

NEW DURHAM ZONING BOARD OF ADJUSTMENT

**New Durham Town Hall
October 10, 2017, 7:00p.m.**

Present

Terry Jarvis, Chair
Wendy Anderson
Joan Martin
Stephanie Richard
David Shagoury
Art Hoover
Paul Raslavicus

Also Present

Laura Zuzgo, Administrative Assistant	Tom Varney, Engineer
Deb Randall, Architect	Chris Boldt, Attorney
William Bailey, Resident	David Swenson, Resident
David Grandin, Resident	Julie Grandin, Resident
Wes Weir, Contractor	Chris Shorette, Resident
Karen Shorette, Resident	Tom Meyer, Resident
John Goyette, Resident	

Call to Order

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

Approval of Minutes

Postponed.

Case 2017-005-Map 121, Lot 44 Request for Variance to Article XIV.1.B and XXI.

E.2

Continuation of Public Hearing

Tom Varney, Varney Engineering, presented diagrams showing changes he made to the plans of the building to make it slightly smaller. Chair Jarvis stated that the only issue to be considered is the 14 sq. ft. forward extension as the rest of the building is within the footprint of the previous building. Mr. Raslavicus stated that in addition there needs to be a request for a variance from the Town's setback of 75 ft. from the lake for construction of a new building as advised by the legal counsel in his communication to the Chair. The Chair indicated that she was not sure whether Counsel understood that the rest of the building was on the old footprint. Mr., Hoover agreed with the notion that a building built on the preexisting footprint did not need a variance. David Swenson, resident noted that the 14 ft. modification exceeds the original footprint and if the size of the structure were reduced perhaps it could be constructed within the original footprint. Mr. Raslavicus stated he would like to ask legal counsel whether a new building may be built within the previous footprint as a vested right or as an approved variance. He indicated that there is nothing about footprints of previously existing buildings in the Articles cited in this application.

Chair Jarvis read aloud her letter to the legal counsel in which Ms. Jarvis indicated that a building would be rebuilt within the original footprint, except for the additional 14 sq. ft. Mr. Hoover read aloud the letter from Town Counsel which stated that a variance was required for the part of the new building within the 75 ft setback buffer. Ms. Anderson indicated that there is ambiguity in the wording of our ordinances, and that they can be read in both ways and people may disagree as to the meaning. She stated that ambiguous language needs to be eliminated in future revisions to the Town Zoning Ordinance.

Wes Weir, contractor, stated he has built numerous houses on the lake in which he replaced the previous building with a new one on the same footprint and never had an issue. Ms. Zuzgo noted the Planning Board had already granted the conditional use permit to tear down the building and then build anew within the footprint, excluding the 14 sq. ft. extension into the buffer. Chris Shorette, resident stated if someone has a house within the 75 ft setback the Town should welcome a restored or new building on the same site. Tom Meyer, resident stated many houses around the lake are within 75 ft. of the shorefront, and it is his opinion that improvements in septic systems and to old buildings reducing runoff will increase the tax base and should be encouraged by the Town.

Chair Jarvis clarified that if the plans to rebuild had remained completely within the original footprint, there would be no issue to be addressed by the ZBA. Chris Boldt, attorney, referenced the case of Bartlett v. Manchester, and suggested it may apply in this case. The Board could determine that the variance for the part of the building inside the 75 ft setback is not needed. Deb Randall requested the Board to consider the amount of time between meetings and each time they go to Counsel is another month setback for them.

Chair Jarvis closed the public hearing at 7:42pm.

The Chair appointed Ms. Anderson, Ms. Richard, Ms. Martin, Mr. Hoover, and herself as the voting members of the Board to determine whether the five criteria for granting a variance for the 14 sq. ft extension into the Town defined buffer are met.

Discussion-

Granting the variance would/would not be contrary to the public interest: Mr. Raslavicus stated his only concern is about rebuilding the septic system and whether that would be in the public's interest. Chair Jarvis stated the septic is already installed and redirected.

The spirit of the ordinance would/would not be observed because: Ms. Martin 2.46% of New Durham is the lakes and that's not much so any activity around the lake easily adversely affects the water quality and steps for mitigation have been taken. However, upgrading the property is beneficial to the Town. Ms. Richard stated the overall upgrades seem to be within the spirit of the ordinance.

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Approved

Granting the variance would/would not do substantial justice because: Ms. Anderson the gains go the public in improving water quality outweighs the decrease in impervious surfaces.

For the following reasons the values of surrounding properties would/would not be diminished: The board concurred the surround properties' value would not be diminished but may encourage other owners to improve their properties.

Unnecessary Hardship: Chair Jarvis stated the area is such that there is no way to meet the 75' setback and keep the septic system where it is. Mr. Hoover stated he agrees there is not fair and substantial relationship between the general purpose of the ordinance and the provisions of the case. It was agreed it's not possible for the property to be used in strict compliance with the ordinance; the new building will be of benefit to the public with increase in tax value; water quality will be increased with diverting where runoff goes and the improvements are of overall benefit and bring the nonconforming lot to be less nonconforming.

Mr. Hoover made a motion that the variance for ZBA Case 2017-005, Map 121, Lot 44, to Article XIV.1.B. and XXI.E.2 be approved as presented. Ms. Richard seconded the motion. Motion passed, 5-0-0.

Case # 2017 – 006 Map 210 Lot 23. Request is for variances to Article XIV Section C.1.b. Article XXI Section E.2.b

Mr. Hoover recused himself from the hearing, noting he has advised the applicant on another case.

The application was reviewed and Chair Jarvis stated they need to determine whether the current application is materially different than the cases submitted for 2015-006 and 2017-002. The board concurred it is different.

Chair Jarvis made a motion that the application dated July 15, 2017, submitted by Attorney Bolt on behalf of Mr. and Mrs. Shorette, for variances to Article XIV Section C.1.b. Article XXI Section E.2.b is materially different than the cases submitted 2015-006 and 2017-002. Ms. Anderson seconded the motion. Motion passed, 5-0-0.

The application was reviewed for completeness.

Chair Jarvis made a motion that the applicant is not required to submit a request for variance to article XIV but does need to apply for a variance to article XXI. Motion passed, 5-0-0.

Ms. Richard made a motion to accept the application for case 2017-006 as complete. Ms. Martin seconded the motion. Motion passed, 5-0-0.

Chair Jarvis opened the public hearing.

Chris Boldt, Esq., representative for the applicants, gave an overview of the plans being proposed. He noted the lot and structure are non conforming; diagrams were provided for review of the proposed plans in comparison to the existing structure. Letters of support from abutters were submitted for review. Mr. Bolt explained his interpretation of various court cases and applicable ordinances and statutes. It was clarified the footprint will be generally in the same area but will be moving back away from the shoreline. There is no current foundation but new plans include one. The plans and maps were reviewed and discussed for clarification.

Chair Jarvis opened the hearing to comment for comment from abutters.

David Grandin, resident and abutter, stated he is supportive of the improvements of a nonconforming lot as proposed for the property.

John Goyette, resident and neighbor, asked if the driveway going to remain gravel or be paved. It was explained the plan is to replace with a pervious material, likely pavers. He explained his concerns with the contamination of the lake caused by the increase in application of asphalt driveways to the small area.

Attorney Boldt reiterated the plans for the driveway to be replaced with pavers as well as further reductions of impervious area.

Tom Meyer, resident, asked for clarification on the hearing process with regards to allowing for further questions to be asked throughout the public hearing process. Chair Jarvis explained the opportunities for different parties to participate and ask questions.

Chair Jarvis closed the public hearing at 9:02pm.

The application was reviewed and discussed for compliance with the applicable ordinances.

Members to participate in the deliberation of the case are Ms. Richard, Ms. Martin, Mr. Hoover, Ms. Anderson and Chair Jarvis.

The board reviewed the 5 criteria for the variance applicable to this case.

Discussion-

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated she sees the plans improving the property, a cesspool is being replaced with a septic system which is certainly in the best interests of the lake. Ms. Richard stated this seems to be the only way to improve and preserve the quality of the lake. Ms. Anderson stated the new plans would more closely meet the ordinances and complying with more setbacks.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the nonconforming lot will be less nonconforming with the improvements. The impervious space will be reduced and the setback will be further from the lake.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated the public will gain nothing with a denial by the ZBA and the impact on the lake will not be reduced without the replacement of the cesspool by a septic system.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't see the surrounding properties being reduced but may encourage further improvements.

Unnecessary Hardship: The board concurred it would cause unnecessary hardships if the variances are not granted as there are no other ways the property can be improved.

Chair Jarvis made a motion to approve granting a variance to Article XIV Section C.1.b. and Article XXI Section E.2.b to construct a building that does not conform to the nonconforming setback and is within 75' of any waterbody or river course subject to the applicant receiving approval and receiving shoreland permit from the NH Department of Environmental Services. Ms. Martin seconded the motion. Motion passed, 5-0-0.

Continued Review of Draft ZBA Procedures

Ms. Zuzgo gave an update on the changes including removal of old and outdated maps. The board discussed the proposed changes.

Chair Jarvis suggested scheduling a workshop for reviewing and updating forms.

Adjourn

Mr. Hoover made a motion to adjourn. Mr. Shagoury seconded the motion. Motion passed, 7-0-0.

The meeting was adjourned at 9:46pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary