

APPROVED
Zoning Board of Adjustment
April 13, 2015

Members Present: Peter Fichter, Chair; Steve Russell, Vice-Chair; Harry Seidel, David Blohm, Members; Alex Azodi, Alternate.

Mr. Fichter called the meeting to order at 7:01 p.m.

Mr. Fichter appointed Ms. Russell and Mr. Azodi as voting members.

ADMINISTRATIVE BUSINESS

OEP Conference

Mr. Fichter informed the Board that the OEP Conference is scheduled for May 2, 2015 and the sign-up deadline is April 23, 2015.

Election of Officers

Mr. Fichter turned the meeting over to the Recording Secretary. The Recording Secretary called for a motion to nominate the Chair of the Newbury Zoning Board of Adjustment for the upcoming year.

Mr. Blohm made a motion to nominate Peter Fichter as Chair of the Newbury Zoning Board of Adjustment for the upcoming year. Mr. Russell seconded the motion. All in favor.

The Recording Secretary turned the meeting over to Mr. Fichter, the newly elected chair.

Mr. Fichter called for a motion to nominate the Vice-chair of the Newbury Zoning Board of Adjustment for the upcoming year.

Mr. Seidel made a motion to nominate Steve Russell as Vice-chair of the Newbury Zoning Board of Adjustment for the upcoming year. Mr. Azodi seconded the motion. All in favor.

Article 16 Section 16.10 Rehearings

Mr. Fichter informed the Board that an inconsistency exists in the RSAs and the Newbury Zoning Ordinance regarding the language used pertaining to "Rehearings". He noted that the RSAs cite more time for a rehearing/appeal than what is stated in the Zoning Ordinance. He suggested that the Planning Board amend Section 16.10 Rehearings to be consistent with the RSAs. Discussion followed.

Mr. Fichter noted that he discussed the matter with Bruce Healey, Planning Board Chair. Mr. Healey agreed to draft an amended Section 16.10 to include the same time references as stated in RSAs pertaining to Rehearings. Mr. Healey said the Planning board will discuss the topic at their next meeting and keep Mr. Fichter informed.

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Minutes

The Board reviewed the minutes of March 17, 2015 and made corrections.

Mr. Seidel made a motion to accept the minutes of March 17, 2015 as corrected. Mr. Fichter seconded the motion. All in favor.

Motion for Rehearing/ Edward and Patricia Anderson

Mr. Fichter requested that Mr. Blohm recuse himself from voting on this item since he was not present during the previous hearings for the Anderson's application. Mr. Blohm agreed and recused himself.

Mr. Fichter appointed Mr. Azodi and Ms. Russell as voting members for this agenda item since they were both present during the previous hearings for the Anderson's application.

Mr. Fichter informed the Board that a Motion for Rehearing has been submitted by Thomas W. Hildreth, McLane, Graf, Raulerson & Middleton, P.A., attorney for Edward and Patricia Anderson, for property located at 161 Bay Point Road, Newbury, NH 03255 Tax Map/Lot # 006-076-012, regarding the ZBA Notice of Decision, March 9, 2015, Denying a Variance from Article V Section 5.9.1 and Article XV Section 15.1.1 & Section 15.1.2.

Mr. Fichter said the documentation submitted included five reasons for granting a rehearing as follows:

1. The ZBA made a mistake of law.
2. Two experts have been engaged who have submitted information regarding the impact to the property values and aesthetics of the neighborhood if this project were to be built.
3. The citing of other variances that have been granted in the Bay Point Road area over the past number of years.
4. Clarification on a number of "tentative or uncertain" points that the applicant was not able to properly address in the original hearing.
5. A modification to the original plan that reduces the project height from 26-feet 9-inches to 25-feet 6-inches.

Mr. Fichter noted that the Board's purpose is to determine if one or more of the above merits a rehearing.

He stated that an incorrect Notice of Decision (NOD) was sent out which did not identify the specific criteria that was used to deny the variance. He said a corrected NOD was drafted containing the specific criteria not met.

Mr. Azodi said the minutes reflected the Board's decision and the specific criteria and reasons for that decision. Mr. Fichter referenced the RSA that states the NOD should identify which criteria has not been met.

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Mr. Russell stated that an omission in the NOD does not negate the process that the ZBA went through to arrive at the final decision. He added that the minutes contain the motion, the Board's decision to Grant or Deny, and the specific criteria that was either met or not met.

Mr. Fichter agreed but added that, technically, the criteria should be included in the NOD. He said Town Counsel reviewed the situation and noted that the pertinent information is contained in the minutes and that is sufficient. However, counsel advised a conservative approach to the situation since the NOD did not contain the same information as the minutes.

Mr. Fichter addressed Item # 2, noting that the Andersons have engaged a licensed NH property appraiser to assess the property values in the neighborhood if this project is completed. The findings indicate that there will be no negative effect on the property values. He added that the Anderson also hired a landscape architect whose assessment concluded that the project plans would not alter the character of the neighborhood.

Mr. Fichter noted that the point raised in Item # 3 regarding precedence of variance-granting for other properties on Bay Point Road does not apply since each case heard by the ZBA stands alone and is not governed by Board decisions on other cases.

Mr. Fichter addressed Item # 4 regarding the additional "points", specifically the one pertaining to whether the property is a 3-bedroom or 5-bedroom property. He said the Andersons are researching that point with the town assessor.

Item # 5 indicated that the Andersons are willing to reduce the building height from 26-feet 9-inches to 25-feet 6-inches.

Mr. Blohm noted that there were multiple issues of concern to the Board besides the building height and drainage plans. Mr. Fichter agreed, adding that one concern was the real intention for the second floor of the building. Discussion followed.

Mr. Seidel stated that a rehearing is merited because of the material differences cited in Item # 1 of the rehearing request.

Mr. Russell stated that the NOD should not warrant a rehearing since the NOD error was a clerical error. He added that the reasons for the variance denial still stand.

Mr. Blohm said he supported a rehearing since there is new material presented regarding the proposed plans.

Ms. Russell said the Board's original decision to deny was not based on building height but rather on other values in the neighborhood. She noted that the request for a rehearing is merited based on Item # 1.

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Mr. Azodi noted that there are material differences with the inclusion of the property appraiser and landscape architect informational input since denial was, in part, based on the concerns regarding the impact on property values and changes to the character of the neighborhood.

Mr. Fichter stated that Item # 1 and Item # 2 were compelling and presented reasons for a rehearing.

There being no further discussion from the Board, Mr. Fichter called for a Motion to Vote.

Mr. Fichter made a motion to grant the request for a rehearing, under Administrative Business, to Edward & Patricia Anderson for a Variance from Article V Section 5.9.1 and Article XV Section 15.1.1 and Section 15.1.2 because the request has met the criteria of Article 16.9.4. Mr. Seidel seconded the motion.

Mr. Fichte called for a Roll Call vote.

In Favor: Mr. Azodi, Ms. Russell, Mr. Russell, Mr. Seidel

Opposed: None

Mr. Fichter noted that this should be considered a new application and must follow all the steps outlined for an Application for Variance, adding that the process begins by submitting a plan to the Code Enforcement Officer for action.

Mr. Fichter called for a break at 8:00 p.m.

The meeting resumed at 8:05 p.m.

Reapplication from Cynthia & Richard Bolduc

Mr. Fichter requested that Ms. Russell recuse herself from voting on this item since she was not present during the previous hearings for the Buldoc's application. Ms. Russell agreed.

Mr. Fichter noted that Mr. Bloom is a voting member for this hearing since he was present during the previous hearings for the Bulldog's application.

The Recording Secretary read into the record the following Public Notice:

*Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on **Monday, April 13, 2015** at the Town Office Building at 937 Route 103 in Newbury, NH: **At 7:15 p.m., Cynthia & Richard Bolduc** for property located at 7 Spring St, Newbury, NH, will seek a **Variance** from the requirements of Article 15; section 15.1.2 of the Newbury Zoning Ordinance to permit the following: An extension and reconstruction of an existing building within the side lot setback. Newbury Tax Map 018-319-018. It is noted: At the meeting held September 8, 2014 the Zoning Board of Adjustment granted a variance for Article 5; section 5.9.1, with conditions. Copies of the applications are available for review during regular business hours at the Newbury Town Office building. Business hours are as follows: Monday, Tuesday, Thursday, and Friday from 8 am - noon.*

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Mr. Fichter noted that the conditions reference above included that a certified septic systems engineer determine if the existing septic system was viable, and a certified engineer provide a full storm water management plan.

Mr. Seidel called for a Point of Order regarding the omission of specific items in the building permit application, namely the following: (1) Does the project increase the number of bedrooms or bathrooms? (2) Is the project in or within 75-feet of a wetland? (3) Is the project within the floodplain?

Mr. Fichter noted that the Board generally does not receive copies of Building Permit applications. Rather, the Board receives copies of the CEO's denial letter.

Mr. Seidel noted that a denied Building Permit application triggers the issues that the applicant must address. If the questions are not answered, the Code Enforcement Officer (CEO) is hampered in giving the applicant appropriate direction.

Discussion followed. Mr. Azodi said it is not within the purview of the ZBA to determine how the CEO does his job. Mr. Fichter agreed, noting that the ZBA receives direction from the CEO.

Susan Hankin-Birke, McSwiney, Semple, Hankin-Birke & Wood, P.C., agent, presented to the Board.

Mr. Fichter introduced the Board and reviewed the hearing process with the applicant and members of the public.

Mr. Fichter asked about the existing septic system and whether a new system is planned. Ms. Hankin-Birke said the existing system will not be replaced, that the existing system is an Enviro septic leach filed with a pump system that is pumped every three years.

She said the lot narrows to the back of the building and the proposed building will not be any closer to the lake. She said the lot is challenged because the building is accessed by Spring Street and presents a tight spot for cars on the street.

Ms. Russell asked if there will be a change in the direction that cars use to access the garage. Ms. Hankin-Birke said no.

The latter added that there is an existing dimensional encroachment into the side setback and the proposed building reduces that encroachment. Ms. Hankin-Birke proceeded to refer to the former application submitted by the Buldocs. The Recording Secretary cautioned her that this is a new application that has no reference point to any previous applications.

Mr. Seidel concurred, noting that this application is for an entirely new building and foundation. He requested visual verification of the existing building versus the proposed

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new building to ascertain the impact to the existing neighborhood.

Ms. Hankin-Birke noted that Article XV of the ordinance is specific to a pre-existing non-conforming building. She said the applicant's proposal seeks to replace the existing residence in its present location and building footprint. She added that the existing detached garage will not be removed.

Ms. Hankin-Birke said the existing non-conformity at issue arises due to current zoning regulations that require a 15-foot side setback. The existing residence has an 8-foot 9-inch wide "bump out" which provides access to the building. With the "bump out", the building is 7-feet 11-inches from the northerly sideline of the property.

Ms. Hankin-Birke said the proposal is to "step-back" to 8-feet 1-inch from the northerly sideline of the property and continue the building and roof line from the "bump out" to more or less square up the northeasterly corner. This plan removes the existing jog in the building footprint on the northeasterly side but it does not increase the existing dimensional encroachment.

Ms. Hankin-Birke noted that the criteria set forth for granting a variance per the Newbury Zoning ordinance mirrors that set forth in the NH RSA 674:33(I)(b)(5). She proceeded to describe how the state legislature has changed the criteria for determining "hardship".

There being no more questions from the Board, Ms. Hankin-Birke addressed Article 16.7 of the zoning ordinance:

16.7.1 The variance will not be contrary to the public interest because: The general public purpose of side setback requirements is to maintain a visual separation between dwellings on lots. Additionally, this allows residents of Newbury to have an assured degree of privacy from their neighbors' residences and/or outbuildings. Most of the lots around Lake Sunapee, however, are not known for their "private" settings. This is especially true in the Pine Cliff area, just as it is along the lakefront proceeding from Newbury Harbor. This is simply a fact of the existing lakefront development, including the residences located on the non-lakeside of the roadway around the lake. It is noteworthy that the abutter on the north side of the Bolduc's property has not raised any objection to the Buldoc proposal.

The general public purpose of the side setback is not impacted in this instance, as the variance requested does not encroach to even the same degree as the existing structure which can be maintained indefinitely under the terms of the Newbury Ordinance. Since the property is located at the end of Spring Street, it is not particularly visible by the public from the roadway. The public's view from the lake will remain largely the same as the existing northerly sideline encroachment of the "bump out" is what will continue to be visible and is a protected right and permitted to remain under the terms of the ordinance. Newbury Zoning Ordinance 15.1.1. Hence, there is no fair or substantial relationship between the general public purpose of side setbacks and its application to this property, per NZOS 16.7; NH RSA 674:33(I)(b)(5).

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The proposed improvements will result in a 1.6% aggregate decrease in impermeable area on the site which will serve the public interest of protecting Lake Sunapee. Additionally, the building stormwater run-off will be contained and treated on-site, thus eliminating current runoff into Lake Sunapee. Best Practices will be implemented and maintained during construction. The proposal is not contrary to the public interest.

There was discussion regarding how the proposed new building will look from the lake and the impact it will have on the rest of the Pine cliff neighborhood.

Mr. Azodi asked if the applicant provided pictures of the existing house. Ms. Hankin-Birke said no.

Mr. Fichter requested elevations. Jeremy Bonin, architect, verbally described the elevations and house design.

Mr. Seidel raised concerns regarding the impact the new building will have on the light and air flow in the neighborhood, noting that the new building is substantially larger than the existing one.

Discussion followed, touching on the generally accepted definitions of “public” and “privacy”.

16.7.2 Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; Newbury Zoning Ordinance 16.7.2 is perhaps supplemented by the statutory criteria for a variance as set forth in NH RSA 677:33 (I)(b)(5), which provides that the board is authorized to grant a variance from the terms of the zoning ordinance if, “literal enforcement of the provisions of the ordinance would result in an unnecessary hardship”. The statute further provides that “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.
- (ii) The proposed use is a reasonable one.

Mr. Azodi asked about the hardship of pulling the “bump out” back to the side setback line. Ms. Hankin-Birke said the law does not address that and proceeded to deliver a lecture on the term “hardship”, citing state case law.

Further discussion followed including why the house will not seem as tall as it is.

(a)-There are special conditions in the property that distinguish it from other properties in the area because: The lots of the Pine Cliff subdivision were created prior to the adoption of zoning in Newbury. A simple review of the Newbury tax map reveals that the Pine Cliff lots have various irregular configurations, widths and lengths. The

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configuration of the Buldoc parcel, including the location of the home, detached garage and driveway are clearly unique from any other parcel.

The Bonin plan depicts the 15-foot side setbacks further revealing that the area within the buildable area of the lot actually narrows toward the eastern portion of the lot. Further, and what is specifically noteworthy with regard to the Buldoc property configuration, is that as a pre-existing, non-conforming building, the Buldocs are vested with the right to continue the existing non-conformity as to the side setback of the existing structure, per Newbury Zoning Ordinance Section 15.1.1.

The current structure encroaches into the northerly side line setback of 15-feet, being located 7-feet 11-inches from the northerly sideline of the property. The proposal is in greater compliance with the Ordinance as the “bump out” necessary to address various concerns existing due to the jog located in the northeasterly corner of the house, closest to the driveway and the location of the main entry will be located 8-feet 2-inches from the side setback. Hence, the proposal is not increasing the dimensional non-conformity, only perhaps by the area, which is why the variance is being requested.

(b)-The property is different in a meaningful way from other properties in the area because: The property is different in a meaningful way from the other properties in the area as it is one of only several narrow cottage-style homes. In addition to the special condition of the narrowing of more than 50% of an already narrow lot, the existing garage, which is located without encroaching on the current side setbacks, does not allow much flexibility. The area between the existing foot print of the house to the east cannot be expanded in that direction without compromising the limited area providing vehicular access from Spring Street onto the Buldoc property and allowing continued use of the garage. The special conditions of this parcel due to the narrowness of the lot differs in a meaningful way from other properties as the roof slopes down on the north and south sides of the house. The existing entrance “bump out” means that snowfall and water off the upper roof can and has made maintenance of the northeasterly corner of the house a problem. The slope of the lot, the piling of snow from the clearing of the access onto the property, and snow and rain falling from the roof onto that same northerly side makes this property different in a meaningful way. By allow the ‘bump out’ roofline to be extended back to the northeast corner of the house, thus eliminating the existing jog from the entrance, will improve access safety and allows increased attention to the existing drainage problems, including basement flooding, due to snow build up, etc. on that corner of the residence.

(c)-The property is burdened more severely by the zoning restrictions because: The Buldoc property is burdened more severely by the zoning restriction than other properties since Lake Sunapee is the southerly boundary of the lot, in such proximity that no extension of the residence is allowed toward the lake and accordingly none is being proposed. Secondly, the lot is quite narrow and already encroaches within the northerly side setback under the current requirements of the zoning ordinance. The third significant special condition of this property that makes this property more severely burdened is the configuration of the entry and access from the northerly side of the lot between the existing structure and the existing garage as well as the roof sloping on the north side as well.

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(d)- *Because of the special conditions of the property, the proposed use of the property is reasonable because:* The proposed use of the property, in light of the special conditions of the property, is reasonable since it will continue to be used in a residential capacity. Additionally, existing maintenance problems which have likely contributed to runoff into the lake will be addressed by eliminating a void where snow and rain was accumulating. The proposed renovations will meet and exceed minimum requirements of both the State and Town relative to stewardship of the Lake.

(i)No fair and substantial relationship exists between the public purposes of the ordinance provision and the specific application of that provision to the Buldoc Property. NH RSA 674:33 I (b)(5)(A)(i).

There is no fair and substantial relationship between the 15-foot setback and the proposed entry and roof from the existing entry “bump out” and the public purpose of maintaining visual separation between buildings on adjacent lots or the view of such structures from the water given the pre-existing dwelling “bump out” encroachment into the same sideline setback as the proposed additional, but slightly recessed “bump out” to alleviate the above-noted maintenance issues. The proposed additional extension is a reasonable use, especially due to the special conditions of the location of the residence access, location of the driveway and proximity of the garage, thus limiting what can be built on the easterly side of the house, and the only area not otherwise subject to setbacks on an exceedingly narrow lake front lot. *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011).

NH case law further instructs that if the requested variance will not alter the essential character of the locality in which it is located, than there is no fair and substantial relationship between the zoning provision(s) from which the applicant seeks relief. *Hannaford Brothers Co. v. Town of Bedford*, 164 NH 764 (2013). In other words, there is no benefit to the public that would outweigh the hardship on the landowner if the variance is denied. *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011). The public will continue to see a “bump out” from the lake. It is unlikely that the further stepped-back continuation of the “bump out” within the 15-foot sideline buffer would even be visible from the lake or Highland Avenue. The abutting property owner on this north boundary of the subject property has not voiced any concern or objection to the Buldoc proposal. There is no basis to conclude that the requested variance alters the essential character of these developed, small and strangely configured lots.

(ii)The applicants’ proposed use is a reasonable one. NH RSA 674:33 I (b)(5)(A)(ii).

As above-noted, given the north/south slope of the roof and the existing “bump out” entrance, providing for better dispersion of rain and snow from the roof right into the entrance area and allowing for easier and better maintenance with the existing jog on the northeast corner of the house is reasonable. The residential use is consistent with the use within the area, and providing for a safer and better protected entrance is reasonable.

Special conditions of this being a lakefront lot, narrow to begin with and further narrowing toward the larger portion of the lot extending to the east, away from the lake, the location of the access to the lot and the area between the existing residence and the

existing garage, and certainly the protected nature of the pre-existing, non-conforming structure includes the existing entry “bump out” which requires some further attention to alleviate the maintenance difficulties, make this project easily distinguished from the conditions of other property in the area. The grade of the lot rises sharply toward the easterly portion up to the existing additional parking along Highland Avenue served by a significant set of stairs. The question with regard to the difference of a dimensional versus area encroachment is best reviewed in the context of a recent NH case where the NH Supreme Court found it reasonable to allow a pre-existing non-conforming sign to be enlarged, as the landowner was only required to show that the proposed sign was a reasonable use of the property on which a conference center and hotel was located. . *Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011).

16.7.3 The variance is consistent with the spirit of the ordinance since: This criteria mirrors that of RSA 674:33, I(b)(2) that the spirit of the ordinance is observed under the Buldoc proposal. The rationale of the Shore Land Overlay District, while recognizing the vested rights existing as to non-conforming, small lots with often oddly configured structures and steep grades, means to allow continued use and rebuilding and remodeling so long as best construction practices are adhered to, and that proper attention to drainage will be accomplished. The Board may make any approval of the variance conditional upon the Applicant subsequently providing permits for the proposed storm management and septic systems under the State regulations, including the Shore Land protection Act. NH RSA 674:33(VI) prohibits the ZBA from requiring the submission of such permits prior to accepting a submission or rendering its decision.

Since the purpose of the Ordinance is stated so as to “promote the health, safety, and general welfare of the inhabitants of the Town of Newbury; to enhance and preserve the value and natural beauty of the lakes”, the Bolduc proposal meets the spirit of the ordinance. Newbury Zoning Ordinance, Article I, 1.1. The same Ordinance section also notes that “it is the intent of the ordinance to allow individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with the accomplishment of these purposes.”

As noted, the Buldoc proposal does not create a new increased dimensional violation. The proposal provides safer access to the residence in the northeast corner. It will improve the current situation with the drainage problems and maintenance issues existing in that critical northeasterly corner of the house. There will be minimal impact on the public’s view from the lake. The requested variance would not alter the essential character of the locality of this residence in the Pine cliff section of Lake Sunapee. *Hannaford Brothers Co. v. Town of Bedford*, 164 NH 764 (2013).

The Board has already determined that a variance from article V, Section 5.9.1 is warranted for applicant’s proposal, with the condition that a comprehensive stormwater management plan, approved by NH DES be implemented by the applicant. Similarly, with regard to the issue of the septic system, the Board may approve the variance conditional upon the NH DES septic system approval consistent with the applicable NH DES Regulations and town regulations.

Ms. Hankin-Birke proceeded with a lengthy monologue on her interpretation of the phrase “spirit of the ordinance”, citing state case law and lecturing the Board on the

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correctness of her interpretation. The Recording Secretary called for a Point of Order and requested that Ms. Hankin-Birke refrain from continuing in this vein and to return to addressing the items in 16.7.

Mr. Seidel noted that the proposed building is out of scale with the size of the lot since it will cover 40% of the lot. He added that the house will be very large when viewed from the lake.

Ms. Hankin-Birke questioned how the Board's thinking on this application varies from its thinking when it granted the Variance from 5.9.1. Discussion followed.

16.7.4 Substantial justice is done because: The improvements relative to the stewardship of the land is a gain to the general public. Hence, denying the requested variance will result only in difficulty for the owner of the property regarding the safety and maintenance issues given the configuration of the confluence of the access road into the property, the north sloping roof, sloping lot and the existence of a garage to the east of the house and on the opposite side of the driveway. What is being requested does not harm any abutter. There will be a benefit to the lake given the drainage, storm and septic engineering necessary to obtain the state permits. The proposal is appropriate and in keeping with the general appearance and character of Pine Cliff. Additionally, the public will realize no appreciable gain from the Board denying the requested variance.

Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515-516 (2011).

16.7.5 The value of surrounding properties will not be diminished because: The proposal is in keeping with the character of the Pine Cliff area. Despite the long pending nature and number of noticed meetings relative to this project, no abutter has voiced a concern about their property value. In fact, it may well be that the abutting property values will be improved due to the overall renovation. The drainage and storm management plans to be instituted under this proposal will further benefit abutting properties, including Lake Sunapee; hence their value will not be diminished.

Ms. Hankin-Birke concluded by stating that the ZBA previously granted a variance from Article V Section 5.9.1 with the condition that the applicant provide an approved stormwater management plan approved by NH DES and consistent with the Newbury ordinance. She referred to the Notice of Decision regarding same dated September 8, 2014. She added that it is clear to her that the proposed further recessed continuation of the existing "bump out" is consistent with the ZBA's previous determination.

There being no further questions from the Board, Mr. Fichter opened the public portion of the meeting.

Will Davis, civil engineer, reviewed the existing conditions plan, how the stormwater will travel down towards the lake across a pervious driveway. He noted that there will be a dry well, a bio retention rain garden, and all walkways and patio areas

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made of pervious surfaces. He added that there will be a 40% reduction in rate of stormwater runoff for a 10-year event.

Discussion followed regarding the necessity for permits regarding tree cutting and placement of a fire pit. Also, concerns were raised regarding post construction maintenance for pervious surfaces.

There being no further comments from the Public, Mr. Fichter closed the public portion of the meeting and the Board went into deliberations.

Mr. Azodi expressed concern over the size of the proposed plan in context with the scale of the rest of the neighborhood.

Mr. Blohm said the plan proposes a good stormwater management plan and the building design is okay and is in keeping with the neighborhood. Also, he said the proposed building is not degrading the view from the lake. He added that the plan is not creating harm and said he was okay with the plans to square off the building.

Mr. Russell said there is a compelling need for improving the safety of the entrance and to address the existing drainage issues. He added that he is okay with squaring off the building and said the requested stormwater management plan has been addressed.

Mr. Azodi said he agreed with Mr. Blohm and Mr. Russell.

Mr. Fichter said a site visit was completed, adding that there were drainage issues in the right front corner of the existing building. He said the proposed stormwater management plan means improved stewardship for the lake, which is of value to the public.

Mr. Russell suggested that the applicant consider adding appropriate vegetation within the 50-foot shoreland buffer since there is little vegetation there now.

Mr. Fichter reminded the applicant that if a lawn is planned for that area, fertilizer may not be used within the Shoreland Buffer Zone.

Mr. Seidel expressed his displeasure with this application and with the original application, noting that he found both to be offensive.

Mr. Russell suggested that two conditions may be: (1) that the 50-foot buffer zone be filled with appropriate vegetation, and: (2) that the applicant supply a stormwater management plan maintenance and inspection plan.

Discussion followed pertaining to above-mentioned maintenance and inspection plan. There was Board consensus that the Newbury Planning Board draft regulation language regarding same for consideration at Town Meeting in March 2016.

Mr. Fichter re-opened the hearing to the Public.

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Mr. Blohm asked if the Code Enforcement Officer will oversee the proposed subtle grading on the site.

Mr. Davis said the intent is there to do that but, as yet, there is no construction plan.

Mr. Azodi asked if Mr. Davis will provide a construction plan. Mr. Davis said yes.

There being no further comments from the Public, Mr. Fichter closed the public portion of the meeting.

There being no further questions from the Board, Mr. Fichter called for a Motion to Vote.

Mr. Azodi made a motion to vote on the request for a variance from Article XV Section 15.1.2 with the condition that the stormwater management plan get approval from the NH DES. Mr. Blohm seconded the motion.

Mr. Fichter voted to Grant the variance from Article XV Section 15.1.2 with the stated condition.

Mr. Seidel voted to Grant the Variance from Article XV Section 15.1.2 with the stated condition.

Mr. Russell voted to Grant the Variance from Article XV Section 15.1.2 with the stated condition.

Mr. Blohm voted to Grant the Variance from Article XV Section 15.1.2 with the stated condition.

Mr. Azodi voted to Grant the Variance from Article XV Section 15.1.2 with the stated condition.

Mr. Fichter advised that the applicant or any party directly affected by this decision may appeal to the ZBA within thirty (30) days of the decision as per RSA 677.2. Said motion must set forth, in detail, all grounds on which the appeal is based.

Ms. Russell made a motion to adjourn. Mr. Russell seconded the motion. All in favor.

The meeting adjourned at 10:56 p.m.

Respectfully submitted,

Meg Whittemore
Recording Secretary

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