

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
February 14, 2023, 7:00PM
*New Durham Town Hall***

PRESENT

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Linda Callaway, Member
David Bickford, Member
Bill Meyer, Member

ALSO PRESENT

Deb Randall, Architect
Tom Varney, Varney Engineering
Josh Thibault, Varney Engineering
Peter Rhoades, applicant

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00PM.

Roll call was taken for Board members.

Agenda Review

No changes were made to the agenda.

Meeting with Deborah Randall to review criteria of the Zoning Ordinance in relation to house design.

Ms. Randall stated she doesn't know what to tell her clients on various issues and wants to guide them towards approval but it seems hard to know the specifics of what is going to be allowed. She explained when they are trying to gain space, she isn't sure if they should be going up or not. Ms. Randall stated there is not an ordinance on mass and volume.

Vice Chair Anderson stated what she is referring to would be precedent and they are supposed to take each application on its own merits, without taking into consideration precedent. Ms. Randall stated that is what is causing some confusion, as she uses precedent to give her clients guidance on their project.

Chair Jarvis stated something she has become more aware of in the last couple years is that the Board needs to also take into consideration the impact on the neighborhood and how it will impact crowding. She stated many of the projects now are larger homes on small lots.

Ms. Callaway stated the height of the buildings is also a factor which is being considered because a two story is going to take up more space on a small lot and impact the neighbors more than a single story.

Chair Jarvis stated unfortunately the ordinances are subjective; she stated one member may consider something as “crowded” while another does not see it that way. She noted that Article XIV Section G is on the ballot for possible repeal in March.

There was extensive discussion about the ordinances, how they can be interpreted and applied by the ZBA.

Request for Rehearing

Chair Jarvis stated a request for rehearing was received on February 10, 2023; the Board must discuss it and decide within 30 days. Town Counsel was not able to join the meeting via Zoom to discuss the request. However, she was able to discuss the issue with the ZBA via the telephone. Chair Jarvis asked the public to leave the meeting for the duration of the discussion.

The Board went into nonpublic session to meet with Town Counsel at 8:05PM.

The Board reentered public session at 8:23PM.

Request for Rehearing- Case #2022 - 014

Application submitted by DTC Lawyers on behalf of Peter Rhoades, 18 Bennett Road, Map 264, Lot 16 and 18.

Chair Jarvis stated Attorney Rattigan is requesting that the Board conduct a rehearing in regard to this case. She stated if a rehearing is granted, counsel would be highlighting the concerns outlined in the request. She suggested the Board grant the rehearing request to be sure all their bases are covered.

Motion: *To have a rehearing for Case #2022 - 014.*

Motion by Mr. Bickford. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Callaway – yes; Mr. Meyer – no; Mr. Bickford - yes; Chair Jarvis – aye; Vice Chair Anderson - abstain. **Motion passed, 3-1-1.**

Chair Jarvis stated all abutter notices and public notices will need to be submitted 21 days before the meeting. The rehearing was scheduled for March 16, 2023, due to the March meeting date being Election Day.

Public Hearing of Case #2023-002

Application submitted by Varney Engineering LLC, on behalf of the Barry and Darlene Checchi for property located at 38 South Shore Road, Map 120 Lot 16.

The applicants are requesting a Variance to:

Article XIV Section C.5: Dimensional Requirements. All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the

following requirements: Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.

Chair Jarvis confirmed all fees were paid, abutters notified, and public postings done.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. None was indicated. Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

The Board reviewed the application for completeness.

Motion: *To accept the application for Case #2023-002 as complete.* Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Meyer – yes; Mr. Bickford - yes; Chair Jarvis – aye; Vice Chair Anderson - aye. **Motion passed, 5-0-0.**

Chair Jarvis read the Public Notice into the record.

Chair Jarvis opened the Public Hearing at 8:34PM.

Tom Varney, Varney Engineering LLC, representing the applicants, stated the plan is to replace the existing garage with a new structure; the existing pavement will be removed and driveway areas will be converted to porous materials. The lot size coverage goes from 34.5% to 24.6%; the building size will be reduced. A NH DES Shoreline Permit will be required; a Conditional Use permit from the New Durham Planning Board will also be required. Mr. Varney stated there won't be living space in the garage; it will be an environmental upgrade to reduce the number of buildings on the lot with the removal of the shed. The house, well and septic will remain the same; there are four parking spaces on the lot. The building size is 15.5%; it will increase to 17%. There are steep slopes, so a storm water study was done. Mr. Varney stated they are within the building envelope as well as behind the 75-foot setback from the lake. The garage will be under the 35-foot height limit.

Chair Jarvis asked how far the current garage is from the lake. Mr. Varney stated the garage is 116 feet from the lake.

Mr. Bickford suggested there are more areas to expand the impervious surfaces.

Vice Chair Anderson stated she is concerned about the size of the garage as it is larger than is needed for a two-car garage; she stated the building coverage is already over the limit and suggested 24-foot by 24-foot garage.

Ms. Callaway stated she doesn't see the need for a two-car garage; she stated the nonconformance is being increased.

Chair Jarvis opened the hearing to input from the public.

Doris Healey, resident, stated she is an abutter on the western side of the property; she presented testimony to the Board to be entered into the record. She noted measurements are missing from

plans, specifically regarding the pervious pavers; she stated current garage is about 18 feet by 18 feet and the existing shed is 146 square feet, noting these total 462 square feet of coverage however the proposed garage is 720 square feet. She stated they are concerned about such a large structure on a small lot; the proposed garage is also not on the same footprint as the existing garage. Ms. Healey stated the garage will be in view from their easterly window. She stated they also question the use of pavers and drainage tiles, explaining when there is heavy rain, the water rushes down the Checchi's driveway. Ms. Healey stated it is the opinion of an environmental engineer friend, that a drainage similar to the one they had to install when rebuilding in 2016, would be needed.

Ms. Callaway asked if any vegetation would be added for filtration. Mr. Varney stated there are none on the plans but there are plans for grass and mulch.

Chair Jarvis closed the public hearing at 9:04PM.

Findings of Fact

- The property is 13,700 square feet.
- The existing lot coverage is 34.5%.
- The proposed lot coverage is 24.6%.
- The existing building size is 15.5%; the proposed is 17.8%.
- The septic tank to the lake will remain at 64.5 feet.
- The leach bed to the lake will remain at 100.5 feet.
- The building set back to the lake will remain at 12.2 feet.
- The proposal is to remove the current garage and a shed which is partly within the 75-foot setback.
- The proposed garage is behind the 75-foot setback.
- The current garage is about 6 feet from the roadway; the proposed garage is 20 feet from the roadway.
- Some of the paved driveway and walkway will be replaced with porous materials.
- There will be four parking spaces on the property.
- Drip edges will be added to the garage.
- The new garage will be about 250 square feet larger than the combined size of the current garage and shed.
- There will be storage beneath the garage; there is no second floor in the garage, and it won't be used for living space.

Ms. Callaway asked what the square footage is of the house alone. It was noted the house is about 1600 square feet.

Chair Jarvis stated the Board members deliberating the case would be Ms. Callaway, Mr. Meyer, Vice Chair Anderson, Mr. Bickford and Chair Jarvis.

Discussion – Variance Article XIV, Section C.5

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated reducing the impervious coverage by 9% is in the public interest but she is concerned the building size is increasing by 2% but that is outweighed by the storm water measures including the drip edge.

Ms. Callaway stated she is concerned about the size of the garage; she stated its considerably larger. Mr. Bickford stated he is concerned about the total coverage as well. He stated the lot is large enough for them to get what they want but they need to stay within the 20%. Vice Chair Anderson stated its contrary because the proposed two car garage is larger than necessary to function as a two-car garage; however, a two-car garage is not needed for this property to be used. She stated there are options for a garage to be constructed within the building envelope and under the lot coverage limit. Mr. Meyer noted the lot coverage would be reduced to 20.2% with a 24-foot by 24-foot garage. Vice Chair Anderson stated it is contrary to the public interest as the building percentage is increased over the 15% and it's not necessary to get the garage and storage area to replace the existing garage and shed. She stated she doesn't believe it's in the public interest to allow this if there are other options; she stated the ordinance is to protect the lake and prevent overcrowding. The Board agreed.

The spirit of the ordinance would/would not be observed because: Mr. Bickford stated it is not being observed as the total coverage of 20% is not being met but it is possible with a different proposal. Vice Chair Anderson stated the spirit of the ordinance is to minimize crowding; the proposal is over 20% but it would be possible to follow the percentages. She stated the number of parking spaces is not needed as there is going to be more than the required 4; she explained the parking spaces could be changed to lawn and it would provide better drainage. The Board agreed.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated substantial justice is not being done with granting the variance. The property owner can get what they want within the percentages. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated a new building would be more attractive and more taxable. Vice Chair Anderson stated the abutters' values could be diminished if their view is obstructed. Chair Jarvis noted the garage would be within the building envelope. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated she doesn't believe it's a hardship to deny the proposed plans. Vice Chair Anderson stated the building envelope is large enough to build a new building that can fit two cars and remain within the ordinance. Chair Jarvis stated the purpose of the ordinance is to reduce the impervious surface as much as possible to protect the lake and the general area. She stated she doesn't see any special conditions of the property that would make the variance reasonable. Ms. Callaway stated there is no fair and substantial relationship; a garage can be built and stay within the 15% as well as make engineering changes to reduce the impervious area. The Board agreed.

Motion: *Based on the application signed January 17, 2023, the plans dated January 9, 2023, and the public hearing of February 14, 2023, to grant the request for a variance to the following:*

Article XIV Section C.5: Dimensional Requirements. *All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.*

With the following conditions:

- The applicants shall comply with all applicable federal, state, county and municipal regulations, ordinances and conditions of approval.
- The garage will not be used for lodging.
- The applicants shall receive a Conditional Use Permit from the New Durham Planning Board, if required.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Discussion:** Vice Chair Anderson stated if the variance were to pass, she wants a condition that the owners are required to submit a maintenance and testing schedule to the Building Inspector to ensure permeable paving that is installed, remains functional.

Motion; *To amend the conditions to include:*

- *The owners shall be required to submit the results of testing to the Building Inspector to prove that the pervious pavers' permeability remains functional.*

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote on the Amendment:** Ms. Callaway – aye; Mr. Bickford – aye; Mr. Meyer – aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passes 5-0-0**

Roll Call Vote on the Motion as Amended: Ms. Callaway – no; Mr. Bickford – no; Mr. Meyer – no; Vice Chair Anderson – no; Chair Jarvis – abstain. **Motion fails 0-4-1.**

APPROVAL OF MINUTES - Postponed.

- October 11, 2022
- October 18, 2022 Site Walk
- November 10, 2022
- November 21, 2022
- December 13, 2022
- December 30, 2022 Site Walk
- January 10, 2023

Review and Possible Revision of the Procedural Rules for the ZBA – postponed.

NEXT MEETING

March 9, 2023

ADJOURN: Mr. Meyer motioned to adjourn. Ms. Callaway seconded the motion. **Roll Call Vote:** Ms. Callaway – yes; Mr. Meyer – yes; Mr. Bickford -yes; Chair Jarvis – aye; Vice Chair Anderson – aye. **Motion passed, 5-0-0.**

The meeting was adjourned at 10:15 pm.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary