. Callahan looked at the town's master plan. It's contemplated within that plan that a senior living facility is needed. Chair Todd argued that this is a use argument, not a dimension argument. Mr. Callahan stated it is a use but the scope and size of the building is necessitated as a function of the use so it is worthy of consideration. It cannot be done any other way as it has shared facilities such as dining and recreation.

Chair Todd asked what the physical characteristics of this site were that specifically distinguish it from others in the area. Mr. Callahan noted the topography is quite varied as it is hilly and there are numerous wetlands. There was no other spot to locate the facility. They wanted proximity to the hospital and there is nothing else available. Mr. Todd commented that all of the surrounding area is R1 and has the same topography. Mr. Callahan stated the single largest factor is the proximity to the hospital. Mr. Todd argued this is not a physical characteristic. Mr. Callahan disagrees and thinks the proximity of this site to the hospital is enormously important and it is distinguishable from other properties in New London. Many iterations of the plan were done and nothing else could be done.

Mr. Callahan stated that if you look at this in its totality, you can't have the other uses without this facility.

Anne Bedard asked about taking a level off the top. Sarah Adams stated that it would mean taking 6 units off of the independent living side and then you would lose 26 units of assisted living and extended care. It would also change the economic viability of the project.

This is a public/private partnership to develop this site to enhance the quality and long term viability of the hospital and to benefit the residents of the town.

Anne Bedard inquired about the cupolas. There was discussion if they were included in the height regulations. Continuum stated they would be willing to remove them.

Bruce Hudson asked if the buildings could be set deeper in the terrain. Mr. Black stated they are trying to limit the amount of ledge they have to blast.

Doug Lyon summarized the five criteria issues. The first one has to do with public interest and he would argue that the public interest far outweighs any conceivable harm to the general public. They will go to great lengths to improve the aesthetics for nearby neighbors.

The spirit of the ordinance has to do with safety and aesthetics. Chief Lyon has already testified that the safety issue is not relevant. As far as aesthetics, this isn't even an issue for most people in the community. For those that are located proximate to the area, continuum will go to great lengths. The memorandum of understanding will deal with concerns that neighbors have.

Substantial justice deals with loss to the individual versus gain to the public. There is a huge gain to the public and denying the variance would be a huge loss to the applicant. There is no indication that the loss to the applicant is outweighed by any substantial public benefit by denying the variance.

In terms of the value of the property, it has been dealt with by the expert testimony. For the hardship criteria, the special conditions of the property are that 35% of it is unusable due to wetlands and steep slopes. This forces the location of this building onto only one part of the property. Because the footprint can't be expanded due to the special conditions of the property, the height is necessary. The one building is necessary in order to programmatically provide the kind of care that has been talked about. Mr. Lyon argues that all of the criteria have been met and substantial evidence has been given.

**IT WAS MOVED (Bruce Hudson) AND SECONDED (Heidi Lauridsen) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.**

#### **DISCUSSION:**

Mr. Todd asked what the essential character of this locality is. It is characterized by it being a hospital area with large buildings and is buffered by a condominium association. It is residential. A large percentage is wetlands and unbuildable.

Will it threaten the health, safety and welfare of this locality for the people in town by granting a variance to exceed the height restriction by 134%? Ms. Bedard stated it will not. The issue is if it can be set in a rural enough setting so it isn't an issue for the neighbors. It appears it is set far enough from County Road but possibly not on the Parkside/Lyon Brook portion of it. A 35 foot building would stand out as well.

Bruce Hudson commented on the contour and elevation changes. From the high side to low side and from a perception standpoint, you may not see the additional height.

Chair Todd asked if the board feels it will alter the essential character of the neighborhood. Mr. Bright stated yes, there will be an impact. Katharine Fischer discussed the traffic and its impact. Anytime there is a large development this is a factor. The viability of the project is governed by the package in which it comes. The big building has to be a certain way to accommodate the services for the people living there. In the R1 district, the space is limited. In this given area, it is within the density requirement by 3 units.

Substantial Justice involves loss to the petitioner if it is denied versus an overall gain to the public. Is the public going to gain anything if we deny the height restriction? It's clear that if it is denied there is considerable loss to the petitioners. The community was disappointed when the Clough Center closed. The board agreed there was a gain to the public by granting the variance.

If you look at the surrounding property values on a map, there is conservation land, the outing club and Knights Hill Park, power lines and commercial property. This use that is proposed is residential.

This is a dimensional variance. We have heard the hardship argument and testimony about the character of the 48 acre parcel. It is riddled with wetlands and steep slopes. There are special characteristics. Will applying the 35 foot ordinance result in an unnecessary hardship to the applicants? Doing this will not give them the density required to make it a viable project. Given the totality of the project it has to be a package deal. Does the application of the height restriction interfere with the reasonable use of the property? Ms. Lauridsen stated they have made a strong case that it does. Ms. Bedard feels it is good use of the property and it is well laid out given the topography and the wetlands.

**IT WAS MOVED (Michael Todd) AND SECONDED (Bruce Hudson) to grant and approve the request for a height variance per Article II, Section 5 of the New London Zoning Ordinance to permit the building to exceed the 35 foot height limit but no taller than 47 feet as presented on the plan dated June 20, 2018 in connection with a proposed development for a senior living community (planned unit development) located on County Road subject to the following conditions: that they maintain and enhance the woodland buffer of mature trees and additional plantings between the proposed project and existing neighborhoods to the fullest extent possible consistent with any recommendations of the planning board, and continue to pursue good faith discussions with Lyon Brook Condominium regarding a memorandum of understanding, in an effort to resolve concerns related to drainage, night sky lighting and landscape buffer. THE MOTION WAS APPROVED UNANIMOUSLY 5-0.**

5. Motion for Rehearing, Case #ZBA18-02, 1876 Newport Rd., Parcel ID 041-001-000, SDB Investments, Inc.

A letter from Attorney John Rab was distributed. Chair Lyon spoke with counsel and was advised to address page 2, number 10, A,B,C of the document.

- A. The second meeting was unlawfully held and resulted in an improper and unlawful revision of the record of the original vote of the board. This is untrue. We have a right to reconsider, during the appeal process, and clarify the motion. There was not revision of the record there was a clarification of the motion.
- B. The Board's decision was unlawful and unreasonable and used incorrect legal standards. The legal standards are not listed so there is not enough evidence to evaluate this contention.

C. The decision was inconsistent with deliberations and vote on June 11, 2018. The clarification was made in order to make the decision more in keeping with the discussion.

He has not met any reasonable contention that a rehearing is applicable.

**IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to deny a request for a rehearing. THE MOTION WAS APPROVED UNANIMOUSLY.**

6. New ZBA meeting schedule

Nicole Gage distributed an updated meeting schedule.

7. Other Business - None

8. Motion to Adjourn

**IT WAS MOVED (Chair Lyon) AND SECONDED (Michael Todd) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting was adjourned at 8:52pm.

Respectfully submitted,

Trina Dawson  
Recording Secretary  
Town of New London