

Draft

Zoning Board of Adjustment

February 27, 2006

Members Present: Tom Vannatta (Chair), Betsy Soper (Vice-Chair), Katheryn Holmes, Lacy Cluff (Alternate)

Mr. Vannatta called the meeting to order at 7:13 p.m.

Administrative Business

Mr. Vannatta asked for the Board's support in appointing Mrs. Cluff as an alternate Board member. Ms. Soper made a motion to appoint Mrs. Cluff as an alternate Board member, Ms. Holmes seconded it. All were in favor. Mr. Vannatta said that her term would expire 3 years from today's date.

The Board reviewed the minutes from January 30, 2006 and made corrections. A motion was made to approve the minutes as corrected. It was seconded. All were in favor.

Mr. Vannatta noted that April 1st was the next session for Office of Emergency Planning.

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. Vannatta explained that this hearing had been continued twice. It was originally heard on December 19, 2005. It was continued to January 30, 2006 and continued again to tonight.

David Eckman from Eckmans Engineering and Robert Stewart from RCS Designs introduced themselves as the authorized agents for Sarah Bullis. Sarah Bullis was also present.

Mr. Vannatta said at the last hearing the Board discussed the application with the applicant, but did not open the hearing to the public or deliberate. He said that at the last

hearing, there was a question about the calculations and whether they were done correctly or not. He asked Mr. Eckman if he had made any changes.

Mr. Eckman said that they were done correctly. He misspoke at the last hearing. He said that he subtracted the wetland buffer out of buildable area. It was never taken out.

Mr. Vannatta said that at the last hearing, they spent a fair amount of time discussing this application. He asked if they had anything new to add.

Mr. Eckman said yes, with the interpretation of regulations. He said that Mr. Stewart was going to discuss those.

Mr. Stewart said that he wanted to present a few things that were factors that went into hardship. He said that the new zoning regulations were passed in March 2005. He said that he did not know when the first public hearing took place, but the regulations changed several times. After the first public hearing, it became interim zoning. The Bullis' purchased this property in mid-November 2004. The new zoning was passed in March 2005. Their intention when they bought the property was to subdivide the 11 acre parcel. There was a lot of discussion on developable area and determination of density.

Mr. Vannatta interrupted the hearing to notify the applicant that there were only four Zoning Board members voting this evening. The Board generally operates with five voting members. He said that they have the right to choose to continue the hearing to another time with a full Board.

Sarah Bullis said that she was okay with having the hearing tonight.

Mr. Stewart said that the purpose of the article is in keeping with what they were trying to do. He read Article 5.0 of the Zoning Ordinance. In keeping with the purpose of this ordinance, what was proposed was 2 lots. Prior to the new regulations, the regulations required only 2 acres.

Ms. Holmes asked if he read that article because that was what changed.

Mr. Stewart said Yes, the minimum lot size/density requirement changed. What was important here was that these regulations were proposed between November and March. They are short roughly 1.5 acres

Mr. Vannatta asked what the bottom line was.

Mr. Stewart said that when the Town was asked to vote on the regulations, item #3 in Table 5.2 did not exist. The Board was asking people to vote on something that did not even exist.

Mrs. Cluff explained that it had not been created yet because the regulations had not been approved. They would have put a lot of work into creating this list without even knowing

if the new regulations were going to pass. She said that this was explained to him at the public hearings for the zoning amendments.

Mr. Stewart said that he disagreed with this approach at that time as well. He said that the regulations said that it existed. When he voted and his clients voted, there was no way of determine what that meant to their lot. If the list was created prior to voting, they could have seen how the regulations were going to affect their property. Without it, they did not know how the regulations affected their land.

Mrs. Cluff noted that the Town chose to vote these regulations in even without this item existing. Had the Bullis' known ahead of time how the regulations were going to affect their property, it would not have changed their vote. She would assume that they would have voted against the regulations if they felt the information available was incomplete and they also would have voted against the regulations if they knew that they were going to adversely affect their property.

Mr. Stewart said right, but they did not know what they were voting on. They purchased the property with this intention of subdividing. When they bought the property, they thought that they could subdivide. When voted on, there was still nothing at this time in March 2005 that would say that they had to have 6 acres of developable land.

Mr. Vannatta said that they were approaching the issue from a timing aspect. He asked Mr. Stewart if he was moving this to a hardship.

Mr. Stewart said that there was no way for them to know how this affected their property.

Mrs. Cluff said that this road was a gravel road, so they would have known ahead of time how these regulations were going to affect their property. The regulations clearly state that gravel roads had a multiplier of 1.5. She said that his argument would make more sense if they lived on a paved road that was categorized as sub-standard.

Mr. Stewart said that it was not clear. He read it as saying sub-standard gravel road.

Mrs. Cluff disagreed and said that it read all gravel roads.

Mr. Vannatta said that he understood what Mrs. Cluff was saying. It Stood on it's own merits. It includes all gravel roads.

Mr. Stewart said that this did not change the numbers, it was not in black and white.

Mrs. Cluff said that she also disagreed with his argument that they had these plans before the regulations were passed. There were a lot of people with plans for their property that the regulations no longer permit them to do.

Mr. Eckman said that each of the lots would be over 5 acres. They did not need State approval because of the size of the lots. He felt that what they were trying to do was in the spirit of the ordinance and that the regulations attacked this lot.

Mrs. Cluff disagreed and did not feel that what they were trying to do was in the spirit of the ordinance. The reason that the regulations seem to attack their lot was because this was the type of land that the regulations were trying to protect. There were a lot of wetlands and steep slopes on the property.

Mr. Stewart said that if they go back to when they bought the lot, there can be different perspectives on this. If he read through this, he was not sure that it was fair to clients to assume that there was this road list that the regulations clearly state exists.

Mr. Eckman said that the test pits were done in August of 2004. They were done well before they purchased the property so they knew if it could be subdivided. We were hired in January before the new regulations were in place.

Ms. Soper asked who determined that this was the boundary.

Mr. Eckman said that his firm surveyed the lot.

Mr. Stewart said that they did their homework. They hired him ahead of time to make sure that they could build on this lot. They meet the intent of the regulations, to have large lots on a rural road. He said that these lots were very buildable.

Mr. Eckman said that the wetlands area was not that big, just long. The strip bisects the lot.

Mr. Stewart said that there would be no wetlands crossings.

Mr. Vannatta said that the real changes were the density requirements.

Mr. Eckman said that in the old ordinance, you got some credit for the steep slopes.

Mr. Vannatta asked if they had anything else new. He felt that they had been going in circles.

Mr. Stewart said that what they were looking to do did meet the purpose of article 5.0. He felt that this was very important. Also, the timing of the road situation was also important. The town voted on a document that did not exist.

Mr. Eckman said that he also felt that it was critical that they did all the test pits for this property in August 2004.

Ms. Holmes agreed that that was a critical part of this application.

Mr. Eckman noted that these were large lots.

Mr. Vannatta opened the hearing to public comment.

Mark Whickarman, abutter on north side, said that the for sale sign was about 10 or 15 feet from the property line. He thought that the lot was non-buildable. He said that the flat spot where the building envelope was at the bottom of another steep slope. A lot of water drained down that property. He did not feel that they could put a driveway in. He said that they needed a 15 foot setback from the property line for the driveway. He urged the Board to vote no.

Ms. Holmes said that she recently went to a meeting and they said that you can go a mile anywhere in N.H. and run into water.

With no further comments, Mr. Vannatta closed the hearing to public comment for deliberation.

Ms. Soper said that they did make things a little clearer on the dates. They did the test pits prior to the March 2005 zoning changes. They did do their homework. The business about the road puzzled her because she interpreted the ordinance the way Ms. Cluff did. She did not feel that they had any extenuating circumstance. This lot was similar to all the lots in that area. Not a unique property which was one of the tests for a variance.

Ms. Holmes thought that there were a couple of things that made this application difficult. They had the perk tests done before they even bought the property. She did not feel that they were taking the Board down a road full of deceit. It was a very difficult situation because the lot was 11 acres and they only wanted to put two houses on it. She would find it difficult not to grant because of how they bought it and did so much surveying and seemed sensitive to the wetlands. She felt that they truly had a hardship. The Board needed to look at this application individually. It was their intent when they bought the property to subdivide it and feels that it was important to recognize that they did their homework before purchasing the property.

Mrs. Cluff said that she did not feel that their argument regarding the road was valid because it clearly stated in the ordinance that gravel roads had a multiplier of 1.5. She also did not think that the fact that they did test pits on this property prior to purchasing it and prior to the zoning changes was a hardship because this also happened to others with intentions of subdividing their lots. She did not feel that what they were requesting was in the spirit of the ordinance. She said that she was inclined to not approve this application.

Mr. Vannatta said that the gravel road seemed to be an issue. He did not feel that the property was not unique. In March, people whole heartedly voted to approve the ordinance. If the Board did not support the ordinance, they would be going against the spirit of the ordinance. Although he had a lot of sympathy for the applicant, he found it difficult to support the application. Unfortunately, the setting is not unique compared to

other properties in the area. He felt that the Board should support the ordinance as it was written, not how they want it to be written. He also felt that it was very clear that gravel roads had a multiplier of 1.5.

Ms. Soper made a motion to vote on the variance as presented. Mrs. Cluff seconded it. The vote was as follows:

Ms. Soper voted to deny because the application did not met the criteria.

Mrs. Cluff voted to deny because the application went against the spirit of the ordinance.

Ms. Holmes voted to grant.

Mr. Vannatta voted to deny based on the spirit of the ordinance because hardship was not proved.

Mr. Vannatta said that the Variance was denied. He said that there was a 30 day appeal period. The other issue, had this been granted, is no longer an issue (the one contiguous acre).

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, February 27, 2006 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 7:30 p.m., Deborah Benjamin, for the property located at 38 Echo Cove Road, Newbury, N.H., will seek a Variance as provided in Paragraph 5.7.4 of the Newbury Zoning Ordinance to permit the following: to allow for construction of an accessory apartment below a two car garage that is less than five (5) years old. Newbury Tax Map 016-654-059.

Copies of the application are available for review during regular business hours at the Newbury Town Office Building.

Mrs. Cluff read the above public notice.

Paul Raynor introduced himself as the authorized agent for Deborah Benjamin. Ms. Benjamin was also present.

Mr. Vannatta Explained procedure.

Mr. Vannatta explained the hearing procedure as follows:

1. The Board would introduce themselves.
2. The applicant would present his case.
3. The Board would ask questions.
4. The hearing would be opened to public comment.
5. Close the hearing for deliberation.

6. The Board would vote.
7. There was a 30 day appeal period

Mr. Vannatta told the applicant there were only four Zoning Board members voting this evening. The Board generally operates with five voting members. He said that they had the right to choose to continue the hearing to another time with a full Board.

Ms. Benjamin asked if she could appeal to a full board if denied.

Mr. Vannatta said that she could.

Mr. Raynor explained that Ms. Benjamin would like to build a garage and put a bath, bedroom and home office in the basement level. This was interpreted as an accessory apartment. He noted that the garage would meet all of the setback requirements.

Ms. Soper asked if they had state septic permits.

Ms. Benjamin said that she would assume that there was.

Mr. Vannatta said that they would need that.

Ms. Benjamin said that Echo Cove Road was a private road. Her parking area was above on the road and it was 41 steps to house. She said that with this garage, she would be able to park closer to house and carry things in a little easier.

Ms. Soper asked if she had any pictures.

Ms. Benjamin showed the Board pictures of the property and where the proposed garage would be located.

Ms. Holmes asked how many trees they were going to need to remove.

Ms. Benjamin said Four.

Ms. Holmes asked how many feet the garage was going to be from the lake.

Ms. Benjamin said 75. It meets all of the setbacks.

Mr. Vannatta asked what the height of the proposed garage was. He asked if it was beyond 34 feet.

Mr. Raynor measured it to scale on the plan and it was 30 feet.

Mr. Vannatta asked what the setback from the road was.

Ms. Benjamin asked if the 30 foot setback was from the edge or middle of the road.

Mr. Vannatta said that it was the edge. He said that they had a 10 foot drop off and asked what the composition of what she was leveling was.

Ms. Benjamin said that they were going to fill it with what they dig out for the foundation.

Mr. Vannatta said that he did not believe it was not going to be enough fill to level it.

Mr. Vannatta asked if there was a written erosion control plan.

Mr. Raynor said no, because knew the application was going to get denied and have to go to zoning.

Mr. Vannatta said that any approval would have to be contingent then.

Mr. Vannatta asked that they go over the written criteria for a variance.

Ms. Benjamin went over the criteria per her application (please see file).

Mr. Vannatta asked what made Ms. Benjamin's property so unique that it made this a hardship.

Ms. Benjamin said that it was not unique, but that she was getting older and would make it easier. It was not unique on the lake, there were a lot of steep slopes. She said that she tried to come up with a plan that would have minimal impact on the land and abutters. .

Ms. Holmes asked where the septic was.

Ms. Benjamin said across the road. It was currently a 500 gallon septic and they want to put in a 1,000 gallon septic.

Ms. Holmes said that they were going to need state approval for that.

Mr. Vannatta said that since the stairs were the only access, once the building was in place, the access would improve.

Ms. Benjamin said that it would improve dramatically.

Ms. Holmes asked if she planned on living there year round.

Ms. Benjamin said yes, but that she went to Florida a couple months of the year.

Ms. Holmes asked if they were going to have to do any blasting.

Mr. Raynor said that he did not think so. The dig was going to be minimal, but may be a rock.

Ms. Benjamin said that she had a well drilled and did not encounter any ledge.

Mr. Vannatta said that he was still not clear as to the side view contour. He commented that a lot of fill was going in.

Ms. Holmes said that they should use smaller machines to do this digging because it was a sensitive area and a lot of harm could be done. She asked if she had considered putting it closer to the road.

Mrs. Cluff commented that she felt the Board was not focusing on the issue. The issue was not the structure itself. She met all of the set backs. She can build the garage. The issue is whether or not she meets the variance criteria for putting an accessory apartment in a structure that was less than five years old.

Mr. Vannatta agreed and said that all of the issues that the Board was looking at were in false realm, but good background issue.

Ms. Holmes asked what the purpose of having the structure over five years was.

Ms. Soper said that the idea behind it was to prevent people from putting in apartments all over the place.

Mrs. Cluff said that she believed it was put in place to prevent 2 family dwellings without adequate land and calling it an accessory apartment.

Mr. Vannatta opened the hearing to public comment.

Dan Wolf, Bowles Road said that the reason for the 5 years was to prevent people from building a home and apartment and having a two family, not an accessory apartment. If started to allow this, the two acres density would be meaningless. He said that he was not concerned about Ms. Benjamin abusing it and felt that she was a wonderful neighbor. He was concerned about how it would be used when she sold her property.

Beverly Wolf, Bowles Road, said that everyone on the lake would want one if they allowed this. She said that she realized that there was not going to be a kitchen, but considered having a bathroom an apartment.

Mr. Wolf said that he had a problem with the plumbing. He said that one there was plumbing in the structure, it would not be difficult to add additional plumbing for a kitchen.

Mrs. Cluff said that her application focused on the stairs being difficult and that this garage would make it easier for her. She could still have a garage with an elevator just not an apartment.

Ms. Benjamin said that it would be a waste of space and that she could not image a bedroom without a bath on cold nights.

Mrs. Cluff asked her if wasted space was a hardship.

Ms. Benjamin said she supposed it was not.

The Board discussed the definition of accessory apartment and dwelling unit.

Mr. Vannatta said that for all intents and purposes, it was a dwelling unit.

With no further questions, Mr. Vannatta closed the hearing for deliberation.

Ms. Holmes said that it was difficult because was trying to being honest about what she was doing instead of just putting an apartment in like others have done in the past.

Mrs. Cluff said that there was no hardship.

Ms. Holmes said that if the Board were to uphold the regulations, they would have to deny the application based on hardship. Plumbing is contrary to the situation in our ordinance. She said that she was sorry that it had to be Ms. Benjamin, but that the Board had to keep this trend roped in.

Mr. Vannatta said that he thought that there were other options, perhaps no shower, just a bathroom facility.

Ms. Holmes made a motion to vote on the variance. Ms. Soper Second it. The Board unanimously voted to deny the variance because hardship had not been proven.

Mr. Vannatta explained that the applicant had a 30 day appeal period. Something different than what has been presented. She would also receive a notice of decision within 72 hours.

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, February 27, 2006 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 7:45 p.m., Deborah Benjamin, for the property located at 38 Echo Cove Road, Newbury, N.H., will seek a Special Exception as provided in Paragraphs 5.7, 5.7.1 and 5.7.4 of the Newbury Zoning Ordinance to permit the following: to allow for construction of an office, bedroom, bathroom and two car garage detached from existing. Newbury Tax Map 016-654-059.

Copies of the application are available for review during regular business hours at the Newbury Town Office Building.

Mr. Vannatta said that with the variance denial, there was no need to hear the above noticed application for a Special Exception.

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, February 27, 2006 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 8:15 p.m., Iris Diamond Linson, for property located at 188 Route 103A, Newbury, NH, will seek a Variance as provided in Paragraph 7.3.2 of the Newbury Zoning Ordinance to permit the following: to construct an attached within the 75 ft. setback from the lake. Newbury Tax Map 019-140-301.

Copies of the application are available for review during regular business hours at the Newbury Town Office building.

Mrs. Cluff read the above public notice.

Mr. Vannatta explained the hearing procedure as follows:

8. The Board would introduce themselves.
9. The applicant would present his case.
10. The Board would ask questions.
11. The hearing would be opened to public comment.
12. Close the hearing for deliberation.
13. The Board would vote.
14. There was a 30 day appeal period

Mr. Vannatta told the applicant the there were only four Zoning Board members voting this evening. The Board generally operates with five voting members. He said that they had the right to choose to conti

Butch Dalton, Ennis Construction and Roger Rodwald were appointed as authorized agents.

Mr. Rodwald said that the applicant was looking to build an attached garage with living space above it and a bathroom. He said that it was within the 75 foot setback, but was in back of the 50 foot wetlands buffer.

Mr. Dalton said that the existing structure was in the setback. He said that they were going to extend the foundation wall only 5 feet out of the ground.

Ms. Holmes asked how high the building was.

Mr. Dalton said that it was less than 34 feet. He said that they were proposing a salt box. They were also proposing a machine laid wall to retain the grade and to slow down the water so that it was not running into stream as fast. The water naturally filters that way now and they would not be changing that. It was currently steep and they would be making it much less steep and slowing the water flow down. He said that this plan moves the driveway away from water.

Ms. Holmes asked about plantings.

Mr. Dalton said that they would be putting in plantings.

Ms. Holmes asked how many trees were going to be taken down.

Mr. Dalton said just one.

Mr. Dalton said that another benefit was that they planned on building a new septic.

Mr. Rodwald said that the intent was to build a new system farther away. With the enviro-systems it would not involve cutting down a lot of trees. He showed the location of the well and explained that erosion control would be put in prior to anything to being done. He said that the current septic system was within 50 feet of the lake.

Ms. Holmes asked if the applicant planned to live in the house year round.

Mr. Dalton said No.

Mr. Rodwald added that the Enviro-septic was designed for sloped areas.

Mr. Vannatta commented that moving the septic, pulling the driveway back and maintaining natural drainage we all very positive things.

Mr. Vannatta asked what the pitch of the building was going to be.

Mr. Dalton explained the pitch of the buildings and said that it would pitch the same as the current building. The largest pitch was towards the back because it was a salt box.

Ms. Holmes asked what the hardship was.

Mr. Vannatta asked that they review the variance criteria.

Mr. Rodwald Went over variance criteria per the application (see file).

Ms. Holmes asked if the driveway would be bluestone.

Mr. Dalton said it would be.

With no further questions and no public present, Mr. Vannatta closed the hearing for deliberation.

Ms. Soper said that she did not have a problem with the application and felt that they were making a lot of positive changes.

Ms. Holmes agreed with Mrs. Soper as did Mrs. Cluff.

Mr. Vannatta agreed and felt that there were quite a few improvements to the environment. Mr. Vannatta felt that they had proven hardship and met the variance criteria.

Ms. Holmes Made a motion to vote on the variance as presented with the condition of state and local approvals. Mrs. Cluff seconded it. The Board unanimously voted to grant.

A motion was made to adjourn. It was seconded. All were in favor. Meeting adjourned at 11:11 pm.

Respectfully Submitted,

Lacy L. Cluff
Recording Secretary