

**Zoning Board of Adjustment
July 23, 2007**

Members Present: Elizabeth Ashworth, Chair; Bill Cluff; Katheryn Holmes; Clay Rucker, Alternate; Steve Russell, Alternate; Helen Wright

Ms. Ashworth called the meeting to order at 7:05 p.m.

Board Nominations

Ms. Ashworth instructed the Board that it needs to appoint one of the alternates to fill Betsy Soper's term until March 2008 Annual Town Meeting Election.

Mr. Cluff nominated Clay Rucker to fill Ms. Soper's position until the Annual Town Meeting Election in March 2008. Ms. Holmes seconded the nomination.

Ms. Wright nominated Steve Russell to fill Ms. Soper's position until the Annual Town Meeting election in March 2008. Ms. Ashworth seconded the nomination.

Ms. Holmes asked Mr. Rucker how many Zoning Board meetings he has attended.

Mr. Rucker stated two meetings and that he had been on the Planning Board prior to that.

Ms. Holmes asked Mr. Russell how many Zoning Board meetings he has attended.

Mr. Russell stated three meetings.

Ms. Wright made a motion to vote on the nominations. Ms. Ashworth seconded the motion. All in favor.

Votes for Clay Rucker – 2

Votes for Steve Russell – 2

Ms. Ashworth ruled to table the decision until counsel can be sought to clarify on the proper way to break the tie.

Ms. Holmes proposed that one of the Zoning Board of Adjustment members should be present at the Summer Town Meeting to promote awareness of zoning and protection of natural resources.

Ms. Ashworth appointed Mr. Rucker as a voting member for the Horne hearing and Mr. Russell as a voting member for the Snelling hearing.

1 *At 7:15 p.m. Thomas & Lorraine Horne, property located at 52 Fowler Mill*
2 *Road, Newbury,, NH will seek a Variance as provided for in 7.5 and 7.5.1 to permit the*
3 *following: reconstruct and alter an existing 5' x 30' wood deck to be altered to a 12' x*
4 *30' screened-in porch of a pre-existing non-conforming building situated within the*
5 *75' set back. Newbury Tax Map 50-506-210.*
6

7 Robert Stewart from RCS Designs was present to represent Thomas and Lorraine Horne.
8 A letter of authorization for representation to Mr. Stewart from the Horne's is on file.

9
10 Mr. Stewart explained that the Horne's would like to put a concrete slab under their
11 existing house that is currently supporting by pilings, expand the deck and convert it to a
12 screened-in porch to be supported by pilings, and change the roof to extend over the
13 whole footprint.

14
15 Ms. Ashworth advised Mr. Stewart that the Board cannot address the slab and roof since
16 all that was asked for in the variance request was to convert the deck into a screened-in
17 porch.

18
19 Mr. Stewart explained that the slab complies with the State requirements and zoning
20 regulations per Article 7.4, therefore he did not address the slab in the application for
21 variance.

22
23 Ms. Holmes asked Mr. Stewart if he and his clients thought they could disturb the earth in
24 the shore land district/buffer zone to pour a slab foundation under this house.

25
26 Ms. Ashworth commented that the Building Inspector will determine if the applicant
27 needs a variance to pour the slab and the Board should focus on the porch.

28
29 Ms. Holmes asked Mr. Stewart to clarify the dimensions of the proposed addition.

30
31 Mr. Stewart explained that the existing house is 24 ft. x 26 ft. not counting the deck. One
32 side of the deck extends out 5 ft., then there is a jog in footprint and the other side of the
33 deck extends out 7 ft. The Horne's would like to extend beyond the 5-ft./7-ft. edge of
34 the deck and square off at 12 ft. beyond the edge of the house with a screened-in porch.
35 The proposed porch is a three-season, uninsulated porch. The home site is on a privately
36 maintained road, and the main house does have heat and insulation.

37
38 Ms. Holmes commented that she does not like the thought of the addition going toward
39 the Lake and the water run-off from the expanded roof area is a danger to the water
40 quality.

41
42 Mr. Stewart pointed out that in an effort to address the drip line, there is a note on the
43 plan *'Roof Pitch Changed For Snow Load Only. There is No Increase in Living Space.*
44 *No Variance or Waiver Required. See Letter Dated November 1, 2004 to Municipal*
45 *Official: RE: Comprehensive Shoreland Protection Act – RSA 483-B, Signed by Collis*
46 *G. Adams CWS, CPESC, Wetlands Bureau Administrator. Item #3 Expansion Of*

1 *Nonconforming Structures, paragraph 4, "Addition of a foundation (provided that the*
2 *elevation of the first floor remains substantially the same) and a change in the pitch of*
3 *the roof for structural reasons are not considered expansions."* He explained that the
4 plans look quite busy because they are multi-purpose for the septic and the zoning.

5
6 Ms. Holmes advised Mr. Stewart that since this project is in the Shore Land Protection
7 area, the applicant will need a permit from the State as well as the Town.

8
9 Mr. Stewart explained that the State has already given their approval of the project and
10 that the Subsurface Water Division works in partnership with the Shore Land Protection
11 Division. One department will not issue a permit if the other is not in compliance.
12 Approval for construction of the septic is dated June 26, 2007. The approval cites the
13 following conditions:

- 14 1. This approval is granted only to improve an existing situation.
- 15 2. All activity shall be in accordance with the Comprehensive Shoreland
16 Protection Act, RSA 483-B.
- 17 3. System must be installed in strict accordance with the manufacture's
18 instructions.

19
20 Mr. Cluff interjected that this discussion has little to do with the variance request that is
21 before the Board.

22
23 Mr. Stewart explained that there is no formal application for activity that meets the State
24 guidelines and this project meets the guidelines because they state that for an existing
25 house, it can move as much as 12 ft. toward the reference line. He stated that the
26 applicant is seeking a variance to Article 7.5:

27 *7.5.1 The addition of decks to existing dwelling units between the buffer zone and*
28 *the setback are permitted conditioned on: maintaining a minimum setback of fifty feet*
29 *(50'), a maximum deck width of twelve feet (12'), maintaining an open deck, utilizing*
30 *simple foundations such as pier or piling foundations to minimize land disturbance, and*
31 *implementing adequate soil erosion control measures as outlined in Section 7.8.*

32
33 Ms. Holmes stated that she does not feel the applicant is allowed to expand his dwelling
34 toward the water.

35
36 Mr. Stewart explained that the proposed covered porch is not going to be dwelling space.
37 It will be a deck with a roof over it and screens all around. There will be no working
38 windows, nor the potential to winterize the porch.

39
40 Ms. Ashworth pointed out that Article 7.5 addresses decks, not porches with a roof cover.

41
42 Mr. Cluff commented that the applicant could expand up to 12 ft. on an open deck.

43
44 Ms. Wright pointed out that this is a non-conforming structure on a non-conforming lot.

45

1 Mr. Stewart commented that applicants have to come to the Zoning Board of Adjustment
2 because of existing conditions that cannot be complied with or changed or if there were
3 rules that were not difficult. Mr. Stewart proceeded to read the variance application as
4 submitted.

5
6 Mr. Stewart commented that the rules that we go by to the strictest terms are basically the
7 Shore Land Protection Act because the Town of Newbury does not have a comprehensive
8 zoning ordinance to dictate how it is done, nor do you have the resources to see it
9 through. He stated that therefore, before we come to the town, we rely on our higher
10 standard as the Shore Land Protection Act. We all want to protect the Lakes. The strict
11 standards of the Shore Land Protection Act are the ones we follow. If we need
12 mitigation, we to go to the Zoning Board of Adjustment.

13
14 Mr. Cluff asked Mr. Stewart how the deck is currently supported.

15
16 Mr. Stewart explained that the deck is currently supported by pilings and is the whole
17 house. The proposal is to place a slab under the house and have the screened-in porch
18 supported by pilings.

19
20 Ms. Ashworth asked Mr. Stewart to address the 'ADDITIONAL NOTES' on the plan in
21 reference to: *All Run Off From Roof To Be Collected And Discharged Into The Existing*
22 *Dug Well. Dug Well To Be Discontinued For Water Use Or Consumption.*

23
24 Mr. Russell asked Mr. Stewart to elaborate on the collection and discharge system for the
25 roof run-off.

26
27 Mr. Stewart explained that there are proposed to be gutters around the drip edge which
28 will feed into a drain spout that discharges into the dug well. Part of the changes on this
29 lot is to make the layout better by moving the septic system further away from the Lake.
30 The new septic system is proposed to be a Clean Solution system.

31
32 Ms. Holmes commented that this application is for a non-conforming building in the
33 buffer zone expanding further into the buffer zone, and it appears that the applicant needs
34 a variance for this building to expand into the 50 ft. State buffer zone. She advised Mr.
35 Stewart that it seems as though the State of NH has gone into partnership with
36 municipalities with the land around the Lakes. The State wants applicants to have a
37 permit if there are going to be disturbance to the land within 50 ft. of the water. She
38 commented that this application is difficult to evaluate because there are changes
39 happening all around the site.

40
41 Ms. Holmes referred to a letter from the NH Department of Environmental Services dated
42 November 1, 2004 to all Municipal Officials. *'...A waiver from DES is required when a*
43 *property owner proposes an expansion of any of the outside dimensions of the existing*
44 *structure, **including the height.** Addition of a second floor is considered an expansion*
45 *even if the overall building height will not increase. Addition of a foundation (provided*
46 *that the elevation of the first floor remains substantially the same) and a change in the*

1 *pitch of the roof for structural reasons are not considered expansions. Also, for*
2 *nonconforming structures erected prior to July 1, 1994, no waiver is required for the*
3 *addition of a deck or open porch extending no more than 12 feet toward the reference*
4 *line. Existing decks and open porches may not be converted into part of the living*
5 *space.'*
6

7 Mr. Stewart stated that he was familiar with that rule and that the proposed screened
8 porch is allowed per RSA 483-B; 11. This statute was referenced on the plan that was
9 submitted to DES. He commented that if he interpreted the RSA incorrectly or if the
10 proposal did not comply the DES would not have given their approval.

11
12 Ms. Ashworth commented that the applicant could easily convert the existing deck into a
13 screened-in porch without increasing the size and asked Mr. Stewart what the need was
14 for expanding the size.

15
16 Mr. Stewart explained that the Horne's are new owners and feels that they need the
17 space. Many people around wet lands are screening in their porches in light of the EEE
18 and West Nile Virus cases.

19
20 Mr. Stewart continued to explain the plans as presented. There is an erosion control plan
21 shown on the drawing, temporary and permanent. There is proposed to be silt fencing all
22 the way around the construction area. In areas where there may be increased flow, there
23 will also be hay bales.

24
25 There were no further questions from the Board.

26
27 Ms. Ashworth opened the hearing to the public. There were no members of the public
28 present for this hearing. Ms. Ashworth closed the hearing to the public and the Board
29 continued with deliberations.

30
31 Mr. Cluff stated that he has no questions and that he understands the proposal.

32
33 Mr. Rucker commented that he would like to read the RSA wording again before making
34 any comments.

35
36 Ms. Holmes commented that she believes Mr. Stewart is presenting an application in
37 good faith for what he thinks is reasonable, but would feel better about this application if
38 there would be some plantings to help with the absorption of surface water. She
39 emphasized that Lake Todd is very fragile and would be happy to see this proposal
40 happen if it was 75 ft. back from the lake. Ms. Holmes recognized that it has a unique
41 setting and that most of the houses in that area are within 50 feet of the lake. This is a
42 little piece of property and the owners are trying to improve their dwelling, water and
43 septic. Those are all good intentions and it has a good erosion control plan.

44
45 Ms. Wright commented that she agrees with Ms. Holmes regarding the plantings,
46 although there is not much space to put planting between the proposed porch and the

1 lake. She stated that she was uncomfortable with Mr. Stewart's comment that 'By not
2 *granting this proposal would limit many other residents whose preexisting*
3 *nonconforming homes are within a shoreland overlay district to apply for the same*
4 *relief.'* Because that sounds as though the Board may be setting a precedent if this
5 application is approved. She also stated that she does not agree with making a non-
6 conforming situation more non-conforming versus less non-conforming and does not see
7 a need or a hardship to support the extension of the deck/porch to 12 ft. out from the
8 house.

9
10 Ms. Ashworth commented that she feels the Board needs to realize that it is an existing
11 non-conforming building. This proposal makes it no more non-conforming because it is
12 still the same roof area and now the run-off will be addressed with gutters, but, it does not
13 appear that this application satisfies the hardship requirement.

14
15 Ms. Wright made a motion to vote on the application. Ms. Holmes seconded the motion.

16 Ms. Wright voted to deny the application for variance based on Article 15.1.1
17 making a non-conforming building more non-conforming and hardship was not satisfied.

18 Ms. Holmes voted to deny the application for variance because hardship was not
19 proven. The applicant could enclose the existing deck without expansion.

20 Mr. Rucker voted to deny the application for variance based on Article 15.1.1. He
21 commented that he agrees with the other members and also does not see a hardship.

22 Mr. Cluff voted to deny the application for variance based on Article 16.7.2
23 because hardship was not proven.

24 Ms. Ashworth voted to deny the application for variance because she does not feel
25 that there is a hardship in this situation.

26
27 Ms. Ashworth advised Mr. Stewart that the applicant may appeal the Board's decision
28 within 30 days if there is new information to be considered.

29
30 The Board took a five minute break.

31
32
33 ***At 7:45 p.m. John R. Snelling, for property located at Alsubet Court, Newbury, NH will***
34 ***seek a Variance as provided in Paragraph 7.3 of the Newbury Zoning Ordinance to***
35 ***permit the following: To construct a home within the 75' shoreline setback. Newbury***
36 ***Tax Map 50-487-067.***

37
38 Robert Stewart from RCS Designs was present to represent John R. Snelling. A letter of
39 authorization for representation to Mr. Stewart from Mr. Snelling is on file.

40
41 Mr. Stewart explained that there are two sheets of plans. The first sheet is a combination
42 of Shoreline Protection Application and the septic plan presented to the Department of
43 Environmental Services, Subsurface Bureau. The second sheet is the erosion control
44 plan. He explained that a variance was required by DES because this is a non-existing
45 structure. The septic design was approved as well as receiving a variance from the
46 Shoreland Protection Act. In order to get a variance from the Shoreland Protection

1 Bureau, you have to cover all the bases and make sure that you are meeting and
2 exceeding all requirements outside of the reference line. With this project, we have
3 worked with the Shoreline Bureau on the best way to treat the run-off. Part of that plan
4 includes minimizing the cutting of trees and following through with a planting plan for
5 permanent erosion control. Shoreland Variances are not easy to get because you have to
6 meet very strict criteria, and the variances are only approved by the Commission of DES.
7 There will be no negative effect on the Lake or the shoreline while the lot is under
8 development. The roof run-off will be collected in gutters and transferred into a dry well.
9 The erosion control sheet shows where development is allowed and what is allowed to be
10 done.

11
12 Ms. Holmes asked Mr. Stewart to explain the Enviro-Septic field.

13
14 Mr. Stewart explained that an Enviro-Septic field almost looks like a culvert that is
15 wrapped in fabric laid out on a special bed of sand. Most septic fields have to be 4 ft.
16 above seasonal high water, but this particular design is only required to be 3 ft. above
17 seasonal high water because of its ability to treat the effluent.

18
19 Ms. Holmes asked Mr. Stewart how effective this system would be if the electricity goes
20 out and the system is not able to pump.

21
22 Mr. Stewart stated that the system would do well enough to hold its own until the
23 electricity came back on keeping in mind that without electricity there would be no
24 effluent entering the system to be treated.

25
26 Ms. Wright asked Mr. Stewart to address the encroachment waiver noted on the plan.

27
28 Mr. Stewart explained that the septic components are supposed to be 10 ft. or more away
29 from the property line or right of way. This particular waiver is to the right of way,
30 Alsubet Court as per the septic approval dated May 1, 2007:

- 31 1. *All activity shall be in accordance with the Comprehensive Shoreland*
- 32 *Protection Act, RSA 483-B.*
- 33 2. *A registered release form for protective well radii shall be on-site for the*
- 34 *inspector prior to operational approval.*
- 35 3. *Waiver granted to address the distance between the leach field and property*
- 36 *line only. EJT 6/26/07*
- 37 4. *Address ENV-WS 1008.04(c).*

38
39 Ms. Wright asked Mr. Stewart if he had located the abutting properties' wells.

40
41 Mr. Stewart stated that according to the second page of the plans, the closest abutting
42 well is approximately 78 ft. away from the septic components.

43
44 Ms. Wright asked Mr. Stewart if there is any reason why the house cannot be further
45 away from the Lake.

46

1 Mr. Stewart explained that the septic system took precedent to be placed as far away from
2 the Lake as possible. The house foundation drains are required to have a setback of 25 ft.
3 from the septic system so that there is no chance for effluent to invade the foundation
4 drains and then end up in the Lake.

5
6 Ms. Holmes asked if the Snellings were new property owners.

7
8 Mr. Stewart affirmed that they are new property owners.

9
10 Mr. Rucker asked Mr. Stewart if he knew where the abutter's septic systems were located
11 in relation to the Snellings' proposed well.

12
13 Mr. Stewart stated that he was not sure where the abutter's septic systems were.
14 However, the septic system for the abutter on the southern side is greater than 75 ft.

15
16 Ms. Ashworth noted that in case of late-comers to the meeting, Steve Russell has been
17 appointed as a voting member of the Zoning Board for this hearing.

18
19 Mr. Stewart reviewed RSA 674:33, conditions of a variance. He informed the Board that
20 this property is assessed for \$143,100 as a building lot. It always has been assessed as a
21 building lot and has always been considered by the Town and its owners as a building lot.

22
23 Ms. Holmes stated that this application does not meet DES rules.

24
25 Mr. Stewart stated that with the DES variance granted, it does meet the rules.

26
27 Mr. Rucker asked Mr. Stewart to elaborate on the notation on sheet 2 regarding the
28 concrete trucks. *'Concrete Trucks: Concrete trucks will discharge and wash out surplus
29 concrete or drum wash water in a contained area on site.'*

30
31 Mr. Stewart explained that it is common practice that a hole will be dug as far away as
32 possible from the Lake to take the water that is used to rinse of the equipment. The hole
33 is then filled in. This practice is permissible by the State.

34
35 Ms. Holmes asked Mr. Stewart how many trees will be taken down to develop this site.

36
37 Mr. Stewart referred to sheet two which indicated six hemlocks outside of the building
38 envelope. All of the trees within the building envelope will be taken down for
39 development. The report of the basil area inventory is included with the application and
40 the trees will be replaced with other trees and shrubs as part of the mitigation plans.

41
42 Mr. Rucker asked Mr. Stewart if there was any indication of ledge under the surface.

43
44 Mr. Stewart stated that all of the soils are very sandy and that the test pits were able to go
45 down over 6 ft.

46

1 Mr. Russell asked Mr. Stewart if this location was the only choice of where to place the
2 home.
3
4 Mr. Stewart explained that they had to consider the side setbacks and the septic dictated
5 the rest.
6
7 Ms. Holmes asked if Mr. Stewart knew the size of the lot.
8
9 Mr. Cluff pointed out that according to the plan, the lot is 0.15 acres.
10
11 Ms. Holmes commented that this lot is nearly unbuildable.
12
13 Mr. Stewart pointed out that the lot met the requirements for the State to be buildable.
14
15 The Board had no further questions for Mr. Stewart.
16
17 Ms. Ashworth opened the meeting up to the public.
18
19 James McHugh, abutter commented that over the years the amount of debris coming
20 down the Lake into the cove near their home has increased and caused weed growth and
21 declination of the water quality. He expressed concern that the development of the
22 Snelling's property will create more debris.
23
24 Roberta McHugh asked Mr. Stewart where the leach field is going to be located.
25
26 Mr. Stewart explained that the leach field will be at the back of the house, away from the
27 Lake and an elevation that is lower than the road but higher than the Lake.
28
29 Ms. McHugh asked what will happen to the road if there is a problem with the leach field
30 and it needs to be dug up for repair.
31
32 Mr. Stewart explained that there could possible be some temporary disturbance of the
33 road such as roughing the surface up by heavy equipment, but the road would be required
34 to be restored after maintenance in complete.
35
36 No further questions from the public. Ms. Ashworth closed the meeting to the public and
37 the Board began deliberations.
38
39 Ms. Wright commented that it is unfortunate that this is such a small lot and recognized
40 that it is a buildable, grandfathered lot that meets the septic and well criteria and has state
41 approval. She had no further questions.
42
43 Mr. Russell commented that after looking at the site, he is compelled to deny this
44 application. But, it is in compliance with the regulations. He commented that any
45 addition of any structure does not benefit the existing environment. But, given that it the

1 State's rationale and DES has allowed these variances, the Board doesn't have much of a
2 choice.

3
4 Ms. Holmes commented that she has that 'back-up-against-the-wall' kind of feeling with
5 the grandfathered lots. She commented that she is not even so sure that DES even
6 walked the Snelling property prior to giving its approval. But, if the State gave its
7 blessing, then the Town should follow suit.

8
9 Mr. Cluff commented that based on the other houses in the area, the Snellings appear to
10 be doing a lot to make sure the Lake is being protected, more than some of the other
11 houses.

12
13 Ms. Ashworth commented that she agrees with Mr. Cluff. The Snellings, with the
14 expertise of RCS Designs, have put together a really good plan to protect the lake.
15 Because the lot is a grandfathered lot and someone has been paying taxes on that lot as a
16 building lot we have to live with the mistakes from the past when there was no zoning.
17 There would be a hardship for the owner if it could not be built upon.

18
19 Ms. Holmes commented that she is concerned about what Ms. Wright brought up about
20 the abutters' well being farther away than 75 ft. from the septic. It would be a terrible
21 thing if the Snellings spend all this money on this project and have a problem with the
22 neighbors later.

23
24 Ms. Ashworth stated that there is no law for the Zoning Board to base that reasoning for
25 denial on. The Board does not have enough information to make septic and well setback
26 a condition of approval.

27
28 There were no further comments from the Board.

29
30 Ms. Wright made a motion to vote on the Snellings application for a Variance to Article
31 7.3. Mr. Cluff seconded the motion. All in favor.

32 Mr. Cluff voted to grant the request for variance as presented.

33 Ms. Homes abstained from voting.

34 Mr. Russell voted to grant the request for variance with regret.

35 Ms. Wright voted to grant the request for variance.

36 Ms. Ashworth voted to grant the request for variance because they met all the
37 criteria.

38
39 Ms. Ashworth advised Mr. Stewart that there is a thirty (30) day appeal period for which
40 an appeal may be filed.

41
42 Mr. Cluff made a motion to adjourn. Ms. Wright seconded the motion. All in favor.
43 Meeting adjourned at 10:15 p.m.

44
45 Respectfully submitted,

46 Linda Plunkett