

**Zoning Board of Adjustment  
February 12, 2007**

**Members Present: Tom Vannatta (Chair); Betsy Soper (Vice-Chair); Alex Azodi; Bill Cluff; Katheryn Holmes; Helen Wright**

Mr. Vannatta explained that Ernie Pagragan has resigned from the Zoning Board of Adjustment as of December 2006. This leaves Mr. Pagragan's position as a full voting member vacant. One of the current alternates should be appointed by the Zoning Board of Adjustment to fill out Mr. Pagragan's term.

Mrs. Soper made a motion to nominate Alex Azodi to fill the Mr. Pagragan's position a full voting member until the March 2007 town meeting election. Ms. Holmes seconded the motion.

No further nominations.

All in favor.

Mr. Vannatta stated that there are still two positions open for the Zoning Board Adjustment on the March 2007 ballot, one for a one-year term and the other for a three-year term. He stated that it would be to the benefit of the Board if the alternates would consider running for those positions since the alternate members are already familiar with the Zoning Ordinances and the Zoning Board of Adjustment's rules and procedures.

**MINUTES**

The Board reviewed the minutes of December 18, 2006 and made corrections.

Mrs. Wright made a motion to approve the minutes of December 18, 2006 as corrected. Mrs. Soper seconded the motion. All in favor.

Mr. Vannatta asked the Board if anyone had anything more to report from the **Joint Board Meeting** on January 11, 2007 beyond what is in the minutes. Specifically, was there any discussion regarding additional JBM meetings in the future.

Mrs. Soper commented that the Planning Board received a request to amend the Zoning Ordinance which would extend the time-frame required for public notice of 10 days as required by the RSA's to 30 days. In addition to notifying the abutters 30 days ahead of the hearing, the petitioner asked the Board to require a 30 day advance notice to each abutter prior to continued hearings. This request also asked for the Board to consider sending a full packet of each application (application, maps and all supporting documents) to each one of the abutters 30 days ahead of the hearing at the applicant's expense. This would place a great amount of difficulty on the Board to make its decision in the time allotted by law, especially if there is a continuance; and a great expense to the applicant.

Mr. Vannatta stated that once the Board approves the minutes, the minutes are a legal record of the decisions at that meeting. Therefore, the interested abutter should seek out a copy of the minutes for information/notification and the continued hearing should not have to be re-noticed.

Mrs. Soper reported that the Planning Board opted not to change the Zoning Ordinance procedures because the Ordinance already complies with the requirements of the law; and a 30-day advance notice to the abutters, including a full application, would create an unnecessary hardship on the applicant.

Mr. Vannatta commented that the one issue that came out strong in the minutes was the contiguous one-acre. The Boards agreed that another future JBM is needed to address the contiguous one-acre. He commented that in the future if there are new enactments of the zoning ordinance, the Boards should come together and discuss them so that we are all on the same page as to what the new amendments are supposed to mean and how they are supposed to be enforced.

Mrs. Holmes commented that Arlene Adams is available to give her power point presentation on the Shoreline Protection Act. However, it may be more beneficial to ask her to visit each one of the Lake Sunapee Towns individually rather than have a regional presentation here at the Town Office Building for Newbury, Sunapee and New London as suggested at the JBM. Mrs. Holmes emphasized that it is very important that the Town be the eyes and ears for D.E.S. to protect our shoreline and natural resources.

Mr. Vannatta reminded the Board that during the December 18, 2006 meeting, Mrs. Holmes addressed Chalk Pond as needing to be considered a Great Pond. Robert Wood from the Lake Sunapee Protective Association reported that all ponds 10 acres or more are to be considered Great Ponds. Chalk Pond is 22+ acres and is therefore, without question, a Great Pond and subject to the Shoreline Protection Act. Mr. Vannatta stated that Chalk Pond should be identified in the Zoning Ordinance as a Great Pond.

Mr. Vannatta commented that the Zoning Board of Adjustment has received an Appeal From An Administrative Decision from Robert Mills, abutter to Richard and Suzanne Rothstein, for the Zoning Board's decision on December 18, 2006. The appeal was submitted within the legal time frame for consideration. The narrative from Mr. Mills explaining why the appeal is justified was received on February 9, 2007. Mr. Vannatta explained that since the decision to grant the variance was the Zoning Board of Adjustment's decision, the Zoning Board has the responsibility to decide whether or not there is something compelling enough in the appeal to grant hearing the appeal.

Mr. Vannatta addressed the following points of Mr. Mills' appeal:

- Concrete Retaining Wall. The wall was not there as part of what the Zoning Board of Adjustment talked about on December 18, 2006. The Building Inspector handled that issue during the building permit process. Therefore it

is not something the Zoning Board of Adjustment can legally get involved with at this point in time.

- Standards of Considering Criteria. The other issue was the way the Zoning Board considered the criteria on the 18<sup>th</sup> of December as opposed to the way the Zoning Board considered the material on the meeting date in September. Mr. Mills indicated there were different standards of consideration.

Mrs. Soper commented that she thought the Zoning Board of Adjustment has gone over the standards of criteria very carefully and was extremely mindful of safety issues at both meetings. She stated that she does not see the need for a re-hearing.

Mr. Vannatta stated that he does not see anything in the write-up that shows that the Zoning Board made an error. After reviewing the minutes of December 18, 2006, no errors are apparent.

Mrs. Soper commented that Mr. Mills' mention of the Board member's relationship with the applicants is puzzling.

Mr. Vannatta commented that he is puzzled by that comment as well.

Mrs. Holmes commented that just because an applicant comes in front of the Zoning Board does not constitute a favorable 'relationship' between the two.

Mr. Vannatta stated that he had to dismiss that accusation because there is no explanation of that comment in the narrative of the appeal application.

Mr. Azodi called for a point of order. He asked Mr. Vannatta if the Zoning Board should be discussing this appeal in front of a public forum.

Mr. Vannatta said absolutely. It is all public.

Mrs. Soper made a motion that the Zoning Board of Adjustment should not re-open this case, dismiss the appeal and return Mr. Mills' check.

Mrs. Wright seconded the motion.

Mr. Azodi recused himself from voting because of a possible perception of a conflict of interest. Mr. Cluff was undecided and recused himself because he was not at the December 18, 2006 hearing.

Mrs. Wright voted to re-hear.

Mrs. Soper voted to NOT re-hear.

Mrs. Holmes voted to NOT re-hear.

Mr. Vannatta voted to NOT re-hear.

Mrs. Holmes asked for clarification regarding the garage. The consideration of the garage was a permit that was addressed by the Building Inspector, however, was there

any measure taken to make sure that it was in compliance with the Shoreline Protection Act.

Mr. Vannatta stated that the garage is a non-issue for the Zoning Board of Adjustment. Aside from that, the 30-day appeal period has expired.

Mrs. Wright asked if there was any consideration given to there being an accessory apartment over the garage.

Mr. Vannatta stated that there is no accessory apartment to be concerned with. At this point in time, the garage is not in the realm of Zoning Board of Adjustment.

***George H. McLean Jr., for property located at 11 Great Island, Newbury, NH, will seek a Variance as provided in Paragraphs 7.3.1 and 15.2 of the Newbury Zoning Ordinance to permit the following: to waive the Shore Frontage Requirement of two hundred (200) feet per dwelling. Newbury Tax Map 005-015-047.***

Present were Wayne McCutcheon, Surveyor; George H. McLean, Jr., Applicant.

Mr. Vannatta appointed Mr. Cluff as a full voting member for this hearing and outlined the procedure for conducting the hearing.

