

NEW DURHAM ZONING BOARD OF ADJUSTMENT

**New Durham Town Hall
October 23, 2018, 7:00p.m.**

Present

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Stephanie Richard, Member
Art Hoover, Member
David Wessell, Alternate Member

Excused Absence

Joan Martin – Member
Paul Raslavicus, Alternate Member

Also Present

Laura Zuzgo, Administrative Assistant
Tom Varney, Varney Engineering
Michael Narkis, Applicant
Chris Edwards, Applicant
Brenda Edwards, Applicant
Don Vachon, Road Agent

Call to Order

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

Appointments/Announcements

Chair Jarvis stated Mr. Wessell expressed interest in being an alternate member of the Zoning Board of Adjustment as well as an alternate on the Planning Board. She stated it was confirmed that this was permissible.

Chair Jarvis made a motion to appoint David Wessell to a three-year term expiring September 30, 2021 as an alternate to the Zoning Board of Adjustment. Ms. Anderson seconded the motion. Motion passed, 4-0-0.

Chair Jarvis appointed Mr. Wessell to sit as a full member in place of Ms. Martin.

Approval of Minutes

Meeting of September 11, 2018 – Edits were made. **Ms. Richard made a motion to approve the minutes as amended. Ms. Anderson seconded the motion. Motion passed, 3-0-2.** Mr. Hoover and Mr. Wessell abstained.

Application Review: Case #2018-004: Variances to Article V.E and Article XIV.C.1(b) for Map 209 Lot 026

Chair Jarvis stated the applicant came before the Board in July with his proposed plans and noted a letter was received from the applicant requesting that this public hearing be postponed until a later date.

Chair Jarvis made a motion to postpone the public hearing for Case #2018-004 to February 12, 2019. Mr. Hoover seconded the motion. Motion passed, 5-0-0.

Application Review: Case #2018-005: Variances from Article VI.3.(a); Article 6VI.C.3.(b); Article XIV.C.1.(c); Article XXI.A; Article XXI.C.1; Article XXI.C.2; Article XXI.G.1.(a) for Map 122 Lots 016 and 035

Chair Jarvis stated the application was reviewed at the September 11, 2018 meeting and additional variances were determined to be needed at that time. The additional requests for variances have been received. It was noted all fees have been paid and abutters were notified. It was noted at the last public meeting, that Map 122 Lot 016 was a nonconforming lot and the requested use was a new use. Chair Jarvis stated there was also a request for engineering information regarding the road and confirmation the required work could be accomplished. She suggested making that a requirement if any variances are accepted and have the Town's engineers evaluate the road.

The Board reviewed the application for completeness.

Chair Jarvis made a motion to accept the application as complete, with the understanding that prior to any work being completed, an engineer shall evaluate the road to determine if the work to the road can be accomplished without complications and if the engineer would be in communication with the Town Road Agent who would need to sign off before any work would be done. Ms. Anderson seconded the motion. Motion passed, 5-0-0.

Chair Jarvis asked if anyone believes a site-walk should be conducted prior to opening the public hearing. She stated she is in favor of seeing the lots to understand the contours of the land better. The Board concurred. It was agreed the site walk would occur prior to the November 12, 2018 meeting. The site walk was scheduled for October 28, 2018 at 4:00pm at 125 South Shore Drive, and will be open to the public.

Tom Varney, Varney Engineering, questioned why the public hearing isn't being opened before the site walk. The Board discussed whether the public hearing should be opened.

Chair Jarvis opened the public hearing at 7:36pm, with the understanding the public hearing will be kept open until after the site walk.

Mr. Varney gave an overview of the properties and explained the proposed plans. He stated there is no suitable location for a septic system on lot 035 which meets current setbacks; he stated there is a lot across the street, lot 016, which would meet all DES

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requirements for surface water and septic system. Pictures of the property were presented along with maps and plans. The Board reviewed the maps and plans. Mr. Varney explained the wetlands encompassing lot 035, with no place for a septic, noting the existing system is in failure. He also explained how the proposed pump system would work. Chair Jarvis asked Mr. Vachon if he was familiar with the area. Mr. Vachon stated there is quite a bit of water that comes down through the area and keeps it wet. The Board reviewed and discussed the current and proposed setbacks. It was confirmed the proposed tank would be completely submerged. (NOTE: At the 11/13/2018 meeting, Mr. Varney clarified that when he used the word submerged, he meant the septic tanks would be buried underground.) Mr. Varney explained that granting the variances and using this solution would allow the applicant to avoid requesting variances from DES. The Board discussed whether the proposed cottage location could be moved to allow a different location for the septic system. The Board confirmed the necessity of a site walk and discussed the importance of working to ensure protection of water bodies.

The applicant asked why an additional engineering analysis is going to be required. Chair Jarvis replied she wants to be sure the road is maintained and protected from the activities during the process, and to protect the Town from any costly issues in the future.

Chair Jarvis made a motion to continue the public hearing for Case #2018-005, Map 122, Lot 016 and 035, to Tuesday, November 13, 2018, 7:00pm, at New Durham Town Hall. Ms. Richard seconded the motion. Motion passed, 5-0-0.

Continued Public Hearing: Case #2018-006, Map 240, Lot 006, 144 Merrymeeting Road.

Mr. Hoover recused himself from the case because of a conflict of interest, having done legal work for the applicant in the past. Chair Jarvis noted the public hearing was opened at the September 11 meeting with Mr. Raslavicus sitting on that board. She noted that since he is not present, the applicant can choose to postpone the public hearing when he is back or move forward with the three members of the Board or a third alternative was she could appoint Alternate Member David Wessel to sit in for Mr. Raslavicus. The applicants stated they would like to move forward with the current board and alternate member.

The Board reviewed correspondence from Town Counsel regarding this case along with an email from DOT.

Chair Jarvis reopened the hearing for Case #2018-006 at 8:28pm. The requests are for variances to Article V. D which requires buildings be 20' from the front property line. The demolished building was 8.2' from the left side; the proposed building will be 11.4' on the left side and 12' on the right side. The second variance requested is to Article V.E, which requires buildings to be 75' from any water body. The demolished building was 32.5' from the water, with no deck or patio; the proposed building would be 23.1' from the water, with the deck and patio 15.1' from the water. It was clarified the proposed building is not going to be built on the current footprint. The Board reviewed and discussed the comments submitted by the DOT engineer. Mr. Vachon confirmed that

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although it's a state road, the Town plows during the winter. The Board reviewed and discussed the proposed location of the building and maps. Mr. Vachon stated he doesn't see a need for a waiver of liability for damages to the road, with the building being set 36' from the center of the road. The Board reviewed the plans and maps, clarifying the sizes of the proposed building and decks. It was noted the storm water study and steep slopes were submitted to the Planning Board for a conditional use permit.

Chair Jarvis closed the public hearing at 8:51pm. The board members reviewing the case include Chair Jarvis, Ms. Anderson, Ms. Richard and Mr. Wessel.

Discussion: Variance to Article V. D

Granting the variance would/would not be contrary to the public interest: Ms. Anderson stated she sees no detriment to it being less than the setback due to the property's restrictions and steep slopes. Chair Jarvis suggested a condition of granting the variance be that the driveways and site lines be done and maintained to the satisfaction of the DOT and the Town. The Board concurred it would not be contrary to the public interest.

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

Granting the variance would/would not do substantial justice because: Ms. Richard stated it does substantial justice as the right-of-way is wide but it is a narrow two-lane road. Ms. Anderson suggested they should remember the offer of use of this property during crisis situation for the community.

The Board concurred the values surrounding properties would not be diminished.

Unnecessary Hardship: The Board concurred the use is reasonable, it is a replacement building and that by granting the variance it will also provide housing for the community in an emergency. The applicants agreed with the conditions relative to the NH DOT requirements.

Ms. Anderson made a motion to grant the variance to Article V. D, of the Zoning Ordinance to allow the new building to be less than 20' from the front, road property line, with the following conditions:

- 1. a second septic tank to be installed;**
- 2. the applicant will meet with NH DOT District 3 as outlined in the October 19, 2018 email to obtain a new driveway permit.**

Mr. Wessel seconded the motion. Motion passed, 4-0-0.

Discussion: Variance to Article V.E

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated she doesn't see it being contrary to the public interest. Ms. Anderson stated she

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always wants to protect water bodies but this is a private, man-made pond. The Board concurred it would not be contrary to the public interest.

The spirit of the ordinance would/would not be observed because: The Board discussed whether the ordinance is applicable to a small, man-made pond. Board concurred the spirit of the ordinance would be preserved.

Granting the variance would/would not do substantial justice because: The Board discussed the building being kept on the existing footprint and the ability of keeping it back from the shoreline rather than moving it closer. It was agreed that granting the prior variance would be irrelevant if this variance is denied.

The Board concurred the values of surrounding properties would not be affected.

Unnecessary Hardship: The Board discussed the property's topographical restraints and the hardships caused by such. The issues identified include flat area used to be wetlands, 80% is steep slopes, State road is wider than Town road, and to move the house to a new location would require moving the septic system and associated utilities. The Board also reviewed the Planning Board decision regarding the conditional use permit. Chair Jarvis suggested this variance be granted with the condition that the Planning Board review their decision regarding the conditional use permit to see if there are any additional requirements they want to include.

Chair Jarvis made a motion to grant the variance to Article V. E, to allow a building other than a water related structure to be located in a flood hazard area or less than 75' from any water body or river, with the following conditions: all conditions as set forth in the previous motion shall be complied with; in light of the June 5, 2018 Planning Board meeting minutes, the ZBA requests the Planning Board review their decision in granting the conditional use permit. Mr. Wessel seconded the motion. Motion passed, 3-1-0. Chair Jarvis, Wendy Anderson and David Wessel voting in favor and Stephanie Richard voting against.

Chair Jarvis closed case #2018-006.

Other

Chair Jarvis stated they need to plan a workshop session to review ZBA procedures based on recommendations that have been passed to the Board. She suggested the Board review the recommendations for discussion and determine how procedures will be edited. The Board reviewed the existing and proposed changes along with the current checklist.

Ms. Richard stated she has submitted a proposal to do the site work for the Zachariah Boodey Farmstead, but wants to ask how that will be handled when the committee comes before the ZBA. Chair Jarvis replied it would be a conflict and suggested Ms. Richard would need to recuse herself from hearing the case.

Adjourn

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Ms. Richard made a motion to adjourn. Mr. Wessell seconded the motion. Motion passed, 4-0-0.

The meeting was adjourned at 9:50pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary