**Zoning Board of Adjustment**

**October 11, 2016**

Approved May 8, 2017

**Members Present:** Peter Fichter, Chair; David Blohm, Vice-Chair; Harry Seidel, Nancy Maraschio, Armen Tarbassian, Members; Gary Budd, Alternate.

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

**ADMINISTRATIVE BUSINESS**

**Meeting Schedule**

The Board discussed the need for establishing a second monthly meeting date to accommodate the potential increased number of applications. The second date, if needed, was suggested to be the fourth Monday of the month. The Land Use Administrator would determine, with the ZBA chair, which applications will be scheduled on each meeting date.

Mr. Seidel made a motion to establish a two-meeting per month format for the Zoning Board of Adjustment on an as-needed basis, with the second meeting to fall on the fourth Monday of each month. Ms. Marashio seconded the motion. All in favor.

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* ***Tuesday, October 11, 2016*** *at the Town Office Building at 937 Route 103 in Newbury, NH:* ***At 7:15 p.m., Richard & Susan Alexander,*** *for property located at 265 Mountain Road, Newbury, NH, will seek a* ***Variance*** *from the requirements of Article 7; Paragraph 7.4.2 of the Newbury Zoning Ordinance to permit the following: Construction of a 24’ x 40’ garage within the 75’ setback from Andrews Brook. Newbury Tax Map 022-310-256. 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.

Richard Alexander presented to the Board.

He wants to build a 24-foot x 40-foot garage on his property. His property is over 23 acres and includes a small road frontage that is usable. He said the setback from the road can be met, but not the required setback from Andrew Brook. He noted that the usable area is 25-feet from the high water mark. Locating the proposed garage on the other side of his house would require more tree cutting along with dealing with wetlands. He said he and his wife hope to retire in Newbury and would like to have a garage near the house.

Mr. Fichter asked about the intended use for the second story on the garage. Mr. Alexander said it would be used for storage and possible a heater for vehicles.

Mr. Fichter noted that the variance request is needed because the proposed garage is within the 75-foot setback from Andrew Brook. Also, the proposed location is within the Shoreland buffer and a Stormwater Management Plan is needed. Mr. Alexander said Brad LeClair will draw up the Stormwater Management Plan this week.

Mr. Blohm asked if Mr. Alexander had any constraints on what was included in the Stormwater management Plan. Mr. Alexander said he would do whatever was needed. Mr. Fichter reviewed the purpose and Best Practices of the Plan,

Ms. Marashio asked where the snow would be put in the winter and whether salt is used on the driveway surface. Mr. Alexander said he uses no salt, and added that all snow is pushed onto both sides of the driveway and not put into Andrew Brook. He added that no snow will be put into the brook in the future if the proposed garage is approved.

There was further general discussion regarding the topography of the property, the proximity to Andrew Brook, and the limitations facing the applicant.

There being no more questions from the Board, Mr. Alexander addressed Article 16.8 of the zoning ordinance:

*16.8.1 The variance will not be contrary to the public interest because:* The existing developed property encroaches on the new setbacks and the proposed garage will not encroach further into the existing setback. The proposed building will not alter the neighborhood nor the character.

Mr. Seidel noted that the existing house already encroaches into the 75-foot setback and lower portion from westerly to easterly, garage will be even with the house regarding the 75-foot setback to the brook. He added that he is willing modify the placement of the garage is needed.

*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:* there is a year-round brook (Andrew brook) running through the lower portion from westerly to easterly, exiting the property at the bridge (Lake Solitude trail head). The setback requirements would result in an area too small to meet the new setback requirements.

*b. The property is different in a meaningful way from other properties in the area because:* Most properties on Mountain Road meet current setback requirements. Due to setback requirements, the building area is diminished in size. Location of proposed garage is impacted.

*c. The property is burdened more severely by the zoning restrictions because:* of the brook. It cuts off the northern area of the lot. There is a small buildable area but does not meet current dimensional setbacks.

*d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* It currently has an existing driveway where the proposed garage will be.

*16.8.3 The variance is consistent with the spirit of the ordinance since:* The driveway location will not encroach into the setback further. It will be shortened. As part of the existing driveway will now become the garage area. The wooded lot area to the east will remain. There will need to be 4-6 existing trees to be cut to allow for the building footprint.

*16.8.4 Substantial justice is done because:* The existing house already encroaches into the setback and will not harm the public or other property.

*16.8.5 The value of surrounding properties will not be diminished because:*

The proposed work area has been a driveway since 1980 and will have no impact on surrounding property values.

Mr. Blohm noted that the Stormwater Management Plan should move stormwater away from the brook and down the hill. He added that this should be indicated on the plan. Also, the plan should include a temporary erosion control plan during construction.

Mr. Alexander noted that the building of the proposed 4-foot frost wall will require a lot of excavation. Mr. Seidel said he should talk with an excavator who will help him develop a site plan that includes a boulder wall on the downside and fill it in so the end result will be a retainer wall. He added that Mr. LeClair can advise.

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

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

Mr. Fichter said this was a reasonable request with the addition of the conditions. Mr. Seidel and Mr. Blohm concurred.

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 from the requirements of Article 7, Paragraph 7.4.2 of the Newbury Zoning Ordinance to permit the following: Construction of a 24-foot x 40-foot garage within the 75-foot setback from Andrews Brook, Newbury Tax Map 022-310-256, with the following conditions precedent:

* Submission of a temporary erosion control plan.
* Submission of a Stormwater Management Plan.
* Approval both plans by the Code Enforcement Officer prior to building permit issuance.

Ms. Marashio seconded the motion.

Mr. Fichter voted to Grant the Variance from Article 7, Paragraph 7.4.2 with the stated conditions.

Mr. Blohm voted to Grant the Variance from Article 7, Paragraph 7.4.2 with the stated conditions.

Mr. Seidel voted to Grant the Variance from Article 7, Paragraph 7.4.2 with the stated conditions.

Ms. Marashio voted to Grant the Variance from Article 7, Paragraph 7.4.2 with the stated conditions.

Mr. Tarbassian voted to Grant the Variance from Article 7, Paragraph 7.4.2 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.

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* ***Tuesday, October 11, 2016*** *at the Town Office Building at 937 Route 103 in Newbury, NH:* ***At 7:30 p.m., Stephen Howard,*** *for property located at 230 Route 103, Newbury, NH, will seek a* ***Variance*** *from the requirements of Paragraph 7.6.1, 8.6, and 15.2.1 of the Newbury Zoning Ordinance to permit the following: Construct a deck on an existing non-conforming building within the 50’ waterfront buffer, within the 75’ shore land and wetland setbacks. Newbury Tax Map 019-159-443.*

*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.

Michael Howard, agent, presented to the Board.

Mr. Howard described the existing deck as being 8-feet deep and including a bump out around the side of the house. The deck sits on concrete footings. He said a permanent stormwater management plan has been done. That includes a ditch to capture roof runoff. He says a silt fence is planned for the new deck construction, along with native planting and landscaping.

Mr. Seidel asked how Mr. Howard installs a silt fence. The latter said he uses a plastic that is marginally waterproof, stapled to stakes, and attached apron seals at the bottom.

Mr. Fichter asked for clarification on how runoff from impervious surfaces will be handled. Mr. Howard said the water will hit the deck and the space boards will allow the water to drip through.

Mr. Fichter pointed out the location of a seasonal stream and the proximity of the proposed deck to that stream. He questioned how stormwater runoff would be handled pertaining to that stream. Mr. Howard said the runoff would be caught in a ground gutter and filtered through a proposed soil profile. He indicated that the proposed deck is 7-inches below the finished floor of the interior floor of the first floor of the house.

Ms. Marashio questioned how the stormwater will be dealt with where the edge of the roof intersects with the edge of the jurisdictional wetland. Mr. Howard said this is a seasonal stream and if the ground gutter doesn’t take care of the runoff then he’ll install gutters and send the runoff to a dry well.

There was discussion regarding jurisdictional wetlands and whether that wetland is a state or local regulatory responsibility.

Mr. Howard noted that he sent in a DES application for a supplemental PBN for Nonconforming Buildings. He added that he will submit that to the CEO.

There being no more questions from the Board, Mr. Howard addressed Article 16.8 of the zoning ordinance:

*16.8.1 The variance will not be contrary to the public interest because:* Since Steve owns the property to the North, he is his own abutter, and there will be no impact on other land owners from the project. Also, the project will include improvements in the drainage and landscaping that will result in better stormwater management and more effective screening of the property from the lake.

*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 condition single ownership of the adjoining properties and the opportunity to improve drainage and screening make the completion of the project a net benefit to the health of the lake without having any negative impact on other landowners.

*b. The property is different in a meaningful way from other properties in the area because:* I would cite the same distinctions that I have pointed out in the preceding sections.

*c. The property is burdened more severely by the zoning restrictions because:* strict adherence to the restrictions would make it impossible to build the deck.

*d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* There will be no impact on other landowners and the environmental and visual impacts on the lake will be improved.

Ms. Marashio stated that the Stormwater Management Plan must be part of this application and include specifics on the plan. Mr. Blohm agreed, adding that the information as submitted is not detailed.

*16.8.3 The variance is consistent with the spirit of the ordinance since:* The rights of other landowners are protected and the overall project will have a net positive effect on the environment and the community.

*16.8.4 Substantial justice is done because:* Granting the Variance will allow Steve to have a wrap-around deck similar to many other lake houses without the deck imposing on anyone’s enjoyment of their property.

*16.8.5 The value of surrounding properties will not be diminished because:* The visual impact from the lake will be reduced and the stormwater impact on the lake will also be reduced.

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

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

Mr. Seidel noted that the application is sloppy but he expressed confidence in Mr. Howard’s work.

Mr. Fichter noted that the documentation submitted is very confusing and questioned whether it is a complete application. He added that the application should include a Stormwater Management Plan.

There was discussion about the lack of required details in the application and the need for an updated plan. The Board decided that, with conditions precedent, they could vote on the application.

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

Mr. Blohm made a motion to vote on the request for a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 of the Newbury Zoning Ordinance to permit the following: Construct a deck on an existing non-conforming building within the 50-foot waterfront buffer, within the 75-foot shoreland and wetland setbacks, Newbury Tax Map 019-159-443, with the following conditions precedent:

* Submission of the approved NHDES Stormwater Management Plan.
* Inclusion of a temporary erosion control plan, properly installed, with indications that the lake and jurisdictional wetland are not affected negatively.

Mr. Seidel seconded the motion. All in favor.

Mr. Fichter voted to Grant a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 with the stated conditions.

Ms. Marashio voted to Grant a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 with the stated conditions.

Mr. Blohm voted to Grant a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 with the stated conditions.

Mr. Tarbassian voted to Grant a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 with the stated conditions.

Mr. Seidel voted to Grant a Variance from the requirements of Paragraph 7.6.1, 8.6 and 15.2.1 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 8:43 p.m.

The hearing resumed at 8:46 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* ***Tuesday, October 11, 2016*** *at the Town Office Building at 937 Route 103 in Newbury, NH:* ***At 7:45 p.m., Anthony & Margit Buonicore,*** *for property located at 34 Shore Drive, Newbury, NH, will seek a* ***Variance*** *from the requirements of Paragraph 7.6.1, 8.6, and 15.2.1 of the Newbury Zoning Ordinance to permit the following: Construct a 3 season porch and covered entry porch on an existing non-conforming building within the 50’ waterfront buffer, within the 75’ shore land and wetland setbacks. Newbury Tax Map 019-202-015. 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.

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

He said the proposed project is to construct a 3-season porch over an existing deck with no change to the primary living space and no change to the existing dimensions of the deck. Also, the plan calls for the addition of an 8-foot x 10-foot porch to the main entrance of the home with a roof only and no side enclosures.

Mr. Stewart said the current level of impervious surfaces is 32% and the property currently has no stormwater management plan. He said the proposed plan includes reducing the impervious surface by 6% post construction. Stormwater will be treated for the entire primary structure. The reduction of impervious surface and full stormwater management results in a more nearly conforming lot after improvements.

Mr. Stewart said the Code Enforcement officer (CEO) has cited two improvements as not being compliant with the zoning ordinance: (1) the porch over the main entrance, and (2) the porch that is proposed for over the main deck. The proposed expansion of the footprint of the home in the 50-foot Primary Building Setback by NH DES definition has a net impact of 12 square feet.

He noted that placing a roof over an existing open deck creates more impervious surface.

Mr. Stewart said the CEO also cited Article 8.6 of the zoning ordinance pertaining to building within the 75-foot wetland buffer. He said Section 8.3.2 states that lakes are not considered to be wetlands. Therefore, the 75-foot wetland setback does not apply to this application. Mr. Stewart added that the proposed development will address and implement a stormwater management plan which will greatly reduce the amount of stormwater that currently is untreated and reaching the lake.

Mr. Budd noted that the plan calls for increasing the existing square footage but reducing the impervious surface by 18%.

Mr. Blohm asked about the gutter system. Mr. Stewart said all gutters will be replaced by a dripline trench measuring 18-inches x 18-inches.

Mr. Seidel asked if there was a basement. Mr. Stewart said the house is a split level.

Mr. Blohm asked if a silt fence is in place. Mr. Stewart said Frank Wiggins, the contractor, had installed one but it blew away.

Mr. Blohm asked if any ground would be disturbed for the porch construction. Mr. Wiggins said there may be some hand digging done for the planned four footings since there is no room on the site for mechanized digging.

Mr. Budd noted that there will be no impact on the southerly side of the property and marginal impact on the northerly side. Mr. Stewart agreed, adding that this is a unique situation because the property is on a peninsula and surrounded on three sides by water.

Mr. Fichter said Article 8.6 should not be considered in this variance criteria. Ms. Marashio concurred, adding Article 8.3.2 clearly defines wetlands.

Mr. Fichter called for a Motion to Vote on this change to the Variance criteria.

Ms. Marashio made a motion to eliminate Article 8.6 from the Variance application criteria since Article 8.3.2 defines wetlands and does not include lakes in that definition. Mr. Seidel seconded the motion. All in favor.

There being no more questions from the Board, Mr. Stewart addressed Article 16.8 of the zoning ordinance, with the exclusion of Article 8.6:

*16.8.1 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. The basic objective of the underlying Zoning Ordinance is to protect the lake. As a result of the proposed expansion of the non-conforming primary building, the overall property development will implement measures to improve stormwater management thereby reducing the contribution of stormwater that presently enters the lake.

*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:* This property is surrounded by the lake on three sides. The setback requirements, as a result of its setting, affects this property to a much greater extent than the surrounding properties. Surrounding properties are only subject to the 50-foot and 75-foot setback on one side. This property is subjected to the same 50-foot and 75-foot setbacks on three sides.

*b. The property is different in a meaningful way from other properties in the area because:* Implementing this setback on three sides greatly diminishes the opportunity to meet setback requirements for reasonable expansion that other properties in the area are not subject to.

*c. The property is burdened more severely by the zoning restrictions because:* It is surrounded by the lake on three sides, thus tripling compliance with the greatest setback requirement for this zone.

*d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* The setting of this property with relation to the shore of the lake renders it reasonable.

*16.8.3 The variance is consistent with the spirit of the ordinance since:* The intent and spirit of the ordinance is to protect the lake. This proposal implements pervious technology to reduce the overall percentage of impervious area and implements stormwater measures to ensure not only that the proposed improvements are not detrimental to the lake, but also that the stormwater runoff to the lake is reduced by implementing stormwater structures for the entire non-conforming building. The result is a much greater protection of the lake, therefore meeting the spirit of the ordinance.

Mr. Blohm asked if the existing gutter system was doing an adequate job. Mr. Stewart said they were working but not effectively. The gutters collected stormwater but then sent it into the lake.

*16.8.4 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. In fact, no proposed reduction of impervious area and no addition of stormwater management as proposed could be considered a loss to the general public interest. The lake is better protected with this proposal and therefore better for the lake.

*16.8.5 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 increase of level of protection of the lake as a result of the proposed increase of water quality protection will be of benefit to the lake, therefore, will have a positive effect on surrounding property values.

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

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

Mr. Fichter stated that the application resulted in a net benefit because of the improvement to the property, reduction of impervious surface, and implementation of a stormwater management plan.

Mr. Seidel said the property is a very difficult site and the reduction in impervious surface, coupled with a stormwater management plan is a positive step. The proposed drip line trench is a big improvement over the current gutters.

Ms. Marashio commended the applicant on taking the necessary steps to make the property more conforming.

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 from the requirements of Paragraph 7.6.1 and 15.2.1 of the Newbury Zoning Ordinance to permit the following: Construct a 3 season porch and covered entry porch on an existing non-conforming building within the 50’ waterfront buffer, within the 75’ shore land and wetland setbacks. Newbury Tax Map 019-202-015. Mr. Tarbassian seconded the motion. All in favor.

Mr. Fichter voted to Grant the Variance from the requirements of Paragraph 7.6.1 and 15.2.1.

Ms. Marashio voted to Grant the Variance from the requirements of Paragraph 7.6.1 and 15.2.1.

Mr. Blohm voted to Grant the Variance from the requirements of Paragraph 7.6.1 and 15.2.1.

Mr. Tarbassian voted to Grant the Variance from the requirements of Paragraph 7.6.1 and 15.2.1.

Mr. Seidel voted to Grant the Variance from the requirements of Paragraph 7.6.1 and 15.2.1.

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

The meeting adjourned at 9:29 p.m.

Respectfully submitted,

Meg Whittemore

Recording Secretary