



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD of ADJUSTMENT MEETING MINUTES May 20, 2013

Members Present: Bill Green (Chair), Courtland Cross, Doug Lyon, Michael Todd, 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.

REQUEST FOR SPECIAL EXCEPTION: Tax Map: 135 Lot: 011 Miller Property

- Special Exception application for a reduction of the wetland buffer for the construction of 775 square feet (30 x 25) parking area off of Pike Brook Road (private road). Article XIII, Wetlands Conservation Overlay District, pages 49-57, E (3) & G and Special Exception criteria per Article XXI, Board of Adjustment, pages 86-87, (G), and (G, 4. 1). Land disturbance will be approximately 40 feet from the wetland. Philip & Jill Miller (Owners). Tax Map 135-011-000. The site has an existing house and no onsite parking. Plan prepared by CLD Engineering. Zoned R-2.

Charlie Hirshberg from CLD Engineers was there, along with Mr. Miller, to offer an overview of the property. Mr. Hirshberg referred to the Streams and Wetland Protection Map dated March 31, 2001 as referenced in the Zoning Ordinance and the provisions for the 100' wetland buffer setback. He explained the location of the property on Pike Brook Road, which is a private road, and that the property has frontage on both Lake Sunapee and King Hill Brook. He referred to the map and photographs included in the application materials. Mr. Hirshberg explained that the language in the Ordinance is ambiguous and unclear and thus this was presented to the Planning Board at the May 14th meeting for discussion. He noted that this application is really two parts- one for the tree cutting which was reviewed by both the Planning Board and Conservation Commission; and the other component regarding the reduction of the wetland buffer.

Mr. Hirshberg said that the Town's regulations were unclear as to whether or not they even needed a special exception. The Planning Board was not able to determine this either, but suggested they meet with the ZBA. He explained that they already have the State Shoreland Approval and are anxious to begin work. They'd like to get the parking area constructed prior to next week to avoid visitors from parking on the road, which is extremely narrow.

The Conservation Commission discussed this at their May 15, 2013 meeting. A copy of the Planning Board and Conservation Commission minutes are included in the file. He noted that both the Planning Board and Conservation Commission were supportive of the tree cutting.

Mr. Hirshberg explained that they were coming before the ZBA to discuss the parking area they would like to create, which is within the 100' wetland buffer. Currently the lot has one parking space which is on the abutters' property and there is no driveway or access easement in place for this arrangement. He noted some features of the site including the location of the well and the septic system across the road. The Miller's purchased the property, and wants to be good neighbors, and not infringe on the abutter's

land, but they also want to be able to have house guests at their 4 bedroom home, but there isn't really room to park. They want to create three parking spaces along the road, which would be 40' from the wetland. He noted that they will still be outside the 150' woodland buffer which is a State and Town shoreland buffer area.

To create this parking area, the plan is to strip off the top soil, and put down gravel. He noted the trees were recently cut. There would be a stone drip edge surrounding the parking area and to avoid a culvert that is currently there.

Mr. Hirshberg read through the criteria included in the application for granting a special exception. . He reiterated that the parking area will be gravel with a stone drip edge to reduce runoff, that there will be no significant disturbance other than the parking area itself, and they have maximized the area from the wetland. The use is allowed under the Special Exception and it is stated that a reduction of the wetland buffer is an option. Mr. Hirshberg felt this would be an improvement to the current parking situation along the narrow road. Mr. Hirshberg felt this was the best place to put the parking area when taking into account its proximity to the wetland.

Ms. St. John said she conducted a site visit and referred to the photographs included in the application materials. She explained that if approved this parking area would be similar to other open parking areas on the adjacent properties along Pike Brook Road.

Mr. Lyon felt this would be an improvement to the situation on Pike Brook Road and to the homeowner who has nowhere to park.

IT WAS MOVED (Doug Lyon) AND SECONDED (Courtland Cross) to discuss. Mr. Lyon explained that because the applicant is requesting a Special Exception, they have to consider three issues.

1. The use is not permitted in the area.
2. This Special Exception is permitted.
3. The criteria are met.

Mr. Lyon said he had visited the site earlier in the week. He felt that the issues had been addressed and the criteria were met in the application. Mr. Lyon felt the spirit of the ordinance was met as it was actually an improvement to the situation, and there would be no impact to the wetland. He had no problem with the application.

Mr. Cross said he also visited the site and thought the applicant was trying hard to accommodate parking on his own property instead of his neighbor. He expressed that the proposed parking area is really the best and only location on the site to accommodate the parking. Chair Green and Ms. DiClerico agreed with Mr. Cross' comments.

Mr. Todd wondered when the Miller's purchased the property. Mr. Miller said it was purchased at the end of November, 2012. Mr. Todd referenced the deed, which mentions a two-car garage. Mr. Miller said there was no garage on the property. Mr. Todd said the deed referenced one but it was determined there was no garage on the property. Mr. Todd wondered where cars previously parked. Mr. Miller said that the previous owner had been the sole occupant of the house and only needed one place to park. The neighbor (Bob Evans) permitted him to go down an alley-way on his own property to park. Mr. Miller explained that when people visit the property, they assume that the driveway like feature next to his site belongs to him, when in fact this isn't correct. He doesn't have permission or the right to use this area; it really belongs to the neighbor.

Mr. Todd said that the ordinance states that the quality of the water is high priority and needs to be protected. If they can assure that every known method of minimizing the impact would be used in the construction of this parking area, he was satisfied that they should grant the Special Exception.

Mr. Hirshberg clarified that the three sides of the parking area would be surrounded by a trench filled with 1.5" of clean stone. The parking area would be crowned to lead runoff into these ditches for immediate infiltration.

IT WAS MOVED (Doug Lyon) AND SECONDED (Courtland Cross) to approve the request for Special Exception for Phil Miller at 74 Pike Brook Road, as it is allowed by Special Exception with criteria met, the use won't be detrimental to the neighborhood, vehicular or pedestrian movement, the proposed exception complies to all other ordinance requirements, it meets the spirit of the zoning ordinance and doesn't cause any damage to the wetland, the water quality, and may even improve it.

THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Todd suggested amending the motion by adding a condition that there not be any expansion to the parking area allowed.

Chair Green said if any new owner wanted to expand they would need to come to the ZBA. Mr. Todd felt that due to its proximity to the wetlands, this suggested condition should go with the land.

Mr. Miller said he had no problem with the amendment. He said he values the lake as much as everyone else did and he is just looking for a parking area for his 4-bedroom house, which has been there for years.

IT WAS MOVED (Doug Lyon) AND SECONDED (Laurie DiClerico) to amend motion to include the condition that the parking be limited to that space permitted and could not be expanded.

Special Exception application for a reduction of the wetland buffer for the construction of 775 square feet (30 x 25) parking area off of Pike Brook Road (private road). Tax Map 135-011-000. Zoned R-2. Special Exception granted with condition that the parking be limited to that space permitted and could not be expanded. THE MOTION WAS APPROVED UNANIMOUSLY.

REQUEST FOR VARIANCE:

Tax Map: 045 Lot: 035 Dowd Property

- Variance application for the construction of a landscape wall (retaining wall) within 50 feet of the water front buffer of Little Sunapee Lake. Article XVI- Shoreland Overlay District, pages 63-70, C (6), retaining wall and Article XXI, Board of Adjustment, pages 84-89, variance criteria. William J. & Gladys K. Dowd Trust (Owners). Property located at 160 Camp Sunapee Road. Tax Map 045-035-000. Plan prepared by Eckman Engineering. Zoned R-2.

David Eckman of Eckman Engineering, LLC was there, along with Mr. Dowd, to present the application. He also distributed photographs of the property. He explained that the house is already within the 50' buffer. They would like construct a retaining wall (landscape wall) and plant Rhododendrons at the top and Hydrangeas at the base to seal off the view of the lower story from the lake. He explained that NH Department of Environmental Services (NHDES), only requires a "Permit by Notification" for a project of this nature, as it is considered only a small- minor impact. Mr. Eckman explained that the bedrooms are on the first floor and the wall will help with privacy. They propose to extend an existing wall to a max of

21” inches high. An aerial photograph was displayed to show the entire site. People fish right off of the shore and are essentially about 50’ from the windows.

Ms. St. John said she visited the site with Dave Eckman, and that this request made more sense to her after she visited the site. She explained that the site has been developed with a house and a significant area of the water front buffer has been modified with a patio and other landscape features. She noted that one abutter, Carol Foss had stopped in to review the plan and had some questions, and that she had contacted the abutter after she visited the site.

Mr. Eckman explained that the project would remove some of the existing lawn area and replace it with vegetation, which would benefit both the owner and others who enjoy the lake and the lake’s views. Mr. Eckman reviewed the variance criteria. He indicated that they would be re-vegetating the buffer area, would be reducing the lawn area, and creating a natural buffer. He felt it would be a positive change to the property, and would provide for less visibility to the first floor. He noted that in this situation the owner is requesting to revegetate the area and put up the retaining wall. He noted if they are not allowed to do this it would be a hardship to the owner who can at times have people within 50’ of his bedroom.

Chair Green said he visited the site and felt it was a reasonable request. He thought they had met the criteria.

Mr. Dowd said that there would be no trees or vegetation removed; instead, they would be adding vegetation. He explained that shrubbery is proposed as it provides more screening than a pine tree or other trees as they mature. He is also concerned about planting any trees so close to the house. The vegetation he wishes to plant will grow to about 12’-18’ high. He noted that there is significant erosion along the shoreland due to the slope of the site and that the placement of the retaining wall and the vegetation will help to mitigate the erosion issues. Furthermore he noted, that he doesn’t want to continue cutting the grass area which is sloped, and dealing with the ongoing erosion issues along the shore especially as he gets older. Mr. Dowd said he respects Lake Sunapee and wants to do his part to take care of it.

Mr. Todd wondered if the assessment to the property would be changed after this work was done. Mr. Dowd thought perhaps it would go down as the views from that side of the home would be gone. Mr. Todd said that the property file is riddled with abatement requests. Mr. Dowd claimed this remark to be an exaggeration. There had been abatement requests because there is no potable water on the site and he has spent an exorbitant amount of money to rid the water of radon and other hazardous elements to enable them to have drinking and cooking water.

Mr. Todd asked if there had ever been significant erosion on the property. Mr. Dowd said that this had been a problem on one side of the property and he and a neighbor rebuilt an area which is now highly vegetated and stable. He explained the site was previously part of an old summer camp for kids. Over the years he had spent time and resources to address many other erosion issues on the property, noting the site is uniquely located on a “point”. He noted both he and his neighbors have addressed erosion issues by planting more vegetation and other site improvements over the years.

Mr. Todd asked if the proposed wall would be pointed or lose stone. Mr. Dowd said they are thinking of the Allen Block Wall Approach. Regardless of the design of the wall, it will be invisible once the vegetation is planted. They would need to go to the frost wall and would not be using concrete but plan to use crushed stone. Mr. Todd opined that quite a bit of excavation was to be done for this wall. He wondered where the extra material dug from the trench would go. Mr. Dowd said it would go behind the wall. He added that although there were no gutters on the home, the runoff from the house is captured by a perimeter drain.

Mr. Todd said that the Shoreline Protection act is very clear in what it wants to be left alone. It specifically states in the ordinance to “re-vegetate.” There hasn’t been any de-vegetation but they are just adding. Mr. Dowd thought the concept of “re-vegetation” needed to have another dimension to it. When the camp was there, most of the vegetation was removed due to foot traffic and high use. He wants to take out 1/3 of the grass and put better quality vegetation there.

Mr. Todd asked what Mr. Dowd had been using for material in areas that had eroded in the past. Mr. Dowd said he took the material that had moved, picked it up and put it back. He didn’t bring anything new to the area.

IT WAS MOVED (Michael Todd) AND SECONDED (Doug Lyon) to discuss.

THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Todd referred to the Town’s Shoreland Overlay District language, focusing on retaining walls intended to revegetate areas. He said it didn’t appear that they were re-vegetating as it hadn’t been de-vegetated. Mr. Dowd said the overall depth of the vegetation line to the water will in some cases double and triple when he is done. He would not opt to stop mowing and let the steep grassy area revert as he wouldn’t be able to control what grows and didn’t want trees there. He would rather see the beautiful flowers out of his window.

Mr. Todd agreed with Mr. Dowd’s wish but the ordinance specifies “re-vegetation.” Mr. Lyon said it depends on how far back they were to look. If they look back to the time prior to the camp, they could say they were re-vegetating the area. Mr. Todd didn’t think the wall was necessary.

Chair Green asked the ZBA if they felt granting the variance would or would not be contrary to public interest. Mr. Cross, Ms. DiClerico, Mr. Lyon and Chair Green agreed that it would not. Mr. Todd said the public interest is to avoid potential disruption of the soil in the 150’ zone. That is what controls the quality of the water. There has to be a good reason to disturb the soils and he wasn’t seeing it in this case. He felt the variance would be contrary to public interest.

Ms. St. John wondered when the landscaping was done on the other portions of the property. Mr. Dowd said he and his neighbor Hoyt Chapin did that together about 20 years ago. Chair Green said the shoreland protection provides guidance but doesn’t prohibit people from improving their property if done in a sensible fashion.

Chair Green asked the ZBA if they felt the spirit of the ordinance would or would not be observed if the variance was granted. Mr. Cross said he had visited the site, noting it was surrounded by a cove, and the issues were unique to the location, not creating other issues for any of the neighbors. Chair Green said having seen what has been done there during the Dowd’s ownership he saw no issue with the request. It would maintain the quality of the water without a problem and he felt the spirit of the ordinance was being observed. Ms. DiClerico said the quality of the lake was being observed and the change in the slope of the property was going to help. Silt fence measures would help.

Mr. Todd referenced a letter from an abutter who was concerned with the construction. Ms. St. John read into the record the email she received from abutter Carol Foss dated, May 16th. “Thank you for your call the other day. As you suggested I am sending this to put my concerns regarding the Dowd stone wall project in writing. The reason for the regulation making the 50 feet buffer a do not disturb area is to protect the lake by being a buffer to protect the lake from runoff and erosion. I am not sure how close the

stone wall will encroach into that 50 foot buffer at its closest to the lake and I would be interested to know that. I understand that there would have to be significant erosion control in the way of silt fences and that the plan is to add more plantings which of course are a good thing. I am concerned; however, that should we have a major rain event there is still a threat to the lake of runoff especially from back filling behind the wall. It will take a period of time before that area settles down and new planting develop a good root system so possibilities of runoff continues for a longer period of time than just during the construction period. If the project does go forward it is very important that none of the existing vegetation be disturbed and that erosion control be in place until the disturbed area becomes well established.”

Mr. Lyon felt spirit was observed because the end result will be an overall improvement to the protection of the lake. There would be less erosion, less of a steep slope, more vegetation that will absorb water and prevent runoff, and ultimately he thought the area would be safer than it currently is.

Chair Green asked the ZBA if they felt substantial justice would/would not be done by granting this variance.

Mr. Lyon said that Mr. Dowd had made it clear how he wants to enjoy the property. He is providing good stewardship and should be able to enjoy it. The site is dramatically improved from how it was when he bought it in the early 80's. Ms. DiClerico and Mr. Cross agreed with Mr. Lyon's comments.

Mr. Todd said he was still hung up on the re-vegetation argument. He couldn't get past it because that wasn't what the ordinance said. He understood he was the only one who felt this way.

Chair Green asked the ZBA if they felt the values of the surrounding properties would/not diminish as a result of this project.

Chair Green opined that the worst case scenario was that there was no downward effect. Ms. DiClerico, Mr. Cross and Mr. Lyon agreed. Mr. Todd said he was fine with the work that had been done to the area previously, but just couldn't get past the wording with regards to re-vegetation.

Chair Green asked the ZBA if they felt enforcement of the ordinance would/not provide hardship. Mr. Cross couldn't identify where a hardship would be while they were trying to prevent erosion and beautify the property. Chair Green felt the request was reasonable and that the wall could be put in without disturbance if done in a timely fashion. He explained that it is a unique site as it goes out to a point with a drop-off to the water. Mr. Lyon added that with reference to the hardship, the unique nature of the site prevents the owner to doing something with the site that he wants to. This is the only practical way to accomplish what he wants without planting trees. He felt it met the criteria. Ms. DiClerico agreed with Mr. Lyon.

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to approve the request for a variance for William Dowd at 160 Camp Sunapee Road. THE MOTION WAS APPROVED.

Review of Minutes

IT WAS MOVED (Doug Lyon) AND SECONDED (Bill Green) to approve the minutes of February 21, 2013, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Motion to Adjourn

**IT WAS MOVED (Bill Green) AND SECONDED (Courtland Cross) to adjourn.
THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 8:47pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London