

**NEW DURHAM ZONING BOARD OF ADJUSTMENT
New Durham Town Hall
December 10, 2019, 7:00p.m.**

Present

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Stephanie Richard
Linda Callaway
Paul Raslavicus
David Wessel, alternate member – excused absence.

Also Present

Justin L. Pasay, of Donahue, Tucker and Ciandella, PLLC
Brad Jones, Jones and Beach Engineers, Inc.,
David and Madeline Grandin, applicants
Brad Helfer
Tom Meyer

Call to Order

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

Continuation of 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 articles:

- 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 stated the Board reviewed and accepted the application as complete at the November 12, 2019 meeting. It was determined that the application was significantly different than the previously submitted application and some testimony was taken in a public hearing which was continued to this meeting. Chair Jarvis stated the members who heard the case were Chair Jarvis, Vice Chair Anderson, Ms. Richard and Ms. Callaway. She stated Mr. Raslavicus has reviewed the minutes and the tape and asked if the applicant wanted four or five members to hear the continuation of the case. Mr. Pasay stated they would proceed with five. Chair Jarvis confirmed there is no real or perceived conflict with any members of the Board hearing this case. None was indicated.

Mr. Pasay summarized the details presented at the last meeting and stated everything being proposed by the Grandins ' will better protect the water resources and be better for

the public and the Grandins'. He noted the lot is nonconforming and is currently improved with about 2200 square feet of structures; the proposal is to raze those and replace them with a three-bedroom home and garage. Mr. Pasay explained the changes proposed and stated the whole project is over all less nonconforming with 148 square feet less within the 75' setback than the current structures and 464 square feet less than previously proposed in the July application; impervious coverage is 383 square feet less than what is there currently and 461 square feet than previously proposed in July. The building is being moved back 24' from the water and there is less side encroachment.

Brad Jones, Jones and Beach Engineers, stated they have been working on the project for a couple years; a boundary survey has been conducted on the lot, including picking up of steep slopes, trees, etc. He explained the plans and maps presented depict the lot and outlined the setbacks, noting the current proposal moves the house back from the shoreline and the entire house is beyond the 50' NH DES setback. Mr. Jones stated the gravel driveway will remain and the leach field will be expanded in the same area with the tank being moved back from the lake. He stated the next step for them will be to get DES subsurface approval as well as a shoreline permit and this will require the wooded area to remain unaltered or wooded. Mr. Raslavicus asked where the 462 square foot decrease in the building is. Mr. Pasay stated that reference is in regards to the July proposal but the current proposal is still significantly less of a footprint. Mr. Grandin stated the building is smaller and pushed back with less square footage within the 75' setback. He stated there was concern expressed by the Board about it being a four-bedroom home, so that was removed. Chair Jarvis confirmed there is currently 1,617 square feet in a bunk house and it is all within the 75' setback and the new plan calls for it to be 1,469 square feet. Mr. Pasay stated this is the best place to site the house, noting they will go under the State's 25% threshold and the topography slopes up to Merrymeeting Road so more trees would be removed and the buffer reduced if the house was moved further back. Chair Jarvis asked how the deck would be constructed. Mr. Grandin replied it would be open and porous. Ms. Callaway asked the size of the deck. Mr. Grandin replied its 14' wide. It was confirmed the front and side decks comply with the ordinance. Mr. Pasay stated they are looking to propose something that is a reasonable use of the property and isn't inconsistent with what is there currently. They are taking what is existing and redeveloping it. Mr. Grandin stated they have owned the property 25 years and have the intention of moving permanently to New Durham but they have concerns in doing so with the current structures. He stated they want to improve the property for themselves and is in the best interests of the Town with this proposal seeming to give the best opportunity to do so. He explained the current building has lead paint, asbestos, no foundation, no insulation and is dangerous to maintain.

Chair Jarvis opened the Public Hearing to public input. It was suggested that if they move the house back, there would be less access around the house and it would not be logical to put a garage at the end of a driveway. Chair Jarvis concurred with the difficulty of getting emergency vehicles into a driveway that is blocked. She noted they are also concerned about the close proximity of wells, etc., on these small lots. Ms. Callaway stated part of the fact making it nonconforming is the proposed shape of the house not being a

rectangular structure and suggested that if the shape and configuration were changed a bit, more of it would be behind the setback. Mr. Raslavicus referenced RSA 483:B in regards to minimum shoreline protection standards for review by the Board. He suggested that when they remove the existing building, they could improve the property by planting trees. It was noted they can't landscape the area as they need it for access to the front of the house. Mr. Pasay stated the Supreme Court of NH has addressed this issue when a board makes suggestions to make it more attractive but that's not the purview of the board and stated NH DES will determine the definition of the wooded buffer. He stated the proposed plans are significantly better than what is there right now and will be good for the lake and the surrounding area. Chair Jarvis stated they are dealing with statutes, not just rules and wants to be sure what the engineers and builders propose, is within the requirements. Ms. Callaway noted this is a larger lot than others in the area and they have more area to work with.

Mr. Pasay outlined the guidelines granted by the NH Supreme Court to Zoning Boards and the questions they can ask when determining whether granting the variances would be in the public interest and within the spirit of the ordinance, noting the intentions are to protect the lake. He stated what is being proposed does not alter the neighborhood, and granting the variance to the owners is not outweighed by denying the variance and it is a significant gain to the public.

Chair Jarvis closed the Public Hearing at 8:11pm.

Chair Jarvis stated the members of the Board deliberating and voting on this request would be Chair Jarvis, Vice Chair Anderson, Ms. Richard, MS. Callaway and Mr. Raslavicus. She proposed considering the following variance requests together: Article V Section E, Article XIV Section C.1.b. and Article XXI Section G.2.b. The Board concurred.

Discussion - Article V Section E, Article XIV Section C.1.b. and Article XXI Section G.2.b

Findings of Fact: ???List down???

- The property is 27,950 square feet (0.46 acres);
- The plan is to raze a 2-bedroom home with deck, bunkhouse and replace with a two story 3-bedroom home with detached garage;
- Nothing will be going where the bunkhouse is currently located;
- The 4th bedroom identified on the plans in the basement will not be used a bedroom and the walls and closet will be taken out;
- Currently there is 17.7% of impervious surface and this proposal would result in 16.5% impervious surface;
- Currently there is 1,617 square feet of buildings within 75' of the lake and this will be reduced to 1,469 square feet; t
- The house will go from 2,023 to 3,218 square feet;

- Currently the house at its closest point is 38.8' from the lake and the proposal moves it to 62.8' from the lake;
- Currently the house is 28'1" from the stream, and the proposal would bring it 25'6";
- The garage will go from 430 square feet to 607 square feet;
- The current garage is 21' from the stream, the proposed garage would be less than 10' from the stream;
- The bunkhouse which is 2.4' from the east boundary will not be replaced;
- The house will be 21.7' from the east boundary;
- The current septic system will be replaced and the necessary variances have already been approved;
- DES statute requires 25% of the woodland buffer area to be maintained as natural woodland between 50 and 150 feet of the reference line;
- A NH DES shoreline permit is required;
- A NH DES septic permit is required;
- It is unclear whether a conditional use permit will be needed from the Planning Board due to steep slopes and this will be determined by the Building Inspector.

Mr. Pasay stated it is their perception that the drainage swale is caused by the Town's road improvements that comes down towards the lake and it's not a stream depicted on a GIS map.

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated that in July she was adamant about the stream but has since taken the opportunity to look at the property and she could not find it and it is not an issue. She stated granting the variance would not be contrary to the public interest. The only way to move the house back further would be to remove the garage; Vice Chair Anderson stated that would not be fair as there is an existing garage; the garage cannot be moved and keep the trees. The Board concurred.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated she believes the spirit of the ordinance is being preserved as the impervious surface is being reduced; the square footage of building will be less in the 75' setback. Vice Chair Anderson agreed the effort to improve and reduce the part of the building in the setback is in the spirit of the ordinance. The Board concurred.

Granting the variance would/would not do substantial justice because: Mr. Raslavicus stated there would be substantial justice with the public gain in improving the property. Vice Chair Anderson stated the septic would be better which is a gain to the public; they have made some of the issues less nonconforming. The Board concurred.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the surrounding properties will not be diminished as the current property sticks out as it is and it will increase the taxability of the property. Vice Chair Anderson stated it's a much nicer architectural appearance. The Board concurred.

Unnecessary Hardship: Chair Jarvis feels the proposed use is reasonable; to deny the request would be unfair and she doesn't see how the property could be used on a year-round basis without substantial improvements to the house. Mr. Raslavicus stated he believes the property can be used within strict conformance of the ordinance. Vice Chair Anderson stated one thing that distinguishes it from other properties in the area is the preservation of old growth trees, which are on this property and they are trying to keep. Mr. Raslavicus stated not every nonconforming lot is entitled to having a garage on the lot and there are cases where they have to say "no" to a garage.

Chair Jarvis made a motion to grant a variance to:

Article V Section E (Flood Hazard Area and Water Body Setbacks): No new buildings except for water-related structures shall be located in a flood hazard area or less than 75' from any water body or river;

Article XIV Section C.1.b. (Dimensional Requirements): All developments with waterfront access or the rights of waterfront access shall meet the following requirements: Building Setback-except for water-related structures, all buildings shall be set back a minimum of 75' from the normal high water mark; **and**

Article XXI Section G.2.b. (Nonconforming Setbacks): The following setbacks are required on all nonconforming buildings, land and uses addressed by the article 2.b- no new buildings except for water-related structures shall be located in a flood hazard area or less than 75' from any water body or river course.

With the following conditions:

- The total bedrooms in the home will not exceed three, the applicant shall receive a Shoreline Permit from NH DES;
- The applicant shall receive approval for a three-bedroom septic from NH DES. Said septic system shall be located at least 90' from the lake and located as depicted on the plans when the variance was granted in July 2019.
- A Conditional Use Permit from the New Durham Planning Board if required. Neither the deck or porch or the areas under the deck or porch are to be enclosed at any time.

Ms. Richard seconded the motion.

Roll Call: Vice Chair. Anderson-aye; Ms. Richard – aye; Ms. Callaway-aye; Mr. Raslavicus – no; ChairJarvis – aye. Motion passed, 4-1-0.

Chair Jarvis stated the next articles to be considered are Article XXI Section C.1. (Conform to Non-Conforming Setback) and Article XXI Section C.2. (Lot Does Not Become More Non-Conforming) and suggested discussing these together. The Board concurred. Chair Jarvis suggested the Findings of Fact under the previous discussion would apply here as well. The Board concurred.

Discussion - Article XXI Section C.1., Article XXI Section C.2.

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated this would not be contrary for the same reasons as previously discussed. The Board concurred.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit would be observed for the reasons outlined previously. The Board concurred.

Granting the variance would/would not do substantial justice because: Ms. Richard stated it would do substantial justice for the same reasons as previously discussed. The Board concurred.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated it would be a new building, new septic system, will raise the property value and potentially raise the values of surrounding properties. Ms. Richard noted none of the variances discussed affect abutter setbacks. The Board concurred.

Unnecessary Hardship: Ms. Richard stated the proposed use is reasonable. Chair Jarvis stated they are taking a nonconforming property and making it less nonconforming. The Board concurred.

Chair Jarvis made a motion to grant the request for a variance to:

Article XXI Section C.1. (Conform to Non-Conforming Setback); and
Article XXI Section C.2. (Lot Does Not Become More Non-Conforming) – New
buildings and structures, alterations and expansion of existing nonconforming uses.
All nonconforming property may be used for new construction of buildings and or
structures including septic and leach field and a nonconforming building may be
altered and expanded provided 1: it conforms to setback and height requirements; 2:
said expansion does not make any structure or use more nonconforming within the
terms of the ordinance.

All of the conditions listed for the previous variances will apply to these variances if granted.

Vice Chair Anderson seconded the motion.

Roll Call: Vice Chair Anderson-aye; Ms. Richard – aye; Ms. Callaway-aye; Mr. Raslavicus – no; Chair Jarvis – aye. Motion passed, 4-1-0.

Continued Review and Acceptance of the Application for Case # 2019-006

Submitted by Bradford Jones of Jones & Beach Engineers, INC. on behalf of Susan Glenn. The applicant is requesting variances to the following articles:

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

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

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

The property is located at Map 110 Lot 13 - 208 South Shore Road.

Ms. Jarvis stated an email was received December 9, 2019 and this was read into the record. It indicated the property owner does not want to proceed with the hearing at this time.

Continued 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. The meeting will consider an application submitted by Bryan Berlind of Land Technical Service Corp. on behalf of Joshua Morgan.

Chair Jarvis stated at the November 12, 2019 meeting, the application was found to be incomplete and a motion passed to continue review of the application to the December meeting. The applicant was informed of the missing materials which needed to be submitted 21 days prior to December 10, with written notification approximately 24 to 72 hours later. The Land Use Assistant has attempted to contact the applicant to determine his wishes going forward and no answer has been received. Chair Jarvis stated there is no request for further continuation from the applicant. The Board discussed whether the application is considered dead. Chair Jarvis confirmed that as of noontime on December 10, 2019, no communication was received from the applicant. The Board concurred there is a clear lack of interest on the part of the applicant. Chair Jarvis noted the applicant was notified by email of the amount of \$26 is due for the application along with a copy of the Rules and Procedures. Chair Jarvis noted on DECEMBER 12th Brian Cauler, Land Use Administrative Assistant contact you by phone, leaving a message asking you to request a continuance to the January meeting. The Board discussed extending the continuation and Chair Jarvis suggested the application be kept until the January agenda, all materials need to be received by December 23, all fees for re-notifications, in addition to the currently owed fees, need to be paid by December 23.

Chair Jarvis made a motion in regards to Case# 2019-008, applicant Joshua Morgan. The Board will keep the application to the January meeting; he will be notified in writing by certified mail as to the due date in December; he must pay to re-notify all the abutters and the general public and must pay the fees owed from the current application.

Vice Chair Anderson seconded the motion.
Motion passed, 4-1-0.

Mr. Raslavicus left the meeting at 9:20pm.

Approval of Minutes

Meeting of November 12, 2019 – Edits were made. **Ms. Callaway made a motion to approve the minutes as amended. Vice Chair Anderson seconded the motion.**
Motion passed, 4-0-0.

Meeting of November 5, 2019 – Edits were made. **Chair Jarvis made a motion to approve the minutes as amended. Ms. Richard seconded the motion. Motion passed, 4-0-0.**

*New Durham Zoning Board of Adjustment
December 10, 2019
Approved January 14, 2020*

Meeting Schedule

Chair Jarvis stated the February meeting would be on Primary Day and the March meeting would be on Town election day; she proposed moving the meetings to the following Thursdays.

January 14, 2020, 7:00pm, New Durham Town Hall
February 13, 2020, 7:00pm, New Durham Town Hall
March 12, 2020, 7:00pm, New Durham Town Hall

Vice Chair Anderson suggested developing a form for case management to help keep track of the applications and their status. She stated it would also be beneficial for helping new members of the board moving forward. The Board concurred with Chair Jarvis and Vice Chair Anderson collaborating on developing a draft.

ADJOURN

Vice Chair Anderson made a motion to adjourn. Ms. Callaway seconded the motion. Motion passed, 5-0-0.

The meeting was adjourned at 9:45pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary