

Draft

Zoning Board of Adjustment

December 19, 2005

Members Present: Tom Vannatta (Chair), Betsy Soper (Vice-Chair), Katheryn Holmes, Tanya McIntire, Alex Azodi (Alternate) and Helen Wright (Alternate)

Mr. Vannatta opened the meeting at 7:10 p.m.

The Board reviewed the minutes from November 21, 2005. A motion was made to accept the minutes as complete. It was seconded. All were in favor.

Mr. Vannatta passed out the proposed changes to the zoning ordinance that he had submitted to the Planning Board for review.

Mrs. McIntire said that she thought that the Shoreland Overlay District was confusing. It referred to 300 feet and then it was never mentioned again.

Ms. Holmes said that the State talked about 300 feet.

Mrs. McIntire said that the regulations did not say what can or cannot be done within the 300 feet.

Ms. Holmes agreed that it needed to be clarified.

Mrs. McIntire also had an issue with paving in the 300 foot buffer zone. She did not feel that it should not be allowed because it was an impervious surface.

Mr. Vannatta said that the Planning Board was looking at the changes at tomorrow nights meeting.

Mr. Vannatta reviewed the variance requirements for the upcoming hearing and commented that it was a use variance and those were the requirements that the agent followed.

Mrs. Cluff read the public notice as follows:

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, December 19, 2005 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 7:30 p.m., Sarah Bullis, property located at 159 Cheney Road, Newbury, NH, will seek an Equitable Waiver of Dimensional Requirement as provided in RSA 674:33-a to

permit the following: for an existing structure that is in violation of the 75 foot wetlands setback requirement to remain. Newbury Tax Map 042-287-426.

Copies of the applications are available for review at the Newbury Town Office building.

Sarah Bullis and her agents, David Eckman from Eckman Engineering and Bob Stewart from RCS Designs, came forward.

Mr. Vannatta stated that the hearing had been properly noticed and explained the procedure as follows:

1. The Board would introduce themselves.
2. The applicant would present his case.
3. The Board would ask questions.
4. Open the hearing to public comment.
5. Close the hearing for deliberation.
6. The Board would vote.
7. There was a 30 day appeal period.

Ernie Pagragan was not present, so Mr. Vannatta appointed Mrs. Wright as a voting member.

Mr. Stewart said that he was here because his client's house was built in the 75 foot wetland setback. The plans were developed for this lot before any of the zoning changes. The test pit for the septic was done in August of 2004. The septic plan was approved on January 3, 2005 by the Town and January 13, 2005 by State for the location of house and septic as it exists today. His client was caught up in the middle of the regulations being changed. The Bullis's thought that they were in compliance. It was picked up at the last Planning Board meeting that the house was not in compliance.

Mr. Eckman picked it up when he surveyed the lot for a subdivision.

Mr. Stewart said that in looking at the plan, the house could have been moved over, but they did not realize that it was not in compliance at the time.

Barbara Freeman, Planning Board chair, asked what the date of the building permit was.

Mr. Stewart said that it was June of 2005.

Mr. Stewart said that if they had not submitted the subdivision plan, they would never have been aware of the problem.

Mrs. Cluff commented that the house was also not built in a building envelope of one contiguous acre per paragraph 5.10 of the Zoning Ordinance. They would need to get an

Equitable Waiver of Dimensional Requirement for this as well if they intended to subdivide the property.

Mrs. Freeman verified that that was correct.

Mr. Stewart said that he would discuss that with his client.

Mr. Stewart said that he did not believe that the Board could be convinced that his clients just decided to build their home where they wanted to and wasted all that time and money. They were simply caught up in the middle of the regulations being changed.

Mrs. McIntire commented that the regulations had changed in March, well before the building permit was issued.

Mr. Azodi told Mr. Stewart that the Board understood that this was not done maliciously, but there were other issues that needed to be addressed. He said that they also needed to prove that it was not ignorance of law.

Mr. Vannatta said that it may be of benefit to review the facts of the Equitable Waiver of Dimensional Requirement.

Mr. Eckman read the facts of the Equitable Waiver of Dimensional Requirement per the application (please see file).

Mr. Azodi asked if the building was up when they discovered the violation.

Mr. Eckman said no, the foundation was there. It was around September 1, 2005.

Ms. Bullis said that it was a modular house and it had already been ordered. It arrived around the 15th September.

Mr. Stewart said that they surveyed the property and did the field work in early September, but did not realize that there was a violation until they prepared the plan.

Ms. Bullis said that it was discovered at the November Planning Board meeting.

Mrs. McIntire said that if they were not trying to subdivide the property, this violation would never have been noticed.

Ms. Bullis said yes, but that they had always intended to subdivide. They did not realize that it was so entailed.

The Board reviewed the location of the well and septic on the plan and Mr. Stewart said that they met the State requirements.

Mr. Vannatta said that he spoke to Paul LaCasse who said that he measured the distance from the house to the brook and it was over 100 feet, but that he did not have a map of the wetlands at that time.

Mrs. Freeman asked to read the first sentence of paragraph 5.10, building envelope, of the Zoning Ordinance.

Ms. Bullis said that they measured to the brook because they were not aware that there were any wetlands between the house and the brook.

Mr. Stewart said that most applicants used the septic plan as their site plan when they were applying for a building permit.

Mrs. Cluff asked why the wetlands were not on the septic plan.

Mr. Eckman said that it was not required; it just needed to be estimated.

Mr. Azodi asked what the cost would be to move the house.

Ms. Bullis said that she did not know.

Ms. Holmes asked if they were currently living in the home.

Ms. Bullis said no, they cannot get an occupancy permit until they get an Equitable Waiver of Dimensional Requirement.

Ms. Holmes asked how far the home was from the wetland.

Mr. Stewart said that it was 56 feet.

Mr. Azodi asked what the setback was in the old regulations.

Mr. Stewart said that there was no setback.

Mrs. McIntire said that they were looking for an Equitable Waiver of Dimensional Requirement from 8.3, not 5.9 as they put in their application.

The Board agreed.

Mr. Vannatta opened the hearing to public comment.

Mrs. Freeman said that in her opinion, this application fit the requirements. She believed that the applicant did make every effort to follow the regulations. The building inspector did not catch this violation either, so the Town had some responsibility.

Ken Shooster, abutter, said that it seemed like a lot of mistakes were made. He thought that the applicant should have to move the house, but not at their expense. He did not think that the Town should have to live with this house being in the wetlands setback. He asked if there was a setback from the road.

Mr. Stewart said yes, and that was met.

Mr. Shooster said that this would have escaped everyone's notice if it were not because of the subdivision. How did that happen?

Mr. Vannatta said because of the information that was available to the building inspector at the time.

Mr. Stewart said the level of the requirements for a subdivision required more detail.

Mr. Shooster asked what could be done to avoid this in the future.

Mr. Vannatta said that they were getting off track and the focus of this hearing was not on changing the ordinance.

Mrs. Freeman that this was the way we find out when we need to make adjustments.

Ms. Holmes commented that it did not happen very often.

Mr. Vannatta closed the hearing to public comment and began deliberation.

Ms. Holmes said that she felt that they had met the requirements. It was not a perfect world and mistakes happened.

Ms. Wright said that she felt that it was a good faith error and felt that denying the application would cause the applicant undue hardship.

Mrs. McIntire also felt that it was a good faith error and felt that they should be granted a waiver. She said that they did the best they could with the information that they had.

Ms. Soper agreed with all of the comments that had been made and felt that it would be unreasonable to ask them to move the house.

Mr. Vannatta said that he felt that the criteria were met. It was timed incorrectly. He felt it would behoove the Board to grant the waiver.

A motion was made to grant. It was seconded. All were in favor.

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, December 19, 2005 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 8:15 p.m., Sarah Bullis, property located at 159 Cheney Road, Newbury, NH will seek a Variance as provided in 5.12.4 of the Newbury Zoning Ordinance to permit the following: to waive the density requirement for a proposed 2 lot subdivision. Newbury Tax Map 042-287-426.

Copies of the application are available for review at the Newbury Town Office building.

Mr. Stewart said that he had discussed the building envelope issue that Mrs. Cluff had brought up earlier in the hearing and said that they would like to continue the variance hearing so that they could apply for another Equitable Waiver of Dimensional Requirement.

A motion was made to continue the above noticed hearing to January 30, 2005 at 8:00 p.m. It was seconded. All were in favor.

A motion was made to adjourn at 9:30 p.m. It was seconded. All were in favor.

Respectfully submitted,

Lacy L. Cluff
Recording Secretary