

**Zoning Board of Adjustment
October 15, 2007**

**Members Present: Elizabeth Ashworth, Chair; Katheryn Holmes, Vice-Chair;
Barbara Richmond; Steve Russell; Helen Wright**

Ms. Ashworth called the meeting to order at 7:15 p.m. The Board reviewed the minutes of October 1, 2007 and made corrections.

Ms. Holmes made a motion to accept the minutes of October 1, 2007 as corrected. Mr. Russell seconded the motion. All in favor.

Ms. Ashworth informed the Board that the Helprin hearing would not be heard by the Zoning Board of Adjustment this evening. She explained that after discussing the issue with Bill Weiler, Planning Board Vice-Chair, it became evident that the Helprin application is an issue that needs to be addressed by the Planning Board for a Conditional Use Permit for work in the wetland buffer zone area.

Ms. Holmes asked if the Helprin application will return to the Zoning Board of Adjustment after it is heard by the Planning Board.

Ms. Ashworth stated that she is not sure at this point in time since she has not seen the application.

Ms. Holmes was adamant that the Town boards have to work together, not in each other's stead. She commented that if the Helprin's get a blessing from the Planning Board, then they should have to come to the Zoning Board for a special exception or variance. The Town oversight needs to continue. DES cannot be everywhere, and they depend on the Town to be their eyes and ears.

Ms. Ashworth stated that she is going to initiate a joint board meeting and asked the Board members to review the cases that have been heard by the Zoning Board this past year and develop a list of questions in preparation for the meeting. Interpretation of intent and/or questions about clarification of the regulations in specific cases will be most helpful.

At 7:15 p.m. Appeal of Administrative Decision regarding Cindy & David Lapp's property located at 103 Bay Point Road, Newbury, NH which was granted a Variance as provided for in 5.9.1 to permit the following: Reconstruct a home on an existing non-conforming lot situated within the 15' setback from the side and rear property lines. Newbury Tax Map 007-166-398.

Ms. Ashworth reminded the Board that only the side setback issue in 5.9.1 is being addressed in this hearing.

Frank Anzalone, Architect and representative for David and Cindy Lapp, presented a survey of the existing site and explained that the Lapp's have an existing home on a small lot that was built during the turn of the century. The existing home is not insulated and there are no footings or foundation under the house. After receiving quotes from builders to restore the house, it became evident that it is too costly to repair the house, and the Lapp's are better off tearing the house down and starting over. There are certain site restrictions, which prevent the Lapp's from being able to meet the side setback. The septic system was replaced in 2000 with a Clean Solution System and is located between Bay Point Road and the house site, and on the southerly side there are wetlands and vegetation, a well, and a culvert that drains nearby wetlands into the lake.

Ms. Wright asked Mr. Anzalone why they did not consider rebuilding in the same footprint.

Mr. Anzalone explained that a four-bedroom house would not be able to be built within the same footprint and meet the building codes in place today. The existing interior stairway is very narrow and steep, and the bedrooms are very small. The building code allows for a minimal amount of repairs to be done without having to meet the codes, but there is too much work to be done to stay below the radar. Due to the aforementioned site restrictions, there was no other feasible location for the house.

Ms. Holmes asked Mr. Anzalone what are the before and after footprint dimensions of the house.

Mr. Anzalone stated that the before dimension of the footprint is 1,448 sq. ft. and the after dimension is 1,538 sq. ft. There is a total increase of 300 sq. ft. as a result in the increase in the size of the bedrooms and the stairway to satisfy current codes. The proposed four-bedroom house is a total of 2,200 sq. ft.

Ms. Ashworth asked Mr. Anzalone if there were outbuildings.

Mr. Anzalone stated that there is a detached garage that will stay on site to be used for winter storage.

Ms. Ashworth asked Mr. Anzalone if they would consider deleting the attached garage so that the master bedroom could shift away from the property line.

Mr. Anzalone explained that removing the garage from the plans would not make much difference because the orientation of the new home has been turned and the bedroom does not impact the required 15 ft. setback. The existing grandfathered setback is 6 ft. 8 in., and after revisions, the proposed setback is 6 ft.

Ms. Ashworth pointed out to Mr. Anzalone that if the setback was the same as the existing house, the Lapp's would not have had to come to the Zoning Board for a variance.

Mr. Anzalone acknowledged Ms. Ashworth's comment and explained that the well and the culvert on the southerly side will not allow the project to go back any further. He pointed out that Ms. Ryan, abutter, is only 6 in. off the common property line.

Mr. Hirshberg commented that the plan has been thought out thoroughly to move as far back as possible to move further away without impacting other issues of drainage on the property.

Ms. Holmes asked Mr. Anzalone if they had considered digging a new well.

Mr. Anzalone explained that they did consider digging a new well, but because of the septic setbacks, it cannot be relocated in a better place.

There were no further questions from the Board. Ms. Ashworth opened the meeting to the public.

Ann Ryan, appellant, explained that she is the abutter to the north and was not able to be at the last hearing. She commented that she objects to the proposed house being located closer to the property line primarily for fire safety issues. This is a tight situation that is going to get even tighter if the house is built where proposed. There are certain parts of the house that are going to get closer, and she stated that she feels very strongly about keeping the current distance between the homes. If there was a fire, the fire could jump from one to the other quite easily. She also expressed concern for where the propane tanks will be located especially since because of the close proximity, firefighting equipment will not be able to fit between the houses.

Paul LaCasse, Newbury Building Inspector, informed the Board that the current building code for a one-hour fire-rated wall is 0 (zero) ft. The current building code is based on the idea that if there is a fire it should be able to be extinguished without spreading to a structure only five feet away.

Mr. Anzalone stated that the narrowest point from the home to the property line is 6 ft., increasing to as much as 12 ft. 6 in. at the farthest point.

Ms. Ryan commented that she has not seen the house plans since they have been revised from August 6, 2007.

Ms. Holmes asked Mr. Anzalone what the setbacks of the original house currently measure.

Mr. Anzalone stated 6 ft. 8 in. from the house to the property line at the closest point and 17 ft. is the farthest corner away from the lake.

Ms. Ryan commented that the impact of moving the house closer to the property line is only part of the problem. By moving the house back, it creates congestion among the

houses because now instead of a staggered layout, there will be three houses in a straight line, which destroys the little bit of privacy afforded by the staggering.

David Lapp commented that their goal in rebuilding was to move the house back from the lake and be environmentally more responsible with vegetation.

Mr. LaCasse asked the Board to consider making a one-hour fire rated wall a condition of approval if the Board approves the application.

Mr. Anzalone commented that there is already a one-hour fire rated wall worked into the building plans. He explained that currently there is a fire safety hazard with the exposed studs, asphalt roof, and no foundation, which creates drafts. The leaning trees are a general safety hazard but also create a bridge for flames to follow from one house to the other.

Ms. Holmes asked if Mr. Anzalone has considered a vegetation plan to create some degree of privacy between the homes.

Mr. Anzalone explained that there is already a vegetation plan in place, which includes ground cover and bushes. The vegetation can certainly be increased but needs to be mindful of the balance between privacy and fire safety.

Henry Thomas, Newbury Fire Chief, commented that any time there is a newly constructed home replacing an old home, which is an asset to the fire department. The homes built to the newer codes take longer to ignite and sometimes even die out themselves before the fire department arrives.

Mr. Anzalone stated that there is a proposed 4 ft. foundation that will slope down to a walkout basement on the lakeside of the house.

Ms. Ryan asked if moving the house to the south is just “difficult” or impossible. The culvert that was mentioned earlier services a man-made wetland resulting from the wetland across Bay Point Road. She asked if there are any solutions that would help deter the flow of water from the Lapp’s property so that the wetlands on the southerly side are not so much of an issue, thereby facilitating the shift of the house further away from the property line. She commented that she would appreciate an effort to exhaust every possibility of site layout before moving the house closer to the property line.

Ms. Holmes explained that historically Bay Point Road would always have water flowing over the road before the culvert was installed. There are people currently involved in creating solutions for storm water management. She commented that the Lapp’s seem to have tried to deal with that by moving the house back from the lake, planting vegetation to increase the absorption of surface water before it gets to the lake and slow the velocity of the remaining water as it heads toward the lake.

Mr. Anzalone commented that other possibilities of site layout have been considered, but they cannot manage the storm water that comes onto the property. In order to move the house back from the property line, the culvert would have to be moved. In order to move the culvert, a machine would have to be brought in, trees would have to be cut, and the well would have to be drilled closer to the lake. All aspects of that activity would require DES and Conservation Commission approval.

Mr. Hirshberg, Civil Engineer, commented that when there are higher flows of water, a wetland will expand like a sponge. If the wetland area is reduced, the wetland will not hold as much water during high flows and that causes more runoff. The NH DES typically does not allow the reduction of wetland areas. Moving the culvert would also require authorization from the abutter's to the south would be required since the culvert would be within 20 ft. of their property line

Matthew Clark, abutter to the south, stated that he would not be in favor of moving the culvert closer to the property line he has in common with the Lapps.

Mr. Anzalone pointed out that the distance between the closes portions of the Lapp's house and the Ryan's house is currently 12 ft. 8 in. The proposed distance between the homes is 12 ft. 2 in.

Ms. Ryan stated that seven years ago, Bay Point Road was repaved and the direction of the culvert was changed. She suggested that perhaps the culvert is an issue with the Town, and the Town should be responsible for overseeing the culvert and the resulting wetland.

Ms. Holmes commented that sending runoff into a wetland is a good thing so that the surface water has a place to rest and be cleaned.

Ms. Ryan stated that she appreciates Ms. Holmes' comment, but this particular wetland is less than 10,000 sq. ft. and is therefore not considered protected by State regulations.

Mr. Anzalone commented that even though the wetland is not over 10,000 sq. ft., it still serves a purpose.

Mr. Hirshberg commented that moving the wetland would impact the balance of the existing vegetation. Moving wetlands also tends to accentuate the impact of erosion and sediments getting into the lake.

Ms. Ashworth asked Mr. Anzalone if he considered deleting the proposed garage, pull back the home from the property line and changing the shape of the house.

Mr. Anzalone commented that even with all of those changes, it is still going to be a tight fit.

Mr. Lapp stated that they also looked at trying to bring the bedrooms forward, but that won't work either because of the height restriction in the zoning regulations.

Ms. Holmes asked Mr. Anzalone in the compromise would be that big if they had to honor the 15 ft. setback.

Mr. Anzalone commented that they would have to lose a bedroom and move the house closer to the lake.

Ms. Holmes commented that now the Zoning Board is in a situation where it is doing a good thing for the lake but a bad thing for the neighbor. She commented that she is encouraged by Mr. LaCasse and Mr. Thomas's testimony regarding fire safety.

Ms. Ashworth asked how many trees are proposed to be cut down.

Mr. Anzalone stated that 3 trees within 10 ft. of the home and the most dangerous trees because of leaning are flagged for removal.

Ms. Holmes pointed out that the Town of Newbury has a tree cutting in the buffer zone regulation that allows for only two trees to be taken down.

Ms. Ryan stated that the trees on the north side are just as important to storm water management as those on the south side and they should not be taken down. She asked Mr. Anzalone if the 200 sq. ft. increase in the home includes the proposed garage and the walk out basement.

Mr. Anzalone explained that the 200 sq. ft. increase includes the garage but not the 800 sq. ft. walk out basement. He commented that the basement space is needed for utility and storage.

Cindy Lapp stated that the storage space under the house is needed for storage of kayaks and canoes during the winter.

Ms. Ryan commented that she was under the impression that that is what the existing garage is to be used for and that is why the existing garage is not being taken down.

Mr. Lapp commented that this is not their idea of an ideal house. It is much smaller than what they would really like, but it is similar to the neighbors with similar lot constrictions.

There were no further comments from the public. Ms. Ashworth closed the public input portion of the meeting and opened the meeting to questions from the Board members.

Mr. Russell asked Mr. Anzalone if there was a way to reconfigure the house to make it more conforming.

Mr. Anzalone commented that if the house is shifted to the south, then the existing and natural features of the lot have to change impacting the culvert and the wetland. He stated that 2,200 sq. ft. is very small for a 4-bedroom house and cannot be reconfigured.

There were no further questions from the Board. The Board began deliberation.

Ms. Richmond commented that she understands and sympathizes with Ms. Ryan, but the setbacks are the setbacks. If everyone moves away from the lake, there is still going to be congestion. She commented that she thinks the new house will be a safer structure built to current building codes and is happy with the plan.

Mr. Russell commented that it seem as though Mr. Anzalone has done everything he could to compromise by moving the house further back and did every thing he could to address the storm water management. He stated that he sympathizes with the location of the house and its proximity to the neighboring house, but at the risk of negatively impacting the lake, this plans seems to be the best option. He commented that he thinks the design that Mr. Anzalone and Mr. Hirshberg came up with minimizes the impact on the lake. This plan replaces a fire hazard with a home with state of the art precautions built into it.

Ms. Wright commented that this is a difficult situation, but the proposed plan makes adjustments and considerations in building practice for fire safety and she did not see fire safety as an issue any more. Unfortunately these are tiny lots and difficult to design. Some adjustments could probably have been made, but this plan is not unreasonable.

Ms. Holmes commented that she knows how critical it is to have space between neighbors, but this lot has a lot of challenges and it is difficult to get your mind around all of it. Digging in the 75 ft. setback is also an issue. One of the reasons the health of Lake Sunapee is teetering is because of development, so when you have a client pulling a house back and putting in a vegetative buffer zone, you have to applaud that.

Ms. Ashworth commented that she agrees with a lot of what has been said. The impact on the Ryan's is huge, but it is also huge for the Town to have a property owner take responsible steps to protect the lake. She commented that she also would not want to see any of the trees come down.

Ms. Holmes made a motion that the Board vote on the request with the following conditions: That a one-hour rated firewall be used in the construction of the Lapp's new home and that site improvements adhere to the buffer zone regulations in Article 7.6 of the Newbury Zoning Ordinance. Ms. Richmond seconded the motion.

VOTE: Ms. Holmes voted in favor to grant the variance with conditions.

Ms. Wright voted in favor to grant the variance with conditions.

Mr. Russell voted in favor to grant the variance with conditions.

Ms. Richmond voted in favor to grant the variance with conditions.

Ms. Ashworth voted in favor to grant the variance with conditions.

Ms. Ashworth clarified that the Zoning Board of Adjustment is upholding its original decision to grant the sideline setback variance.

Mr. Russell made a motion to adjourn. Ms. Holmes seconded the motion. All in favor.
Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Linda Plunkett