
Zoning Board Minutes 1/11/16

Zoning Board of Adjustment

January 11, 2016

Approved June 11, 2016

Members Present: Peter Fichter, Chair; Harry Seidel, and David Blohm, Members, Alex Azodi and Nancy Marashio, Alternates.

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

ADMINISTRATIVE BUSINESS

Minutes

Mr. Fichter announced that the Russells have decided to retire from the Zoning Board. Mr. Fichter also stated that Nancy Marashio has decided to join the Zoning Board as an alternate. Mr. Fichter made a motion to accept Nancy Marashio as an alternate. Mr. Blohm seconded the motion. All were in favor of accepting Ms. Marashio as an alternate on the Zoning Board.

The Board reviewed the minutes of December 14, 2015. Corrections were made.

Mr. Seidel made a motion to accept the minutes of December 14, 2015 as corrected. Mr. Blohm seconded the motion. All in favor.

Mr. Fichter explained the changes to some of the Zoning Ordinances that occurred at a joint meeting with the Planning Board. He explained the Planning Board can institute the changes immediately before the town has voted on it. Mr. Fichter said this can be found in RSA 676:12 Paragraphs 1,2 and 6.

Introductions

Nancy Marashio recused herself from the first case as she is an abutter to the Thompsons.

Mr. Fichter gave a review of the case that was heard at the December meeting.

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, January 11, 2016** at the Town Office Building at 937 Route 103 in Newbury, NH: **7:15 p.m., Thompson Family Trust, Trustees Patrick & Melissa Thompson**, for property located at 14 & 15 Edgemont Landing, Newbury, NH, will seek a **Variance** from the requirements of Paragraph 9.4 (formerly 9.3), 7.4.2 (formerly 7.3.2) & 8.4 of the Newbury Zoning Ordinance to permit the following: Construct a replacement septic system on steep slopes and within the 75' shore land and wetland setbacks. Newbury Tax Map 007-085-090 & 007-088-092. 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.*

Mr. Fichter asked Mr. Bill Evans if he would be representing the Thompsons again this evening, in which Mr. Evans replied 'yes'.

Mr. Fichter explained that there are four members on the Board since one member has recused herself. In order for an applicant to be granted a variance, three board members need to approve the variance. He asked if Mr. Evans would like to proceed and he answered

yes.

Mr. Evans explained where they would like to put the septic system.

Melissa Thompson explained that she and her husband have owned the property for 18 years and the concept of this plan began about five years ago. At that time they spoke with then Code Enforcement Paul LaCasse as well as the Lake Sunapee Protection Association to discuss their plans to make sure there would be the least amount of burden on the lake.

Ms. Thompson distributed photos of her property with the current leach field which is lake side in front of the property. The concept is to replace the homes with something that is almost identical to what is currently on the property. Mr. Seidel asked if the drawings were to scale and Ms. Thompson said they were. Mr. Azodi clarified that Ms. Thompson plans to plant a lot of shrubs.

Mr. Seidel asked the height of the proposed retaining wall and she replied that it would be 11 feet. Ms. Thompson shared photos of three other retaining walls on her road that are larger than the one that she is proposing.

Mr. Blohm said that the drawings were not to scale. Mr. Seidel and Mr. Azodi agreed that the drawings were NOT to scale.

Mr. Seidel says he has a hard time believing that the height of this retaining wall is necessary for this project. Mr. Seidel asked if the retaining wall is to create a yard for them, or is it that it is the only way that the contractor can get the septic system in. Ms. Thompson said that it is mostly because they need that height for the project.

Mr. Seidel asked if the work would be done with mechanical equipment. Mr. Evans replied that it would be done very carefully with mechanical equipment.

Mr. Ray Wensell discussed the plans for the silt fence and the geo-grid system that will be going in.

After further discussion, Mr. Fichter reminded everyone why the Thompsons need a variance. It is not the fact that they want to put in a wall, but rather that they want to put fill in behind the wall as well as putting in a holding tank in that same location.

Mr. Fichter opened the hearing to public comment. There being no public comment, Mr. Fichter closed the public session and the Board began deliberations.

Mr. Seidel said that he is pleased to see the owner's dedication to landscaping. He said the fill that is being put behind the retaining wall has to be clean fill with stone that is well drained. Mr. Seidel does not think it will be causing vulnerability to the lake. The one thing that concerns him is the water that comes down and goes to the structure to the lake. He would like to know specifics of this drainage.

Mr. Azodi said he does not believe that this project will make things worse.

Mr. Fichter asked Mr. Seidel if he thought their storm water plan was incomplete. Mr. Seidel replied that he does not think it is incomplete.

Mr. Blohm agreed with Mr. Azodi in the fact that this project will not make things worse. He believes that there is a big improvement to what is currently there.

Mr. Fichter is not convinced that a 12' wall is necessary. He understands that it is the owner's desire to not have a sloped area. Mr. Blohm agreed that it is for their convenience, but he does not see a big difference between a 10' and 12' wall.

Mr. Seidel made a motion to vote on the application of a variance from Article 8, Section 8.4 of the Zoning Ordinance to permit the construction of a retaining wall to provide usable yard area with stairway access to the lake and a structure for Lots 90 & 92 for applicants Patrick and Melissa Thompson.

Mr. Blohm seconded the motion.

Mr. Blohm voted to Grant the Variance from Article 8, Section 8.4.

Mr. Seidel voted to Grant the Variance from Article 8, Section 8.4.

Mr. Azodi voted to Grant the Variance from Article 8, Section 8.4.

Mr. Fichter voted to Grant the Variance from Article 8, Section 8.4

Mr. Fichter reminded the Thompsons they will receive official notification from the office for this ordinance and there is a 30 day period that anyone can appeal the Board's decision.

Mr. Fichter asked Mr. Evans to read through the application for Variance from Articles 9 & 7, Sections 9.3 & 7.3.2.

16.7.1 The variance will not be contrary to the public interest because: It will allow for the construction and installation of a new septic system approved by NHDES which will meet current wastewater treatment and disposal standards.

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: Both Lot 92 and Lot 90 are located on the shore of Lake Sunapee and are positioned on steep naturally existing slopes. The slope of the lot where the effluent disposal field is proposed to be installed is 36%. The septic/pump tanks along with the effluent lines need to be placed below the existing homes to collect wastewater by gravity and then convey the effluent up the hill into the leach field.

b. The property is different in a meaningful way from other properties in the area because: The property is different because the current existing steep slope of the land is naturally 36%. This is the only area on the lot suitable for the design and installation of a septic system more nearly meeting current standards.

c. The property is burdened more severely by the zoning restrictions because: there is a hardship due to the naturally existing topographic conditions and size of the lots.

d. Because of the special conditions of the property, the proposed use of the property is reasonable because: allowing the variance will enable the owner to place a septic system on the lot to handle the wastewater flows from the existing homes on Lots 90 and 92. Without this variance a new septic system would not be able to be permitted by the NHDES.

16.7.3 The variance is consistent with the spirit of the ordinance since: Because of the type of natural conditions existing on the lots, this is the best location for the design and installation of a new septic system. This system will replace the existing substandard on-site wastewater systems currently serving the homes on Lots 90 & 92.

16.7.4 Substantial justice is done because: Because there is no other reasonable location to design and install the new septic system, substantial justices will be done by granting the requested variance.

16.7.5 The value of surrounding properties will not be diminished because: The granting of this variance will allow construction of a new septic system to serve both homes on Lots 90 & 92. The system will prevent untreated and poorly treated wastewater from entering Lake Sunapee thereby protecting the water quality of the lake for all.

Mr. Seidel asked Mr. Evans about septic system on a slope where water will be crossing the system. Mr. Evans said that the water will be diverted around the system, not cross it. Mr. Evans went on to explain how this works.

Mr. Evans showed the plans for the septic system to the Board members.

Mr. Fichter asked the Board if they had any additional comments. There being no further comments, Mr. Fichter opened the hearing to the public.

There being no comments from the public, Mr. Fichter closed the hearing to the public and the Board began deliberations. Mr. Blohm said it looked like a reasonable design.

Mr. Azodi said it looks like a better solution.

Mr. Seidel said he thinks it is a good design.

Mr. Seidel made a motion to vote a variance on Article 9 & 7, Sections 9.3 and 7.3.2 to permit construction of a septic system to service the wastewater treatment and disposal needs of the homes located on Lots 90 & 92 belonging to Patrick and Melissa Thompson with a condition that uphill of the proposed septic system, an open swale will be designed and to be included in the drawing of the design.

Mr. Blohm seconded the motion.

Mr. Blohm voted to Grant the Variance from Articles 9 & 7, Articles 9.3 and 7.3.2 with special conditions.

Mr. Seidel voted to Grant the Variance from Articles 9 & 7, Articles 9.3 and 7.3.2 with special conditions.

Mr. Azodi voted to Grant the Variance from Articles 9 & 7, Articles 9.3 and 7.3.2 with special conditions.

Mr. Fichter voted to Grant the Variance from Articles 9 & 7, Articles 9.3 and 7.3.2 with special conditions.

Mr. Fichter reminded the Thompsons they will receive official notification from the office for this ordinance and there is a 30 day period that anyone can appeal the Board's decision.

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, January 11, 2016** at the Town Office Building at 937 Route 103 in Newbury, NH: **At 7:30 p.m., Masoud and Susan Azodi-Kazeroony**, for property located on Gerald Drive, Newbury, NH, will seek a **Variance** from the requirements of Paragraph 5.9.1, 7.4.2 (formerly 7.3.2), 7.7.2.3 (formerly 7.6.2.3), 7.8.2.1 (formerly 7.7.2.1), and 15.3.1 (formerly 15.2.1) of the Newbury Zoning Ordinance to permit the following: Construction of a new house, driveway, and septic system on a non-conforming lot within the 30' right-of-way setback, 75' wetland setbacks, and 150' natural woodland buffer of the property. Newbury Tax Map 29A-055-377. 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.*

Mr. Azodi said that he, Susan and Mr. Charles Hirshberg will be presenting the case.

Mr. Azodi explained the history of why they are there. He explained that this land is part of the Chalk Pond subdivision. This project has already obtained approval for the house and septic system. The approval expired by the time they purchased the house and they were given an extension. The project took a long time to get started, so they contacted Mr. Hirshberg to submit a new application.

Mr. Hirshberg continued speaking about the history of the project. He explained it is a .2 lot on the water of Chalk Pond.

Mr. Hirshberg said they wanted to keep the house site within the parameters of the 50' ft. setback.

Mr. Hirshberg said what they are proposing is a tiny house (525 sq. ft. of footprint). It will be 15' x 35' with an area for parking with pretreatment septic system.

Mr. Seidel asked about a stone wall that is uphill from the leach area. Mr. Hirshberg said it is to keep vehicles off the leach field.

Mr. Hirshberg said there will be no deep rooted plantings on the leach field. He explained that the site will also be terraced so materials do not run into Chalk Pond.

Mr. Blohm asked if the deck would be an additional disturbed area, and Mr. Hirshberg said yes.

Mr. Hirshberg said they are asking for a variance of the 75' setback from the water so they can be at the 50' setback mark. They are also looking for a variance for the 30' setback from the road so they can be at the 21' mark (he explained that the original deed says that the setback was 20').

Mr. Fichter asked Mr. Brian Vincent to discuss the impact of the water that comes down from the culvert. He said they are not trying to contribute to the flow that is coming down from the drives on Gerald Drive. Mr. Hirshberg said they will not be changing the flow that is already established.

Mr. Hirshberg said they originally got involved to resurrect the septic system. He explained they cannot submit the plans to the state until they get acceptance from the Zoning Board.

Mr. Fichter then asked Mr. Vincent to go over the variance application.

16.7.1 The variance will not be contrary to the public interest because: the proposed residential dwelling is sited 23 feet from the near road Right of Way (ROW) line. The proposed dwelling is a small, 2-bedroom house with footprint totaling 525 square feet. The proposed dwelling width was limited to 15 feet to minimize impact to the front setback buffer, and at the same time, keep the living space of the structure out of the 50 foot Water Front Buffer. Given the small lot size, and the waterfront setback requirements, the Applicant believes that the natural resources should be the priority in hardship siltation such as this. As such the project is not contrary to the public interest given the limited impact to the front setback, and minimizing impacts to the waterfront buffer. It should be noted that a variance was granted previously per the attached 'Notice of Decision' dated September 25, 2006. This variance was previously granted for relief from the 30' setback.

A portion of the proposed septic tank is located within the 75-foot lake-front /wetland buffer, while the proposed leach field is located just outside of the 75 foot lake front/wetland buffer. The septic tank will be grouted, sealed and plumbed with minimum DSR26 PVC piping to prevent infiltration and exfiltration per NHDES subsurface rules Env Wq 1008.04 C. A variance was granted

previously per the attached 'Notice of Decision' dated September 25, 2006.. Due to the alignment of Gerald Drive, the septic tank cannot be moved any further from the lake.

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

- *There are special conditions in the property that distinguish it from other properties in the area because:* For purposes of this paragraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - 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; It is the intent of the ordinance that a legal lot should be allowed to be used in accordance with permitted uses as described in the zone in which the property is located. The property is located in the Town of Newbury Residential zone. The proposed use is residential. When the lot was created, it is our understanding that the lot was a conforming lot and should now be considered a legal, buildable lot. Ruction. In addition, the existing natural vegetation within the 50-foot Waterfront Buffer, including all but two tree, will be left undisturbed.
 - The proposed use is a reasonable one: the proposed structure will be a residential use, with modern construction materials and compliant with current building codes. The proposed structure and driveway will be built outside of the 50 foot Water Front Buffer, with the exception of a small deck, which will be constructed on piers. The permanent disturbance associated with the deck will be +/- 10 sq. ft. for the piers. Otherwise, the disturbance will be limited to construction purposes only, and will be restored to its Natural condition upon completion of construction. Although it is impossible to keep the proposed structure and driveway outside of the 75-foot lake-front / wetland buffer, the Applicant has maximized the distance as much as reasonably possible.

b. If the Criteria in sub paragraph A are not established, an unnecessary hardship will be deemed to exist is, and only if owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The site consists of a small parcel of land totaling approximately 0.2 acres in size. A substantial amount of the site is located within the 50 foot Waterfront Buffer, with the balance of the site located in the Natural Woodland Buffer. Given the above noted lot constraints, this legal non-conforming lot cannot be used in strict conformance with the ordinance. As noted above, due to the alignment of Gerald Drive, the septic tank cannot be moved any further from the lake.

c. The property is burdened more severely by the zoning restrictions because: The site consists of a small undeveloped lot of approximately 0.2 acres in size. The site is located adjacent to Chalk Pond, and is located within the Residential District. Chalk Pond abuts the site on the north. As such, nearly the entire property is located within the 75 foot lake-front/wetland buffer. In addition, a substantial amount of the site is located within the 50 foot Waterfront Buffer, with the balance of the site located within the Natural Woodland Buffer. Given the above-noted lot constraints it is physically impossible for this legal non-conforming lot to be used in strict conformance with the ordinance. As noted above, due to the alignment of Gerald Drive, the septic tank cannot be moved any further from the lake.

d. Because of the special conditions of the property, the proposed use of the property is reasonable because: The lot has been a legal residential lot since 1967. It is located in the Residential Zone adjacent to Chalk Pond. The lot consists of a small arcel of land totaling approximately 0.2 acres in size. It is presently undeveloped. Chalk Pond abuts the site on the north. As such, nearly the entire property is located within the 75- foot lakefront/wetland buffer. In addition, a substantial amount of the site is located within the 50-foot Waterfront Buffer, with the balance of the site located in the Natural Woodland Buffer. Given the above noted lot

constraints, this legal non-conforming lot cannot be used in strict conformance with the ordinance, and the best use of the lot is a residential use, with a modern structure built to current building codes.

16.7.3 The variance is consistent with the spirit of the ordinance since: The subdivision in which the subject lot was created pre-dates the current Newbury Zoning Ordinance. The current deed clearly stipulates a 20' setback from the road, which the proposed building will meet.

The proposed structure will be built as far away from the pond as practically possible, minimizing impacts within the 50 foot Waterfront Buffer and the 75-foot lake-front/wetland buffer. The proposed structure will be built on concrete spread footings and concrete foundation walls. The proposed deck will be built on piers to minimize temporary impacts within the 50 foot Waterfront Buffer. Disturbance to the natural ground cover will be limited to no greater than 12' outside the proposed building footprint. The disturbed areas will be backfilled and stabilized as soon as possible after the foundation footings and walls have cured. It is anticipated that a limited amount of Ground Cover and Tree impacts will be unavoidable, within the 50 foot Waterfront Buffer, in order to construct the proposed structure. Every attempt will be made to minimize these impacts. The disturbed area will be restored to its natural condition.

A portion of the proposed septic tank is located within the 75-foot lake-front/wetland buffer, while the proposed leach field is located just outside of the 75 foot lake front/wetland buffer. The septic tank will be grouted, sealed and plumbed with minimum SDR 26 PVC piping to prevent infiltration and exfiltration per NHDES subsurface rules Env wq 1008.04C. As such, the septic tank will have extra precautions built into it to prevent infiltration and exfiltration. Due to the alignment of Gerald Drive, the septic tank cannot be moved any further from the lake.

There will be existing unaltered area and 'created' unaltered area after construction is complete. Proposed unaltered area within the Woodland Buffer is 495 square feet. Created unaltered area is 495 square feet. With the created unaltered area, the total proposed unaltered area is 980 square feet, or 30 percent of the Woodland Buffer area. This exceeds the Town's requirement of 25 percent (conforming lots) of one-half acre land within the Woodland buffer. It should be noted that the state shoreland program has approved a waiver for the unaltered area. In addition, a waiver is required for the proposed septic system given that a 2H to 1V till slope is proposed to construct the new septic system. It should be noted that the final finished grade in this area will be flatter than 5H to 1V as a 3.5 foot tall boulder retaining wall is proposed beyond the 2H to 1V fill slope, as noted on the plan details.

16.7.4 Substantial justice is done because: The landowner invested in this property to utilize it as a legal buildable lot. The proposed structure will be designed to meet current building codes using modern materials and methods, which will reduce the need for frequent maintenance and disturbance within the Shoreland Protection Overlay District. As noted above, the Applicant is proposing to limit site impacts as much as possible given the physical constraints of the legal, non-conforming lot. Special considerations have been implemented with the proposed site design with respect to septic tank sealing precautions as well as preserving and creating as much 'unaltered area' as practically possible.

16.7.5 The value of surrounding properties will not be diminished because: Many properties in the area are within the 50' Waterfront Buffer and/or current side or front setbacks. The proposed structure is situated on the lot in a similar fashion to other structure in the immediate vicinity. The applicant believes that the proposed residential development, built to current building codes will not diminish the values of surrounding properties. Much of the site excavation work for the proposed improvements will be performed from working within the existing footprint of the proposed structure to minimize impacts to the overall site. With the exception of the front setback, no encroachment of standard building setbacks is proposed.

Mr. Fichter asked the Board if they had any additional comments. There being no further comments, Mr. Fichter opened the hearing to the public.

Ms. Sue Russell read a letter on behalf of the Sunapee Hills Association. Ms. Russell read an email stating her concerns that she had originally sent to the Zoning Board. Ms. Russell stated that the Azodis did not originally want to build on this property, but rather it was supposed to be a walkway to their other property giving them water access. She went on to say that she was at the original hearing in 2006 with concerns with water runoff into the pond. She also has concerns with the steep slope and the seasonal stream.

Ms. Russell showed photos of the seasonal stream that comes down from other properties that goes into the pond.

The Recording Secretary read a letter from Mr. and Mrs. Dick and Pam Greaves into the record.

Mr. Fichter asked Mr. Hirshberg asked about the runoff on the land. Mr. Hirshberg said that the state does not allow for the piping of water flow directly to the water body.

There being no comments from the public, Mr. Fichter closed the public portion of the hearing.

The Board began deliberations.

Mr. Seidel said that he feels that this a great plan.

Mr. Blohm agreed and said that it makes sense and is a good plan.

Ms. Marashio said that given the lot, it is an amazing plan. The concerns that the Association has, she understands, but it is a buildable lot and this is the best plan.

Mr. Fichter said that he wants to add that any future construction should fall into the footprint of this project. He also said that he would like to have a construction fence in place while construction takes place on the property.

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 for Masoud and Susan Azodi-Kazroony located on Gerald Drive from Article 5, Paragraph 5.9.1, Article 7, Section 7.4.2 (formerly 7.3.2), Section 7.7.2.3 (formerly 7.6.2.3), Section 7.8.2.1 (formerly 7.7.2.1), and Article 15 Section 15.3.1 (formerly 15.2.1) with the condition that a construction fence barrier be situated between the east end of the proposed structure and the culvert stream on the east side of the property. Also, any future building should be in the footprint of these plans. Mr. Blohm seconded the motion. All in favor.

Mr. Fichter voted to Grant the Variance from Article 5, Paragraph 5.9.1, Article 7, Section 7.4.2, 7.7.2.3, 7.8.2.1 and Article 15 Section 15.3.1.

Mr. Blohm voted to Grant the Variance from Article 5, Paragraph 5.9.1, Article 7, Section 7.4.2, 7.7.2.3, 7.8.2.1 and Article 15 Section 15.3.1.

Mr. Seidel voted to Grant the Variance from Article 5, Paragraph 5.9.1, Article 7, Section 7.4.2, 7.7.2.3, 7.8.2.1 and Article 15 Section 15.3.1.

Ms. Marashio voted to Grant the Variance from Article 5, Paragraph 5.9.1, Article 7, Section 7.4.2, 7.7.2.3, 7.8.2.1 and Article 15 Section 15.3.1.

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

The meeting adjourned at 10:52 p.m.

Respectfully submitted,

Donna Long
Recording Secretary