

**Zoning Board of Adjustment
June 4, 2007**

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

Ms. Ashworth called the meeting to order at 7:00 p.m. She polled the Board to see if there is anyone interested in representing the Zoning Board of Adjustment at an information table during the Newbury Old Home Day scheduled for July 14, 2007. Ms. Holmes volunteered to fill in for a couple of hours. Ms. Ashworth said that she would contact Mrs. Freeman, Planning Board Chair, to see if the Planning Board is going to participate in an informational table.

The Board discussed the 2007 Spring Conference for land use board members. Ms. Ashworth reported that the conference was well attended and was also very informative. Her sense is that Newbury has good ordinances in place, but many towns are still trying to catch up.

Ms. Ashworth appointed Steve Russell, Alternate, as a voting member for this evening's meeting, and the public hearing commenced with the reading of the public notice.

Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on Monday, June 4, 2007 at the Town Office Building at 937 Route 103 in Newbury, NH:

At 7:15 p.m., Stephen Remen, property located at 23 Winter Lane, Newbury, NH, will seek an Equitable Waiver of Dimensional Requirement as provided in RSA 674:33-a to permit the following: Completion of the construction of an addition on a preexisting garage that is within the 75 foot setback from a brook. Newbury Tax Map 018-285-179.

Derek Lick, Attorney from Sulloway & Hollis, was present to speak on behalf of Stephen Remen. Stephen Remen, Applicant was also present.

Mr. Lick introduced himself to the Board and stated that he was also on the Zoning Board of Adjustment in Sutton. He commented that Mr. Remen is in a unique situation, and therefore, in his application he has given more information than necessary in hopes of giving the Board multiple options. He explained that Mr. Remen has received various opinions from the Town of what his options are and what needs to be done. As a result, he decided to look at the various options and apply accordingly. Mr. Lick informed the Board that Mr. Remen is a 30-year resident and readily admits that a mistake was made and wants to rectify the situation.

Mr. Lick explained that there is a pre-existing 24 ft. x 26 ft. garage within the 75 ft. setback to Cunningham Brook, which was built by the same contractor in the year 2000 and in compliance with the zoning regulations that were in effect at that time. Mr.

Remen thought that his contractor had applied for and satisfied the building permit requirements for the 24 ft. x 24 ft. addition as he had done on the prior garage project in 2000. As a result of zoning regulation revisions after the year 2000, the setback to permanent brooks and streams has increased from 50 ft. to 75 ft., and the stream behind Mr. Remen's property is now considered a permanent stream, thereby subject to the 75 ft. setback.

Mr. Lick stated that Mr. Remen is willing to take whatever measures necessary to address and remedy the run-off from the impervious surface of the garage roof, including but not limited to installing gutters, a French drainage system, a dry well, or planting vegetation. He explained that this addition sits no closer to Cunningham Brook than the pre-existing garage. If Mr. Remen is required to tear down the addition, the only option left for him is to build a bigger structure only 15 ft. away, which will require tree cutting and earth disturbance. The whole point of building an addition onto the existing garage is to create a place to keep his plow truck, which is necessary in order to maintain the private road on which he lives. There are written statements from the neighbors stating that they have no objection to the addition, and Cunningham Brook is not in fact a year-round running brook.

Mr. Lick stated that he spoke with Suzanne Levine; and in his opinion, she understands where Mr. Remen is coming from and want him to do what needs to be done to remedy the situation as best he can. Mr. Lick informed the Board that the Board of Selectmen has sent a letter to Mr. Remen instructing him to demolish the addition. He stated that the Code Enforcement Officer instructed Mr. Remen to go to the Zoning Board of Adjustment, one Selectman instructed Mr. Remen to go to the Planning Board and another Selectman instructed Mr. Remen to go to the Zoning Board of Adjustment for an Appeal to an Administrative Decision. There lies the confusion.

Mr. Remen commented that this layout of the addition is really the only feasible way to extend the garage in order to accommodate the ¾ ton plow truck. He stated that there were a couple of mistakes. One, not pulling a building permit; and two, designating Cunningham Brook as a permanent stream. Cunningham Brook does not appear on the 2007 town map of permanent streams. This garage is very low impact. There is no plumbing, no septic and no inhabitants.

Ms. Holmes asked Mr. Remen what he thinks of the suggestions of planting, installing gutters and a drainage system.

Mr. Remen stated that he is willing to install or plant whatever erosion control or storm water drainage system required. He also stated that there is certainly no intention to build anything further.

Mr. Lick reviewed the Supplement to Application for Equitable Waiver of Dimensional Requirement that was submitted as part of Mr. Remen's application.

16.8.1.1 ...the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in

violation has been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.

Mr. Lick stated that all construction activity ceased as soon as the Code Enforcement Officer notified Mr. Remen of the violation. He has since taken every step necessary to follow the direction of municipal officials to remedy the situation.

16.8.1.2...the violation was not an outcome of ignorance of the law, or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

Mr. Lick commented that there was no bad faith on Mr. Remen's part, no ignorance of the law. Mr. Remen knew he needed a building permit. The problem was a result of the lack of communication between Mr. Remen and his contractor. Each thought the other had applied for the building permit.

Ms. Wright asked Mr. Remen if he remembered signing a building permit for the construction of the original garage in 2000.

Mr. Remen stated that he does not remember signing for a building permit in 2000. He stated that in the past, the contractor took care of everything.

Ms. Wright pointed out that the building permit is required to be posted in a conspicuous place at the building site. She asked Mr. Remen why he did not notice that the permit was not posted.

Mr. Remen stated that he was not familiar with the requirement of posting the building permit at the site.

Mr. Rucker asked Mr. Remen if he was residing at the property while construction was under way.

Mr. Remen stated that he was not a full-time resident and not present during construction.

Ms. Wright asked Mr. Remen if he thought he would have gotten the building permit if he had applied prior to construction.

Mr. Lick commented that looking at the permanent streams for Newbury, Yes, because Cunningham Brook is not on the map. Also, he stated that he does not know how the Code Enforcement Officer would have ruled considering the conflicting information. The Code Enforcement Officer only said to apply for a building permit. He did not mention anything about being in the 75 ft. buffer zone.

Mr. Russell pointed out that in the application to the Zoning Board of Adjustment; there is a copy of a letter from Paul LaCasse, Code Enforcement Officer. Mr. LaCasse stated in his letter that the actual setback from Cunningham Brook is 60 ft., and the information in the application indicates a 78 ft. setback.

Mr. Remen explained that the stream curves a bit, so it depends upon where you measure. Also, he stated that there was a tree that has fallen which has redirected the water to be a little closer to the site in question.

16.8.1.3...the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, not interfere with or adversely affect any present or permissible uses of any such property.

Mr. Lick referred to the letters from the abutters who were in support of the addition. He commented that the addition actually improves the value of the neighborhood by keeping unsightly storage of vehicles out of site. Also, this site is farther away from the public right of way, Winter Lane.

16.8.1.4...due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be granted.

Mr. Lick commented that Mr. Remen has invested approximately \$20,000 in this building already. If it is torn down, that money would be wasted and more would have to be spent to build an even bigger building only 15 ft. way or less.

Ms. Holmes commented that Mr. Remen mentioned that the reason that the addition was so favorable was that the plow truck could be housed. She asked if there be gravel, salt or anything else stored on site that would be used to maintain that road.

Mr. Remen said no. Only sanding has been done in the past, and Mr. Remen stated that he does not anticipate that practice changing. He explained that the residents of Winter Lane contract a person to sand the road with straight sand. He stated that there is no sander on the back of his plow truck.

Ms. Holmes pointed out that one of the benefits to a garage is that it catches drippings of oil and residue off the vehicle, which is a good thing for the brook. She commented that even the State of NH is struggling with regulations for 3rd- and 4th-Order streams. Whatever goes into the streams eventually goes into the Lake. The Newbury Planning Board has worked very hard to construct zoning regulations to protect our lakes and streams. Most of the contractors are aware of the Town's regulations, and they have a license. This situation may be a no-fault situation, but somebody has to be responsible for the violation. The responsibility falls on the property owner. She asked Mr. Remen if he had to get a variance in 2000 when he constructed the original garage.

Mr. Remen explained that he only got a building permit. Cunningham Brook was not considered a permanent stream and, therefore, had no setback requirement.

Mr. Lick reiterated that putting a vehicle in a garage is better than leaving it outside for environmental and aesthetic reasons. This also provides a pad of concrete under the vehicle, which can be used to divert runoff from the direction of the brook.

Mr. Rucker asked Mr. Remen if there is an existing French drain installed since there appeared to be crushed stone placed near the foundation of the garage.

Mr. Remen explained that part of the stone was existing and that most of the run-off happens to occur next to the garage near the cul-de-sac near where the crushed stone is gathered.

Mr. Rucker commented that if run-off is coming off the garage roof, measures should be taken to make sure it doesn't contaminate the brook. Perhaps a better solution would be to dig a dry well to catch and filter the roof run-off.

Ms. Holmes asked Mr. Remen if an engineer had advised him on how to perform the site work.

Mr. Remen commented that the site work was discussed only with his contractor, and as a result, 6 in. of crushed stone was laid in that one area.

Ms. Ashworth pointed out that part of the difficulty in trying to assess this situation is caused by the map that was submitted is not drawn to scale. Therefore, it is difficult to try to determine distances from sidelines and the right of way.

Mr. Remen explained that there is less than 50 ft. from the side of the garage to Winter Lane.

Mr. Russell commented that he was concerned that the structure is actually doubling in size, which is just about doubling the existing impervious surface. He also commented that the slope on the stream-side of the garage is very steep; and it doesn't seem possible that there could be an engineering plan so incredibly detailed which would address the roof run-off affecting the three to six feet of area between the garage and the steep slope.

Mr. Rucker commented that through personal experience, he knows that such an engineering plan can be done. There is a natural berm before the embankment starts down toward the stream, which would facilitate such a plan.

Ms. Wright commented that due to water run-off from Rollins Road and Bartlett Road, Cunningham Brook is now classified as a permanent stream. This streambed headed directly into the lake is only going to intensify and get wetter based upon the weather patterns.

Mr. Lick stated that Mr. Remen is willing to do whatever the Board suggests to address the potential impact of run-off on Cunningham Brook.

Ms. Wright suggested cutting the addition off and moving it to another location on the lot.

Mr. Lick stated that the addition is built on a cement slab, which prevents the addition from being able to be picked up and moved.

Mr. Remen stated that having two garages is not efficient.

Mr. Lick stated that the impacted area of two garages would be greater, especially on this site, than if there was one garaged for the combined use.

Mr. Russell asked Mr. Remen why he could not store the plow truck in the existing garage.

Mr. Remen explained that the existing garage is not big enough to fit the $\frac{3}{4}$ ton truck with the attached plow. He also pointed out to the Board that designating Cunningham Brook as a permanent stream is not accurate. Cunningham Brook unequivocally dries up during the drier part of the summer.

Ms. Holmes commented that the reason Cunningham Brook is not a seasonal brook now is due to all of the activity up above Route 103A. She stated that protection of the waters needs to be enforced, and consideration between one garage and a lake has to be weighed. The Zoning Board of Adjustment heard a different case where an individual did have to tear down their building. As a Zoning Board of Adjustment member, it is important to try to uphold these regulations. She commented that in her opinion, that is why the Board of Selectmen told Mr. Remen to tear the addition down. The contractor should be fined or at least reprimanded for moving ahead without the proper permits. Unfortunately, the responsibility falls on Mr. Remen for building a building without a building permit in a sensitive area.

Mr. Lick stated that Mr. Remen is willing to install a French drain system or whatever other requirements the Board may impose to address the run-off.

Ms. Wright stated that the Zoning Board members have to comply with the zoning regulations as a responsibility to the taxpayers who voted on the regulations and elected the Board members to enforce those regulations.

Mr. Lick commented that the Equitable Waiver of Dimensional Requirement is a release valve for those regulations. This also was built into the regulations and approved by the taxpayers acknowledging that sometimes special circumstances come about. Sometimes the rules don't make a lot of sense and this is one of those cases. The suggestion of a French drain and dry well drainage system is a step forward. The Board can now take

advantage of requiring erosion control measures to be taken on the existing structure in conjunction with the addition.

Mr. Cluff commented that he does not feel the Board has enough information to approve or deny this application without an actual survey showing topo lines, actual distances from all lot lines drawn to scale and professionally engineered drainage plans.

Ms. Ashworth asked if any other Board member feels they do not have enough information to approve or deny this application. No other Board members responded.

Mr. Lick asked if it makes a difference of 60 ft. or 65 ft as to whether or not the French drain works.

Mr. Cluff stated that in order for him to make an educated decision on the application, an accurate plan is necessary.

Ms. Holmes commented that it is her understanding the D.E.S. also requires a permit for work so close to a waterway. The **Comprehensive Shore Land Protection Act** is reaching out to streams and ponds.

Mr. Lick commented that it is his understanding that the SLPA currently applies only to Lakes and Great Ponds and not streams.

Ms. Ashworth commented that it is her understanding that the SLPA does not currently apply to streams.

Ms. Holmes commented that the State legislature is reviewing and getting ready to vote on legislation this week regarding 3rd - and 4th - Order streams.

Mr. Lick stated that Mr. Remen is willing to have a survey prepared for the Board. The run-off calculations will reveal if a French drain and/or drywell will handle the roof run-off.

Mr. Cluff commented that he believes most of the new structure is farther away from the stream, but still feels he needs to see the details in order to make a decision.

Mr. Lick confirmed that the addition to the garage does not encroach any closer to the stream than the existing garage.

Ms. Ashworth opened the hearing to public comment.

June Fichter, representing Lake Sunapee Protective Association, submitted a written statement and acknowledged that this is a very difficult situation. She stated that a major reason for setback requirements is to protect the riparian vegetation on either side of the lakes, ponds and streams. The riparian vegetation serves many functions. It promotes bank stabilization and water quality protection by helping to hold the banks in place,

thereby preventing erosion. It also traps sediment and pollutants such as phosphorus. During high stream flows the riparian vegetation slows and dissipates floodwaters, which can damage fish spawning areas and aquatic insect habitats. It also provides food, nesting and hiding places during life cycles for over 80% of the wildlife species. The riparian vegetation shields streams from summer and winter temperature extremes that may be dangerous to fish and other aquatic life as well as the oxygen balance within the water. Even uprooted trees create fish habitat by forming pools and ripples in the stream. Many of the aquatic insects and fish eat and live in the riffles and use the pools for resting and refuge from summer drought and winter cold.

Mrs. Fichter stated that the riparian vegetation is an entire system extending from tall tree canopy to ground cover and everything in between. She encouraged the Zoning Board of Adjustment to uphold the regulations that protect the riparian buffers. She cited a case a few months ago in which a property owner moved a newly constructed garage because it was closer than 75 ft. to Cunningham Brook. This particular brook seems to be taking more run-off from Rollins Road than before. She stated that there is a large sandbar in Lake Sunapee where Cunningham Brook empties out which has gotten bigger in recent years.

Ms. Ashworth introduced Suzanne Levine's letter of objection into the minutes.

As an abutter to the above-mentioned property, I am writing to object to Mr. Remen's request for a variance to permit construction of an addition within the 75 ft setback from an existing stream. Cunningham Brook is listed as a permanent stream in Newbury's zoning ordinances. As an active member of Newbury's Conservation Commission, I have worked hard to preserve what is necessary. Cunningham Brook feeds into Lake Sunapee and is a natural animal corridor. This needs to be protected. I would like my objection to all three of Mr. Remen's requests to be a permanent part of the record. Thank you for considering my request, as I will not be in town to attend the hearing.

Bill Weiler, Newbury Conservation Commission Chair, commented that the Conservation Commission was approached about Cunningham Brook and he and Suzanne Levine walked that stream in the summer that he judged to be quite average in late August. The stream was running at that time. He said that based on that, he wrote an amendment to the zoning ordinances and properly noticed public hearings followed prior to the passage of the amendment by ballot vote at Town Meeting. There was ample opportunity for people not to be surprised.

Ms. Ashworth closed the public hearing to public input. The Board began deliberations.

Ms. Ashworth commented that she agrees Mr. Cluff that a survey would be helpful but is not sure that it would change anything.

Mr. Cluff commented that there is an existing structure and there is still 26 ft. of roof that is staying regardless of adding a drywell to catch run-off from the addition.

Ms. Ashworth commented that the Board has the opportunity to take care of the existing structure and its run-off.

Mr. Rucker commented that he would not want to set a precedent.

Ms. Ashworth stated that it is always difficult when the Board is on the wrong side of an issue since it has already been built. However, the Board needs to judge each case on its own merits.

Ms. Holmes commented that the Board of Selectmen have the final say, and they say tear it down. There is a method to appeal that decision, so here we are. Regulations have changed in the last seven years because of things that have shown negative results to the environment. She commented that she wishes that all of the residents along brooks, streams, ponds and lakes could be asked to plant vegetation. The property owners should be trying to establish a partnership and relationship with the lake and the environment. A 26 ft. building along a stream should be taken very seriously. She commented that she is not sure how to help out Mr. Remen and have everybody win. It is a difficult thing to have the lake be the loser. Given what June Fichter has offered regarding riparian buffers, this is a very difficult case because of the disturbance to the environment if this garage has to be taken down and rebuilt elsewhere.

Mr. Cluff recognized that there was very minimal disturbance on the brook side. Also, there are no nitrates and phosphates involved with this project because there is no grey water or septic.

Ms. Holmes commented that it sounds as though some members may think that a French drain may be the answer to addressing the run-off

Mr. Rucker commented that if it is installed correctly, a French drain can be a win-win situation. The run-off does not go away; it gets filtered and absorbed into the vegetation and/or drywell.

Mr. Cluff commented that the installation of a drywell can direct the run-off even further away from the streambed giving the riparian vegetation more time to absorb the water.

Ms. Holmes stated that the Board will need to see a drainage report and tests that show that whatever is running off that roof is not going down into the brook. She asked Mr. Cluff if that would be reason enough for him to vote to overturn the ordinance.

Mr. Cluff stated that those data figures would weigh heavily.

Mr. Russell commented that he disagrees with Ms. Ashworth and believes that approving this application will set precedence. The Zoning Board of Adjustment would be saying to each property owner that they can go ahead and build whatever they want then subsequently appeal to the zoning board after-the-fact.

Ms. Holmes pointed out that the Zoning Board of Adjustment has ruled in the past to have the property owner remove and tear down their building. Therefore, precedence is not set.

Mr. Cluff commented that the decision of the zoning board should be based on the merit of the case set before the board and not based on a precedent.

Ms. Holmes commented that the addition had no building permit. Therefore, if the Zoning Board agrees with the Board of Selectmen, so be it. Or, the Zoning Board can address the drainage issue and protection of the riparian buffer as alternatives to saving the building.

Ms. Wright commented that if Mr. Remen had applied for a building permit, he would have found that he could not have built the structure. It is not as if he did not know he needed a permit, he got one before and knows it needs to be posted, which is the home owner's responsibility. She also stated that she has great concerns for the streams and lakes. The regulations are here to protect the water bodies. This would be a good time to emphasize that. The homeowner should be a good citizen and take it upon himself to fix the existing roof whether or not the addition stays or not.

Ms. Wright made a motion to vote on the Equitable Waiver of Dimensional Requirement.
Mr. Russell seconded the motion.

Mr. Cluff abstained for reasons needed more information such as that which would be supplied on a survey map.

Mr. Russell voted to not to grant for reasons that Mr. Remen did not meet the criteria of 16.8.1.2. The logistics of the permitting process were not proper, the potential impact on the watershed, the steep slope area is extremely sensitive, and the after-the-fact application puts the Board in a bad place.

Ms. Holmes voted not to grant based on 16.8.1.4. and 16.8.1.2. She commented that the public benefit is zero, and the impact on the Brook and the Holmes down stream and the lake are potentially bad.

Ms. Wright voted not to grant based on 16.8.1.2.

Ms. Ashworth voted to grant because she did not feel that it is in the best interest of the lake that the structure is torn down. With the condition of a French drain system, the run-off could be directed to go to a dry well.

Application for an Equitable Waiver of Dimensional Requirement was denied.

Ms. Ashworth informed Mr. Lick and Mr. Remen of their right to appeal within 30 days if there is new information they wish to present.

The Board took a short break.

