**Zoning Board of Adjustment**

**February 27, 2017**

Approved May 8, 2017

**Members Present:** Peter Fichter, Chair; David Blohm, Vice-Chair; Nancy Marashio, Arman Tarbassian, Members; Alex Azodi, Alternate.

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

Mr. Fichter appointed Mr. Azodi as a voting member for this meeting.

**ADMINISTRATIVE BUSINESS**

**OEP Conference**

Mr. Fichter informed the Board of the upcoming OEP Conference on April 29, 2017 at the Grappone Center in Concord, NH. He encouraged attendance, noting that the conference information is consistently in-depth and helpful.

**Minutes**

The Board reviewed the minutes of January 23, 2017 and made corrections and additions.

Mr. Fichter made a motion to accept the minutes of January 23, 2017 as corrected and with the written addition from Ms. Marashio. Ms. Marashio seconded the motion. All in favor.

**Clarification**

Ms. Marashio wished to correct a statement that was made at the February 13, 2017 meeting pertaining to the Accessory Dwelling Units (ADUs) proposed zoning ordinance amendment. She noted that when the proposed amendment is not as restrictive as the existing regulation, the amendment does not go into effect until Town Meeting. She added that one of the restrictions that was placed on the applicant at that meeting was less restrictive which means the applicant may not act on that restriction until after Town Meeting.

Mr. Fichter informed the Board that the applicant has been notified in writing regarding the above.

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

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, February 27, 2017*** *at the Town Office Building at 937 Route103 in Newbury, NH:* ***7:15 p.m., Gary Budd,*** *property located at 10 Frost Top Hill, Newbury, NH, will seek an after the fact* ***Special Exception*** *as provided for in article 7.7.4 of the Newbury Zoning Ordinances to permit the following: To allow for equipment and work to be performed in the waterfront buffer of Lake Sunapee for replacement of a septic tank. Newbury Tax Map 020-170-363 Copies of the plan are available for public review at the Town Office Building during regular business hours. Interested citizens are encouraged to attend the public hearing and express their views. Signed written comments will be accepted during business hours at least one (1) business day prior to the meeting at the Land Use Office. Land Use Office hours are as follows: Monday, Tuesday, Thursday, and Friday from 8am to noon.*

Ms. Marashio noted that an after-the-fact Special Exception is unusual. Mr. Fichter agreed, adding that the Code Enforcement Officer (CEO) deemed it necessary. Mr. Fichter reviewed the parameters of the application as follows:

* The steel septic tank was replaced with a concrete septic tank, which falls under DES best practices;
* A DES permit was not required;
* Heavy equipment was used within the waterfront buffer of Lake Sunapee to transport the new tank to the property and to install it; and
* The CEO cannot issue a Certificate of occupancy without a Special Exception for the use of heavy equipment within the waterfront buffer of Lake Sunapee.

Gary Budd, property owner, presented to Board.

Mr. Budd told the Board that he met with the CEO regarding the project and that the latter confirmed that a DES permit was not required to replace a septic tank. However, Mr. Budd said the state requires that silt fences be installed during the replacement, which was done. Mr. Budd emphasized that this was a septic tank replacement only, not the installation of a new septic system. He added that he felt it was a necessary step because of the age of the existing septic tank and the potential for old metal tanks to leak. He also noted that Henniker Septic inspect the entire septic system for failure and the inspection revealed no evidence of failure.

Mr. Azodi asked if the inspection surfaced no failure, why change the tank?

Mr. Budd replied that the existing septic tank was put in when the house was built, probably in the 1950s. He said he felt it was prudent to replace it with a concrete tank.

He added that the application pertains to the use of heavy equipment on the site. He said there were four dumpsters on the site during the house demolition stage, not for the septic tank installation. He added that the application is for the use of heavy machinery brought down the hill at Frost Top.

He added that there was a misunderstanding regarding access to his property and he thought he had a right of way (ROW) as outlined in the deed.

Mr. Fichter noted that anything pertaining to deeds, ROWs, covenants falls under civil issues and is not within the purview of the ZBA.

Mr. Budd read into the record Article 7 Section 7.7.4 as follows:

*Waterfront Buffer Changes: Other construction in the buffer zone is permitted when necessary for maintenance or repair, the installation of water wells, health, erosion control, or safety. Such construction shall require the approval of a Special Exception by the Zoning Board of Adjustment. Work for which a permit has been issued by the NH Department of Environmental Services Wetlands Bureau is permitted without approval of a Special Exception.*

Mr. Budd continued as follows:

*Machinery was brought onto my property to replace an existing metal septic tank with a concrete tank. Through research it was understood that it is NHDES preference, as a precautionary measure, to replace an existing metal tank with a new concrete one. No state permitting is required for this replacement. Within a short period of time upon purchase of the property, I replaced the tank. As a courtesy call, I contact the Newbury Town Office the day of the installation, as I knew heavy equipment would be entering and exiting the Frost Top Hill Road to and from Rt. 103. I was not aware that a Special Exception was required for bringing the heavy equipment onto my property in order to swap the tanks. As a precaution, a silt fence was installed. After replacement, the area near the location of the tank was graded to its original condition, up to and including the ROW access from Frost Top. Additionally, the area was seeded and will be reviewed for further seeding this spring. The silt fence will not be removed until vegetation (grass lawn) is re-established.*

Mr. Budd shared with the Board photos of the above mentioned areas.

There being no more questions from the Board, Mr. Budd addressed Articles 16.7.1 – 16.7.5 of the zoning ordinance:

*16.7.1 That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation or undue violation of the character of the neighborhood because:* There were no long term detrimental impacts to the character of the neighborhood due to the tank replacement. As indicated above, common area was re-graded and seeded and will be re-seeded this spring 2017 as needed.

*16.7.2 That the use will not be injurious, noxious, or offensive and thus detrimental to the neighborhood because:* No, the use of machinery for tank replacement was two days and did not pose circumstances injurious, noxious or offensive and thus was non-detrimental to the neighborhood.

*16.7.3 That 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:* Standard operating procedures were in effect for the deployment of equipment from 103 Frost top Hill Road. No issues of public health, safety or welfare were created. Original metal tank was emptied by licensed septic disposal service prior to installation of new concrete tank.

*16.7.4 The location and size of the use, the nature and intensity of the operations involved, 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:* There were no long term negative effects to the harmony of the neighborhood. The equipment was on-site for two days.

*16.7.5 Operations in connection with such a use shall not be more objectionable to nearby properties by reason of noise, fumes, odor, or vibration, than would be the operation of any permitted uses in this district which are not subject to special exception procedures because:* Normal operations standards were used but those standards were not out of the ordinary levels for noise and vibrations.

Mr. Azodi asked if the CEO looked at the site. Mr. Budd said that the work was done in November 2016 and that the CEO visited the site following additional work that was done in December 2016.

Mr. Fichter noted that he visited the site and that the silt fence was installed. Ms. Marashio agreed, adding that the silt fence captured runoff from 8 Frost Top.

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

 Edward Albro asked if the new septic tank is in the exact same place as before. Mr. Budd said yes, but the new tank is larger and the state is aware of that. Mr. Albro asked what happened to the old septic tank. Mr. Budd said he thought the contractor took it with him. Mr. Albro asked if the ZBA could find out if that was the case. Mr. Fichter said that was the responsibility of the contractor, not the ZBA.

 Clifford Albro asked if Mr. Budd has the receipt for pumping out the old septic tank and a guarantee from the contractor that the steel tank was not just crushed in place and the concrete tank put on top. Mr. Budd noted that he will check on this.

There was discussion about what constitutes a delivery truck, specifically if a dumpster is being delivered. It was suggested to confer with the CEO for further clarification.

 Ann Petrelli noted that the CEO admitted to finding out about the work being done on the property by seeing dumpsters on the property. She noted that the dumpsters arrived on July 29, 2016 and were there all summer. She added that the delivery truck rode over the patio and over the silt fence. She said she told Mr. Budd that no cars were allowed on the Frost Top properties.

Mr. Fichter noted that the ZBA has empathy for the issues and concerns raised by Ms. Petrelli and, while those issues may be valid, they are civil issues and the ZBA has no jurisdiction in civil matters.

Mr. Azodi asked the abutters if there is any permanent damage as a result of the heavy equipment.

 Ms. Petrelli said at this point she does not know if there was any permanent damage done but said water pipes and electric lines are beneath the soil surface and it is unclear at this point if they are damaged. She also expressed concern that the heavy equipment may have contributed to increased erosion. Also, she requested that the damaged patio area and stones be replaced.

Mr. Azodi asked how long would it be before it could be determined if the water pipes or electric lines were damaged. Mr. C. Albro said the damage should be evident by July 4, 2017.

 Paul Siciliano asked about the standard procedure for a septic tank replacement. Mr. Fichter said that if all DES permits are met, then there is no notification to the abutters. He added that if the installation equipment traverses over common land, there is no town regulation that requires abutter notification.

The waterfront and shoreland buffer regulations were reviewed and there was further general discussion regarding septic systems within those buffer areas.

 Mr. E. Albro asked if there is a holding tank on Mr. Budd’s property. Mr. Budd said the septic tank was replaced in kind. Mr. Albro asked how long a hose it would take to pump it out. Mr. Budd said there is a leaching system under the house and noted that there has not been any failure of that system since the house was built.

 Ms. Petrelli said she felt violated and that Mr. Budd did not follow the protocol in place for all Frost Top property owners. Mr. Budd said he will get a bond if needed to ensure that all the common land is restored to its original condition.

 Carl Bannaker noted that he has worked with Mr. Budd in the past and has found him to be a man of his word. He noted that Mr. Budd has offered to help fix the dock at Frost top, has mowed lawns and goes above and beyond to make good and damage done.

The Recording Secretary read into the record the following letter:

*February 24, 2017, To whom it may concern: Please accept my written comments regarding the application of Mr. Gary Budd for work on the property at 10 Frost top Hill (20A-170-363). I am the owner of the property at 7 Frost top Hill but cannot attend the scheduled meeting. The property in question has been an eyesore, a hazard, and an impediment to the value of the adjoining properties on Frost Top Hill. I am pleased that Mr. Budd has purchased this property and has sought to return it to habitable condition. At the same time, I recognize there are environmental, health and safety concerns that must be met while this work is performed. Concerns have been raised about the impact of this work on neighboring properties, but I have no doubt that Mr. Budd will address any impacts the work has on these properties and their common areas. In the interest of returning Mr. Budd’s property to full usable and valuable condition, I support and encourage the application of the least restrictive terms available by the Zoning Board of Adjustment to permit completion of this work. Sincerely yours, Paul Kurmas.*

 Clifford Albro expressed concern that Mr. Kumas is referring to work that is already done.

 Ms. Petrelli asked if the ZBA inspected the septic [tank] before it was installed. Mr. Fichter said the ZBA is a judicial board and is not involved in enforcement of the regulations.

There was further general discussion about the quality of the new septic tank and of septic systems.

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

Mr. Tarbassian noted that if an old steel septic tank is replaced, it is an improvement and it is a good thing to do. He added that what was done was for the benefit of everyone at Frost Top since it will ensure that the old tank will not fail. He noted that he feels empathy regarding the common ground issues and added that those concerns might have been better handled by the applicant.

Ms. Marashio noted that a neighbor stated that the Real Estate advertisement for the property said the septic system needed updating.

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

Mr. Blohm made a motion to vote. Mr. Fichter seconded the motion. All in favor.

Mr. Blohm made a motion to vote on the request from Gary Budd for an after-the-fact Special Exception from Article 7 Section 7.7.4 of the Newbury Zoning Ordinance for property located at 10 Frost Top Hill, Newbury, NH, Newbury Tax Map 020-170-363, to permit the following: To allow for equipment and work to be performed in the waterfront buffer of Lake Sunapee for replacement of a septic tank, with the following condition:

* That the common area affected by construction equipment be restored to its original condition prior to the commencement of work.

.Mr. Fichter seconded the motion.

Mr. Fichter called for a Roll Call vote.

Ms. Marashio voted to Grant the Special Exception from Article 7 Section 7.7.4 with the condition stated.

Mr. Tarbassian voted to Grant the Special Exception from Article 7 Section 7.7.4 with the condition stated.

Mr. Azodi voted to Grant the Special Exception from Article 7 Section 7.7.4 with the condition stated.

Mr. Blohm voted to Grant the Special Exception from Article 7 Section 7.7.4 with the condition stated.

Mr. Fichter voted to Grant the Special Exception from Article 7 Section 7.7.4 with the condition stated.

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

The meeting adjourned at 8:57 p.m.

Respectfully submitted,

Meg Whittemore

Recording Secretary