

**NEW DURHAM ZONING BOARD OF ADJUSTMENT
New Durham Town Hall
April 9, 2019, 7:00p.m.**

Present

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Stephanie Richard, Member
Linda Callaway, Member
Paul Raslavicus, Alternate Member
David Wessel, Alternate Member

Excused Absence

Art Hoover, Member

Also Present

Laura Zuzgo, Administrative Assistant
Jay MacNamee, Applicant
Chris Boldt, Attorney representing Arthur and Challis Krulewitz
Brad Jones, Jones & Beach Engineers, Inc., representing David and Julie Grandin
David Grandin, Applicant Madeline Grandin, Applicant's relative
Carolyn Ranier, Grandin Abutter Mark Ranier, Grandin Abutter
Mario Ranier, Grandin Abutter Jan Abbott Michaud, Grandin Abutter
Karen Dapkus, Resident Mike Dapkus, Resident
Tom Meyer, Resident

Call to Order

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

Agenda Review

Chair Jarvis moved approval of minutes to the end of the meeting, with possible postponement to the May meeting.

Continued Review and Acceptance of Application ZBA Case # 2018-004

The applicants, Jay MacNamee and Susan Ferber, are requesting variances from: Article V Section E: Flood Hazard Area and Water Body Setbacks. No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river; Article XIV Section C.1.b. C. Dimensional Requirements 1. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: b. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level. The property is located at 324 Kings Highway, Map 209 Lot 036-001.

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If the application is found to be complete, a Public Hearing may be held.

Chair Jarvis asked if any member of the Board has a conflict or appearance of conflict of interest with hearing this case. None was indicated. Chair Jarvis asked if anyone in the audience feels there is a conflict or appearance of conflict of interest with any members of this Board hearing this case. None was indicated.

Chair Jarvis stated the application was originally received on July 28, 2018; reviewed by the ZBA on August 14, 2018 and determined to be incomplete due to a variety of different mergers and redrawing of lot lines. The applicant requested in October to postpone the case until February 2019, which was granted. On February 19, 2019, the application was again determined to be incomplete and the applicant was given the opportunity to submit any missing information, which was received by the March deadline. Due to a variety of reasons at the March meeting, and due to the lack of a full board present, the applicant chose to postpone to this date for a full board.

The Board reviewed the application for completeness.

Ms. Richard made a motion to accept the application for Case 2018-004 as complete. Ms. Anderson seconded the motion. Motion passed, 6-0-0.

Chair Jarvis read the rules for Public Hearing.

Jay MacNamee, applicant, gave an explanation of the topography of the land, noting there are steep slopes, and in order to accommodate the Town's shoreline setback, it would require the shed in a steep slope area which is forbidden by the State. It was noted a permit from the State was received for the shed as an accessory structure; Mr. MacNamee stated the Planning Board had asked him to remove the shed from the plans as it was not water related and advised he would need to see the ZBA for it instead. Mr. Raslavicus noted the current plans show a smaller structure than originally presented. Mr. MacNamee confirmed that is due to the Town's restrictions on the size of the accessory structures.

Chair Jarvis asked if any abutters were present who wanted to speak. None were noted.

Chair Jarvis asked if any members of the public were present who wanted to speak. None were noted.

Chair Jarvis closed the public hearing at 7:12pm.

Chair Jarvis stated the members of the Board who would be hearing the case include Ms. Callaway, Ms. Richard, Ms. Anderson, Chair Jarvis and Mr. Raslavicus would be sitting for Mr. Hoover.

Chair Jarvis asked the Board if they want to discuss and vote on the Variance requests for Article V, Section E and Article XIV, Section C.1.b which both refer to setbacks from

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water or rivers or high water marks together. By consensus of the Board, it was agreed to do so.

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

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated it would not be contrary to the public interest, it is a small structure and will not be visible from the road but may be from the pond. Chair Jarvis stated it would be limited to 150 square feet. Mr. Raslavicus questioned whether the discussion is necessary, suggesting it may qualify as a water related structure, and that the outline in the RSA includes the structures noted as well as “etc.” Chair Jarvis stated based on what was indicated would be stored in the shed, which included seasonal furniture; she disagrees with it being a water-related structure. The Board reviewed Article V for water related structure definition. Ms. Anderson noted it was indicated that water related items such as canoes and kayaks will be stored as well and sees its use as a water-related structure. Ms. Callaway noted the primary purpose of the structure seems to be for water related items. The Board reviewed and discussed the ordinances.

The spirit of the ordinance would/would not be observed because: Chair Jarvis noted the building is limited in size and would be taxable.

Granting the variance would/would not do substantial justice because: It was noted that only 50’ of the first 250’ of the property is 15% or less; between the 50’ and 75’ marks, it’s over 30%, with steep slopes prohibiting in 30%. Chair Jarvis stated the proposed location is the most reasonable location but will still require items to be carried up and down the steep slope. Ms. Richard stated it seems the applicant has done their best to work within the ordinance by meeting the square footage size and making it a conforming structure but this is the one spot they cannot do anything else.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated it is the only place for a shed to be placed for storage of seasonal items. Ms. Anderson stated it doesn’t take anything away from the value of surrounding properties.

Unnecessary Hardship: The Board concurred it would be an unnecessary hardship for the applicant if the variances were not granted.

Ms. Richard made a motion to the grant the request for variances to Article V, Section E; Article XIV, Section C.1.b. Ms. Anderson seconded the motion.

Chair Jarvis made an amendment to the motion adding two conditions to the motion: the structure will be no more than 150 square feet; the applicant shall receive confirmation from the Planning Board that the conditional use permit he received remains in effect. Ms. Richard seconded the motion. Amendment passed, 5-0-0.

Amended motion passed, 5-0-0.

Chair Jarvis closed Case 2018-004.

Motion for Rehearing Case # 2018-010

Attorney Boldt is requesting a rehearing concerning the Variance Application submitted for property owned by Arthur and Challis Krulewitz. The property is located at Map 112 Lot 001, 228 South Shore Road.

Chair Jarvis stated the application was received in October 2018; it was reviewed and determined to be incomplete at the November 28, 2018 meeting. On December 11, 2018, additional information was reviewed and the application was determined to be complete. The Public Hearing was opened at that time and it was determined a Site Walk was necessary. A Site Walk was conducted on December 17, 2018 with the Board members, the Road Agent, Town Administrator, and applicant's representative. On January 8, 2019 the public hearing was continued and the requests for variances were denied. A motion for a rehearing was received on January 30, 2019 making the motion timely.

Chair Jarvis stated the purpose of the discussion is to determine whether to grant or deny the motion for rehearing. It is a public meeting but it is not a Public Hearing and testimony will not be taken from anyone but the Board may ask for clarification from Attorney Boldt.

Chair Jarvis stated the members on the Board at the time of the December 17, 2018 Public Hearing were Ms. Richard, Ms. Anderson, Chair Jarvis, Mr. Hoover and Mr. Raslavicus, noting Mr. Hoover had hoped to be at this meeting at this time. She also noted Ms. Callaway heard the case but was not a voting member at the time but was present as an alternate. She is now a full member and will participate in this discussion. It was noted that if the Board feels there are additional reasons for the action, they cannot add them to the record but must vote to have a rehearing. If it is felt any mistakes were made, an approval for rehearing must be granted. If a Rehearing is granted, there will be the usual notification requirements and postings, at the cost of the applicants. If the rehearing is denied, the applicant may challenge the decision in Superior Court and at that point the ZBA is done.

The Board agreed to go point by point through the motion.

Chair Jarvis noted for the motion for rehearing:

1. The applicant's representative asserted that the Board's decision was unreasonable and unlawful, and is the basis for which a motion for rehearing was requested.
2. Letters of support from abutters state that there would be no decrease in property values. The Board reviewed these letters.

3. An alternative setback plan was presented. The plan indicates there is no other location for the three bedroom house and attached garage therefore would not need a variance in order to comply with 75' shoreline setback, but would encroach on 20' road setbacks.

Ms. Richard suggested there are possible ways for the lot to be used as a residence within the terms of the ordinance. Mr. Raslavicus noted the record is clear that various board members said there may be other suggestions to keep within the setbacks but no such plans were presented before the deliberations. The vote was only for the plans presented. Ms. Anderson noted when they discussed the reasons for denial, it was noted the special conditions of the lot provided more opportunities to comply than other properties in the area. Chair Jarvis noted the Planning Board speaks to the culvert and what the applicant is willing to offer to the Town if the variances are granted; she noted they had to consider the flow of the culvert but it would be out of the jurisdiction of the ZBA and any decisions regarding the culvert would be the responsibility of the Board of Selectmen. Mr. Raslavicus stated he hasn't seen any new facts presented. Ms. Callaway noted they are looking to keep the zoning objective of having less of a footprint within the setbacks for the Town; although the State may say its fine, the Town decided years ago to establish this ordinance to further protect the lake. Chair Jarvis noted they determined there would be improved drainage with the new design but also felt the spirit of the ordinance could be better met without such an extensive impact on the 75' setback. The Board discussed that they must consider each case on its own merit and this property seemed to have options that would remain within the ordinances, unlike many properties that do not.

After reading the assertions presented and review of the case file, Chair Jarvis asked if any members of the Board feel there is a reason to grant or deny the motion for rehearing.

Ms. Anderson made a motion to grant the motion for rehearing concerning variance application of Arthur and Challis Krulewitz, 228 South Shore Road, Map 112, Lot 001. Ms. Richard seconded the motion. Motion failed, 0-0-5.

Chair Jarvis made a motion to deny the motion for rehearing. Mr. Raslavicus seconded the motion. Motion passed, 5-0-0.

Attorney Boldt requested a copy of the audio as well as a copy of the draft meeting minutes within five business days, pursuant to RSA 91-A. Chair Jarvis noted the video will be available on the Town website at the close of the meeting.

Review and Acceptance of Case # 2019-001

Jones and Beach Engineering Inc., representing David and Julie Grandin, are requesting variances from: Article V Section E: Flood Hazard Area and Water Body Setbacks. No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river; Article XIV Section C.1.(b) Building Setback: Except for water related structures, all buildings shall be set back a minimum of seventy five (75) feet from the normal high water mark; Article XXI,

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Sections C.(1) and C. (2): New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided:

1. They conform to Non-conforming setback and height requirements
2. Such expansion does not make any existing lot, structure, or use more nonconforming within the terms of this Ordinance;

Article XXI Section G.2.(b) : Non-Conforming Setbacks. The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article

2. Buildings: b. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.

The property is located at Map 110 Lot 022 –383 Merrymeeting Road. If the application is found to be complete, a public hearing may be held.

Chair Jarvis asked if any member of the Board has a conflict or appearance of conflict of interest with hearing this case. None was indicated. Chair Jarvis asked if anyone in the audience feels a conflict or appearance of conflict of interest with any members of this Board hearing this case. None was indicated.

The Board reviewed the application for completeness with clarifications of details from the applicants' representative. Chair Jarvis noted the 75' well radius appears to be a foot or 2 over to the septic tank, which would also require a variance. She stated if the Board is in agreement, she would accept a letter stating the tank would be moved out of the 75'. It was noted the increase in size of the house would be within the setbacks of the Town but it has not been designed at this point. It was also noted this property was reviewed by a wetlands scientist and none was determined to be on this lot. The Board concurred a request for variance to Article VI will be needed. The applicant's representative asked if they were able to design a septic 125' from the lake, if the application would be considered complete. Chair Jarvis clarified it would not be accepted as complete tonight as they would still need to see the septic design. It was clarified the septic design would also have to be reviewed by the Building Inspector before a building permit is issued.

Ms. Richard made a motion to accept the application for Case 2019-001 as complete.

Ms. Callaway seconded the motion. Discussion: Chair Jarvis reiterated that she doesn't believe the application is complete. **Motion failed, 2-3-0.** In Favor-Ms. Richard & Ms. Callaway Against- Ms. Anderson, Mr. Raslavicus, & Chair Jarvis

Chair Jarvis stated the next meeting is May 14 and if the applicant wants to be on the agenda for that meeting, they need to have the various letters and or septic designs into the land use office by Friday close of business May 3rd, but if they want Ms. Zuzgo to review them, they will need to have them in by May 1st.

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Election of Officers

Ms. Anderson made a motion that Terry Jarvis remain as chair of the Zoning Board of Adjustment for the ensuing year. Ms. Richard seconded the motion. Motion passed, 5-0-1. Chair Jarvis abstained.

Chair Jarvis made a motion that Wendy Anderson remain as vice chair for the ensuing year. Ms. Callaway seconded the motion. Motion passed, 5-0-1. Ms. Anderson abstained.

OSI Planning and Zoning Conference

Chair Jarvis stated the conference would be June 1, 2019 in Concord. She stated there are funds to cover the expense of attending and there are plans for carpooling; she also outlined the topics on the agenda.

Approval of Minutes

Meeting of February 14, 2019 – Edits were made. **Ms. Anderson made a motion to approve the minutes as amended. Ms. Richard seconded the motion. Motion passed, 4-0-2.** Chair Jarvis and Mr. Wessel abstained.

Meeting of March 14, 2019 – Edits were made. **Ms. Anderson made a motion to approve the minutes as amended. Mr. Raslavicus seconded the motion. Motion passed, 4-0-2.** Mr. Wessell and Ms. Callaway abstained.

Review of Decision of Administrative Appeal

The Board reviewed and discussed the Decision of Administrative Appeal. Mr. Raslavicus clarified that they need a motion to include this in the case file. Chair Jarvis suggested having this referred to the Planning Board for their consideration. Ms. Richard suggested some edits be made to the Zoning Ordinance to clarify the definition of residents. There were also edits to include case number and dates.

Ms. Richard made a motion to approve the Decision of Administrative Appeal as amended, and to include it as part of the file for Case 2018-011, and to submit a copy of the decision to the Planning Board. Ms. Anderson seconded the motion. Motion passed, 4-0-2. Chair Jarvis & Mr. Wessel abstained

Revised Procedures

Postponed.

New Business

Next Meeting:

Tuesday, May 14, 2019, 7:00pm, New Durham Town Hall

Adjourn

Ms. Anderson made a motion to adjourn. Mr. Wessel seconded the motion. Motion passed, 6-0-0.

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The meeting was adjourned at 9:55pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary