

**Town of New London
Zoning Board of Adjustments
January 19, 2011
APPROVED**

Members Present: Chair Bill Green, Doug Lyon, Laurie DiClerico, W. Michael Todd, Courtland Cross

Also Present: Peter Stanley (Zoning Board Administrator)

Chair Green called the **MEETING TO ORDER** at 7:30pm. He noted the hearing was being recorded and had been properly noticed.

He said they were gathered at the request of Barbara Troxell, who was representing the Barbara Troxell Trust.

APPEAL FROM AN ADMINISTRATIVE DECISION

**Barbara Troxell, Barbara Troxell, Trustee
357 Forest Acres Road
New London, NH 03257**

Tax Map: 118 Lot 020

PURPOSE OF THE REQUESTED WAIVER

Appeal from an Administrative Decision as permitted by Article XVI, Section J, 1, b of the New London Zoning Ordinance regarding the installation of a product that sheds water from between the floor joists of a second story deck to permit use of the deck below during inclement weather. The question is whether or not this constitutes “covering” the deck.

Chair Green explained that the request was previously denied because it was not in compliance with the zoning ordinance. The panels added would have the same effect of having a roof and would direct the runoff as opposed to having it evenly dispersed.

Chair Green gave the floor to Mrs. Troxell to explain her case.

Mrs. Troxell said that the deck they are talking about is a deck above another deck. They are proposing to put some dry space protection in between the joists, which would allow the runoff to come down into two gardens that are there currently. The gardens are not rain gardens, but they could become rain gardens if needed. The deck above is larger than the deck below. Some of the runoff will go off the edges of the deck, where it has been going already. She said that they are willing to put in a gutter if it is required by the board.

Mrs. Troxell said that she has another project in process (which has been permitted), which includes a drywell that would be able to accept the runoff from this deck. The back yard does not slope steeply from this deck into Messer Pond. They have been contentious about putting in more plantings and not taking any out. They are putting in two large rain gardens to give more protection to Messer Pond. Mrs. Troxell said that she was on the Board of the Messer Pond Protective Association when they enlisted the help of Charlie Hershberger to find more ways to be proactive about preserving the pond. They are trying to screen this runoff to allow for more usage of the downstairs deck. She commented that she has small children and older family members who visit, and that it would be beneficial to be able to use the deck and get out of the way of the insects.

Mrs. Troxell said that the rain water that would pass through the existing upper deck would not be increased or that an enormous amount would be diverted in a detrimental way towards the pond. It was explained by Mrs. Troxell’s project manager, Mr. Paul Raynor, that a premade product called “Dry Space) would go between the joists and snaps in between the cleats to help the water run off. He added that the existing gardens are about 3’ high and are made of stone that would be retained in front of the deck. Peter Blakeman, Blakeman Engineering, said that there were small gardens there, which were drawn onto the plans. Knowing they were in the 50’ buffer they felt the water could go through the decking material and diverted to the gardens below, and making them into rain gardens. They could take some material out of them and let the water pool there and plant it with water-loving plants. The other option he

suggested was to make use of the drywell that has been installed for their addition, which has capacity to accept more water. They would have to put a gutter up and dig for a pipe to get the water over to the dry well. Mr. Blakeman thought either option would include the same amount of work.

Mr. Lyon asked if the rain was hitting the upper deck and running off; some going through the floor boards and onto the bottom deck. If they do as they are proposing, the water that falls between the boards would drain to the front and drip out the “v’s”. Blakeman agreed but added that it wouldn’t take all the water from the deck but that some would still run off the deck as it does now.

Mr. Todd asked if the deck was pitched. Mrs. Troxell said that it was not.

Mr. Stanley said if they look at the photo of the flooring, no water or very little would shed from the deck, but would go through the cracks to the deck below. The only problem with the rain garden solution is that it is a disturbance within 50’ of the water. They could use a gutter to capture the water and divert it out of the 50’ setback into a pipe that leads to the dry well. That way, they wouldn’t need a variance to disturb within the 50’ setback.

Mr. Todd said he didn’t see any grade on the drawing that Mr. Stanley provided on the white board. He asked what the grade was. Mr. Stanley said it goes towards the pond. Mr. Todd asked what was under the deck. Mrs. Troxell said there was crushed stone under there, but wasn’t sure what was under the stone. Mr. Todd explained that under his deck there was crushed stone, and a layer of polyethylene, and that it was pitched away from the house. If that was her situation, what they aim to protect has already been constructed to move water away from the house. If they know that is the case with their deck, there wouldn’t be any change in what is happening now after they put a roof on it. He wasn’t sure they had all the facts they need and might not be possible to tell without digging. It was not uncommon to see contractors to put impervious material underneath a decking.

Mrs. Troxell said that since they have the two gardens at the end of the deck, the water is going in there anyway. If it was a polyethylene material under the crushed stone, it would have the same effect on the groundwater as having a roof over the deck.

Mr. Todd asked about the trust. He asked who owned the property. Mrs. Troxell said that the trust owns the property. She said that she was the sole trustee and agreed with Mr. Todd that she had full power, in full force and effect, to make decisions regarding the property.

Mr. Stanley said if they were constructing this deck today they wouldn’t put polyether under a deck because they want the water to infiltrate. The ordinance says and existing porch shall not be covered. That left him with enough concern to bring it to the board. He said he was fine wherever they go with it. The concern is now they want to trap water that was going through something and are forcing it to another direction. If they capture the water and direct it towards a dry well, the problem goes away.

Todd said their goal is to disperse the rain water that falls on the deck and not have it create sheet erosion or any other unfavorable circumstance within the 50’ buffer zone.

Stuart Nutter, abutter, asked if what they were talking about really was a roof. A roof by definition was the top most part of the building. He didn’t think it really was a roof, but still a deck. Mr. Stanley said the regulation says nothing about a roof; it says “covering.” Mr. Green said he used the word “roof” in error.

Mr. Blakeman said he wanted to comment on the roof. The roof is pitched and collects water with a certain velocity within the drip edge, which does have the potential to cause erosion. Mr. Todd said that this could be mitigated and dealt with by the use of a gutter, directed to the dry well.

IT WAS MOVED (Doug Lyon) AND SECONDED (Courtland Cross) to discuss.
THE MOTION WAS APPROVED UNANIOMUSLY.

Mr. Lyon said since the applicants are willing to employ the dry well solution and, due to the comments they heard from Mr. Blakeman and the Zoning Board Administrator that it would solve the legal issues about additional runoff

within the 50' buffer zone, he suggested approving the request with the condition that the gutter and dry well solution that was discussed be required.

Mr. Todd suggested that Mr. Lyon make a motion to this effect.

IT WAS MOVED (Doug Lyon) AND SECONDED (W. Michael Todd) that although the Zoning Administrator accurately sited a violation, they would grant the requested appeal with the condition that all stormwater runoff produced by the proposed panels be captured in gutters and then piped, without digging in the Waterfront Buffer, to the existing drywell located just outside the Waterfront Buffer.
THE MOTION WAS APPROVED UNANIMOUSLY.

Minutes Approval from November 8, 2010

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the minutes from November 8, 2010, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Todd felt that they needed to amend their rules to include certain provisions concerning establishing authority of persons before the board, including power of attorney. He said that he would submit the appropriate language at their next meeting.

The meeting adjourned at 7:53pm.

Respectfully Submitted,

Kristy Heath, Recording Secretary
Town of New London