Ms. Ashworth appointed Steve Russell as a voting member for the next hearing.

At 7:30 p.m., Stephen Remen, property located at 23 Winter Lane, Newbury, NH, will seek a Variance as provided for in 16.7 and 7.3.2 to permit the following: permit construction of an addition within the 75 foot setback from an existing stream. Newbury Tax Map 018-285-179.

Mr. Lick referenced the written supplement submitted as part of Mr. Remen's variance application. He commented that he fully understands the situation that the Zoning Board of Adjustment has been put in. However, the purpose of the Zoning Board of Adjustment is to address situations that do not always fit the general rule. If these things didn't happen, then there would be no need for a zoning board of adjustment. He acknowledged again the difficulty of this situation.

Mr. Lick presented Mr. Remen's application for variance. He commented that if the variance is granted, measures to protect the brook will be taken. If the variance is not granted and the addition is torn down, the site is left with a pre-existing 24 ft. x 26 ft. garage with no basis for installing drainage or additional vegetation. In granting the variance, the Board is actually allowed to gain a public benefit by addressing the existing run-off. An approved French drainage system with a dry well designed by an engineer will be a win-win situation.

Mr. Lick commented that there would be no benefit to requiring Mr. Remen to tear down the addition. He will have no choice but to disturb the environment in the demolition process and the rebuilding process of a second structure only 15 ft. away.

Mr. Lick addressed the Board's concern for setting precedent. He stated from a legal standpoint, one hearing cannot be binding on future hearings. Each hearing is heard and decided based on its own merits.

Ms. Ashworth asked Mr. Lick to explain what makes this situation unique and why Mr. Remen could not do anything else.

Mr. Lick explained that Mr. Remen is trying to build the smallest structure possible, which can only be done by adding onto the existing garage. The layout of the property will not allow it to be placed anywhere else on the site. This location does not encroach any closer onto the brook than the existing garage.

Ms. Ashworth asked Mr. Remen if he had considered staggering the two phases.

Mr. Remen explained that he needed a dimension larger than 26 ft. If the phases are staggered, the plow truck will not fit in the garage. He commented that he is willing to do what ever is necessary to address the concerns of the Board without having to tear down the addition. The addition has very little impact on the site and the surrounding environment. If it is moved, trees are going to have to be cut down and more earthwork will be necessary. Additionally, Mr. Remen commented that the sand bar at the end of Cunningham Brook has been there for the past 30 years or more. And, phosphorous does not come from rainwater roof run-off.

Ms. Holmes asked Mr. Remen why he built so much of an addition of 24 ft. onto the garage.

Mr. Remen explained that he needed a continuous measurement longer than 26 ft. in order to fit the truck with the plow in the garage. The remaining space would be used for the items that were in the original structure, which is why the 50 ft. total. Mr. Remen stated that he did look at other options of design, but this made the most sense and seemed to be the most feasible.

Ms. Holmes asked Mr. Remen what part, if any; he sees that has been affected by the construction.

Mr. Remen stated none because the bank is higher than the ground level of the garage.

Mr. Lick reviewed the criteria for variance as per Article 16.

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

Mr. Lick explained that the total building footprint is smaller than if Mr. Remen is required to move and rebuild the addition. There is only rainwater coming off the roof that needs to be addressed by erosion control. There is no septic system or gray water. Mr. Remen is open to the Board's suggestions for erosion control for the entire building.

16.7.2 Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

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

Mr. Lick explained that Mr. Remen is seeking the least intrusive means to meet his needs. By building onto the existing garage instead of building a totally new garage, there is minimal additional intrusion on the environment and the encroachment into the buffer zone is no more than the existing garage.

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

Mr. Lick explained that Mr. Remen cannot build the garage in another area because of the existing right-of-way, Winter Lane. If the garage is moved, there will have to be tree cutting in order to try to meet the road setback.

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

Mr. Lick stated that Mr. Remen is not harming Cunningham Brook, and there is no impact on the embankment. He stated that Mr. Remen is also willing to take measures to preclude run-off from the original section of the garage.

16.7.4 Substantial justice is done.

Mr. Lick stated that for the same issues as above, the best way to protect the brook is to mandate a drainage plan for the entire structure as a condition of approval.

16.7.5 The value of surrounding properties will not be diminished.

Mr. Lick commented that the properties owners in the area have given written notice that they have no issues with the construction of the garage, except Ms. Levine. The surrounding properties will be enhanced by not having vehicles parked out in the open.

Mr. Lick stated that he knows and apologizes for the difficult situation the Board is in. However, the ordinances allow for variances and the conditions imposed on Mr. Remen will probably decrease the run-off.

Ms. Holmes commented that in light of Article 16.7.3 that the use will be consistent with the spirit of the ordinance, she suggested that Mr. Remen and his neighbors get together and understand what the difference is between a permanent stream and a seasonal stream. The Town had designated Cunningham Brook as permanent and those people on either side should be educated about the shore land protection act and the importance of riparian vegetation. When the Zoning Board of Adjustment is dealing with the public interests it is also dealing with the Lake.

Mr. Lick commented that the public interests can be addressed with the conditions imposed. He reiterated that if everyone could comply with the written work, there would be no need for variance provisions.

The meeting was opened to the public.

Bill Weiler, Conservation Commission Chair, pointed out that during the discussion of the fact that there was no building permit taken out, there was no mention of erosion control plans filed.

There was no further public comment. The meeting was closed to the public and the Board began deliberations.

Ms. Holmes commented that the application should be considered as incomplete because it does not have any erosion control plans included. She commented that she would be in favor of extending this hearing if Mr. Remen was able to meet the Board's specifications for a full erosion control plan, site plan and engineering plan.

Ms. Ashworth commented that it is difficult to rule on a variance. There has to be some specific condition of the property that prevents Mr. Remen from building a garage anywhere on the site. The applicant has to prove that there is not other place to build.

Ms. Wright commented that it is stated in the application that it could be built elsewhere.

Ms. Ashworth commented that in her opinion, Mr. Remen did not demonstrate that other locations were investigated.

Mr. Cluff commented that if he designed the garage in such a way that it was bumped out away from the stream that would diminish the value of the property because of an odd, ugly structure.

Ms. Wright commented that as a good citizen, Mr. Remen should address the run-off from the original garage structure whether or not he receives a variance.

Mr. Cluff commented that if the Board does decide to grant the variance with conditions, the approval should go before all of the Boards for review and comment prior to final approval. He also commented that the Board should try to consider the application for variance as if the addition was not already there. Hence, the need for a survey.

Mr. Cluff made a motion that the Board vote to determine that it does not have enough information and that the Board should require more lot data before proceeding with the application of variance. Ms. Ashworth seconded the motion. Discussion followed.

Ms. Ashworth emphasized that Mr. Remen needs to show what is so special about that one spot that the garage cannot be put anywhere else on the lot.

Ms. Holmes commented that the application seems to be incomplete for variance consideration. There needs to be an erosion control plan and a site plan prepared by a professional.

Mr. Russell commented that he is in agreement that the Board does not have enough information to make a decision.

Ms. Wright stated that she also is in agreement that the Board does not have enough information to make a decision.

Ms. Ashworth commented that it does appear to become a different issue when you consider it as if the garage was not there.

Mr. Cluff asked for clarification purposes, what kind of information the Board would like to see.

Ms. Ashworth commented that it is really up to the applicant to prove the special condition that exists.

Ms. Holmes commented that the Board needs to see an erosion control plan, temporary and permanent.

Ms. Ashworth added that all setbacks should be shown on the plan as well as proof that the building could not be put somewhere else on the lot and erosion control plans should also be provided. She commended Mr. Remen for building an attractive building.

Ms. Wright made a motion to continue the hearing for variance until Monday, July 16, 2007 at 7:00 p.m. at the Newbury Town Office Building. Mr. Cluff seconded the motion. All in favor.

Mr. Lick commented that he would like to table the appeal to the administrative decision at this time until the Board rules on the variance application.

Ms. Ashworth made a motion to continue the hearing for the appeal to administrative decision until Monday, July 16, 2007 at 7:15 p.m. at the Newbury Town Office Building. Mr. Cluff seconded the motion. All in favor.

Ms. Holmes made a motion to adjourn. Ms. Wright seconded the motion. All in favor. Meeting adjourned at 9:45 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary