

MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
08 MAY 2013

Chairperson Larry Prelli called the meeting to order at 7:00pm.

Roll Call: Larry Prelli (Chair), Wendy Anderson (Vice-Chair), Joan Swenson, Mike Hoffman, Dave Shagoury (alternate); recording secretary Amy Smith.

Others Present: Kevin & Deborah Carter; Tom Varney, P.E.

PUBLIC HEARING: CASE 2013-4 - Application submitted by Thomas Varney, PE on behalf of Kevin & Deborah Carter. The applicant is seeking a Variance to Article XVII Section F-2-B, as referred to in Article XVII Section C, of the New Durham Zoning Ordinance in order to permit the extension of an existing deck within the 50 foot shoreland setback. The deck is to be 12 feet x 18 feet (216 square feet). The property in question is located at 113 North Shore Road (Tax Map 108, Lot 54).

Chair Prelli introduced Board members and designated Mr. Shagoury to sit in as a voting member. Chair Prelli explained the public hearing process to the applicants. Chair Prelli asked Mr. & Mrs. Carter if they felt any of the Board members should not sit in on the case due to a conflict of interest. Mrs. Carter replied that there was no issue with a conflict of interest.

Mr. Varney stepped forward and explained the plan which shows existing conditions and proposed conditions. Mr. Varney stated the Carters would like to expand the deck along the full length of the house. The deck would encroach on the 50' shoreland setback. Mr. Varney stated there were erosion issues with the lot and he was contracted to environmentally improve the property. Mr. Varney stated a retaining wall was built, infiltration steps were added and also crushed stone drip edges were added to catch the water off the eaves along 3 sides of the house. Mr. Varney stated the addition to the house itself meets the setback, the deck expansion does not. Mr. Varney explained how he felt the 5 criteria necessary in obtaining a variance were met.

1)The proposed deck extension would not diminish surrounding property values as there already is an existing house and deck on the property and there is limited visibility of the structure from the road and the lake. 2)The variance would not be contrary to the public interest as the project is environmentally upgrading the property with Department of Environmental Services approved stormwater measures. 3) Denial of the variance would be an unnecessary hardship as this is a small non-conforming lot and due to topography and size, the area for a house and deck is very limited. 4) Granting the variance would do substantial justice as it will increase the property value without harm to others. 5) The use is not contrary to the spirit of the ordinance as the proposed deck has limited visibility from the road and lake and stormwater runoff is being handled with best management practices.

Chair Prelli asked how far the proposed deck extension encroaches on the shoreland setback. Mr. Varney stated the worse case would be 17' into the setback.

Board members reviewed Article XVII Section E of the Zoning Ordinance. This section allows open decks to encroach the setback by a maximum of 12'. As a result, the Carters would need a variance of 5' not 17' as the Ordinance already allows decks the additional 12' encroachment.

Ms. Swenson asked if this is the only place the addition could be built. Mr. Carter stated yes unless the septic and part of the driveway were relocated. Ms. Swenson asked if there was a foundation under the deck extension. Mr. Varney stated no, the extension would be supported by sonar tubes.

Mr. Shagoury asked Mr. Varney how the building area has increased but the impervious area has decreased. Mr. Varney stated this is a calculated figure due to the stormwater drainage.

Chair Prelli closed the public hearing portion of the meeting.

Chair Prelli made a motion to approve a variance to Article XVII Section E to allow the extension of an open deck as described on the plan submitted by Tom Varney, PE, on behalf of Deborah & Kevin Carter for property located at 113 North Shore Road (Tax Map 108, Lot 54). Ms. Swenson seconded the motion.

Board members discussed whether they believed the application met the 5 criteria necessary in granting a variance. Ms. Anderson stated she did not feel the hardship criteria was met or that approving the variance was in the spirit of the ordinance. Ms. Anderson continued to state the area of the new deck is larger than the area that is being lost. Ms. Anderson also stated she believes the deck could be contoured and that would eliminate the need for a variance. Ms. Anderson sketched her suggestion on the plan. Discussion followed. Mr. Hoffman stated he was comfortable with the application meeting the spirit of the ordinance part but he agreed with Ms. Anderson that the hardship criteria had not been met. Board members agreed.

Chair Prelli called for a vote on the motion.

Chair Prelli made a motion to approve a variance to Article XVII Section E to allow the extension of an open deck as described on the plan submitted by Tom Varney, PE, on behalf of Deborah & Kevin Carter for property located at 113 North Shore Road (Tax Map 108, Lot 54). Ms. Swenson seconded the motion. The motion was unanimously denied.

Chair Prelli explained that there are 5 criteria that an application must meet in order for the Board to be able to grant a variance. Chair Prelli continued to state that the application must meet all 5 criteria and in this case the Board did not feel the application met the hardship prong.

Mr. Carter asked if there is an appeal process. Chair Prelli stated there is an appeal process but the applicant must show that the Board made an error or that there are new facts to be presented to the Board. Chair Prelli stated an applicant can not just submit the same application over again hoping for a different result.

Mr. Carter reviewed the sketch made by Ms. Anderson.

Review of Minutes

Board members reviewed the minutes of 10 April 2013. Ms. Swenson suggested the following corrections: Page 2, second paragraph, third line down, inserting the word 'woodlot' between the words "the" and "list". Third paragraph, 6th line down, inserting '2012' after the word "August". Third paragraph, 9th line down inserting 'construction' after the word "stop". Fifth paragraph, first line, inserting a space between "," and the word "drafted", second line deleting the words "to and answers" and replacing them with 'and responses'. 4th line replacing the word "them" with the words 'the criteria'. Last line inserting the word 'variance' between 'of' and 'approval'.

Page 3, 2nd line adding Laura Zuzgo's title (Clerk) and adding the words 'to the property' after the word "access". Second paragraph third line down inserting the words 'of the property.' after the word "use". 6th line inserting the words 'New Durham' before the word "Code". Third paragraph, 8th line down changing the word "have" to 'had'. Page 5 first paragraph, first line adding the words 'to build' between the words "possibility" and "out".

Mr. Hoffman suggested on Page 4, second paragraph, second line down, inserting the words 'and that' between the words "wrong" and "he".

Ms. Anderson suggested on Page 5, second to last paragraph, last sentence inserting '; and she would consider this a financial hardship.' after the word "this".

Ms. Swenson made a motion to approve the minutes of 10 April 2013 as corrected. Chair Prelli seconded the motion. The motion was unanimously approved. (Mr. Shagoury abstained from voting as he did not sit in as a voting member at the 10 April 2013 meeting.)

Ms. Anderson asked Ms. Smith if she could add page numbers to subsequent minutes. Ms. Smith stated she would.

Review of Mail

Board members reviewed the mail.

Other Business

Ms. Smith informed Board members that the Selectmen will be holding a public hearing in the near future to increase the cost of advertising. Ms. Smith explained that currently the Town is charging \$50.00 for newspaper notification for both Planning and Zoning Board applications. The newspaper notices are costing the Town more than what is being collected from applicants. Ms. Smith stated she recommended to the Selectmen that the fee is increased to \$75.00. Chair Prelli asked Ms. Smith if she could notify Board members once she knows the date of the Public Hearing.

Ms. Smith stated that at the 10 April 2013 meeting the Board briefly discussed switching the meetings to the second Tuesday of the month and holding the meetings at the Town Hall as this was more convenient for both the videographer and Ms. Smith as there is access to all the files at the Town Hall. Ms. Smith stated she spoke with the Ms. Veisel, Chair of the Ethics Committee,

whose meetings are currently held the second Tuesday of the month at the Town Hall. Ms. Veisel stated she did not have a problem switching the location of her meeting so the Zoning Board could meet at the Town Hall. Board members liked the idea of holding their meetings at the Town Hall and agreed to give the second Tuesday of the month, as opposed to the second Wednesday of the month, a try. Ms. Smith asked, to be clear, that should an application come in for the June meeting, she would schedule it for Tuesday June 11, 2013 at the Town Hall. Board members agreed. Chair Prelli asked Ms. Smith to e-mail alternate member Cecil Williams to advise him of the change.

Ms. Anderson asked if it is possible to ask applicants to put a bar scale on their plans. Chair Prelli stated this may be a hardship on applicants as not all applications are professionally rendered plans. Ms. Anderson asked if it could be required on professionally rendered plans. Chair Prelli suggested putting this item on the agenda to be discussed at the next meeting.

Chair Prelli asked Board members if they felt a letter to the Selectmen regarding an investigation into the Straight matter was in order. Chair Prelli stated he felt, as representatives of the Townspeople, the Board should request an investigation to see if this was just a series of errors or something more. Mr. Hoffman agreed that even though the Straights received relief from the Zoning Board whether any fraud was involved by other parties, not the Straights, should be looked into. Ms. Anderson questioned how a building permit could be issued on a lot without any road frontage. Board members agreed that the fact the lot was a 'woodlot' may have been ambiguous but it was quite obvious the lot had no frontage. Chair Prelli stated he would draft a letter to be circulated among Board members prior to submittal to the Selectmen. Chair Prelli asked Ms. Smith to e-mail the Straight decision letter, drafted by the Town Attorney, to all Board members. Ms. Smith asked Chair Prelli if he could give her the decision letter, with the original signature on it, as the letter of decision gets recorded at the Registry of Deeds. Ms. Smith stated the Registry will only accept documents with original signatures. Chair Prelli stated he could drop the letter off at the Town Hall on Saturday.

At 8:30 pm Chair Prelli made a motion to adjourn. Ms. Swenson seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith

Recording Secretary