

**NEW DURHAM ZONING BOARD OF ADJUSTMENT
New Durham Town Hall
January 8, 2019, 7:00 PM.**

Present:

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Stephanie Richard, Member
Art Hoover, Member
Paul Raslavicus, Member
Linda Callaway, Alternate Member

Excused Absence:

Joan Martin, Member
David Wessell, Alternate Member

Also Present:

Laura Zuzgo, Administrative Assistant
John Michaud, Resident
Eric Buck, Terrain Planning & Design, LLC, Applicant's Representative
Romy Maurer, Terrain Planning & Design, LLC
Michael Hayward, Hayward & Co.

Call to Order

Chair Jarvis called the meeting to order at 7:01 PM. Mr. Raslavicus was appointed to sit on the board as a full member in Ms. Martin's place.

The Board signed the documents for the appointment of Linda Callaway and she joined the board at the table for the meeting.

Approval of Minutes

Meeting of December 11, 2018 – Edits were made. **Ms. Richard made a motion to approve the minutes as amended. Ms. Anderson seconded the motion. Motion passed, 5-0-0.**

Site Walk of December 17, 2018 - Edits were made. **Ms. Anderson made a motion to approve the minutes as amended. Mr. Hoover seconded the motion. Motion passed, 4-0-1.** Chair Jarvis abstained.

Continuation of Case 2018 – 010, Map 112, Lot 001 – 228 South Shore Road

Chair Jarvis noted the applicant is requesting variances to Article V, Section E; Article XIV, Section C.1.B; Article XXI, Section C1 and C2; Article XXI, Section G.2.b.

Chair Jarvis stated the application was received on October 19, 2018; determined by the Board not to be complete on November 13, 2018; the revised application was received at the end of November. The public hearing was held on December 11, 2018 and it was determined a Site Walk was needed. The site walk was held on December 17, 2018. Additional information was requested at the Public Hearing

including an update on the drainage issues, a possible turn-around and impervious pavement. At the Site Walk it was stated a 15" culvert was supposed to have been installed years ago and an assessment is needed to determine if the increased water flow could be handled. Additional information was requested on culvert and drainage evaluations and wetland scientist determinations. Chair Jarvis stated a wetlands assessment was received from A & D Klumb Environmental, LLC and would be reviewed at this meeting.

Eric Buck, Terrain Planning and Design, LLC stated they have provided the wetlands scientist report as requested and more detail explaining their calculations for determining the proper size of the rain garden. He noted these are directly from the NH DES water management guidelines. These were reviewed and discussed by the Board. It was noted the retaining wall would be between 4' and 4'6" tall. The Wetland Scientist believes that the drainage channel would be considered ephemeral or an intermittent stream will require some sort of dredge and fill permit from the Wetlands Bureau at DES. This would get tied into whatever happens with the culvert. During the site walk, the Town Administrator and Road Agent stated that there needs to be a greater study of the uphill side of the culvert and the Town would work with the property owners, although it could be a condition of approval. Chair Jarvis asked about the potential responsibility or liability for potential damage to the property due to the proposed change in the direction and flow of the culvert. Mr. Buck explained where the right of way is and there is currently no drainage or maintenance easement so he believes adverse damage from the culvert would be the responsibility of the Town. Chair Jarvis stated no damage has currently occurred with the culvert and would be concerned about possible damage with any changes made to it. Mr. Hayward stated the amount of runoff will not change. Mr. Raslavicus suggested a contingency of the project be that no work be started until the culvert issue is resolved. The Board concurred as it may alter what has to be done and it will depend on the information that comes from the further studies. The Board reviewed the application and clarified the proposed plans with Mr. Buck.

Chair Jarvis closed the public hearing at 7:55pm. She stated the members deliberating the case would be Mr. Raslavicus, Mr. Hoover, Ms. Anderson, Ms. Richard and Chair Jarvis.

Findings of Fact:

- The applicant plans to demolish the existing cottage with plans to replace it with a three bedroom house and attached garage, as per the provided plans;
- Originally two lots which were merged in early 2000s;
- The property has an existing approved 3 bedroom septic system that was installed in 2008;
- The current house is 48' from the water body; the new building would be 55' from the water body – within the Town's 75' setback;
- There is an existing culvert with plans to redirect drainage with an open swale and bio retention rain garden. Rain garden has been redrawn for the 15" culvert;
- The shed located approximately 15' from the lake will be removed;
- The plan will go from 9% impervious surface to 18% impervious surface;
- The house footprint will be less than 15%;
- According to the Town Administrator, the cross culvert was proposed in 2006-2008, to have been upgraded from 12" to 15", however this was never done;
- The skew of the culvert will be changed based on the plans;
- The increased size of the culvert and change of direction of the culvert needs to be evaluated by the Town Engineers;

- The viability for the increased volume and change of direction needs to be approved by the Town Engineers;
- The Wetlands Scientist has reviewed the property and there are wetlands there. However, review was limited due to frozen ground;
- Information on the pervious pavers has been received;
- Perc test results have been received;
- There will be a change in the location of the driveway access which must be reviewed and approved by the Road Agent;
- A shoreland impact permit was received from NH DES and a dredge and fill permit will be needed;
- Part of the house and garage roof will drain towards the lake;
- The reason for not moving the garage behind the 75' setback was for architectural reasons;
- The retaining wall needs to be evaluated by engineers;
- The water table was provided with the test pit data and confirmed to be acceptable.

Discussion: Variances to Article V, Section E; Article XIV, Section C.1.b; Article XXI, Section G.2.b

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated she is concerned about doubling the impervious surface, making a non-conforming lot even more non-conforming. Ms. Richard feels we could look at it as a large increase in impervious surface within the 75 foot setback, regardless of whether it can adjust within that setback area. Chair Jarvis suggested the house could be pushed further back; there would be less impervious surface if the buildings were smaller. Mr. Raslavicus stated it does not meet the purposes of the public interest. The statement of purpose under Article XIV basically says the following restrictions are applicable to land with a designated shorefront conservation area, which is the 75 foot setback Ms. Anderson pointed out there are attempts being made to filter any runoff and improve the impact on the shoreline. Mr. Hoover stated the 75' setback from the lake and the 20' setback from the road, shrinks the building area by quite a bit which was not the case when the original cottage was built with a 50' setback at the time. The Board concurred modifications could be made to the plans to make them less non-conforming. Ms. Anderson feels the variance would be in the public interest as far as the upgrades to the drainage coming out of the culvert are concerned and as far as tax revenue is concerned. It is contrary to the public interest as far as increase in impervious area within 75 feet setback.

The spirit of the ordinance would/would not be observed because: Ms. Richard and Ms. Anderson stated the drainage would be improved and water filtered better before going into the ground and possibly the wetland area. Mr. Raslavicus stated a big impact is the size of the proposed buildings versus the existing situation. He is concerned that approval would be setting a precedent. This is one of the lots where living with the 75 foot setback is actually possible. If the spirit of the ordinance is really keep all new construction would be 75 feet back.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated that by allowing them to triple the living space is substantial justice for the property owners. Ms. Richard stated the public gain does not outweigh the negative impact as a result of the additional impervious surface. The significant overage within the 75 foot is much more of a gain for the applicant than the assumed gain we'd get in taking care of any drainage right now. Ms. Anderson stated there doesn't seem to be a drainage issue currently but the public gain does not seem to be substantial justice with the proposed improvements. Mr. Raslavicus stated this applicant can move the building back and build a reasonable

home within the prescribed setbacks and doesn't see the need for the Board to do something to provide justice.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis suggested it could raise the values of the properties in the area and it will certainly raise the value of this property. Board Members concurred. The area would, however, be more crowded with a doubling of impervious surface.

Unnecessary Hardship: Chair Jarvis stated the property does allow the building to be moved back to meet the setbacks. Ms. Richard noted the lot is flat and it is larger than many lots around the lake. Due to the conditions of this lot it not a hardship. Relative to the size of the lots on the lake, it's quite large. Its two lots merged together. Mr. Hoover stated anything that goes in there will be an improvement and suggested there may be other ways for the applicant to have a house on the property. Ms. Anderson stated that when looking at the lot map, possibilities for moving the building can be visualized. The Board concurred the criteria for a hardship is not met.

Unnecessary Hardship: The criteria in subparagraph A have not been established. An unnecessary hardship will deem to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonable used control of the ordinance and a variance is therefore necessary to enable a reasonable use if it. This property is not the only non-conforming lot in the area. It's unique in its size making it easier for the requirements of the ordinance to be met.

Chair Jarvis made a motion to approve the request for variances to Article V, Section E; Article XIV, Section C.1.b; and Article XXI, Section G.2.b with the following conditions: prior to a building permit being issued there will be an evaluation of the upland water flow volume and ability of the revised culvert location and direction to support the flow; said evaluation to be completed by the Town Engineer at the applicant's expense; before a building permit is issue the retaining wall shall be evaluated and deemed to be compliant by a licensed engineer. Mr. Hoover seconded the motion. Motion failed, 4-0-1. Mr. Hoover abstained.

Mr. Hayward, of Hayward & Co., asked for a continuance of the hearing. Chair Jarvis replied the Board is in deliberations and isn't sure the request at this point is valid. She noted that if a continuance were granted at this point, they would not have the same board at the February meeting unless the continuance was until March. Mr. Hayward stated that a continuance would give them the chance to revise the plans as a denial would mean they would have to come back with a new application that is significantly different than the existing application.

Chair Jarvis stated they have to act on the plan as accepted. If plans are changed, a new case would need to start with notification to abutters, public notice, etc. The Board reviewed the guidelines and concurred. Mr. Raslavicus noted there is an appeal process but the Board has to complete the case before that can happen. The Chair stated there are no provisions for changing the plans or tabling a case once deliberations have begun. The Board concurred with the Chair's decision.

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

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated that the increase in impervious surface makes a non-conforming lot even more non-conforming. It was noted the

roof of the house is directed to runoff towards the shore, although there would be a drip edge. Mr. Raslavicus stated other towns or the State can consider various improvements for infiltration but the current ordinances do not address this.

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

Chair Jarvis said the spirit of this part of the ordinance is trying to make it easier for non-conforming lots to become more conforming. But this plan as a whole is making the lot more non-conforming, not going the other way. This particular article does speak to the issue that we have so many more non-conforming lots in town and does provide requirements for how a non-conforming lot can change. It's possible to provide the applicants with a new home without making the lot so severely more non-conforming than it currently is. It's possible to provide the applicants with a new home without making the lot so severely more non-conforming. Ms. Anderson agreed.

Granting the variance would/would not do substantial justice because: The Board concurred the applicant has other opportunities and options to still build a new home. Ms. Anderson stated she doesn't think allowing more non-conformance does anyone else any justice except the applicant. She doesn't think substantial justice even exists in this case. Ms. Richard feels it appears the applicant has other opportunities for them to have a new home. Mr. Hoover stated I think as things currently stand loss to the town outweighs the gain to the applicant.

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

Unnecessary Hardship: Ms. Richard asked that the comments from the previous discussion be repeated. The Board concurred that denial of the variance would not be a hardship, noting the lot is flat, larger than many and the site conditions allow for compliance to the setbacks and ordinances.

The criteria in subparagraph A have not been established. An unnecessary hardship will deem to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonable used control of the ordinance and a variance is therefore necessary to enable a reasonable use if it. The property is not a hardship. There are options to use this property as a residence even with a new house within the terms of the ordinance.

Chair Jarvis made a motion to approve the request for variance to Article XXI, Section C.1 and C.2, with the two conditions previously identified in the prior motion. Mr. Hoover seconded the motion. Motion failed, 4-0-1. Mr. Hoover abstained.

The request for variances does not pass.

Chair Jarvis stated they have been asked by the Code Enforcement Officer to change the requirements within the ordinance that appeals to administrative decisions can be made within 60 days after the decision is made. The Board reviewed the section in the Rules and Procedures.

Chair Jarvis made a motion that the change be effective with any administrative decision issued on or after February 1, 2019. Appeals from the administrative decision under RSA 676:5 shall be filed within 30 calendar days of the decision. Ms. Richard seconded the motion. Discussion: Chair

Jarvis noted there are some decisions that are in the mail and it wouldn't be fair for them to get a letter indicating 60 days. With a decision being made tonight, it will be 30 calendar days from the date of the decision. It was clarified this is for all administrative decisions which would be appealed to the ZBA. The Board discussed whether 30 days is an adequate time to allow for getting paperwork done. Ms. Zuzgo suggested tabling the decision until the next meeting so the Building Inspector can be present for further explanation of the recommendations by Town Counsel. It was noted most municipalities already follow the 30-day limit. **Motion passed, 5-0-0.**

Mr. Raslavicus and Mr. Hoover left the meeting at 9:15pm.

The Board discussed the meeting process for reviewing applications. Chair Jarvis suggested reviewing applications all at once, followed by individual public hearings/deliberations etc.. This way if an application is incomplete the applicant knows early in the meeting. There was a discussion on the amount of time for applicants to amend incomplete applications and what occurs if the information is not received within the timelines and a postponement is not requested. On a previous case we told the applicant that all materials had to be received at least 10 days before the meeting. If the missing materials are not received by the deadline and a postponement is not requested then the application will be considered withdrawn and they would start all over. If it is something small and the applicant is present they can fix the application while they are sitting there.

Discussed was decreasing the amount of time allowed for the general public to speak, who should be allowed to rebut and should repetitive comments be limited.. It was suggested that the interested public be limited to 3 minutes. The applicant will be allowed to rebut, general public would not. There needs to be a way to handle repetitive comments. Further discussion regarding abutters being allowed to rebut is necessary. The Board concurred to discuss all of these further at the next meeting as well as develop a checklist for applications.

Future Meeting

Chair Jarvis stated the next meeting is February 12, 2019 and Case #2018-005 for Map 209, Lot 026, which was postponed from the October 2018 meeting, will be resumed at the February meeting. She noted they would also have Case# 2018-011, Administrative Appeal, on the agenda.

Adjourn

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

The meeting was adjourned at 9:28pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary