

NEW DURHAM ZONING BOARD OF ADJUSTMENT

New Durham Town Hall

November 12, 2019, 7:00 p.m.

Present

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Stephanie Richard

Linda Callaway

Absent:

Paul Raslavicus, Member, Excused

David Wessel, Alternate Member, Excused

Also Present

Thomas Varney, Varney Engineering, LLC

Justin L. Pasay, of Donahue, Tucker and Ciandella, PLLC

Brad Jones, Jones and Beach Engineers, Inc.,

David Grandin, applicant

Madeline Grandin

Josh Morgan

Sarah Morgan

Cara Kelley

Tom Meyer

Brad Helfer

Lori Drake

Wes Whitter

Call to Order

Chair Jarvis called the meeting to order at 7:02 pm.

Chair Jarvis stated this meeting would be conducted under the revised procedures, which were amended and approved October 8, 2019. She stated due to the fact that the amendments were not posted on the website in a timely manner, applicants were notified and provided a copy of the revised procedures, and given an additional week to submit any additional information for the applications.

Review and Acceptance of the application for case # 2019-006

Submitted by Bradford Jones of Jones & Beach Engineers, INC. on behalf of Susan Glenny. She is requesting variances to the following:

Article VI Section C.3.b. (Leach Field Setback from Property Line);

Article XXI Section G.1.a. (Leach Field Setback from Property Line); and

Article XXI Section G.1.c.(Leach Field Setback from Road).

The property is located at Map 110 Lot 13 - 208 South Shore Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis asked if any member of the Board has a real or perceived conflict in hearing this case. None was indicated. The Board reviewed the application for completeness. Chair Jarvis asked for the locations of the utilities and buildings on adjacent properties.

She noted a request via email was sent for the amount of money that was due and asked when the check was submitted to the Town. Mr. Jones replied it has not been submitted. Chair Jarvis stated that would make the application incomplete. The Board reviewed the rest of the application for completeness. It was noted there was no signature indicating whether a Site Walk would be permissible. Chair Jarvis stated the locations of adjacent wells also needs to be indicated on the application and noted if they are not over 75', a variance will be needed to Article VI, Section C.3.A2.

Chair Jarvis made a motion to postpone the acceptance of the application for Case # 2019-006, submitted by Bradford Jones of Jones & Beach Engineers, Inc. on behalf of Susan Glenny to December 10, 2019. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Review and Acceptance of the Application for Case #2019-007

Submitted by Thomas W. Varney of Varney Engineering, LLC on behalf of Sean Kelley and Cara Kelley. They are requesting variances to the following:

- Article V Section E (Flood Hazard and Water Body Setbacks);
- Article VI Section C.3.a. (Sewage Setbacks from water and dwellings);
- Article VI Section C.3.b. (Leach Field Setback from property line);
- Article XIV Section C.1.b. (Building Setback);
- Article XIV Section C.1.c. (Leach Field Setbacks);
- Article XXI Section F. (Decks, Stairs and Walkways);
- Article XXI Section G.1.b. (Leach Field Setbacks); and
- Article XXI Section G.2.b. (Building Setback from Water and Flood Hazard Area).

The property is located at Map 1109 Lot 033 and 034 – 59 North Shore Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis asked if any member of the Board has a real or perceived conflict in hearing this case. None was indicated. The Board reviewed the application for completeness. Chair Jarvis asked if the proposed septic tank and leach field are larger than what is currently there as that would make a nonconforming lot, more nonconforming. Ms. Richard stated it's not more non-conforming if the house continues with the same number of bedrooms, which it appears to be. It was noted the foot print will remain the same. Mr. Varney replied it would be a two-bedroom house. Vice Chair Anderson asked about the existing setback from the lake that is indicated as currently 39' but the proposed is 38', although it is supposed to be on the same footprint. Mr. Varney replied that is a typo.

Chair Jarvis made a motion to accept application for Case#2019-007 as complete. Ms. Richard seconded the motion. Motion passed, 4-0-0.

Review and Acceptance of the Application for Case #2019-008

Submitted by Bryan Berlind of Land Technical Service Corp. on behalf of Joshua Morgan. He is requesting a variance to Article V Section D (Building Setback from

Property Line). The property is located at Map 218 Lot 1 - 76 King's Highway.. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis asked if any member of the Board has a real or perceived conflict in hearing this case. None was indicated. The Board reviewed the application for completeness.

Chair Jarvis stated a request was submitted to waive the requirements for plans at a minimum of 1" equals 20' but the plans submitted are 1" equals 30'. She stated she is opposed to granting the request as she is unable to find the reason for it. Ms. Callaway noted there is not a topographical map or information either. Ms. Richard agreed there is information missing that they need including information regarding septic systems of abutting properties, utilities, setbacks and photographs. Chair Jarvis noted a letter was sent on October 27 indicating there is money owed and asked if all the fees have been paid. It was confirmed it has not been paid. Chair Jarvis stated she would have the Land Use Assistant contact the applicant directly to confirm the fees. Vice Chair Anderson stated they need to be sure to have maps with contours as well as photos.

Chair Jarvis made a motion to deny the October 21, 2019 waiver request for Case #2019-008, submitted by Bryan Berlind of Land Technical Service Corp. on behalf of Joshua Morgan to allow a 1" equals 30' in lieu of the required 1" equals 20'. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Chair Jarvis made a motion to postpone further review of the application for Case #2019-008, submitted by Bryan Berlind of Land Technical Service Corp. on behalf of Joshua Morgan to December 10, 2019. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Review and Acceptance of the Application for Case # 2019-009

Submitted by Justin L. Pasay of Donahue, Tucker and Ciandella, PLLC on behalf of David and Julie Grandin. They are requesting variances to the following:

- Article V Section E (Flood Hazard Area and Water Body Setbacks);
- Article XIV Section C.1.b. (Building Setback);
- Article XXI Section C.1. (Conform to Non-Conforming Setback);
- Article XXI Section C.2. (Lot Does Not Become More Non-Conforming); and
- Article XXI Section G.2.b. (Building Setback from Water and Flood Hazard Area).

The property is located at Map 110 Lot 22 - 383 Merrymeeting Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis asked if any member of the Board has a real or perceived conflict in hearing this case. None was indicated.

Chair Jarvis stated they received, accepted, and held a public hearing for the same property in July 2019. The Board needs to determine whether this application is materially different from Case #2019-001. The Board compared the two applications.

Chair Jarvis noted the house was pushed back about 10'; the house is a 3 bedroom house while the plans still show the area for the 4th bedroom but the term bedroom has been removed; the square footage remains the same and the garage has been made smaller; the impervious surface in the 75' setback is less as is the square footage of the house. Ms. Callaway noted there is less of the house in the 75' setback but they now desire a deck in that area. Justin L. Pasay of Donahue, Tucker and Ciandella, PLLC on behalf of David and Julie Grandin, requested to add one point on the issue of materiality; he referenced the *Fisher v Dover* court case which provides protection for abutters against applications that return multiple times and noted this application is a response to the comments made by the Zoning Board of Adjustment at the July hearing and work has been done to address the concerns, showing specific response to the concerns of the Board.

Chair Jarvis made a motion that Case #2019-009 is materially different from the information received for Case #2019-001 and to move forward with Case #2019-009 to review for completeness. Ms. Richard seconded the motion. Motion passed, 4-0-0.

The Board reviewed the application for completeness.

Chair Jarvis made a motion to accept the application as complete for Case #2019-009 and to move forward with a Public Hearing. Ms. Callaway seconded the motion. Motion passed, 4-0-0.

Public Hearing – Case #2019-007

Chair Jarvis opened the Public Hearing for Case #2019-007 at 7:57 pm. She noted there is only a 4-member board present and asked Mr. Varney if they wanted to move forward with hearing the case. Mr. Varney confirmed they want to proceed. Chair Jarvis read the case into the record. The application was submitted by Thomas W. Varney of Varney Engineering, LLC on behalf of Sean Kelley and Cara Kelley. They are requesting variances to the following:

- Article V Section E (Flood Hazard and Water Body Setbacks);
- Article VI Section C.3.a. (Sewage Setbacks from water and dwellings);
- Article VI Section C.3.b. (Leach Field Setback from property line);
- Article XIV Section C.1.b. (Building Setback);
- Article XIV Section C.1.c. (Leach Field Setbacks);
- Article XXI Section F. (Decks, Stairs and Walkways);
- Article XXI Section G.1.b. (Leach Field Setbacks) and
- Article XXI Section G.2.b. (Building Setback from Water and Flood Hazard Area).

The property is located at Map 109 Lot 033 and 034 – 59 North Shore Road. Chair Jarvis confirmed the meeting was posted publically and all abutters were notified.

Tom Varney, Varney Engineering, stated this property is half way between Meaders Point and Owls Head and it has a steep driveway with a small cottage on a wooded lot. He stated applicants have owned the property since 2017 and would like to demolish the existing cottage and build a new structure on the existing footprint. The lakeside deck

would be increased to 12' wide; a porch and deck be added to one side; a garage would also be added to the property. The property has 10 to 25% slopes and storm water erosion occurs with runoff from the road and through the property to the lake; the septic system is failing and is to be replaced. The adjacent access lot, Map 109, Lot 33, was merged with Lot 34 to increase the lot size. Storm water measures are designed to infiltrate the runoff from the road and driveway, into the soil. A Conditional Use Permit will be required from the Planning Board for engineering and design of these measures. A copy of the tax map was distributed, showing the adjacent lots along with pictures and diagrams of the lot and plans. Mr. Varney stated a survey was done. Chair Jarvis asked if the proposed house will be within the same footprint of the current house. Mr. Varney replied it would be for the most part and that's why they are asking for a variance. He outlined the details of the lot including the cottage, driveway, well and septic. Mr. Varney noted the current cottage is just behind the 50' setback with an 8' deck and stated the proposed plans demolish the cottage, and add two decks and porch. The cottage remains the same size and footprint with the addition of the decks and covered screen porch. The lot size coverage is 6.5% and the proposed is 11.4%; there will be drip edge all around the buildings. Chair Jarvis asked why he didn't put the proposed leach fields near the proposed garage for less of an impact on the neighboring properties. Mr. Varney replied it would be too close to their well. Chair Jarvis noted the setback doesn't apply to their own property, only for adjacent wells. Mr. Varney stated the distance would be the same in relation to all the wells. Ms. Callaway suggested that if there is going to be an impact to any well, wouldn't it be better to be the owners than the abutters. Chair Jarvis asked what kind of access there will be to the porch and deck. Mr. Varney replied it would be wooden stairs and there will be access to the deck from the house; the stairs will be 4' wide.

Chair Jarvis opened the Public Hearing to comment from abutters and the public. None was indicated. Chair Jarvis asked if the solar panels shown on the plan would be on the roof or elsewhere on the property. It was noted that is a mistake as they will not be installed. Ms. Callaway asked if the waterfront deck would have walls. Mr. Varney stated it would be open. Vice Chair Anderson asked if the walkways would be remaining. Mr. Varney stated both would be removed. Chair Jarvis closed the Public Hearing at 8:28 pm.

Chair Jarvis asked the Board if they want to discuss Article V Section E (Flood Hazard and Water Body Setbacks), Article XIV Section C.1.b. (Building Setback); and Article XXI Section G.2.b. (Building Setback from Water and Flood Hazard Area) together. The Board concurred with discussing the articles together.

Findings of Fact:

Proposed plans are to demolish existing house and build a new house on the same footprint with the addition of a larger deck on the lakeside and porch and deck on the side; the slopes are 10-25%; the 1968 septic system is failing and needs to be replaced; lots 33 and 34 were voluntarily merged in August 2019; the new septic system will be 38' from the well on Map 109, lot 36; the porch on the left will be roofed and have screen sides but will not be living space; a garage will be added to the lot.

Discussion –Article V Section E; Article XIV Section C.1.b.; and Article XXI Section G.2.b.

Granting the variance would/would not be contrary to the public interest: Vice Chair Anderson stated the new building on the existing footprint is not contrary and it doesn't increase any disturbance. Vice Chair Anderson noted that increasing the impermeable surface within the 75' setback is contrary to the public interest, specifically the covered porch although the decks would be fine. The Board concurred.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated the spirit of the ordinance is to protect the lake and does not feel that increasing the impermeable surface with a covered porch within the 75' setback is in the spirit of the ordinance. Ms. Richard stated they are making efforts to minimize the impact on the area and although it's a covered deck/porch, but its not a whole new room or living space. Ms. Richard suggested looking at the other drainage improvements that are proposed as part of this project, including the drip-edge around the house, porch and deck.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated she agrees that increasing the impermeable surface is not in the spirit of the ordinance but feels the improvements would do substantial justice for the owner and surrounding area. Vice Chair Anderson asked if the value to the owner for the porch outweigh the costs of putting more impermeable surface within the setback. The Board concurred.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated anytime one property is improved, there is potential for other properties to be improved; it will have a new septic system and improved drainage. The Board concurred that the values of the surrounding properties would not be diminished.

Unnecessary Hardship: Chair Jarvis stated the purpose of the ordinance is to keep houses, garages, etc back more than 75' from the lake; she asked if this property is similar to other lots around it, whether it would have any special considerations and would denying the request place an unnecessary hardship on the owner. Chair Jarvis suggested it's the south side porch that is causing the issue. The Board reviewed the maps of the area lots; Chair Jarvis noted all lots are small on the lakeside and asked if there are any special conditions of the property. Ms. Richard stated it doesn't appear the porch is being put in the least steep area. Ms. Callaway stated that the covered porch with the overhang, it's looking at 40% of the 50-70% buffer being filled. They are also losing substantial trees with the garage and leachfield. Chair Jarvis stated she doesn't feel the property could not be used without a variance. . The house is already within the setback and it is being replaced within the footprint; the house would be able to be used with the front deck but without a porch. Ms. Richard stated the property can be used without

granting of a variance. Vice Chair Anderson stated it is partially a new footprint, the porch isn't needed to use the house. The Board concurred.

Chair Jarvis made a motion to deny the request for exceptions to Article V Section E; Article XIV Section C.1.b.; and Article XXI Section G.2.b. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Chair Jarvis suggested they discuss the following articles together: Article VI Section C.3.b. (Leach Field Setback from property line); Article VI Section C.3.a. (Sewage Setbacks from water and dwellings); Article XIV Section C.1.c. (Leach Field Setbacks) and Article XXI Section G.1.b. (Leach Field Setbacks). The Board concurred.

Discussion - Article VI Section C.3.b.; Article VI Section C.3.a.; Article XIV Section C.1.c. and Article XXI Section G.1.b.

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would be in the public interest to replace a failing septic system. Vice Chair Anderson stated it's an improvement to replace the septic that is so close to a well with a new system. Ms. Richard stated she understands the well release from next door but the ordinance supersedes that. The Board concurred.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated a new system is in the spirit of the ordinance and works to protect the lake. The Board concurred.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated it would be doing substantial justice as the septic system is failing and it would be replaced with a new one. The Board concurred.

For the following reasons the values of surrounding properties would/would not be diminished: Vice Chair Anderson suggested the new septic system could be moved to be further away from the abutters well. The Board discussed various options for moving the location of the new system. Mr. Varney noted the abutting property's well is 3' from the property line but the burden is being put on the applicant.

Unnecessary Hardship: Ms. Richard stated that without granting this variance, no septic system could be built per the ordinance; there is not enough room behind the setback line from the lake and setback from the wells in the area. The Board concurred.

Chair Jarvis made a motion to grant the request for variance to Article VI Section C.3.b. (Leach Field Setback from property line); Article VI Section C.3.a. (Sewage Setbacks from water and dwellings); Article XIV Section C.1.c. (Leach Field Setbacks) and Article XXI Section G.1.b. (Leach Field Setbacks). Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Discussion - Article XXI Section F. (Decks, Stairs and Walkways)

Chair Jarvis stated this ordinance addresses any existing building located less than 50' from the highwater mark. She stated because the new building is being built on the existing footprint, it would be considered existing and the porch on the water side would be within the setback. Vice Chair Anderson stated it would not be an existing building after being rebuilt, it will be brand new even though it's on the same footprint. Ms. Richard suggested this ordinance variance would not be applicable. The Board discussed whether the variance is applicable and the Board concurred it was addressed in the previously discussed ordinances regarding the 75' setbacks.

Chair Jarvis made a motion that after further discussion, the Board has determined that the request for variance from Article XXI, Section F, Decks, Stairs and Walkways, does not apply. Ms. Richard seconded the motion. Motion passed, 4-0-0.

Public Hearing - Case # 2019-009

Chair Jarvis stated Vice Chair Anderson has to leave at 10:00 pm and that will leave the applicant with only three board members. She asked if they wished to continue with the Public Hearing. Justin L. Pasay of Donahue, Tucker and Ciandella, PLLC, agent for the applicant, requested to go ahead with the Public Hearing and then suspend the hearing at 10:00 pm and continue the hearing to the December meeting. He stated he doesn't want to proceed without Vice Chair Anderson. Chair Jarvis stated they will have a fifth member available at the December meeting and asked if they would like them to participate in the hearing at that point. Mr. Pasay replied he would let the Board know at that point.

Submitted by Justin L. Pasay of Donahue, Tucker and Ciandella, PLLC on behalf of David and Julie Grandin. They are requesting variances to the following:

Article V Section E (Flood Hazard Area and Water Body Setbacks);

Article XIV Section C.1.b. (Building Setback);

Article XXI Section C.1. (Conform to Non-Conforming Setback);

Article XXI Section C.2. (Lot Does Not Become More Non-Conforming) and

Article XXI Section G.2.b. (Building Setback from Water and Flood Hazard Area).

The property is located at Map 110 Lot 22 - 383 Merrymeeting Road.

Chair Jarvis asked if any member of the Board has a real or perceived conflict in hearing this case. None was indicated.

Chair Jarvis opened the Public Hearing at 9:43 pm. She noted variances were granted for the septic system in July 2019.

Justin L. Pasay, of Donahue, Tucker and Ciandella, PLLC on behalf of David and Julie Grandin, stated the new proposal is an improvement from the July 2019 proposal and addresses the concerns raised by the Board at that point. He explained the changes in the

plan which he stated would be improvements for the property, the owners and the lake but the ordinance is preventing them from doing so. Mr. Pasay stated the property has 116' of shorefront, is 0.46 acres in size and about 115' on Merrymeeting Road, making it a nonconforming lot. He stated it currently has a two-bedroom house, a deck, a bunkhouse 2' from the eastern boundary line and a detached garage. The proposed plans demolish the existing structures and replace it with a three-bedroom home with deck, detached garage, which will be a total of 3100 square feet. Mr. Pasay stated the Grandins are looking for a place to retire and stated the variances being requested are the same as requested at the July meeting but the issues have been addressed with changes to the plans. Mr. Pasay stated the Grandins worked with the engineer to address the issues of concern identified by the Board noting the four bedroom home was reduced to three; the building was also moved back from the shoreline. He noted it cannot be moved back any further as the lot slopes upward and would require removal of trees. Mr. Pasay distributed a summary spreadsheet of the specific changes to the proposed plans for review by the Board; these include moving the house back from the lake to be 62.8' from the water instead of 38.8', moving the building back from the eastern side to 21.7', the western boundary setback is 22.9' existing and would be moved back to 16.6'. He stated that dimensionally, the proposed plans are either less nonconforming than the existing structure or more conforming than the existing conditions. Mr. Pasay stated that in regards to the impervious coverage, the proposed building would be 148 square feet less than the existing and 461 square feet less than the July proposal. Chair Jarvis asked for the citation number of the NH DES rule. It was noted it is part of the shoreline ordinance of the DES regulations.

David Grandin, stated they have owned the property for over 25 years and in that time, properties surrounding them have been improved and theirs is the only one which has not. He noted all sit less than 40' from the lake and wants to work with the Board to come up with something that will work for everyone. Mr. Grandin stated they changed the number of bedrooms, reduced the size of the driveway, looked at other options for the garage but couldn't make a change in location work for that, and stated that if there is a concern they missed, they would like to try to work it out.

Chair Jarvis opened the Public Hearing to comment from abutters. None was indicated.

Chair Jarvis made a motion to continue the Public Hearing for Case #2019-009 to December 10, 2019. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Chair Jarvis suggested making a change to the agenda and to add the continuation of the Public Hearing for case 2019-009 before reviewing applications at the December 10, 2019 meeting. The Board concurred.

Chair Jarvis made a motion that the continuation of the Public Hearing for Case #2019-009 will start at 7:00 pm. Vice Chair Anderson seconded the motion. Motion passed, 4-0-0.

Vice Chair Anderson left the meeting at 10:00PM

Review and Approval of the Revised Application and Check Sheets

Chair Jarvis explained she had added to the draft application the information developed by Ms. Richard and the Check Sheets. The application is now 22 pages. She explained an eight page alternative application for review. If approved there would be separate applications for Variances, Special Exceptions, Administrative Appeals and Equitable Waivers of Dimensional Requirements. All four would be available on the web site. Ms. Callaway asked if the applications could be either a “fillable” pdf or a word document. Chair Jarvis will look into it.

The Check Sheets were review and edits were made.

Chair Jarvis made a motion to approve the application packages, as presented and revised 11/12/19. Ms. Richard seconded the motion. Motion passed: 3-0-0

APPROVAL OF MINUTES

Meeting of October 8, 2019:

Public Minutes: Edits were made. **Ms. Callaway made a motion to approve the minutes as amended. Chair Jarvis seconded the motion. Motion passed, 3-0-0.**

Non-Public Minutes: **Ms. Richard made a motion to approve the minutes as presented. Ms. Callaway seconded the motion. Motion passed, 3-0-0.**

ADJOURN

Ms. Richard made a motion to adjourn. Ms. Callaway seconded the motion. Motion passed, 3-0-0.

The meeting was adjourned at 10:15 pm

Respectfully Submitted,

Jennifer Riel, Recording Secretary