

Draft

Zoning Board of Adjustment

March 27, 2006

Members Present: Thomas Vannatta (Chair), Elizabeth Ashworth, Alex Azodi (Alternate), William Cluff (Alternate), Helen Wright (Alternate) and Lacy Cluff (Alternate).

Mr. Vannatta opened the meeting at 7:05 p.m.

Administrative Business

Mr. Azodi made a motion that Mr. Vannatta continue to be chair of the Zoning Board. Mrs. Cluff Seconded it. All were in favor.

Mrs. Cluff made a motion that Betsy Soper continue to be vice-chair of the Zoning Board. Ms. Ashworth seconded it. All were in favor.

Mr. Vannatta said that both Mrs. Wright and Mr. Cluff's terms were up as alternates. He made a motion to appointed them both as alternates for the next three years. Ms. Ashworth Seconded it. All were in favor.

The Board reviewed the minutes of February 27, 2006 and made corrections. Mr. Cluff made a motion to approve the minutes as corrected. Mrs. Wright seconded it. All were in favor.

Mr. Vannatta commented that the Equitable Waiver of Dimensional Requirement had been approved to be added to the Zoning Ordinance.

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

At 7:30 p.m., Marie Francoise Degraeve, property located at 36 Winding Brook 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 15 foot side setback as per 5.9 of the Newbury Zoning Ordinance requirement to remain. Newbury Tax Map 035-393-323.

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

Mrs. Cluff read the above public notice.

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 appointed Mrs. Wright and Mr. Cluff as voting members.

Robert Stewart, RCS Designs, introduced himself as the Degraeve's authorized agent. He went through the criteria for the Equitable Waiver per the application (please see file). He referred to the paper work that had been submitted with the application, a certificate of zoning compliance done in early 1995 by Del Harris and the original building permit. In November of 1995 the septic was completed. That was over 10 years ago. He said that this was not a result of ignorance of the law, it was a good faith error. He referred to the mortgage loan inspection that was required by a bank for the sale of the loan. In doing this, they found that it was 12.6 feet away from the property line. To date, no adverse complaint had been made and has never presented a problem. The cost of correction would not outweigh any gains.

Mr. Azodi asked if the person who did the survey for the bank was a licensed surveyor.

Mr. Stewart said that he was.

Mr. Vannatta opened the hearing to the public. With no public comment, he closed the hearing to public comment and went into deliberation.

Mrs. Wright feels that the applicant met the requirements.

Mr. Cluff also felt that the applicant met the requirements and that the cost to move the structure did not outweigh any gains.

Ms. Ashworth said that the applicant had definitely met the requirements.

Mr. Vannatta had no problem with application and felt that it met the criteria.

Mr. Cluff made a motion to vote on the application as presented. Mrs. Wright seconded it. The vote was as follows:

Mr. Cluff voted to grant.

Mrs. Wright voted to grant.

Mr. Vannatta voted to grant.

Ms. Ashworth voted to grant.

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

At 7:45 p.m., Richard and Donna Matte, property located at 50 Alsubet Court, 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 the is in violation of the 30 foot right of way setback as per 5.9 of the Newbury Zoning Ordinance requirement to remain. Newbury Tax Map 050-492-116.

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

Mrs. Cluff read the above public notice.

Mr. Vannatta appointed Mr. Azodi, Mr. Cluff and Mrs. Cluff as voting members for this hearing.

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

Donna Matte introduced herself and went over the criteria per a letter included in her application (please see file).

Mr. Vannatta asked why Paul LaCasse, Code Enforcement Officer, visited the site.

Mrs. Matte said that there was a complaint.

Mrs. Cluff asked why they did not inquire at the Town Office to see if a building permit was required before replacing the shed.

Mrs. Matte had asked around and did not feel they needed to because they were replacing an existing shed.

Mrs. Cluff said that they replaced the shed with a much larger one.

Mrs. Matte said yes, that the old shed was 5 x 8 ft. and the new one was 14 x 8 ft. The old shed was 7 ft. high and the new one was 12 ft. high.

Ms. Ashworth asked if they met the setbacks with the old shed.

Mrs. Matte said no.

Ms. Ashworth asked what would have happened if they had applied for a building permit.

Mr. Vannatta said that he would have denied it and told them to apply for a variance or to rebuild it in kind.

Mr. Azodi asked if they had any way of showing that this did not devalue the abutter's property.

Mrs. Matte said that it depended on the property that you were looking at. The view they were blocking was of the Howard's house and their beach.

Mr. Vannatta opened the hearing to public comment.

Karen Barton, an abutter, said that the new shed replaces what she believed to have been an older 4x4 shed. She presented pictures that showed the old shed as well as views from their home with the old shed and the new. She said that the front of the shed had been moved closer to the lake by 4 feet and 6 feet in the opposite direction. She also noted that there were two large brackets that looked like they may be able to hang large objects. She said that the shed was located at the bottom of a hill that was very icy to navigate in the winter. She said that she also believed that the left side could violate the 75 foot setback. However, that would take a survey. She said that the Newbury Zoning Ordinance was readily available. She felt that this shed devalued her property and that the loss to them was greater than the Matte's loss to remove it. She said that she felt that the Board should deny the application.

Kenneth Barton, abutter, said that his cottage was the furthest north. Mrs. Matte claimed that this shed was an asset, but he did not believe that that was true. He felt that there was also a safety issue. It gets very icy in the winter and someone could easily slide into it.

Mr. Azodi asked how the shed affected Mr. Barton's property.

Mr. Baron said that it was not attractive and posed a safety issue. He said that he hated to see the Matte's hurt by this, but felt that the law was the law.

Barbara Barton, abutter, said that she felt that they should have checked with the neighbors prior to building it. She said that they had talked about a tool shed, but that this was much larger.

Bill Howard, abutter on the south side, saw no problem with the shed. There was a beat up shed there previously and they had improved it. The shed was about 15 feet from his front door and if anyone were to have an objection to it, it would be him.

Larry Barton, abutter, said that the Ms. Matte already acknowledged that they failed to inquire and that this was ignorance of law. He said that the question of diminishment of value was a real one because of the proximity of the shed from their house. He said that they had no choice, but to be faced with it everyday. He said that they now look out the window at a green roof, not trees or the lake.

Mr. Azodi asked if this was built when they were not there.

Mr. Barton said yes. The notion that shed was there. The exact size, cannot tell would prefer to see on of comparable size. It is 4x's as large and twice as tall. He said that the question of diminished value was highly subjectable because there was no way to adequately test the value of their property before the shed was built. He said that they did not meet at least two of the criteria, ignorance of the law and that it would not diminish the abutter's property value. He asked that the Board deny the application.

Ms. Ashworth asked if all of the Barton's were related and if they were full time residents.

Mr. Barton said that they were all related, not full time residents.

Mr. Vannatta closed the hearing to public comment and gave Mrs. Matte the opportunity to respond.

Mrs. Matte said that Donna, Larry and Karen did not know about the shed because they were not here, but their parents were here and Ken Barton spoke at least once to the person building the shed. In terms of the safety issue, there were dead trees there and Ken Barton helped her husband take those trees down.

Mr. Vannatta closed the hearing for deliberation.

Mr. Azodi said that it was difficult because he could see both sides and wanted to be sensitive to both sides because both had legitimate points. However, the Board had to follow the criteria in the RSA and the applicant must meet the requirements and make all of the findings. In his opinion, items b and c were not met. These have not been proven.

Mr. Cluff completely agreed with Mr. Azodi and based on the fact that the applicant had not met two of the criteria, he did not feel that the Board should approve the application.

Ms. Ashworth, Mrs. Cluff and Mr. Vannatta all agreed with Mr. Azodi and Mr. Cluff.

Mrs. Cluff made a motion to vote on the application as presented. It was seconded. The Board unanimously voted to deny the application because it did not meet the criteria in paragraphs 16.8.1.2 and 16.8.1.2 of the Newbury Zoning Ordinance.

Mr. Vannatta said that they had choices, they could appeal back to Board and with new supporting information or they could not appeal and rebuild the shed in kind with same foot print and dimensions.

Mr. Vannatta asked if anyone had any old or new business to discuss.

With nothing further to discuss, Mrs. Wright made a motion to adjourn. It was seconded. All were in favor. Meeting adjourned at 8:39 p.m.

Respectfully submitted,

Lacy L. Cluff
Recording Secretary