

MINUTES

NEW DURHAM

ZONING BOARD OF ADJUSTMENT

JULY 11, 2007

Chair Theresa Jarvis called the meeting to order at 7:03 PM.

Members Present: Theresa Jarvis (Chair), Larry Prelli (Vice-Chair), Bill McGrew, Michael Hoffman, Helen Wellman (Alternate), Wendy Anderson (arrived at 7:40 PM)

Others Present: David Lindberg, Karen Keefe

Chair Jarvis appointed Helen Wellman to sit for Wendy Anderson.

Minutes: Larry Prelli moved to approve the minutes of May 9, 2007 as amended and with the request to staff David Allen that the date of separation of utilities between upstairs and downstairs apartments be added to the minutes if it can be found in the tape of the meeting. Mike Hoffman seconded. Bill McGrew abstained because he was not at the meeting. Approved unanimously.

Request for Rehearing: Karen Keefe and Paul Keefe have requested a re-hearing on the grounds of RSA 676:3,II and an appeal hearing on the matter of Rhoda Sue Landers and the Equitable Waiver that was granted to her on 5/09/2007.

- Determine if the request from Karen Keefe and Paul Keefe is a motion for rehearing under the terms of RSA 677:2 or RSA 677:3.
- Determine if the ZBA shall rehear the application submitted by Arthur W Hoover on behalf of Rhoda Sue Landers, P.O Box 1207, Alton, NH 03809 for property located at 184 Ham Road (Tax Map 12, Lot L) in New Durham. The application requested an Equitable Waiver for Dimensional Requirements in order to continue using the house at 184 Ham Road as a two family home. The lot does not meet the size requirements of Article IV, Section 1.a.c. for a two family home. The New Durham Zoning Board of Adjustment granted the request on May 9, 2007.

Chair Jarvis described the procedures for handling a request for rehearing. There is no public testimony; the Board works with the information that has been submitted. The ZBA will first review the request to see if it meets the requirements for being a proper request for rehearing and if it is timely. Then it will confirm that the person(s) filing the request have standing. Then it will look at the content of the request to see if there is good reason stated in the request to hold a rehearing.

Ms. Jarvis pointed out that the RSA language and the language of court decisions and history make clear that "in the interest of finality of ZBA decisions a request for rehearing shall not be taken lightly"; and the request must specify fully the grounds upon which the applicant argues that the ZBA decision was unlawful or unreasonable. Finally, she emphasized that at this meeting the ZBA would consider only the request for rehearing. If the Board decides in favor of a rehearing, that rehearing will be scheduled at an appropriate time.

Bill McGrew noted that the request for rehearing was delivered to Town Hall on July 5 which was less than 30 days from the date of June 8 when the minutes and decision were available to the public. The fact that the request was not delivered to the Zoning Board staff person within 30 days was not relevant. Chair Jarvis noted that the applicants were residents of the Town of New Durham and abutters to the applicant and therefore had standing.

Bill McGrew moved that since the request from Karen Keefe and Paul Keefe was received on time; and since Karen Keefe and Paul Keefe were residents of the Town of New Durham and abutters to Rhoda Sue Landers; therefor the request constituted a valid request for rehearing. Mike Hoffman seconded. Unanimous.

Chair Jarvis asked the board to look at each point made in the Keefe's request for rehearing and consider if it was relevant and adequate as grounds for rehearing. She noted that the Board did not need to find all reasons relevant and adequate: only one was needed.

- 1. The dwelling in question was initially brought to the site at 184 Ham Rd. as a modular single family dwelling with an in-law apartment. Francis Cassidy and Barry Fox, Jr. owned the land together and Francis Cassidy bought the modular house.*

Mike Hoffman stated that the special exception was granted on an issue of dimensions, not an issue of use. This point of Mr. and Mrs. Keefe does not relate to dimensions and is therefore not relevant. Both Mr. Hoffman and Ms. Jarvis felt this point confirmed the findings of fact noted in the ZBA decision. Other

Board members agreed.

2. *Have new information that Barry Fox, Jr. and his family lived in the residence dwelling until 1995.*

Bill McGrew pointed out that this was more than 10 years ago. Larry Prelli wondered if Mr. & Mrs. Keefe were trying to establish a case that the issue had not existed for 10 years. Helen Wellman said this point was not in and of itself a reason for rehearing. Other Board members agreed.

3. *According to the New Durham Master Plan, a two-family dwelling is in complete conflict with the rural character of the neighborhood and not permitted. Section 2c.*

Board members reviewed several pages of the Master Plan. There is not a Section 2c. The plan does suggest some areas should be for single family housing, but does not indicate 2 family dwellings should be prohibited; and in the housing section it calls for a range of types of housing in the town.

Mike Hoffman noted that the subject of the Equitable Waiver was a dimensional issue; and this objection is not a dimensional issue. If there are other problems they should be addressed by code enforcement, not rehearing. He said his understanding of the statutes and case law is that the appropriate trigger for a rehearing is the clear possibility that without a rehearing substantial harm or injustice might be done. Other Board members agreed.

4. *Have documentation of an Approval for Operation [of a septic system] that was signed on 12--17/1987 and listed with the Department of Environmental Services in Concord, NH. As per the audio of the meeting, Terry Jarvis stated that there no ordinance to inspect the septic system.*

Ms. Jarvis said she did not think this was a relevant issue because the Town has no jurisdiction over the approval of septic systems. Others agreed.

5. *An Equitable Waiver per RSA 674: 33a must be met in all categories. It does not meet subsections (c), (d) and II. The Board's decision was unreasonable and unlawful. As per the audio of the ZBA meeting of 05/09/2007, Mr. Hoover stated, "The other requirements were not that rigid within that statute". Also, within that audio, Mr. Hoover stated 3 times that Ms. Landers assumed that there was a 2-family permit As per the audio, Karen Keefe questioned the fact that all of the categories had to be met and Terry Jarvis told her that she was confused with something else.*

Chair Jarvis stated that this point in the request for rehearing relates to Section I of the RSA and the ZBA made its decision under Section II. Larry Prelli said he read the statute as allowing the waiver of II.a and II.b but not II.c or II.d. Mike Hoffman said that discussion of II.c and II.d was not recorded in the minutes in detail, but the issues were presented and discussed at the meeting. He

remembered taking into consideration that correction of the deficiency would be very costly or even impossible, and he felt other members had considered the issue as well. Other Board members agreed.

6. *Have documentation that David Morse lived at 184 Ham Rd. from 10/01/96 to 12/31/2000.*

Larry Prelli said there is the implication in points 1, 2, and 6 that the issue may not have existed for 10 years. Unless this point was part of such an argument--which is never actually stated in the request for rehearing—it is not relevant. Terry Jarvis checked the file from the original hearing and said the affidavit of Mr. Moore clearly indicates the problem existed for 10 years. In the absence of any actual evidence to the contrary, the ZBA will stay with the documentation provided by Mr. Moore. Other Board members agreed.

7. *RSA 676:3, II: The written decision was not filed within 144 hours of the vote.*

Ms. Jarvis agreed this was a fact and noted that Mr. and Mrs. Keefe were allowed 30 days after the filing of the decision to submit their request for rehearing. Therefore the point is not relevant. Other Board members agreed.

8. *RSA 673:3: The Zoning Board of Adjustment shall consist of 5 members.*

Ms. Jarvis quoted RSA 674:33-II which says that an application or request needs 3 affirmative votes to pass. There were only four Board members present on May 9 and the applicant, Ms. Landers, was notified of the law and chose to proceed with a board of 4. Ms. Jarvis said she did not see that the issue was relevant to the request for rehearing. Other Board members agreed.

9. *RSA 674:17, Section 11. Reasonable consideration was not afforded to the character of the area. Per the same audio, Mr. Hoover stated that the property at 184 Ham Rd. is a residential property. According to New Durham's Master Plan, it is considered to be a Semi-Commercial property, iii. Land Use Guidelines Overall residential development will be permitted at a density of one dwelling unit per five acres. Minimum lot size requirements for single-family homes may vary when an open space conservation subdivision is used. However, lot requirements in the primary aquifer protection area will be increased by 50% unless provisions for groundwater recharge are provided. The lot coverage will not exceed 20% or 4,000 square feet. The maximum building height will be 35 feet.*

Ms. Jarvis said she did not see any relevance in this point. Other Board members agreed.

10. *The property at 184 Ham devalues surrounding properties and is contrary to New Durham's Master Plan.*

Mike Hoffman stated that this allegation was made at the original hearing, but no

evidence was brought forward to support it. He also pointed out that no one had raised this concern at any time during the more than 10 years it has existed as a 2-family dwelling. Other Board members agreed.

11. *Mr. Hoover stated, as per the audio, that the property was built with an in-law apartment; Terry Jarvis questioned him on the fact that he had stated that it was a 2-family dwelling.*

Bill McGrew said he could not see how this point was relevant. Other Board members agreed.

12. *This property does not qualify as a rental property for 10 years. Have documentation.*

Bill McGrew wondered if the Keefes meant that it did not qualify as a 2-family dwelling for 10 years. Mike Hoffman said it did not matter if it was rental or not. A 2-family dwelling could have 2 separate owners; one for each unit. Other Board members agreed.

The Board discussed their findings.

Bill McGrew moved to grant a rehearing on the Equitable Waiver of Dimensional Requirements that was approved on May 9, 2007 for Rhoda Sue Landers to allow the continuation of a 2-family home on her property at 184 Ham Road (Map 12A, Lot 1-L) in new Durham. Larry Prelli seconded. The vote was zero (0) to approve, five (5) to not approve. The request for rehearing was not granted.

Chair Jarvis noted to Ms. Keefe that she had a right to appeal the decision to the Superior Court and that any appeal must be filed within 30 days.

Officers of the Board: Bill McGrew moved to elect Larry Prelli as Vice-Chair of the Board. Mike Hoffman seconded. Unanimous.

Bill McGrew moved to elect Terry Jarvis as Chair of the Board. Mike Hoffman seconded. Unanimous.

Bill McGrew moved to adjourn at 10:12 PM. Mike Hoffman seconded. Unanimous.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

Minutes approved September 5, 2007.