

**Town of New London
Zoning Board of Adjustments
April 20, 2011
APPROVED**

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

Also Present: Peter Stanley (Zoning Board Administrator), Susan Chiarella (Zoning Board member, Springfield)

Chair Green called the **MEETING TO ORDER** at 7:37pm. He noted the hearing was being recorded and had been properly noticed.

He said they were gathered at the request of Theodore Bacon, who is being represented by Gavin Campbell.

ZONING VARIANCE

**Theodore Bacon
552 Lakeshore Drive
New London, NH 03257**

Tax Map: 050 Lot 009

PURPOSE OF THE REQUESTED WAIVER

Variance to the terms of Article XX, Section B, 3, b, 1, to allow for the replacement of a garage with less than the required minimum side yard and the replacement of a portion of a walkway and landings on the waterfront side of the main house that is located entirely within the Waterfront Buffer.

Chair Green turned the floor over to Mr. Campbell to make comments for his case.

Mr. Campbell said that the first part was on the waterfront side, including the walkways that are there now and how they wish to reconfigure them. He showed the photographs that were included in the information packet. There is a 46" walkway with a roof over one section. He wants to eliminate the roof and connect existing decks. He also wants to eliminate a boardwalk and a flight of steps. Mr. Todd suggested that Mr. Campbell number the photographs he is speaking of to make it clear which he is speaking of. He agreed and said he would be eliminating a significant amount of impervious surface (92 square feet). He would propose these things with a walkway which would be continued going no further into the setback than it was currently. He would also be moving the impervious surfaces by about 7' from the lake shore. Mr. Campbell commented that this would also enhance the visual impact of the property. He noted that he will not be disturbing any soil within the waterfront buffer.

Mr. Stanley said that if they remove something that is non-conforming, they can't put it back and what they replace it with must comply. He is requesting to put a new walkway in that area. Mr. Todd added that he is reducing the non-conforming. Mr. Stanley said the goal of zoning is to bring everything into compliance as rapidly and as fully as possible over time. They have this provision for that very reason. What they are putting back is less conforming, but is still non-conforming.

Mr. Campbell said that illustration #2 speaks to what Mr. Stanley was talking about. He wants to make the entire thing safer for the Bacons. The entire building is mostly non-conforming.

Mr. Campbell read through the facts supporting the request for a variance, which was attached to the application.

1. The variance will not be contrary to the public interest: Removing the existing boardwalk will serve to enhance the appearance of the property and will reduce the impervious surface within the 50' setback by 59 square feet.

2. The spirit of the ordinance is observed: The new walkway configuration will bring the building closer to compliance.

3. Substantial justice is done: This will allow for the continued enjoyment of the property while bringing the property closer to compliance.

4. The values of surrounding properties are not diminished: Beyond the aesthetic benefit, the proposed modifications will bring the property in closer compliance with the ordinance.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. We feel that the intent of the ordinance is being met in that we propose to improve the situation by reducing the impervious surfaces and improving setbacks while still allowing the Bacons full enjoyment of their home. As the preponderance of the home is located inside the 50' setback, strict adherence to the ordinance, in this very unusual circumstance, would deny the family access, hitherto enjoyed, to the westerly side of the home.

**IT WAS MOVED (W. Michael Todd) AND SECONDED (Laurie DiClerico) to discuss.
THE MOTION WAS APPROVED UNANIMOUSLY.**

1. The variance will not be contrary to the public interest: Chair Green asked Mr. Cross his thoughts on this. Mr. Cross said that he spoke with the neighbors of this property who thought it was a good idea and that it was very professionally planned. He thought they had done the best they could with a difficult situation. Mr. Lyon said that the entire property is non-conforming so the best they can do is to whittle away and make it less non-conforming. Ms. DiClerico agreed and said that the positive things they are doing are decreasing the amount of impervious surfaces and not disturbing any soils in the area. Mr. Todd had nothing to add.

2. The spirit of the ordinance is observed: Chair Green asked Mr. Lyon his thoughts. Mr. Lyon said that the same comments from above could be directed towards this question.

3. Substantial justice is done: Ms. DiClerico said that justice would be done, as it would bring the property closer to compliance. The rest of the board members agreed.

4. The values of surrounding properties are not diminished: Chair Green said he went to visit the property and felt that property values would actually be enhanced. Mr. Cross said that he spoke with the neighbors and they had no problem with it at all. Mr. Todd said it would improve the view from the lake.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: Mr. Todd said that there is a fair and substantial relationship between the purposes of the ordinance and the application of the ordinance to this property. What he has done is given them a method by which they can reduce the nonconformance and make it less. The remainder of the board agreed with Mr. Todd.

IT WAS MOVED (Courtland Cross) AND SECONDED (Doug Lyon) to accept the application for a zoning variance, with respect to Article 16, J, 1, B. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Green said they would go back to Article 20, B, 3, B, 1 to discuss the garage or outbuilding that is being requested. Mr. Campbell said that it is a little under 5' off of the neighbor's property line. Mr. Todd asked if this building was described as "shed" on the documentation. Mr. Campbell said it was. They would like to take it down and reconstruct it to its smallest width. He would move it about 2' closer to the Bacon's driveway to make it more compliant. Mr. Todd understood that it would be smaller than the original footprint. It would still not be conforming to the setback requirements. Mr. Campbell said they could not make it compliant to the setback because the driveway could not be moved due to a number of trees. The septic runs up the middle of the driveway as well, making it difficult. Mr. Todd noted that half the property lies on the opposite side of the street. Mr. Campbell said the alternative is to repair the building as it sits. He is trying to service his clients the best he can. He can't, in good conscience, repair the structure as it would last as long as a new structure, and would be less compliant. By building a new structure, it would be cost effective, and visually would be better. It would be sided in the same novelty siding as their camp.

Mr. Lyon summarized the choices: to repair the shed, or to reconstruct it. He understood a repaired shed would be closer to the lot line than the new one, and would be larger. Mr. Campbell said it would not be larger than it sits, but not larger than his proposed building. It would be less non-conforming. The floor of the garage would be dirt. They would stone the drip lines to prevent erosion. Mr. Todd asked if it was within the shoreline buffer. Mr. Stanley said it was within the shoreline zone. Mr. Todd asked if they had to do anything special with the drip lines for buildings in this area. Mr. Stanley said that they need to incorporate infiltration trenches on either side of the roof. Mr. Todd said that they could require infiltration measures. Mr. Campbell said that the lot between the lot and the street was a virtual catch basin on its own. It is all conifers and roots. The shoreline is about 5 and ½ feet higher than the low point of the street and the house.

Chair Green asked Mr. Campbell to read through his application responses for this segment of his request.

Mr. Campbell read the following:

1. The variance will not be contrary to the public interest:

The proposed construction will not exacerbate the “problem” and will improve the visual appearance of the property.

2. The spirit of the ordinance is observed:

There will be a slight, six foot, reduction in area of the replaced garage and we will be able to move the new garage two feet further toward the driveway, hence moving it closer to compliance. The owner will also be willing to trench and stone the drip line of the new roof and to remove an existing 8x8 garden shed which is on the other side of the drive.

3. Substantial justice is done:

Granting the variance will allow the owners to continue use of a building which is essential to the intended use of the property as a three season lakefront property.

4. The values of surrounding properties are not diminished:

The construction of the replacement garage two feet further from the property line, the exterior of the garage sided to match the existing cottage and the removal of the garden shed will all serve to enhance the visual environment of the neighborhood and move the property closer to compliance in a difficult situation. The lot being as narrow as it is, the options are limited.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

The existing garage would be nearly impossible to repair to reasonable standards and will be closer to compliance if replaced. Due to the narrow width of the lot, it cannot be relocated to full compliance. If the public purpose of the ordinance is to prevent the construction of non compliant structures we believe that the proposed reconstruction serves both the public interest in that it improves the situation and the Bacon’s interests as to deny the application would serve to deprive them of the rightful use of an existing building.

Mr. Todd asked what the pitch on the garage roof was. Mr. Campbell said it was about a 5:12 but was going to use a 6 pitch on the new building. It would not match the pitch on the cottage. They are located about 40’ from each other. It would be taller than the current garage, and would have a smaller footprint. Mr. Todd wanted to make sure they wouldn’t end up with a two-story building.

**IT WAS MOVED (Courtland Cross) AND SECONDED (Laurie DiClerico) to discuss.
THE MOTION WAS APPROVED UNANIMOUSLY.**

1. The variance will not be contrary to the public interest:

Chair Green thought it would be in the public’s best interest and felt it was a good improvement for the property. Everyone agreed.

2. The spirit of the ordinance is observed:

Ms. DiClerico thought this change was making the property more compliant. Everyone agreed.

3. Substantial justice is done:

Mr. Lyon said they are trying to make the property less non-conforming and Mr. Campbell did a good job to make this happen. Everyone agreed.

4. The values of surrounding properties are not diminished:

Mr. Cross said that the neighbors spoke highly of the plan and given the parameters they had to work within, they did a good job. He was all for it. Mr. Lyon derived considerable comfort by knowing that the neighbors are in favor of this.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

Mr. Todd said the ordinance is to eliminate non-compliance and this was a step in the right direction. Everyone agreed.

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) that the proposal be approved, as laid out, with the provisions that the existing 8x8 shed be removed, and the infiltration be shore land compliant. THE MOTION WAS APPROVED UNANIMOUSLY.

Next on the agenda was a request for a variance and a special exception for 177 Poor Road Realty Trust, represented by Douglas Gamsby, CLD Engineering.

ZONING VARIANCE

**177 Poor Road Realty Trust
177 Poor Road
New London, NH 03257**

Tax Map: 091 Lot 005

PURPOSE OF THE REQUESTED WAIVER

Variance to the terms of Article XIII, Section, F (1) to allow a septic tank, effluent field and related piping to be closer to a wetland than 75 feet.

Mr. Stanley said that the law firm listed under "mailing address" is for the trustee of the trust. The property owner tried to sign his own permit and it took it three additional weeks for the law firm to go along with the request.

Mr. Gamsby said that he is a licensed septic designer (for five years) and a certified septic inspector in New Hampshire and Vermont. He displayed a map of the wetlands in the area of the old Poor Farm. The existing tank can be located but no one knows where the field is. There is a small wooden structure that some think it is a dug well, but no one is really sure. They have very limited space within 75' in which to put a septic system. They could go out towards the road, but it didn't seem worth doing. The maps show that the property has poorly drained soils, which allows for a 50' setback through the State. They will not be expanding the number of bedrooms, but will expand a dining area in the home. Mr. Gamsby said they will put a new, larger tank in place of the old tank, and would put a pump chamber next to it. The new solution would be a "Clean Solution System." Mr. Stanley said that this system relies on aerobic treatment. Mr. Gamsby said that there were a number of chambers involved: the first is a regular septic tank. The second and third chambers are filled with a series of something that looks like ping-pong balls with holes in it. Air is forced in there and all the surface area from the balls and the forced air creates a lot of bacterial action. What leaves is equivalent to what would leave the bottom of a leach field. From there it goes into a pump chamber and into a small leach field. 225' leach field instead of a regular pipe and stone field, which would be about 45' x 30'. They have chosen this type of system due to the limited space.

Mr. Cross asked if the delivery system was powered by electricity. Mr. Gamsby said that it was. If a loss of electricity was experienced, the well pump would not work and so there would be no demand on the system.

Mr. Todd asked how they test if this system is working years down the road. Mr. Gamsby said that by state rule, they have to sign a maintenance agreement with Clean Solution who comes every year or two to maintain and replace the compressor, if needed. He added that he has designed four Clean Solution systems on Lake Sunapee, and nine within the Lakes Region. Mr. Stanley said that there have been quite a few of these put in town.

The reason they will put a new tank in the same place as the old is to minimize the disturbance to the land. The 1.5" 160 psi force main will cross the road, go along the road and cross a small wetland piece (special exception) and through a field to a distribution box. The reason the tank is so deep, they will be able to gravity to it. Mr. Cross asked how old the existing line was. Mr. Gamsby said he had no idea, but suspected it was very old. It appeared there was ground water flowing into the pump chamber, which shows it was not water-tight. He felt that this could actually be creating the wetland area on the property.

Mr. Gamsby said that the State requires 10' setbacks from the field, and 75' from wells.

Mr. Todd asked if it would be better to get the leach field as far away from the lake as possible. Mr. Gamsby said that it is about 200' from the lake right now. If they go back to the existing conditions, the problem with going up the road is that it is very flat. They would have to run all the way up the road and would have more chance of freezing, due to the fact that the road would be plowed. He said they don't know if there are any wetlands in that area, and don't have sufficient pitch for it to work. Mr. Stanley said that the image shows that the further back they go, the closer they get to the lake on the other side of the property. He added that the Clean Solution system produces the clearest water possible, and the leach field doesn't perform a cleaning function, but rather a receiving function. It was agreed that this was a tough lot.

Mr. Gamsby said they have the Shoreland protection plan in review with the State currently and they hadn't received it back yet. They received a wetlands permit for the special exception at the beginning of the month from the State as well.

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

Mr. Cross said that this was an old installation and wondered if it was used annually or seasonally. Mr. Stanley said that it was used year-round and that Harry Wheaton used to live there. He wondered what they did for sewage disposal in the winter-time under the existing system. Mr. Stanley said that they flushed the toilet. They have no evidence of failure. Mr. Gamsby said that the owners are offering to fix the problem at their own expense even though it has not failed yet. Mr. Todd said that it could be leaching effluent into the lake and no one would know. Mr. Gamsby said that failure either falls into one of two criteria: either surfaces to the surface or it flows into the ground water and comes out at some point.

Mr. Gamsby read through the answers he had provided for the variance application as follows:

The variance will not be contrary to the public interest:

There is an existing septic system currently on the lot. We did a cursory search of the property and could not find where the existing leach field is located. The existing septic tank appears to be sized too small for a five bedroom house. The proposed septic system will be a benefit to the public interest in that it will be a substantial improvement over the existing system.

The spirit of the Ordinance is observed:

The subject lot has a great deal of poorly drained wetlands. The proposed septic system layout is as far as reasonably possible from the wetlands. Additionally, we are proposing a "Clean Solution" system, which essentially does the work of a leach field in a tank. The resulting effluent is "clean" prior to entering the natural soil and requires only a 225 s.f. dispersion field, compared to 1378 s.f. for a traditional pipe and stone leach field.

Substantial justice is done:

Since no one really knows for sure where the existing leach field is, it is safe to assume that it is within at least 75 feet of one of the wetlands on the property. The existing septic tank appears to be insufficiently sized to efficiently perform anaerobic processes and settling time for a five bedroom structure. The proposed septic design will be sized and dispersed appropriately, a great improvement over the existing condition.

The values of surrounding properties are not diminished; and:

The property values of surrounding properties will not be diminished because this is an improvement over the existing condition and there will be less risk to public health.

Literal enforcement of the provision of the ordinance would result in an unnecessary hardship:

1) No fair and substantial relationship exists between the general public purposes of the ordinance provisions and the septic system on this property.

There is no other reasonable place to place a septic system on this property.

2) The proposed use is a reasonable one:

Because it will conform closer to current regulations, will not pose a public health risk as the existing system has the potential to do and is a great improvement over the existing condition.

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to discuss.

THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Lyon said that Mr. Gamsby laid this plan out reasonably well and showed that they will be substantially improving the septic system. The quality of lake water would be protected, and it seemed to him that he met the criteria. Mr. Cross, Ms. DiClerico, Michael Todd, and Chair Green agreed with Mr. Lyon's remarks.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to approve the application for the variance as submitted in terms of the location of the new septic system.

THE MOTION WAS APPROVED UNANIMOUSLY.

SPECIAL EXCEPTION

177 Poor Road Realty Trust

177 Poor Road

New London, NH 03257

Tax Map: 091 Lot: 005

PURPOSE OF REQUESTED WAIVER:

The applicants are requesting a Special Exception, as permitted by Article XIII, Section E, (1) of the New London Zoning Ordinance, to allow a pipe from a septic system pump chamber leading to a drainage field to be installed crossing a wetland.

Criteria 1) Mr. Gamsby said that this is a situation that is allowed by Special Exception.

Criteria 2) Mr. Gamsby said that there is no reasonable alternative that does not cross a wetland. The proposed layout provides the least amount of impact to the wetlands.

Criteria 3) The proposed wetland crossing will benefit the public good by allowing the replacement of an antiquated, inefficient septic system with an updated septic system on this property conforming to current State standards.

Chair Green asked Mr. Gamsby to point out the wetland that would be crossed. He showed it was near a small wooden bridge. This was the narrowest crossing point.

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to discuss.

THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Lyon went through the three criteria that must be met to allow a special exception.

Each of these criteria were met by Mr. Gamsby's answers. It was determined that allowing the special exception made sense to get the septic system constructed.

**IT WAS MOVED (Bill Green) AND SECONDED (Doug Lyon) to approve the special exception for the wetland crossing at 177 Poor Road, Tax Map 91, Lot 5.
THE MOTION WAS APPROVED UNANIMOUSLY.**

Approval of Minutes

January 19, 2011

Ms. DiClerico said last paragraph of the first page, the project manager should be "Mr. Paul Raynor."
Mr. Todd asked to change "repeal" to "appeal." There was a space after "request" ed waiver.

IT WAS MOVED (Bill Green) AND SECONDED (Doug Lyon) to approve the minutes of January 19, 2011, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.

March 14, 2011

Mr. Todd said same correction space after "request" ed waiver.
Last paragraph, "Mr. Todd pointed out...Have harvested hay from it since 1940."

IT WAS MOVED (Bill Green) AND SECONDED (Michael Todd) to approve the minutes of March 14, 2011, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:55pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London