
Zoning Board Minutes 6/13/16

Zoning Board of Adjustment

June 13, 2016

Approved November 14, 2016

Members Present: Peter Fichter, Chair; Harry Seidel, David Blohm, Nancy Maraschio, Members; Alex Azodi, Alternate.

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

ADMINISTRATIVE BUSINESS

Minutes

The Board reviewed the minutes of January 11, 2016 and made corrections.

Mr. Blohm made a motion to accept the minutes of January 11, 2016 as corrected. Mr. Azodi seconded the motion. All in favor.

Election of Officers

Mr. Fichter turned the meeting over to the Recording Secretary. The Recording Secretary called for nominations for the ZBA Chair for the upcoming year.

Mr. Blohm made a motion to nominate Mr. Fichter as Chair of the Newbury Zoning Board of Adjustment for the upcoming year. Ms. Maraschio seconded the motion.

The Recording Secretary called for a Roll Call vote.

In Favor: Mr. Blohm, Mr. Azodi, Ms. Maraschio, Mr. Seidel

Opposed: None

The Recording Secretary turned the meeting over to the newly-elected ZBA Chair, Mr. Fichter.

Mr. Fichter called for nominations for the ZBA Vice-chair for the upcoming year.

Mr. Fichter made a motion to nominate Mr. Blohm as Vice-chair of the Newbury Zoning Board of Adjustment for the upcoming year. Mr. Seidel seconded the motion.

Mr. Fichter called for a Roll Call vote.

In Favor: Mr. Fichter, Mr. Azodi, Ms. Maraschio, Mr. Seidel

Opposed: None

OEP Conference Recap

Board members who attended the recent OEP Conference shared their thoughts on course content, specifically new regulations pertaining to variances and special exceptions. Also discussed was the role of deliberations in the hearing process, along with the fact that the ZBA acts as a judicial board within the town.

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

At 7:15 p.m., 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, June 13, 2016** at the Town Office Building at 937 Route 103 in Newbury, NH: **At 7:15 p.m., Michael & Susanne Quimby**, for property located at 651 Route 103A, Newbury, NH, will seek a **Variance** from the requirements of Paragraph 5.10 of the Newbury Zoning Ordinance to permit the following: to allow for a 2 lot subdivision creating a new lot that would be non-conforming as it would contain less than one contiguous acre for the building envelope. Newbury Tax Map 028-789-456. 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 introduced the Board and reviewed the hearing process with the applicant and members of the public.

Mr. Fichter noted that the Planning Board heard this application for a minor subdivision and sent the applicant to the ZBA for a variance.

Bob Stewart, RCS Designs, agent, presented to the Board.

Mr. Stewart reviewed the lot's current dimensions, noting the total acreage is 8.42 acres, but there is an ephemeral stream located on the property and, following ongoing wetland monitoring, there is clear evidence of a wooded wetland in the middle of the lot. That means the buildable area on the property is restricted. Mr. Stewart noted that there are two culverts that provide drainage, but road development over the years has resulted in a lot of stormwater runoff concentration on the property.

Mr. Blohm asked if the stormwater runoff drains anywhere else besides the woodland wetland. Mr. Stewart described the underground and above-ground path of stormwater runoff on the property, based on his year-long monitoring of the ephemeral stream. His conclusion is that some runoff is carried by the culverts, but most of the water remains on the property, hence the wooded wetland.

Mr. Blohm noted that the ephemeral stream was created by past development and now interrupts the required on-acre of contiguous buildable area. Mr. Stewart agreed. He said the proposed subdivision results in a total buildable area of 2.32 acres, but because of the wooded wetland, the buildable area is not contiguous.

Discussion followed regarding the required wetland setbacks and side and rear setbacks. Further discussion followed regarding setback requirements for lakes, streams, ponds and other waterbodies and the impact on buildable areas.

Mr. Seidel expressed concern about the possibility of increased runoff and how the property will be protected from further degradation of the wetland. He asked if the house is on high ground. Mr. Stewart said yes.

Mr. Stewart said the plans call for treating this site as a shoreland site, with stormwater management plans, and all stormwater will be discharged on site through subsurface infiltration. He said there will be drip edge infiltration ditches and dry wells to mitigate the effects of stormwater and the effects from construction, roof, driveway and any other impervious surface.

Mr. Azodi asked if the stream was the result of development before the lot was purchased. Mr. Stewart said yes.

Discussion followed about the number of trees that may be removed, the amount of clean fill needed for the proposed building site, and whether any of the fill has gone into the wetlands. Mr. Stewart noted that he has sampled the wetland area with an auger to ensure that there is no degradation due to fill or resulting from any other activity on the site.

Mr. Azodi asked if this will be a new residence for the Quimby's. Mr. Stewart said yes. It will be a one-level home instead of their current home which is two levels.

Mr. Seidel noted that the well is not within the buildable area and is not exempt from the 75-foot setback. Mr. Stewart noted that there is an exemption in the regulations but added that the well can be moved if needed.

Discussion followed regarding the placement of the well.

There being no more questions from the Board, Mr. Stewart addressed Article 16.7 of the zoning ordinance:

16.7.1 The variance will not be contrary to the public interest because: It will not unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. The proposal for development will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. We are dealing with Section 5 which deals with Building Envelope and the density requirements therein. This site also has good roads for safety service access and it is currently in a residential zone. The property owners plan to develop a stormwater management plan to protect existing wetlands and water bodies.

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: There exists drainage that is discharged upslope from drainage ditches along Chalk Pond Road and NH Route 103A that is concentrated into a seasonal swale that bisects land which reduces the building envelope below one acre. The stormwater that flows into this swale is present mainly only after storm events. This drainage is a result of concentration of stormwater from two roads. Most lots are not subject to this amount if discharged from public roads.

b. The property is different in a meaningful way from other properties in the area because: of the proximity to the roads and topography that allows for the water to discharge onto this property. Most stormwater runoff is perpendicular to the road. Also, the drainage discharges into a wooded wetland. As a wetland scientist and a member of it particularly a wooded wetland.

Mr. Seidel noted that the plans show limited wooded wetland on both lots and the proposed plans are an asset to this lot because it is treating the current drainage. He asked if wetland trees die. Mr. Stewart said some do but most trees like wetlands and the upland trees are adaptable. He noted that many of the trees in the wetland have been there for up to 80 years.

c. The property is burdened more severely by the zoning restrictions because: Most stormwater drainage swales are concentrated to the edge of right-of-ways. In this case, the stormwater runoff has been established well off the edge of the ROW. We also have a septic design that meets all regulations.

d. Because of the special conditions of the property, the proposed use of the property is reasonable because: The lot meets all other zoning requirements such as buildable area, frontage and setbacks. The lot can support a building, driveway, septic and well, meeting all planning and zoning requirements of the Town of Newbury and the NHDES.

16.7.3 The variance is consistent with the spirit of the ordinance since: The location of the lot is in a developed residential setting, it is located on a well maintained highway with ample access to fire and police protection, the lot lacks fragile features such as steep slopes, critical habitat, productive forests and agricultural land. It meets the intent of the regulations because it lacks the fragile and critical resources that the regulation is intended to meet. Also, it has an important wetland on it and the setbacks should be adhered to.

16.7.4 Substantial justice is done because: The loss by not granting the variance is solely to the lot owner. There is no gain to the general public as shown in meeting the qualifications of the other criteria of this application.

Mr. Fichter asked if the property owner plans to keep the current tree cover that runs parallel to Route 103A. Mr. Stewart said it is his understanding that that is their intention, since they want to maintain their current level of privacy. He added that keeping the tree cover and maintaining the wooded wetland could be conditions of approval.

16.7.5 The value of surrounding properties will not be diminished because: The proposed residential use of the property in a residential setting will, as a use, not diminish surrounding property values. The development of this lot to the proximity of the seasonal drainage and the wetland downslope, respecting the required setbacks as shown on the plan will have minimal impact to the forested wetlands and seasonal drainage.

Mr. Azodi asked if there was one acre of contiguous buildable area on the lot without subdividing it. Mr. Stewart said no.

Mr. Seidel asked if there are homes on adjacent lots. Mr. Stewart said yes, all adjacent lots are developed.

Ms. Maraschio asked if the state assumes any responsibility for the current stormwater runoff due to road development. Mr. Stewart noted that attempts have been made over the years to force the DOT to assume responsibility but without success.

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

The following letter was read into the record: *June 6, 2016, from Debra Capua, 630 Route 103A, Newbury, NH 03255. RE: Variance from requirements of Paragraph 5.10 of the Newbury Zoning Ordinance for 651 Route 103A, Newbury, NH, To Whom it may concern< As one of the primary property abutters impacted by the proposed non-conforming lot subdivision variance proposal submitted for 651 Route 103A, I strongly oppose granting of such a variance for the reasons noted below. (1) Introduction of two additional homes on the aforementioned property are incongruous with the area's rural character, which boasts hiking trails, a wildlife refuge and large (average 10 acres) housing lots with largely undeveloped land. A quick look at the site work already in progress reinforces this belief. (2) With respect to Item 1 above, I also am concerned that allowing the variance so that two homes can be built on small-sized lots is not in keeping with the rural characteristics of the area and will diminish my property value due to perceived overbuilding by a potential buyer. Additionally, the potential of noisy neighbors or their pets living in close proximity to my property could also diminish mine and neighboring property values. The Town of Newbury is known for being unblemished from city annoyances. In summation, allowing the aforementioned property to be subdivided as requested may grant the Quimbys the opportunity to reap a monetary reward by having two lots to sell or on which to build for later sale. The parties most impacted by this decision over the long term are those of us whose property abuts the Quimby property and who wish to remain in our homes unlike the Quimbys who are selling their existing residence at that same property location. A decision in favor of the submitted proposal hardly seems fair and equitable to those of us who remain. Thus, I am opposed to a favorable ruling. Respectfully, Debra Capua.*

Dr. J. Michael Boteler, 648 Route 103A, Newbury, read into the record the following: *Before I address some concerns regarding this request I must state that Mike and Suzanne Quimby have been very good neighbors and helped my wife when we first purchased our home in 2007. Having said that, I have the following comments and concerns: (1) The proposed variance contains much less property than the one acre stipulation in paragraph 5.10 of the Newbury Zoning ordinance (recently revised March 8, 2016). This exceeds the one acre by greater than 50%. There must have been some rationale to set this constraint to begin with, what has changed? (2) The definition of the "Building Envelope" as pointed out in Article 2 section 2.21 clearly states that the property water well must be contained within the designated envelope. According to the information provided it does not. Moreover, to move it to within the envelope would necessarily push the septic system outside the envelope since they must be separate by at least 75 feet which would also be a violation. (3) Although there are other concerns I will only add that according to the Application for a Variance Paragraph 16.7.2. D, the applicant states that the septic and well meet all planning and zoning requirements. This is not true as pointed out above. Respectfully, D., J. Michael Boteler and Mary Wong.*

Discussion followed regarding the placement of the septic system and the well.

Dr. Boteler said the regulations regarding a buildable area are confusing and asked why such regulations were and then violated.

Mr. Fichter explained how the ZBA functions as a board, why applications are made to consider overturning regulations, and the how the board arrives at a decision regarding a request. He added that the retention of the current woodland along the road will ensure that the atmosphere of the 2-acre lot requirement will be maintained visually when driving by the property.

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

Mr. Fichter said he believed the intent of the ordinance has been met and that this is a situation of dealing with something that was created by others.

Mr. Azodi questioned whether the drawings are accurate. Mr. Seidel and Mr. Blohm said they trust the drawings as submitted.

Additional concerns included the issue of building into the 75-foot wetland setback and the intended use of the fill lot and whether that will run off into the wetland.

Mr. Stewart said the intent is to stabilize the fill area, seed it and install plantings to stabilize the slope.

Mr. Fichter reopened the hearing to the public.

Mr. Boteler questioned the cutting down of trees on the property. Mr. Azodi said the subdivision status on the property will not give the owners additional rights to cut trees. Mr. Boteler noted that the site excavation is substantial. Mr. Stewart said the site was originally a log landing for a Chalk Pond Road subdivision at one time. That is why the area was leveled.

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

Mr. Seidel said the applicant has demonstrated their concern regarding protecting wetland and the town from further degradation. There is a low density with the house and surrounding woods on the property. He added that the application satisfies the criteria for a buildable lot.

Mr. Blohm noted that the Quimbys may be good stewards of the property but the next owners may not be.

Mr. Azodi said he wants to see some measures of ongoing protection built into the Board's decision.

Ms. Maraschio noted that this presents an unusual situation involving stormwater runoff that should be handled (to some degree) by the state.

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

Mr. Azodi made a motion to vote on the application submitted by Michael & Susanne Quimby, for property located at 651 Route 103A, Newbury, NH, for a Variance from the requirements of Paragraph 5.10 of the Newbury Zoning Ordinance to permit the following: to allow for a 2 lot subdivision creating a new lot that would be non-conforming as it would contain less than one contiguous acre for the building envelope. Newbury Tax Map 028-789-456, with the following conditions: (1) That a stormwater

management plan be implemented per Article 21 Stormwater Management of the Newbury Zoning Ordinance, (2) That the well be relocated outside of the 75-foot wetland setback, and (3) That the existing buffer of trees located on the property along Route 103A be retained. Mr. Seidel seconded the motion. All in favor.

Mr. Seidel voted to Grant the Variance from Paragraph 5.10 with the stated conditions.
Ms. Maraschio voted to Grant the Variance from Paragraph 5.10 with the stated conditions.
Mr. Azodi voted to Grant the Variance from Paragraph 5.10 with the stated conditions.
Mr. Blohm voted to Grant the Variance from Paragraph 5.10 with the stated conditions.
Mr. Fichter voted to Grant the Variance from Paragraph 5.10 with the stated conditions.

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 called for a break at 9:19 p.m.
The meeting resumed at 9:21 p.m.

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, June 13, 2016** at the Town Office Building at 937 Route 103 in Newbury, NH: **7:30 p.m., Appeal of Administrative Decision** regarding property owned by **Maureen Clement** located at 80 Park 10 Road, Newbury, NH which in the Select Board's opinion is one legal lot of record. Maureen Clement is appealing the Select Board's opinion of the lot being one lot, created through involuntary merger, rather than separate lots as originally deeded. Newbury Tax Map 031-795-325. 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 introduced the Board and reviewed the hearing process with the applicant and members of the public.

Maureen Clement, 84 Park 10 Road, Newbury, referred the Board to Blocks H, J, K, and L which were surveyed in August 2009 and showed the ROW. She indicated the lots that she owns within those Blocks and described the lots that she wants to unmerge.

Mr. Blohm asked why she wants to unmerge them at this time. Ms. Clement said she didn't voluntarily merge them and now wants to make a building lot out of lots # 23, 24, 1, 2, 3, 26, 27, 28, 4, 5, and 6. She referred to the lots as they appear in a handout in color-coded areas of yellow and pink. She further described parcels in Block J, lots # 38, 39, 40, 32, 33, and 19, indicating that she could sell them to people in the house on Block K so they can have a better septic system.

Discussion followed.

Mr. Azodi said the object is to have the lots in Blocks J and I turned into four separate tax maps instead of keeping it as it is right now, which is one lot.

Mr. Fichter asked how long the property has been one tax bill. Ms. Clement said since 1985 when she purchased the property.

Mr. Azodi asked if she purchased the property as one property or four separate properties. Ms. Clement said one property. She said Block I, lots 2 and 3 are not on her deed and she got a quiet claim for them.

Mr. Fichter said if this was an involuntary merger, Ms. Clement has until December 31, 2016 to request an un-merger. Mr. Fichter asked Ms. Clement if she was aware that the lots were merged. Ms. Clement said no. Mr. Fichter asked if she didn't question why she owned many lots and still got only one tax bill. Ms. Clement said she had her property assessment record pulled and noted that her record contained "scribbling on it".

Discussion followed about: a 1996 tax map that shows separate lots; and how an un-merging would create lots that do not meet town regulations.

Mr. Azodi asked why Ms. Clement didn't request an un-merging of lots since 1985. Ms. Clement said she didn't know she could do that until she saw a notice in the Town Report. She added that the town told her that she was getting one tax bill to minimize the number of tax reports.

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

Norm Bernaiche, Tri-Town Assessor, referred to Block J, lots 35, 36, and 37, and indicated evidence of building permits and drawings of a house, and boundaries of all property owned by Ms. Clement in Blocks I, J, K, and L.

Mr. Seidel noted that Ms. Clement claimed the lots as a property when she gave the dimensions of the property for the building permit.

Discussion followed about un-merging just some of the lots versus all of the lots and then merging afresh. Mr. Bernaiche said the problem with selective unmerging is that there are septic systems on some of the lots. He added that if the town merged the lots involuntarily, then all the lots should be un-merged.

There was further discussion about finding the history of the lots in question and any past owners who may have merged lots in Blocks I and J.

Josh Perkins, an abutter, suggested looking up the 1985 tax bill to find out how many lots are listed on the bill.

Further discussion centered on what is involved in un-merging all the lots, surveying them separately, re-recording them, then merging just the lots the Ms. Clement wants merged.

Mr. Azodi noted that since there is no documentation pertaining to the four specific Blocks of property in question, the Board cannot un-merge them. He referred to RSA 674:39-aa item 2b.

Mr. Bernaiche noted that the 1994 town tax card shows all of the lots as one lot.

The following letter was read into the record: *June 13, 2016, Gentlemen, Our names are Kate Aleskiewicz and James Barthelemy. We have property on Bly Hill that abuts that of Maureen Clement. We wanted to inform you of a situation concerning a shared property line. This may be of no concern for tonight's meeting but we wanted to make you aware of it as we will be unable to attend. A survey commissioned by Maureen in 2008 has moved this line to a location where it now dissects our house. This house was built in 1910. It is hard to believe that 100 years later it can be determined that it has not been located wholly on its own lot for all this time. The revised town tax map (2015) clearly shows this new line. Map 20B Lot 31-758-288. We are concerned that this change is depicted on the tax map as this is obviously something that we will have to resolve. If any action is taken tonight might have the effect of lending any credibility to this assumption of property line location, we would be very concerned. Please be informed of this situation in your decision making. Respectfully, Cate Aleskiewicz.*

Mr. Fichter said the issues surfaced in the above letter are beyond the purview of the ZBA.

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

The Board recommended that Ms. Clement consult a real estate attorney for advice. Ms. Clement requested a continuance.

Mr. Seidel made a motion to continue this hearing until September 12, 2016 at 7:15 p.m. Ms. Maraschio seconded the motion. All in favor.

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

The meeting adjourned at 11:00 p.m.

Respectfully submitted,
Meg Whittemore
Recording Secretary