



The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

RECEIVED
MAY 24 2017
TOWN OF NEW LONDON

May 19, 2017

SAMUEL B ROWSE LIVING TRUST
SAMUEL B ROWSE TTEE
PO BOX 1245
NEW LONDON NH 03257

RE: File #2016-00635 - Samuel B. Rowse Living Trust, New London
Tax Map/Lot # 103

Dear Mr. Rowse:

The New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau has completed its review of your application and on May 18, 2017 determined that the proposed project to Repair and replace a 33 ft 2 in x 36 ft 8 in boathouse over public submerged lands in the same footprint but increasing the ridgeline height 6 feet, remove 203 square feet of crib and drive 9 piling to support a 203 square foot dock. and drive two additional piling and one ice cluster piling on 432 feet of frontage along Lake Sunapee in Sunapee. does not comply with the RSA 482-A and Administrative Rules Env-Wt 100 through 900. The application has therefore been denied.

This decision was determined based on the following findings:

Standards for Approval

1. Pursuant to Rule Env-Wt 302.03, Avoidance, Minimization, and Mitigation, (a) (1) and (2) applicants shall submit a statement describing the impact of the proposed project design and provide evidence which demonstrates that potential impacts have been avoided to the maximum extent practicable; and any unavoidable impacts have been minimized.
2. Pursuant to Rule Env-Wt 302.04, Requirements for Application Evaluation, (a)(1) for any major or minor project, the applicant shall demonstrate the need for the proposed impact by plan and example.
3. Pursuant to Rule Env-Wt 302.04, Requirements for Application Evaluation, (a)(2) for any major or minor project, the applicant shall demonstrate by plan and example that the alternative proposed by the applicant is the one with the least impact to wetlands or surface waters.
4. Pursuant to Rule Env-Wt 402.09 Structures Disallowed, boathouses located in or over the waters shall not be approved.
5. Pursuant to RSA 482-A:3, Excavating and Dredging Permit; Certain Exemptions, (a) In processing an application for permits under this chapter the department shall request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application.
6. This project is a classified as a major impact project per Rule Env-Wt 303.02 (d) modification of a major docking structure.

Findings of Fact

1. On March 16, 2016, the Department received an application for a permit to repair and replace a boathouse over public submerged lands in the same footprint but increasing the ridgeline height 6 feet, replace a crib with 9 support piling and to drive two piling and one ice cluster piling to protect the structures on property identified as Lot 24 on New London Tax Map 23.
2. On May 18, 2016 the Department issued a Request for More Information to the Applicant requesting among other things that they provide a written request for a waiver of Rule Env-Wt 402.21, Modification of Existing Structures completed in accordance with Part Env-Wt 204, Waivers that included documentation of the building code requirements noted in the application as being the reason for the requested modification.
3. The Letter notified the Applicant that the failure to provide a single and complete response to the request within 60 days of the request date, more specifically, by July 17, 2016, would result in a denial of the application.
4. The Applicant requested and was granted an extension of the deadline to respond to the request.
5. On September 30, 2016, the Department received a response to the Request for More Information. The waiver request submitted with the response did not contain documentation showing that the requested roof pitch and height increase was necessary to withstand anticipated snow loads.
6. On October 27, 2016 the Department issued a Request for More Information to the Applicant, reiterating and clarifying the original Request that the Applicant provide revised plans for a structure without dormers and which proposed only the minimum roof pitch needed to meet loading requirements and that the Applicant submit evidence supporting the necessity for the requested pitch in the form of the specific loads to be met and the calculations completed.
7. The Letter notified the Applicant that the failure to provide a single and complete response to the request within 60 days of the request date, more specifically, by December 27, 2016, would result in a denial of the application.
8. The Applicant requested and was granted an extension of the deadline to respond to the request.
9. On April 17, 2017, the Department received a response to the second Request for More Information. The response did not contain revised plans for a structure without dormers which proposed only the minimum roof pitch needed to meet loading requirements. Nor did the response contain evidence supporting the necessity for the requested pitch in the form of the specific loads to be met and the calculations completed.

Rulings in Support of the Decision

1. Two requests for additional information dated May 18, 2016, and October 27, 2016, addressed to the applicant and agent of record, which clearly identified the requirement that the applicant to submit additional information to DES within 60 days of the request.
2. Pursuant to RSA 482-A:3, XIV(a), if the requested additional information is not received by DES within 60 days of the request, DES shall deny the application.
3. DES did not receive the requested additional information within the 60 days and therefore the application has been denied.

Any person aggrieved by this decision may appeal to the N.H. Wetlands Council ("Council") by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

2016-00635

Page 3 of 3

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>.) Copies of the rules also are available from the NHDES Public Information Center at (603) 271-2975.

Sincerely,



Darlene Forst
Wetlands Inspector
NHDES Wetlands Bureau

WSDCF/dmb

cc: New London Conservation Commission
New London Board of Selectmen
New London Municipal Clerk

of decking, etc. Authorized Agent, Regina Nadeau of Normandin, Cheney & O'Neil, PLLC. Application received March 9, 2016.

The Board reviewed the photographs included in the Wetland application, showing pictures of the existing boathouse and the proposed boathouse. The Board discussed the specific language which states:

1. Docks and existing boathouses are permitted subject to the following restrictions.
 1. a. New dock construction and existing dock maintenance or replacement are permitted subject to required state permits, standards, and regulations. The attachment of the dock to the shoreland shall be the least impacting alternative as permitted by the State. (Amended May 2014)
 1. b. Maintenance or replacement of existing boathouses which will not increase the use, size or footprint of the structure is permitted subject to required state permits, standards, and regulations. Construction of new boathouses is not permitted. (Amended May 2014)

The Board discussed the language, "will not increase the use, size or footprint" and if the proposed changes to the roofline is an increase in the size of the building and use of the boathouse. The boathouse application to NHDES states that the reason from going from a flat roof to a pitched roof is to allow for snow loads. This roofline also allows for more storage, which will increase the use. The Board agreed that the change to the roofline and the dormer is more attractive, but the intent of the zoning amendment was not to increase the size or to obstruct views of the lake. The Board agreed that the proposed boathouse does not comply with the provisions of the Zoning Ordinance, and that the owner should be advised to seek a variance from the Zoning Board of Adjustment and to inform NHDES of the Planning Board's position. The Board commented that the Zoning Ordinance was amended in May 2014 as requested by residents as they did not want to see any increase in boat houses.

- ✓ **MOTION TO ADVISE THE NHDES THIS APPLICATION DOES NOT MEET OUR ZONING ORDINANCE REQUIREMENTS AND TO ADVISE MR. ROUSE TO OBTAIN A VARIANCE FROM THE ZONING BOARD OF ADJUSTMENT. IT WAS MOVED (Michelle Holton) AND SECONDED (Jeremy Bonin) AND THE MOTION WAS APPROVED UNANIMOUSLY.**

Bruce Herring Wetlands Application. The Board briefly discussed the Bruce Herring Wetlands Application. Property located at 300 Lakeshore Drive. Tax Map 036-011-000 (old # 036-012-000). Staff noted that at the March 20th Conservation Commission meeting, the Commission commented they had some concerns about the location of the 2nd dock, and that this property has had a raft out in the water. The Planning Board decided not to provide any comments to NHDES as docks are permitted, and rafts and structures in the water are the jurisdiction of the State.

Pike Brook Road Wetland Applications. The Board also asked about the Pike Brook Wetland Applications, noting additional docks are proposed there as well.

7. ARR district on the draft map is shown as a medium yellow color, would like to see a light yellow shade.
8. R2 is shown on the draft map- R2 and it be placed on the map around the lake, can the R2 be placed in a different locations.
9. Legend after Urban Residential- include R-1
10. Legend after Residential- include R-2
11. Current map has the Special Flood Hazard Zone, Planned Unit Development Overlay District and Workforce Housing Overlay District (in various zipatone patterns), these districts need to be placed on the map (and want to be sure the zipatone patterns don't confuse people and still be able to read the underlying information).

Amendment to the Rules of Procedure

Reading of the proposed amendment occurred at the February 23rd, 2016 meeting which is to change the election of offices from the month of June to April.

- ✓ **MOTION TO APPROVE THE AMENDMENT TO THE RULES OF PROCEDURE. IT WAS MOVED (Bill Dietrich) AND SECONDED (Jeremy Bonin) AND THE MOTION WAS APPROVED UNANIMOUSLY.**

Future Meeting Dates Schedule Discussion

The Board discussed future meeting dates in 2016. Staff will amend the meeting calendar for posting. Refer to the Planning Board meeting schedule and the Town's website for updated meeting information.

Update of Town Meeting and Zoning Amendments.

It was acknowledged that the Zoning Amendments have passed and Lucy St. John informed the Board that the language has been incorporated and the next step is to update the actual map, which was just discussed. Both will be available soon.

Agenda Attachments List Items

Ms. St. John referred to the items on the list noting several State applications were received including one for a boathouse, specifically the Samuel Rowse Wetland Application. She is bringing this to the attention of the Board, as the definition of boathouse and the provisions of the Shoreland Overlay District were amended in May 2014.

Rowse, Samuel B. Trustee Wetlands Application. Property located at 47 Sunset Shores. Tax Map 103-024-000. Project description- Remove 203 square feet of rock/crib support on an existing grandfathered over the water boathouse/dock, replace with 9 support piling; repair 66 square feet of crib support under west wall of boathouse using existing materials; remove a 3 ½: 12 pitched boathouse roof and replace with 7:12 pitched roof for snow load; install one 3 piling ice protection cluster and 2 free standing ice protection pilings. Other general in-kind replacement

Normandin, Cheney & O'Neil, PLLC
Attorneys at Law
213 Union Avenue - Normandin Square
P.O. Box 575
Laconia, NH 03246

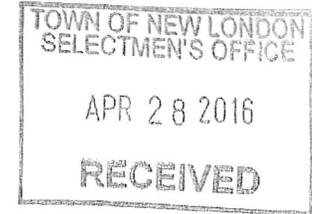
A. Gerard O'Neil, Jr.
Robert A. Dietz
James F. LaFrance
Regina A. Nadeau
William D. Woodbury
Donna L. Depoian*
Timothy K. O'Brien
Kaitlin M. O'Neil

Tel: 603.524.4380 Fax: 603.528.6831
Email: rnadeau@nco-law.com
www.ncolaw.com

F.E. Normandin 1890-1967
F.A. Normandin 1909-1967
Thomas P. Cheney 1918-1970
A. Gerard O'Neil 1923-2000
Paul L. Normandin 1931-2014
John D. O'Shea, Jr. - Retired
Philip P. Bonafide - Retired

* also licensed in MA

April 26, 2016



Darlene Forst, Supervisor
NH Wetlands Bureau
NH Department of Environmental Services
PO Box 95
Concord, NH 03302-0095

In re: Dredge and Fill Application of Samuel Rowse 2016-635
47 Sunset Shores, New London, NH

Dear Darlene::

Please accept this letter on behalf of my client, Samuel Rowse, who has a pending application for permit to reconstruct his permanent dockage and over the water boat house on Lake Sunapee. The purpose of this letter is to respond to comments forwarded to the Department by the New London Planning Board, in which it states the proposed modification of the boathouse roof will create more usable space and is in violation of the Zoning Ordinance, and where it also states that the proposed dock reconstruction must be minimalist.

Boathouse: Firstly, as the plans show, the boathouse will not have a second floor. The increased pitch of the roof is proposed solely for snow load, and will constitute empty space in the interior. Secondly, no views are impacted as the shoreline is straight, and at least one abutter has personally called me in support of the application. Finally, as the New Hampshire Supreme Court ruled in Lakeside Lodge v. Town of New London, 158 NH 164 (2008), "the DES guidelines state that only the federal... and state... governments have the authority to impose on-lake regulations upon State-owned public water and that dock and mooring regulations are considered 'on-lake' management". (In that case, the Court distinguished RSA 482-A from the Shoreland Protection Act 483-B, which specifically allows Towns to impose more stringent standards because the land involved is private land.) Accordingly, because the proposed roof pitch will not affect views, create any greater usable space, or violate any legally enforceable Town Ordinance provision, the increase in pitch is justified to assure the continued functionality of the boathouse.

Dock Repair: As stated in the application, the plans provide for a reduction in impact by converting a crib supported dock with piling closest to shore so, even if the Town Ordinance did

apply to docks in public waters, the proposal would in fact be less impacting.

Please know that I will be following up directly with the Town on these matters and that I would expect the Town's issues to be handled at the local level. This would mean that the State should be able to go forward with its separate permitting process notwithstanding the Town's position.

Kindly contact me with any questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. A. Nadeau', with a long horizontal flourish extending to the right.

Regina A. Nadeau

RAN/sps

enclosure (1)

cc: Rob Turpin

Samuel Rowse

Lucy St. John, Town of New London

file