



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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

ZONING BOARD of ADJUSTMENT
DRAFT MEETING MINUTES
July 24, 2013

Members Present: Doug Lyon (acting Chair), Courtland Cross, Laurie DiClerico, Nancy Rollins and W. Michael Todd

Members Absent: William Green (Chair)

Also Present: Pierre Bedard, surveyor and Lucy St. John, Planning and Zoning Administrator.

Chair Lyon called the meeting to order at 7:30pm. He said that the hearing had been properly noticed.

- Variance application from Robin Laughinghouse (Owner). Tax Map 093-012-000. Located at 789 County Road. Zoned ARR. Variance application to Article XIII, Wetland Conservation Overlay District, H Prohibited Uses (4), the erection or construction of any structures or building and Article XXII- Streams Conservation Overlay District, E. Prohibited Uses (1) Erection or construction of any new structures. Applicant proposed an addition to the existing house.

Ms. St. John referred to the staff report highlighting the request for both a variance and special exception. She explained that both are included and referenced some other recent applications for both a variance and special exception.

Mr. Pierre Bedard was present to speak on behalf of the applicant. Mr. Bedard said he was unsure how or when the manmade trench had been created. He thought the reason for it was to gain access to water for irrigation. Chair Lyon said that the history of the planning of the house showed that the owners took care to stay out of the buffer.

Mr. Todd wondered how the trench could be proven to be manmade. Mr. Bedard said there is no energy in the marsh that would cause erosion of the shoreline. The streamline is 125'+ from this area and there is a vertical bank that is 3' or more tall with trees growing out of the side of it. It appears that it has been there for a long time.

Mr. Bedard provided a photo of the area in question. It was obvious that it was a manmade occurrence and was not natural.

Mr. Bedard read through the application, showing criteria for the variance:

1. *The variance will not be contrary to the public interest:* The encroachment into the buffer is from a small (12 feet long) human caused wetland.
2. *The spirit of the ordinance is observed:* The 100 foot buffer will be maintained to the natural wetland boundary. An alternative would be to apply for a wetland permit to fill in this wetland and restore the natural upland but this does not seem to be in the spirit of the ordinance.
3. Substantial justice is done: The proposed addition was in the original plans but was never built. The existing house location was moved to allow for the 100 foot buffer to the natural wetland boundary.
4. *The values of surrounding properties are not diminished; and:* The property is greater than 6 acres. The existing building site is near the center of the lot, isolated from view by surrounding properties.
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

A.

- 1) *No fair and substantial relationship exists between the general public purposes of the ordinance provision and specific application of that provision to the property;* An effort was made to provide for the house addition beyond the 100-foot buffer in the original house placement. It was actually moved from its location on the approved septic system plan. The human caused wetland was not taken into account. The discovery of the human caused wetland has caused a hardship based on the original plan.
- 2) *The proposed use is a reasonable one;* The addition is on existing lawn area and will be greater than 100 feet from the natural wetland boundary.

B. *If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

The human caused wetland is what has caused the hardship on this property. The intent of development of this property was to maintain the buffer to the existing natural wetland (“marsh”).

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

Chair Lyon said that the question he had about the wetland had been answered. It was clear that it was not created by natural forces. There were no questions for Mr. Bedard regarding the criteria.

IT WAS MOVED (W. Michael Todd) AND SECONDED (Courtland Cross) to approve the variance as proposed. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Lyon said this request was approved based on Mr. Bedard's application which was complete and applied to the necessary criteria. Mr. Todd said that because they found the requirements for variance they need not move on and work through a special exception.

Chair Lyon said the language in the ordinance can be interpreted that one can apply for a special exception to reduce or eliminate the 100' wetland buffer. They have asked the opinion of Town Counsel (Bart Mayer) who agreed it was not well-worded and was vague. Chair Lyon believed that this is simply inappropriate and violates the spirit of the ordinance. They decided in a previous application that they would not consider this as a special exception. He asked Ms. St. John to add this to her list of things to clarify in the ordinance. He is happy to consider a variance if the use is modest and in the spirit of the ordinance. This is what they need to keep in mind; the spirit of the ordinance.

Chair Lyon asked Ms. St. John to not offer an option of a special exception to applicants in these kinds of cases. Ms. St. John said that the ordinance includes language for a variance and a special exception. She explained that the special exception is a use that is permitted as long as the applicant can demonstrate the criteria have been met. Chair Lyon agreed but said that there is no way an applicant could meet the criteria because it would go against the spirit of the ordinance.

Mr. Todd said the Wheeler case was a pre-existing non-conforming use. Even if they look at the special exception argument, under Article XIII, Wetlands Conservation Overlay District, (E. (3), Special Exceptions, it removed restriction wetlands overlay, and it didn't comply with the allowed expansion of a non-conforming use. Mr. Lyon said that Mr. Todd would have argued in the Wheeler case that it would be making a structure even more non-conforming.

Chair Lyon asked Ms. St. John to let applicants know that the ZBA is unlikely to grant these kinds of special exception in cases like these. He noted that the ZBA is not sympathetic to special exceptions. Ms. St. John said a hardship has to be proven in a variance but not in a special exception, therefore, a special exception is easier to get.

Chair Lyon thought the five criteria for the variance were the conditions of a special exception. Ms. St. John disagreed but said they could go over this at another time.

Mr. Todd estimated that the New London ZBA grants 95% of the special exceptions that are brought forth to them. Other towns deny special exceptions 95% of the time. What is the difference? Chair Lyon said that we should not measure the success of the ZBA by the number of applicants that are turned down, but rather that each one has been considered on its merits and a reasonable and just conclusion reached. Ms. DiClerico said that the setting and unique properties in New London make denials not occur as often as in other towns.

Other Business

- **Letter received from Phil Miller, Pike Brook Road, Tax Map 135-011-000 request to have the ZBA reword and reissue the Notice of Decision of the May 20, 2013 meeting.**

Chair Lyon said Phil Miller was concerned that the wording in the notice of decision document could be construed that he could not park a car anywhere on the property other than on the approved parking lot. Chair Lyon said that the decision was that the just approved parking area could not be expanded. Ms. St. John explained that the appeal period has past, and that to change the motion would mean they need to notice abutters.

Chair Lyon provided the following statement:

Phil Miller, Pike Brook Road, tax map 135-011-000 requested that the ZBA reword and reissue the Notice of Decision from the May 20, 2013 ZBA hearing that approved his proposed parking area. Mr. Miller is concerned that the wording could be interpreted to prohibit parking anywhere but on the approved parking area. Vice Chair Doug Lyon researched this issue and determined that the ZBA could not change the wording in the Notice of Decision without going through the entire hearing process again. Lyon informed Mr. Miller of this and promised to bring up the issue with the ZBA at the July 24, 2013 meeting and have the minutes of the meeting reflect the fact that the Notice of Decision includes a condition that the approved parking area not be expanded in the future. The Notice of Decision does not refer to any other part of the Miller property.

Other business

Ms. St. John wondered if the members of the ZBA would prefer an earlier meeting time. The members felt that this would work into their schedules. No official change in the meeting time was made.

No minutes were approved at this meeting.

The meeting adjourned at 8:02pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London