



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Thursday, September 14, 2015
6:30 PM**

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd (Vice-Chair), Vahan Sarkisian, Ann Bedard, Cheryl Devoe, Paul Vance, Frank Anzalone (Alternate), Katherine Fischer (Alternate), and Jerry Coogan (Alternate).

STAFF PRESENT: Lucy St. John, Planning and Zoning Administrator.

OTHERS PRESENT: Charles Hirschberg (CLD Consulting Engineers), Paul Raynor (Lane River Design), Bill Helm (Chair of Planning Board), Bob Brown (Chair of Conservation Commission and abutter), and John & Mary Doyle (abutters).

Call to Order: Chair Lyon called the meeting to order at 6:30 pm.

Roll Call: Chair Lyon called the roll. He said the meeting had been properly noticed.

Approval of Minutes

IT WAS MOVED (Chair Lyon) AND SECONDED (Vahan Sarkisian) to approve the minutes of August 18, 2015, as circulated. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Lyon appointed the following to be voting members for tonight's discussion: Chair Douglas Lyon, Michael Todd, Vahan Sarkisian, Ann Bedard and Cheryl Devoe.

Public Hearing

- **Variance application for Anne and David Wustrow.** Property located at 575 Forest Acres Road. Tax Map 119-020-000. Zoned Residential, R-2. Owner proposes to tear down and reconstruct a nonconforming three bedroom dwelling partially within the existing footprint within the 50' waterfront buffer, and with some disturbance within the 50' waterfront buffer.
 - Variance to Article XVI, Shoreland Overlay District – C. Permitted Uses (C.2); G. Waterfront Buffer (G.2.b); and J. Nonconforming Buildings and Structures-(J.1 and J2)
 - Variance to Article XX Nonconforming – (B.1.) and (B.3.b.2.)

Charlie Hirschberg, CLD Engineering and Paul Raynor presented the application on behalf of the owners who lives in California and were not able to attend. Key points of the presentation included:

- ✓ Been in the family since 1968.
- ✓ Daughter, Anne Wustrow (now owner and applicant) owned it since 1991.
- ✓ Existing building footprint is about 820 sq. ft., of that is a 240 sq. ft. screened porch on the lake side and 600 sq. ft. of living space with some unique features.
- ✓ Approximately 330 square feet of the existing structure is located in the waterfront buffer.
- ✓ Septic System is a new Clean Solution System that meets the setbacks of wetlands and the abutter well; effecting where the lot is buildable.
- ✓ What is being proposed is to rebuild on the existing footprint a single level with a porch.

- ✓ Noted that back in 1991 determined not it was unbuildable, as there are wetland on the lot, which is located on the other side of the road (not the lakeside).
- ✓ In the nonconforming area, the living space will be reduced.
- ✓ Run off going along the lake side will be minimized with the new roof, moving most of the run off away from the lake.
- ✓ Nonconforming structure, and uncertain of the variances required due to the confusing language in the ordinance and not sure if they really need all the variances.
- ✓ State Shoreland permit has been granted.
- ✓ Will stay in the existing building footprint.
- ✓ Tree removal approved by the Planning Board, and will discuss removing the stump with the ZBA. They would like to remove the massive stump and its roots, which are running under the house and effecting the steps. The technique to be used will be done within the foot print of the house. Mr. Hirschberg said they would pull the tree in a direction so to not disturb the other trees. Mr. Hirschberg said that this is negotiable and the porch's plate form could be moved over slightly or built on top of the stump, although, it will rot over time.
- ✓ The intent is to rebuild on the same foot print and put a foundation under the house without a full basement, instead, put a frost wall with a crawl space 1 ft. below grade and layered with stone for drainage. The three wing walls will be positioned to support the porch, instead of support piers. Also, they are asking for a single bay garage at ground level.
- ✓ A storm water management was approved from the State Shoreland and submitted to the Town.
- ✓ The lot does not have much vegetation on the outer limits however, once graded, they will improve the amount of vegetation on the lot.
- ✓ Impervious 14%, which complies with Town and State requirements.
- ✓ Need dip line will reduce the amount of runoff toward the lake.
- ✓ Stones to be placed under the porch area.
- ✓ They are staying within the foot print and when they expand they are meeting the 25 ft. setback, the road setback and 30 ft. setback. So as they expand, they are conforming.
- ✓ Expanding a nonconforming structure that straddles the waterfront. He noted that the building is on said foot print within 50' & 60' buffer and already has land disturbance.
- ✓ Discussed that this is a nonconforming structure, not a nonconforming use.
- ✓ Nothing is going to be constructed in the flood plain.
- ✓ Discussed it the provisions of voluntary replacement of substantial improvement apply and how much of the structure, said the existing is 840' including porch but not including second floor (600').
- ✓ Explained that the portion of the lot on the other side of the road has wetlands and approximately only 9% of the whole lot is non-wetlands (both sides).
- ✓ Asked the Board for clarification on what provisions really apply, and if Article XVI, J.3 (page 70) supersedes the other provisions. He noted that the ordinance is quite confusing and difficult to understand.

Motion to discuss

**IT WAS MOVED (Chair Lyon) AND SECONDED (Vahan Sarkisian) to discuss.
THE MOTION WAS APPROVED UNANIMOUSLY.**

Board comments

- ✓ The house slightly impinging on the existing foot print on the 30 ft. side set back, it would not be increasing, but maintaining the setback.

- ✓ Discussed the details submitted on the survey plan which needs to be signed by the surveyor. Referred to past ZBA discussion on the need to have a current and correct survey and recording of survey plans.
- ✓ Discuss how they were planning to remove the stump, considering the proximity of the other trees and not have other disturbance to the waterfront buffer. Suggested that the stump be ground in place and filled over with earthen materials so not to cause any further disturbance to the waterfront buffer, and cut the roots if they interfere with the foundation. Leaving the stump doesn't compromise the integrity of the proposed structure. What is understood of application, is that while the intention is to remove the stump, it is also their intention to put that section of the property back into its "original condition" by filling and planting on it. Chair Lyon suggested, that for purposes of their continued discussion, the board discuss whether or not removing the stump will be a deal breaker or not.
- ✓ Discussed that several variances are requested, per the provisions identified and that the language in the Ordinance is quite confusing, convoluted, contradictory and circular. Each of the provisions were discussed. Discussed Article XVI, Shoreland provisions specifically J 1 and J2, and if J3 negates J 1 and J2. Ms. Devoe stated that in her opinion, if they are asking for a variance to Article XVI, J.2, they do not need one, except for J.1, because it also represents it. Therefore, A. and B. need to be met and all of J.1 and J.2.d. The board discussed this further.
- ✓ Discussed if the provisions of voluntary replacement of substantial improvement apply and how much of the structure. Referred to the 1977 property card and that the structure was improved over the years, some improvements without permits, and that it had morphed from a one bedroom house to a three bedroom house and how should the Board calculate the useable areas. Discussed the issue of previous construction that happened in the past without a permit. This bring up the fact that the board periodically run into situations where things have been constructed long ago in the past without permits. Noted that getting building permits in the past wasn't the same as it is now, and someone may had needed a variance, but the Town may not had required them. Discuss that old tax cards may not be correct and reliance on them just complicates the issue, and discussed that the current building footprint should be used as the point of discussion relative to expanding.
- ✓ Discussed how much of the land was unbuildable because it is wetlands.
- ✓ Discussed that the location of the chimney and that it won't be adding to the overall footprint of the proposed structure.
- ✓ Agreed that Article XX doesn't apply, they are dealing with Article XVI, Shoreland Overlay District, Section 16.G.2.b, rock and stump issue, 50' set back plus 10' issue and J.1 & J.2, has a series of requirements which appears to have been met, only permitted within the existing footprint and outside dimensions and that is the case for the parts within the wet land buffer area. Existing decks & porches, cannot be enclosed or covered expanded, but they're already enclosed, and are not in the overlay district. Include a new foundation, the structure is already partially in the buffer. No living space or basement are increased and that the construction of the house is a permitted use, per C. 2.

Public Hearing Opened

Chair Lyon asked the audience if there was anyone who had testimony, thoughts or information they want to provide. Ms. St. John referred to the letters received from John and Mary Doyle, at 533 Forest Acres Road.

Robert Brown, an abutter and Chair of Conservation Committee commented:

- ✓ He is fundamentally supportive of this project.

