

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

**Members Present: Elizabeth Ashworth, Chair; Katheryn Holmes, Vice-Chair;  
Steve Russell; Helen Wright; Sue Russell, Alternate**

Ms. Ashworth called the meeting to order at 7:10 p.m. The Board reviewed the minutes of June 9, 2008.

Mr. Russell made a motion to approve the minutes of June 9, 2008 as submitted. Ms. Wright seconded the motion. All in favor.

*At 7:15 p.m. Chrstitine Windler Trust, property located at 21 Bay Point Landing Road, Newbury, NH will seek a Variance from the requirements of Paragraph 7.3.2 of the Newbury Zoning Ordinance to permit the following: construction within the 75' shoreline setback. Newbury Tax Map 007-057-483.*

Ms. Ashworth appointed Ms. Russell as a voting member for this hearing.

Mr. Windler, property owner and Jay Tucker, Site Manager, were present to for the hearing. Mr. Windler stated that he had already submitted the application, maps and response to Article 16.7. The septic information and plans only became available today, so they were not submitted sooner. He informed the Board that the maps are conceptual since he may have to change some of the placement of windows, but no major structural changes. Mr. Windler provided copies of the septic design plan and erosion control plan to the Board members. He explained that the temporary erosion control will be silt fence and the permanent erosion control will be located on the southerly side of the building, consisting of a rain garden. There are a couple of trees beyond the 75' setback that are not drawn in on the map. Three or four trees will need to come down to accommodate the access for the driveway. There are two trees marked to be cut that will not need to be cut because the septic system cannot be placed where originally planned.

Ms. Holmes asked what kind of septic system is proposed.

Mr. Tucker stated that a standard chamber system is proposed so that it will be sturdy enough to be driven over.

Ms. Holmes asked Mr. Windler the age of the existing septic system.

Mr. Windler estimated that the existing septic system has been in place since the 1960's – 1970's and has only been used seasonally. There is a path right-of-way going down to the lake that will be maintained by the people who use it. There are more trees planned to be planted as well as plantings and groundcover to create a buffer. There is an embankment between the house and the Lake. The plan is to not disturb any of the growth on the embankment, and more shrubs and blue berry bushes will be planted.

Mr. Russell asked what the CSPA rules are regarding the razing of buildings near the shore.

Ms. Holmes stated that Mr. Windler will need to get a permit from the State in order to remove the existing building(s).

Mr. Windler informed the Board that he has already talked with the State and they indicated that they look favorably on projects that remove buildings from the shoreline or push them back.

Mr. Windler read through the variance criteria:

- 16.7.1 The variance will not be contrary to the public interest. The variance will not be contrary to the public interest as the structure will be less non-conforming and built to current building code.
- 16.7.2.2.1. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. An area variance is needed because, due to existing, non-conforming lot size and town setback regulations, it would be impossible to build a reasonable structure within the allowed building envelope, creating hardship for the owners. If you look at the lot and measure back all setbacks, there is enough room to build a fair-sized teepee.
- 16.7.2.2.2. An area variance is needed to enable the applicant's proposed use of the property given the special conditions on the property. Give the lot size and configuration, the side, front and shoreline setbacks, an area variance is needed so a less non-conforming structure can be built.
- 16.7.3 The variance is consistent with the spirit of the ordinance. The variance will allow the structure to become less non-conforming, by siting it further back from the water, as well as moving the house and garage out of the setbacks, which are consistent with the spirit of the ordinances.
- 16.7.4 Substantial justice is done. Justice will be done with regard to the owners and their neighbors, as the structure will be less non-conforming and modest in scope. Both abutting neighbors are being negatively affected by the existing structure. The proposed new location is a valuable improvement to all parties.
- 16.7.5 The value of the surrounding properties will not be diminished. Property values of the surrounding properties will be improved as the structure will be built to current building codes and more conforming to the zoning ordinances. Moving the structure out of the side and front setbacks, and increasing the distance from the shoreline, will have a positive effect on the surrounding properties.

Ms. Ashworth asked Mr. Windler how high the existing building is compared to the proposed building.

Mr. Tucker stated that the existing building is 23 ft. from peak to grade, the proposed house is 28 ft. from peak to grade, which is still 6 ft. under the maximum height per Newbury regulations.

Mr. Windler stated that the first floor will be brought down to close to grade. He emphasized that to accomplish that, the building will be brought down and no fill will be used to create an artificial grade.

Ms. Russell asked Mr. Windler if he was planning to have a full basement under the proposed house.

Mr. Windler explained that he is planning on a full basement under all section of the house except the porch. Currently the basement ranges from duck space to crawl space.

Ms. Holmes asked Mr. Windler if his new house would be obstructing the abutter's view of the Lake.

Mr. Windler explained that by moving the structure back, the view of the Lake from the abutters' perspective will actually improve.

Ms. Russell asked Mr. Windler if he was planning on adding a deck to the proposed structure.

Mr. Windler said he is planning on a deck on the existing structure on the southerly side of the building. The deck dimensions are included in the calculations for impervious surfaces. It is proposed to be 8 ft. wide x 14 ft long. If it is close to grade, it does not need a railing. It will be similar to a patio.

Mr. Tucker informed the Board that there will be two to three trees cut, that are not within the 50 ft. State buffer. Those trees will be replaced by hemlocks closer to the Lake. There are no trees planned to be cut within the 50 ft. buffer.

Mr. Russell asked Mr. Tucker what the plans are for permanent erosion control.

Mr. Tucker explained that there is a raingarden planned on the southerly side of the building.

Ms. Ashworth asked Mr. Tucker by what method is the runoff going to get to the raingarden.

Mr. Tucker explained that they may have to direct the runoff to the raingarden with gutters. There is a berm between the Lake and the building site, and the slope of the lot actually runs back away from the Lake, so there should be little to no runoff getting into the Lake.

Ms. Holmes asked Mr. Windler what kind of roof surface is being proposed.

Mr. Winder stated that the roof will be constructed of either shakes or composite shingles. There will be no metal roof.

Ms. Russell commented that she is very concerned at the amount of impervious surface that is being created.

Mr. Tucker stated that the proposed site will have a smaller amount of impervious surfaces than the existing site because of the removal of the large existing garage.

Mr. Windler commented that consideration was given to a pervious driveway if necessary, but based on the calculations, that will not be necessary.

Ms. Ashworth opened the hearing to public input.

Matthew Clark, abutter, commented that there have been houses there for a long time, since the 1800's, and these decisions made today will affect people for the next 100 years. He stated that he has several comments and concerns.

First, Mr. Clark explained the access to the Windler property is shared with the access to the Clark property. Currently, both property owners are creating a legal agreement for a continued right to cross which will be more binding for future uses than just their verbal agreement.

Second, Mr. Clark explained that the drainage currently comes off Bay Point Landing Road and down the driveway. Mr. Clark asked the Board to consider giving him an assurance that the drainage does not redirect and come into the Clark's property as a result of construction and/or regarding of the land.

Ms. Ashworth advised Mr. Clark that it is not within the scope of the Zoning Board of Adjustment to litigate the drainage issue. The drainage will be handled during the building permit process per Article 21 Stormwater Mitigation Ordinance.

Third, Mr. Clark stated that the house is being moved back and gives the abutters a better view of the Lake. That is good.

Fourth, Mr. Clark stated that he and Mrs. Clark approve of the changes in the driveway.

Being no further comment from the public, Ms. Ashworth closed the hearing to the public.

There were no further questions for the applicant from the Board. The Board began deliberations.

Ms. Russell pointed out that several times reference was made to this project making buildings 'more conforming' when in actuality they are being made 'less non-conforming' because they were never conforming to begin with, nor will they be when it is finished.

Mr. Russell stated that he would like to see more detail on the erosion control plan. There is no drainage plan with a planting scheme indicated. He commented that he would like to see a more detailed drawing with existing topographic lines shown. There is also not much detail showing the direction of the roof run-off once it hits the ground. He stated that since this project is so close to the Lake, and the owners need to be extra careful. He commented that he does not doubt the sincerity of the applicant but is only saying that there is not enough detail in the plan.

Ms. Holmes commented that she is concerned with the statement on the septic plan that if the old tank cannot be removed, it will be crushed and buried.

Ms. Ashworth explained that if they cannot get it out without creating a large land disturbance, or if tree roots have grown into it, rather than tear up the ground, they can crush and bury it.

Ms. Holmes commented that she is not sure how a full basement is going to be able to be built under the proposed house without blasting. She stated that she is very concerned with the impact of building a full basement in this very sensitive area.

Ms. Ashworth commented that a full basement means an 8 ft. ceiling. She offered to open the hearing back up to the public if there are more questions the Board members need answered before making a decision.

The sense of the Board was to re-open the hearing to the public for more information.

Mr. Tucker addressed the depth of the basement. He explained that the intention is to have a full basement with a 7 ft. to 8 ft. ceiling. He stated that they will be working with the slope of the land and do not expect to have an issue of reaching the required depths. The location of the raingarden will be designed by Peter Blakeman per the State regulations to address the permanent erosion control requirements. The temporary erosion control will be silt fence with crushed stone as recommended by Pierre Beddard. He was not in favor of using hay bales because they tend to rot. But, if the Town wants to require hay bales, hay bales it is.

Ms. Holmes advised Mr. Tucker that if you use stone within the method of erosion control, it needs to be removed when the project is stabilized.

Ms. Ashworth commented that it is not within the Zoning Board's jurisdiction to choose between hay bales or crushed stone. It is up to the engineers to decide and satisfy the State.

Mr. Windler commented that he is not sure how the excavation for the basement will turn out. They will have to wait and see what they run into. Either way, they will have to follow the rules of the CSPA.

Mr. Tucker commented that the basement is not the crux of this application, so it can be changed if necessary based on the conditions.

Ms. Holmes asked Mr. Tucker what he intends to do with the old septic tank.

Mr. Tucker stated that their plan is to pump it out, dig it up and remove it unless it is more harmful to the site to tear it out of the ground.

There were no further questions from the Board or from the Public. The Board reconvened deliberations.

Ms. Holmes commented that the application presented tonight was a vast improvement from the application presented at the first meeting. There is a planting plan and an erosion control plan. DES will be weighing in on this project with the new CSPA in place because of the digging in the buffer zone. It seems as though Mr. Windler has assembled a good team of experts who will make sure this project does not harm the shoreland area. Ms. Holmes stated that it is also good when the abutters are in favor of the project.

Mr. Russell stated that he has no issues, all of his questions were answered.

Ms. Wright stated that she has no issues, all of her questions were answered.

Ms. Russell commented that she remains concerned with the addition of new impervious surfaces and earth disturbance so very close to the Lake.

Ms. Ashworth thanked the Board members for their due diligence on this project. She stated the Windler's could have rebuilt in the same footprint and avoided this process, but did go through with it to improve the site.

Ms. Holmes commented that blasting is not acceptable so close to the Lake.

Ms. Ashworth commented that she agrees that blasting is not desirable, but the State will regulate that.

Ms. Wright commented that if the Windler's built in the same footprint, they could have done all of these things anyway, but they are making the site better and it is an improvement.

The Board reviewed the criteria of Article 16.7 to make sure all items were satisfied. There were no further comments from the Board.

Ms. Wright made a motion to vote on the area variance with the contingencies that the existing stormwater runoff is addressed in the building permit process and is not detrimental to what is existing and the applicant needs to obtain all required State approvals. Mr. Russell seconded the motion.

Ms. Wright voted to grant the area variance with conditions.

Mr. Russell voted to grant the area variance with conditions.

Ms. Holmes voted to grant the area variance with conditions.

Ms. Russell voted to grant the area variance with conditions.

Ms. Ashworth voted to grant the area variance with conditions.

Ms. Ashworth advised Mr. Windler that there is a 30-day period in which the abutters may appeal the Zoning Board's decision.

Ms. Wright made a motion to adjourn. Ms. Russell seconded the motion. All in favor.  
Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Linda Plunkett  
Recording Secretary