

TOWN OF NEW LONDON  
ZONING BOARD OF ADJUSTMENT  
MARCH 19, 2007

PRESENT: Larry Ballin (Chairman), Russ Cooper, Randy Foose, Bill Green, Brian Prescott, Peter Stanley  
(New London Zoning Administrator).

PUBLIC HEARING (1)

Robert & Laurie Durkin requested a variance to the terms of Article II, Section 5 of the New London Zoning Ordinance in order to construct a cupola that exceeds the height limitation of 35'. The property is located on Old Main Street in the ARR zone, Tax Map 121-005.

Larry Ballin opened the hearing at 7:30 p.m.

Applicant's Presentation

Applicant Laurie Durkin presented a brief history of her ownership of this property consisting of the three-acre house lot surrounded by a 40-acre conservation easement. Since relocating to New London full time a couple of years ago, their family has grown, and they are now adding an addition to the house. They would like to include for esthetic reasons, as well as to enable them to enjoy the view from their property, a 7' x 7' cupola. The cupola would be in keeping with the barn style architecture and the rural character of the neighborhood. She stressed that the balance of the structure will be in compliance with the ordinance. Only the cupola is the subject of this hearing.

She reviewed the five criteria for granting a variance.

1. She addressed the hardship question first, by saying that they feel that the cupola is a carefully considered and executed part of the overall addition. It will add to the aesthetic viability of the structure, and be in keeping with the barn style architecture that seems most fitting for this unique property. It will also allow owners a vantage point to take in the view. In their written application, applicants submitted that denial of the variance would interfere with their right to use their property as they see fit, in an architecturally and contextually fitting manner, so would constitute a case of hardship whereby it would be unfair not to waive the formality of the particular dimensional requirement.
2. Granting the variance will not result in a decrease in values of surrounding properties. The location of the house is not visible from the road, or the nearest neighbors.
3. In their written statement, applicants submitted that by granting the variance substantial justice would be done by affirming the right of a family to determine the character of their own private residential environment as long as it is not deleterious in any way, especially recognizing the private nature of this property.
4. Granting the variance would not be contrary to the public interest due to remote nature of the property, and the proposal's low impact on public landscape.
5. The use is not contrary to the spirit of the ordinance. She reiterated that the cupola is the only part of the proposed addition that does not comply with the ordinance. The cupola is not going to be habitable, and she has understands that it would not add a fire danger, given today's modern fire equipment. She also pointed out that the fact that their driveway goes around two sides of the house increases the overall safety on the site. She feels the addition would not impose a danger to themselves or others.

Larry Ballin read into the record a letter from the Durkins' nearest neighbor, Frank Hammond, supporting the variance. He reported that there has been no other input submitted, and no abutters or other members of the public attended this hearing. He asked if there were any input from the Town. Peter Stanley said there was not.

Brian Prescott referred to calculations of height on sloped lots. Peter Stanley said they take the average of the sides. He said they did the computations, and the average height of this building is a little under 35-feet for everything but the cupola.

Russ Cooper clarified that the entire cupola will be above the 35-feet, and asked how high it will be. Peter Stanley said probably about 8 or 9 feet above the ridge-line.

Larry Ballin referred to the drawing saying that it appears that the roof-line itself is above 35-feet. Peter Stanley said using averages, the ridge-line from which the cupola will rise is 34.9 feet.

Bill Green asked if the cupola will be accessible from the interior of the home. Laurie Durkin said it will be, by a pull down (attic-style) door with stairs.

Russ Cooper asked if the whole purpose of the cupola is for the view. Laurie Durkin said it is for the view, but also for aesthetics as seen from the outside.

Larry Ballin asked Peter Stanley if as fire chief, does he feel that this would exceed any limitations on the Town's fire fighting apparatus. Peter Stanley said no, because it is just a cupola. If it were the whole structure, it would be a problem.

Hearing no further comments or questions, motion was made, seconded and unanimously approved to close the public hearing, and enter deliberations.

#### Deliberations

Larry Ballin noted that the Board has passed similar things in the past—for the Town and for the College. He noted that the house is invisible from the road and neighbors. He noted that the applicant went through the five findings of fact, and said he has no problem with the variance.

Russ Cooper noted that the cupola is not really a necessary thing, but said he is more inclined to support the variance given that this property is protected by conservation land. He suggested that if there were a possibility of this ever becoming more visible to the public, such as if the land were ever to be subdivided in the future, he would be less in favor of granting this variance to the ordinance's height restriction.

Randy Foose agreed that the house is invisible from the road, and neighbors.

Brian Prescott asked about the 35-height limitation in the ordinance. Peter Stanley said that the 35-foot height restriction has been in the ordinance since the beginning (of the zoning ordinance), and he thinks it was an issue of fire safety, and to keep new things within the scale of surrounding buildings at the time. He said there is no language in the ordinance referring to the purpose of that limitation. He noted that the ordinance does permit a variety of different types of towers, silos, etc., in certain zones, by special exception. He added that this year, they removed chimneys from inclusion in the height consideration.

Bill Green asked how they decided upon 35-feet in the ordinance. Peter Stanley said that typically that is the height of a hand ladder that is carried on a piece of apparatus. That would get the firefighter to the ridge-line of the house. Now they have equipment that allows greater height but must be closer to the building, so 35-feet is still a good number. He said that from a fire-fighting stand-point, the cupola is not an issue. If the house were on fire, they would just knock a hole in the cupola to vent the house.

In response to further question from the Board, he went into detail as to how they calculate the average height of a building on a sloping lot as this one is. Brian Prescott expressed some concern that the mountain side of the house is much higher. Peter Stanley said that side of the house from the ground to the highest point is just under 40-feet, but again they use the average height of all the sides of the house.

Larry Ballin asked about the average height of the Colby building and the Town shed with its cupola. Peter Stanley said they are just under 40-feet, but he cautioned that in zoning law, when considering a variance, the Board should not consider precedents. Each case must be considered individually. He reminded the Board that it did deny the cupola to the Country Club. Larry Ballin said that involved more structure. Peter Stanley said no, that was just the cupola, but not an invisible one as this one is.

Brian Prescott said he feels that nothing is really invisible. He said he does not have any problem with this himself, but noted that it is the first “look-out” cupola that the Board has considered. He said he feels it is pretty gray.

Bill Green said his only concern is that it does not have much to do with the use of the building, but with the aesthetics, and he questioned whether it is a reasonable use of the property.

Russ Cooper reiterated that the only reason he would support it is because it is protected by a conservation easement. Bill Green agreed that no one will see the house now or in the future.

Hearing no further comments or questions, Randy Foose moved to grant the variance. Russ Cooper seconded. No further discussion. Russ Cooper and Randy Foose voted to approve the motion to grant the variance. Bill Green opposed. Brian Prescott abstained. The variance was GRANTED.

#### PUBLIC HEARING (2)

Jennifer Paul requested a special exception to the terms of Article XIII, Section E-1 of the New London Zoning Ordinance in order to cross a wetland at its narrowest point with a relocated section of private road—Sunset Shores Road. The property is located at 9 and 192 Sunset Shores Road in the R-2 zone, Tax map 001-007, 008 and 114.

George Pellettieri of Pellettieri Associates Inc. represented the applicants during the hearing, and explained to the Board that the applicants own both lots bordering on this section of the private road, and would like to relocate it to take it further away from the residences, augment safety, and allow a larger play area for the children. The newly aligned section will run mostly through an open field section, and at the point where it rejoins the existing road, a lightly wooded section of small caliper trees.

The project will also include removal of an existing septic system that does not meet the town’s setback requirement from a wetland, and replacement of that with a new septic system that will meet the setback requirement. Also, they will be improving drainage by replacing an existing culvert. Finally, they will be removing an existing barn structure and the asphalt area in front of that, as well as an asphalt driveway that runs along one side of the house.

The total amount of wetland encroached upon will be 635 square feet. He referred to the landscape drawing, and pointed out one area of 25-square feet, the 50-square foot area of wetland in the location of the culvert, and said that the balance of that 635 square feet pertains to an existing drainage swale along the existing side of the road.

He reported that they have presented the plans to the Conservation Commission twice and to the Planning Board twice, and per the Planning Board’s request, they have had the wetlands delineated in finer detail. Those drawings were available at this hearing. Later in the meeting, Peter Stanley responded to a question from the Board by saying that the plan first presented to the Conservation Commission encroached upon too much wetland. Applicants returned with the present realignment that reduced that encroachment. The current plan does not increase the amount of wetlands encroachment, so the Conservation Commission has agreed to support it.

George Pellettieri went on to say that in meeting with Department heads, the question of whether or not this will have to comply with the Town’s regulations for service roads was raised. The response from Town Counsel was that it does not; therefore they have been able to reduce impact on wetlands even more by adjusting the width from the originally proposed 18-feet to 14-feet, and they have been able to down-size the radii of the curves as well. He said

they have not yet submitted the application for the wetland impact or the new septic to DES, but understand that that will be required.

Bill Green asked how many other residences are on the road. George Pellettieri said there are two beyond the Pauls, and three before their property.

Russ Cooper why the change is needed. George Pellettieri reiterated that it is to augment safety by bringing the road further from the houses, and allowing more play area in front of the homes. The change will improve the Pauls' use of their property.

Brian Prescott asked how this is different from the change previously approved for this same road. Peter Stanley clarified that previously the Board approved a similar realignment of a section of this same road in front of the Wilsons' house. This is the same road, but a different section. George Pellettieri added that the State and the Conservation Commission have approved the change to the Wilsons' section of this road, and the residents seem content with it as well. Bill Green asked to confirm that this new realignment will match up with that section in specs, width, etc. Yes.

Russ Cooper asked to clarify the location of the old septic system that will be removed, and the location of its replacement. George Pellettieri pointed that out, and reiterated that the current one does not meet the Town's setback requirement. The new one will. Brian Prescott asked to confirm that the other septic system (for the other residence) will stay where it is. Yes.

Hearing no further comments or questions, Brian Prescott moved to close the public hearing, and to open deliberations. Bill Green seconded. No further discussion. Motion unanimously approved.

#### Deliberations

Bill Green said that based on the fact that this is all the same drainage, and same road for which the Board had approved a similar change in the past, and the fact that there will be little wetland impact, he would support this. Brian Prescott agreed.

Russ Cooper asked if any wetland currently encroached upon will be freed up as a result of this change. George Pellettieri referred to the change in the septic system, improved drainage, and removal of impervious surfaces.

Hearing no further questions or comments, Brian Prescott moved to grant the special exception. Bill Green seconded. No further discussion. Motion unanimously approved.

#### OTHER BUSINESS

1. Brian Prescott moved to accept the minutes of January 4, January 29 and March 1, 2007. Randy Foose seconded. No further discussion. Motion unanimously approved.

2. The Board voted unanimously to appoint Bill Green as Chairman of the Zoning Board of Adjustment.

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Sarah A. Denz  
Recording Secretary