

NEW DURHAM ZONING BOARD OF ADJUSTMENT

New Durham Library

November 26, 2018, 7:00p.m.

Present

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Stephanie Richard, Member

Art Hoover, Member

Paul Raslavicus, Alternate Member

Excused Absence

Joan Martin, Member

David Wessell, Alternate Member

Also Present

Tom Varney, Varney Engineering

Call to Order

Chair Jarvis called the meeting to order at 7:05pm. Mr. Raslavicus was appointed to sit on the board as a full member in Ms. Martin's place.

Agenda Review

Chair Jarvis moved the review of the November 13, 2018 meeting minutes to the next meeting.

Chair Jarvis added at the end of the meeting: discussion for review of Procedures and materials to be submitted with plans; discussion for CEO

Ms. Richard joined the meeting at 7:08pm.

Approval of Minutes

Meeting of November 15, 2018 – Site Walk: Edits were made. **Mr. Hoover made a motion to approve the minutes as amended. Ms. Richard seconded the motion. Motion passed, 5-0-0.**

Hearing Continued: Case #2018-005, Map 122, Lot 016 and Lot 035, 125 South

Shore Requests for Variances to: Article VI, Section C3A, Article VI, Section C3B, Article XIV, Section C1C, Article XXI, Section A, Article XXI, Section C1, Article XXI, Section C2, and Article XXI, Section G1A.

Chair Jarvis gave a summary of the case to date, noting the application was initially reviewed on September 11, 2018, and found to be incomplete. At the October 23, 2018 meeting of the ZBA, the application was reviewed with additional variances being requested and found to be complete. A site walk was determined to be necessary and the public hearing was opened on October 23, 2018, being continued until after the site walk

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Approved

was completed. The site walk was initially conducted on October 28 and then again on November 15 due to a question of validity in posting for the first date. The findings of the site walk are going to be part of the deliberations at this meeting.

Tom Varney, Varney Engineering, stated it seems to be a good solution to put the septic on Lot 016. The system will be more than 75' from the lake. However one of the tanks and the majority of the leach bed will be within 125' necessitating additional waivers from other things. He explained there is no issue with the State in their approval. Mr. Varney presented maps for review, showing wetlands and dry areas.

Mr. Raslavicus noted the State would require a defactum merger of the two lots so they must be sold together. The Board reviewed and discussed the proposed building plans and maps.

Chair Jarvis closed the public hearing at 7:24pm.

Chair Jarvis noted the members deliberating the case would be Mr. Hoover, Ms. Richard, Ms. Anderson, Mr. Raslavicus and Chair Jarvis. She suggested combining the discussion of the like variances.

Chair Jarvis outlined the Findings of Fact:

Lot 035- the following was identified:

- A large percentage of the property is wetlands.
- The property is surrounded on 2.5 sides by wetlands.
- There is a stream running on the east side of the house in an area that is not wetlands.
- Current system too close to the wetlands and running brook
- Much of the "non-wetland" property is wet, even with drainage pipes in place.
- There is no location on lot 35 to locate a new septic system that meets New Durham's ordinances and state requirements due to the wetlands.
- The proposed new house will be built on slab with no basement. It will also be built 2 inches higher from ground then current
- The property is unique when looking at surrounding properties

Lot 016- the following was identified:

- None of the septic tanks are within 75 feet of the lake.
- The majority of the leach bed and 1 of the 2 septic tanks will be within 125 feet of the lake.
- The leach beds for the adjacent properties are approximately 20 and 30 feet from the proposed leach bed.
- The deeds of the two lots will be redone to prohibit the sale of one without the other.
- At the location of the leach bed, the ground will be elevated approx. 2-3 feet sloping off towards the lake

Approved

- Proposed new system will be an upgrade
- Once the system is installed most people will not realize there is a change in use

The Board discussed the requests for variances to the following articles:

Article VI Section C.3.(a) “No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed:

- a. Less than one hundred twenty five (125) feet from the edge of a public water body; or
- b. Less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant.”

Article VI Section C.3.(b) “No part of a leach field shall be located less than:

- a. Twenty (20) feet from a property line on a lot less than eighty thousand (80,000) square feet;
- b. Less than thirty (30) feet from a property line on an eighty thousand (80,000) square feet to one hundred fifty thousand (150,000) square feet lot; or,
- c. Less than forty (40) feet from a property.”

Article XIV Section C.1.(c) “Any leach field shall be set back a minimum of one hundred twenty five (125) feet from the normal high water mark.”

Article XXI Section G.1.(a) “Leach field not less than ten (10) feet from the lot line;

Discussion: Variance to Article VI, Section C.3.A, Article VI, Section C.3.B, Article XIV, Section C.1.c Article XXI Section G.1.(a):

Granting the variance would/would not be contrary to the public interest: The Board concurred it would not be contrary as the current system is too close to streams and brooks; the new system would be an upgrade with double tanks.

The spirit of the ordinance would/would not be observed because: The Board concurred the spirit of the ordinance would be observed and there is no other alternative to allow the property owners to use their property; it would be an improvement for the safety of the lake. The reason for the upgrade is a necessity.

Granting the variance would/would not do substantial justice because: The Board agreed it would do a substantial justice grant the variance.

For the following reasons the values of surrounding properties would/would not be diminished: The Board concurred the surrounding properties will not be affected but the current property will be improved.

Unnecessary Hardship: The Board concurred this is clearly a case of unnecessary hardship if the variances are denied and that this property is a unique situation.

Chair Jarvis made a motion to grant the variance requests to Article VI, Section C.3.A, Article VI, Section C.3.B, Article XIV, Section C.1.c, Article XXI Section G.1.(a) with the following conditions:

- 1. Town engineers to evaluate proposed work and determine if the road can handle it;**
- 2. the landowners will comply with the requirements listed in the Road Agent's 11/19/18 letter;**
- 3. the applicant will comply with New Durham Ordinance XVIII "Ordinance Relative to Street Excavation" which includes applying to the Board of Selectmen for a permit;**
- 4. the deeds of lots 016 and 035 will be redone to prohibit the sale of one lot without the other;**
- 5. Lot 016 will be posted prohibiting anything in weight that is not allowed by the manufacturer's guidelines from being placed or driven on the lot.**

Ms. Richard seconded the motion.

Discussion: It was confirmed any costs for engineering studies would be the responsibility of the applicant. **Motion passed, 5-0-0.**

The Board discussed the requests for variances to the following articles:

Article XXI Section C.(1) "They conform to Non-Conforming Setback and height requirements below;"

Article XXI Section C.(2) "Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this ordinance."

Discussion: Variance to Article XXI Section C.(1), and Article XXI Section C.(2)

Granting the variance would/would not be contrary to the public interest: The Board concurred granting the variance would not be contrary to the public interest for the same reasons previously discussed. It was noted the variances are only valid for two years and the applicants are only asking for a new septic system at this point.

The spirit of the ordinance would/would not be observed because: The Board concurred the spirit of the ordinance would be observed for reasons cited previously.

Granting the variance would/would not do substantial justice because: The Board concurred the spirit of the ordinance would be observed for reasons cited previously.

For the following reasons the values of surrounding properties would/would not be diminished: The Board concurred the spirit of the ordinance would be observed for reasons cited previously. It was agreed that upgrading the septic system can only improve the value and improve the protection of the water.

Unnecessary Hardship: The Board concurred that denying the variances would be an unnecessary hardship for the applicants.

Mr. Hoover made a motion to approve the request for variances to Article XXI Section C.(1), and Article XXI Section C.(2) with all the previous conditions as outlined. Ms. Anderson seconded the motion. Motion passed, 5-0-0.

The Board discussed the request for variance to the following article:

Article XXI Section A “All non-conforming properties in active use when this ordinance is passed and adopted may continue in their present use.”

Discussion: Variance to Article XXI Section A:

The Board concurred the reasons for approval of the variance are the same as for the previous articles discussed and approved. It was agreed the lot is a unique property and there is no other option for the applicants to replace the septic on lot 035.

Ms. Richard noted they are going from an undeveloped lot to a lot with a septic system (lot 016) but it will not appear to be developed and a change of use will not be apparent.

Chair Jarvis made a motion to approve the request for a variance to Article XXI, Section A with all the conditions that have been applied to the variances that were previously approved for lot 016. Ms. Anderson seconded the motion. Motion passed, 5-0-0.

Other

Chair Jarvis stated they discussed at a prior meeting looking at procedures and materials to be submitted with applications, noting Ms. Anderson and Ms. Richard were nominated to gather information. She noted one item she noticed is the lack of wetlands being shown and indicated on applications. Chair Jarvis and Art Hoover will work together on the rest of the procedures. Chair Jarvis and Ms. Zuzgo will correlate information to distribute to the board for review in developing draft documents.

Adjourn

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

The meeting was adjourned at 8:20 pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary