

Zoning Board of Adjustment
July 26, 2023
Approved September 13, 2023

Members Present: David Blohm, Chair; Henry Thomas, Vice-Chair; Larry Briggs, Member; Katheryn Holmes, Member; Patricia Sherman, Alternate

Members Not Present: Steve Hurd, Member; Alex Azodi, Alternate

Public: William Brown; Nancy Friese; Doug Gamsby; Charles Miller; Kim LoPresti; David Rhodes; Susan Rogers

Mr. Blohm called the meeting to order at 7:00 p.m.

Mr. Blohm said that Patricia Sherman has agreed to be an alternate. Ms. Holmes made a motion to appoint Patricia Sherman as an alternate for three years. Mr. Briggs seconded the motion. All in favor.

Mr. Blohm appointed Ms. Sherman as a voting member of the Board for this meeting.

Minutes

The Board reviewed the minutes of May 10, 2023. Mr. Briggs made a motion to approve the minutes as presented. Ms. Holmes seconded the motion. All in favor.

The Board reviewed the minutes of May 24, 2023. Mr. Briggs made a motion to approve the minutes as presented. Mr. Thomas seconded the motion. All in favor.

Amendments to Rules of Procedure

Ms. Favreau went over the amendments to the Zoning Board of Adjustment Rules of Procedure. Mr. Briggs made a motion to accept the amended Zoning Board of Adjustment Rules of Procedure. Ms. Holmes seconded the motion. All in favor.

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 Wednesday, July 26, 2023, at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:05 p.m., William R. Brown Rev Trust & Allyson M. Murphy Rev Trust (owners), for property located at 70 Morse Lane, Newbury, NH, will seek a Special Exception as provided for in Article 5.7.1 and 7.2.2 of the Newbury Zoning Ordinance to permit the following: An accessory apartment in the Shoreland Overlay District. Newbury Tax Map 034-088-450. Copies of the application 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.

William Brown presented to the Board.

Mr. Brown said that he would like to put in a garage with an accessory apartment for his mother-in-law which will be within 250 feet of Morse Brook. Discussion followed.

Mr. Blohm said that given the structures' proximity to the brook the applicant will need to deal with stormwater management in a big way. Mr. Brown said the area the garage will be placed in has been a driveway since he has lived there. Mr. Blohm said the applicant will want to minimize the run-off from the roof and where it goes. Discussion followed. Ms. Holmes said she thinks the applicant has some kind of stormwater thing around the house. Mr. Brown said the driveway was built to pitch into the woods and not toward the brook. Discussion followed.

There being no further questions from the Board Mr. Brown addressed Article 16.7 of the Zoning Ordinance:

16.7.1 The use will not be detrimental to the character or enjoyment of the neighborhood because: The structure will be a typical garage with like appearance of the main house. The accessory apartment will be occupied by an elderly family member.

16.7.2 The use will not be injurious, noxious, or offensive and thus detrimental to the neighborhood because: The structure will be a typical garage used to house standard vehicles and a business vehicle. The accessory apartment will be used for a safe and comfortable place for family member.

16.7.3 The use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions because: The property structure will not create any added traffic, hazards or undue risk. It is a standard residential garage that is intended to remain residential, personal, and small business use. All plans for waste disposal have approved designs.

16.7.4 The size of the site in relation to the proposed use and the location of the site with respect to the existing or future street giving access to it shall be such that it will be in harmony with the neighborhood because: The Location of the building will be in an area already utilized for parking. The access to the property and the location of driveway will remain unchanged.

16.7.5 The operations in connection with this use shall not be more objectionable to nearby properties by reason of noise, fumes, odor, or vibration, than would be the operations of any permitted use in this district which are not subject to special exception procedures because: The structure will be utilized for vehicle parking and an accessory apartment for a family member. The property is currently used as residential and small business (electrical and horticulture) and has no intention of being utilized for any activities resulting in any added noise, fumes, odor, or vibrations.

Mr. Blohm asked what the square footage of the ADU is. Mr. Brown said 980 square feet.

Mr. Blohm opened the public portion of the meeting.

Mr. Blohm read the following into the record:

July 21, 2023

Town of Newbury

Zoning Board of Adjustment

PO Box 296

Newbury, NH 03255

To Whom It May Concern:

Although we are not able to attend the public hearing on Wednesday, July 26, 2023, for William R. Brown and Allyson Murphy, we wanted to let you know that we fully support their request for a Special Exception. We abut their property and reside at 62 Morse Lane.

Thank you for your consideration.

Debra W. Johnson

J. David Johnson

Nancy Friese, 95 Morse Lane, said she has no issues with the applicant wanting to put up the garage.

There being no further comment from the public, Mr. Blohm closed the public portion of the meeting.

Deliberations

Mr. Blohm said he would recommend an appropriate stormwater management plan gets submitted to the code enforcement office.

Mr. Briggs made a motion to vote on the request from William R. Brown Rev Trust & Allyson M. Murphy Rev Trust (owners), for property located at 70 Morse Lane, Newbury, NH for a Special Exception as provided for in Article 5.7.1 and 7.2.2 of the Newbury Zoning Ordinance to permit the following: An accessory apartment in the Shoreland Overlay District. Newbury Tax Map 034-088-450 with the following condition:

- The applicant must submit an appropriate stormwater management plan that meets the requirements of the Town of Newbury's Code Enforcement Officer.

Mr. Thomas seconded the motion.

Roll Call Vote:

Henry Thomas voted to Grant the Special Exception as provided for in Article 5.7.1 and 7.2.2-met criteria.

Katheryn Holmes voted to Grant the Special Exception as provided for in Article 5.7.1 and 7.2.2-met criteria.

Larry Briggs voted to Grant the Special Exception as provided for in Article 5.7.1 and 7.2.2-met requirements of Zoning Ordinance and responses to 16.7.1 through 16.7.5 to be acceptable.

David Blohm voted to Grant the Special Exception as provided for in Article 5.7.1 and 7.2.2-met criteria.

Patricia Sherman voted to Grant the Special Exception as provided for in Article 5.7.1 and 7.2.2-met criteria.

Five votes to Grant the Special Exception

Mr. Blohm advised that the applicant or any party directly affected by this decision may appeal to the ZBA within thirty (30) days of the decision pursuant to RSA 677:2. Said motion must set forth, in detail, all grounds on which the appeal is based.

Continuance-*Doug Gamsby (agent), Alwin Charles Elliott Miller (owner), for property located at 10 Lake Ave., Newbury, NH, will seek Variances from the requirements of Paragraphs 6.8 and 7.4.2 of the Newbury Zoning Ordinance to permit the following: Construction of a house within the side setbacks and within the 75-foot lake setback. Newbury Tax Map 16A-357-532.*

Doug Gamsby from Greenline Property Services presented to the Board. Mr. Gamsby gave the Board a revised plan.

Mr. Gamsby said this is the continuance for a variance to take down a building and rebuild in a little bit different footprint. Mr. Gamsby continued that the last time the applicant was before the Board, the Board requested an existing conditions plan with the existing building footprint dimensions and on the proposed plan elevations with roof slope. Mr. Gamsby said the plan shows the existing building over the property line on the north side 1.65 feet and shows the existing building on the south side 3.31 feet. Discussion followed.

Mr. Gamsby said the building was moved to the north and the south side of the building approximately one foot to the north so now the applicant does not need a variance on that side anymore, so the only variance being asked for is on the north side.

Mr. Briggs said the board suggested at the last meeting a minimum of four feet from the property line to the drip edge on the south side and it looks like the plan reflects that. Mr. Briggs continued that the Board did not suggest any movement in the east, west or north. Mr. Briggs asked if the building was shrunk in width, north to south. Mr. Gamsby said the building was shrunk by a foot and a half, so it is no closer on the north side than the last time in front of the Board. Ms. Sherman asked how wide the footprint of the building is. Mr. Gamsby said 28 feet. Ms. Sherman asked how many inches being allowed for the drip edge. Mr. Gamsby said in Newbury the building footprint comes out to the edge of the roof so that is what is shown on the plans. Ms. Sherman asked if the property was 33 feet where the building is located. Mr. Gamsby said the frontage on the lake side is 33.39 feet and it gets a little bit wider as you go back. Discussion followed. Ms. Sherman said there is a four-foot side yard required in Blodgett's for properties under a certain frontage, why can't the applicant comply with that. Mr. Gamsby said that it would be an extremely narrow house. Ms. Sherman said there is a 28-foot-wide property in Blodgett's that has a 20-foot-wide house with three bedrooms, 2 and 1/2 bathrooms and two living areas. Mr. Gamsby said that is why they are before the Board for a variance so that the applicant can have a 28-foot-wide house. Discussion followed.

Mr. Gamsby said they have moved the building 4 feet off of the south side so that it is 4.5 feet, there is a pervious driveway off to the back, doing a stormwater management erosion control with gutters along the house and a drywell out in the back and the owner wants to

drill a well on the property. Ms. Holmes asked what the original footprint was. Mr. Gamsby said 31 feet wide, it is being cut back to 28 feet. Discussion followed.

Ms. Sherman asked what the hardship about a house that is 4 feet different than proposed. Mr. Gamsby said the applicant decided to have a certain size house for him and his family and making it narrower would change the whole dynamic of the house. Discussion followed.

There being no further questions from the Board Mr. Gamsby addressed Article 16.8 of the Zoning Ordinance:

16.8.1 The variance will not be contrary to the public interest because: The existing house is over the property line approximately 1 foot 8 inches. The proposed building will correct this encroachment. The proposed house will be no closer to the Lake reference line than the existing house and the existing porch stairs will be relocated and slightly closer to the building.

16.8.2 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 house will be narrower by about 4 feet to correct the encroachment on the north side and meet the required 4 foot setback on the south side.
- b) *The property is different in a meaningful way from other properties in the area because:* The lot is 33' wide at the lakeside end, one of the narrowest lots in the area.
- c) *The property is burdened more severely by the zoning restrictions because:* The lot is very narrow, being approx. 33' wide on the lake side and approx. 21' wide on the Washington St. side. Because of the narrowness, the proposed well location, drywell location and not wanting to take down trees on the Washington St. side, there is very little room for a garage or storage on the back side of the lot so the house needs to be expanded to allow for more storage.
- d) *Because of the special conditions of the property, the proposed use of the property is reasonable because:* We are correcting a property line encroachment and making for a more attractive road frontage by adding landscaping features and constructing a dwelling with a more attractive facade than what currently exists.

16.8.3 The variance is consistent with the spirit of the ordinance because: The existing structure had a minor fire a few years back in an upstairs bedroom. While the structure was not too badly damaged from the fire, the existing house is in fairly poor condition. It was built in 1892 and has gone thru utility upgrades but there is little in the house up to current fire, life & safety codes. A new house will be up to current codes and have a more appealing look in the neighborhood.

16.8.4 Substantial justice is done because: The proposed structure will be within the property lines, stormwater management controls are being proposed thru roof gutters and

a drywell behind the house and a pervious parking section is proposed to assist in preventing detrimental effects to the Lake.

16.8.5 The value of surrounding properties will not be diminished because: The property values of other properties in the area will be enhanced with a newer looking dwelling, up to current safety codes and having less of a storm water impact on the Lake and neighborhood, in general.

Discussion followed.

Mr. Blohm opened the public portion of the meeting.

Kim LoPresti was concerned about the excavation process for the foundation. Mrs. LoPresti said that she has been pushing for the applicant to be more conforming to the south.

Susan Rogers, 18 Lake Ave., said that Blodgett's is a community, there are roughly 120 homes, we are a group of people who know each other so well that we knock on the door and walk in. Ms. Rogers continued that the Blodgett's community expects that somebody new coming to Blodgett's Landing wants to be part of that community and hope that the Board will support continuing the community by sticking to what the suggestions are. Ms. Rogers said that if somebody wants to come to Blodgett's Landing and cannot be part of the community, then they should probably go someplace else.

Ms. Holmes asked where the notion comes from that the applicant doesn't want to be a part of Blodgett's Landing.

Charles Miller said that he has lived in six states and has never had this kind of issue, even in tight knit communities where you are on top of each other. Mr. Miller continued that this is a complicated old house that is literally going to fall down at some point onto the neighbor's house, the roof is held together by ratchet straps right now. Mr. Miller said what he is trying to do is not an egregious rebuild, it is being kept fairly small and becoming more conforming than it's been. Mr. Miller said that his understanding is if he wanted to, he could just build on the footprint that it is in and build it higher and not have to ask for permission to do so, which he does not think would be correct. Mr. Miller continued that he has spoken to and sent the plans to the owners on the north side. Mr. Miller said that he has put a ton of money and effort into this, the carrying cost of this house has been quite significant and he is trying to keep everything local. Mr. Miller said that he was born and raised in New Hampshire, don't get his address in Massachusetts wrong. Mr. Miller said that he has changed his plans twice now, once to adjust the stairs that Mrs. LoPresti didn't like and now to adjust to all the feedback from the Board.

Mr. Briggs said that he does think the applicant did what the Board had asked to move the house back a full 4 feet on the south side.

There being no further comment from the public, Mr. Blohm closed the public portion of the meeting.

Mr. Thomas said the biggest issue the Board had before was the south side and the applicant brought that into conformity, the only thing the Board is looking at tonight is the north side. Mr. Thomas continued that he does not see this as a large impact outside of the area that the applicant can build by right. Discussion followed.

Ms. Holmes said it is always a conundrum when dealing with Blodgett's Landing. Ms. Holmes continued that the Board asked the applicant to do some configurations to lessen the burden on the south side, which they did. Ms. Holmes said that she would rather see the applicant build the proposed house than rebuild on the same footprint.

Mr. Briggs said he was a little torn, the part that is causing him the conflict is 16.8.2, what is the special condition that is causing an unnecessary hardship. Discussion followed.

Mr. Blohm said he doesn't see the hardship; it is possible to redesign the house. Mr. Blohm continued another concern he has is that a setback is a setback and you've got to draw a line in the sand somewhere because if every house deviates from a setback, then there is a problem in Blodgett's.

Ms. Sherman said she is most concerned about the minimal setback on the north side, because you really are imposing on your neighbor's ability to use their site, with the 4-foot setback for the narrow lots you get 8 feet between buildings.

Mr. Briggs made a motion to vote on the request from Doug Gamsby (agent), Alwin Charles Elliott Miller (owner), for property located at 10 Lake Ave., Newbury, NH for Variances from the requirements of Paragraphs 6.8 and 7.4.2 of the Newbury Zoning Ordinance to permit the following: Construction of a house within the side setbacks and within the 75-foot lake setback. Newbury Tax Map 16A-357-532.
Ms. Sherman seconded the motion.

Roll Call Vote:

Henry Thomas voted to Grant the Variances from Paragraphs 6.8 and 7.4.2, the applicant has pulled it back from the south lot line and the impact from existing footprint is minimal.

Katheryn Holmes voted to Grant the Variances from Paragraphs 6.8 and 7.4.2 based on 16.8.2.2 and 16.8.1, the variance is therefore necessary to enable a reasonable use of the property.

Larry Briggs voted to Deny the Variances from Paragraphs 6.8 and 7.4.2, having a hard time understanding the undue hardship that building a compliant building, width wise, north to south, although not the applicant's desire, but he knows there are many homes in that area, that area is so special and has its own special zoning ordinance to preserve the character of that neighborhood.

Patricia Sherman voted to Deny the Variances from Paragraphs 6.8 and 7.4.2 on the basis of 16.8.2, the special conditions exist that such literal enforcement results in an unnecessary hardship and on the basis of substantial justice is done and the value of the

surrounding properties will be diminished because on the north that very narrow setback diminishes the ability to use what is probably another narrow lot on the other side. David Blohm voted to Deny the Variances from Paragraphs 6.8 and 7.4.2, appreciates the fact that there's been a trade-off and the conditions have been improved in many ways, the area of Blodgett's has a requirement to have 4-foot setbacks and that is not being met; denial is based on the fact that it's not meeting the basic conditions of the zoning ordinance as set out in 6.7.

**Three votes to Deny the Variances & two votes to Grant the Variances
The Variances are Denied.**

Mr. Blohm advised that the applicant or any party directly affected by this decision may appeal to the ZBA within thirty (30) days of the decision pursuant to RSA 677:2. Said motion must set forth, in detail, all grounds on which the appeal is based.

Mr. Briggs made a motion to adjourn. Mr. Thomas seconded the motion. All in favor.

The meeting adjourned at 8:56 p.m.

Respectfully submitted,

Tiffany A. Favreau
Recording Secretary