

**MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
14 OCTOBER 2014**

Vice Chair Wendy Anderson called the meeting to order at 7:08 pm.

Roll Call: Wendy Anderson (Vice Chair), Joan Swenson, Mike Hoffman, Dave Shagoury (Alternate), Stephanie Kearns (Alternate), Recording Secretary Amy Smith.

Excused: Cecil Williams, Larry Prelli

Others Present: Kathleen & Chris Cairns, Peter Cooperdock, Gregory Anthes, Brian Lacey, Ryan Lacey, Christopher Berry, John Goyette, Jan Bell, Dennis Neyland, Richard Colbath, Susan Abizaid, David Bickford, Glenn Bushong, Atty. Arthur Hoover.

Vice Chair Anderson introduced Board members and designated Ms. Kearns and Mr. Shagoury to sit in as voting members.

PUBLIC HEARING - CASE 2014-03 - Application submitted by Brian & Leila Lacey. The applicant is seeking a Variance to Article XVII Section F- 2- e of the New Durham Zoning Ordinance in order to permit a building closer than 15 feet from the boundary line. The existing cottage is located 12.4' from the boundary line, but the bedroom's layout inside the cottage is such that a small expansion is needed which will bring one corner of the cottage to 12.0' from the boundary line. The property in question is located at 114 South Shore Road (Tax Map 122, Lot 10).

Vice Chair Anderson opened the public hearing. Present for the hearing was Brian Lacey, Ryan Lacey, and applicant's representative Christopher Berry of Berry Surveying and Engineering. Vice Chair Anderson asked the applicant if he felt there are any Board members who should not sit in on the case due to a conflict of interest. Mr. Berry asked Vice Chair Anderson if she still worked for Woodburn & Company. Vice Chair Anderson stated she did not. Mr. Berry stated there was no issue with a conflict of interest. Mr. Berry explained the proposal to Board members. Mr. Berry noted the layout of the bedroom is such that a bed barely fits inside the room and leaves no room to walk around both sides of the bed. Mr. Berry noted the expansion will allow a bed to more comfortably fit in the room and allow for a safe means of egress. Board members reviewed the plan prepared by Mr. Berry. Ms. Swenson asked if the deck is an open deck. Mr. Berry stated it is. Ms. Swenson asked the closest point of the current structure to the property line. Mr. Berry stated 12.4 feet and the proposal will place the structure 12.0 feet from the property line.

Vice Chair Anderson asked if there were any abutters present who wished to comment on the proposal. There were none. Vice Chair Anderson asked if there were any members of the public who wished to comment on the proposal. There were none. Vice Chair Anderson closed the public input portion of the hearing. Board members reviewed the application materials and the 5 criteria necessary in granting a variance. Mr. Hoffman noted the relief being asked for is minimal (.4 feet) and safe egress is important. Vice Chair Anderson agreed. Mr. Shagoury, Ms. Swenson, and Ms. Kearns agreed the request is reasonable. Ms. Swenson noted there is a nice stand of trees between the structure and the abutting lot to act as a buffer.

Mr. Hoffman made a motion to approve the application submitted by Brian & Leila Lacey for a Variance to Article XVII Section F- 2- e of the New Durham Zoning Ordinance in order to permit a building closer than 15 feet from the boundary line. The existing cottage is located 12.4' from the boundary line, but the bedroom's layout inside the cottage is such that a small expansion is needed which will bring one corner of the cottage to 12.0' from the boundary line. The property in question is located at 114 South Shore Road (Tax Map 122, Lot 10). Ms. Swenson seconded the motion. The motion was unanimously approved.

PUBLIC HEARING - CASE 2014-04 - Application submitted by David Berry of Berry Surveying & Engineering on behalf of Glenn & Tamra Bushong. The applicant is seeking a Variance to Article XVII Section F-2-a, c, d, and e of the New Durham Zoning Ordinance to permit a building closer than 20 feet from the frontage line, closer than 15 feet to a side boundary line, closer than 30 feet to an abutter's building, building coverage of more than 15 percent of the lot area, and impervious surfaces covering more than 20 percent of the lot area. The property in question is located at 15 Meaders Point Road (Tax Map 111 Lot 40).

Vice Chair Anderson opened the public hearing. Present for the hearing was Glenn Bushong, applicant's representative Christopher Berry of Berry Surveying and Engineering, and abutter Susan Abizaid. Vice Chair Anderson asked the applicant if he felt there are any Board members who should not sit in on the case due to a conflict of interest. Mr. Berry stated there was no issue with a conflict of interest. Mr. Berry explained the proposal to Board members. Mr. Berry noted a portion of the structure is currently on the abutter's land and the proposal will remedy that encroachment. Mr. Berry also noted the proposal will move the structure back from the water. Mr. Berry stated the Bushong's property sits lower than the properties on either side and there is an issue with water running under the cottage. Mr. Shagoury noted the property sits lower than the road as well. Mr. Berry stated raising the cottage and installing a full foundation should help the water issue. Mr. Shagoury asked about water runoff down the staircase. Mr. Berry stated reconfiguring the staircase should mitigate water runoff. Ms. Swenson noted the structure as it does not meet any of the current zoning regulations.

Vice Chair Anderson asked if there were any abutters present who wished to comment on the proposal. Susan Abizaid stated she is the abutter whose land a portion of the Bushong's cottage sits on. Ms. Abizaid asked for clarification on the roof line. Mr. Bushong stated the structure will be the same structure it will just be squared off and raised by approximately 3 feet. Ms. Abizaid also noted there is an existing, aging holding tank on the property that she asked Mr. Bushong to be cautious of while having the work done to his property. Vice Chair Anderson asked if there were any members of the public who wished to comment on the proposal. Mr. Goyette asked if the property in question was formerly owned by Marilyn Willard. Mr. Bushong stated it was. Mr. Goyette asked if a replacement septic could be placed across the street. Mr. Berry stated it could as a last resort but he would prefer to keep the infrastructure on the same lot. There was no more public input. Vice Chair Anderson closed the public input portion of the hearing.

Board members reviewed the application materials and the 5 criteria necessary in granting a variance. Mr. Hoffman noted the lot is very unique due to both size and the way it is situated. Mr. Hoffman also noted the proposal will correct a previous mistake by removing the structure from the abutting lot and having it entirely on its own lot. Ms. Swenson agreed and stated the

structure will be moved back from the Lake and situated on its own lot making it less nonconforming. Ms. Swenson also noted the overall impervious surface on the lot will be decreased. Mr. Shagoury stated the proposal alleviates the encroachment issue and should improve the water issue therefore improving the lot overall. Vice Chair Anderson read the five criteria necessary in granting a variance. Board members agreed the proposal met all five.

Ms. Swenson made a motion to approve the application submitted by David Berry of Berry Surveying & Engineering on behalf of Glenn & Tamra Bushong for a Variance to Article XVII Section F-2-a, c, d, and e of the New Durham Zoning Ordinance to permit a building closer than 20 feet from the frontage line, closer than 15 feet to a side boundary line, closer than 30 feet to an abutter's building, building coverage of more than 15 percent of the lot area, and impervious surfaces covering more than 20 percent of the lot area. The property in question is located at 15 Meaders Point Road (Tax Map 111 Lot 40). Mr. Hoffman seconded the motion. The motion was unanimously approved.

PUBLIC HEARING - CASE 2014-05 Application submitted by Joseph & Cheryl Mullen. The applicant is seeking a Variance to Article VI Section C- 2 of the New Durham Zoning Ordinance in order to permit the construction of a three bay garage no closer than 58 feet from the intermittent stream, with associated driveway impacts, maintaining at least a 30 foot vegetated buffer along the stream. The property in question is located at 287 South Shore Road (Tax Map 113, Lot 77).

Vice Chair Anderson opened the public hearing. Present for the hearing was the applicant's representative Peter Cooperdock. Vice Chair Anderson asked the applicant if he felt there are any Board members who should not sit in on the case due to a conflict of interest. Mr. Cooperdock stated there was no issue with a conflict of interest.

Mr. Cooperdock explained the confusion with a building permit denial letter from former Code Enforcement Officer (CEO) Arthur Capello. Mr. Cooperdock stated back in July Mr. Capello issued a denial letter for the proposal, but in his opinion, cited the wrong Article of the Zoning Ordinance. Mr. Cooperdock stated the Capello letter cited Article XIII 'Steep Slope Conservation District' as a portion of the garage would be in the 30% slope. Mr. Cooperdock stated this is not the case and the garage would be situated on terrain that is greater than 20% slope but less than 30% slope. Mr. Cooperdock stated he 'cleaned up' the plan to make it less confusing. Mr. Cooperdock stated once he was made aware of the CEO's letter the 30 day time period to appeal an administrative decision had lapsed. Mr. Cooperdock stated he contacted the current CEO, Jim Daley, regarding the situation and Mr. Daley stated he could not rescind the previous CEO's opinion. Mr. Cooperdock continued to state the application before the Board is for the setback from the intermittent stream and not construction on a slope greater than 30%.

Mr. Cooperdock explained the proposal to the Board and noted there is an existing easement and driveway on the property. Mr. Cooperdock also noted a 58' buffer will be maintained from the stream. Board members reviewed the plan. Mr. Hoffman asked if Mr. Cooperdock looked at locations west of the stream to locate the garage. Mr. Cooperdock stated he did not. Mr. Hoffman noted per the Zoning Ordinance an 85' vegetative buffer must be maintained from the stream. Mr. Cooperdock stated he did not know the buffer needed to be vegetated. Mr. Hoffman referred to Tables 4 and 5 found in Article VI Section C of the Zoning Ordinance. It was determined that

the Zoning Ordinance calls for an 85' vegetative buffer for buildings from seasonal or intermittent streams on slopes 20-29.9%. Mr. Hoffman next read Article VI Section F of the Zoning Ordinance which states "The Planning Board may approve a Conditional Use Permit for a use in the Riparian Buffer Zone only if it finds, with the advice of the New Durham Conservation Commission, that all of the following standards have been met in addition to any performance standards for the particular use: 1. There is no alternative location on the parcel that is outside the riparian buffer zone that is feasible and reasonable for the proposed use." Mr. Hoffman stated he felt if the Planning Board has this requirement to look at in granting a Conditional Use Permit it is reasonable for the Zoning Board to look at it as well. Mr. Hoffman continued to state Mr. Cooperdock had already acknowledged that he did not look into alternative locations.

Mr. Shagoury stated he did not believe the hardship criteria had been met. Mr. Shagoury noted a smaller garage would have less of an impact. Mr. Cooperdock stated he did not believe any size garage would meet the setback criteria in that location. Mr. Cooperdock also noted due to the existing gravel driveway the 85' vegetative buffer from the stream could not be met. Other options such as eliminating the apron were briefly discussed. Mr. Hoffman noted it is not the job of the ZBA to redesign the proposal but to act on the application before them. Vice Chair Anderson agreed.

Ms. Swenson asked if the gully is remaining. Mr. Cooperdock stated it is. Ms. Swenson questioned runoff. Mr. Cooperdock stated there would be a stone trench around the garage. Mr. Cooperdock also stated there is every intention to have runoff shed into the stream and not onto the neighbor's property.

Vice Chair Anderson asked if there were any abutters present who wished to comment on the proposal. There were none but the Board did receive a letter from abutter John Taylor. Vice Chair Anderson read Mr. Taylor's letter aloud. Mr. Taylor's letter stated his concern regarding an increased amount of runoff onto his property as a result of the proposal. Vice Chair Anderson asked if there were any members of the public who wished to comment on the proposal. There were none. Vice Chair Anderson closed the public input portion of the hearing.

Vice Chair Anderson stated it may be Mr. Cooperdock's intention to keep runoff from impacting the neighboring property but there is nothing on the plan that shows the water is being directed off of the neighbor's property. Ms. Kearns agreed. Mr. Shagoury stated he did not believe the proposal presented was the only way to do the project. Mr. Shagoury stated the entrance to the garage could be from the end not the side and the apron could be eliminated. Mr. Shagoury stated he did not see a hardship.

Mr. Hoffman stated the Zoning Ordinance calls for an 85' vegetative buffer and the proposal is only for a 30' vegetative buffer. Mr. Hoffman also noted it is not up to him to come up with alternative designs but the agent is not asserting there are no other ways for the proposal. Mr. Hoffman also stated he does not believe Mr. Taylor's concerns were addressed. Ms. Swenson stated she agreed with Mr. Hoffman and noted in the previous two applications there was a slight deviation from the Ordinance and in both cases improvements were made. Ms. Kearns stated the agent has stated there is every intention to divert runoff from the neighbor's property but this is not shown. Board members reviewed the five criteria necessary in granting a variance.

Mr. Cooperdock asked the Board if they could recess the public hearing until the next meeting before they voted so he could confer with the property owners. Ms. Smith noted the second Tuesday in November is Veteran's Day and the Town Offices are closed. Board members agreed to meet on Thursday 13 November 2014 instead. Ms. Smith asked Mr. Cooperdock to submit his request in writing.

Ms. Swenson made a motion to recess Case 2014-05 - Application submitted by Joseph & Cheryl Mullen. The applicant is seeking a Variance to Article VI Section C- 2 of the New Durham Zoning Ordinance in order to permit the construction of a three bay garage no closer than 58 feet from the intermittent stream, with associated driveway impacts, maintaining at least a 30 foot vegetated buffer along the stream. The property in question is located at 287 South Shore Road (Tax Map 113, Lot 77) until 13 November 2014 at 7 pm at the New Durham Town Hall. Mr. Shagoury seconded the motion. The motion was unanimously approved.

Motion for Rehearing - Case 2014-02-Water Monkey Camp, LLC- Tax Map 119 Lots 11 & 32

Mr. Hoffman recused himself from the discussion.

Board members reviewed a Motion for Rehearing, dated 17 September 2014, filed by Atty. John Cronin on behalf of Water Monkey Camp, LLC. Ms. Swenson suggested going over Atty. Cronin's letter point by point. Ms. Swenson noted the Board did discuss campgrounds, and were advised by the Town Attorney they could discuss campgrounds, but the application for Special Exception was not denied based on it qualifying or not qualifying as a campground. Ms. Swenson noted the application was denied as it did not meet the criteria in Article VIII A 1 a and b of the Zoning Ordinance. Ms. Swenson stated maybe 'convincingly' was not the proper word to use in the Board's motion to deny the application but the Board did not act unlawfully or unreasonably in denying the Special Exception as the Board determined the lots in question did not appear to be in the areas designated 'most suitable for urban growth', moderately suitable for urban growth' or 'slightly suitable for urban growth' on the 'Land Use Suitability Map' as is required in order for a Special Exception to be granted under Article VIII Section A 1 a or b.

Mr. Shagoury suggested incorporating the 10 February 2014 e-mail from Atty. Cronin to Ms. Smith acknowledging the existence of the 'Land Use Suitability Map' and his receipt of digital photos of the 'Land Use Suitability Map' into the file for Case 2014-02 and noting it in the minutes.

Ms. Swenson addressed the next point in Atty. Cronin's Motion for Rehearing and noted the ZBA is sensitive to money spent by and time of applicants, however, the Town's Regulations need to be the Board's guiding force. Ms. Swenson also noted Atty. Cronin's mention of the Board's not doing their 'constitutional duty to assist' and 'The Town cannot engage in efforts to delay a project or ignore an application' is unfounded. Ms. Swenson noted the Board first heard the application on 12 August 2014 and recessed it until 26 August 2014. Ms. Kearns agreed and noted Board members rearranged their own schedules in order to accommodate the applicant and recessed the hearing for two weeks instead of recessing the hearing until their next regularly scheduled meeting which would have been 9 September 2014. Ms. Smith noted a Conservation Commission meeting, which had already been scheduled, was preempted as a result of the

ZBA's decision to recess the hearing until the last Tuesday of the month (26 August 2014) instead of their normal meeting date of the second Tuesday of the month. Ms. Kearns also stated the discussion regarding the campground was an effort on the part of the Board to be helpful to the applicant and not a part of the decision.

Mr. Shagoury noted the Board has two options. They can vote to grant the Motion for Rehearing or they can vote to deny the Motion for Rehearing. Board members agree they did their due diligence in processing and reviewing the application and no new information was submitted in the Motion for Rehearing.

Vice Chair Anderson made a motion to deny the Motion for Rehearing, dated 17 September 2014, filed by Atty. John Cronin on behalf of Water Monkey, LLC - Case 2014-02 as no new information was submitted and the Board did its due diligence in processing and reviewing the application at public hearings held on 12 August 2014 and 26 August 2014. Mr. Shagoury seconded the motion. A roll call vote was taken: Kearns - Aye, Anderson - Aye, Swenson - Aye, Shagoury -Aye.

Mr. Hoffman returned as a Board member.

Review of Minutes

Board members reviewed the minutes of 26 August 2014.

Mr. Shagoury made a motion to approve the minutes of 26 August 2014 as written. Ms. Kearns seconded the motion. The motion was approved with four affirmative votes (Kearns, Anderson, Shagoury, Swenson) and one abstention (Hoffman).

Review of Mail

There was no mail.

Other Business

Mr. Shagoury and Ms. Anderson requested binders to organize their ZBA paperwork. Board members discussed reviewing the Zoning Board Application form for possible revisions/suggestions and taking it up at the 13 November 2014 meeting if time permits.

At 9:50 pm Ms. Swenson made a motion to adjourn. Mr. Hoffman seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary