

**Zoning Board of Adjustment**  
**August 9, 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:** Greg & Leslie McLane; James Bruss

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

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

Board Introductions.

**Minutes**

The Board reviewed the minutes of June 14, 2023. Mr. Briggs made a motion to approve the minutes as amended. Mr. Thomas seconded the motion. All in favor. Ms. Sherman abstained.

The Board reviewed the minutes of July 12, 2023. Mr. Briggs made a motion to approve the minutes as presented. Mr. Thomas 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, August 9, 2023, at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:05 p.m., Leslie McLane Liv Trust & William McLane II Liv Trust (owners), for property located at 68 High Point Road, Newbury, NH, will seek a Variance from the requirements of Paragraph 18.7.4 of the Newbury Zoning Ordinance to permit the following: Construction of a single-family dwelling within the Perimeter Buffer Area in the Skyline/Hillside Conservation Overlay District. Newbury Tax Map 030-275-316. 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.*

Greg & Leslie McLane presented to the Board.

Mr. McLane said they would like to put their house 15 feet instead of 30 feet from the property line. Mr. McLane said the property is a view property, it has nice views up there. Mr. McLane said moving the house gives a better view and relatively speaking its more level. Mr. McLane continued that the key reason the Zoning Ordinance is in place for 30 feet versus 15 feet is, *“The specific intent of this paragraph is that there shall be no continuance strip clearing along contiguous lots.”* Discussion followed. Mrs. McLane said there are zero trees in the 15-foot corridor.

Mr. McLane said that they went to the Planning Board for a conceptual review, and they sent the applicants to the ZBA, because the subdivision plan shows the building site approximately 30 feet down and when you are down there, it is a very different view and in order to get the same kind of view trees would need to be cut. Discussion followed.

Mr. Blohm said this will be closer to the neighbor's side. Mr. McLane said that there are two neighbors that are really impacted, one below and one above. Mr. McLane continued that the neighbor above and the applicant have an agreement that the neighbor will not dispute anything. Mr. McLane said the neighbor below, who can see the house the most, sent in an email of support. Discussion followed.

Ms. Holmes asked for the square footage of the house. Mr. McLane said 3,317 square feet, two car garage, three bedrooms. Discussion followed.

Mrs. McLane said they are planning to leave it natural, there is a lot of ledge, the only ledge they are taking out is only what is necessary to build the house. Discussion followed.

Ms. Sherman said the building height in Newbury is 34 feet and the plans scaled a bit higher than that. Mr. McLane said the railing on the tower is considered an appurtenance that can fall into that category when the preliminary plans were approved under a previous code enforcement officer. Ms. Sherman advised the applicant to follow up with the current code enforcement officer in case a variance is needed for that. Discussion followed.

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

*16.8.1 The variance will not be contrary to the public interest because:* Answer-The public interest, as explicitly stated in 18.7.4 is (emphasis added): 18.7.4 Perimeter Buffer Area: In subdivision and in the development of building lots, a minimum buffer area of thirty (30) feet wide between the building envelope and property lines shall remain undisturbed except for driveways and utility lines. The specific intent of this paragraph is that there shall be no continuous strip clearing along contiguous lots. In this area it is confirmed that there will be "no continuous strip clearing along contiguous lots," as this area is either exposed ledge or has ledge a few inches below the moss/grass, and consequently is devoid of trees. The variance is not contrary to the public interest because:

- The 15' setback does not require cutting or strip clearing any trees (the intent of this section)
- The 15' setback from the property line is consistent with other Newbury properties outside the Skyline District.
- It does not alter the essential character of the neighborhood.
- There is minimal (or no) impact on the neighbors.
- There is no threat to public health, safety, or welfare.
- It does not otherwise injure public rights.
- It is a reasonable use of the land within the context of the zoning regulations.

Picture #1 below is Google Earth image of the property. The red line is the property, the blue line is a 15' setback and the yellow line is the 30' setback. The "x" is the appropriate photographer location of Picture #2, with the arrow indicating the direction of the picture. Picture # 2 shows the requested variance subject area (from 30' setback to 15') and the lack of trees in this area. (See file for ZBA Case #23-10)

*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:* Answer-Conditions of this property that distinguish it from other properties in area include:
- This property has the largest quantity of exposed ledge, making building and building locations challenging.
  - This property already lacks trees in the subject area (other properties have trees near their borders)
  - There is a unique easement on the property precluding building a house on a substantial portion of the "buildable" area of the property (this is in addition to the Clear View Easement that encumbers most properties in the area.)
  - The location and orientation on Bly Hill create special and different needs to maximize the unique view vantage point
  - The topography and limited building areas are unique to this property. The building area for this property has relatively steep slopes and irregular contours whereas other lots have the availability of relatively flat building areas.
- b) *The property is different in a meaningful way from other properties in the area because:* Answer-Topography is unique to this property such that the preferred building location to optimize the view is within the 30' setback area. On this property, the elevation quickly slopes down from the proposed building location, whereas on other properties the building area is relatively flat. Additionally, the topography of the other properties in the area encourages building outside of the 30' setback area to optimize their respective views, whereas on this property, due to the topography, the optimal view is within the 30' setback. Additionally, the other properties on this side of Bly Hill are relatively rectangular in shape, while this property has a severe "dog leg" side which encroaches into the property. The variance requests siting as close to this "dog leg" as practical. If the "dog leg" shape were not there, the siting of the house in this location would not require the variance. Please see Figure #1 for the property shape. (See file for ZBA Case #23-10)
- c) *The property is burdened more severely by the zoning restrictions because:* Answer-Properties in this neighborhood are "view properties". The optimal view for the other properties does not encroach into the 30' setback area. The optimal view for this property does encroach into the 30' setback area. Not allowing the variance will hinder and provide a suboptimal view while the other properties in the area have been allowed to maximize their view. Houses with better views have higher values and

higher assessments. A suboptimal view will reduce the economic value of the property, unfairly burdening us as the land owners.

- d) *Because of the special conditions of the property, the proposed use of the property is reasonable because:* Answer-No trees need to be clearcut, which satisfies the intent of the ordinance. Thus, it is reasonable to use the subject area as intended by the variance as it does not conflict with the intent of the ordinance. Additionally, the building with a 15' setback is a reasonable use in other areas of Newbury.

*16.8.3 The variance is consistent with the spirit of the ordinance because:* Answer-The explicit spirit of the ordinance, as stated in the Code, is "The specific intent of this paragraph is that there shall be no continuous strip clearing along contiguous lots." As mentioned in 16.8.1 above, there are no trees in the subject area, thus there will be no "continuous strip clearing" in the subject area, and as such the specific intent and spirit of the ordinance is met.

*16.8.4 Substantial justice is done because:* Answer-A main benefit to us (the property holders) is better views. These properties are sold and appropriately taxed as view properties, and we would appreciate maximizing the views, which in turn helps enhance the value of the property. The variance will also enable building on a more level plot of ground relative to the sloping areas immediately surrounding this area helping enhance its usability. The variance creates no harm to the general public or to specific individuals, including abutters. From this location it is 200' to the nearest neighbor, with a substantial portion of that buffered by trees. It is over 300' to the next nearest neighbor. All other abutters are unable to see this section of land. Changing the setback from 30' to 15' arguably will be indistinguishable to anyone other than us, the property holder. Not approving the variance could arguably cause injustice to us and the general public. If the variance is denied, the views will not be as favorable (which is an injury to us.) If the views are not as favorable, the view-tax burden should be less, depriving Newbury of revenue, which is an injury to the general public. Overall, approving the variance is a "win" for us and the general public.

*16.8.5 The value of surrounding properties will not be diminished because:* Answer-There is no reduction in value to the surrounding properties, and approving the variance could increase the value of surrounding properties given the variance would help maximize the value of this property. A higher value on one property in the neighborhood helps the value of all properties in the neighborhood. There is no harmful economic impact to any abutting property by changing the setback from 30' to 15'. Of the six abutters, only two can physically see the subject area, and of those two, one must walk to the property line to see location and cannot see the location from their house. The other abutter who can see this location from their house, approving the variance pushes our house further away from their house, which may improve their value because of the greater privacy. There is no negative impact to the remaining four abutters, who cannot see the subject location on their property, and if they could, the shift in the house location would not be materially noticeable.

Discussion followed.

Mr. Briggs asked about stormwater management during construction and post construction because of the steep slopes and tight radius curves. Mr. Briggs asked if there is a cellar. Mr. McLane said there will be a basement, because of the ledge, they will have to blast down to put in footings and with the slope of the land going down, they will blast down for a walk out basement.

Ms. Sherman said there is a calculation to figure out how much of a drywell is needed for drainage. Mr. Briggs said that is post construction, while it is under construction there will be blasting, going to have drill rigs and earth movers. Mr. McLane said that it is currently all ledge so it just all runs off, but there will be hay bales and whatever appropriate measures. Discussion followed.

Mr. Blohm opened the public portion of the meeting.

Mr. Blohm read the following into the record:

*August 7, 2023*

*Newbury Zoning Board of Adjustment,*

*We are writing to you to express our full support for the proposed new location of the home to be built by Greg and Leslie McLane, our abutting neighbors at 68 High Point Road in Newbury, NH.*

*If you have any questions, feel free to reach out to us via phone or email at:*

*Respectfully submitted,*

*Doug and Maureen Laughlin*

*78 High Point Road, Newbury NH*

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

Discussion followed.

Mr. Briggs made a motion to vote on the request from Leslie McLane Liv Trust & William McLane II Liv Trust (owners), for property located at 68 High Point Road, Newbury, NH for a Variance from the requirements of Paragraph 18.7.4 of the Newbury Zoning Ordinance to permit the following: Construction of a single-family dwelling within the Perimeter Buffer Area in the Skyline/Hillside Conservation Overlay District. Newbury Tax Map 030-275-316.  
Mr. Thomas seconded the motion.

**Roll Call Vote:**

Henry Thomas voted to Grant the Variance-met criteria.

Katheryn Holmes voted to Grant the Variance-met criteria.

Larry Briggs voted to Grant the Variance-met criteria.

David Blohm voted to Grant the Variance-met criteria.

Patricia Sherman voted to Grant the Variance-met criteria.

**Five votes to Grant the Variance**

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.

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, August 9, 2023, at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:10 p.m., James Bruss (agent), Kenneth A. & Debra L. Nemcovich (owners), for property located at 276 Mountain Road, Newbury, NH, will seek a Special Exception as provided for in Article 5.4.1 of the Newbury Zoning Ordinance to permit the following: Utilization of the shop building already on site for 1-2 workers to continue use as a woodworking shop for creation of built ins and cabinetry for construction projects as a Cottage Industry as a permitted use in the Residential District. Newbury Tax Map 022-056-245. 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.*

James Bruss presented to the Board.

Mr. Blohm asked if Relax & Co. is completely out of the property. Mr. Bruss said they are completely out of there, they moved to Sunapee. Mr. Blohm asked if what is being proposed is limiting it to 2 people in the shop building. Mr. Bruss said that is correct. Mr. Blohm said 2 cars. Mr. Bruss said 2 cars.

Mr. Blohm said generally the definition of cottage industry is owner occupied and wanting to run a business out of the property. Mr. Bruss said that was not the Town's definition. Mr. Briggs read from Paragraph 2.29, *An accessory use of a dwelling unit or an associated accessory building for an occupation or business activity which results in a product or service. It is an occupation which is carried on by a resident or residents who occupy the dwelling unit and may include no more than two non-occupant employees on the premises.* Mr. Briggs continued that his fundamental issue is looking for who is the resident. Mr. Bruss said Jared Raymond, he is the foreman of the construction operations and oversees the cabinet shop. Mr. Briggs said he is not the property owner. Mr. Bruss said no, but the ordinance doesn't say you have to be the property owner. Mr. Blohm said that he is not the applicant, so there is a three-way deal going on and the Board is trying to interpret the zoning regulations. Mr. Blohm asked if the property owners are Nemcovich and they are not in residence. Mr. Bruss said correct. Mr. Blohm asked if Jared Raymond is in residence and rents from the Nemcovich's. Mr. Bruss said that he rents the property, Jared works for him, and Jared and Laura live in the house. Mr. Bruss said there are four people that live in the house, three that are field employees and one who is an office employee.

Ms. Holmes said the letter from the code enforcement officer advises that the Raymond family, as residents, would need to apply for the special exception, as the ones running that business with a letter of agency from the owner of the property. Ms. Holmes continued that Mr. Bruss is the Raymond's employer, but the Raymond's live on the property, so there is confusion as to who would need the special exception. Discussion followed.

Mr. Blohm asked if Mr. Bruss was a resident of Newbury. Mr. Bruss said he is not; he lives in New London. Discussion followed.

Ms. Sherman said she thinks there is confusion in the Board's understanding of the ordinance. Ms. Sherman asked can the resident apply for the special exception or does the homeowner apply for the special exception. Ms. Sherman asked Mr. Bruss if the work the Raymonds are doing is to support themselves or is it to support Mr. Bruss's business. Mr. Bruss said it is supporting our business, they are employees of our business. Discussion followed.

Ms. Holmes said it is a little convoluted, Mr. Bruss is not supposed to be having a business there, but he does have a business there, he has employees that are there. Mr. Bruss said he has employees that live there, but they are not working there since they were forced to vacate. Ms. Holmes said that if the special exception for cottage industry is granted, the Raymonds would be working for Mr. Bruss. Mr. Bruss said they already work for him. Mr. Blohm said the Raymonds work in general for the company, so this is not really fitting the definition of cottage industry the way it is set up. Mr. Bruss asked what's not fitting about it, it says that it has to be supervised by a person that's a resident, Jared is the construction operations manager and supervises that. Mr. Bruss continued that he understands that the Board might not like the way it is written, but by the way it is written it does comply. Discussion followed.

Mr. Briggs read from Paragraph 2.29, *occupations such as hairdressers, lawyers and contractor's yards may be permitted provided they are clearly subordinate to the residential use of the dwelling unit*. Mr. Bruss said 26 acres, farm going onsite, 5 total buildings, this is 1,200 square feet of space out of almost 10,000 square feet, how is that not subordinate. Mr. Blohm said that he doesn't disagree with any of that, the Board's job is to interpret the regulations and what the intent is. Mr. Blohm said that he thinks the intent is to allow people who live in a place to do stuff from their house that generates income for them.

Mr. Blohm continued that the code enforcement officer said it really should be the Raymonds as the applicant on this. Mr. Bruss said he followed the advice of Town officials. Mr. Blohm said that the code enforcement officer tended to agree with what the Board is saying. Mr. Bruss said that the code enforcement officer's initial email agreed with what the Board is saying, but in follow-up subsequent conversations when Mr. Bruss asked can people who aren't the owners actually apply for this, the code enforcement officer said that Mr. Bruss was right. Ms. Holmes said the code enforcement officer should have sent a follow-up letter to the Board in that case.

Ms. Sherman said the Board is concerned about definition here, and can't come to a conclusion because of differing information, would it be possible to go through the other things to see if the definition under which this application turns out to be correct, the applicant wouldn't have to come back. Mr. Blohm asked the Board if the Raymonds should apply. Mr. Briggs said he agreed. Ms. Sherman said she would like a legal opinion. Mr. Bruss asked on what specifically. Ms. Sherman said that Mr. Bruss has gotten 2 different

answers from the code enforcement officer. Mr. Bruss said that some members of the Board were saying that this doesn't meet the criteria of the cottage industry; is that what you are asking for or who has standing to make this application. Mr. Blohm said the issue is standing to make this application. Discussion followed.

Mr. Briggs said that Mr. Bruss is out of the property now and wants to move the woodworking shop back. Mr. Bruss said he wants to temporarily move it back while building the new woodworking shop. Mr. Briggs asked where the shop is today. Mr. Bruss said nowhere, they are having to subcontract it all out.

Ms. Holmes asked what exactly is done in the woodworking shop. Mr. Bruss said they do built-ins for various projects, projects that can't be done on-site efficiently.

Ms. Sherman asked when the new woodshop building would become viable. Mr. Bruss said as soon as they get a change of use from the Sunapee Planning Board they can start. Discussion followed.

The Board agreed that they would seek a legal opinion on who has standing to make the application, would the Raymonds be considered residents in the spirit of Article 2.29 and would cottage industry apply with the Raymonds working for a company that employs them.

Mr. Bruss said he would like to withdraw the application pending notification from the Town after legal opinion.

### **Other Business**

Mr. Briggs made a suggestion that when an applicant makes a submission, he would like to receive a full-size copy of the site plan for each Board member instead of the 11x17 currently submitted. Discussion followed.

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

The meeting adjourned at 9:08 p.m.

Respectfully submitted,

Tiffany A. Favreau  
Recording Secretary