

MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
13 FEBRUARY 2013

Chairperson Larry Prelli called the meeting to order at 7:05 pm.

Roll Call: Larry Prelli (Chair), Wendy Anderson (Vice-Chair), Joan Swenson, Dave Shagoury, Cecil Williams (Alternate); recording secretary Amy Smith.

Others Present: Tom Varney, Atty. Arthur Hoover, Paul Perry.

PUBLIC HEARING: CASE 2013-1 – The application for an Appeal from an Administrative Decision submitted by Atty. Arthur Hoover on behalf of Paul & Lynn Straight for property at 9 Country Lane (Map 238 Lot 30). Chair Prelli opened the public hearing and stated the Board received a request from Atty. Hoover requesting a recess until April as there was a concern there would not be a full Board to hear the application as one of the Board members may have to recuse himself. Atty. Hoover stated that he has recently been informed the member may not have to recuse himself but he had already submitted the letter. Mr. Shagoury made a motion to recess the public hearing of Paul & Lynn Straight until 10 April 2013 at 7 pm. Ms. Swenson seconded the motion. The motion was unanimously approved. Chair Prelli asked Ms. Smith to make a copy of Atty. Hoover's letter for all Board members.

PUBLIC HEARING: CASE 2013-2 – The application for a Variance submitted by Thomas Varney on behalf of James and Louise Barwell for property at 47 Meaders Point Road (Map 111 Lot 24). At 7:10 pm Chair Prelli opened the public hearing and read the public hearing notice. Mr. Shagoury offered to recuse himself as he had done work for one of the Barwell's abutters. Mr. Varney, representing the applicant, stated he did not have a problem with Mr. Shagoury hearing the case. Mr. Varney showed the Board plans of the project. Mr. Varney stated the Barwell's would like to demolish the old cottage and replace it with a new cottage with garage and a new septic and well. Mr. Varney noted the property has a general 15% slope. Mr. Varney noted the Planning Board denied the Barwell's application for a conditional use permit because of failure to meet the requirements of allowed impervious surface and for the septic tank location not meeting the 125' setback. Mr. Varney stated the Planning Board was going to submit a letter to the ZBA explaining the nature of the hardships inherent to the property. Mr. Varney noted the revised plan does meet the impervious surface requirement but the septic tank is 57 feet away from the Lake. Mr. Varney stated if the septic tank were located 125' from

the lake it would be about 8 feet underground which would be impractical and would not work as the water table is about 2.5 feet below ground. Mr. Varney showed the Board a drawing depicting what the septic tank location would look like, relative to the house, if it were 125' away from the Lake. Mr. Varney stated the existing septic system is antiquated and a new one would be a big improvement. Ms. Swenson asked if Mr. Varney, as an engineer, would be willing to put in writing that the new system is safer. Mr. Varney stated he would. Mr. Shagoury asked what the State requirement is for distance of a septic tank from the Lake and a well. Mr. Varney stated 50 feet from both. Ms. Anderson noted the leach field is the most important part and that meets the setback. Mr. Shagoury noted the location exceeds the State requirements.

Chair Prelli noted he did receive a letter from the Planning Board Chairman but thought it was a draft copy and not an official letter. Chair Prelli stated the letter corresponds with what Mr. Varney is saying. Chair Prelli stated he wished he had a final copy of the letter but the Planning Board minutes seem to be clear.

Mr. Varney read his responses, found on page 3 of the application, listing how he believes the application meets the criteria for a variance. Ms. Swenson asked if there are issues with the wells on either side of the property. Mr. Varney stated no.

Chair Prelli closed the public discussion portion of the hearing. Mr. Williams stated he generally agrees with what Mr. Varney has stated but would like to see the letter from the Planning Board. Chair Prelli agreed the letter from the Planning Board would be good to have but stated the minutes are pretty clear about the Planning Board's opinion. Mr. Shagoury stated the Planning Board turned down the application because they had to and stated he would be willing to approve the application without the Planning Board's letter. Ms. Swenson noted the proposed septic tank is no closer than the existing tank and is an upgrade. Ms. Swenson also noted the proposed tank location meets the State requirement and the Engineer has stated the proposed system is safer than the existing one. Ms. Anderson stated she agreed with Ms. Swenson that the proposed system is an improvement over the existing one, is no closer than the existing tank and does meet the State requirements. Ms. Swenson asked how many bedrooms the proposed home had. Mr. Varney stated 2. Chair Prelli stated there seemed to be a consensus of the Board in favor of the application and asked if the absence of the Planning Board letter changes anyone's opinion. Ms. Swenson stated the lack of the letter would not preclude her from voting but feels the letter should be present for a complete file.

Ms. Anderson suggested for sake of the record the Board go over the 5 criteria, point by point, necessary in granting a variance.

- 1) Board members agreed granting the variance would not diminish surrounding property values as the proposed system is a newer and better system and does not impact neighboring wells.

- 2) Board members agreed granting the variance would not be contrary to the public interest as a newer, better septic system is in the public interest.
- 3) Board members agreed denial of the variance would result in unnecessary hardship to the owner of the property as the lot is small. Due to the size and slope of the property places to put the system are very limited. The location does not cause a problem for any wells and it does meet the States setback requirements. Chair Prelli did point out that just because an applicant meets the State's setback requirement does not automatically give the applicant grounds for a variance.
- 4) Board members agreed granting the variance would do substantial justice because requiring the tank to be very deep underground would be difficult and impractical.
- 5) Board members agreed granting the variance is not contrary to the spirit of the ordinance as the proposed system improves the quality of the water because it is a better system.

Chair Prelli made a motion to approve the application for a variance from Article III Section A to allow a septic tank/pump chamber 57 feet from the Lake and 60 feet to a proposed well for James & Louise Barwell for property located at 47 Meaders Point Road (Map 111 Lot 24). Also a request for the letter the Planning Board promised in its minutes of 8 January 2013. Mr. Shagoury seconded the motion. The motion was unanimously approved.

Mr. Paul Perry, abutter to the Straight property, asked the Board if he could ask them some procedural questions. Chair Prelli stated he could. Mr. Perry asked if he could submit, in writing, a rebuttal to the points submitted by Atty. Hoover in the application. Chair Prelli stated he could submit questions and comments to the Board in writing and informed Mr. Perry he should submit them to Ms. Smith. Mr. Perry asked if he should speak to the Board directly and not to the applicant. Chair Prelli stated this was correct. Chair Prelli informed Mr. Perry that the Board has a 'Rules of Procedure' handout which he could get from Ms. Smith. Mr. Perry asked about showing his points in video format at the hearing. Board members agreed they preferred the paper format. Mr. Perry stated he would submit his comments to the Board by April 1, 2013.

Board members reviewed the minutes of 18 April 2012. Ms. Swenson noted on page 1, 3rd paragraph under the heading 'Groom Variance', second to last sentence, change the word "to" to "onto" between the words 'gets' and 'the'. Also on page 2, fourth paragraph, 1st word change "He" to "Mr. Zuzgo". Chair Prelli made a motion to approve the minutes of 18 April 2012 as corrected. Ms. Swenson seconded the motion. The motion carried with 3 affirmative votes (Prelli, Anderson, Swenson) and 2 abstentions (Williams, Shagoury).

Board members reviewed the minutes of 15 August 2012. Ms. Anderson noted Helen Wellman's name should be removed from "Roll Call" also under others present Ms. Aston-Fleming, Mr. Colbath, Ms. Michaud, David Allen, and Thomas Mottl should be added. Board

members agreed , Page 1, 4th paragraph under the heading 'Aston-Fleming' the second and third sentence should be changed to "Together they create 16.9% impermeable surface. The proposed garage increases the impermeable cover to 21.2%, greater than the 20% allowed by Article XVII Section F 2 d." Page 2 first paragraph, last sentence, the words "adds and" should be changed to "is an". Page 3, second paragraph under the heading 'Thomas Mottl' "xx square feet of" should be changed to "a". Chair Prelli made a motion to approve the minutes of 15 August 2012 as corrected. Mr. Shagoury seconded the motion. The motion carried with 3 affirmative votes (Prelli, Shagoury, Anderson) and 2 abstentions (Williams, Swenson.)

At 8:20 pm Ms. Swenson made a motion to adjourn. Mr. Shagoury seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith

Recording Secretary