

NEW DURHAM ZONING BOARD OF ADJUSTMENT

New Durham Town Hall

June 12, 2018, 7:00p.m.

Present

Terry Jarvis, Chair

Joan Martin, Member

Stephanie Richard, Member

Art Hoover, Member

Paul Raslavicus, Alternate Member

Absent:

Wendy Anderson, Vice Chair

David Shagoury, Alternate Member

Also Present

Laura Zuzgo, Administrative Assistant

Tom Varney, Varney Engineering

Timothy Courounis, Applicant

Call to Order

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

Chair Jarvis appointed Mr. Raslavicus to sit on the board in Ms. Anderson's place.

Case #2018-002, Map 114, Lot 035 – Timothy & Pamela Courounis: Variances to Article XIV, Section C.1.b., Article XXI, Section E.2.b., Article XXI, Section G.2.a. and Article VI, Section C.3.a. – (Continued from May 8, 2018)

Chair Jarvis asked if there were any conflicts of members sitting on the Board for review of this application. None was indicated by the Board members or applicants.

Chair Jarvis stated the applications are requesting variances to Article XIV, Section C.1.b., Article XXI, Section E.2.b., Article XXI, Section G.2.a., Article VI Section C.3.a in order to construct a cottage within a 75' setback from the lake, septic system less than 75" of water body and 75' from any well, or dwelling other than to which it is appurtenant.

The Board reviewed the application for completeness. It was noted two applications were received and Mr. Raslavicus explained the differences between the two, being the addition of another variance.

A letter from the Department of Public Works Director/Road Agent dated May 29, 2018 was received and reviewed by the Board.

Ms. Richard made a motion to accept the amended application as complete. Mr. Hoover seconded the motion. Motion passed, 5-0-0.

Chair Jarvis read the Public Notice, outlining the application is in regards to variances requested and noted review of the application was postponed from the May 8, 2018 ZBA meeting so the application could be amended.

Chair Jarvis opened the public hearing at 7:14pm.

Tom Varney, Varney Engineering, gave an overview of the proposed plans, noting a conditional use permit was obtained in 2015 but the new owners/applicants are now proposing a cottage with changes to the approved footprint. He noted a shoreline permit from NH DES was previously approved as well. Mr. Varney explained the location of the proposed cottage and the Board reviewed the maps. He noted the plans would conform to the deeded covenants of the property and explained the locations of the building, septic and well along with the abutting properties and setbacks. The Board reviewed and discussed the proposed plans.

Mr. Raslavicus stated that one question to answer is whether anything can be built on this dimensionally non-conforming lot given the fact that the last building on this lot was demolished in 2007. Mr. Hoover stated that because the lot is a lot of record, a variance would be needed.

Ms. Martin asked the applicant if he at any time spoke with someone from the Town about the buildable status of the lot before purchasing it and Mr. Courounis said no he had not.

After asking if there were any other people wishing to speak Chair Jarvis closed the public hearing at 8:04pm. She asked if any members of the Board felt a site-walk to be necessary. None was indicated. Mr. Varney stated he would like to present his reasons for approval of the zoning ordinances.

Chair Jarvis reopened the public hearing at 8:05pm.

Mr. Varney stated the building location would be similar to the abutting properties; the proposed cottage meets the DES shoreline setbacks; the lot will be buildable and allow the owner to enjoy the water front property; its similar to other properties but is nonconforming, created pre-zoning and the setback is not feasible; the land will be environmentally upgraded; the property cannot be used in strict accordance with the ordinances; the proposed use is reasonable; setback is as far as possible.

Chair Jarvis closed the public hearing at 8:12pm.

Discussion: Variance to Article XIV, Section C.1.b.

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Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated she is concerned with the encroachment on Town's right-of-way and recommended limiting the building to 1.5 stories. Mr. Hoover stated it's beneficial as the septic system will be updated from what was previously there.

The spirit of the ordinance would/would not be observed because: Ms. Martin stated it will be a large disturbance to the land and is concerned about water quality issues due to human habitation near the lake. The Board discussed the restrictions of such a small sized lot and it's not possible to meet the setback requirements.

Granting the variance would/would not do substantial justice because: Ms. Richard stated if they do not grant the variance, the property owner will have a lot which they are indicating is not a buildable lot.

Unnecessary Hardship:

Chair Jarvis summarized the deliberations:

- The lot is not feasible for a 75' setback of the house as the lot itself is only 75' deep;
- The septic will be updated;
- The proposed plans are for a small building on a 750 square foot building envelope with a 1,380 square foot house, no more than 1.5 stories;
- To build there will be quite a bit of disturbance of the land;
- A conditional use permit will be required from the Planning Board;
- The land was purchased as a buildable house lot; and
- The new owners were not aware the variances had expired;
- To deny the variance would deny the applicant the right to use the nonconforming building lot;
- It was noted the subdivision was approved and this was a pre-existing lot. Conditions were discussed regarding the setback.

Chair Jarvis made a motion to grant a variance to Article XIV, Section C1B to allow a building less than 75' from the normal high water mark, conditional on the following:

1 - Comply with the Road Agent request in regards to the driveway;

2 - Obtain conditional Use Permit from the Planning Board for steep slopes;

3 - The height of the building will never be more than 1.5 stories;

4 - The second walkway will be eliminated.

Mr. Hoover seconded the motion. Motion passed, 3-2-0. Ms. Martin and Mr. Raslavicus opposed.

Discussion: Variance to Article XXI, Section G.2.a. as found on pg. 118

The Board discussed whether the variance is needed and the Board determined a variance would not be needed for a building to be less than 20' from a roadway as indicated in the ordinances on pg. 117, however a variance is needed to allow a structure to be located less than 75' from the water as indicated on page 118 of the ordinances. It was noticed

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Approved

that there is a typographical error in the Zoning Ordinance Under G.2. there are 2 items listed as “a.”).

Chair Jarvis made a motion that the ZBA consider the deliberations and finding of fact that were conducted for Article XIV, Section C.1.b., that the information be acceptable as the discussion of Article XXI, Section G.2.a as presented on page 118. Ms. Richard seconded the motion. Motion passed, 3-1-1. Ms. Martin opposed. Mr. Raslavicus abstained.

Ms. Richard made a motion to grant the variance to Article XXI, Section G.2.a, as shown on page 118 which reads: “No new building except for water related structures shall be located in a flood-hazardous area or less than 75’ from any water body. Mr. Hoover seconded the motion. Motion passed, 3-0-2. Ms. Martin and Mr. Raslavicus abstained.

Discussion: Variance to Article VI, Section C.3.a.

The Board reviewed the article as it pertains to the application. The letter from the Road Agent, dated May 29, 2018; was noted along with a letter received from an abutter in support of approval of the location of the leach field. Ms. Richard noted nothing on the application has changed in regards to the septic design since the first application was approved by the Board and NH DES in 201X. It was confirmed that no new approval was needed from NH DES as their approval had not expired. Mr. Raslavicus stated he doesn’t feel its in the spirit of the ordinance although it was at one point approved so will abstain. The Board discussed the difficulty in alternative designs of the septic.

Chair Jarvis made a motion to grant a variance to Article VI, Section C.3.a., to permit sewage disposal and leach field less than 125’ from the edge of a public water body and less than 75’ from any well or from a dwelling; and grant a variance to Article XIV, C.1.c. to allow the septic tank and leach field less than 125’ from the normal high water mark. Mr. Hoover seconded the motion.

Chair Jarvis made an amendment to the motion that the septic tank and leach field are to be installed as referenced in the plans dated April 11, 2018. Mr. Raslavicus seconded the amendment. Amendment passed, 4-0-1. Ms. Martin abstained.

Motion passed, 3-0-2. Ms. Martin and Mr. Raslavicus abstained.

Approval of Minutes

Meeting of March 22, 2018 – Postponed as a quorum is not present for members present at the meeting.

Meeting of May 8, 2018- The minutes were reviewed. **Mr. Hoover made a motion to approve the minutes as written. Ms. Martin seconded the motion. Motion passed, 3-0-2.** Mr. Raslavicus and Chair Jarvis abstained.

Review of ZBA Responsibilities under the Master Plan

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The Board reviewed and discussed a summary of fees by the Zoning Board. Ms. Zuzgo explained the fees as well as expenses charged to the Board.

Chair Jarvis stated the Master Plan indicates which boards and committees are responsible for carrying out the different parts and suggested the Board review their responsibilities. Ms. Zuzgo noted Mr. Swenson is also working on a spreadsheet for this. Chair Jarvis reviewed the roles specific to the Board. Due to the time a more detailed review will occur at the next meeting.

Next Meeting

July 10, 2018, 7:00, New Durham Town Hall

Adjourn

Mr. Hoover made a motion to adjourn. Ms. Richard seconded the motion. Motion passed, 5-0-0.

The meeting was adjourned at 9:21pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary