



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA)
MEETING MINUTES
Tuesday, May 17, 2022
Whipple Town Hall, 6:30pm

MEMBERS PRESENT: Doug Lyon, Chair, Michael Todd, Katharine Fischer, Ann Bedard, Heidi Lauridsen

MEMBERS ABSENT: Frank Anzalone, Lauren Chadwick, Steve Root

OTHERS PRESENT: Adam Ricker, Zoning Administrator, Dan Monette, Anthony Dow

1. **Call to Order**– Doug Lyon called the meeting to order at 6:30pm. Chair Lyon called the roll.
2. **Public Hearing (s):**

Case #	ZBA 22-06
Owner	William Scott Gould & Michelle A Flournoy
Applicant	Dan Monette
Address	0 Bunker Road
Parcel ID	076-035-000-000-000
Zone (s)	Residential (R-2)
Overlay	Shoreland Overlay District

Summary:

#ZBA 22-06– The applicant is applying for a variance to Article XV1, C., 2., to construct a driveway partially within the waterfront buffer. The road frontage of the lot is on the south side of Bunker Road, across the street from Pleasant Lake, however, the 50' waterfront buffer transcends the width of Bunker Road.

Chair Lyon explained that this is a new application and reminded the applicants that only the five criteria would be considered for the variance. Chair Lyon then explained the procedures for the hearing.

Dan Monette, with Fuss & O'Neill, presented on behalf of the property owners. Mr. Monette provided details on the property acreage, zoning, and road frontage. The proposed driveway would be for access to a single family residence on the currently undeveloped lot. The proposed disturbance would be a total of 835 square feet. Mr. Monette wanted it noted that the town property card indicates there was previously a house on that property that burned down. Mr. Monette is unsure of where it was located on the property, or what access it might have had in the past.

Mr. Monette presented the following to support the criteria required for the variance:

1. **The variance will not be contrary to the public interest.** This is a legal lot established prior to the ordinance and lot size limitations with no other means of access. There is no change of use and safe access is a right of every landowner in NH. This access does not alter the residential character of the neighborhood or threaten public safety, health or welfare.
2. **The spirit of the ordinance is observed.** The driveway is positioned to meet the driveway regulations for slope and width requirements. The access point provides the best sight distance and the 20 foot wide entrance point specified in the driveway regulations. Moving the driveway to the East or West would change the slope and the line of sight.

Michael Todd remarked that this seemed to be the only place the driveway could be built and Mr. Monette replied in the affirmative.

Mr. Monette stated that storm water management improvements would protect the lake.

Mr. Todd asked for more information about those improvements. Mr. Monette explained that they had submitted a shore land permit package and a septic design, which have been approved. On the South side of the driveway is a storm water practice of stone lined swale with infiltration capabilities. The upper driveway also has an infiltration basin and a stone path coming out of the driveway. There is a town culvert on the downhill side that crossed Bunker Road to Pleasant Lake and the applicant proposed a treatment to prevent erosion and sediment from the driveway. All the ditch flow along Bunker Road runs into two existing culverts which run into the lake. The current proposal will trap and treat as much runoff as possible before it runs into the lake. Proposed drip edges and trench will provide as much infiltration as possible. The portion of the driveway that impacts the 50 foot buffer is minimal.

3. **Substantial justice is done.** The driveway would be located in the safest and least impactful location that meets the driveway regulations. It is the only way to allow access for the site, there is no injury to the public, and it would allow the applicant to realize reasonable property rights. There is currently no equipment access to the property without going through an abutter's lot.
4. **The values of surrounding properties are not diminished.** The setbacks and other features of the lot and proposed building are all conforming. The residential use will fit nicely with the character of the neighborhood, and raise the value of the neighborhood.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:** This is an existing lot and access is permitted by regulation. It is encumbered by wetlands, which reduces the ability to develop with less disturbance. The alternative opportunities for access are minimal and the current proposed access meets all other zoning requirements. Maintaining and minimizing the waterfront buffer impacts will help the environment and protect the lake.

Mr. Todd asked for clarification on the location of the wetlands. Mr. Monette used a visual to show that there are wetlands in the Southeast and Northeast corners. Mr. Todd asked what would be done with the existing outhouse that is located on the Southeast wetlands. Mr. Monette was unsure but mentioned it was an old structure. Mr. Todd suggested removal.

It was asked if the property was forested and if there would be a substantial amount of clearing. Mr. Monette confirmed there would be tree clearing done and used the visual to show the proposed tree line. They would be maintaining the 25% required within the buffer and they were cutting a minimal amount within 50 feet of the water.

Anne Bedard stated this was a sharp corner and that the road was graded towards the driveway. Mrs. Bedard noted concerns with ice forming over the roadway.

Mrs. Bedard asked if the Public Works Director had looked at the plan. Mr. Monette believed approval was pending the Zoning Board hearing. Mr. Ricker confirmed that he has visited the site with Bob Harrington, however the driveway permit couldn't be signed off on until the variance was approved. He shared that Mr. Harrington had concerns about one tree that could be removed to help the sight lines.

Chair Lyons asked to clarify that the tree and the sight lines would be dealt with as part of the driveway permit process. Mr. Ricker confirmed that it was not within the 50 foot buffer so it was not impacted by the variance and Chair Lyons stated that it wasn't an issue for the Zoning Board at the moment.

Mr. Monette continued by summarizing his support for unnecessary hardship: This is a unique lot with a majority of its frontage lying within the 50 foot buffer. If Bunker Road was located a few more feet inland, they would not require the variance. Steep slopes and sight distance create additional hardship to access and literal enforcement would deny access for residential use in a residential zone. The proposed use is a reasonable one as the construction of a single-family home in the R2 district is permitted by right.

Chair Lyons opened the discussion to questions from the board members. There were none. Chair Lyons opened the discussion to questions from members of the public:

Anthony Dow, an abutter from 534 Bunker Road, stated their main concern is the water coming off the left side of the building and retaining wall. Mr. Dow noted water already pools at the corner of the lot and it is usually wet there. Mr. Dow is wondering how the project could be achieved without another storm drain and culvert to the lake due to the seasonal streams that run through the property. There is concern that with a building on the lot, it will force the water around it and to the neighbors.

Mr. Monette responded by using a visual to explain the drainage system. That design is a large box of stone with a reservoir on the bottom with a pipe. It is designed to take on a ten year storm. The water coming off of the hillside goes into the ditch and gets absorbed as much as possible. When it is overwhelmed and rises to the level of the pipe, the pipe discharges to a lower storage area. There is one storage area on the right hand side of garage entrance and the left hand side of the driveway back out. There is a large rock lined swale that goes along edge of the driveway towards a catch basin which brings it to the existing town pipe diverting it away from the abutting property and towards the existing culvert.

Mr. Ricker noted that the zoning regulations are written so that the post-development run-off must meet the pre-development run-off. The obligation is on the applicant to treat the storm water that is created by the impervious area. There is already existing run-off but there should not be any additional water run-off.

Mrs. Bedard asked for Mr. Monette to show where the two existing culverts are located. He used the visual to demonstrate the locations and Mrs. Bedard reinforced that it is imperative that the water on that corner be controlled. Mr. Todd asked for the size of the existing culverts and what that would translate to for storm ranking. Mr. Monette estimated that, between two of them, they were probably sized for five year storms. Chair Lyon read off that both the culverts were 12 inch CMP. Mr. Todd asked if they could add a third culvert to address the neighbors' concerns. Mr. Monette agreed that an additional culvert could relieve that ditch flow on the road. There was a discussion on where the low point of the road was. Mr. Todd indicated that the third culvert would make sense to add at the lower end of the lot. Mr. Monette gave his agreement again that it would be helpful but noted it was all work within the right of way. Mr. Ricker asked Mr. Todd to clarify if he was looking to make that a condition of the variance or a recommendation that they should consult public works? Mr. Todd replied that it was not necessary to make it a condition but that it should be dealt with and proposed continuing the hearing in order to provide the time to deal with it.

Mrs. Bedard felt that the intention of the proposed plan was good and that it should be left up to public works to remedy the existing situation with water drainage. Chair Lyon felt it should be left to the road agent to determine during the permitting process, after the variance is granted.

Mr. Ricker noted that the ditch line was relatively flat and there may be alternatives to adding a third culvert that could be considered. Mr. Monette concurred and shared his experiences with Messer Pond. Mr. Todd reiterated his concern that turning this from a wooded lot to a developed lot could potentially increase the flow of water to the lake. Mr. Monette referred again to the storm water management plan and noted that there should be no water quality issues and this was more of a flood water issue.

Chair Lyon asked for any other questions from the public relating to the variance request. There were none

IT WAS MOVED (Michael Todd) AND SECONDED (Anne Bedard) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon felt the applicant had successfully supported their arguments for the five criteria and, in his judgement, met the five criteria. The variance would not be contrary to the public interest and the applicant made a good faith effort to improve drainage off of the site. There is an understanding that there is existing drainage issues that the Public Works Director and the engineers will discuss and additional drainage work is a priority for the town. The applicant is entitled to access the site. The spirit of the ordinance is to deal with impact to the shore land, and health and safety as pertaining to the site distances at the end of the driveway. The applicant has made a good faith effort to deal with those issues. Substantial justice is done as the applicant clearly has the right to access an approved building lot and this lot was approved before the existing zoning regulations. The development is consistent with present use of land in the neighborhood and that would not diminish surrounding property values. This lot has significant challenges due to its location, size and proximity to the road and wetland buffer. The reasonable use that is being proposed is one that the owner is entitled to. All five criteria have been met.

IT WAS MOVED (Doug Lyon) and SECONDED (Michael Todd) to approve the variance to construct a driveway partially within the waterfront buffer conditional to the driveway being constructed according to the plans CS-102 dated January 10, 2021 submitted to the town, and as presented to the Board, and that any plantings related to

this project be consistent with the native species recommended by DES. Also with the recommendation that the engineers discuss with the highway department any additional drainage issues. THE MOTION WAS APPROVED UNANIMOUSLY. Voting members: Doug Lyon, Ann Bedard, Michael Todd, Katharine Fischer, Heidi Lauridsen.

3. Other Business

The Selectmen have suggested that a code of conduct be added to the rules of procedure for all committees and boards. Adam Ricker shared that he had spoken to Kim Hallquist, Town Administrator, regarding the one sentence addition on civility that Chair Lyon had drafted. Copies of the proposed addition were provided to the board so the members could review for the next meeting. Mr. Ricker also shared that, to date, there have been no civility complaints brought to the Town Administrator regarding the Zoning Board.

4. Motion to Adjourn

IT WAS MOVED (Doug Lyon) AND SECONDED (Anne Bedard) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 7:20.

Respectfully submitted,

Cara Leone

Land Use and Assessing Coordinator
Town of New London