

NEW DURHAM ZONING BOARD OF ADJUSTMENT

New Durham Town Hall

February 13, 2018, 7:00p.m.

Present

Terry Jarvis, Chair

Stephanie Richard, Member

Art Hoover, Member

David Shagoury, Alternate Member

Paul Raslavicus, Alternate Member

Excused Absence

Wendy Anderson- Vice-Chair

Joan Martin – Member

Also Present

Laura Zuzgo, Administrative Assistant

David Collins, Resident

Tom Varney, Varney Engineering

Deborah Randall, Architect

Call to Order

Chair Jarvis called the meeting to order at 7:04pm.

Chair Jarvis appointed Mr. Raslavicus to sit in Ms. Anderson's position; Mr. Shagoury to sit in Ms. Martin's position.

Review and Acceptance of Application number 2018-001 Map 122, Lots 27 & 26

Chair Jarvis asked if any member of the board had a real or perceived conflict of interest requiring them to step down. None was noted.

Mr. Hoover stated there seems to be a technical difficulty with the project and clarified the project requires the two lots be merged which has not currently been done. He explained the process required in order to move forward as well as ramifications in doing so.

David Collins, lot owner, stated he is aware of the merger situation and is fine with it being a contingency of the approval.

Chair Jarvis noted there are no measurements in regards to setback of septic tank, leach field or abutters' house and well. She also noted Lot 26 is a right-of-way for the back lot access to the lake, and questioned whether that can be done away with. Mr. Hoover stated Mr. Collins owns all the lots so he can do the merger. By consensus of the Board, it was agreed to move forward with the merger contingency. Maps were reviewed and Mr.

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Varney explained the distance from the abutters' house, to leach fields, septic tanks and wells. The board reviewed the remainder of the application.

Mr. Hoover made a motion to accept the application as complete with the provision that there be a voluntary merger of the lots. Ms. Richard seconded the motion.

Motion passed, 5-0-0.

Public Hearing

Application number 2018-001, Map 122, Lots 27 & 26 for Variances to Article V, Section E, Article XIV, Section C.1.b., Article XXI, Section E.2.b. and Article VI, Section C.33Aa.1. and Section C.3.a.2.

Chair Jarvis opened the public hearing at 7:21pm.

Tom Varney, Varney Engineering, gave an overview of the proposed project of upgrading an existing cottage. He stated the proposed cottage will expand toward the road over the existing footprint, driveway replaced; lot coverage is being reduced from 31.8% to 18.5% by removing the boat ramp, concrete patio and shed. There will be a new well and septic system installed and explained storm water and steep slope management plans will be implemented. Maps and diagrams were presented for review. Mr. Varney explained one of the variances is to have the house be less than 75' from the lake. The Board reviewed and discussed the plans for clarification.

Deborah Randall, architect, explained the changes to the property regarding the proposed project and overall expansion of the building. There was also discussion of the storm water management plan and how the new building and driveway would affect runoff into the lake.

Mr. Varney gave a summary of why these variances should be granted.

Chair Jarvis closed the public hearing at 8:09. She noted there are a total of 5 ordinances being addressed and proposed Article V, Section E, Article XIV, C.1.b. and Article XXI, Section E.2.b. and discuss as a unit, then proceed to the remaining articles which deal with the septic tank location and then Article VI, Section 3A2.

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

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated the application is proposing to place a building that is not 75' from the highwater mark. She stated she doesn't think it is contrary to the public interest as the old building is going to be replaced with a newer building which will have an increased value. Mr. Hoover stated they are giving more than they are giving up and is in favor of the improvements. Mr. Raslavicus stated it seems it may be contrary to public interest as the restrictions were set up to avoid building nonconforming houses within the protective setbacks. He stated the "grandfather" terms are for remaining on the same footprint. Mr. Shagoury stated he agrees and doesn't think its in the public interest, while the building

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may need to be replaced, he doesn't think the size expansion is necessary and makes a nonconforming lot, more nonconforming.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the proposed plans improve the pervious surface as well as the septic system. Mr. Hoover stated the ordinance also considers more than just the septic system such as the materials used and that is within the spirit of the ordinance. Ms. Richard stated the only way to not seek the variance would be to rebuild on the existing footprint. Mr. Raslavicus stated the spirit of the ordinance is to allow rebuild and improvement without increasing size, noting the ordinance is intended to protect the shoreline and avoid overcrowding. Mr. Shagoury stated the plans make a nonconforming lot, more nonconforming and is contrary to the ordinance.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated an old structure is being replaced and thinks the property is just not conducive to doing much of anything. Mr. Raslavicus stated it can vary depending on who's interest you are considering the justice towards, whether those who set the regulations or in this case, Mr. Collins. Mr. Hoover stated if they don't grant the variances and allow the improvements, there would continue to be runoff and damage to the lake. The Board discussed whether there were restrictions which would be attached to an approval. Mr. Hoover stated taking a nonconforming building and making it more nonconforming would be an injustice. Ms. Richard stated she believes granting the variance would be a substantial justice. Mr. Hoover referenced case law and the State statutes relative to these ordinances, noting if certain conditions are imposed, he would be comfortable granting the variances, such as limiting building size. It was noted the proposed plans are approximately double the square footage. Ms. Richard stated they would have to come to the Board for a variance regardless of the square footage of the building. Chair Jarvis noted the size of the lot is also increasing with the lot merger. She suggested it's the conditions of the lot that are causing the hardship.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she believes it would increase the value because the lot will be bigger, there would be a new house and a new septic system. The other Board members agreed.

Unnecessary Hardship: Chair Jarvis stated it is the special conditions of the property that create the hardship. Mr. Raslavicus felt that there was no hardship because in his opinion there are other lots with the same conditions. After a brief discussion the other members believed there was a hardship. Also there is no change in use; it is going from residential use to residential use.

Chair Jarvis summarized the discussion: the current building is not structurally sound, the total lot coverage is decreasing, it is felt the proposed new house is too large for the lot, a nonconforming lot is becoming more nonconforming, environmentally there will be improvements by improving drainage into the lake and from across the road and septic control, as well as a new house; there is no way to build a house 75' back from the lake,

nor is there any way to have a 125' setback for the septic; going from a residential use to a residential use

Mr. Hoover made a motion that the application for case number 2018-001, Map 122, Lots 027 & 026 be approved with the condition that there be a merger of lots 026 and 027.

Chair Jarvis made an amendment to the motion to say relative to the request for a variance from Article V Section E, Article XIV Section C.1.b, and Article XXI Section E.2.b, with those items dealing with the request to construct a new cottage within 75' of the high water mark. Chair Jarvis also added to the amendment that along with the contingency that lots 026 and 027 be merged, the applicant also receive a steep slope use permit and storm water use permit from the Planning Board, and a shoreland permit and septic approval from NH DES. Mr. Shagoury seconded the amendment. Amendment passed, 5-0-0.

Chair Jarvis made an amendment to the amended motion to clarify the building design as presented in the document dated September 16, 2016, shall be revised as presented during the hearing, removing the 6'x12' bump-out at the right rear of the building and moving the square footage to the left rear of the building. Ms. Richard seconded the motion. The second amendment passed, 5-0-0.

Motion passed as amended, 5-0-0.

Mr. Raslavicus made a motion that the building be no higher than 1 ½ stories. Motion failed for lack of second.

Discussion – Article VI, Section C.3.a.1

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated this ordinance requires that the septic be located 125' from the shoreline. She stated a new septic system is in the best interests of the lake. Mr. Raslavicus stated they don't have the 125' space to do it and approval will be required from NH DES.

The spirit of the ordinance would/would not be observed because: The Board concurred the new septic is in the spirit of the ordinance.

Granting the variance would/would not do substantial justice because: The Board concurred the new septic is in the spirit of the ordinance.

For the following reasons the values of surrounding properties would/would not be diminished: The Board concurred the new septic is in the spirit of the ordinance.

Unnecessary Hardship: Mr. Hoover stated the lot is smaller than the rest of the lots in the area and the use is reasonable.

Ms. Richard made a motion to approve the variance to Article VI, Section C.3.a.1 to allow the septic system to be within 125' of the lake with the same conditions as the previous motion and adding the condition that approval from the road agent is granted to allow the leach field to be less than 10' from the road frontage of the property. Mr. Shagoury seconded the motion. Motion passed 5-0-0.

Discussion – Article VI, Section C.3.a.2

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated this variance to the ordinance is to allow the septic tank/disposal area to be less than 75' from the well or dwelling. Mr. Hoover stated it would not be contrary to the public interest. It was noted the location would be 50' to the abutters' house. Chair Jarvis stated she doesn't see any other location on the property. Mr. Hoover noted NH DES approval would still be required on this. Mr. Shagoury stated it is not contrary to the public interest but it would be nice to have approval from the abutter.

The spirit of the ordinance would/would not be observed because: The Board concurred the spirit of the ordinance would be observed.

Granting the variance would/would not do substantial justice because: The Board concurred granting the justice would do justice for reasons previously discussed.

For the following reasons the values of surrounding properties would/would not be diminished: The Board concurred the surrounding property values would not be diminished.

Unnecessary Hardship: Chair Jarvis stated the property is too small, which causes the hardship. The use remains residential.

Ms. Richard made a motion to approve the variance for Article VI, Section C.3.a.2 to allow the septic system to be located within 75' of the abutters home, with the 6 conditions previously discussed. Discussion: Ms. Zuzgo clarified abutters were notified and no mail was returned. **Mr. Shagoury seconded the motion. Motion passed, 4-0-1.** Mr. Raslavicus abstained. He explained he's not sure the rights of the abutters are being protected.

Mr. Hoover left the meeting.

Future Meetings

The Board concurred to move the next meeting to March 14, 2018, 7:00pm as March 13th is voting day..

Chair Jarvis stated the draft edits for the Procedure Rules were reviewed by Town Counsel and a few comments were provided. These were reviewed and discussed.

Chair Jarvis made a motion to suspend the current procedural requirement that any amendments to the Procedures must be read at two subsequent meetings and

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approve the Procedural Rules for the New Durham Zoning Board of Adjustment dated 2/12/18. Mr. Raslavicus seconded the motion. Motion passed, 4-0-0.

Chair Jarvis stated Ms. Zuzgo is working on getting the applications setup on the website as fillable forms. The edits made to the Application were reviewed and discussed.

Chair Jarvis made a motion to approve the application to New Durham Zoning Board of Adjustment, as amended at the February 13, 2018 meeting. Mr. Raslavicus seconded the motion. Motion passed, 4-0-0.

Approval of Minutes

Postponed.

Mr. Raslavicus made a motion to adjourn. Mr. Shagoury seconded the motion. Motion passed, 4-0-0.

The meeting was adjourned at 9:54pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary