**Zoning Board of Adjustment**

**September 12, 2016**

Approved May 8, 2017

**Members Present:** Peter Fichter, Chair; Harry Seidel, Nancy Maraschio, Members.

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

**ADMINISTRATIVE BUSINESS**

**New Member/Alternate**

Mr. Fichter called for a Motion to appoint Armen Tarbassian as a Member of the Zoning Board of Adjustment until March 2017, filling the vacant position formerly held by Steve Russell.

Mr. Seidel made a motion to appoint Armen Tarbassian as a Member of the Newbury Zoning Board of Adjustment until March 2017. Ms. Marashio seconded the motion. All in favor.

Mr. Fichter called for a Motion to appoint Gary Budd as an Alternate to the Zoning Board of Adjustment.

Mr. Seidel made a motion to appoint Gary Budd as an Alternate to the Newbury Zoning Board of Adjustment. Ms. Marashio seconded the motion. All in favor.

Mr. Fichter welcomed Mr. Tarbassian to the ZBA and noted that he is voting member for this hearing. Likewise, Mr. Fichter welcomed Mr. Budd to the ZBA.

**Minutes**

There were no minutes available to review.

**CONTINUATION- Appeal of Administrative Decision** regardingproperty 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.

Mr. Fichter noted that there was a different set of Board members tonight than when Ms. Clement presented her appeal at the June 13, 2016 meeting. He offered three options to Ms. Clement: (1) to proceed with her appeal hearing at tonight’s meeting; (2) if her appeal is re-presented at tonight’s meeting, Mr. Tarbassian and Mr. Budd will be excused, which means Ms. Clement must have three “Yeas” for a successful appeal; or (3) continue the hearing to a future date and time certain.

Ms. Clement chose to continue her appeal until the November 14, 2016 ZBA meeting.

Mr. Fichter made a motion to continue the Appeal of Administrative Decisionregardingproperty owned byMaureen Clement located at 80 Park 10 Road, Newbury, NH which in the Select Board’s opinion is one legal lot of record, Newbury Tax Map 031-795-325, until November 14, 2016 at 7:15 p.m. Mr. Seidel seconded the motion. All in favor.

At 7:30 p.m., Mr. Fichter appointed Mr. Budd as a voting member for the following hearing.

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

The Recording Secretary read into the record the following Public Notice: *Notice is hereby given that the Newbury Zoning Board of Adjustment will conduct a public hearing on the following proposal on* ***Monday, September 12, 2016*** *at the Town Office Building at 937 Route103 in Newbury, NH:* ***7:30 p.m., John Van Siclen Revocable Trust,*** *property located at 28 Echo Cove Road, Newbury, NH will seek a* ***Variance*** *from the requirements of Article 5; section 5.9.1 & Article 15; section 15.2.1 to permit the following: To allow relocation and reconstruction of an existing non-conforming building within the right-of-way setback. Newbury Tax Map 016-596-002.* ***7:30 p.m., John Van Siclen Revocable Trust,*** *property located at 28 Echo Cove Road, Newbury, NH, will seek a* ***Special Exception*** *from the requirements of Article 5; section 5.7.1 & 5.7.4 & 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 016-596-002. 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.*

Mr. Fichter noted that the Board will review the request for a Variance first.

Will Davis, Horizons Engineering Inc., and Jeremy Bonin, Bonin Architects & Associates, PLLC, agents, presented to the Board.

 Mr. Davis reviewed the plans and the existing property, noting the lot is 2 ½ acres with an existing leach field, house, driveway and garage. He said phase 1 of the proposed plan is to construct a new garage with an accessory apartment on the second floor. He said the wastewater leach field is designed for a 5-bedroom house.

Mr. Bonin noted that house may be a remodel of the existing house of a new structure altogether.

Mr. Davis said that when the plans for the house are decided, another collection tank will be installed. He added that the Code Enforcement Officer approved the septic plan.

Mr. Seidel asked if the existing septic system is on the submitted plans and if it is linked and functioning. Mr. Davis said it is functioning without problems. He reviewed the location of the septic system with the Board by referring to the displayed plans.

There was discussion regarding the setback from the road. Ms. Marashio questioned who owns the road. Mr. Davis said that, technically, the road is owned by the Van Siclens with a right-of-way. The existing garage dimensions were reviewed (498 square foot) along with its location within the road setback.

Mr. Bonin noted that there are no plans to change the ROW allowances that currently exist for the users of the parking area.

Mr. Fichter noted that there are two dimensional issues: the plan calls for moving the garage to a new location which requires a variance; and the footprint is larger. If the applicant chose to build on the existing footprint, there would be no need for a variance.

There was discussion regarding the potential use of the accessory apartment. Ms. Marashio noted that these plans call for a new building with 637 square feet. She added that this is not a matter of moving an existing building to a new location, but rather the construction of a new building that is significantly larger than what is there now.

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

*16.7.1 The variance will not be contrary to the public interest because:* The proposed building location provides more separation from Echo Cove road than the existing building location provides for improved safety. The new building location will also be further from the lake than the existing building and stone drip edges will be provided to improve stormwater management on site. Therefore, the variance will not be contrary to the public interest.

*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 Echo cove road alignment is very constricted as it passes through the property. There is a sharp curve that is unique to other properties in the area and this creates difficulty in using the existing garage in its current location. Turning in and backing out can be difficult due to limited space and the sharp curve.

 *b. The property is different in a meaningful way from other properties in the area because:* Because the property is located along a sharp curve on Echo Cove road, a large portion of the usable area on the lot is located in the 30-foot front setback. This setback area is larger than other properties in the area since it has frontage on Echo Cove Road on two sides instead of one.

 *c. The property is burdened more severely by the zoning restrictions because:* The lot configuration and Echo cove Road alignment create setbacks that are unique to this property.

 *d. Because of the special conditions of the property, the proposed use of the property is reasonable because:* It will provide a more nearly conforming building location with additional stormwater management. The accessory apartment is an allowed use by special exception and the garage is an existing use.

*16.7.3 The variance is consistent with the spirit of the ordinance since:* The proposed project is in keeping with the spirit of the ordinance to promote health, safety and general welfare. <Moving the building away from the road will improve safety. Moving the building away from the lake and adding drip edges will reduce impacts to the lake, which will improve health and general welfare.

*16.7.4 Substantial justice is done because:* The applicant will be allowed to reconstruct a garage and add an accessory apartment while improving the safety of the general public and reducing stormwater impacts to the lake.

*16.7.5 The value of surrounding properties will not be diminished because:* The reconstruction of an older garage and addition of an accessory apartment will increase the value of the subject property. There will be no negative impacts to abutting properties. Therefore, the value of surrounding properties will not be diminished as a result of this project.

Mr. Seidel said he made a site visit and noted that the proposed plans will have a significant impact on the views now enjoyed by the adjacent properties.

Mr. Fichter said it appears that there will be substantial tree removal in order for construction to occur and asked how many trees will be removed on the property. Mr. Bonin said not many trees will be removed when relocating the proposed garage/apartment back from the road. Mr. Davis said two or three trees will be removed.

Mr. Bonin said the plan is to leave as many trees as possible. He added that there will be impacts due to construction but all attempts will be made to keep those impacts to a minimum. He said there will be landscape plans to be implemented once the new garage/apartment is completed. He stated that the intent is to improve the sight line on Echo Cove Road.

Mr. Budd questioned the distance between the abutters’ houses and the proposed garage/apartment. Mr. Davis said the proposed building is 75 to 80-feet from one neighbor’s house and 100-feet from the other neighbor’s house.

Ms. Marashio noted that the new building will be a two-story building versus the one-story garage currently on the property. Mr. Bonin said it won’t be problematic because it will be located further back on the property, not right on the road like the existing garage is located.

Mr. Fichter noted that the plans do not include elevations and requested that elevations be included. Discussion followed regarding the grade of the property and the elevations.

Mr. Bonin noted that the height of the existing garage is 14-feet and the height of the proposed building is 25-feet.

Ms. Marashio questioned how this plan is not contrary to the public interest (16.7.1). Mr. Bonin said the proposed plan is taking something that is non-conforming and making it less non-conforming.

Ms. Marashio added that the plan also changes the character of the building. She questioned why the new garage must be located at this site and not someplace else on the property. She noted that there is a sizable amount of property and wondered why another location isn’t being considered.

Mr. Bonin said any other location would remove the existing parking and make the garage less convenient to the house. Mr. Davis added that locating the new garage further back on the property would require more land disturbance.

Ms. Marashio pointed out that the applicant has not considered another location for the new garage.

Mr. Bonin added that when the house remodel/replacement is completed, he anticipates that there will be a garage included in those plans.

The Recording Secretary read into the record the following letters received from concerned citizens:

**Letter 1:** *September 6, 2016, Dear Mr. Fichter, We are the owners of 34 Echo Cove Road and abutters to 28 Echo Cove Road. Unfortunately, we are not able to attend the hearing scheduled for September 12 in person so appreciate the opportunity to respond in writing to the proposals put forth by the Van Siclen family. We are opposed in the strongest possible terms to the construction of san accessory apartment so close to our property. The proposed location of the construction is extremely close to our home. By allowing an additional cottage to be built far closer than Newbury specifies in the right-of-way setback regulations, the proposed construction will impact us in a very direct way. The unique value of our home is predicated upon the privacy that we are afforded at the end of a quiet, on-lane gravel road. By allowing a variance to the right-of-way setback rules, the value of our property will be permanently and materially diminished. The unique beauty and privacy of our home will be destroyed. Critically, the Van Siclen garage is set on an extremely tight corner and therefore, their proposed new construction will impact our property far more than their own. The simple geometry of asking for a setback variance on an inside corner of the road is much more impactful to neighbors than it would be along a straight road. The building will be materially closer to our home than to the Van Siclens. If they want additional living arrangements on their property, they should either build a larger home in their current location (already being planned we believe) or abide by the well-established setback regulations. The Van Siclens have over two acres of woodland and can easily build their additional space without encroaching on our privacy. The regulations are in place for a reason – it is the town’s duty to protect the rights of neighbors in a situation like this. Additionally, we are extremely fearful of an accessory apartment that includes a kitchen in that location. While we appreciate the Van Siclen’s desire to have guest quarters, we are strongly opposed to having a kitchen in that space as it opens up the possibility that the apartment could be rented out separately by the current or future owners. According to the Town of Newbury Regulations, the intent of the regulations that allow accessory apartments is to provide opportunity for rental housing units; it is precisely the possibility of rentals that causes us to reject the proposed design that includes a kitchen. As stated in the Van Siclen’s zoning board application, the proposed location is in a very tight, constricted location. Having an additional residence that could be rented out in this very tight spot would be very detrimental to us and the other neighbors and would add traffic in an area that cannot safely accommodate it. The safety of the one lane road and the quiet spirit of the neighborhood cannot accommodate as apartment with a kitchen that could be rented out independently. Echo cove is a very narrow, unpaved one lane road where people walk their dogs and take strolls. Our kids play kids whiffle ball on the road – it is uniquely quiet and private area. The tight conditions, the sharp curve of Echo Cove and the safety concerns of cars turning in/backing out are all referred to in the application. The building of an apartment under these conditions creates great safety concerns for all of us – and cause us to strongly oppose the idea of a kitchen. In summary, we are extremely fearful of the impact on our family and our home driven by the variance and special exception that the Van Siclens are requesting in their proposal. We would be supportive of the 10-foot setback request if the building were to remain solely a garage. However, the proposed building is a dramatic departure from the current structure – with a 30% larger roof and twice the height of the existing garage. Additionally, we would be supportive of a larger structure built the full 30-foot setback from the road as long as it does not include a kitchen. The Van Siclens have a large, beautiful home on the water and do not need to destroy the value of our home so they may have a second “rental” cottage in the woods. Thank you for your consideration. Sincerely, Inna & Mark Moore, 24 Echo Cove Road, Newbury.*

**Letter 2:** *September 9, 2016 I am unable to attend the public hearing on September 12, 2016 concerning the proposal of the John Van Siclen Revocable Trust property located at 28 Echo Cove Road. I do not oppose the variance allowing the relocation and reconstruction of the existing building. I do, however, oppose the granting of a Special Exception to allow the construction of an accessory apartment within a building less than five years old. I have reviewed the application and all documents and do not see any hardship that suggest the current zoning regulations should be waived. I believe the Town of Newbury has regulations for good reasons and they should be followed. Sincerely, Beverly R. Wolf.*

**Letter 3:** *September 6, 2016 Dear Mr. Fichter, We are the owners of 16 Echo Cove Road and neighbors to 28 Echo Cove Road. Unfortunately, we are not able to attend the hearing scheduled for September 12 in person but are writing this letter to express our opposition to [the] proposal put forth by the Van Siclen family. The proposed location of the construction is extremely close to our home and will be caddy-corner to it, almost diagonally opposite. By allowing an additional cottage to be built far closer than Newbury specifies in the right-of-way setback regulations, the proposed construction will impact us in a very direct way. By allowing a variance to the right-of-way setback rules, the value of our property will be permanently and materially diminished. Additionally, we are extremely fearful of an accessory apartment that includes a kitchen in that location for fear that it will be used by current or future owners as a separate rental apartment. According to the Town of Newbury Regulations, the intent of the regulation that allow accessory apartments is to provide opportunity for rental housing units; it is precisely the possibility of rentals that causes us to reject the proposed design that includes a kitchen. As stated in the Van Siclen’s zoning board application, the proposed location is in a constricted location. Having an additional residence that could be rented out in this very tight spot would be very detrimental to us and the other neighbors. The safety of the one lane road and the quiet spirit of the neighborhood cannot accommodate an apartment with a kitchen that could be rented out independently. This structure would essentially create another dwelling within this tight, quiet, shared community road. In short, we ask you not to approve this variance and special exception that the Van Siclens are requesting their proposal. Thank you for your consideration. Kristen and Nader Moavenian, 16 Echo Cove Road, Newbury.*

**Letter 4:** *September 12, 2016 Concerning-Meeting September 12, 2016, John Van Siclen property @ 28 Echo Cove road, Newbury, NH, Variance & Special Exception especially pertaining to Survey map page 2 of 4: (1) We bought our home in march 1968. We were told, at that time, that it included the parking lot off our road near the proposed garage/apartment. It’s really important for us because of the small amount of land we own. We have to double up the cars in our driveway, and move them when someone needs to get out. No one has ever mentioned anything different in 48 years. (2) There are steps to the lake from under our deck that were there way before our home was built. It was a path (probably part of the boy’s camp) that we just added some wood and gravel to make it easier to climb the hill. There’s an embankment to the left that they skirt around. Again, no one in 48 years has ever questioned that it wasn’t ours. (3) We’re bringing this to your attention at this time because we cannot accept this survey without some kind of understanding as to these two items. To make it more difficult, our home burned down in March of 2010. We no longer have any of the original surveys or papers involved in the original purchase. In those days, also, we’re not sure how accurate surveys were. We want to make sure that this survey is respectful of our property. (4) It’s really important that if these variances and special exceptions are approved, we want to make sure (in writing) that our road is put back the way it was before the construction of both garage and future home. (5) We also question why it is so important to have the garage/apartment o far away from the home. We sympathize with Inna & mark Moore, mostly because they look right across to the garage from their master bedroom and others. It seems as though with all the property the Van Siclens and Moores own, there couldn’t have been a better solution for all. Respectfully submitted, Brenda S. & Charles L. Killam.*

Mr. Bonin noted that the above written opposition from the abutters to the apartment portion of the plans is not applicable since the zoning regulations encourage accessory apartments on properties as a way to enhance available rental properties in town.

Mr. Fichter clarified the intent of the regulations regarding accessory apartments: Accessory apartments were designed to allow for aging family members to remain in close proximity to their relatives; and to provide affordable workforce housing.

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

 Bill Harrison, 14 Echo Cove Road, said the road is a quiet one and that he is appalled that the Van Siclens would put another building on the property and a rental property at that. He said it destroys the neighborhood to have a rental unit. He added that the Board should not approve a separate living space without knowing the plans for the rest of the property.

 Brenda Killam, 20 Echo cove Road, an abutter, discussed her concerns regarding the retention of her property per a 1968 survey that was lost in a house fire. She is worried that construction will remove some access on her property that she now has.

Mr. Fichter noted that property surveys and covenants between property owners are a civil matter and not within the ZBA’s purview or authority.

 Deb Benjamin, 38 Echo Cove Road, noted that the road is maintained by all the neighbors and that the road width is 15-feet, not 30-feet. She said the proposed plan is not for a garage – it is for a condominium with a car underneath. She said the old garage fits in with the property. The proposed new garage/apartment will be intrusive on the neighbors (Killams and Moores) and she stated that she supports their concerns.

Mr. Seidel asked what other options were considered regarding the location of the new building. Mr. Bonin said by pulling it further into the lot and making it fully conforming the driveway will have to be longer and the septic will have to be relocated. Also, the impact to the land will be greater.

Mr. Seidel offers two suggestions on the displayed plans where the proposed new garage could be located – both suggestions would be closer to the house.

 Mr. Fichter reopened the hearing for further public input.

 Ms. Benjamin asked if the house will be remodeled or rebuilt and a garage will be included in that plan, why the applicant is building a new so-called garage at this time.

 Mr. Harrison agreed and encouraged the Board to look at the development plans for the whole property, not just this one building.

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

Mr. Fichter expressed concern regarding the removal of trees and the sensitive nature of the location.

Mr. Budd agreed, noting that the negative impact on the sensitive environment and the neighborhood is troublesome. He added that there are alternatives on the property for relocating this type of building and those alternatives have not been considered.

Ms. Marashio cited 16.8.2.2 and discussed the definition of hardship as defined by the zoning ordinance. She noted that, in her opinion, hardship does not exist.

Mr. Tarbassian stated that the height of the proposed building will have a significant impact on the neighbors. He added that the property is large enough to consider an alternative location.

Mr. Bonin rebutted, saying that he sits on the new London Planning board and that it is his experience that considerations such as those presented in this application should be viewed as creating a balance. The alternative locations suggested would create significant negative impacts to the land while the proposed plan would minimize such impacts and make the property less non-conforming.

There being no further discussion 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 5; section 5.9.1 & Article 15; section 15.2.1 to permit the following: To allow relocation and reconstruction of an existing non-conforming building within the right-of-way setback. Newbury Tax Map 016-596-002. Mr. Fichter seconded the motion. All in favor.

Ms. Marashio voted to Deny the Variance from Article 5; section 5.9.1 & Article 15; section 15.2.1 because hardship was not established.

Mr. Budd voted to Deny the Variance from Article 5; section 5.9.1 & Article 15; section 15.2.1 because there are alternative locations on the site for the proposed plan.

Mr. Tarbassian voted to Deny the Variance from Article 5; section 5.9.1 & Article 15; section 15.2.1 because there are alternative locations on the site for the proposed plan.

Mr. Seidel voted to Deny the Variance from Article 5; section 5.9.1 & Article 15; section 15.2.1 because there are alternative locations on the site for the proposed plan, and the plan would degrade the quality of the surrounding neighborhood.

Mr. Fichter voted to Deny the Variance from Article 5; section 5.9.1 & Article 15; section 15.2.1 because there are alternative locations on the site for the proposed plan, and the plan would degrade the quality of the surrounding neighborhood.

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

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Meg Whittemore

Recording Secretary