

Zoning Board of Adjustment
August 27, 2007
Approved October 1, 2007

Members Present: Elizabeth Ashworth, Chair; Katheryn Holmes, Vice-Chair; Steve Russell; Barbara Richmond, Alternate

Ms. Ashworth called the meeting to order at 7:25 p.m. and appointed Ms. Richmond as a full voting member for this meeting.

Ms. Holmes made a motion to appoint Ms. Richmond to fill Mr. Cluff's term as a full member until the next Annual Town Meeting. Mr. Russell seconded the motion. All in favor.

The Board reviewed the minutes of August 6, 2007.

Mr. Russell made a motion to approve the minutes of August 6, 2007 as written. Ms. Richmond seconded the motion. All in favor.

The Board reviewed the minutes of August 13, 2007 and made corrections.

Ms. Richmond made a motion to accept the minutes of August 13, 2007 as corrected. Mr. Russell seconded the motion. All in favor.

The Board reviewed the minutes of August 20, 2007 and made corrections.

Ms. Holmes made a motion to approve the minutes of August 20, 2007 as corrected. Ms. Richmond seconded the motion. All in favor.

At 7:30 p.m. Cindy & David Lapp, property located 103 Bay Point Road, Newbury, NH will seek a variance as provided for in 7.3.2 to permit the following: Reconstruct a home on an existing non-conforming lot situated within the 75' shoreline setback. Newbury Tax Map 07-166-398.

Present to represent Mr. & Ms. Lapp were Frank Anzalone, Architect and Charlie Hirshberg, Civil Engineer. Mr. Anzalone explained that the Lapp's request for a shoreland waiver has been answered by the Department of Environmental Services, Wetlands Bureau via an email from Tom Gilbert, Shoreland Specialist. Mr. Anzalone presented the Board with a copy of the email.

To Whom It May Concern: A Shoreland Waiver request submitted by David Lapp for a proposed project located at 103 Bay Point Road in Newbury has passed preliminary and upper level review and is currently in the process of approval. A Shoreland Waiver is currently being written for the proposed project and will be sent to the commissioner for a signature during the week of August 27, 2007, and is expected to be sent to the property owner within the same week. Any questions regarding this Shoreland Waiver

*may be addressed to me. Sincerely, Tom Gilbert – Shoreland Specialist
NHDES/Wetlands Bureau.*

Ms. Holmes asked if the waiver is just for the shoreland or does it also cover any wetlands as well.

Mr. Hirshberg explained that the waiver is only for the shoreland and not effective in wet areas. This project does not require a wetlands permit.

Ms. Ashworth pointed out that the second variance request is a result of the Lapp's not wanting to affect the wetlands.

Mr. Hirshberg explained that the original plans have changed in answer to DES's request to address two issues. The first issue was a drain pipe which was discharging run-off toward the lake. That pipe has been eliminated. The second issue was the driveway surface. DES asked for a pervious surface on the driveway. Mr. Hirshberg explained that he presented an alternative to the pervious surface requested by DES which has been considered acceptable. The alternative is a crowned driveway with sheeting run-off which will be captured by multiple infiltration areas along the length of the driveway. The infiltration areas will be a stone drip edge of 8" of ¾" stone that allows the run-off to drain into the stone. There will be three areas of built up stone to slow the filtering and drainage activity. As much of the gravel as possible has been eliminated and replaced with plantings of native plants. Much of the existing grass is proposed to be replaced with vegetation and native plants. These proposed plantings were recommended by LSPA and DES and comprise various native shrubs, bushes and groundcover. The result will be a man-made riparian buffer along the lake. Excess roof run-off will be picked up by a drainage system and directed to a drywell. Any excess run-off that does not infiltrate the drainage system will be addressed by pipes that will discharge it into a depressed area where there are planting, creating a slight ponding.

Ms. Holmes asked if the depressed area will support foot traffic.

Mr. Anzalone stated that the area will support foot traffic but the goal is not to create paths which may destroy the plantings.

Ms. Holmes commented that during a site visit, she noticed the path of the water flow toward the Lapp's property from across the road. She asked if there are any septic issues the Board should be aware of.

Mr. Hirshberg commented that there are no changes in the system. There was a clean solution system installed in the year 2000 that is adequate for the proposed use.

Ms. Holmes asked if there are any well issues that the Board should be aware of.

Mr. Hirshberg explained that in the past a series of pipes were installed that carries water down to the lake. Periodically there is a little opening in the pipes. He stated that he does not know who or why those pipes were installed.

Ms. Holmes asked if the pipes would be removed.

Mr. Anzalone commented that there are no plans to remove the pipes because it would be unnecessary disturbance of the earth.

Ms. Holmes asked why there was pink and black striped boundary tape on the site.

Mr. Hirshberg explained that the pink and black indicates the edge of wetlands.

Ms. Holmes commented that she likes the idea of creating rain gardens. She commented that she is not so sure how the catch basins will work in a 100-year flood, but it is a good effort and an improvement to the site.

Ms. Holmes asked what the green ribbon on the trees meant.

Mr. Hirshberg commented that the green ribbon was not something involving this project. He stated that they wanted to leave the wetlands alone and only work in the dry areas and leave as much vegetation as possible.

Ms. Holmes asked if a waiver was needed from the wetlands.

Mr. Hirshberg explained that the wetlands near the Lapp's proposed home are less than 10,000 sq. ft., therefore, they are not regulated. However, every effort is being made to protect the wet areas, no matter how small.

Ms. Richmond asked Mr. Anzalone what are the plans for the old house. If it is going to be demolished, how will that be done and with what kind of equipment.

Mr. Anzalone explained that the old home will be taken down with heavy equipment. There is an erosion control plan in place and the trucking will be kept at a minimum.

Mr. Hirshberg commented that right now there is a large gravel area that will be utilized by an excavator for the razing and removal of the home.

Ms. Richmond asked if the ground under the old home is going to be disturbed.

Mr. Anzalone commented that there will be minimal disturbance of the ground. There is no foundation under the old home. It has a stone basement but the ground around it is beginning to erode. Therefore, the sooner the site is stabilized, the better. After the home is removed, the grade will be leveled off with a retaining wall to prevent sheet run-off to the lake terraced, planted and landscaped. The new house site will have a 4 ft. foundation on the uphill side and a walkout basement on the downhill, lake side.

Ms. Richmond asked if Mr. Hirshberg anticipated erosion being a problem during a flood situation.

Mr. Hirshberg commented that it appears that there are boulders under the existing house; therefore there is not that much earth to erode even in the worst situation.

Ms. Holmes asked Mr. Hirshberg if he foresees any need for blasting.

Mr. Hirshberg stated that the area looks much more like boulders than ledge. The boulders can be addressed by digging and will not require blasting.

Mr. Anzalone reviewed the variance criteria in Article 16.7 for a variance to Article 7.3.2.

16.7.1.1 *The variance will not be contrary to the public's interest.*

The proposed home will be set back away from Lake Sunapee as far as the existing septic system setbacks allow, making the home less nonconforming. The public will benefit from the house being moved back away from the lake; this will provide a more environmentally sensitive condition, increase the natural landscape area to help filter the runoff for improved water quality and improve the public view from the lake.

16.7.2.2.1 *An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property.*

The existing home has several structural issues, moisture issues, is energy inefficient and has several other defective conditions. The home is also nonconforming, it has a setback of 12 ft. from Lake Sunapee. The majority of the home's structural defects are caused by inadequate or lack of footings and foundation walls. The repairs required are economically unsound and would require excavation for the footings within 12ft. of the shoreline. The Lapp's intend to replace the existing substandard home with a new home. The proposed home is to meet today's codes and be much more energy efficient. In addition, the home is to be moved back way from the lake as far as possible. This will make the home less nonconforming. An existing septic system is located on the site. This system location along with other site conditions restrict the ability to locate the home outside of the lake setback.

16.7.2.2.2 *The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.*

The existing septic system was placed just outside of the 75' setback. The remaining site outside of the setback consists of poorly draining soil, natural

wetland vegetation and a driveway. These conditions have limited the location of the new home to within the 75' setback from the lake

16.7.3 The variance is consistent with the spirit of the ordinance.

The site is located within the Residential District Zone. The current use is a single family residence. The intended use is also single family residence.

16.7.4 Substantial Justice is done.

The lot conditions will not allow for the construction of a home outside of the 75' setback. The existing nonconforming home will be removed. The Lapp's intend to locate the proposed home as far from the lake as possible. This will make the new home as less nonconforming as possible.

16.7.5 The value of the surrounding properties will not be diminished.

The current deteriorating home will be removed. The new lake style home and site have been redesigned to improve the value of the property, this will benefit the adjacent properties. This will also improve the visual value of the adjoining properties. The added setback and natural vegetation will improve the visual value of the lake and help improve water quality. These two factors will help to increase the value of all the adjacent properties and will benefit to all that visit the lake.

Ms. Holmes asked Mr. Hirshberg if it is possible to place the new house any further back from the lake.

Mr. Hirshberg explained that the septic system field has a 25 ft. setback and a 10 ft. setback from the tank. Those setbacks limit the placement of all other activity on the lot. The Lapp's have gone back as far as they can go.

Ms. Holmes asked Mr. Anzalone how he established that the current house is substandard.

Mr. Anzalone explained that the current house appears to have been piecemealed together. There are portions of the home that have no foundation and portions of the weight bearing corners on stone and portions on dirt.

Ms. Holmes asked if the cottage is going from a summer home to year 'round.

Mr. Anzalone explained that the first floor of the current home is insulated and the second floor is not. There is currently balloon framing with 2"x 4" roof rafters showing stress. The new home will be fully insulated as required by

building codes, energy efficient and environmentally friendly. The plumbing and electrical in the current house is either not working or not working efficiently.

Ms. Holmes commented that she approves of the added setback, added vegetation and improved visual and water quality efforts for the lake. She asked Mr. Anzalone in a sensitive site like this, how does he think the lake will fare under demolition activity of the current house.

Mr. Anzalone explained that he and Mr. Hirshberg have talked with the contractors in advance and have interviewed each one. Only those that have demonstrated water quality and protection of the lake as a priority have been asked to work on this job.

Ms. Holmes thanked Mr. Anzalone and Mr. Hirshberg for their efforts and integrity.

Mr. Russell asked if there are contractors with small equipment able to handle such a tight site.

Mr. Anzalone explained that there are some contractors who specialize in small sensitive sites and have the equipment to accomplish such a job with minimal to no impact.

Mr. Hirshberg commented that over the last 10 years, public awareness of shoreland protection and water quality has risen. As a result of that awareness, there has evolved a variety of site contractors who specialize in work around the lake and know the issues of development, including temporary and permanent erosion control.

Mr. Anzalone commented that they will be trying to have the contractors in and out as quickly as possible. The walls of the new house will probably be constructed off site in order to keep the activity on site to a minimum. Also, that will facilitate the house to be raised quickly.

Mr. Russell asked Mr. Hirshberg what is the septic capacity.

Mr. Hirshberg explained that there is a four bedroom septic currently in the ground. Also the plumbing appliances and fixtures of today tend to use less water than those ten years ago.

Ms. Holmes asked if the Lapp's have a septic approval.

Mr. Anzalone presented the septic plan and approval from the clean solution system that was installed in 2000.

Mr. Russell asked Mr. Anzalone how he will be sure that the planting are done.

Mr. Anzalone informed the Board that the Lapp's have hired him to perform the construction administration duties, so he will make sure the plantings are done.

Ms. Ashworth closed the informational portion of the hearing and opened the hearing to public questions and comments.

No members of the public had questions or comments.

Ms. Ashworth closed the hearing to public questions and comments and the Board began deliberation.

Ms. Holmes asked if there were any written comments submitted from the abutters.

Ms. Ashworth stated that the abutters were properly notified by certified mail and no responses were received.

Mr. Russell commented that he is impressed with the plan and the thoroughness of the plan. He commented that it is a well thought out plan with the lake as a high priority in all aspects. All of his concerns seem to have been addressed.

Ms. Holmes commented that all of the hardship criteria were thoroughly addressed. Since the house is nearly inhabitable and the run-off is now addressed, they have done well with the plan. She stated that all of the items of concern on her checklist have been satisfied.

Ms. Richmond commented that she liked the plan and it is definitely an improvement for the whole area. The drainage plan is good and getting the house further away from the lake is a plus.

Ms. Ashworth commented that this proposal is a nice job and has improved the site.

Ms. Holmes made a motion to vote on the Lapp's application for variance to Article 7.3.2 as presented for reconstructing a home on an existing nonconforming lot situated within the 75 ft shoreline setback contingent upon the Zoning Board receiving a copy of the signed waiver from DES. Mr. Russell seconded the motion.

Ms. Richmond voted to grant the variance with condition of receiving the written waiver from DES.

Mr. Russell voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Holmes voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Ashworth voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Ashworth advised Mr. Anzalone and Mr. Hirshberg that there is a 30 day appeal period for abutters to appeal the Board's decision.

At 7:45 p.m. Cindy & David Lapp, property located at 103 Bay Point Road, Newbury, NH, will seek a Variance as provided for in 5.9.1 to permit the following: Reconstruct a home on an existing nonconforming lot situated within the 15 ft. setback from the side and rear property lines. Newbury Tax Map 07-166-398.

Mr. Anzalone addressed the variance criteria in Article 16 for a variance to Article 5.9.1.

16.7.1 The variance will not be contrary to the public's interest.

The existing home is currently located within the setback. The public will benefit from the new home being built within the side yard setback. The south side of the property currently has a drainage culvert pipe, a stone wall and an area of natural shore land vegetation. The pipe helps drain an area of wetland which is fed from a culvert pipe which comes from across the street. The existing shore land vegetation provides a more environmentally sensitive condition and improves the public view from the lake. Removing these two existing features will negatively affect the public's interest.

16.7.2.2.1 An area variance is needed to enable the applicant's proposed use of the property given the special conditions on the property.

The existing home has several structural issues, moisture issues, is energy inefficient and has several other defective conditions. The home is also nonconforming; it has a side year setback of 6 ft. 8 in. The majority of the homes' structural defects are caused by inadequate or lack of footings and foundation walls. The repairs required are economically unsound and would require excavation for the footings with in 12 ft. of the shoreline. The Lapp's intend to replace the existing substandard home with a new home. The proposed home is to meet today's codes and be much more energy efficient. An existing drainage culvert and well are located on the site. This culvert along with other site conditions restrict the ability to locate the home outside of the setback.

16.7.2.2.2 *The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.*

The current nonconforming lot has a width and lake shore frontage of 78 ft. The south side of the lot contains an existing culvert, existing well and existing natural shore land vegetation. These conditions have restricted the buildable area.

16.7.3 *The variance is consistent with the spirit of the ordinance.*

The site is located within the Residential District Zone. The current use is a single family residence. The intended use is also single family residence.

16.7.4 *Substantial justice is done.*

The lot conditions will not allow for the construction of a home outside of the side yard setback. The existing nonconforming home will be removed. The Lapp's intend to locate the proposed home as far from the lake as possible. This will make the new home as less nonconforming as possible on the lake side and will provide a more environmentally sensitive condition, increase the natural landscape area to help filter the runoff for improved water quality and improve the public view from the lake.

16.7.5 *The value of the surrounding properties will not be diminished.*

The current deteriorating home will be removed. The new lake style home and site have been designed to improve the value of the property; this will benefit the adjacent properties. This will also improve the visual value of the adjoining properties. The added lake side setback, added natural vegetation and maintaining the existing culvert will improve the visual value of the lake and help improve water quality. These factors will help to increase the value of all the adjacent properties and will benefit to all that visit the lake.

Mr. Anzalone explained that by turning the orientation of the house approximately 90 degrees, the house becomes further away from the lake but closer to the sidelines. The current house has a setback distance of 6 ft. 8 in. from the sideline and the proposed house will have a setback distance of 2 ft. 10 in. The distance between the homes averages 15 ft. The narrowest place between the homes is 11 ft. 6 in.

Ms. Holmes asked if the runoff from the roof on the northerly side of the proposed house will impact the abutters.

Mr. Hirshberg explained that the peak of the roof slopes toward the east and west, therefore, the abutters to the north will not be affected from roof runoff.

Mr. Anzalone also explained that the drainage system will be collecting drainage from the neighbor's cement sidewalk as well as the Lapp's roof. The stone ditches and vegetation will address any and all surface and roof runoff in the vicinity.

Ms. Holmes asked Mr. Hirshberg if there are gutters proposed on the new home.

Mr. Hirshberg explained that since the proposed roof is to be metal, it is not possible to place gutters along the roof. The drip edge referred to in the drainage plan is a 2 ft. wide stone section in the ground.

Since there were no further questions from the Board, Ms. Ashworth closed the informational section of the meeting and opened the hearing up to the public.

There were no questions or comments from the public. Ms. Ashworth closed the public portion of the hearing to the public and the Board began deliberation.

Ms. Holmes asked why the regulations state a 15 ft. setback from the sidelines.

The setback is primarily for fire safety.

Ms. Holmes commented that she would find this proposal challenging to approve if there was not drip edge. Since the Ryan's, abutters to the north, were notified and have not responded, they have 30 days to appeal.

The Board members had no further comments or questions.

Ms. Holmes made a motion to vote on the Lapp's request for a variance to Article 5.9.1 to permit reconstruction of a home on an existing nonconforming lot situated within the 15 ft. setback from the side and rear property lines contingent upon the Zoning Board receiving a copy of the signed waiver from DES. Ms. Richmond seconded the motion.

Ms. Holmes voted to grant the variance with condition of receiving the written waiver from DES.

Mr. Russell voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Richmond voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Ashworth voted to grant the variance with condition of receiving the written waiver from DES.

Ms. Ashworth advised Mr. Anzalone and Mr. Hirshberg that there is a 30 day appeal period for abutters to appeal the Board's decision

Ms. Holmes made a motion to adjourn. Ms. Richmond seconded the motion. All in favor. Meeting adjourned at 9:05 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary