

MINUTES
NEW DURHAM ZONING BOARD OF
ADJUSTMENT
MARCH 21, 2012

Wendy Anderson called the meeting to order at 7:27 PM in the absence of Chair Prelli and Vice-Chair Hoffman.

Roll Call: Wendy Anderson, Dave Shagoury, Joan Swanson

Others Present: Bryan Berry, Gordon Whitford.

Farmer Variance: Acting Chair Wendy Anderson summarized the request of Brenda Farmer, 175 North Shore Drive (Map 101, Lot 042) for variances from Article XVII.F.2.b and Article XVII.F.2.e in order to add a 28' x 8' addition to her existing home. Article XVII.F.2.b requires a 50' setback from the Merrymeeting Lake high water line, and the proposed addition would align with the existing front of the house which at the juncture with the new addition is 46' from the high-water line. Article XVII.F.2.e requires a 15' setback from the property line and a 30' setback from the nearest dwelling on the abutting property. Ms. Farmer's proposal sets the side of the addition approximately 8' from the property line.

Ms. Anderson asked Ms. Farmer's representatives to explain the case in more detail. Mr. Berry said the goal of this plan is to bring the house up to the standards of similarly located current lake homes. Ms. Farmer has requested and been granted a DES Shoreland permit to encroach 4' upon the state's 50' setback requirement. The current house is approximately 6' from the west property line. However, the abutting property is a 20' strip owned also by Ms. Farmer. Her proposal assumes the lots will be merged if the variance is granted and has designed the addition so that it extends 18' beyond the current property line, which makes it approximately 8' from the new property line. Mr. Berry noted that their proposal taken together is less non-conforming than the existing lot and structure.

Mr. Berry described a patio area, driveway area, and several other currently impermeable parts of the lot that will be taken out and replaced by grass so that there is a net decrease of two square feet of impermeable surface. He added that the plan also includes a crushed stone drip line along both gutter lines of the addition which will detach the addition from the lot's stormwater flow. This means there will be a decrease

of about 500 square feet from the net impermeable surface which currently stands at 37% of the lot.

David Shagoury asked how the additional space would be utilized. Mr. Whitford, the home designer, said the master bedroom would be moved from the opposite end of the house to the new addition area as would the bathroom. This will open up a larger living/dining room area in the center of the house, and create space for an "electronics" room for computers and other equipment. The combination will make the house much more pleasing and functional.

David Shagoury asked how many years back in time the applicants had researched the title deeds. Mr. Bailey said 50-60 years. Mr. Shagoury noted that many of the right of way lots of Merrymeeting Lake subdivisions were created because of long standing rights of way for moving logs cut from the large parcels now owned by Red Oak to the lake for transport to sawmill. He asked if the applicants had found any such rights of way, and noted that unless they had gone back 100 or more years in their deed research they would not have found them.

Wendy Anderson stated that a primary goal of the 50' setback from the waterline is protection of the water quality of the lake. Given that the requested variance is no greater than the existing condition, and is only about 4' into the 50' setback she sees little chance for negative impact on the lake. The fact that the applicant will create the crushed stone drip line has the effect of increasing protection of the lake's water quality. For these reasons, she said, she did not feel concerned about that part of the applicant's request. Other board members expressed agreement with her perspective.

David Shagoury expressed concern about the expansion of the house so far into the 15' setback from the property line. He said he felt the purpose of that setback was to keep houses from being laid out too close together in a more urban or suburban style; and also to allow access for fire and safety equipment if needed. He said that infringing more than half way on that setback seemed excessive.

Acting Chair Anderson asked Mr. Bailey to explain the hardship to his client if the variance was not granted. Mr. Bailey referred to the section of the law that speaks of preventing "reasonable use" of the property, and said that Ms. Farmer's request would allow reasonable use more in keeping with other nearby lake properties.

The Board discussed the questions of hardship and reasonable use extensively for close to an hour. They concluded by consensus that denying the Farmer proposal did not create a hardship that denied reasonable use. They agreed that the existing house

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provided reasonable use, and that a smaller or differently shaped addition could also provide reasonable use. David Shagoury said it would be more accurate to call the impact of denying the variance an inconvenience rather than a hardship.

Mr. Bailey asked the Board how many feet of impingement on the 15' setback would the board be comfortable approving. For example if the addition left a 10' space between the side of the addition and the property line, would the board find that acceptable? Board members noted that the applicant had the right to submit a revised application, but it was not appropriate for the Board to state a specific depth into the required 15' setback.

The Board then directly addressed each of the five conditions required for approval of a variance.

Condition 1: Granting the variance would not be contrary to the public interest

Joan Swenson, David Shagoury, and Wendy Anderson agreed that with the net decrease in impermeable surface on the site and the establishment of a gravel strip on the waterside of the addition that will encourage infiltration of any runoff from the addition, the public interest regarding water quality has been addressed. Although Mr. Shagoury brought up the question of existing ROW or easements that are very old that could be violated if the proposed addition was allowed, Ms Anderson and Ms. Swenson said that if no records in the current registry of deeds show any ROW or easements through the properties involved in this application, the proposal of the addition could not be considered an infringement of any rights that cannot be confirmed with a seemingly reasonable due-diligence of the part of the applicant's agents. In addition, no one has stepped forward with any complaints at this public meeting.

Condition 2: The use must not be contrary to the spirit and intent of the ordinance

Joan Swenson, David Shagoury, and Wendy Anderson agreed that the use is still concurrent with the spirit and intent of the ordinance; and that the use is consistent with the abutting uses. All members agreed that the infringement into the 15' side setback is contrary to the spirit of the ordinance. They also agreed that the infringement into the 50' water setback is not significant and because the proposed addition is farther from the water than the existing structure and since the net area of impermeable surface is less than the existing situation, the proposed addition is not contrary to the spirit and intent of the 50' setback ordinance.

Condition 3: By granting the variance substantial justice would be done

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Joan Swenson, David Shagoury, and Wendy Anderson agreed that the infringement into the 15' setback is an infringement on the public interest. The reasons for which the side setbacks were established were to keep buildings from being built too close together for a rural setting, and for safety purposes. The plans suggest that the 50' setback could be met and still have the same area for the proposed addition, but as stated previously the public interest regarding water quality (which is the reason why the 50' setback was established) has been addressed.

Condition 4: Granting the variance will not lead to any decrease in value of surrounding properties.

Board members agreed that granting the variance would not lead to any decrease in value of the surrounding properties.

Condition 5: Denying an area or use variance will create an unnecessary hardship for the applicant.

Board members agreed that setback requirements from the watercourse running along the west side of the property prevent the addition being placed on that side of the house. However, the general public purposes of the 15' side setback still apply for the reasons stated above. Board members agreed that the Owner still has reasonable use of the property even when the ordinance is strictly applied.

Wendy Anderson moved to deny the application of Brenda J. Farmer of 130 South Road, Tax map 122 lots 21 & 22 regarding the variance requests from Article XVIII F.2b and F.2d of the Zoning Ordinance based on the applicant not meeting standards of the 15' side setback restriction.

The Board thinks the 15' side setback is an appropriate restriction to hold the Owner to in regards to the public interest of preventing buildings from being built too close to one another, and protecting safety. The Owner can still have reasonable use of the property with a proposed addition that does not violate the side setback to the proposed extent. The applicant has not shown unnecessary hardship that would interfere with their reasonable use of the property.

Joan Swenson seconded. Approved unanimously (3-0) with no abstentions.

Joan Swenson moved to review and vote on the previous meeting minutes when there is a full board as half of the members who deliberated at the previous meeting are not present at the current one. Wendy Anderson seconded. Approved unanimously

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**Joan Swenson moved to adjourn the meeting at 9:50 PM. Ms. Anderson seconded.
Approved unanimously.**

Respectfully submitted,

David Allen
Land Use Administrative Assistant
With considerable assistance from Wendy Anderson.

Minutes approved as amended on 4/18/2012

Town of New Durham

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