

Zoning Board of Adjustment
November 8, 2023
Approved December 13, 2023

Members Present: David Blohm, Chair; Henry Thomas, Vice-Chair; Larry Briggs, Member; Katheryn Holmes, Member; Steve Hurd, Member; Patricia Sherman, Alternate
Members Not Present: Alex Azodi, Alternate

Public: Jeremy Bonin, Greg Rusnica, Philip Hastings, Tom Chesnard, James Smith, John & Cynthia Canaday

Mr. Blohm called the meeting to order at 6:57 p.m.

Minutes

The Board reviewed the minutes of September 13, 2023. Mr. Briggs made a motion to approve the minutes as amended. Ms. Holmes seconded the motion. All in favor.

Board Introductions.

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 Wednesday, November 8, 2023, at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:05 p.m., Cleveland, Waters & Bass, P.A. (agent), Patsy Ruth Fisher Fam Trust(owner), for property located at 325 Bay Point Road, Newbury, NH, will seek Variances from the requirements of Paragraphs 7.4.2, 15.2.1 and 9.4 of the Newbury Zoning Ordinance to permit the following: permit certain additions and modifications to the property in order to make the waterfront more accessible. Newbury Tax Map 006-211-473. Copies of the application 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 am-noon.

Tom Chesnard an attorney from Cleveland, Waters & Bass, P.A. presented to the Board. Mr. Chesnard introduced attorney Philip Hastings, also from Cleveland, Waters & Bass, P.A. and Jeremy Bonin and Greg Rusnica from Bonin Architects and Associates P.L.L.C.

Mr. Chesnard said they are here tonight to discuss property at 325 Bay Point Road.

Mr. Blohm said that he found it a little difficult to understand where the proposed addition is relative to the building.

Mr. Chesnard said the property is a non-conforming lot consisting of approximately .6 acres and located in the residential zoning district. Mr. Chesnard continued that the property contains a single-family residence and is a shorefront property on Lake Sunapee. Mr. Chesnard said that the special conditions of this property relate primarily to its topography, its size, and its shape. Mr. Chesnard continued that there is an increasingly steep slope from the front of the residence on the property all the way to the shoreline in

the rear of the property. Mr. Chesnard submitted photos *[see ZBA case file]* to the Board that he said really emphasizes what kind of slope he was talking about; this is really a serious degree of slope.

Ms. Sherman said the applicant should have drawn a cross section through the site which would have given the Board an understanding of the slope and would have answered a lot of questions. Mr. Chesnard said the pictures show how steep this slope is and how many people would actually have potential issues accessing the waterfront from that property and that is something to consider. Mr. Chesnard continued that this is a residence designed for year-round use and the applicant is in his 70s and there are some mobility issues, and this is really serious for him and that is the crux of why they are before the Board.

Mr. Chesnard said you have the slope but also the narrowness and smallness of the lot. Mr. Chesnard continued that it is the small, cramped narrow lot with the serious slope that really gives it the special conditions that it has, and those conditions have led to the accessibility issues for the applicant. Mr. Chesnard said that the goal is to make the waterfront more accessible in light of the special conditions and to do that the applicant needs certain variances from the Zoning Ordinance, so the applicant is asking for variances from Section 7.4.2, building within the 75 foot setback of the lake, Section 7.6, alteration/reconstruction of existing non-conforming building, Section 15.2.1, alteration and expansion of a non-conforming building, Section 9.4, development of steep slopes and Sections 7.7.2.2 and 7.7.2.4, although they were not mentioned in the Code Enforcement Officers denial letter, which relate to disturbance or removal of natural groundcover within the waterfront buffer.

Mr. Briggs said that he thinks there is another variance needed where the upper platform of the trolley is within the side setback, and this wasn't mentioned in the list of variances. Mr. Chesnard said hopefully that won't change the analysis when it comes to the five criteria and if the applicant is able to proceed tonight, then they can address that. Mr. Chesnard said the applicant is asking for these variances for this project making the shorefront on the property more accessible.

Mr. Blohm said he understands the trolley as a way to get down to the lake. Mr. Blohm noted that every property along that road is steep like this. Mr. Blohm asked for clarification on the placement of the addition. Mr. Bonin outlined the location of the addition on the plan for the Board.

Ms. Sherman asked about the access to the house and how do you get from the house to the trolley and the traverse of the trolley. Mr. Blohm asked why the addition is needed in order to put in a trolley. Mr. Bonin showed the driveway of the property on the plan, showed the proposed addition location, and where the trolley will go across. Mr. Bonin said that the elevator will get you down the three stories to basement level, walk across the patio and the trolley goes diagonally across. Mr. Blohm asked is it a flat surface. Mr. Bonin said from basement level to the top of the trolley it is a flat surface. Mr. Bonin continued that the trolley heads down at an angle to reach the waterfront. Ms. Sherman asked if it was about a twelve-foot run. Mr. Bonin said for the trolley he thinks it is a longer linear run than that. Ms. Sherman said no, height. Mr. Bonin said the trolley itself is close to twenty feet vertical.

Mr. Bonin said the front of the house is approximately on the 50-foot setback from State shoreland and the lake elevation is 21 feet, it's 42% grade, so while all the other sites in the general area are fairly steep, this one is a little bit steeper. Discussion followed.

Mr. Blohm asked why such a big building is needed in order to house an elevator. Mr. Bonin said the addition will be housing the elevator and a new entry with accessible mudroom. Mr. Blohm said coming along with the elevator structure, there is going to be a bunkroom and what else. Mr. Bonin said that will be on the lower level, so the lower level is the elevator, the bunkroom, the upper level is the elevator and the mudroom. Ms. Sherman asked in regard to the septic, if the bunkroom added another bedroom. Mr. Bonin said they are taking a bedroom out of the basement level, so the bedroom count stays the same. Discussion followed.

Mr. Briggs asked if the trolley would be out in the elements all year round. Mr. Bonin said he believes they are powder coated metal. Mr. Chesnard submitted pictures of trolleys from the company the applicant will be working with [see ZBA case file]. Discussion followed.

Mr. Briggs said with the uncertainties that exist in some of the official drawing package, will the Board have a problem. Ms. Holmes said no she doesn't think so. Discussion followed. Mr. Chesnard asked the Board if they feel more information is needed. Mr. Blohm said his reaction to the submission was that it's incomplete, not enough information to actually make a decision. Mr. Blohm continued that there is no information on what the plan is for stormwater management. The Board was in agreement. Discussion followed. Mr. Hastings said he appreciates the Board cutting to the chase and the questions, but he thinks it would be helpful if Mr. Chesnard made the presentation so the Board has everything before them and then at the end, the applicant could get from the Board what they think is needed to move forward.

Mr. Bonin said that the applicant is coming to the Board prior to going for State Shoreland, before having the engineer prepare a full stormwater management plan and the applicant paying for all of that in case of variance denial or a Board requested change that the applicant will need to file with the State again. Discussion followed.

There being no further questions from the Board Mr. Chesnard addressed Article 16.8 of the Zoning Ordinance:

16.8.1 The variance will not be contrary to the public interest because: A variance is contrary to the public interest when it unduly, and to a marked degree, conflicts with the Zoning Ordinance such that it violates the Zoning Ordinance's basic zoning objectives. *Malachy Glen Assoc., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance would violate a Zoning Ordinance's basic zoning objectives: (1) "whether granting the variance would alter the essential character of the neighborhood" or (2) "whether granting the variance would threaten the public health, safety or welfare." *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011).

The variances requested by the Applicant would not alter the essential character of the area where the Property is located. Notably, the Proposal would not change the use of the Property nor will it change its residential appearance. Further, the side of the Residence that the addition would be constructed on faces a thick wooded buffer, which will greatly reduce the visibility of the proposed addition. Accordingly, the proposed addition will to a large degree be inconspicuous to the public due to its small size and the dense woodlands around it restricting its visibility. Also, the exterior of the proposed addition will match the exterior of the rest of the Residence so that the addition does not stand out from the rest of the Residence or otherwise appear out of place.

Additionally, the proposed trolley will be hardly visible at all, from Bay Point Road and its color and size will allow it to blend in with the natural surroundings as much as reasonably possible.

There is no reason to suspect that the variances, or Proposal, will threaten the public health, safety, or welfare of the Town and its residents.

16.8.2 Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. In 2001, the New Hampshire Supreme Court relaxed the unnecessary hardship standard to require only that the zoning restriction interfere with the applicant's "reasonable use of the property, considering the unique setting of the property in its environment." *Simplex Techs., Inc. v. Town of Newington*, 145 N.H. 727, 731 (2001). In other words, if the proposed use is reasonable, considering the unique setting of the property, a hardship may still exist to justify a variance even if other reasonable uses exist which would be permitted under the zoning ordinance.

The analysis of the New Hampshire Supreme Court in *Simplex* was based on the constitutional protections afforded to landowners. "Inevitably and necessarily there is a tension between zoning ordinances and property rights, as courts balance the right of citizens to the enjoyment of private property with the right of municipalities to restrict property use. In this balancing process, constitutional property rights must be respected and protected from unreasonable zoning restriction" The Court found that the New Hampshire Constitution limits "all grants of power to the State that deprive individuals of the reasonable use of their land" and held that the prior standard was too restrictive.

Since *Simplex*, the unnecessary hardship standard has been clarified by statute and further Court decisions. *See, e.g., Rancourt v. city of Manchester*, 149 N.H. 51, 54 (2003) ("Where as before *Simplex*, hardship existed only when special conditions of the land rendered it uniquely unsuitable for the use for which it was zoned, after *Simplex*, hardship exists when special conditions of the land render the use for which the variance is sought 'reasonable.'")

Accordingly, an applicant for a variance need not show that the proposed use is "necessary," only that it is "reasonable." *See Harborside Assocs., L.P.*, 162 N.H. at 518-19. "This factor, however, does not require the landowner to show that he or she has been deprived of all beneficial use of the land." *Harrington v. Town of Warner*, 152 N.H.74, 80-81 (2005). The question of whether the property can possibly be used differently from

what the applicant has proposed is not a material consideration. *Malachy Glen Assocs., Inc.*, 155 N.H. at 108.

- a) *There are special conditions in the property that distinguish it from other properties in the area because:* An unnecessary hardship may arise from conditions that are not shared by all lots within the district. *See Cmty. Res. For Just., Inc. v. City of Manchester*, 154 N.H. 748,752 (2007) (“While the property need not be the only such burdened property, the burden cannot arise as a result of the zoning ordinance’s equal burden on *all* property in the district”). Moreover, an unnecessary hardship does not require the special characteristics to be detrimental characteristics. A hardship may arise if characteristics of the Property render it unusually suited to a proposed use that is otherwise prohibited by the ordinance. *See Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003).

The Property in the instant matter is unique in its slope, size, configuration, and topography. The steep slope located at the end of the Property between the Property and the Residence is a special condition that not all properties within the Residential Zoning District have. Further, although other properties in the area, especially those located on Lake Sunapee, presumably have steep slopes as well, the prevalence of the particular steep slopes near the waterfront on the Property is especially unique. The steep slopes on the Property between the Residence and the waterfront appear to go from the Property’s western boundary to its eastern boundary without breaking or ending at any point in between the boundaries. In other words, there is no feasible way to make the waterfront more accessible from the Residence without having to traverse the steep slopes on the Property. Certain special conditions of the Residence-the existing building on the Property-also should be considered for the purposes of the unnecessary hardship analysis. In particular, the specific location or placement of the Residence on the Property so close to the waterfront and the steep slopes severely limits the location of the proposed improvements.

As a result of these unique characteristics, and the location of the existing Residence on the Property, the proposed addition cannot feasibly be constructed farther from the shoreline and still effectively serve its main purpose, which is to house an elevator to make the lower level-and the proposed trolley-more accessible from the upper level of the Residence.

Similarly, while the Ordinance requires a minimum of 2 acres for properties within the Residential Zoning District, the Property is a 0.6-acre lot. *See Zoning Ordinance*, §5.12. The Property, accordingly, contains a pre-existing nonconforming use which further limits the potential improvements and modifications for increasing waterfront accessibility. Because of the topography, size, and configuration of the Property and the

setback requirements of the Ordinance, any alteration, renovation or construction on the Property would likely require a variance.

- b) *The property is different in a meaningful way from other properties in the area because:* For the same reasons that the special conditions on the Property distinguish it from properties in the area, the Property is also different in a meaningful way from other properties in the area. In particular, the Property's shape, size, location, and unique slope when combined with the current placement of the existing Residence on the Property, create a tangible and legitimate impediment to accessing the waterfront for anyone on the Property with mobility issues. Further, these same special conditions significantly limit the buildable areas on the Property for the addition and the improvements and also make any effective alterations or improvements to increase waterfront accessibility a difficult task.
- c) *The property is burdened more severely by the zoning restrictions because:* As set forth in connection with the special and unique conditions of the Property, those unique and special conditions result in a more severe burden on the Property. Minimum setbacks on bodies of water are generally enacted to protect surface waters from pollution, protect structures from flooding or erosion, and protect water bodies from being adversely affected by construction and human inhabitation. The size and slope of the Property, as well as the location of the existing Residence on the Property, make any construction or improvements designed to increase waterfront accessibility from the Residence unfeasible without the requested variances.
- d) *Because of the special conditions of the property, the proposed use of the property is reasonable because [and no fair and substantial relationship exists between the general purposes of the Ordinance provision and the specific application of that provision to the Property, Relating to Sections 16.8.2.1 of the Ordinance which is not included on the Town's Variance Application Form]:* The uses included in the Proposal-including the construction of the addition (to house a foyer/elevator area) and the installation of a trolley to the Property-are permitted uses in the Residential Zoning District and are therefore presumptively reasonable. *See Vigeant v. Town of Hudson*, 151 N.H. 747, 753 (2005) (uses that are permitted by the Ordinance or by existing variances are presumptively reasonable). Moreover, the extent to which the Proposal encroaches onto the setbacks is relatively minor and will have no impact on the neighbors or the public.

The proposed uses of the Property contained in the Proposal are reasonable in and of themselves and are particularly reasonable in light of the special conditions of the Property related to its shape, size, and topography-such as its steep slopes-and also the special conditions of the Residence related to its placement on the Property.

In fact, there does not appear to be any reasonable alternative to the Proposal that would allow safe and reliable access to the waterfront on the Property in light of advancing age and mobility issues. This is significant because for the property to be fully used and enjoyed, the waterfront must be accessible. To access the waterfront from the Residence currently, one must traverse the steep terrain or use the existing stairs and walkways. Although stairs and walkways can be helpful to some people, stairs and walkways are still a potential impediment to people with mobility issues. The only reasonable way for someone with mobility issues to fully use and enjoy the Property involves the installation of the trolley system, as included in the Proposal. The proposed addition (to house the elevator/foyer area) is also necessary because-without the addition-someone with mobility issues would still be required to use stairs to go from the upper level of the Residence to the lower level to access the trolley.

Section 1.2 of the Ordinance outlines the purpose of the Ordinance and states as follows: The purpose of this Zoning Ordinance is to promote the health, safety, and general welfare of the inhabitants of the Town of Newbury, New Hampshire, to enhance and preserve the value and natural beauty of our lakes, ponds, and natural environment; to conserve the value of buildings and encourage the most appropriate use of land; and to carry out the purposes defined in RSA 672:1 and 674:17 and the Overall Vision of the Newbury Master Plan. *It is the intent of the ordinance to allow individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with the accomplishment of these purposes.*

None of the general purposes of the Ordinance, set forth in Section 1.2 above, would be impaired by this variance or the Proposal as a whole. In fact, many of those purposes would be supported by the Proposal, such as promoting the health, safety, and general welfare of the inhabitants of the Town, and encouraging the most appropriate use of land. Significantly, the Proposal is consistent with the last sentence of Section 1.2, explaining that the intent of the Ordinance is to allow individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with the accomplishment of these purposes. *See* Ordinance, §1.2. In this case, the requested variances will allow the degree of freedom needed to ensure that the Property can be fully used and enjoyed.

16.8.3 The variance is consistent with the spirit of the ordinance because: The requirement that the variance not be “contrary to the public interest” is “related to the requirement that the variance be consistent with the spirit of the Zoning Ordinance.” *Malachy Glen*, 155 N.H. at 105. The Proposal will be consistent with the public interest as discussed above. As mentioned above, the Ordinance is expressly intended to “allow individual landowners as great a degree of freedom in the use and enjoyment of their land as is consistent with the accomplishment of [the Ordinance’s] purposes.” *See* Ordinance,

§1.2. The Proposal is consistent with the character of the area, as many of the nearby properties already enjoy walkways and stairways from their homes to the waterfront in order to enjoy Lake Sunapee. The Proposal will allow the degree of freedom needed for full use and enjoyment of the Property by creating a more accessible waterfront without having any negative impact to any neighbor or the public at large.

Also, the addition's encroachment into the waterfront buffer setback will be benign. The addition will be no closer to Lake Sunapee than the existing building, and there are already stairs and walkways on the Property leading from the Residence to the waterfront. Further, although the 268-square foot addition will add some impervious coverage to the Property, the Proposal's replacement of impervious pavers with pervious pavers for the patio together with a reduction in the amount of retaining walls needed subtracts from the impervious coverage. Importantly, within the most sensitive ecological portion of the site (the waterfront buffer), the amount of impervious coverage will be significantly reduced. In fact, the Proposal will slightly decrease the total impervious coverage of the Property by changing it from 32.2% of the lot to 32.14%. Additionally, the impacted waterfront buffer area will be restored and improved, increasing the "tree point scores" in two sectors from 15 and 20 (both substandard) to greater than 25. Accordingly, not only is the proposed use reasonable, but the Proposal will substantially lessen the environmental impact of the Residence on Lake Sunapee and improve the Property's aesthetic impact.

Accordingly, the spirit of the Zoning Ordinance would thus be observed by granting this variance.

16.8.4 Substantial justice is done because: The "substantial justice" element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general public is an injustice, and whether the proposed development is consistent with the area's present use. *Malachy Glen Assocs.*, at 109. In *Malachy Glen Associates*, the New Hampshire Supreme Court "upheld the trial court's conclusion that the proposed storage facility project worked a substantial justice because it "pose[d] no further threat to the wetlands [,] ... [was] appropriate for the area [.] and [did] not harm its abutters[;] [therefore,] the general public [would] realize no appreciable gain from denying this variance." *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 515 (2011)(citing *Malachy Glen Assocs.*, 155N.H. at 109).

The harm to the Applicant of strict enforcement of the Ordinance will far outweigh any benefit to the public in this case. The Proposal allows the Applicant to gain important utility from the Property, including improving the safety conditions thereon by replacing the existing stairway. Denying this variance, on the other hand, would have no material or practical benefit to the public that would outweigh the harm to the Applicant.

The Proposal will not create any of the harms zoning ordinances are designed to prevent. There is little to no public benefit in denying the variance that outweighs the loss to the Applicant. Granting the Application will therefore result in substantial justice.

16.8.5 The value of surrounding properties will not be diminished because: The Proposal will have little, if any, impact on the overall character of the area. There is no reason to

suspect that the proposed addition and proposed improvements to make the waterfront more accessible on the Property will have any negative impact on property values. The Applicant reserves the right to amend, modify, and/or supplement this application at or before the hearing thereon.

Discussion followed.

Mr. Blohm opened the public portion of the meeting.

John Canaday, the abutter, said there is a good buffer between his property and the applicants, and he does not have any concerns about it. Mr. Canaday continued that the steepness of the property has been accurately described and he favors the proposal and sees this as a value added to the property.

There being no further comment from the public, Mr. Blohm closed the public portion of the meeting.

Discussion followed.

Mr. Bonin said he would like to recap the additional information the Board wanted, site sections, a better plan illustrating the addition location and the location of the trolley. Mr. Briggs said with dimensions. Mr. Bonin continued, resolving the TFMoran note #7. Ms. Sherman said also note #6. Mr. Briggs said stormwater management, erosion control plan per the checklist. Mr. Bonin said he was waiting for the Board to deliberate for direction on stormwater management. Discussion followed. Mr. Blohm suggested a continuance and the applicant would come back with the information. Mr. Thomas said the applicant is waiting until after the variance is granted to go for the DES Shoreland Permit. Mr. Bonin said that was the applicant's preference. Mr. Thomas said that other applicants have presented on stormwater management more or less what their intents are, not engineered drawings and all of that. Mr. Blohm said he would agree with Mr. Thomas. Mr. Thomas said the applicant could show a siltation fence and retention while under construction using best practices on the plan. Discussion followed. Mr. Blohm said the applicant is to come up with something that will satisfy the requirement of the Board's checklist.

Mr. Thomas made a motion to continue the hearing for 325 Bay Point Road, Newbury Tax Map 006-211-473 to December 13, 2023 at 7:05pm.
Mr. Briggs seconded the motion. All in favor.

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 Wednesday, November 8, 2023, at the Town Office Building at 937 Route 103 in Newbury, NH: At 7:10 p.m., Allen & Major Associates, Inc. (agent), Bulang Investments LLC (owner), for property located at 1285 Route 103, Newbury, NH, will seek Variances from the requirements of Paragraphs 5.9.1 and 9.4 of the Newbury Zoning Ordinance to permit the following: Construction of a 24' x 24' 2-bay garage within the right of way and side setbacks and in the steep slopes area.

Newbury Tax Map 007-019-002. Copies of the application 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 8am to noon.

James Smith from Allen & Major Associates, Inc. presented to the Board.

Mr. Smith said the proposal is for a 24' x 24' garage and the reason for the location is that the property is encumbered by a driveway easement for the neighbor, they share the driveway and they both cross over each other's property. Mr. Smith said stormwater management is shown for the 24' x 24' garage, from the foundation to the property line is 2.2 feet. Mr. Smith continued that the drip edge from the roof is going to be one foot from the property line, the reason is they didn't want to go too far into the side slope, and they can't get into the remainder lot between the railroad and Route 103 to do what they need to do and access that driveway. Mr. Smith continued they are proposing the garage, proposing a retaining wall, re doing the steps, putting an infiltrator trench for the roof drains and a stone lined diversion swale up against the wall where the garage is.

Mr. Smith said the coverage is going to increase from 21.4% to 27.3%. Mr. Briggs asked what the total impervious area. Mr. Smith the total impervious area will be 27%. Mr. Briggs asked if that includes the driveways. Mr. Smith said yes it does, the houses, the walks, everything that's impervious. Mr. Briggs said the table on the plan shows building coverage of 27.3%. Mr. Smith said it should say impervious coverage, it is under 30%.

Mr. Smith said the plan shows silt fencing on the uphill side and the downhill side. Mr. Smith continued that they will have to move an existing utility line that goes to the house but that will be worked out with the electric company.

Mr. Blohm asked, in order to get into the garage, how that was going to happen. Mr. Smith said they were going to put an additional apron in to get into the garage.

Ms. Sherman said the applicant is burying the well in the slab. Mr. Smith said yes, they are going to put a cover on the well and going to maintain it on the slab of the garage floor. Discussion followed.

Ms. Sherman said if this is the radius of this driveway, she scaled it about 40 feet. Ms. Sherman asked why this can't go over far enough to get the setback more like 4 or 5 feet, the applicant still has 30 feet left to back and turn. Mr. Smith said it is his understanding that the applicant and neighbor talked about it and came to an agreement on where the garage should go. Ms. Sherman said she is particularly concerned about how the applicant is going to excavate without damaging the neighbor's property. Discussion followed.

Ms. Sherman said her biggest concern is the setback, a foot setback is not reasonable for the applicant or for the neighbor. Ms. Sherman said she does believe if push came to shove that they could cut that turn back, right now that's almost a hairpin turn. Discussion followed. Mr. Thomas said he agrees that one foot off the property line, you can't dig a foundation without an agreement with the abutter, because you have to have an over dig to

get a foundation in. Ms. Sherman said she doesn't think allowing a one-foot setback in this case is demanded, she thinks that there is a way to increase the turning space by 4 or 5 feet. Discussion followed.

Mr. Blohm asked the applicant if there was the ability to make the change. Mr. Smith said he would have to talk with the engineer and his client, this is what the client wanted. Discussion followed.

Mr. Smith said he can go back to his client with the Board's concerns and see what can be done to adjust. Mr. Blohm said that Ms. Sherman brings up a really valid point with the setback. Discussion followed.

Mr. Smith clarified what the Board is looking for which is elevations on the wall, finished floor elevation on the garage, see about a shift on the garage to accommodate a bigger setback and maybe temper that curve a little bit.

Ms. Holmes made a motion to continue the hearing from Allen & Major Associates, Inc. (agent), Bulang Investments LLC (owner) for property located at 1285 Route 103, Newbury, NH to December 13, 2023 at 7:10pm.
Mr. Briggs seconded the motion. All in favor.

Ms. Holmes made a motion to adjourn. Mr. Briggs seconded the motion. All in favor.

The meeting adjourned at 8:58 p.m.

Respectfully submitted,

Tiffany A. Favreau
Recording Secretary