

Newton Board of Appeals

2 Town Hall Road

Newton, NH 03858

MINUTES OF THE MEETING of September 21, 2020

CALL TO ORDER at 7:30 PM by Tom McElroy, Chairman

ROLL CALL: Tom McElroy, Chairman; Jack Kozec, Michael Connolly, Alan French, appointed alternate Trisha McCarthy, and Alternate Roger Hamel (who has recused himself from consideration of the 125 Development applications); Laura MacKenzie, recording Minutes (Full board attendance).

ACCEPTANCE OF MINUTES: A Motion to accept the Minutes of the August 1st site walk which was pushed off to next month's meeting and the minutes from the August 10th meeting was unanimously passed.

Chairman McElroy called the Public Hearing to order for Rt. 125 development continuation.

Chairman McElroy – There are four variances, A, B, C and D. We will start with A. The variance required for this parcel is from the required 200' structural side setback when abutting another zone. The parcel will have a 50' structural side-setback, where a 200' setback is required. The setback is 50', needing a variance of 150' for the structural setback.

We are going to go through the five criteria:

#1: The variance is not contrary to the public interest such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The response from the applicant is that the variance will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The variance will not change the use or character of the neighborhood. All local, state, and federal permits will be submitted, protecting all health, safety, and welfare of the public.

Who would like to be first, Mike? Would you like to make any comments?

Mike Connolly – I disagree. I do not think it falls into the favor of what the town has voted in.

Alan French – The exact same. We went through a town meeting vote and it was 822 yes, 297 no and the townspeople didn't want the 150' variance.

Jack Kozec – Yes, I disagree, and my comments are that the request for the 150' variance for the rear-side setback is contrary to the public interest and not in the spirit of the ordinance.

Trisha McCarthy – Unfortunately, I agree with everybody that yes, I don't think it's in the best interest and what our residents have voted for, for any type of waiver of the 200' setback.

Chairman McElroy – The primary reason for this 200' buffer is to protect the aquifer. That is one reason why it was set up as 200' and the overwhelming vote for the two different votes in 2013 and again, in 2020 were overwhelmingly against changing the setback from 200 to 50.

Ok let's go to # two: The spirit of the ordinance is observed. The proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare.

Mike you want to make a comment?

Mike Connolly – Again, I will go back to some of the previous comments. I do not think it follows the spirit of what the town has voted in and I have questions on the aquifer, so my vote is no.

Alan French – Back to the same thing... we are all responding to the town vote on these variance requests.

Jack Kozec – I also disagree and go back to my prior comments about the 150' variance and people have spoken out several times in the town of Newton to keep it at 200' and 150' would not be in the spirit of the ordinance.

Chairman McElroy – I also am in agreement with the other members that we are trying to protect the aquifer and the way the town has voted twice on this issue has been overwhelming against changing the buffer zone.

Trisha McCarthy – I am in agreement that it would change the spirit of not only the aquifer and what the public has voted on, but originally way back when we did this it was to protect not only the aquifer, but variance zones and separating residential and commercial. So, I agree this would not be in the spirit of what we should be doing.

Chairman McElroy – Number 3: Substantial justice is done. The benefit of the applicant should not be outweighed by harm to the general public or other individuals. The value of the surrounding properties will not diminish. The parcel will be setback within an adequate and reasonable distance to abutting zones.

Mike Connolly – I think in the spirit of things, the way that this property is being divided up I think in the spirit of the dividing of this the way it's being laid out, there are alternatives that can come into play that should be looked at. I am voting no.

Trisha McCarthy – Yes, and I agree also with Mr. Connolly that there possibly could be alternatives but the way this is presented I believe that it is not in the spirit of what we should be doing and that there could be an alternative but the way it's presented, I have to vote no.

Chairman McElroy – I am in agreement with the other members of the board and I will vote no.

#4: The values of surrounding properties are diminished. Expert testimony on this question is not conclusive but can not be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves. The response from the applicant is that the value of the surrounding properties will not diminish as the usage will not change due to the approval of this variance. The parcel will be set back at an adequate and reasonable distance from abutting zones.

Trisha McCarthy – I agree that if this buffer is changed that it could affect the property values.

Chairman McElroy – Everything I have read about property values being affected, it is up in the air... it may be or may not be, so it is not a definitive answer. So not a definitive answer, but I would vote no on these criteria.

#5: Literal enforcement of the ordinance could result in unnecessary hardship. Unnecessary hardship means the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. Because of special conditions of the property that distinguishes it from other properties in the area: A) there is no fair or substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. The applicant must that because of conditions of the property, the restriction that is applied to the property does not serve a purpose. That purpose in a fair and substantial way. B) The proposed use is a reasonable one. The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternately, the unnecessary hardship means that only to special conditions to the property that distinguish it from other properties in the area. As an alternative to A and B, the applicant can satisfy the unnecessary hardship requirement by establishing that because of the special conditions of the property, there is no reasonable use that can be made of the property that can be permitted under the ordinance. If there is a reasonable use, including an existing use that is permitted under the ordinance, this alternative is not available.

The applicants response to this criteria is that due to the property zoned as light industrial/commercial, it has been developed as such, along with the fact that the surrounding area contains the largest light industrial/commercial zoning in the town of Newton. The ordinance does not accurately reflect the current character of the neighborhood. The regulation directly interferes with the owners right to use the property as he sees fit. Furthermore, the variance does not injure the public right or the rights of others.

Mike Connolly – I am going to refrain from comment. I do not think it meets the current criteria.

Alan French – I just think that there could be another alternative solution. I disagree.

Jack Kozec – I also disagree. We had worked on this piece of property a few months ago and I believe that the developer knew going in that it given these variances, that we had no idea what size buildings were going up and he created his own hardship therefore, I disagree.

Chairman McElroy – I realize this is a small parcel land (2.92 acres) and the property could accommodate a smaller building therefore, I disagree.

Trisha McCarthy – I disagree as well. I believe there could be an alternative design and the way its presented, I agree with everyone else.

Mike Connolly - You may want to make a motion for each one separately.

Jack Kozec- I would like to make a motion to **deny** variance request A for lot 27-7 tax map 14, block 1 for 125 development corp.

...Motion carries

Chairman McElroy – Ok, now we are moving onto variance B for lot 27-7: The variance required is for the 200-foot structural rear-setback when abutting another zone. The parcel has a 50-foot structural rear setback, where a 200-foot setback is required. The setback is 50 feet needing a variance of 150 feet for the structural rear setback.

#1: The variance is not contrary to the public interest such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The response from the applicant is that the variance will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The variance will not change the use or character of the neighborhood. All local, state, and federal permits will be submitted, protecting all health, safety, and welfare to the public.

Mike Connolly – In the spirit of the ordinance, I am going to deny this.

Alan French – Yes, it is a repeat of the side setback.

Jack Kozec - I say no, also. The setback going from 200 feet to 50 feet was defeated in March and we are upholding the mandate as voters and is definitely contrary to the public interest.

Trisha McCarthy – I agree. It is definitely contrary to public interest and the spirit of the ordinance and the residents have spoken and that certainly means something. I agree with everyone else; I would deny this.

Chairman McElroy - Again, we are going back to protecting the aquifer which is the original proposal to create this 200-foot buffer so I would deny this.

#2: The spirit of the ordinance is observed. The proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare.

The applicant's response is the purpose of the ordinance is to ensure an adequate and reasonable distance between zones. With the 50-foot side setback in place, there will be no alterations to the character of the neighborhood.

Mike Connolly – Again, first the spirit of the town vote. But that aquifer, health comes into play so I say no

Alan French – Deny

Jack Kozec – Deny. I think the spirit of the ordinance speaks for itself.

Trisha McCarthy – I agree. It is the spirit of the ordinance, it's the aquifer and really is important to protect our natural resources and the spirit of the ordinance that the town residents have voted on

Chairman McElroy – Again, we are trying to protect the aquifer and uphold the votes that were made twice that denied the change of the buffer zone; I say no.

#3: Substantial justice is done. The benefit to the applicant should not be outweighed by harm to the general public or other individuals.

The response from the applicant is that the benefit to the applicant is not outweighed by harm to the general public or other individuals and the value of the surrounding properties will not diminish as the using will not change and if the parcel will be setback at a reasonable and adequate distance to abutting zones.

Mike Connolly – Again, I go back to public health, the aquifer, and the spirit of what the town voted in, so I need to say no with this.

Alan French – I am going with the town vote and the 200-foot setback

Jack Kozec – The general public outweighs the benefit of the applicant If the variance is approved.

Trisha McCarthy – I would agree. Harm to the general public and public health and damage to the aquifer.

Tom McElroy – Again, I vote no on this particular criterion. The diminishing of surrounding properties is up in the air.

#4: The values of surrounding properties are diminished. Expert testimony on this question is not conclusive but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves. The response from the applicant is that the value of the surrounding properties will not diminish as the usage will not change due to the approval of this variance. The parcel will be set back at an adequate and reasonable distance from abutting zones.

Mike Connolly – Based on the walkthrough, and seeing the distance to the property line, I need to say no at this time.

Alan French – According to the walk we had, the setback does not correlate with what the town vote was.

Jack Kozec – I also disagree. I think it would have effect on property values.

Trisha McCarthy – I have to vote no at this time, as well.

Chairman McElroy – I am also going to vote no. Talking about surrounding values, it's a toss-up whether surrounding properties would be affected.

#5: Literal enforcement of the ordinance could result in unnecessary hardship. Unnecessary hardship means the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. Because of special conditions of the property that distinguishes it from other properties in the area: A) there is no fair or substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. The applicant must that because of conditions of the property, the restriction that is applied to the property does not serve a purpose. That purpose in a fair and substantial way. B) The proposed use is a reasonable one. The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternately, the unnecessary hardship means that only to special conditions to the property that distinguish it from other properties in the area. As an alternative to A and B, the applicant can satisfy the unnecessary hardship requirement by establishing that because of the special conditions of the property, there is no reasonable use that can be made of the property that can be permitted under the ordinance. If there is a reasonable use, including an existing use that is permitted under the ordinance, this alternative is not available.

The applicants response to this criteria is that due to the property zoned as light industrial/commercial, it has been developed as such, along with the fact that the surrounding area contains the largest light industrial/commercial zoning in the town of Newton. The ordinance does not accurately reflect the current character of the neighborhood. The regulation directly interferes with the owners right to use the property as he sees fit. Furthermore, the variance does not injure the public right or the rights of others.

Mike Connolly – I think there are alternatives. I have to vote no with this one.

Alan French – I believe the alternative could be a smaller building on that parcel.

Jack Kozec – Yes, I also disagree. I agree with Alan. I think a smaller building on that property and again, he developed his own hardship.

Trisha McCarthy – I think that the owner could have had another alternative plan or design and a smaller building could achieve it.

Mike Connolly – Yes, the owner did create his hardship

Charmain McElroy – I am voting no. Again, there is another alternative for that property.

Jack Kozec – Made a motion to **deny** variance request B for 125 development corp. of NH.

Motion carries

Chairman McElroy – Ok, we are going on to C, under lot 27-7: The variance required for this parcel is from the required 75-foot building distance from the center line of the street and 50 feet from any lot line. The parcel will have a building and pavement with a 25-foot distance from the center line of the street. The distance from the building to the center line of the street is 25 feet needing a distance of 50 feet.

Coleman McDonough – Two things: One, that is not a road, it is a private driveway. And two, do we have to go through this whole address everything because when you voted no on the 200-foot side-setback, it basically wipes out the whole lot. So, it is not buildable and there is really no sense in moving forward. You cannot reduce the size of the building; the building is wiped out. So, you cannot even fit a building. When you voted out the 200-feet, you cannot even fit a building on that lot.

I am just confused on all the same board members allowed Halo, Recetek, 3 puzzle, 5 puzzle, 9 puzzle, 2 puzzle, and building one. They were all allowed, and they were all 50-feet.

Mike Connolly – When were they years those were put in place?

Coleman McDonough – I can get you all those years. This has been a 12-year project and every lot in phase one, the ZBA approved those lots and they are all the same board members. It just seems like the board should be consistent in the way that this project has gone.

Jace – I have done a couple of these site walks now. And one thing that's important to us is that we do a good job on the plans, and applications that we submit. And its somewhat frustrating to hear that the members don't look at the paperwork we provide and to not know it's a public road and it's a driveway, its outlandish to me and it tells me that none of the members know what they are voting on, the specifications on the buildings, the setback limits and again, I feel like you guys should be looking at the paperwork to know what you are talking about. Its every hearing we do this. Its all recorded, too. Its really unacceptable for those things to happen. There's been times in hearings where members of the board have stated "oops, I haven't even looked at the paperwork yet. Please give me a second so I can grab it."

Coleman McDonough - I have got all these non-conforming buildings, do you think that is fair? Mike, you are a new member, but I go back to boards need to be consistent. We have all these buildings in phase 1 and have been granted a 50-foot setback. This is the same town, same project, same phase, same street, same board, same everything. And its been yes, yes, yes, and now it is no?

The aquifer does not have any bearings on ZBA approval and zoning.

Chairman McElroy – If this letter C variance were to pass, how close would the building be to the right of way or the path, whatever you want to call it.

Coleman McDonough – When you voted and denied us the 200 foot, the 50 foot, you didn't grant us, it wipes out the whole lot. So, it is irrelevant to waste our time and your time. That denial wiped out the whole lot. You can't fit a building unless you want to put it in the air.

There is no building in phase I that conforms with the 200-foot setback.

Barbara White – According to the ordinance, the setback from the centerline of the road for light commercial/industrial zone is 75 feet.

Chairman McElroy –

Ok we will go through the five criteria:

- 1) The variance is not contrary to the public interest such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The response from the applicant is that the variance will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The variance will not change the use or character of the neighborhood. All local, state, and federal permits will be submitted, protecting all health, safety, and welfare to the public.

The applicant's response is the same as it has been with the other variances.

Mike Connolly – No. Defer comment

Alan French – Votes no, as well.

Jack Kozec – The 50-foot variance is contrary to the public interest and not in the spirit of the ordinance.

Trisha McCarthy – Somewhat confused at this point, due to the private drive vs. public road and how variances may vary.

Chairman McElroy – Voted no, as well.

Criteria #2: The spirit of the ordinance is observed. The proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare. The applicant's explanation remains constant.

Mike Connolly – No.

Jack Kozec – No, also.

Trisha McCarthy – No

Chairman McElroy – Voted no, as well.

#3: Substantial justice is done. The benefit to the applicant should not be outweighed by harm to the general public or other individuals.

The response from the applicant is that the benefit to the applicant is not outweighed by harm to the general public or other individuals and the value of the surrounding properties will not diminish as the using will not change and it the parcel will be setback at a reasonable and adequate distance to abutting zones.

-All board members voted no on this particular variance.

Chairman McElroy –

#4: The values of surrounding properties are diminished. Expert testimony on this question is not conclusive but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves. The response from the applicant is that the value of the surrounding properties will not diminish as the usage

will not change due to the approval of this variance. The parcel will be set back at an adequate and reasonable distance from abutting zones.

-All board members voted no on this particular variance.

Chairman McElroy –

#5: Literal enforcement of the ordinance could result in unnecessary hardship. Unnecessary hardship means the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. Because of special conditions of the property that distinguishes it from other properties in the area: A) there is no fair or substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. The applicant must show that because of conditions of the property, the restriction that is applied to the property does not serve a purpose. That purpose in a fair and substantial way. B) The proposed use is a reasonable one. The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternately, the unnecessary hardship means that only to special conditions to the property that distinguish it from other properties in the area. As an alternative to A and B, the applicant can satisfy the unnecessary hardship requirement by establishing that because of the special conditions of the property, there is no reasonable use that can be made of the property that can be permitted under the ordinance. If there is a reasonable use, including an existing use that is permitted under the ordinance, this alternative is not available.

The applicants response to this criteria is that due to the property zoned as light industrial/commercial, it has been developed as such, along with the fact that the surrounding area contains the largest light industrial/commercial zoning in the town of Newton. The ordinance does not accurately reflect the current character of the neighborhood. The regulation directly interferes with the owners right to use the property as he sees fit. Furthermore, the variance does not injure the public right or the rights of others.

-All board members voted no on this item, as well.

Jack Kozec – Made a motion to deny variance request C for 125 Development Corp. of NH.

-Unanimously denied by all members

Chairman McElroy – Going to D: The variance required for this parcel is 50-foot building activity distance from any poorly or very poorly drained soil. The parcel will have a 15-foot distance to building activity, pavement at recharge basin. The building activity for pavement and recharge basin is 15 feet, needing a variance of 35 feet.

-Chairman McElroy went into the five criteria, same as before. The board disagreed with all five criteria, unanimously.

Jack Kozec - Made a motion to deny variance request D for 125 Development Corp. of NH.

-Voted no by all board members.

Chairman McElroy

Lot 27-3, again four variances requested:

A) A 150' variance from the 200' side setback

Going through the five criteria:

1) The variance is not contrary to the public interest such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The response from the applicant is that the variance will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. The variance will not change the use or character of the neighborhood. All local, state, and federal permits will be submitted, protecting all health, safety, and welfare to the public.

The applicant's response is the same as it has been with the other variances.

-Criteria one was unanimously disagreed by the board

2) The spirit of the ordinance is observed. The proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare. The applicant's explanation remains constant: Reasonable distance between zones, nor alternations in character of the neighborhood.

-The board unanimously disagreed with criteria #2

3) Substantial justice is done. The benefit to the applicant should not be outweighed by harm to the general public or other individuals.

The response from the applicant is that the benefit to the applicant is not outweighed by harm to the general public or other individuals and the value of the surrounding properties will not diminish as the using will not change and it the parcel will be setback at a reasonable and adequate distance to abutting zones.

-All board members voted no on this particular variance.

4) The values of surrounding properties are diminished. Expert testimony on this question is not conclusive but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves. The response from the applicant is that the value of the surrounding properties will not diminish as the usage will not change due to the approval of this variance. The parcel will be set back at an adequate and reasonable distance from abutting zones.

-All board members voted no on this particular variance.

5) Literal enforcement of the ordinance could result in unnecessary hardship. Unnecessary hardship means the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. Because of special conditions of the property that distinguishes it from other properties in the area: A) there is no fair or substantial relationship between the general public purposes of the ordinance provision

and the specific application of that provision to the property. The applicant must that because of conditions of the property, the restriction that is applied to the property does not serve a purpose. That purpose in a fair and substantial way. B) The proposed use is a reasonable one. The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternately, the unnecessary hardship means that only to special conditions to the property that distinguish it from other properties in the area. As an alternative to A and B, the applicant can satisfy the unnecessary hardship requirement by establishing that because of the special conditions of the property, there is no reasonable use that can be made of the property that can be permitted under the ordinance. If there is a reasonable use, including an existing use that is permitted under the ordinance, this alternative is not available.

The applicants response to this criteria is that due to the property zoned as light industrial/commercial, it has been developed as such, along with the fact that the surrounding area contains the largest light industrial/commercial zoning in the town of Newton. The ordinance does not accurately reflect the current character of the neighborhood. The regulation directly interferes with the owners right to use the property as he sees fit. Furthermore, the variance does not injure the public right or the rights of others.

-All board members voted no on this item, as well.

Chairman McElroy – Made a motion to deny variance A for lot #1, phase II and III for 125 Development Corp. of NH

-Motion carries, unanimously.

B) A 150' variance from the 200' rear setback

-Chairman McElroy went through the five criteria, same as previously. All board members disagreed with the requests, unanimously.

C) C) A 50' variance from the 75' setback from the centerline of the road

- Chairman McElroy went through the five criteria, same as previously. All board members disagreed with the requests, unanimously.

D) A 30' variance from the 50' setback to poorly drained soils

- Chairman McElroy went through the five criteria, same as previously. All board members disagreed with the requests, unanimously and to **deny** the requests from McDonough construction corp.

-The hearing for 125 Development Corp. has come to an end.

Chairman McElroy – Initiated the hearing for Mr. Jim Bourque.

-Vernon Digman* is representing Mr. Bourque, his engineer.

Mr. Digman explained that this is a lot that previously had a large, 6-bedroom home on it that has since been condemned and taken down. What is being proposed is 2-bedrooms instead of 6 and a home that is roughly 40% smaller than the previously existing home. This was a previously, a non-conforming lot in the way that it was established by 1929 sub-division. This lot cannot meet the wetlands setback from country pond, as it was not thought of back in 1929 ordinance. This is a lot of record. The new home will gain some distance from the lake, due to the new home being smaller.

Trisha McCarthy – On Oct. 3, 2019, conservation received some info. From DES but nothing sense. Conservation should be heavily involved in this before taking action in this.

Vernon Digman -Per the Newton Building inspector, he pointed us to you for a special inspection and that the plans are approved by DES, both septic and shoreline. And structurally, it will meet local codes.

Chairman McElroy – Ok, lets go through the five criteria:

- 1) The variance is not contrary to the public interest such that it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

The applicant's response is that the proposed 2-bedroom house is to replace the previous 6-bedroom house. The new house has all proper state approvals and improvements for the best safety and health to the area.

-The board unanimously agreed on criteria and everything is in order. Trisha McCarthy, however, did abstain from voting as she did not have the proper paperwork to reference.

- 2) The spirit of the ordinance is observed. The proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare.

The applicant's response to this is the proposal has all required state approvals and will upgrading the septic and well and will protect the lake and abutting properties.

- 3) Substantial justice is done. The benefit to the applicant should not be outweighed by harm to the general public or other individuals.

The response from the applicant is that this will be a lower impact property to the environment and property.

- 4) The values of surrounding properties are diminished. Expert testimony on this question is not conclusive but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.

The response from the applicant is that all the proposed improvements will increase the value of abutting properties.

5) Literal enforcement of the ordinance could result in unnecessary hardship. Unnecessary hardship means the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. Because of special conditions of the property that distinguishes it from other properties in the area: A) there is no fair or substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. The applicant must that because of conditions of the property, the restriction that is applied to the property does not serve a purpose. That purpose in a fair and substantial way. B) The proposed use is a reasonable one. The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternately, the unnecessary hardship means that only to special conditions to the property that distinguish it from other properties in the area. As an alternative to A and B, the applicant can satisfy the unnecessary hardship requirement by establishing that because of the special conditions of the property, there is no reasonable use that can be made of the property that can be permitted under the ordinance. If there is a reasonable use, including an existing use that is permitted under the ordinance, this alternative is not available.

The response from the applicant is that the proposal allows the owner to use his lot in the proper loading and safety to the town.

Motion was made by Jack Kozec, seconded by Alan French to have the Board of Adjustments issue a special exemption to James T Bourque: A special exception shall be granted to permit the erection of a structure within the Shoreland Protection District provided that all of the following conditions are found to exist. Reference Newton Zoning law Section XXIX Shoreline Protection District (Overlay) To be Reviewed and enforced by Newton NH Building Inspector.