**Zoning Board of Adjustment**

**February 13, 2017**

Approved May 8, 2017

**Members Present:** Peter Fichter, Chair; David Blohm, Vice-Chair; Nancy Maraschio, Armen Tarbassian, Members; Gary Budd, Reed Gelzer, Alternates.

Mr. Fichter called the meeting to order at 7:15 p.m.

**ADMINISTRATIVE BUSINESS**

There was no administrative business.

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

The following Public Notice was read 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 23, 2017*** *at the Town Office Building at 937 Route 103 in Newbury, NH. The original hearing date of Monday, January 9, 2017 has been CONTINUED.* ***7:30 p.m., Lekker Plek, LLC, Agent James Bruss,*** *property located at 69 Route 103, Newbury, NH, will seek a* ***Special Exception*** *from the requirements of Article 4; section 4.10.1, 4.10.4 & Article 15; section 15.1.2 to permit the following: To allow relocation and reconstruction of an existing non-conforming use and to allow construction of an accessory apartment within an accessary building less than five years old. Newbury Tax Map 051-474-535.* ***7:30 p.m., Lekker Plek, LLC, Agent James Bruss,*** *property located at 69 Route 103, Newbury, NH will seek a* ***Variance*** *from the requirements of Article 4; section 4.10.9 & Article 15; section 15.2.1 & 15.2.2 to permit the following: To allow relocation and reconstruction of an existing non-conforming 3 bedroom cottage to be converted to a 1 bedroom accessory building over 800sq ft. within the 50 ft. waterfront buffer and 75 ft. setback from Lake Todd. Newbury Tax Map 051-474-535. 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 a.m.-noon.*

James Bruss, Building Services Group, LLC, agent, presented to the Board.

Mr. Bruss stated that the applicant owns a one-family dwelling and is applying for a Special Exception for the construction and occupancy of an accessory dwelling, creating an accessory apartment.

**Special Exception**

Mr. Bruss 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 are three factors we believe contribute to proof that the planned change will not be detrimental to the character or enjoyment of the neighborhood: (1) A building of similar size and purpose already exists closer to the shore of the lake and can be replaced by right in its current place. The current planned location improves the neighborhood by pulling back from the lake shore. (2) An abutting property has an accessory dwelling unit on it so this use is in keeping with the neighborhood. (3) The 2.74 acre size of this lot allows for minimal lot coverage issues and the location of the planned structure is hidden from most public view.

*16.7.2 That the use will not be injurious, noxious, or offensive and thus detrimental to the neighborhood because:* A similar cottage already exists closer to the shore. Moving it back helps environment and aesthetic.

*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:* This use will not in any way cause issues with any of the above. Through planning and careful grading we are dealing with all run-off being created by building. We have planned and permitted a new septic system. We have created adequate parking area and good access for emergency responders.

Mr. Fichter expressed concern about capturing any vehicular leaks before they end up in the lake.

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

Nancy and Peter Carl, abutters, stated they have no objections and fully support the project.

There being comments from the Public, Mr. Fichter closed the public portion of the meeting and the Board went into deliberations.

Mr. Blohm made a motion to vote on the request for a Special Exception from Article 4 Section 4.10.1 Ms. Marashio seconded the motion.

The Board determined that a Special Exception from Article 4 Section 4.10.2 was not applicable for the following reasons:

* The Newbury Planning Board has proposed an amendment to the Newbury Zoning Ordinance Article 4 Section 4.10.4 to be consistent with the provisions of the new state law on accessory dwelling units (RSA 674:71 and 72), specifically pertaining to the 5-year requirement for ADU construction in an existing building. Said amendment shall be voted on at Town Meeting on March 14, 2017.

Mr. Fichter voted to Grant the Special Exception from Article 4 Section 4.10.1.

Ms. Marashio voted to Grant the Special Exception from Article 4 Section 4.10.1.

Mr. Tarbassian voted to Grant the Special Exception from Article 4 Section 4.10.1.

Mr. Blohm voted to Grant the Special Exception from Article 4 Section 4.10.1.

Mr. Blohm made a motion to vote on the request a Special Exception from Article 15 Section 15.1.2 to permit the construction of a one bedroom cottage as a replacement to a three bedroom structure within a 75-foot setback with the following condition: that a swale be added on the SW and SE sides of the driveway. Ms. Marashio seconded the motion.

Mr. Fichter voted to Grant the Special Exception from Article 15 Section 15.1.2.

Ms. Marashio voted to Grant the Special Exception from Article 15 Section 15.1.2.

Mr. Tarbassian voted to Grant the Special Exception from Article 15 Section 15.1.2.

Mr. Blohm voted to Grant the Special Exception from Article 15 Section 15.1.2.

Mr. Fichter advised Mr. Bruss that he 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.

**Variance - Article 4 Section 4.10.9**

Ms. Marashio made a motion to vote on the Variance from the requirements of Article 4 Section 4.10.9 to permit the relocation and reconstruction of an existing non-conforming three bedroom cottage to be converted to a one bedroom accessory dwelling building over 800 square feet within the 50-foot waterfront buffer and the 75-foot setback from Lake Todd. Mr. Blohm seconded the motion.

Mr. Fichter voted to Grant the Variance from Article 4 Section 4.10.9.

Ms. Marashio voted to Grant the Special Exception from Article 4 Section 4.10.9.

Mr. Tarbassian voted to Grant the Special Exception from Article 4 Section 4.10.9.

Mr. Blohm voted to Grant the Special Exception from Article 4 Section 4.10.9.

Mr. Fichter advised Mr. Bruss that he 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.

**Variance - Article 15 Section 15.2.2**

Mr. Bruss addressed Article 16.7 of the zoning ordinance:

*16.7.1 The variance will not be contrary to the public interest because:* The goal of the ordinance is to protect the lake. Allowing this relocation and change of footprint protects the lake through better runoff management opportunities provided by the increased setback. Reducing the loading from three bedrooms to one bedroom similarly further protects the lake.

*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:* This is an unusually large property for this area of the lake. This allows space to relocate the structure further away from the lake edge while still allowing it to be close enough to the lake to feel connected to the shoreline and water activities.

 *b. The property is different in a meaningful way from other properties in the area because:* of the existence of a three bedroom cottage within ten feet of the water’s edge. The owner wants to protect the lake by relocating the rebuilt structure further from the water’s edge. This additional setback space allows us room to properly capture and treat runoff prior to entering the lake.

 *c. The property is burdened more severely by the zoning restrictions because:* The owner is not required to seek a variance to rebuild the existing cottage in its current location, but is required to do so to move it further away from the water’s edge and in so doing is also reducing the number of bedrooms.

 *d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* It reduces the overall number of bedrooms and becomes more compliant by moving further away from the water’s edge.

*16.7.3 The variance is consistent with the spirit of the ordinance since:* Our understanding of the goals of the ordinance is to protect the water quality of the lake and surrounding shore. This proposed use does this in three ways: it replaces a three bedroom cottage with a two bedroom cottage; it replaces an antiquated septic system with a new DES approved one; and it moves the building further away from the shore’s edge to allow compliant treatment of runoff.

*16.7.4 Substantial justice is done because:* The lake is better protected, the number of bedrooms is reduced in the cottage from three to one, and the users of the lake will see a new well-kept structure instead of the existing run-down cottage.

*16.7.5 The value of surrounding properties will not be diminished because:* The lot exists with a four bedroom house and a three bedroom cottage. By allowing the relocation of the cottage and shrinking the number of bedrooms in the cottage, the end product is at least as zoning compliant as the existing condition, if not more. By taking a run-down cottage on the lake shore and making it a new well-kept structure in keeping with the aesthetic of other structures on the lake it enhances the value of this and surrounding properties.

Ms. Marashio made a motion to vote on the Variance from the requirements of Article 15 Section 15.2.2 to permit the relocation and reconstruction of an existing non-conforming three bedroom cottage to be converted to a one bedroom accessory building over 800 square feet within the 50-foot waterfront buffer and the 75-foot setback from Lake Todd. Mr. Fichter seconded the motion.

Mr. Fichter voted to Grant the Variance from Article 15 Section 15.2.2.

Ms. Marashio voted to Grant the Special Exception from Article 15 Section 15.2.2.

Mr. Tarbassian voted to Grant the Special Exception from Article 15 Section 15.2.2.

Mr. Blohm voted to Grant the Special Exception from Article 15 Section 15.2.2.

Mr. Fichter advised Mr. Bruss that he 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 Board agreed that Section 4.10.4 does not apply to this application because it has been eliminated from the new zoning ordinance regulations.

**Variance - Article 15 Section 15.2.1**

Mr. Bruss addressed Article 16.7 of the zoning ordinance:

*16.7.1 The variance will not be contrary to the public interest because:* The current building sits less than 10-feet from the water’s edge. The runoff from the roofs, etc. goes diretly into the lake with no opportunity for capture or treatment. The proposed reconstruction allows room to capture and treat all building runoff prior to entering the lake. Normally, we would have simply left the building where it is and expanded away from the water. In this case, we feel we are all better served by relocating the structure to allow space for proper runoff capture and treatment.

*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:* The existence of the existing three bedroom cottage so close to the water distinguishes it from most other properties in the area. The fact that this lake front lot is large enough to allow for a better placement of the structure to still allow for the close connection to the water while also bettering the runoff situation is also unusual in an area of smaller lake front lots.

 *b. The property is different in a meaningful way from other properties in the area because:* the owner is proposing to replace an existing three bedroom cottage with a single bedroom cottage further away from the water’s edge. This property differs due to the existence of the cottage and the relatively large size of the lot.

 *c. The property is burdened more severely by the zoning restrictions because:* The owner is not required to seek a variance to rebuild the existing cottage in its current location, but is required to do so to move it further away from the water’s edge and to reduce the number of bedrooms.

 *d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* It reduces the overall number of bedrooms and becomes more compliant by moving further away from the water’s edge.

*16.7.3 The variance is consistent with the spirit of the ordinance since:* Our understanding of the goals of the ordinance is to protect the water quality of the lake and surrounding shore. This proposed use does this in three ways: it replaces a three bedroom cottage with a two bedroom cottage; it replaces an antiquated septic system with a new DES approved one; and it moves the building further away from the shore’s edge to allow compliant treatment of runoff.

*16.7.4 Substantial justice is done because:* The lake is better protected, the number of bedrooms is reduced in the cottage from three to one, and the users of the lake will see a new well-kept structure instead of the existing run-down cottage.

*16.7.5 The value of surrounding properties will not be diminished because:* The lot exists with a four bedroom house and a three bedroom cottage. By allowing the relocation of the cottage and shrinking the number of bedrooms in the cottage, the end product is at least as zoning compliant as the existing condition, if not more. By taking a run-down cottage on the lake shore and making it a new well-kept structure in keeping with the aesthetic of other structures on the lake it enhances the value of this and surrounding properties.

Ms. Marashio made a motion to vote on the Variance from the requirements of Article 15 section 15.2.1 to permit the relocation and reconstruction of an existing non-conforming three bedroom cottage to be converted to a one bedroom accessory building over 800 square feet within the 50-foot waterfront buffer and the 75-foot setback from lake Todd with the condition that the parking and turnaround area be graded to the south. Mr. Fichter seconded the motion.

Mr. Fichter voted to Grant the Variance from Article 15 Section 15.2.1.

Ms. Marashio voted to Grant the Special Exception from Article 15 Section 15.2.1.

Mr. Tarbassian voted to Grant the Special Exception from Article 15 Section 15.2.1.

Mr. Blohm voted to Grant the Special Exception from Article 15 Section 15.2.1.

Mr. Fichter advised Mr. Bruss that he 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. Budd made a motion to adjourn. Mr. Fichter seconded the motion. All in favor.

The meeting adjourned at 9:27 p.m.

Respectfully submitted,

Angela Monahan

Recording Secretary