

**Town of New London
Zoning Board of Adjustments
September 23, 2009**

Present: Bill Green (Chairman), Courtland Cross, Douglas Lyon, Jeff Horton

Also present: Peter Stanley

Chair Green called the meeting to order at 7:30pm and noted that this was a rescheduled hearing and apologized for any inconvenience it may have caused. He asked if anyone had any objection to proceed with the meeting with only four members of the Zoning Board present instead of five. There were no objections, and so the hearing proceeded.

Chair Green said that the purpose of this was an area variance, as explained below.

SPECIAL EXCEPTION

**Hary M. Snow, representing Jesse & Jaqueline Worobel
85 Bog Road
New London, NH 03257**

Tax Map: 107 Lot: 021

PURPOSE OF REQUESTED WAIVER:

Area Variance to the terms of Article XX, Section 3B, 2 of the New London Zoning Ordinance in order to permit substantial improvement of an existing non-conforming building with slightly less than the required front yard setback.

Chair Green asked Mr. Snow to state his case and to explain why they were requesting the area variance.

Mr. Snow started off by giving a brief overview of the project. The Worobels had purchased a piece of property adjacent to them. There was a small Cape on the property, which they tore down. The two lots were combined, creating a four acre lot. Mr. Snow said that the ultimate goal of the Worobels was to design an edition to go on to the existing house. They had discussed the project with Peter Stanley from the beginning, and he noticed that they had a setback issue in terms of the existing house being 45 feet off the road; five feet short of the zoning ordinance. This is why they were asking for a variance. Mr. Snow displayed a map to show the area with the setback issue as well as the proposed addition. He indicated that there would be two bedrooms in the new part, a garage, kitchen and family room. Standing alone, the new addition would be totally conforming. They are asking for a variance to allow a substantial improvement of this property, the original building, of which, is nonconforming by five feet.

Mr. Snow referenced page 82 of the ordinance. Under "B: nonconforming buildings or structures" it reads that nonconforming structures may be continued indefinitely, altered, expanded or substantially improved. It also says that if there is an issue with a front yard setback, improvements could not be made to the structure unless a variance is approved by the Zoning Board. Mr. Snow felt that the ordinance said that they could add on to the nonconforming setback, continuing along that line or set back even two feet, which would still be nonconforming, up to a substantial improvement. He interpreted the text to talk about the front line setback and didn't feel it has anything to do with the conforming part of the lot. He believed that the paragraph was dealing with a specific setback that is nonconforming, and additionally, the entire part of the new construction would be conforming. He felt that it was confusing.

Mr. Lyon asked if the argument was that the prohibition against expansion only covers if you are expanding along the existing non-conforming line. Mr. Snow said that he believed the spirit of the ordinance was to protect the front line setback. He didn't believe that it had anything to do with anything that is conforming, such as the structure that he wanted to build.

Mr. Stanley said the applicants were at the meeting to hear a request for variance, not an appeal of an administrative decision. He said that the following section(s) in the ordinance could not be disregarded and that they would help to create better understanding. He indicated that the Worobels had a very good case to get a variance and that that was what Mr. Snow should be defending. Mr. Stanley said that the next section in the ordinance regarding substantial improvement gave details on why a zoning variance was needed. He also said that Bart Mayer explained that this is

the kind of case that variances are made for. Mr. Stanley said that there is case law that states clearly is the goal of zoning is to bring everything to conforming as rapidly as possible. Therefore, they need to take into consideration the entire structure, including the nonconforming parts of it.

Mr. Horton asked what percentage of a structure would fall under substantial improvement. Mr. Stanley stated that it was a 50% increase from the original structure.

Mr. Snow went on to explain his case by reading through his responses from the application submitted to the Town.

1. The proposed use would not diminish surrounding property values because:

The new building structure has an upgraded appearance and is more in line with other houses in the neighborhood.

2. Granting the variance would not be contrary to the public interest because:

The resulting structure will upgrade property values and be a positive asset to the neighborhood.

3. Denial of the variance would result in unnecessary hardship to the owner because:

- a) The following special conditions of the property make an area variance necessary in order to allow the development as designed:

They would not be able to use their combined lot and house as intended. The existing house is 45' off Bog Road and only the back right side of the property lends itself for development.

- b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

Other areas of expansion would result in more zoning issues. It is not financially reasonable to move the house beyond the 50' setback.

4. Granting the variance would do substantial justice because:

Two lots have been combined creating a 4 acre conforming lot. The variance approval would enable the lot to be used more effectively as it relates to the new addition expansion.

5. The use is not contrary to the spirit of the ordinance because:

The result is a positive for the town and the ordinance states in Article XXB that a non-conforming building may be substantially improved.

Mr. Green asked if there were any comments.

Mr. Cross asked what the applicant meant by "not being able to use the combined lot as intended." Mr. Snow said that they tore down a nonconforming structure making two lots into one four acre piece. It was their obvious intention to add on to the existing structure. The obvious area for expansion would be towards the new land that was purchased.

Fred Kaufman, meeting attendee and neighbor of the Worbels lives at 216 Bog Road. He commented that the house that was torn down was very nonconforming, very close to the road and very unattractive. He also shared that there were two garages that were torn down as well. Mr. Kaufman felt that the improvements to the existing house would upgrade the entire neighborhood and wanted it to be noted that he was completely in favor of the project.

Peter Stanley said the house immediately to the left of the property is the same size of what the new house would be with the addition included, and that it was also closer to the road as the house in question. He shared that there were no other houses on the road that would draw a heavy comparison to the nonconforming setback. He believed that

the applicant has made a house that is larger and is also making it on a lot that now conforms. He said that it was a unique property and felt it would satisfy the hardship issue.

Chair Green asked for a motion to discuss.

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

1. The proposed use would not diminish surrounding property values.

Mr. Cross said that having looked at the information and having heard the testimony, he can't help but agree that it would be more of an improvement than a diminishing of the property. Mr. Lyon and Mr. Horton agreed.

2. Granting the variance would not be contrary to the public interest.

Mr. Horton said that he keeps coming back to the fact that the addition structure is within setbacks and it appears that everything they are adding complies and is conforming. Mr. Green thought it would be in the public's best interest to go forward with the project. Mr. Lyon agreed with Mr. Stanley that the goal of zoning is to bring things into conformity and felt that the structure would be brought closer to conformity by creating the addition. Mr. Cross agreed with Mr. Lyon.

**3. Denial of the variance would result in unnecessary hardship to the owner because:
a.) The following special conditions of the property make an area variance necessary in order to allow the development as designed.**

Mr. Lyon felt that it was clear that the intention was to combine two lots to provide a legal location for a larger structure. He believed that they had done it in a responsible way and had also eliminated a more unattractive and nonconforming issue by tearing down the old buildings. Mr. Cross and Mr. Horton agreed.

b.) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

Mr. Green said that the plan presented made the most amount of sense. He remarked that, after all, it was all about 5'. Mr. Cross said that he had no problem with it at all. Mr. Lyon commented that the only way they could improve upon the design was to lift the whole house up and move it back, and that is was not financially feasible.

4. Granting the variance would do substantial justice because:

Mr. Cross said that the granting of the variance would do substantial justice for the arguments they had heard. Mr. Lyon said they have made a good faith attempt to take a nonconforming structure and make it closer to conforming, which was great. The board agreed.

5. The use is not contrary to the spirit to the ordinance because

Mr. Lyon commented that the result, overall, for the Town is a more conforming situation which is in the spirit of the ordinance, not contrary to it.

At this point, Chair Green asked for a motion.

IT WAS MOVED (Doug Lyon) AND SECONDED (Jeff Horton) that the Zoning Board grant the Area Variance to permit substantial improvement of an existing non-conforming building with slightly less than the required front yard setback to the property owned by Jesse and Jacqueline Worobel at 85 Bogg Road, New London. THE MOTION WAS APPROVED UNANIMOUSLY.

SPECIAL EXCEPTION

**Malcom & Ingrid Wain
408 Sugarhouse Road
New London, NH 03257**

Tax Map: 034 Lot: 015

PURPOSE OF REQUESTED WAIVER:

Special Exception as permitted by Article V, Section A, 1 to permit the continuance of an existing dwelling unit during the construction of a new replacement dwelling unit for the purpose of having a residence during construction. The existing structure will be removed when construction of the new building is completed. The property is located at 408 Sugarhouse Road in the R2 zone.

Chair Green asked if anyone had any objection to proceed with the meeting with only four members of the Zoning Board present instead of five. There were no objections, and so the hearing proceeded.

Chair Green asked the Wains to state why they were asking for the special exception.

Mr. Wain said he felt this was a straight-forward case and that he understood the zoning rules and regulations with regards to this situation. He felt that what he was offering to do, by posting a bond and an insurance contract to insure demolition of the old property when the new property is complete, took all the pressure off of the town to have to deal with a non-conforming structure on the property. He explained that they expect to conform completely with the ordinance.

Chair Green asked Mr. Wain to lead the Zoning Board down through his application. Before Mr. Wain began his review, Chair Green mentioned that the following neighbors had made comments to him via email:

Peter and Susie Nichols of 42 Porcupine Ridge – in support of the Wains.

Mike and Katie Christopher of 434 Sugarhouse Road – in support of the Wains.

James Mallinger of 327 Sugarhouse Road – in support of the Wains.

1. The proposed use would not diminish surrounding property values because:

Replacement home would be a newer higher valued single family home.

2. Granting the variance would not be contrary to the public interest because:

I am replacing an older home with a new more energy efficient home.

3. Denial of the variance would result in unnecessary hardship to the owner because:

- c) The following special conditions of the property make an area variance necessary in order to allow the development as designed:

We need a place to live while the new home is being built; old home will be demolished within 7 days after new home is occupied. To insure compliance with zoning regulations I want to post bond and sign an agreement authorizing the Town to demolish the old home if I don't comply with the 7 day occupancy agreement.

- d) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

If existing house demolished first, we would incur the additional cost of alternative living arrangements as well as the cost of removing and storing the contents of the house.

4. Granting the variance would do substantial justice because:

We need a place to live and forcing us to move out in light of what we propose seems unjust.

5. The use is not contrary to the spirit of the ordinance because:

The existing house will be demolished so there ultimately will only be one newer single family home on the property.

Chair Green asked when the Wains planned on starting the construction. Mr. Wain said that they'd like to begin immediately. He explained that where the property lies, within the "Slope 'n Shore" community, there are no heavy vehicles allowed on the road during the summer, so they are trying to get it done as soon as possible.

Chair Green asked for a motion to discuss.

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

Mr. Stanley said that he took the liberty of writing specific conditions of approval, which were basically the points that Mr. Wain had stated in his application. He handed out a copy of the memorandum to the members of the Zoning Board.

The memo read:

The Town has had difficulty in the past getting property owners to actually comply with agreements with it comes time to tear down a perfectly good structure. For that reason, we recommend the following conditions, should you choose to approve the Wain Variance Application. They are;

1. That a date specific for removal of the original structure be established at the outset.
2. That the applicant shall enter into a contract with the Town, the terms of which will require, among other things, removal of the structure by the date set above and authorize the Town to have the building removed at the owner's expense, any time after the date established above.
3. That security in an amount sufficient to cover the cost of building demolition and removal shall be provided to the Town. The form and amount of security shall be acceptable to the Town.