- ✓ He feels the most important thing to do is what's best for the pond, the environment, neighbors and so forth.
- ✓ He commented about how OSHA has some specific instruction on how to dig a hole in the ground, called Stepping and Grated. And that they have rules to prevent a lapse or cave in on a worker, so long as those guidelines are followed, as he had to follow OSHA standards when he constructed his house recently on the pond.
- ✓ Expressed that the tree stump should be left intact so not to cause any further disturbance to the waterfront buffer.
- ✓ He referred to the original subdivision plan, called Forest Acres created by Forest Kimble. He commented that many of the lots in this original subdivision plan were all individual surveyed lots with a separate deed and recorded accordingly. Is the front and back the same lot or are there two separate deeds and if so, could the back lot be sold separately? He asked if the lots were merger or annexed or if they were required to be merged. Mr. Todd explained that a merger of two tax parcels into a single parcels is not the same as an annexation of the two lots from a Registry of Deeds point of view. Mr. Hirschberg said his understanding is that it is one deed and one lot. Mr. Todd said it is correct, parcel one and parcel two on a deed, but voluntary merger of lots of record is a tax map issue, it is not an annexation of land from a surveyor's point of view. Mr. Hirschberg said if it is done without consent of the property owner, they could dispute it, but if it was not disputed in a certain period of time, it was considered consented. Ms. St. John referred to the provisions of RSA 674:39-aa Restoration of Involuntarily Merged Lots and noted that a notice is include in the Town Report about this.
- ✓ Commented that from the Conservation Commission viewpoint, there is a lot of things we don't understand including how the Town process works, and that normally the Conservation Commission has reviewed and commented on projects. Ms. St. John referred to the email in the file and provided to the ZBA members dated Sept 8, 2015 from Bob Brown, and Ms. St. John's email response of Sept 11th, which explained when the Wustrow Shoreland application was received and the Town process for the dissemination of said information. The Board commented that the process was clearly documented and that the Conservation Commission and abutters had ample opportunity to provide comments.

John and Mary Doyle, abutters were in attendance. They referred to the letters of support they had submitted and commented they believe this project will a positive impact on the neighborhood and area with minimal impact on the pond; leaving the property in a better state than it is.

Chair asked if there were any additional comments from the audience. There were no other.

Public Hearing Closed

Motion

MOTION WAS MADE (Chair Lyon) AND SECONDED (Michael Todd) to discuss. THE MOTION PASSED UNANIMOUSLY.

Board Discussion Opened

The Board discussed the location of the proposed piers/wing walls, the issue of the tree stump and the need to correct any disturbance and to improve the waterfront buffer. They also reviewed and discussed the specific criteria needed to support the variance request as outlined in the application responses and that the variance criteria were met. Discussed snow load. Discussed that the hardship is the location of the existing septic system, can't move the structure any closer to the lake or the road and most of the property is located

on the other side of the road, which has been discussed as having unusual topography and the use is reasonable.

Motion

IT WAS MOVED (Doug Lyon) AND SECONDED (Cheryl Devoe) that variances were only required to Article XVI, Shoreland Overlay District provisions C.2 and G.2.b. The Board concurred that the five conditions for approving the variances were met. The variances were approved with the following conditions:

1. The tree (1) to be cut and approved by the Planning Board can be removed but the stump must remain. The stump maybe grinded and filled over with earthen materials but no digging of the stump or roots shall be permitted.
2. No wing walls may be used to support the porch areas, precast support piers shall be used.
3. No future building expansion is permitted for any part of the new structure including any part of the structure that is conforming or any part of the structure which is nonconforming.
4. Areas of disturbance shall be replanted with non-invasive plants per the NH Department of Environmental Services (NHDES) list.
5. As-built plans shall be recorded at the Merrimack County Registry of Deeds (MCRD) upon completion and within one (1) year from the date the building permit is issued by the Town. The recorded as-built plan shall include a plan note stating the conditions of the September 14, 2015 ZBA approval.
6. The survey plan submitted with the application shall be stamped and signed by the surveyor, include the conditions of the ZBA approval and be recorded at the Merrimack County Registry of Deeds (MCRD).

THE MOTION PASSED UNANIMOUSLY

Other Business

There was no further business.

Motion to Adjourn

IT WAS MOVED (Chair Lyon) AND SECONDED (Vahan Sarkisian) to adjourn the meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

Meeting adjourned at 8:20 pm.

Respectfully submitted,

Dianne Richtmyer, Recording Secretary
Town of New London