

MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
11 JUNE 2013

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

Roll Call: Larry Prelli (Chair), Mike Hoffman, Dave Shagoury (Alternate), Cecil Williams (Alternate); recording secretary Amy Smith.

Others Present: Deborah Carter

Request For Appeal: Deborah & Kevin Carter

Chair Prelli introduced Board members and designated Mr. Shagoury and Mr. Williams to sit in as voting members. Chair Prelli explained to Mrs. Carter that a full Board consists of 5 members and tonight there are only 4. Chair Prelli asked Mrs. Carter if she wished to postpone the meeting until a 5 member Board is available. Mrs. Carter stated she wished to proceed. Chair Prelli asked Mrs. Carter if she felt there were any Board members who should not sit in as voting members due to a conflict of interest. Mrs. Carter replied that there is no issue with a conflict of interest.

Mrs. Carter stepped forward and stated on 8 May 2013 she and her husband appeared before the Zoning Board for a variance to allow the extension of an existing deck within the 50 foot Shoreland setback. Mrs. Carter stated her original application was for a variance to Article XVII Section F-2-B. Mrs. Carter further stated that at the public hearing on 8 May 2013, the Board and she and her husband agreed, that Article XVII Section E was more appropriate. Mrs. Carter stated once she and her husband got home they took a better look at Article XVII Section E and felt that this Article states that the structure is the beginning point of measurement for the deck. Therefore an open deck can be built up 12 feet (maximum) toward the water with the measurement beginning from the existing structure. Mrs. Carter stated this being the case she does not feel that she needed a variance to begin with because what she is asking to do is allowed under Article XVII Section E. Mrs. Carter stated she is requesting that the Board rescind the denial of the variance at the 8 May 2013 meeting as no variance is needed. Board members reviewed the letter submitted by Mrs. Carter. Chair Prelli asked if there was any other public comment. There was none. Chair Prelli closed the public comment portion of the meeting.

Mr. Hoffman stated he agreed with Mrs. Carter and stated he was troubled by the Board's decision. Mr. Hoffman stated he reread Article XVII Section E and communicated his concern that the Board may have made a mistake to Chair Prelli. Mr. Hoffman stated the Board was in the process of figuring out how to correct the error when she filed her request for appeal. Chair Prelli stated he also agreed with Mrs. Carter. Chair Prelli stated he feels that the Board did make an error and the structure should have been the point of measurement. Mr. Williams stated he was not present at the 8 May 2013 hearing but he has read the materials and he also agrees that Mrs. Carter is correct. Mr. Shagoury stated he too agrees with Mrs. Carter.

Mr. Hoffman made a motion that in the matter of Kevin & Deborah Carter’s application for a variance from Article XVII Section E to build a deck, heard on 8 May 2013 and its subsequent denial by the Board, that since Article XVII Section E permits the addition of an open deck extending up to a maximum of 12 feet closer to the normal high water for existing buildings that are closer than 50 feet from the normal high water, no variance is required and that this Board’s decision of 8 May 2013 is hereby vacated without prejudice to the Carters. Chair Prelli seconded the motion. The motion was unanimously approved.

Mrs. Carter thanked the Board.

Mr. Hoffman made a motion that the Board wished to acknowledge, for the record, that during discussions concerning a variance on 8 May 2013 it erred in its interpretation of Article XVII Section E when it found that there was a 12 foot permissible encroachment zone for decks that extended from the 50 foot setback line toward the normal high water. No such zone exists in regulation or law. The Board regrets any inconvenience this misinterpretation may have occasioned. Mr. Shagoury seconded the motion.

Discussion followed. Chair Prelli stated he felt the motion was redundant as the variance for the Carters was vacated. Mr. Shagoury and Mr. Williams agreed. Chair Prelli called for a vote on the motion. **Mr. Hoffman’s motion was denied with 1 affirmative vote (Hoffman) and 3 negative votes (Shagoury, Prelli, Williams.)**

Review of Minutes

Board members reviewed the minutes of 8 May 2013.

Mr. Shagoury made a motion to approve the minutes of 8 May 2013 as printed. Chair Prelli seconded the motion. The motion was approved with 3 affirmative votes (Prelli, Shagoury, Hoffman) and 1 abstention (Williams.)

Review of Mail

Board members reviewed the mail. Chair Prelli signed the amended Notice of Decision regarding the Straight case. Ms. Smith stated she would record the decision once she received the recording fees from Atty. Hoover.

Bar Scale

Chair Prelli suggested holding off on the bar scale discussion until Ms. Anderson is present.

Zoning Ordinance Question – Article III A-3 & Article IX D-3

Board members reviewed 2 sections of the ordinance regarding setbacks to septic systems/leach fields as requested by the Planning Board Chairman. Board members felt that the ordinance as currently written wasn’t a problem. Mr. Hoffman did express concern regarding the prohibition on reconstruction of a ‘privy, cesspool, septic tank, or sewage disposal less than 125’ from the edge of a public water body’ as found in Article III A-3 as this would be a problem with small lots on the Lake. Mr. Shagoury stated he believes that the State prohibits replacement of in kind

systems that don't meet the setbacks and a new design is necessary. There was a consensus among Board members that the ZBA does not legislate and any changes to the Ordinance are not in its purview.

Other Business

Chair Prelli stated he has not yet drafted a letter to the Selectmen regarding the Straight matter as was discussed at the 8 May 2013 meeting. Chair Prelli informed Board members that Atty. Justin Richardson would like to participate in the drafting of the letter.

Board members agreed that should an application come in the next meeting will be 9 July 2013.

At 7:42pm Mr. Hoffman made a motion to adjourn. Mr. Shagoury seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary