

Zoning Board of Adjustment
July 13, 2009

Members Present: Katheryn Holmes, Chair; Steve Russell; Sue Russell, Alternate;
Peter Fichter, Alternate

Ms. Holmes called the meeting to order at 7:15 p.m. and circulated a draft of the guidelines for application to the Zoning Board of Adjustment to be discussed later.

Ms. Holmes appointed Ms. Russell and Mr. Fichter as voting members for this evening's meeting.

The Board reviewed the minutes of May 11, 2009 and made corrections.

Ms. Russell made a motion to accept the minutes of May 11, 2009 as corrected. Mr. Fichter seconded the motion. All in favor.

The Board reviewed the minutes of May 20, 2009 and made corrections.

Mr. Russell made a motion to approve the minutes of May 20, 2009 as submitted. Ms. Russell seconded the motion. All in favor.

The Board reviewed the minutes of June 8, 2009 and made corrections.

Mr. Russell made a motion to accept the minutes of June 8, 2009 as corrected. Mr. Fichter seconded the motion. All in favor.

At 7:30 p.m. Steven & Jennifer O'Brien, for property located at 9 Bay Point Landing Road, Newbury, NH, will seek an Area Variance from the requirements of Paragraph 5.9 of the Newbury Zoning Ordinance to permit the following: Construction of a new house within the side setbacks of the property. Newbury Tax Map 007-086-460.

Frank Anzalone of Frank Anzalone Associates was present as an authorized representative for this application. Mr. Anzalone explained to the Board that this property has been in the O'Brien's family since the 1850's. Over time, the family has changed as has the site. Currently, there are two houses on the site. One down by the Lake has been there over 100 years and the other one closer to Bay Point Landing Road has been there not as long, but is also in a state of disrepair. The O'Brien's would like a home to fit their needs. The lot is approximately 75 ft. x 180 ft. deep. The placement of the new septic system dictated the placement of the well and the house. The two existing homes are well within the sideline setbacks, and the leach field, which is also very old, is partly on the neighbor's property.

Mr. Anzalone explained that the O'Brien's would like to remove the two existing houses and septic systems and build one new home with a new enviro-system clean solution septic system. Because of the width of the property, it is difficult to site a standard home. The proposed home is to be 2,357 sq. ft. The designers tried to place the leach field as close to the property line as possible without encroachment. This leaves the septic system only 7 ft. from the proposed attached garage.

Mr. Fichter asked Mr. Anzalone if the O'Brien's had applied for a septic approval.

Mr. Anzalone stated that a septic approval had been applied for and approved by the Board of Selectmen and the State of NH.

Mr. Fichter asked Mr. Anzalone if the septic system is as close to the side line boundary as possible.

Mr. Anzalone explained that the engineer sited the septic system as close to the side line boundary as possible in order to maximize the available building envelope for the structure. This leaves the septic system only 7 ft. from the foundation of the proposed garage.

Ms. Holmes asked where on the septic approval for construction it states that the system will be a Clean Solution.

Mr. Anzalone stated that although the O'Brien's are planning a Clean Solution, they still have to design for a conventional system. Therefore, there clean solution is not indicated on the approval. This system is the best answer for this area because of the slope of the land; the waste will be pumped up to the leach area.

Ms. Holmes asked Mr. Anzalone if the two old systems will be dug up and the area reclaimed.

Mr. Anzalone explained that there are regulations in place for taking out old systems. The carting company will take care of the old systems and the old houses. One of the old systems' sites will be covered by the proposed new home and the other site will be reclaimed by planting native vegetation as per the landscape plan. One of the old house sites will also be covered by native vegetation for less maintenance and to help control and manage ground water filtration. The run-off from the roof of the garage will be guttered and sent to a rain garden; therefore it will not have an impact on the leach field. The O'Brien's intent is to leave as much of the land natural as possible.

Ms. Holmes asked how deep the foundation of the garage goes down.

Mr. Anzalone explained that the garage will be on a slab with a 4 ft. frost wall. As the land slopes downward, there will be a full walk-out basement which will only go 4 ft. into the ground as it gets closest to the lake.

Ms. Holmes asked Mr. Anzalone if there would be any blasting activity.

Mr. Anzalone commented that he does not anticipate the need for blasting. He explained that there were test pits dug, and no ledge was encountered. If ledge does exist further down, there is hydraulic equipment that can be brought in to fracture the rock without blasting.

Mr. Anzalone pointed out that the two existing homes have a total of 12 bedrooms and two old septic systems, and the proposed home will have only 4 bedrooms and a new clean

solution septic system.

Mr. Russell asked if either one of the existing houses have basements.

Mr. Anzalone stated that both existing houses have basements. Mr. Anzalone went on to address Article 16.7 of the zoning ordinance.

16.7 Variance, Variance from Article 5.9.1 to allow the construction of a single family residence within the side yard setback.

16.7 Variance: The Board may, on appeal, grant a variance from the provisions of this Ordinance, if ALL the facts specified below are found by the Board.

16.7.1 The variance will not be contrary to the public interest.

Two existing houses are currently located on the site. Both of these houses are located over the side yard setback. One of the houses has a setback of 1'-1 1/2" (on the south side of the property) and the other house has a setback of 14'-1" (on the north side of the property.) Both of these houses will be removed and replaced with only one new house. The new house location will be an improvement to the nonconforming side yards. One of the side yard encroachments will be eliminated and the other will be reduced to 11'-3 1/2".

The public will benefit from the increased side yard setback. The removal of two houses and replacement of only one will reduce the visual impact for the public. It will also reduce the septic loading on the site, increase onsite rain fall collection and help control the rain runoff from the site into the lake. These improvements will improve the water quality of the lake which will benefit the public interest.

16.7.2 Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

The existing lot has a lake shore frontage of approximately 75'. Current zoning requires 200'. The existing lot size is 13,860 sq.ft., 0.318 acres. Current zoning requires 2 acres. The lot size does not allow for the construction of a new house outside of the setbacks and the construction of a new septic system. The current regulations implemented on an existing undersized lot are an unnecessary hardship on the O'Brien's.

The two existing houses located on the lot have a total of 12 bedrooms. The proposed house has 4 bedrooms. In order to meet the current zoning setbacks two of the proposed bedrooms would have to be eliminated. The additional reduction in the number of bedrooms would cause serious unnecessary hardship to the O'Brien's by greatly reducing the value of the property.

16.7.2.2.1.1 Applicant seeking an area (dimensional) variance:

16.7.2.2.1 *An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.*

The existing houses have several structural issues, moisture issues, are energy inefficient and have several other defects. The houses need to be replaced. Both houses have nonconforming side yards.

Like many of the neighboring properties, both houses were built many years before zoning regulations were implemented. The lot is approximately 75' wide by 178' deep. The lot does not meet today's zoning requirements as far as size.

The size of the lot, side yard setbacks, setback from a right-of-way, setback from the lake, well location and septic requirements leave a small buildable area on the lot. The small buildable area and the location of the septic have restricted locating the house within the setback

16. 7. 2,2.2. *The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.*

The current non-conforming lot has a width and lake shore frontage of 75'. The septic system is to be located on the south west collier of the lot and encroaches into the buildable area. The septic location has reduced the width of the buildable are of the lot and forced the house into the setback. These conditions have restricted the buildable area.

16.7,3 *The variance is consistent with the spirit of the ordinance.*

The site is located within the Residential District zone. The current lot has two single family residences. The indented use is one single family residence.

16,7.4 *Substantial justice is done.*

The nonconforming lot and the other lot conditions listed above will not allow for the construction of a house outside of the side yard setback. The existing non-conforming houses will be removed. Locating the proposed house outside the setback and maintaining the clearance to the septic system would require locating the house closer to the lake and further into the lake setback. The O'Brien's intend to locate the proposed house as far from the lake as possible. This will make the new house as less non-conforming as possible on the lake side and will provide a more environmentally sensitive condition, increase the natural landscape area to help filter rain runoff for improved water quality and improve the public view from the lake and the street.

The only option to construct a new house on this nonconforming lot, in a residential zone, requires removal of the existing two nonconforming houses and locating the house within the side yard setback.

16.7.5 The value of the surrounding properties will not be diminished.

The current deteriorating houses will be removed. The new lake style house and the site layout have been designed to improve the value of the property; this will benefit the adjacent properties.

The added lake side setback, added natural vegetation on the lake side and side yards and increasing the natural shore land vegetation will improve the visual value of the lake and help improve water quality. These factors will not diminish the value of the surrounding properties but will help to increase the value of all the adjacent properties and will be a benefit to all that visit the lake.

Mr. Fichter asked Mr. Anzalone if he had considered reducing the number of bedrooms so that the house would not have to be so large and encroach into the sideline setback considering that the proposed house only encroaches on the setback by 4 ft. Perhaps the garage could be 4 ft. narrower.

Mr. Anzalone stated that a whole wing of the house would have to be eliminated in order to stay outside of the sideline setback. He explained that the bedrooms are 7 ft. deep, and if they eliminate one of the bedrooms, there would not be enough room for the whole family.

Mr. Fichter pointed out that the plans indicate the lower level for future expansion of recreational use. He suggested that the lower level could be used as a 4th bedroom.

Mr. Anzalone commented that the basement is not conducive to a bedroom. Also, the garage would only be able to fit one car instead of two.

Ms. Holmes stated that not having a garage does not constitute a hardship.

Mr. Anzalone commented that by current real estate standards, a garage is necessary for future marketing purposes.

Ms. Russell commented that she understands the desire for the applicant to have a two-car garage, but a 17 ft. x 6 ft. 10 in. bedroom is very large and could be made smaller. If the garage was moved over approximately 4 ft., then a waiver from the sideline setback would not be necessary.

Mr. Anzalone commented that 20 ft. was needed from for sideline for the leach field per State requirements. He explained that if the proposed house was moved closer to the lake, the garage would not need a setback variance. The lot is small and was either going to require a variance from the sideline or the lake. The sideline is the lesser of two evils and better for Lake's water quality.

Mr. Russell commented that there is ample space in the basement that could be used for a bedroom. Having a bedroom in a finished basement is not really a hardship.

Mr. Anzalone stated that some of the final plans are contingent on a budget, and the applicant is not exactly sure what the basement space is going to be used for. The O'Brien's did not

originally want a basement space, but due to the slope of the land, it was the most feasible way to site the house. Mr. Anzalone reminded the Board that the O'Brien's are proposing to remove two houses and two septic systems off the lot to be replaced by one house with one two-car garage. The impact on the site will be much less under the proposed new house.

Ms. Holmes asked Mr. Anzalone if he recalled how he came up with the dimensions of the building envelope.

Mr. Anzalone explained that by process of elimination from the setback, the building envelope shown on the plan was the area left outside of encroachments. He pointed out that the run-off from the roof of the house/garage can be managed with gutters and rain gardens, but if the leach field is moved closer to the lake, run-off maintenance from the leach field is not so sure as the system gets older.

Ms. Holmes asked if the O'Brien's would be living in the proposed house year round.

Mr. Anzalone informed the Board that eventually, the O'Brien's would like to move to the lake house permanently and retire in Newbury.

Ms. Holmes commented that Mr. Anzalone had stated that 'these upgrades will improve the water quality of the Lake'; but actually, we do not know if these upgrades will improve the water quality of the Lake, but it could eliminate some of the negative impacts. She stated that a variance is difficult to obtain because of the hardship criteria and applauded the plan for pulling the building back from the Lake. Ms. Holmes commended the vegetation/permanent erosion control plan.

Ms. Holmes asked if the O'Brien's had received an approval for construction of the septic system from the Department of Environmental Services (DES).

Mr. Anzalone stated yes, and presented a copy of the Approval for Construction of the septic system Permit No. 00031 dated May 29, 2009 and a copy of the Shoreland Impact Permit Approval, Permit No. 2009-01023.

Ms. Holmes asked Mr. Anzalone if there were any other permits required.

Mr. Anzalone advised that a waiver for the removal of the existing houses and the existing septic systems is required, as well as obtaining the required municipal permits for construction.

Mr. Russell asked Mr. Anzalone if there would be any trees removed from the site in order to clear for the new construction.

Mr. Anzalone stated that the plan shows six trees that are marked for removal on the demolition plan.

Mr. Fichter asked Mr. Anzalone to explain the stairway that appears to be an encroachment in the sideline setback.

Mr. Anzalone explained that because the plans are two-dimensional, it is difficult to see that the stairway Mr. Fichter was questioning is not attached to a structure. It is an independent stairway for safe access to the Lake side of the property, therefore exempt from setbacks. They will be stone steps.

Ms. Holmes asked Mr. Anzalone to explain the proposed height dimensions on the plan.

Mr. Anzalone explained that the height of the building was calculated in accordance with the Newbury building height regulations and approved by the building inspector.

The Board reviewed and discussed the building height regulation in the zoning ordinance.

Mr. Fichter suggested that rather than the discussion get bogged down by an interpretation issue, the meeting should continue onto the next issue.

The sense of the Board was in agreement with Mr. Fichter.

Ms. Holmes opened the meeting to the public.

Theodore O'Such commented that the use of the words *leach field* and *septic system* seemed to be used interchangeably and asked if there was a difference between the two references.

Ms. Holmes clarified that *leach field* and *septic system* had been used interchangeable, and there was no significant difference between the two within this hearing.

There being no further questions or comments from the public, Ms. Holmes closed the hearing to the public and the Board began deliberations.

Mr. Fichter suggested that the Board hear testimony about the setback from the Lake per Article 7.3 before deliberating on Article 5.9 since some of the information yet to be heard could have an influence on the decision of Article 5.9.

The sense of the Board was in agreement with Mr. Fichter.

Mr. Fichter made a motion that the Zoning Board of Adjustment vote on both article after hearing all information on both applications. Mr. Russell seconded the motion. All in favor.

The Board took a 10 minutes recess.

At 7:45 p.m., Steven & Jennifer O'Brien , for property located at 9 Bay Point Landing Road, Newbury, NH, will seek an Area Variance from the requirements of Paragraph 7.3 of the Newbury Zoning Ordinance to permit the following: Construction of a new house within the 75 ft. wetland setback of the property. Newbury Tax Map 007-086-460

Mr. Anzalone addressed the request for variance setback from the Lake. He explained that there are two existing houses, and the closest one is 31 ft. from the Lake. The proposal is to remove the two houses and build one house 52 ft. back from the Lake. This distance moves the proposed house as far back from the Lake as possible without running into conflict with the leach field. The number of bedrooms would be going from a total of 12 between the two existing houses to 4 in the one proposed house, keeping the work within 75 ft. of the Lake to a minimum. There is a shore land protection plan and an erosion control plan included on site plan. The proposed walkway is designed with a pervious surface approved by DES. The patio area is terraced to reduce the velocity of the runoff. Also, a rain garden is incorporated into the plan to collect and mitigate the runoff from the garage roof.

Ms. Russell asked Mr. Anzalone to describe the walkway and patio method of being pervious if they are made of stone.

Mr. Anzalone explained that the walk way and patio is designed to be built with flat stone with spaces in between. Within the spaces would be loose gravel to accept and absorb the water runoff.

Mr. Fichter asked if the proposed house is all guttered into the rain garden.

Mr. Anzalone stated no. The main part of the proposed house is designed to go into crushed stone for a different method of runoff collection and filtration. He explained that there is a 10 ft. drop in a short distance of land, but there is a need for a walkway for safety. The only change from the existing conditions is that steps and a walkway are added. The existing trees and vegetation will remain. If the rain garden exceeds its limits, then the overflow will drain into the pervious walkway. A third line of defense is the native vegetation to absorb runoff before it gets to the Lake.

Mr. Russell commented that it sounds as though there are a lot of components to this permanent erosion control plan. He asked Mr. Anzalone how it would be maintained.

Mr. Anzalone explained that this plan would take less work than the use of gutters. Gutters would need to be cleaned. The proposed plan involves no extra maintenance once it is in place.

Mr. Anzalone addressed Article 16.7 of the zoning ordinance.

16.7 Variance. Variance from Article 7.3.2 to allow the construction of a single family residence within the 75' set back from the normal high water line.

16.7 Variance: The Board may, on appeal, grant a variance from the provisions of this Ordinance, if all the facts specified below are found by the Board.

16.7.1 The variance will not be contrary to the public's interest.

The proposed house will be set back away from Lake Sunapee as far as the septic system setbacks allow, making the house less non-conforming. The public will benefit from the house being moved

back away from the lake; this will provide a more environmentally sensitive condition, increase the natural landscape area to help filter the rain runoff for improved water quality and improve the public view from the lake.

16.7.2 Special conditions exists such that literal enforcement of the ordinance results in unnecessary hardship.

The existing lot has a lake shore frontage of approximately 75'. Current zoning requires 200'. The existing lot size is 13,860 sq.ft., 0.318 acres. Current zoning requires 2 acres. The lot size does not allow for the construction of a new house outside of the setbacks and the construction of a new septic system. The current regulations implemented on an existing undersized lot are an unnecessary hardship on the O'Brien's.

The two existing houses located on the lot have a total of 12 bedrooms. The proposed house has 4 bedrooms. In order to meet the current zoning setbacks two of the proposed bedrooms would have to be eliminated. The additional reduction in the number of bedrooms would cause serious unnecessary hardship to the O'Brien's by greatly reducing the value of the property.

16.7.2.2,1.1 Applicant seeking an area (dimensional) variance;

16.7.2.2.1 An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property,

The existing houses have several structural issues, moisture issues, are energy inefficient and have several other defective conditions. The houses need to be replaced. One of the houses is non-conforming, it has a setback of 52-0 from Lake Sunapee,

The O'Brien's intend to remove the two existing nonconforming houses and replace them with one new house that will meet today's building code requirements. This will increase fire safety for them and the surrounding properties. This will also increase the energy efficiency of the house.

The lot is narrow and nonconforming. The narrowness of the lot leaves little room for a septic system, water well and the house. The house and the septic system have been located as far from the lake as possible. This makes the house less nonconforming.

16.7.2.2.2 The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

The current non-conforming lot has a width and lake shore frontage of 75'. The septic system is to be located on the south west corner of the lot, as far from the lake as possible. The septic system encroaches into the buildable area. The septic location has reduced the depth of the buildable area of the lot and forced the house into the lake setback. These conditions have restricted the buildable area.

16.7.3 The variance is consistent with the spirit of the ordinance.

The site is located within the Residential District zone. The current use is a single family residence. The indented use is also single family residence.

16.7.4 Substantial justice is done.

The lot conditions will not allow for the construction of a house outside of the 75' setback. The existing non-conforming houses will be renovated. The O'Brien's intend to locate the proposed house as far from the lake as possible his will make the new house as less non-conforming as possible and allow them to construct a house in a residential zone.

16.7.5 The value of the surrounding properties will not be diminished.

The current deteriorating houses will be removed. The new lake style house and the site layout have been designed to improve the value of the property; this will benefit the adjacent properties.

The added lake side setback, added natural vegetation on the lake side and side yards and increasing the natural shore land vegetation will improve the visual value of the lake and help improve water quality. These factors will not diminish the value of the surrounding properties but will help to increase the value of all the adjacent properties and will be a benefit to all that visit the lake.

Mr. Anzalone explained that the main reason the septic system is designed where it is, is because they do not want to risk having the septic system wash into the Lake. By keeping it behind the proposed house, the Lake is protected from the chance of that happening.

Mr. Fichter asked if a chambered system could be designed such as those that can be driven over so that the setbacks of the proposed house could be more in compliance since the leach field would not be encroaching on the building envelope.

Mr. Anzalone explained that the problem with that type of system in this situation is that this system needs to be mounded in order to be in compliance with the seasonal high water mark, which is not conducive to parking and driving over.

Ms. Russell commented that according to the Comprehensive Shoreland Protection Act (CSPA), gravel and stone is considered impervious, which is contrary to what DES has allowed in this plan.

Ms. Holmes pointed out that DES did grant the shoreland impact permit; therefore they must not feel there is a violation of the CSPA.

Mr. Anzalone commented that the plan does meet DES requirements. He explained that the patio system that is proposed is not the same as a typical patio and will therefore, remain pervious. He explained t hat because of the time of year that the work will begin, the permanent plantings may not get done this year, but will certainly be done next year as soon as the ground allows.

Ms. Holmes asked Mr. Anzalone what the foundations of the existing homes were made of.

Mr. Anzalone stated that the foundation of the house near the Lake is made of rock, and the foundation of the house near the road is made of concrete.

There being no further questions from the Board, Ms. Holmes opened the meeting to the public.

Mrs. O'Such stated that she does not blame the O'Brien's for wanting to improve their property if they are going to use it during the winter months.

There being no further comments or questions from the public, Ms. Holmes closed the meeting to the public and the Board began deliberation.

Mr. Fichter commented that it sounds as though the septic system is driving a lot of the design and layout of the site. He informed the Board that he did walk the site and his overall sense was that the proposal would not be a detriment to the neighborhood. He commented that he is not convinced that the septic system is adequate. Also it looks as though some things could be moved around to make the building more conforming, but the neighbors do not seem to mind having the building encroach on the 15 ft. set back. Overall, this proposal is going in a direction that is better for the Lake.

Ms. Russell commented that for future knowledge, she would like to get more information for the Zoning Board regarding what type of material is considered pervious vs. impervious in regard to the CSPA.

Ms. Holmes commented that the agreement of the neighbors regarding the encroachment on the 15 ft. sideline setback makes a difference. Additionally, this proposal will clean up and improve the site along with improving the conditions surround the Lake.

Mr. Russell commented that initially he had some minor objections to this plan, but the thoroughness and the well thought out design has addressed those objections. He stated that he feels confident that this proposal will work for this site. He commented that he believes that Mr. Anzalone may be mistaken regarding the maintenance free erosion control plan, but if that becomes evident, it would be addressed at a later date. He stated that he applauds the effort try to create an efficient erosion control system, but none of them are maintenance free.

Ms. Russell emphasized that during construction, the buffer zone area needs to be protected and kept in a natural state.

Ms. Russell made a motion to vote on the request for a variance from Article 5.9 Sideline Setback with the condition that clarification to the height measurement be made prior to obtaining a building permit. Mr. Fichter seconded the motion. All in favor.

Mr. Fichter voted to Grant the variance from Article 5.9 with the condition stated.
Ms. Russell voted to Grant the variance from Article 5.9 with the condition stated.
Mr. Russell voted to Grant the variance from Article 5.9 with the condition stated.
Ms. Holmes voted to Grant the variance from Article 5.9 with the condition stated.

Ms. Holmes made a motion to vote on the request for a variance from Article 7.3 Buffer zone setback. Mr. Fichter seconded the motion. All in favor.

Mr. Russell voted to Grant the variance from Article 7.3.

Ms. Russell voted to Grant the variance from Article 7.3.

Mr. Fichter voted to Grant the variance from Article 7.3.

Ms. Holmes voted to Grant the variance from Article 7.3.

Ms. Holmes advised Mr. Anzalone that there is a 30 day appeal period in which an abutter or party of interest may appeal the Board's decision(s).

Mr. Fichter made a motion to adjourn. Ms. Russell seconded the motion. All in favor.

Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary