

**Approved  
Zoning Board of Adjustment  
June 8, 2015**

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

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

Mr. Fichter appointed Ms. Sue Russell as a voting member for this meeting.

**ADMINISTRATIVE BUSINESS**

**Minutes**

Mr. Fichter announced that the final minutes from the April 13, 2015 were not ready for review. The minutes should be completed by the end of this week.

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

**Appeals**

Mr. Fichter said that at the last meeting there was discussion on Article 16.3 that states that an applicant has thirty days to appeal a decision. After doing research on Article 16.3 Mr. Fichter has found that the article actually states that an applicant has **twenty** days to appeal a decision. He said that after doing research he has found that in the 1990's the RSA changed from 30 days to 20 days and this was not incorporated in the regulations. Mr. Fichter spoke with Bruce Healey from the Planning Board and Mr. Healey explained that the Planning Board is going to do a number of amendments to zoning ordinances. This will be done in the fall of this year. For now, Mr. Fichter says the Board will continue to tell applicants they have thirty days until it has been officially changed in the amendments.

**NH OEP Conference**

Mr. Seidel said that he could not go to the spring OEP conference. Mr. Fichter said that he went and it was a well attended conference and efficiently run.

**Other ZBA Meetings**

Mr. Seidel said that he was involved in a hearing in Concord for the Concord Zoning Board. He said there were 15 hearings in one night. He said big municipalities do it differently than we do. Mr. Fichter said that the Sunapee Zoning Board has a sign in sheet and he thinks we should adopt this procedure for recording purposes.

Mr. Fichter said that there will be a July meeting for the Zoning Board.

The Recording Secretary read the Public Notice into the record as follows:

*Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a*

*public hearing on the following proposal on **Monday, June 08, 2015** at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:15 p.m., **Brian & Justine Fournier** for property located at 52 Fowler Mill Rd, Newbury, NH, will seek a **Variance** from the requirements of Article 7.5, governed by Article XV, which includes: 15.1.1, and 15.1.2, of the Newbury Zoning Ordinance to permit the following: for an addition of an 8' x 10' mudroom to an existing non-conforming building within the 75 foot setback of the Shore Land Overlay District. Newbury Tax Map 050-506-210. 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 a.m. – noon.*

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

Justine Fournier presented to the Board.

*16.7.1 The variance will not be contrary to the public interest because: it achieved approval with the shoreline protective act and it fits in with the overall footprint of the home. – attached photo of what use to exist that was 19' x 3'.*

Mr. Fichter asked, from the sketch that was provided, that he notices that the closest corner is 68 feet from the shoreline. Mr. Fichter asked if it was her intention to comply with the Shoreland Protection Act.

Ms. Fournier explained that she received an approval for construction from the Department of Environmental Sciences.

Ms. Fournier distributed these approvals to the Board Members.

Mr. Seidel said that the reason she is there is because it is a non-conforming building.

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

- a. There are special conditions in the property that distinguish it from other properties in the area because: the mudroom addition faces away from the water and is only 8' x 10'.*
- b. The property is different in a meaningful way from other properties in the area because: this is my year round residence. The original size of the structure is very small and this very small addition will have a huge impact on usability and quality of life.*

Mr. Fichter asked if the neighbors near her are seasonal homes or year round homes. Ms. Fournier said that most homes around her are seasonal.

Ms. Fournier replied that the property to the left is vacant, two homes to the left is a year round home, the property to the right is a seasonal home and then two houses on the right is mostly seasonal. There is no property across the street from the Fournier home.

- c. *The property is burdened more severely by the zoning restrictions because: the restrictions would not allow me to have a mudroom/entrance to my small year round home.*
- d. *Because of the special conditions of the property, the proposed use of the property is reasonable because: The mudroom does not encroach upon the waterfront, in fact, it faces away from the water.*

*16.7.3 The variance is consistent with the spirit of the ordinance since: the size of the mudroom is relatively small.*

*16.7.4 Substantial justice is done because: consideration for the sensitivity of the work was given when determining the overall size of the project.*

*16.7.5 The value of surrounding properties will not be diminished because: the addition is tastefully and proportionally designed and well away from any property lines. By adding to the value of this home, it will add to the value of the surrounding homes.*

Mr. Blohm asked about other work that has been taking place on the property. He asked if this work has been permitted. Fournier's contractor, Matt O'Clair, said that this second floor work had been permitted. Blohm asked if the mud room was under the original plan and Fournier said that it was. Mr. Blohm asked why the work was put on two different building permits. Mr. O'Clair said that he was the second contractor on the job and he was under the assumption that all of the permits had originally been filed by the first contractor. When Mr. O'Clair contacted the building inspector for an electrical inspection that is when he found out that a building permit had not been obtained and a cease and desist had been given.

Ms. Russell asked how much of the mud room was completed. Ms. Fournier said that it was framed.

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

**No public input was given.**

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

Mr. Blohm said that the mud room is not encroaching on the water.

Ms. Russell said the project is minimal and it was too bad that the original contractor didn't get the property permits to begin with.

Mr. Seidel said he doesn't think that runoff will be a problem. He said this addition really makes the building layout better.

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

Mr. Seidel made a motion to vote on the request for a variance from Article 7.5, governed by Article XV, which includes: 15.1.1, and 15.1.2 of the Newbury Zoning Ordinance to permit the following: for an addition of an 8' x 10' mudroom to an existing non-conforming building within the 75 foot setback of the Shore Land Overlay District. Mr. Blohm seconded the motion. All in favor.

Mr. Fichter voted to Grant the variance from Article 7.5 with the stated condition.

Ms. Russell voted to Grant the Variance from Article 7.5 with the stated condition.

Mr. Russell voted to Grant the Variance from Article 7.5 with the stated condition.

Mr. Blohm voted to Grant the Variance from Article 7.5 with the stated condition.

Mr. Seidel voted to Grant the Variance from Article 7.5 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.

The Recording Secretary read the Public Notice into the record as follows:

*Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on **Monday, June 8, 2015** at the Town Office Building at 937 Route 103 in Newbury, NH: **At 7:30 p.m., Edward & Patricia Anderson** for property located at 161 Bay Point Road, Newbury, NH, will seek a **Variance** from the requirements of Article 5; section 5.9.1, Article 15; section 15.1.1 and section 15.1.2 of the Newbury Zoning Ordinance to permit the following: reconstruction and extension of an existing non-conforming garage within the right-of-way and side setbacks. Newbury Tax Map 006-076-012. 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.*

Attorney Tom Hildreth, agent and legal counsel for Edward and Patricia Anderson presented to the Board.

*16.7.1 The variance will not be contrary to the public interest because: the slightly larger building in no way threatens the health, safety, or general welfare of the public; nor will it alter the essential character of the neighborhood. There is no infringement on the abutters' access to light and air. There are no changes in the building's primary purpose that would impact the safety of the public. The turning motions of vehicles will not*

*change as they access the new garage. The building code and building inspector would govern any other potential life safety issues. In fact, the public interest will be enhanced by the replacement garage. Allowing the applicants to store and maintain their vehicles and equipment in a garage will be a public benefit because automobiles occasionally leak fluids that can be detrimental around lakes and streams. Moreover, allowing the applicants to store recreation and maintenance equipment inside will avoid unsightly clutter and discourage vandalism. It is in the public interest 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 the purposes of the ordinance. Variances are included in a zoning ordinance to prevent them from becoming unduly oppressive as applied to individual properties uniquely situated. On Tax Map #6, which includes 161 Bay Point Road, there are 32 lots on the lake side of the road. Of those, 30 are non-conforming and many of those include non-conforming structures. There are at least four garages within a half mile of the Anderson property that have either higher or wider profiles, or are located within the required setbacks, or both. Because of the general nature of the steep slopes in this part of the lake, garages, historically, needed to be at the top of the slope in close proximity to the road for access purposes. The essential character of Bay Point Road and its street scape was established years ago by this dynamic. In fact, much of the visual character of the neighborhood is only the street scape as the homes are located at lower elevations out of view of the road with mature trees and other landscaping obscuring their visibility. The variances sought here do not conflict with the basic zoning objectives. The proposal does not change the underlying use or essential character of the neighborhood. Section 15.1 of the zoning ordinance would allow the applicants to replace the existing garage on its current footprint with height and massing dimensions limited only by the ordinance's upper height aesthetic sensibilities or the quality and character and the quality of the neighborhood.*

Mr. Seidel asked how the calculations for the runoff were calculated. Gordon Leedy, landscape architect for the Andersons, replied that one of his engineers prepared those calculations by looking at the water quality volume. Mr. Seidel asked Mr. Leedy to confirm that it comes to 52 sq. cubic ft. Mr. Leedy confirmed. Mr. Seidel then asked him to confirm that the capacity was 83 sq. cubic ft. Mr. Leedy confirmed.

Mr. Hildreth showed three photographs of the garage. One was the current garage, one was the garage that could be built by right without a variance and the third was the garage that they are proposing to build. He stated that the third photograph that is the garage that could be created with a variance is a better looking outcome than the second outcome that show what the garage would look like without a variance. He stated that the variance would yield a more pleasing result.

The Board reviewed the three photographs.

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

*a. There are special conditions in the property that distinguish it from other properties in the area because: The special condition of this nonconforming property that*

*distinguishes it from other properties in the area is its very narrow width. This property has frontage of only 49.5' and that width is fairly constant throughout the lot except for a section close to the existing house which is a bit wider by virtue of a lot line adjustment a number of years ago. Additionally, the property includes a septic system that is 25' wide with a minimum 10' setback on the north side and less than 15' setback on the south side. The septic system extends from its required 75' distance from the lake to approximately 38-40' away from the right of a way. There is literally an area of only 19.5' wide by approximately 8-10' deep remaining that is compliant with the building setback envelope which is not adequate for a garage. The variances requested would allow the applicants to replace the existing substandard garage with a modern, fully functional two-car garage, with a bonus room above.*

*b. The property is different in a meaningful way from other properties in the area because: The special condition of this nonconforming property that distinguishes it from other properties in the area is its very narrow width. This property has frontage of only 49.5' and that width is fairly constant throughout the lot except for a section close to the existing house which is a bit wider by virtue of a lot line adjustment a number of years ago. Additionally, the property includes a septic system that is 25' wide with a minimum 10' setback on the north side and less than 15' setback on the south side. The septic system extends from its required 75' distance from the lake to approximately 38-40' away from the right of way. There is literally an area of only 19.5' wide by approximately 8-10' deep remaining that is compliant with the building setback envelope, which is not adequate for a garage. The variances requested would allow the applicants to replace the existing substandard garage with a modern, fully functional two-car garage, with a bonus room above. In addition, this property contains an existing sub-standard garage with a footprint of 20' wide by 22.5' deep, which is not adequate for a modern, fully functional two-car garage that can accommodate vehicles and yard equipment such as lawnmower, snow blower, and gardening tools. The main house has minimal basement which provides no storage for such equipment, and there is no other space on the property to adequately house this type of equipment. Allowing the variances requested here would permit the applicants to bring their property up to the standards expected for high end lakeshore properties.*

*c. The property is burdened more severely by the zoning restrictions because: In the present case, a single family residence already exists on the lot, sited years before zoning or shore land protection legislation. It is impractical to store vehicles, maintenance equipment, the associated fuels, and recreation equipment in a sub-standard garage. The modern day zoning and shore land protections impose significant restrictions that remove a possibility of a replacement garage other than in the vicinity of the current garage, near the road. Yet, the special conditions affecting the property allow only an approximately 175 sq. ft. buildable area, making them nearly confiscatory when applied to this property. The variances requested will permit the owners a modern, fully functional, two car garage that meets the standards expected of high end lake front properties, thus allowing the landowners full use of their property for the intended primary residential purposes.*

*d. Because of the special conditions of the property, the proposed use of the property is reasonable because: The applicants' proposed replacement garage is reasonable because it is a modest increase over the size of the existing garage, it does not*

*alter the essential character of the neighborhood, it does not threaten the health, safety, or general welfare of the public, and it is a handsome and aesthetically pleasing improvement over the existing building. Moreover, the slightly larger and greatly more attractive building will allow the applicants to maintain a neat and tidy appearance of the property by permitting the covered storage of their vehicles, landscaping equipment, and other tools and devices. The substantial investment represented by the replacement garage will enhance the values of surrounding properties by demonstrating a sustained commitment to quality and improving the appearance of the street scape and neighborhood. The engineer-designed water retention system to be installed around the drip edge of the replacement garage will improve the runoff characteristics of water traversing the property to the benefit of the abutters and the lake. The applicant's proposal is also reasonable because it is similar to many other two car garages in the neighborhood that serve similar purposes for similar properties. The design of the replacement garage is consistent with the architectural styles of the neighborhood. The variances area also reasonable because they will permit a more appropriate and aesthetically pleasing design than an alternative which the applicants could construct by right by adding a second story to the existing footprint to a full height of 34'. That design and configuration would not be architecturally pleasing, and would not be reasonable. By comparison, the modest and attractive proposal presented here is reasonable.*

Mr. Blohm said he did not see where the encroachments were and also, he would like Mr. Hildreth to address that some concerns of the abutters are saying this is more than a garage and does in fact alter the character of the neighborhood.

Mr. Hildreth showed the board a layout of the existing garage and the footprint of the expanded garage.

Mr. Blohm asked about the expansion to the south and how it impacts the side setback. Mr. Hildreth said that it is 15' away from the side. Mr. Fichter said that in the previous session it was over the side setback. Ms. Sherman, architect for the Andersons, stated that they brought the original surveyor back in to survey the land and he found the pins and now they are not encroaching on the side setback. Now it is right on the 15' mark.

Mr. Hildreth distributed the tax card for the Anderson property which states that it is a five bedroom house. He stated that it has not been a five bedroom house since the time they owned it. It has been reduced to a three bedroom home. Mr. Fichter stated that this also was not in the original submission. Mr. Fichter put it in the record book.

*16.7.3 The variance is consistent with the spirit of the ordinance since: Replacing the existing substandard garage with a footprint that expands it by only 4' in width and merely 3.5' in depth does not unduly and in a marked degree violate the spirit of the ordinance. Rather, the proposed garage is intended to replace an existing non-structurally sound building to meet modern requirements and needs. Allowing the additional space above is allowed by right when the underlying structure retains the original footprint. Garages similar to that proposed here abound in the neighborhood, many of which, themselves, do not comply with setback requirements. The design of the*

*replacement garage is consistent with architectural styles of the neighborhood and with the character and quality of the improvements already made to the property by the applicants. The purpose of the Newbury zoning ordinance is to promote the health, safety, and general welfare of the inhabitants of the town. Granting the requested variances will enhance environmental safety by containing vehicles, equipment and liquids that could harm the environment and by containing and controlling water runoff from the property. Granting the requested variances will promote the health, safety, and general welfare by demonstrating the worth and value of the properties in the neighborhood by the substantial additional investment reflected in the quality and character of the replacement garage. Granting the variances will, therefore, be consistent with the spirit of the ordinance.*

*16.7.4 Substantial justice is done because: The Andersons seek to improve the current conditions both for their own comfort and convenience and for the benefit of their neighbors, and the public at large by enhancing protective features for the environment. Care has been taken to design a plan that optimizes those values. Allowing the variances will allow the applicants use of their land for its intended residential purposes. The replacement building does not harm the abutters, it enhances their safety, and protects the environment. Substantial justice is also furthered by permitting a high quality, handsome improvement that will permit more off street parking and storage that would not fit in the present structure. Substantial justice is done as the proposal complies with the intent of the ordinance without altering the essential character of the neighborhood.*

*16.7.5 The value of surrounding properties will not be diminished because: The existing structure is in poor condition. It will be replaced with a building of enhanced appearance and greater structural integrity. The replacement garage has been professionally designed to be consistent with the character of the neighborhood. The engineered system for containing and controlling roof runoff will enhance environmental protections for the benefits of the neighbors, the lake, and the public at large. The garage will enhance rather than diminish the value of surrounding properties. It will remove some cars from the roadside, thereby improving the quality of the street scape. The applicant will install temporary erosion control measures before any construction is commenced so that no accidental impacts can occur that might affect a neighbor's land or harm the water quality of the lake during the course of construction. IN addition, the water control devices to be installed at both of the garage's eaves provide permanent erosion control protection. The garage will support the residential character of the property. It will allow the owners convenient storage of cars, recreational equipment, lawn and landscape maintenance tools, and the like. The use of the building is consistent with other properties in the Bay Point Road residential zoning district. The applicants' objectives, as stated above, are to increase the use of their property, with a modern, fully functional two car garage with a bonus room above. The plan proposes a handsome replacement structure that will allow them to maintain a tidy and orderly property, while simultaneously enhancing environmental protections. The investments have made to date, couples with that required by the proposed replacement garage, reflect their serious*



*and careful stewardship of the land, and will enhance the neighborhood's appearance as well as property values.*

Mr. Hildreth said that the trend of the neighborhood is changing. Mr. Hildreth then gave a detailed description of the history of the road. He stated in doing research on the neighborhood that in 1890, Bay Point was described as a quiet and pleasant road. In 1891 there was a layout put in for a 20' road. Within a few months the railroad told the town that this proposed road goes right through where the railroad will be laid, so the town rescinded the original plan and later planned the road with a widening of the road to 30' wide at a certain point. In 1907, there was a third plan that shows a road that went from 20' to 50' wide.

Mr. Seidel agreed that Bay Point Road has a lot of history.

Mr. Hildreth showed some photos of other garages that have been built in the neighborhood to prove that this proposed garage will match what is already being built in the neighborhood.

Mr. Fichter asked Mr. Leedy to discuss not only the character of the neighborhood, but also how this structure would impact the value of the adjoining properties.

Mr. Leedy said he has a good sense of the neighborhood and said that it is a neighborhood in transition with new structures, especially garages. He said that at least 2/3 of the garages near the Andersons are either 1 1/2 story or 2 story garages. He feels that this garage would keep in trend of the other garages in the area. Mr. Leedy the properties in this area have always been close. He said it is his determination that the character of the proposed garage would be an improvement aesthetically to the neighborhood and would be an increase in monetary value to the neighborhood.

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

Ron and Diana Heagney state that they were never opposed to the project but after hearing the case presented this evening he is even more supportive of the project. He said the project makes a lot of sense.

The Recording Secretary read two letters from abutters to the Anderson property into the record. The first letter was written by Eve Burton and John Finck.

Mr. Hildreth said that the letter complained about the process which reflects a lack of knowledge for how things work at a Zoning Board hearing. He additionally stated that the other part of the letter discusses that the Andersons will use this space to include a kitchen at a later time. Mr. Hildreth said this is not true and this space will not include a kitchen. The letter also states that three abutters oppose this project. Mr. Hildreth said that was not true because one of the abutters was here this evening in support of the project.

The Recording Secretary read the second letter from an abutter from Tracy and Mark Wood.

Mr. Leedy says he thinks it is important for the Board to judge this application with its own merits and its own view of what the impact on the neighborhood would be. The fact that the construction is no closer to the road or the adjacent garage than the existing garage, he cannot say that this changes the way that the neighborhood presents itself. Mr. Hildreth said he stands by his opinion that the most important relationship is the homes to the lake and to each other.

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

Mr. Blohm said that there is new information that was presented this evening that was not presented before. He said that with the new setback information there is no additional encroachment on the setbacks now that the property has been resurveyed. He also stated that the most interesting part of the presentation was the display of the proposed garage. Mr. Blohm said a picture is worth a thousand words and he now understands what the proposed garage would look like and what the current garage looks like.

Mr. Seidel said that he thinks that this variance request clearly will not be contrary to the public interest. There is no real infringement to the abutter's properties. He said that that section of the road is mostly forest on the left side and then there is a cluster of a couple houses and then more forest. Mr. Seidel said he thinks that the neighborhood will be advanced due to vehicular density on the road due to the fact that the Andersons cannot put their vehicles in the current garage. He said this property has constraints because it is only 49.5' wide. This is a day to day use that is a significant hardship to this property owner.

Mr. Russell said there were two new facts presented at this hearing that he wished had been presented at the previous hearings. One of the facts was the modified setbacks. Mr. Russell said that they did not have correct information and that is not the fault of the Board. He also said they did not have basic information on the house as far as the home is a three bedroom house rather than a five bedroom house. He said now that he sees all of the correct information, the project now makes sense.

Ms. Russell said that the setback change makes it less non-conforming than originally thought. She said there she was getting a sense from the abutters that the essential character of the neighborhood was going to change. She said that after hearing Mr. Hildreth say that the neighborhood is slowly changing, that the letters from the abutters were expressing their feelings that this could be a trend in their immediate neighborhood; but, the Board needs to look at this case individually on the facts before it.

Mr. Fichter agrees that there was a lack of correct information give to the Board at previous hearings. He said that the previous concern of a runoff problem has now been

dealt with. He said he respects the landscape architect and the appraiser as to what it will do to other properties in the neighborhood.

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

Mr. Seidel made a motion to vote on the request for a variance from Article 5; section 5.9.1, Article 15; section 15.1.1 and section 15.1.2 of the Newbury Zoning Ordinance to permit the following: reconstruction and extension of an existing non-conforming garage within the right-of-way and side setbacks. Mr. Blohm seconded the motion. All in favor.

Mr. Fichter voted to Grant the variance from Article 5 with the stated condition.

Ms. Russell voted to Grant the Variance from Article 5 with the stated condition.

Mr. Russell voted to Grant the Variance from Article 5 with the stated condition.

Mr. Blohm voted to Grant the Variance from Article 5 with the stated condition.

Mr. Seidel voted to Grant the Variance from Article 5 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.

Mr. Seidel made a motion to adjourn. Mr. Blohm seconded the motion. All in favor.

The meeting adjourned at 9:35 p.m.

Respectfully submitted,

Donna Long  
Recording Secretary