

ZONING BOARD OF ADJUSTMENT
Minutes of September 8, 2008

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

Ms. Ashworth called the meeting to order at 7:15 p.m.

At 7:15 p.m. continuation of Parry Family Trust, property located at 9 Old Mill Road, Newbury, NH, will seek a Variance from the requirements in Paragraph 5.3.2 and 7.4 of the Newbury zoning Ordinance to permit the following: construction of a storage shed within the required sideline setbacks. Newbury Tax Map 007-233-313

Ms. Ashworth informed the Board that she has received a written request from Mr. Parry to continue this hearing because the engineer has not been able to complete the erosion control plan as requested by the Board at the last hearing. She commented that since he does not have the materials prepared that the Board specifically asked for, it would be her recommendation to allow the continuance.

Ms. Holmes made a motion to continue this hearing until Monday, October 20, 2008 at 7:15 p.m. as requested by Mr. Parry. Ms. Richmond seconded the motion. All in favor.

Ms. Ashworth advised the abutters present for the Parry hearing that if they cannot attend, they may write a letter to the Board and it will be read and considered at the meeting.

MINUTES

The Board reviewed the minutes of August 11, 2008.

Ms. Holmes made a motion to accept the minutes of August 11, 2008 as submitted. Mr. Russell seconded the motion. All in favor.

Comprehensive Shoreland Protection Act

Ms. Holmes informed the Board members that a representative from DES will be offering a presentation on the CSPA at the Newbury Town Office Building on Tuesday, September 23, 2008 at 6:30 p.m. She encouraged the Board members to attend.

Site Reviews

Ms. Holmes commented that it is important in cases involving the buffer zone that someone from the Board should actually go out and measure how far the water reference line is from the proposed construction. The Board should make all cases contingent upon DES approval. Also she commented that some of the septic systems around the Lake were constructed for seasonal use only, and the Board should check on all systems that come before the Zoning Board to make sure they are compliant.

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Fall Conference

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Ms. Ashworth advised the Board members that if anyone wants to attend the Fall Conference, they should let Denise, Land Use Clerk, know so that she can register them through the Town.

At 7:15 p.m. Gerald Bundy, property located at 1230 Route 103, Newbury, NH, will seek a Special Exception as provided for 5.4.1 to permit the following: Workshop as accessory building for cottage industry. Newbury Tax Map 019-733-289.

Ms. Ashworth advised Mr. Bundy that there is not a full Board this evening, and gave him the option of continuing his hearing until October when a full Board may be present.

Mr. Bundy stated that he would like to move forward with his application this evening. He stated that he feels confident that his application is allowable by the purpose of the zoning regulations and is going on recommendation by Ken McWilliams, Town Planner, to apply concurrently to the Zoning Board for a special exception and the Planning Board for site plan review.

Mr. Bundy presented his application and explained to the Board that he has a small stone business, which is run out of his garage and has been running the business out of his garage for the past 12 years. He referred to his summary letter submitted with his application.

"I am applying for a special exception to the residential zoning regulations per Article 5.4 of the Newbury Zoning Regulations, Uses Permitted by Special Exception – Cottage Industry (5.4.1) on the property owned by Gerald and Elise Bundy at 1230 Route 103. The proposed structure is a steel structure on a concrete slab 70ft. x 45ft.

I am proposing construction of a building for my stone fabrication business that I have been operating out of my garage for the past 12 years. I operate a non-retail business and believe that this business has had a negligible impact on my neighborhood over this time. No hazardous materials are used, all water used in fabrication is contained and recycled and noise is unnoticeable outside of the building. There is no outward appearance of business conducted. As a non-retail business, there is no traffic incurred.

The only noticeable change in appearance from outside of the property will be that the existing logging road where it enters route 103 will be upgraded to a driveway. The proposed building will not be visible from any perspective. I will have to cut trees to provide approximately 250 ft. of drive and for the building envelope and am willing to revegetate an equal amount of land that is presently open. The NH DOT has reissued a driveway permit for access to Route 103.

As to the issue of storm water management and sediment control, I believe the town's interests and concerns dovetail with my own. The area I am proposing to utilize is not in any drainage area and presents no existing water issues, including during severe weather conditions. In order to allow for extra safety factor with regards to water management, I intend to implement permanent best management practices per the NH DES Storm water Manual where prudent to do so.

In 1998, the Planning Board granted me permission for this project as a cottage industry, however I did not proceed with this plan as I would have had to borrow funds. I am at this point prepared to move ahead with this project and am seeking the town's approval. Respectfully..."

1 Mr. Bundy explained that the granite fabrication he produces are pieces for architectural enhancements
2 such as fire places and rounded columns. When he originally got approval from the Planning Board in
3 1998, his property was still zoned commercial, therefore, a special exception was not required. Since so
4 much time has lapsed and no work has been done, he has to start over under the current zoning
5 requirements. He reiterated that there are no hazardous materials involved in the fabrication and no
6 waste except for some stone millings that are recycled. The water used during fabrication is also
7 recycled. There are no solvents or flammable materials or chemicals used. Everything is self-contained
8 within the shop. There are currently no employees involved, but Mr. Bundy stated that he would like to
9 have approval for one as a contingency should it become necessary in the future. There is no customer
10 traffic coming to the shop. Everything is delivered to a location off-site in his own pickup truck. The NH
11 DOT has re-issued the driveway permit onto Route 103. All of the aspects of the driveway will be
12 reviewed by the Planning Board during the site plan review process. The proposed building is 70 ft. x 45
13 ft. and 25 ft. high at the lowest grade.

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15 Ms. Ashworth informed the Board that all of the abutters were properly notified. No objections were
16 submitted.

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18 Ms. Richmond asked Mr. Bundy what size rock he works with.

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20 Mr. Bundy stated that the size of the rock varies depending on the project. There have been projects
21 that have involved a 10 ft. x 1 ft. piece of rock, others have been small strips of molding. Mostly the
22 projects involve shaping and are made to order.

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24 Ms. Ashworth asked Mr. Bundy why he is proposing to build such a large building.

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26 Mr. Bundy explained that currently he works in his garage, which is very tight and difficult to maneuver
27 around. He explained that every time he needs to work with a different piece of equipment, he has to
28 move things around to make room – constantly shifting and arranging throughout the project. The
29 larger building will enable him to set up all pieces of equipment and have elbow room to move around
30 and maneuver the larger pieces without rearranging the equipment. He stated that the building will be
31 insulated in order to provide a workable space in the colder weather.

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33 Ms. Holmes asked Mr. Bundy if he will be installing a septic system to service the proposed building.

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35 Mr. Bundy stated that he is undecided about whether or not to build a septic system to service the
36 proposed building. He commented that the soil is perkable and could support a septic system if needed
37 in the future. The topography is flat, but he would like to keep as much of the land intact and natural as
38 possible.

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40 Ms. Holmes asked Mr. Bundy if he thought the steep slopes behind the proposed site would be a
41 problem.

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43 Mr. Bundy stated that the seasonal drainage that comes off the steep slopes will not be impacted by nor
44 will it impact the building site. He informed the Board that he has been reading "The Green Book" and if
45 necessary, is considering creating a ditch on the high side of the driveway which will lead through a
46 gully and into a catch basin. There is no place for water to run off because there is a natural berm
47 between Route 103 and the building site that would prevent any runoff from leaving the property.

1 Ms. Ashworth commented that the focus of the Zoning Board should be to consider if this proposed use
2 is appropriate for this area.

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4 Ms. Holmes commented that under the provisions of the Cottage Industry, there may be as many as two
5 other employees. She recognized that Mr. Bundy is asking for possibly only one other employee, his
6 proposed workshop will not be seen from the road, the abutters are not disapproving of the application,
7 and he has been carrying on this business unnoticed in his garage and wants to expand the business

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9 Mr. Bundy clarified that the expansion of the business is expansion of the working environment only,
10 not volume.

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12 Ms. Ashworth opened the hearing to the public. Since there were no members from the public present
13 for questions, Ms. Ashworth closed the hearing to the public and the Board began deliberations.

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15 Ms. Holmes recognized that there will be some tree cutting and minor altering of the land in order to
16 site the building.

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18 Ms. Ashworth referenced the provisions of Article 5.

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20 *5.0 PURPOSE: The purpose of this Article is to regulate the density, distribution and building*
21 *envelope of development and construction within the Residential District so as to: 1.) Reinforce the goals*
22 *of the Town of Newbury Master Plan to preserve its rural character, 2.) Promote construction of housing*
23 *which maintains and strengthens traditional New England settlement patterns of compact villages*
24 *surrounded by open, rural landscape, 3.) Promote the economical and effective use of services and*
25 *resources, including roads and highways, fire protection and police protection, 4.) Preserve natural,*
26 *scenic and historic resources, 5.) Protect and minimize the fragmentation of natural areas, critical*
27 *habitat and productive forest, agricultural land and open space. It is the intent of these regulations to*
28 *limit development density on land where fragile features and critical natural resources are located. The*
29 *goal is to balance individual property rights with the protection of the town's community assets and rural*
30 *character through appropriate and sensitive land use. Rather than designating multiple zoning districts*
31 *within the designate Rural Residential District, minimum lot size and maximum density for a site shall be*
32 *based upon the unique characteristics of the parcel relative to the presence of Steep Slopes, Aquifers,*
33 *Wet Lands, Flood Plains and Deer Wintering Areas as well as road access and proximity to protected*
34 *open space.*

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35 Ms. Ashworth commented that this proposal is in character with the residential area. Cottage Industry
36 is not Retail. Therefore, on-site customer retail traffic would not be allowed under this provision.

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38 Ms. Holmes commented that when the Board gives a special exception to a commercial endeavor, there
39 seems to have a wide scope of possibilities. If a Special Exception is granted, the Board could place a
40 condition that the site not be used for on-site retail customers. She commented that Mr. Bundy has
41 presented his parameters very clearly. Therefore, if Mr. Bundy wants to change the parameters, he
42 would need to come back to the Board to amend the application.

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44 Mr. Russell commented that the general location where Mr. Bundy is proposing to build the structure is
45 not high density, neighbors large tracts of undeveloped land, and abuts the outskirts of the Mt. Sunapee
46 State property. There will not be lots of high traffic and no customer traffic, which amounts to very low
47 impact on the neighborhood.

1 The Board reviewed the criteria of Article 16.6 – Special Exceptions – General Conditions and agreed
2 that Mr. Bundy’s application satisfies all of the provisions of Article 16.6, which are addressed in his
3 narrative.
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5 Ms. Ashworth commented that although the application complies with the requirements of the
6 ordinance, traffic patterns could be an issue. Therefore under the provisions of Article 16.6.4.6,
7 Regulation of number, design, and location of drives or other traffic features; the Board could set a
8 condition on the approval to address the possibility of traffic hazards.
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10 Ms. Holmes made a motion that the Board vote on Mr. Bundy’s Special Exception Application for a
11 Cottage Industry with the condition that there shall be no on-site retail traffic and the special exception
12 is contingent upon approval of Site Plan Review by the Planning Board. Mr. Russell seconded the
13 motion.
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15 Ms. Richmond voted to grant the special exception with conditions stated.
16 Mr. Russell voted to grant the special exception with conditions stated.
17 Ms. Holmes voted to grant the special exception with conditions stated.
18 Ms. Ashworth voted to grant the special exception with conditions stated.
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20 Ms. Ashworth advised Mr. Bundy that there is a 30-day appeal period in which his abutters may appeal
21 the Board’s decision.
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23 Ms. Richmond made a motion to adjourn. Mr. Russell seconded the motion. All in favor. Meeting
24 adjourned at 8:45 p.m.
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26 Respectfully submitted,
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29 Linda Plunkett
30 Recording Secretary
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