

**Zoning Board of Adjustment
April 14, 2008**

Members Present: Elizabeth Ashworth, Chair; Steve Russell; Barbara Richmond; Helen Wright

Ms. Ashworth opened the meeting at 7:05 p.m.

Board Nominations

Ms. Ashworth opened the meeting for nominations from the Board members for officers of the Board.

Chair

Ms. Wright made a motion to nominate Ms. Ashworth to the office of Chairperson of the Zoning Board of Adjustment. Mr. Russell seconded the motion.

Ms. Ashworth accepted the nomination.

No other nominations were made. Ms. Wright called for a vote on the nomination.

VOTE: All in favor.

Vice-Chair

The Board voted to table voting on the position of Vice-Chair until more board members are present.

MINUTES

The Board agreed to review the outstanding minutes at the regularly scheduled meeting in May.

The Spring Conference hosted by the Office of Energy and Planning is Saturday April 26, 2006 at the Radisson in Manchester.

At 7:15 p.m. Jane Murphy & Marc Jasmin,, property located at Shore Drive, Newbury, NH, will seek a Variance from the requirements in paragraph 16.7 of the Newbury Zoning Ordinance to permit the following: to allow for construction of a wooden storage shed within the 15 ft. and 75 ft. setback. Newbury Tax Map 020-172-544.

Ms. Ashworth explained to Jane Murphy and Marc Jasmin that there is not a full Board, so they have the option of continuing the hearing until a full Board is able to gather.

Mr. Jasmin stated that he would like to continue the hearing for tonight.

Mr. Jasmin explained that he and his wife, Jane Murphy, purchased their property in 1994. Their home is located across Route 103A in Birch Bluff, and along with their home came a lot on Shore Drive, which is very small but provides lake access. The lake lot is too small to build a dwelling on. He explained that over the years, they have toed their lake toys (chairs, rafts, kayaks, canoes, etc.) up and down the hill to and from the house in Birch Bluff. As a means of relief, they would like to build a storage shed on the lake lot to store the lake toys. None of the neighbors have any objections to the shed. There will be no water services, toilets, or electricity to the shed. The proposed shed will not be obviously visible from the water. The dimensions of the proposed shed are 10 ft. x 12 ft. and will be on cinder blocks.

Ms. Wright asked how big the lake lot is.

Mr. Jasmin stated that the lake lot has 78 ft. of shore frontage, 100.2 ft. of road frontage, and 110 ft. and 107 ft. on the sides.

Ms. Ashworth asked if the shed is proposed to be 75 ft. or more from the lake.

Mr. Jasmin stated that it will be more than 75 ft. from the lake. It will be approximately 15 ft. from the road. He explained that he and his wife are very conscientious about keeping their property neat, and they are very responsible homeowners.

Mr. Russell asked if there was any written documentation, which indicates the dimensions of the shed.

Ms. Murphy explained that the only documentation they were given is from the builder, which states 10 ft. x 12 ft.

Ms. Richmond asked how far the shed will be from the neighboring property owned by the abutters, Kirstetter.

Ms. Murphy stated 20 ft. to 25 ft.

Ms. Wright asked if this shed would be considered a temporary structure or could it be grandfathered for a dwelling.

Ms. Ashworth explained that it would be considered a permanent structure, but is not grandfathered for a dwelling because the applicant has applied for a shed and the Board is ruling on a shed.

Mr. Jasmin reviewed the requirements of Article 16.7 Variance.

'16.7.1 It is correct that the variance will not be contrary to the public interest. Abutters do not object to our structure.

16.7.2 This property is a hardship because existing setback regulations from lakefront and road do not leave sufficient space to build a structure without a variance.

16.7.2.1 Use Variance

16.7.2.1.1 Zoning restriction interferes with landowner's reasonable use of property. Our application is filed because of this regulation.

16.7.2.1.2 No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. Our shed would not create any detriment to the lake or roadway

16.7.2.1.3 Injury to public or private rights of others. The shed would fit in with the appearance of surrounding structures. It will be closer to the road than the water and, due to trees and foliage on the property, be minimally, if at all, visible from the water. It will also be located behind a fence, which will partially obscure its view from the road

16.7.2.2 Area Variance

16.7.2.2.1 Variance is needed because of special conditions of the property. The variance is needed because the size of the lot does not permit the construction of any structure without a variance.

16.7.2.2.2 Benefit sought by applicant cannot be achieved by some other method reasonable feasible for the applicant to pursue. This is correct and is the reason we seek the variance.

16.7.3 The variance is consistent with the spirit of the ordinance. This is correct in that the size of the structure is minimal and its appearance will blend in with that of other structures on the road.

16.7.4 Substantial justice is done. This is the only lot on the lakeside of the street without a structure on it. All our abutters have storage areas for their lakefront items. This would afford us the same amenity they already enjoy.

16.7.5 Value of surrounding properties will not be diminished. Throughout more than a decade of ownership of this property, we have maintained the land, keeping it neat and orderly as well as observing all the rules and regulations regarding lakeside property. This shed will not have any negative impact on the neighborhood

16.7.6 Floodplain regulations. This section does not apply to this application.'

Ms. Ashworth stated that according to Article 2.1.1.4 Definitions, sheds are included in the definition of a structure; therefore it is considered permanent. She commented that in her opinion the Board only needs to consider the area variance, not the use variance.

The hearing was opened to the public.

No members of the public were present for questions or comments.

The hearing was closed to the public.

The Board began deliberation on the application.

Mr. Russell commented that what the applicants are asking is very minimal impact. He stated that he is still concerned for further development of this lot in the future.

Ms. Ashworth emphasized that if the application is approved, it does not open up the lot for a bigger building in the future. The Board would be only allowing a variance on this shed from the setback from the road. Anyone who wants to build anything else will have to go through their own variance hearing.

Ms. Richmond commented that her only concern was for the neighbors, but since they voiced no objection, she has no objection.

Ms. Wright made a motion to vote on the application as presented. Ms. Richmond seconded the motion.

VOTE: Ms. Richmond voted to grant the request for variance as presented.
Mr. Russell voted to grant the request for variance as presented.
Ms. Wright voted to grant the request for variance as presented.
Ms. Ashworth voted to grant the request for variance as presented.

Ms. Ashworth informed Mr. Jasmin and Ms. Murphy that there is a 30-day appeal period in which an interested party may appeal the Zoning Board's decision. Also, a building permit will be required to erect the shed as proposed.

Ms. Ashworth made a motion to recess the meeting for five minutes until 7:45 when the next hearing was scheduled. Ms. Wright seconded the motion. All in favor.

Ms. Ashworth reconvened the meeting at 7:45 p.m.

At 7:45 p.m., Geraldine S. Bateman, for property located at 9 Frazier Ave, Newbury, NH, will seek a variance from the requirements in Paragraphs 5.9 & 7.3 of the Newbury Zoning Ordinance to permit the following: to allow for reconstruction of an existing structure within the 15 ft. and 75 ft. setbacks. Newbury Tax Map 020-327-448.

Present for this application was Geraldine Bateman, Judith Murray, Jack Bateman, property owners and Charlie Hirshberg, Engineer and Agent.

Ms. Ashworth explained to Mr. Hirshberg that there is not a full Board, so they have the option of continuing the hearing until a full Board is able to gather.

Mr. Hirshberg stated that they would like to continue the hearing for tonight. Mr. Hirshberg presented the proposed plans for reconstruction of the existing boathouse on Frazier Ave. He explained that this is a boathouse with living space and has been the only structure on the property since the 1920's. The condition of the boathouse is deteriorating due to age, and the roof needs replacement. The living space in the existing boathouse is entirely over the water, including the bathroom. This layout results in the bathroom plumbing being suspended over the water, exposed to the weather elements and a dire threat to the water quality. This past year, the water was so high that the livingroom was actually in the water.

Mr. Hirshberg explained that they have been in communication with the wetlands bureau and would like to reconstruct the boathouse in such a way that the layout of the living space would be set back enough so that the plumbing would not be suspended over the water but able to feed right into the ground into a clean solution septic system. Proposed is a small foundation with a frost wall to protect the plumbing from the weather and potential breakage.

Mr. Hirshberg explained that existing peak of the house is over the living space, then there is a flat roof over the water. The new structure is designed with an added pitch to the whole roof in order to meet the regulations for snow load. The roof peak was 19 ft. from the water and is now proposed to be 15.5 ft. The cribs on the docking structure are in good shape and will remain the same. The whole dwelling unit will come down but the dock and cribs will remain. The new roofline will not be higher than the existing peak, and the new pitch will be less than that of the existing peak section. This dwelling was built to be a seasonal dwelling, and there is no intent to make it a year 'round use.

Ms. Ashworth asked what the square footage of the new room will be with the new pitch and peak.

Mr. Hirshberg stated that he has not calculated that square footage, but it is pretty much the same. The Wetlands Board described the before and after as "functionally equivalent".

Mr. Hirshberg explained that the existing structure is 1,091.2 sq. ft. and the proposed structure is 1,088.3 sq. ft. The building will meet the building code per the building inspector. DES has granted a shoreland waiver for this project to modify a structure within 50 ft. of the State shoreline setback. The plantings in the plan are per the DES waiver. Four to five trees will be removed. The roof run-off will be collected in gutters and directed to a retention area that is similar to a depressed garden. It is 2 ft. deep to allow the run-off to infiltrate back into the ground at a slower pace and puts it back into the ground where there is certain vegetation that is known to process phosphorous.

Mr. Hirshberg explained that there is a State approved septic already installed. The sewerage is pumped up to a tank and chambers. The leach field is pumped periodically on schedule. He explained that this application is being proposed concurrent with the State shoreland waiver and the wetlands application. Due to confusion over the application within the departments at the State level, the State approvals took longer than anticipated. There are two variances needed from the Town: one is from the 75' setback from the water; and the other is from the 15 ft. setback from the sideline. The proposed structure is 13.3 ft. from the sideline. There are the same amount of bedrooms, two in the old and two in the new.

Ms. Wright asked if this dwelling would be seasonal or permanent.

Mr. Hirshberg assured the Board that it would be a seasonal dwelling. The dwelling will not be insulated, therefore uninhabitable during the winter months. He stated that if the Board feels it is necessary, he would be comfortable with a condition placed on the approval that the dwelling is for seasonal use only.

Ms. Wright asked how that designation of seasonal will affect the septic.

Mr. Hirshberg explained that it does not matter. The State does not make a differentiation. All septic systems have to be designed for year 'round use.

Ms. Wright asked if the septic tanks would be metal or concrete.

Mr. Hirshberg stated that they are all concrete. The septic chambers are in the front of the parking area, therefore, they will not be driven over by the construction vehicles. All of the construction equipment will be able to go around the septic area.

Mr. Hirshberg stated that, in a nutshell, in order for the property owners to be able to use their property, it has to be rebuilt. Mr. Hirshberg addressed the provisions of 5.9 and 7.3 of the zoning ordinance as follows:

- 1. **Granting the variance will not be contrary to the public interest because:** The boathouse has been at this location since the 1920's and has been an accepted part of the neighborhood for that period of time.*
- 2. **Denial of this variance will result in unnecessary hardship to the owner because:** The current owners want to continue enjoying the boathouse they purchased. The current structure is old and sagging. Repair of the existing structure at this point would be inefficient and too costly for the end product. Owner would be denied reasonable use and enjoyment of property due to safety concerns if this variance were denied.*
- 3. **The use will not be contrary to the spirit of this ordinance because:** The proposed structure will be built in essentially the same footprint as now exists. The change in the building footprint is to move the bathroom facility and plumbing from directly over the Lake surface with no foundation to protect it from the elements and move it onto the land portion of the Boathouse enclosed*

in a concrete foundation to protect it from the elements. Currently, there is a potential for the plumbing fixtures to fail and pollute the Lake.

4. ***By granting the permit substantial justice would be done because: The homeowner can continue to enjoy the boathouse and Lake community for a long period of time secure in the knowledge that the boathouse is structurally safe and the plumbing is out from near the water surface.***
5. ***The proposed use will not diminish the surrounding property values because: There are numerous boathouses in this area, in fact, the neighboring lot is another residential boathouse.'***

Ms. Richmond asked what kind of siding is proposed for the structure.

Mr. Hirshberg stated that it will be clapboard siding with asphalt shingles. There will be gutters to prevent the runoff from splashing on the land or running into the lake. The Wetlands Board wanted the gutters. The homeowners will have to maintain and keep them clear of debris.

Ms. Richmond asked Mr. Hirshberg to explain the razing plan.

Mr. Hirshberg explained that the building will be taken down in pieces. There will be a turbidity blanket all around the area to protect the lake by confining any loose debris during the dismantling. Ideally, this step would be done in the winter months, but due to the confusion and hold-up within the State departments over the Wetlands Board Application and the Shoreline Protection Waivers, we are now looking at razing during the non winter months. The roof will be removed and taken off-site or over land before taking the shingles off in order to avoid asphalt debris and nails from falling in the water.

There were no further questions from the Board. Ms. Ashworth opened the meeting up to the public.

Carey Demers, abutter, stated that he sent in a letter to the Zoning Board of Adjustment explaining that he and his wife are not opposed to the rebuilding of the boathouse, but are concerned with the loss of their lake view toward the north due to the change in the roof line. He commented that if the roofline were to be pulled back to its original position or if the roof was replaced in kind, he would have no objection to the project. He advised the Board that he was in the exact same circumstance when he rebuilt his boathouse a few years ago. The State approved certain changes, but the Newbury Zoning Board denied the application, partially as a result of his abutters, the Bateman's, being concerned with the effect of their view of the Lake.

Ms. Ashworth circulated Mr. and Ms. Demers' letter which read as follows: *'As an abutter of Geraldine Bateman, we are writing to share our thoughts about his construction project at Frazier Ave., in Newbury, NH. We submitted plans to rebuild our boathouse to the state several years ago. We were told by them that we could not make any changes in the height or dimensions of the current boathouse. Since it was quite*

small, we requested a variance from the Town of Newbury to build a new house on the land behind it, remove the plumbing from the boathouse and install the plumbing in the new house. The Batemans attended the variance meeting and stated their objection to the building of a new house, stating the house would interfere with their view of the lake from the right of way going to their house. We were denied our variance request from the town and told to rebuild our boathouse with the current dimensions which we did. As we are favorable of the Bateman's reconstruction of their boathouse, we do have a concern about the height of the roofline as it affects our view of the lake. As we are at the southwestern tip of Lake Sunapee, we attempt to focus our view of the lake to the north. We spend a lot of time in our yard with our children and friends. We eat most of our meals in the yard enjoying the view of the activities of the lake over the roof of the Bateman's boathouse. We are concerned that if the roofline is heightened throughout the house, we will no longer have any view of the lake to the north. We ask that you consider this concern as you review this request for the variance at hand. Thank you. Sincerely...'

Mr. Hirshberg commented that part of the reason the roof was designed as proposed is because the Town of Newbury has adopted the National Building Code which requires roof support snow load of 90 lbs. per sq. ft., resulting in the proposed roof.

Ms. Ashworth asked Mr. Hirshberg what the difference in the elevation is between the old and new roofline.

Mr. Hirshberg stated that the proposed roof is 30 ft. long. The old roof is 8.5 ft. from the eaves to the deck, and the new roof is 12 ft. The difference is due to the truss construction.

Ms. Richmond asked if a metal roof would help lessen the pitch of the roof since the snow load may not be so heavy because the snow won't stick to a metal roof.

Mr. Hirshberg stated that the snow load calculations are based on the wood strength of the truss; therefore, a metal roof would not affect the pitch requirements.

Ms. Ashworth commented that she does not feel she has enough information to make a ruling on this application because she does not know the building code requirements for roofs.

Mr. Hirshberg commented that if structurally they could reduce the pitch, maybe that can be done. But, what was explained to him was that for this width of structure and the current building code, this is what it needs to be.

Ms. Wright commented that in addition to snow load information, the Board also does not have the Wetlands Board approval documents.

Ms. Ashworth reiterated that she does not want to make a ruling one way or the other due to the lack of roof information. Additionally, the line of site from the Demers' property before and after this proposal will be an important consideration.

Mr. Hirshberg stated that, in his opinion, the trees on the property block the view more than the proposed roof will.

Ms. Ashworth stated that since the Board did not have Mr. Demers' letter ahead of time, they were not able to focus on that concern during the individual site views. She commented that she would like to continue this hearing to that the Board can obtain more factual information regarding the building code requirements and make a second site review to assess the view.

Mr. Bateman commented that the proposed roof is going to be lower than the existing roof.

Mr. Demers stated that he has no problem with the Bateman's rebuilding the boathouse and that the boathouse can be built with a flat roof.

Ms. Ashworth commented that she is very concerned that she does not have enough information because she is not familiar with the building codes and is not sure if a flat roof can be built or not. There is conflicting information being presented.

Mr. Russell commented that the Board could issue a conditional decision based on if it is reasonable to change the pitch of the roof. If it cannot be kept, then the Board could make a decision to approve the application with the condition attached to investigate the roof options.

Ms. Ashworth commented that it is up to the applicant to research and present an application that is acceptable to the Board. It is not within the Board's jurisdiction to research and make a proposal to the applicant.

Ms. Wright commented that the Board should receive communication from the Building Inspector regarding what kind of a roof, pitched or flat, is acceptable.

Mr. Demers asked Mr. Hirshberg how wide the proposed roof is.

Mr. Hirshberg stated that it is 20 ft. and a fraction, same as the existing roof.

Ms. Ashworth made a motion to continue this hearing until May 12, 2008 at 7:15 p.m. in order to obtain more information about the roof load and line of sight. Ms. Wright seconded the motion. All in favor.

Mr. Hirshberg commented that if the applicant gets a wetlands approval for this configuration, then it changes, they will have to re-apply for a new wetlands permit.

Ms. Ashworth stated that the Board could vote on what was presented this evening but advised against it.

There was not further discussion.

Ms. Wright made a motion to adjourn. Ms. Richmond seconded the motion. All in favor.
Meeting adjourned at 9:15 p.m.

Respectfully submitted,

Linda Plunkett