Mr. McCutcheon explained that the purpose of the application is to create a 50 ft. strip to be annexed to the abutting piece of land on Great Island. There was a subdivision plan in 1890 that created multiple lots with 100 ft. frontage along the shoreline, and the back land was divided up randomly. The Newbury tax map is not correct in its description of the McLean lot. It shows the McLean back land as being a total of 4.55 acres when in actuality it is only 1.74 acres. The applicant has been under the impression that they own and has been paying taxes on 4.55-acre lot and thought this annexation would be in complete compliance with the ordinance. What the applicant would like to do is annex Parcel A, a 50 ft. strip totaling .16 acres from the "McLean Lot", to the neighboring .35-acre parcel the "Boat House Lot". The McLean Lot is owned by 5 members of the McLean family and the Boat House Lot is owned by the same 5 members of the McLean family plus 2 members of the Davis family. On Great Island, most of the land has been handed down through families for generations. The applicant is the sixth generation of McLeans to own this property. This annexation will increase the shore frontage on the Boat House Lot by one-third and allow the Boat House Lot owners to have access to the boathouse without having to cross the McLean property. All of the foot traffic to the boathouse has to cross the McLean property. It is not possible to maneuver watercraft on the westerly side of the boathouse because of a stone wharf that is located close to the boathouse. The stone wharf is the old Woodsum Steamboat Wharf. The Davis's are now an elderly couple that live in Chicago and would like to divest their property interests in Great Island. There are some perspective future plans and septic plans have been submitted and approved by D.E.S. for a two-bedroom cottage. The plans were approved on a tentative septic easement since the annexation had not yet been approved. The lot could be developed with an easement for septic and access to the boathouse, but the

applicant and interested parties would rather keep the deeds and access as clean and less complicated as possible.

Mr. Vannatta commented that in summation, there are two non-conforming lots, one larger one smaller. This annexation will make the larger lot more non-conforming in trade for making the smaller lot less non-conforming.

Mr. McCutcheon reviewed the criteria for the variance. He cited the following: Granting of the variance will not be contrary to the public interest because there will be 1.58 acres remaining with 208 feet of lake frontage on the McLean Lot after annexation. Denial of the variance will result in unnecessary hardship to the owner because the boathouse on the adjacent lot sits partially on the larger property. An area variance is needed to enable the owner's proposed use of this property given the condition of the location of the boathouse on the adjoining lot and the non-conforming size of the adjoining lot. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible because of the non-conforming size of both parcels. The use will not be contrary to the spirit of the ordinance because the use will not change. By granting the variance, substantial justice will be done because the existing boathouse will front on its own land and will also be accessed on its own land. The proposed use will not diminish surrounding property values because the use will not change from what it now is.

Mr. McCutcheon clarified that when he referred to 'use' he was meaning residential use versus commercial use.

Mrs. Soper asked Mr. McCutcheon how large is Great Island.

Mr. McCutcheon stated approximately 50 acres, most of which is in Newbury. In 1979 when he performed his last survey on the Island, the monuments from 1890 were still in place.

Mr. Azodi asked if there is a potential buyer for the Boat House Lot.

Mr. McCutcheon said yes, and that buyer happens to be out of the family.

Mr. Vannatta asked if the sale of the Boat House Lot happens to be contingent upon the approval.

Tom Dugdale, Realtor, said that he was not sure.

Mrs. Soper commented that it seems to her that the applicant should know if there is a potential sale and if it is contingent upon approval of this variance request.

There were no further questions by the Board.

The hearing was opened to public comment.

Tom Dugdale, Realtor, commented that he is not totally clear that the Zoning Board understands the terms of the septic design. He explained that the design has been approved subject to an easement given from the McLean Lot. He stated that he is curious as to what the questions are regarding the septic issue.

Mr. Vannatta stated that the discussion this evening is required to be only on the lot line adjustment. If a home is to be built on the Boat House Lot at a later date, all of the building requirements will have to be met.

Mr. Dugdale asked for clarification regarding Equitable Waiver of Dimensional Requirement.

Mr. Vannatta explained that those waivers are for after-the-fact mistakes.

Jeff McLean stated that, for the record, he is in favor of the annexation as Mr. McCutcheon presented.

Mark McLean stated that he also is in favor of the annexation. He commented that there was an existing boathouse in front of the McLean Lot that was destroyed during the 1938 Hurricane.

Philip Lamereau, public member, stated that he also is in favor of the annexation, and it would be much easier for both parties (buyer and seller) if they don't have to create an easement.

No further comments from the public. Mr. Vannatta closed the public input portion of the hearing for deliberation.

George McLean, applicant, stated that, for the record, he also is in favor of the application as presented.

Mr. Vannatta emphasized to the Board that they should weigh the merits as presented and make sure that each of the variance criteria have been satisfied in order to vote to approve the application as presented.

Mrs. Soper stated that she understands what the applicant hopes to accomplish and why and she sees no harm in granting the variance.

Mr. Vannatta clarified to the Board members that the concern for the Zoning Board of Adjustment is the changing of the size of the properties, not the actual annexation process. If the variance is approved, both lots will remain non-conforming either in size and/or frontage.

Mrs. Holmes asked if the Board should be considering any density issues with respect to a neighboring property.

Mr. Vannatta stated that density is not an issue with this application. The granting of this application would not be creating more lots, only moving the lot line between two lots. Also, there is nothing in the file from either neighboring expressing concern for the potential close proximity on an additional dwelling.

Mrs. Holmes stated that she sees no reason not to grant the variance.

Mr. Cluff commented that the reasoning for the application makes sense to him, but he is not sure that all of the criteria have been met. Some other method of accessing the boathouse could be utilized by re-configuring the access of the boathouse.

Mr. Vannatta stated that if the dock on the McLean side is moved to the westerly side of the boathouse, it will not be able to be utilized because of the stone wharf.

Mr. Azodi asked for the Board's opinion as to what constitutes hardship in this case.

Mr. Vannatta explained that it was addressed in Mr. McCutcheon's citation. No matter what the applicant does, they cannot make the lot conforming by virtue of the existing conditions. Looking at the grades and setbacks, there could be a problem in building a house on the boathouse lot, but that may be a future issue, not an issue for this hearing.

Mr. Azodi commented that 16.7.3 says that all of the provisions have to be satisfied.

Mr. Vannatta explained that if a board member feels that one of the provisions are not satisfied, the member is required to vote not to grant. Hardship is one of the most difficult items to prove. If the boathouse is ever removed, it will never be able to come back because the State is not approving them anymore. Mr. Vannatta commented that he believes there isn't anyone on the island that could do any construction and not need a variance due to the lay of the land.

Mr. Vannatta stated that he believes the applicant has met all of the criteria.

Mrs. Soper made a motion to vote on the variance request as presented and that this motion is subject to all of the conditions and materials presented. Mrs. Holmes seconded the motion.

Mr. Azodi voted to GRANT as presented.

Mrs. Soper voted to GRANT as presented.

Mr. Cluff voted to GRANT as presented.

Mrs. Holmes voted to GRANT as presented.

Mr. Vannatta voted to GRANT as presented.

Mr. Vannatta reminded the applicant that the decision of the Zoning Board of Adjustment is subject to a 30-day appeal period.

Mr. McCutcheon commented that every town should have a land use coordinator like Newbury such as Patricia MacDonald.

***Robert L. and E. Diana Morris, for property located at 83 Bowles Road, Newbury, NH, will seek a Special Exception as provided in Paragraph 5.7.1 of the Newbury Zoning Ordinance to permit the following: to allow for an accessory apartment over an existing garage attached to a one-family dwelling unit. Newbury Tax Map 017-404-247.***

Present were Jennifer Morris-Sweet, Daughter and Representative for Mr. and Mrs. Morris and Betsy Lusinski, Daughter of Mr. and Mrs. Morris.

Mr. Azodi recused himself from this hearing because of a potential conflict of interest. Mr. Cluff recused himself from this hearing because he is an abutter to the Morris's.

Mr. Vannatta appointed Mrs. Wright as a voting member for this hearing and outlined the procedure for conducting the hearing. He offered the applicant the option of continuing the hearing to a later date since there would be only four voting members deciding whether or not to grant or deny. The applicant decided to go on with the hearing this evening.

Ms. Morris-Sweet explained that the accessory apartment is for the purpose of creating a separate living space from the main house for her and her daughter. The new living space is proposed to be less than 800 sq. ft. The existing septic system will be expanded to accommodate the additional two bedrooms. There will be no need to alter the existing well and does not change the existing dwelling or its use.

Mrs. Holmes asked if there was an existing septic approval plan.

Ms. Morris-Sweet explained that that has not been designed at this time.

Mr. Vannatta explained that if this application is granted, the approval will be conditional upon an approved septic design.

Ms. Lusinski explained that the accessory apartment is being proposed to be built above the existing three-car garage. The roofline of the garage will change in pitch and will be raised but not above the height of the existing roof of the main house. The main house is greater than five years old. The addition will blend in architecturally with the current dwelling. There will be a deck with stairs for a second egress. The interior measurements of the proposed accessory apartment are the same as the existing garage. No trees will need to be cut.

Ms. Morris-Sweet and Ms. Lusinski cited the following from the application:

The use of the apartment will not be detrimental to the character or the enjoyment of the neighborhood or cause any undo variation or violation in the character thereto. The apartment will not be injurious, noxious or offensive and thus detrimental to the



neighborhood, except for an occasional dirty diaper. The apartment use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions, waste disposal or similar adverse causes of conditions. The size of the site is 12.97 acres. The apartment will be built in the same footprint of the present structure, over the existing attached garage. The roofline will be lower than the highest roof of the main house. The location, nature and height of the apartment will be in harmony with the neighborhood and will not discourage the appropriate development and the use of the adjacent land and buildings or impair the value thereof.

Mr. Vannatta asked if the eaves on the lakeside and backside of the addition will extend longer than they are now.

Ms. Lusinski said no, the drip line will remain the same.

Mrs. Soper stated that she believes the applicant has done a wonderful job, and nothing will be seen from the road.

Mr. Vannatta read a letter in the file from Steven and Loa Winter, abutters. They are in favor of the application.

Mr. Vannatta opened the hearing to the public.

Liz Tentarelli, abutter, stated that she is heartily in support of this project. She stated that she believes this is a wonderful solution and is better for the environment than subdividing and building a whole new home. This establishes a way for an expanded family to stay together.

Michelle Noyer, member of the public, commented that she believes this type of situation is the reason this article was written, to accommodate affordable living for families.

Bill Cluff, abutter, commented that knowing the Morris's and their intentions, this proposal is the best thing that can be done to maximize the use of the property and satisfy the needs of the family. It will blend in nicely.

Mr. Vannatta closed the hearing to public comment and the Board began deliberations.

Mrs. Soper commented that this is a great idea. She stated that she had talked with the Morris's when they were thinking of subdividing and said that this is a much better solution.

Mrs. Wright commented that this application meets all of the requirements in the ordinance. She stated that this plan is designed and placed well. She had no issues.

Mrs. Holmes applauded the applicant for a terrific addition.

Mr. Vannatta commented that all of the conditions in the ordinance have been met.

Mrs. Holmes made a motion that the Zoning Board of Adjustment vote on the Special Exception for the Morris's and that it include a condition that there be a septic approval for two bedrooms and that all documents and testimony as presented this evening be followed to plan as presented. Mrs. Wright seconded the motion.

Mrs. Wright voted to GRANT as presented with the aforementioned condition.  
Mrs. Soper voted to GRANT as presented with the aforementioned condition.  
Mrs. Holmes voted to GRANT as presented with the aforementioned condition.  
Mr. Vannatta voted to GRANT as presented with the aforementioned condition.

Mr. Vannatta reminded the applicant that there is a 30-day appeal period.

Mrs. Holmes asked for clarification regarding communication of conditions set forth in Zoning Board decisions to the Building Inspector.

Mr. Vannatta explained that the Building Inspector has access to all of the information in the Zoning Board files. He is made aware of the decisions and conditions.

Mr. Vannatta informed the Zoning Board that a letter has been received from Robert Stewart, RCS Designs. In the letter, Mr. Stewart addresses a situation involving an application by Scott Hill to the Planning Board back in July of 2003. Mr. Hill had applied to the Planning Board prior to density requirements as applied to subdivisions. When Mr. Hill went back to the Planning Board at a later date, the rules of density had changed the Planning Board refused it. Mr. Vannatta stated that the Zoning Board of Adjustment cannot hear an appeal from Mr. Hill because the Planning Board decision was made more than 30 days ago. The letter from Mr. Stewart cannot be considered as an appeal because it did not come in in the form of an application. Therefore, it will be considered as informational only.

Mrs. Holmes made a motion to adjourn. Mrs. Wright seconded the motion. All in favor. Meeting adjourned at 9:10 p.m.

Respectfully submitted,

Linda Plunkett