Mr. Wain said that he appreciated the memorandum from Mr. Stanley, but that he did not have a finish date for the house as of yet. Mr. Cross said that Mr. Wain had said that there was a 7-day window of completion in which to demolish the old building. Mr. Stanley said that since there was not a calendar date expressed, demolition could be six years from now. Mr. Stanley said that they are able to pick the date and the Town would be flexible in determining it. Mr. Stanley said that demolition could be 7 days after the certificate of occupancy permit was issued. Mr. Lyon said that clearly, the town was willing to establish an agreeable date. Mrs. Wain asked if there was a delay in the completion of the construction, would there be some sort of window or grace period allowed for the demolition to occur. Mr. Green said that exterior construction needed to be done within one year. Also, should they grant this, it is conditional on the language of an agreement agreed upon between themselves and the Town. Mr. Stanley said that the town's attorney has already reviewed this case and has provided a draft of the agreement to be signed. He said that it was generic in content and they would make it specific with regards to the date. He added Mr. Stanley added that construction could not be started until the agreement was signed and the bond is signed as, approved by the Board of Selectmen.

1. The proposed use would not diminish surrounding property values because:

Mr. Horton felt that the circumstance would not diminish property values. Chair Green agreed. So did Mr. Lyon and Mr. Cross.

2. Granting the variance would not be contrary to the public interest because:

Mr. Cross said that he couldn't see any reason why it would not be a benefit to the public interest. He also said he would like to compliment the people on their thorough application and the approach they have

taken. Mr. Lyon and Mr. Horton agreed with Mr. Cross. Mr. Wain said that he would like to thank Peter Stanley for his guidance and help with this project.

3. Denial of the variance would result in unnecessary hardship to the owner because:

a) The following special conditions of the property make an area variance necessary in order to allow the development as designed:

Mr. Lyon said that this was an unusual circumstance. Because of his experience as a past member of the Board of Selectmen, he was skeptical at first, but felt that the Wains were approaching the project in the appropriate way, including a time limit and a bond and agreement and on this basis, meets criteria for hardship. Mr. Cross and Mr. Horton agreed.

b) The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:

Mr. Green said that he did not feel that there was another way to avoid financial burden. Mr. Lyon felt it met the criteria. Mr. Cross and Mr. Horton agreed.

4. Granting the variance would do substantial justice because:

Mr. Horton said that justice would be served on a small scale and it is the right thing to do. Mr. Lyon said that the application had been well completed and that they have approached this in a way that is fair to both parties. Mr. Cross agreed.

5. The use is not contrary to the spirit of the ordinance because:

The board agreed that the use was not contrary to the spirit of the ordinance because of the measures the Wains had gone through to insure that the old house would be taken care of after the new house was completed.

IT WAS MOVED, (Cort Cross) AND SECONDED (Bill Green) to accept the application for variance for Malcom and Ingrid Wain of 408 Sugarhouse Road, with the conditions of approval that have been provided by Mr. Stanley, and that the construction not begin until the agreement has been signed.

THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Stanley advised the Wains to meet with the Board of Selectmen to agree on the appropriate details of the terms.

Other Business

The minutes of the August 17, 2009 meeting were not reviewed, as there was not a quorum.

Mr. Stanley now came to the Zoning Board to review the proposed fees for the Zoning Hearings. Generally, they only charge applicants for postage and the fee for advertising. He has done an estimate with the finance officer to see what the costs were for the various individuals involved in the zoning meetings. He indicated that Amy Rankins gave him a total of the time she spent getting materials ready for the meeting. Including the secretaries time, the meeting that was just held cost the Town about \$300. It was his recommendation that if they charged the applicants \$150 per meeting, plus postage and advertising, the Town could make back some of the money that was spent to prepare for, hold and record the meeting.

Mr. Lyon asked what the Planning Board was charging for hearings. Mr. Stanley said that they have recently gone through and re-done their fees and added some fees that were not there previously. They have created a fee schedule that charges a large amount for a conceptual hearing, with the filing fee to be credited if the hearings continue on to a final hearing.

Mr. Stanley said that if the board didn't like the figure of \$150 per meeting, they could suggest another amount.

Chair Green had two questions regarding some of the hearings they have as well as the amount being proposed.

Chair Green said that he was not exactly sure of how the cost per meeting was determined. He added that any fees he has been experiencing, even outside the Town, are now under the magnifying glass. He understood that fees should be present but wonders how it should be balanced, since the people coming to the Zoning Board are taxpayers. Chair Green also mentioned that some of the hearings, particularly wetlands crossings for driveways, don't seem to serve any great purpose other than what was presented to them. He wanted to make sure that going forward with fees it is necessary and beneficial for the person to come forward. Mr. Stanley said that most of the time cases that come before the Zoning Board are pretty much "non-issues," but that they still represents the same amount of time spent by the Town to hold a meeting. He said there are lots of incidences where this becomes an issue. Mr. Lyon asked if Chair Green's point was that \$150 is a hefty fee for someone who wanted to come to get an exception on something like a driveway crossing over a wetland. Chair Green answered in the affirmative.

Mr. Cross asked if the Zoning Board had the authority to set fees. Mr. Stanley said yes, with regards to Zoning Board fees and hearings. Mr. Cross asked if they needed approval from the Board of Selectmen. Mr. Stanley said that they did not.

Mr. Green asked how Mr. Stanley reached the amount of \$150 for the meeting.

Mr. Stanley said that the following time increments and fees were added:

4 hours from the Land Use Assessing Coordinator.

2 hours for the Zoning Board Administrator.

3 hours for the secretary.

He figured the actual cost to the town to have the meeting to be \$298. Mr. Stanley said that he hadn't distinguished between special exception or variance categories but is willing to come up with the differences if they wish. Chair Green said that the two sorts of hearings were very similar.

Chair Green said that they need to balance the cost with keeping in mind that the applicants are tax payers. Mr. Stanley noted that surrounding towns charge between \$100 - \$150 per hearing. They are proposing \$150 plus postage, plus recording fees. He said that taxpayers pay taxes and expect some sort of service from their taxes. The Zoning Board was targeted because it is not utilized as much as other boards, and it seemed reasonable to charge for these types of hearings. It was estimated that fees for these hearings could bring in between \$2500 - \$3000 per year in revenue to the Town. Mr. Stanley said that if they think the amount should be less per meeting, he is fine with that. He is doing as told by the budget committee and the Board of Selectmen to find revenue where they can and where it is reasonable to do so.

Mr. Cross suggested tabling this issue for the time being until the whole board was present. Mr. Lyon felt that a lot of good points were made including the wetland crossing hearings, and Mr. Stanley's efforts to find alternative ways with which to deal with those kinds of issues. Mr. Lyon asked Mr. Stanley what was involved in the State's approval for the wetland crossings. Mr. Stanley explained that unless the Conservation Commission has a problem with it, it is approved. Mr. Lyon said he liked the idea of the Conservation Commission being more involved with the process of these driveway crossings over wetlands. Mr. Stanley said that he would look into this and cautioned that it does take time to make such changes. But he agreed that it was something that needed to be thought about. He also added that they may be reformatting the wetland regulations in the Town to help them to conform to the State's new legislation. If the new legislation passes, there would be a new thinking of wetlands across the state.

Mr. Cross thought that Mr. Stanley's memorandum regarding changes to the zoning fees should be sent to the remaining members for review and be discussed at the next hearing. Mr. Stanley agreed to do so.

Mr. Cross said that over a year ago, an approval for a ramp was denied, which had already been built. He noted that the applicant had been denied on the variance, yet the ramp still hasn't been removed. He wanted to know what was the point of denying a variance if there was no enforcement of the denial. Mr. Stanley said that there are laws that

have to be followed and Zoning decisions don't hold up very well in court. He stated that he was not the police and can't order anyone to do anything.

Cort asked if there should be some consideration as to assigning fines to those who do not comply with their decisions in a certain time frame. Mr. Stanley said that they cannot instill fines. They can only collect fees after taking the applicants to court. He noted that they want to avoid going to court because it is very expensive. They are bound by the framework of the statutes that they work within. Mr. Cross asked if there wasn't any mechanism that gives the Zoning Board any clout to enforce their decisions. Mr. Stanley said that there was not. Mr. Lyon added that the state has the authority but almost never enforces anything because they don't have the money to do so.

IT WAS MOVED (Bill Green) AND SECONDED (Cort Cross) to adjourn the Zoning Board Meeting of September 23, 2009. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 9:15pm

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London