

**ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING for –  
Area Variance – Haley/Boucher  
October 10, 2005**

**APPROVED W/TYPING CORRECTIONS – 11/14/05  
1<sup>st</sup> DRAFT**

The meeting was called to order at 6:30 p.m. by Chairperson Sager at the property of the applicant on Camp Road for a site visit. A number of abutters and the applicant were in attendance. The discussion was limited to a view of the premises and key aspects related to the application. At approximately 6:45 p.m., Chairperson Sager recessed the meeting and the site visit, to be reconvened at the Town Hall. The meeting was reconvened at the Town Hall at 7:13 p.m. by Chairperson Sager. Those attending were:

<b>REGULAR</b>		<b>ALTERNATES</b>		<b>OTHERS</b>	
Richard Sager, Chair	X	Marge Cutter		Paul Morrill	
George Frothingham, Vice Chair	X	Doug Stewart	X	Dianne Bishop	X
Cecile Arnone	X	David Haag	X		
Marsha Lavallee-Huntoon		Robert Moholland	X		
Maggie Kennedy	X	Paul Winckler	X		

Other attendees included:

Steve Zalewski, Zoning Officer  
Ralph Buchanan, Redi-Block  
Helen Abbott  
Tom Haley  
Caryl Haley

Teresa Haley  
Thomas Soucy  
John Boucher  
Josh Haley  
Brian D. Berlind, Land Tech

The Pledge of Allegiance was recited.

**ROLL CALL – DESIGNATION OF ALTERNATES –**

The board members identified themselves to the audience. Mr. Haag was seated for Ms. Lavallee-Huntoon.

**PUBLIC HEARING – Case # 2005-13**

**Thomas Haley / John Boucher – Map 73, Lot 232**

**Variance – 2.02.D.6 – side setback and 1.02.B.2 – non-conforming structure**

Mr. Haley explained his reasons for applying for this Variance. He had been coming to Pine River Pond since 1958 and purchased this property in November 2004 and proceeded to obtain a building permit and a permit for a retaining wall. There was a complaint from a neighbor that the wall was too close to the property line. Mr. Buchanan from the Redi-Rock Company attempted to move the wall back. As best as could be determined, the wall was placed back in the same place as the old wall. The old wall consisted of wood with 360 tires behind it to stabilize it; it was cabled to two trees and then cabled to several of the tires. It was determined that the old wall was dilapidated and needed to be removed immediately and did so after receiving the permit. The permit was to replace the original retaining wall.

He believes a good job was done as far as putting the new wall up and holding back the land. His concerns now are many: trying to get space for parking, trying to get a septic system installed, trying to get a 26' x 34' house on the lot – as well as hold back the hill. He selected a retaining wall manufactured by a company called Redi-Block. Based on all resources at the time, the Redi-Block system seemed to be the best wall suited for structural integrity.

It was his intention that the wall be replaced and he did the best job he could to put it back in the same place as the original wall. After the complaint from the neighbor, Mr. Haley caused his surveyor (LandTech) to superimpose the old wall on top of the new wall on a plan; it was hard for LandTech to draw it; the only evidence it had is a picture taken from the road taken looking down as the work was being done, and there is one of the orange stakes next to the old wall – it's hard to tell from the photograph is it's 6", a foot or whatever from the property line.

His intent was not to aggravate the neighbors; he is willing to do whatever is necessary to cover/hide the wall from the neighbor's view. At this point he doesn't know the exact distance of the wall from the property line; he believes it appears to be somewhere in the 2 to 2 ½ ft area that the wall swings out past the old wall. Mr. Sager asked if there is any question that the wall is entirely on Mr. Haley's property – Mr. Haley confirmed the wall is entirely on his property.

Mr. Sager then asked if Mr. Haley wanted to address each of the five criteria on his application. Mr. Haley said he didn't know if there was anything more he could add. He said it's a difficult lot, one that slopes strongly toward the water, and trying to get parking, septic foundation also maintain the certain distance from the lake that all of it has to be, makes it a challenging lot.

Mr. Sager asked if the Board had any questions. Mr. Frothingham commented that Mr. Haley made reference to the orange stake in a photograph and asked that Mr. Haley point it out, which he did. Mr. Haag asked if the picture was taken after LandTech's survey, Mr. Haley responded in the affirmative. Mr. Sager pointed out what appeared to be the pre-existing wall, Mr. Haley confirmed it. Mr. Haag asked if Mr. Berlind (representing LandTech) checked the wall prior to doing the survey. Mr. Haley said he didn't think it was an issue at the time, although he did specifically ask Mr. Buchanan to put in four stakes, because of the slope on the side of the road, and they wanted to make sure they knew what that distance was. Mr. Haag then commented that the drawing that superimposes the walls must be pretty accurate. Mr. Haley said it's as accurate as he thinks they can get at this time.

Mr. Berlind then addressed the Board and other attendees. He noted that he was hired in 2005 to do a perimeter survey and stake property lines because due to the slope, trees, etc, it is a difficult lot. While there, Mr. Berlind's crew located the old wall. He had seen it previously, it was taller than he is and it was collapsing and not something anyone would want to stand next to very long. Rough shots were taken while the crew was there. Therefore, Mr. Berlind's plan indicates that the original wall is approximate. There might even have been an angled point in the southerly portion that runs parallel with the actual property line that the crew didn't shoot. This is the best Mr. Berlind has for survey data. By adding the photographic data, there may be a more accurate picture of where the wall is. The wall is completely on Mr. Haley's property; the nearest point of the old wall is 2.3 feet to the side property line. The closeness is in the arc of the new wall; they have confirmed that it is one-half a foot inside the property line; it does not encroach onto the neighbor's property.

Mr. Sager then welcomed anyone who was interested in seeing the pictures to approach the table and look at them. Mr. Haag then asked Mr. Berlind if he thinks the new wall is closer to the property line or can't he really say. Mr. Berlind responded that he thinks it is closer, but he can't say for sure, mainly because of the curve of the new wall.

Mr. Sager then explained that the application Mr. Haley completed, due to the Board's fault, was not exactly what was needed for him to complete, because he is looking for an Area Variance, while the application he completed was geared to a Use Variance. The NH Supreme Court has tweaked the Use Variance a little so it is actually easier to get an Area Variance than a Use Variance. However, Mr. Haley will still have to deal with the Criteria portion; and when we get to the section where the "unnecessary hardship" elements are addressed, Mr. Sager will explain the questions are at that time and ask Mr. Haley to respond to those questions.

Mr. Haag then asked if Mr. Buchanan, who installed the new wall, might explain what he saw there and how he measured it might be applicable.

Mr. Buchanan then explained that he had built a few other walls similar to this one; Mr. Haley hired him to replace his old existing retaining wall; it was difficult to determine exactly where the wall was because it was built in amongst existing trees; the old boards that were nailed and strapped between the trees were sticking out, falling over. One of the concerns was when getting to the corner near the abutter's property, the original angle of the wall was approximately 120°; after speaking to the people who manufacture the Redi-Blocks, 120° wasn't possible – a 90° corner or a sweep was possible; after discussion between Mr. Buchanan and Mr. Haley, they decided that the sweep was the best way to go. Not knowing exactly where the property line was, Land Tech (Mr. Berlind) was hired to do a survey; and Mr. Buchanan then requested that the stake be put in by the edge of where the original wall was.

Mr. Sager asked Mr. Buchanan if he had been on site when the old wall was intact – did he walk between the lake and the old wall; Mr. Buchanan said he did. Mr. Sager asked if Mr. Buchanan reached up with his hand, could he have touched the top of the old wall – Mr. Buchanan said he could not reach the top. Mr. Sager then asked if the new wall is the same height, or shorter or taller, than the old wall; Mr. Buchanan indicated he thought it is taller.

Mr. Sager asked if he knew how much higher – Mr. Buchanan said he thinks it's one set of blocks higher, which is 16". Mr. Sager then asked if the old wall was level on top – Mr. Buchanan said it was not completely level, it sloped to the left, in part, he thought, because it was giving way to that side toward the abutter's side, the south side.

Ms. Kennedy asked why the extra block was added. Mr. Buchanan indicated that this was due to the septic system, which will be located behind the house, and they have received a waiver to have it 75 feet from the house; to do so the house had to be brought up a little higher in order to make the gravity flowage of the system. Mr. Buchanan then explained to Mr. Haley that the foundation of the new house would be 4' above the ground, which was a concern to him, because the concrete person was concerned about the height above the ground. Therefore, Mr. Buchanan suggested adding another block to the wall and it would bring the ground level up 18" and bring the visible foundation to about 2-3 ft. Mr. Sager then wanted to confirm that less of the foundation to be constructed would be sticking out of the ground because of the added height of the new wall. Mr. Buchanan indicated that is the case.

At this point, Mr. Sager explained the differences between the Use Variance and the Area Variance. He read the "unnecessary hardship" criteria from the original application which Mr. Haley completed. He then read the new criteria:

- a) ***The following special conditions of the property make an area variance necessary in order to allow the development as designed:*** Mr. Haley's verbal response is: the issues are the strong slope of the land to the water; foundation on solid ground, with no erosion; it is a narrow lot and subject to side setbacks, lake setback, septic and leaching system, an area to park cars, etc. Mr. Berling indicated that the lot pre-dates any zoning ordinances.
- b) ***The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:*** Mr. Haley's verbal response is: the slope is the biggest concern and trying to fit a house and everything else on this narrow lot; researched very heavily to find the best retaining system for structural integrity and assure no erosion into the lake; is not away of any other block-wall system; believe there is no other alternative.

Mr. Haag asked if it was possible to dig out behind the wall and push the curve back 6" or so. Mr. Buchanan indicated it would be very difficult. He did not want to disturb the existing ground under the structure, and the foundation people were very concerned about that. As he backfilled, he compacted the soil every foot or so and put stone behind the blocks, thereby assuring the integrity of the ground and the wall – he excavated no more than was absolutely necessary.

Mr. Sager asked about the tires. He asked if the tires were used as fill to the old retaining wall structure. Mr. Haley said he removed 360 tires from behind the old wall.

The Public Hearing was opened at 7:50 p.m.

Mr. Zalewski, the new Zoning Officer, asked if there was a permit to put the wall in. Yes, this is so. He then asked what the permit was for. Mr. Sager replied that his understanding was that it was to replace the existing wall. Mr. Zalewski then asked why is Mr. Haley here for a variance. Mr. Haley responded that the new wall is 6" closer to the property line than the old wall. He commented that it is supposed to be replaced in kind, not supposed to change the foot print of the new wall, if anything, make it more conforming, not less conforming. The old wall was not conforming because it was too close to the property line; so this new wall swept closer to the property line. Mr. Zalewski asked if there was a plan that was submitted with the application for the permit – Mr. Sager responded that he didn't know. Mr. Haley indicated that there was a plan, but it was a very rudimentary thing done by the people who provided the blocks.

Mr. Soucy, Mrs. Abbott's son, speaking for the abutter closest to the wall next to the property line, said he thinks that if the intent was to replace the old retaining wall, there should have been a better plan. He feels there should have been better engineering in order to conform to what it was in the beginning.

Mr. Sager then asked Mr. Soucy and Mrs. Abbott if she was the one who complained to the town. Mrs. Abbott said she felt the wall is too close to her property. She asked what is the side setback regulation. Mr. Sager responded that if there is nothing on the lot, starting from scratch, a grandfathered lot, it would be 10 feet.

Mr. Haley has indicated he would do some planting or something along the lines of that would try to appease Mrs. Abbott; he asked if there is anything she would like to see happen to this property. He did explain that if the variance was approved, the board could put certain conditions on the approval that may benefit Mrs. Abbott – like additional planting or something of the like.

Ms. Teresa Haley, Mr. Haley's sister, lives on Lord Road, indicated she is at this hearing to support her brother. She believes he made a good-faith effort to abide by all the information he was given. She believes he got the best advice possible; his intentions are good – it will be a nice home when finished.

Mr. Zalewski asked if there is a drawing of all of this. Mr. Sager responded that we do have a drawing and he showed it to Mr. Zalewski. Mr. Zalewski asked what is the height of the new wall. Mr. Buchanan responded that it is approximately 10 ½ feet; Mr. Zalewski asked if it's designed to go that high; Mr. Buchanan responded that the manufacturer has indicated this particular wall is designed to go up to 12 ft.

Mr. Sager again spoke to the abutter asking if there was anything else they would like to see there if the Board were to approve this variance. Mr. Soucy said that apparently the new wall just sort of stops at the end – and they would like to see the edge of the wall extend into the land. He also indicated they would be agreeable to Mr. Haley's planting something to cover the wall.

Mr. Sager asked if the abutters were opposed to the granting of this variance. Mr. Soucy and Mrs. Abbott said they were not opposed to the variance, just the way it was done.

Mr. Sager then asked the abutters if the Board were to approve his request for a variance, and we would make a condition that they will take all required steps in order to preclude any washouts within the vicinity of the wall, would that be satisfactory to you. Mr. Soucy replied in the affirmative. Mr. Sager continued that if the variance was approved, and there was washout there, they could complain to Code Enforcement, they would go out to view the site, and they would be subject to a \$275 per day fine for violating the variance.

The public hearing closed at 8:10 p.m.

The board then addressed the Criteria.

**Criteria 1: The proposed use would not diminish surrounding property values because:** This wall replaces a rotted wooden wall that had failed in many places. Cables tied to trees and 360 buried tires supported it. The new wall is engineered by Redi-Rock Company. It is well constructed and provides a split limestone face that it an attractive and structurally sound retaining wall solution. It also matches similar walls around Pine River Pond.

MOTION: to accept that the requirements of Criteria 1 have been met.  
 Made by: Dave Haag  
 Seconded by: Cecille Arnone  
 Discussion: none  
 Vote: passed unanimously

**Criteria 2: Granting the Variance would not be contrary to the public interest because:** This non-conforming lot was used with an old trailer and old septic system that did not meet current town standards. The variance procedure was put in place to address the public interest in these situations.

MOTION: to accept that the requirements of Criteria 2 have been met.  
 Made by: Dave Haag  
 Seconded by: George Frothingham  
 Discussion: none  
 Vote: passed unanimously

**NEW CRITERIA 3 for Area Variance:**

**Criteria 3: Denial of the Variance would result in unnecessary hardship to the owner because:**

- a) **The following special conditions of the property make an area variance necessary in order to allow the development as designed:** (verbal response from Mr. Haley) The issues are the strong slope; foundation on solid ground, with no erosion; it is a narrow lot and subject to side setbacks, lake setback, septic system, etc. Mr. Berling indicated that the lot pre-dates any zoning ordinances.

MOTION: to accept that the requirements of Criteria 3.a) have been met.  
 Made by: Maggie Kennedy  
 Seconded by: Cecille Arnone  
 Discussion: none  
 Vote: passed unanimously

- b) *The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:*** (verbal response from Mr. Haley) The slope is the biggest concern and trying to fit a house and everything else on this narrow lot; researched very heavily to find the best retaining system for structural integrity and assure no erosion into the lake; is not away of any other block-wall system; believe there is no other alternative.

MOTION: to accept that the requirements of Criteria 3.b) have been met.  
 Made by: Dave Haag  
 Seconded by: George Frothingham  
 Discussion: Mr. Sager commented that this is a difficult situation; undue financial burden is subjective. Removing the weakened wall is a good thing as it's collapse would have likely caused tires to spill out onto the abutter's property, and into the lake.  
 Vote: passed unanimously

***Criteria 4: Granting the Variance would do substantial justice because:*** The small variation required would prevent erosion of a hillside property into Pine River Pond. It would ensure a stable base for the replacement dwelling's foundation and provide a reasonably sized flat access area around the dwelling for periodic maintenance of property.

MOTION: to accept that the requirements of Criteria 4 have been met.  
 Made by: Cecille Arnone  
 Seconded by: George Frothingham  
 Discussion: none  
 Vote: passed unanimously

***Criteria 5: The use is not contrary to the spirit of the ordinance because:*** The new wall has been decreased in setback for most of its length, particularly along the lake frontage.

MOTION: to accept that the requirements of Criteria 5 have been met.  
 Made by: George Frothingham  
 Seconded by: Dave Haag  
 Discussion: Mr. Sager commented that whether there is a further encroachment into the sideline setback is not definite; Mr. Haley may have expanded slightly toward the sideline but is further away from the lake.  
 Vote: passed unanimously

MOTION: to GRANT an Area Variance to Mr. Thomas Haley, Map 73, Lot 232, for a side setback, according to Wakefield Zoning Ordinance 2.02.D.6 subject to the following conditions:

- The applicant will take steps to insure there are no washouts along the south side of the wall.
- The applicant will plant a number of vine-type plants along the wall to conceal the massive expanse of the wall with natural greenery.

Made by: Rick Sager  
 Seconded by: Maggie Kennedy  
 Discussion: none  
 Vote: passed unanimously

Mr. Sager then advised the applicant that he had been granted his variance according to the two conditions. A written decision will be sent to him within a week. Any who wants to appeal this decision has 30 days to do so.

It was also noted that the ZBA received a letter from Mrs. Mary Cullinan who has no objections to the Board's granting the Variance to Mr. Haley nor any objection to the construction of the new brick wall.

This completed the hearing for Mr. Haley. The Board then took a 10 minute break before moving on to other business.

**APPROVAL OF MINUTES**

MOTION: to accept the minutes of August 22, 2005 meeting with typing corrections  
Made by: Cecille Arnone  
Seconded by: Dave Haag  
Discussion: none  
Vote: passed unanimously

**OLD BUSINESS**

Refund of funds for withdrawn applications

Mr. Sager has starting drafting something about this subject. He does believe there should be some sort of penalty for withdrawing an application. He will come up with a proposal and will e-mail it to all members. This will be continued to the next meeting.

Ms. Bishop explained that this came about due to a person who submitted an application for a variance, paid all the necessary money due, but it was incomplete due to the lack of the stamped certified survey. In a phone conversation with the applicant, Ms. Bishop was told the person was not going to do a survey at this time and was not going forward with the application at this time – perhaps at some time in the future. The applicant neither withdrew his application or request a refund. So this particular application is in limbo.

Mr. Moholland brought up the issue of re-hearings, and who is required to pay for additional notices to public or abutters, also could be included with this funds situation. Mr. Sager explained that the NH legislature has given the selectmen, or anybody with an interest, the right to appeal but hasn't specified who pays in the instance when it comes back to the ZBA and we have to re-notice all the abutters, etc. An abutter has the right to bring suit in the Superior Court, and the Superior Court can then send it back to the ZBA. Then is the abutter responsible to pay? What happens if the abutter doesn't pay – is the application then dismissed and the applicant is then out of luck? Mr. Sager indicated he contacted other municipal attorneys, and the general consensus is that when an applicant files an application they should be prepared for the possibility of someone taking an appeal and it may come back to the ZBA.

**NEW BUSINESS**

Area Variance

Use Variance

Mr. Sager is attempting to put these applications into one. He is hoping to move the criteria that are applicable to both variances to one section, making them criteria 1 through 4; and then make criteria 5 the hardship on the bottom to be completed according to either the Area variance or Use variance. He hopes to have the draft of this to everyone within a week.

Mr. Sager is also working on revising the Rules of Procedure as well as the instructions for the Variance applications to incorporate the fact that they are now being heard as Use and Area variances as well as some other changes. All will be e-mailed to everyone soon.

Fall times for meetings & site walks – starting when?

It is apparent that from this point forward site walks cannot be done in the evening, as it is getting dark earlier. It was suggested that they be done on Saturday mornings at 9:00 a.m. The group agreed to this day and time.

2006 Budget

Mr. Sager met with Ms. Frost and the Selectmen and has recommended an increase to the budget by about \$2,000. He will e-mail it to all members.

Planning & Zoning Conference

This will be held on November 5 at the Mountain Club and Loon, NH. The time is 8:00 a.m. to 3:00 p.m. Those members who will be attending this year are Paul Winckler, Doug Stewart and George Frothingham.

Steve Zalewski, who is the new Zoning Officer for the town, spoke to the members. He is from Effingham, is the Zoning Officer for Effingham, is also on the Planning Board and Conversation Commission in Effingham. He has been a selectman before, he's has filled in as Town Moderator – he has a pretty good knowledge of how towns work.

Ms. Bishop reminded the group about the Cell Tower balloon test to be conducted on October 29, or November 5, depending on weather. The joint hearing, continued from August 18, 2005, will be held on November 17. An e-mail reminder will be sent to members a few days before.

Mr. Sager is trying to work something out with town's website to get a secure room in the website so we can all look at the applications on line; he tried sending a PDF file, but it was too large.

It was decided that the next meeting will be November 14, 7:00 p.m. An application is expected to arrive within a day or two and can be heard on that date, in addition to other ZBA business being conducted at that time.

Mr. Sager then opted to recess this meeting at 8:50 p.m. in order for Mr. Sager to serve as the ZBA's legal counsel to bring the Board up to date in the Arnone case, and informed Ms. Arnone that she could now leave the building – there was no more regular ZBA business to be discussed. The Board recessed at 8:50 p.m., and came out of recess at 9:10 p.m.

MOTION: to adjourn the meeting at 9:10 p.m.  
Made by: Paul Winckler  
Seconded by: Maggie Kennedy  
Discussion: none  
Vote: passed unanimously

Respectfully submitted,

Dianne Bishop, ZBA Secretary