

**MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
14 JULY 2015**

Acting Chair Swenson called the meeting to order at 7:08 pm.

Roll Call: Joan Swenson (Acting Chair), Stephanie Richard, Dave Shagoury (Alternate), Recording Secretary Amy Smith.

Excused: Cecil Williams, Wendy Anderson

Others Present: Videographer Peter Pijoan, Daniel Roy, George Rief, Paul Raslavicus, Zannah Richards, Tom Varney, PE.

Acting Chair Swenson designated Mr. Shagoury to sit in as a voting member.

Public Hearing - CASE: 2015-01 - Application submitted by Thomas Varney, PE on behalf of Jane Corcoran. The applicant is seeking a Variance to Article VI Section C 3 (a) 1 & 2 [General Provisions Section] and Article XIV Section C 1 (c) [Shorefront Conservation Overlay District Section] of the New Durham Zoning Ordinance in order to permit a septic tank/pump chamber to be 92' from the lake and a leach bed to be 46' to the neighbor's dwelling. The property in question is located at 390 South Shore Road (Tax Map 114, Lot 35).

Public Hearing - CASE: 2015-02 - Application submitted by Thomas Varney, PE on behalf of Jane Corcoran. The applicant is seeking a Variance to Article XIV Section C 1 (b) [Shorefront Conservation Overlay District Section] and Article XX Section E 2 (b) [Non-Conforming Buildings, Land or Uses Section] of the New Durham Zoning Ordinance in order to permit construction of a new cottage/house less than 75' to the lake. The property in question is located at 390 South Shore Road (Tax Map 114, Lot 35).

Acting Chair Swenson informed the audience and viewing public that a full Board consists of five members and tonight there are only three as one member was called out of Town unexpectedly and another has not fully recovered from surgery. Acting Chair Swenson asked Mr. Varney if he would like to proceed with the hearing tonight or request a recess in the hopes of having a full Board at the next meeting. Mr. Varney, on behalf of Ms. Corcoran, stated he will go forward with the hearings tonight.

Acting Chair Swenson read the public hearing notices and opened the hearing for both cases as they are both for the same applicant and property and it is likely the discussion will overlap. Tom Varney, PE stepped forward and introduced himself to the Board. Mr. Varney explained the lot in question is a very small waterfront lot and the structure was designed to meet the Planning Board's requirements for a conditional use permit for stormwater management. Mr. Varney noted the proposal meets the State of New Hampshire requirements. Mr. Varney stated the Town of New Durham's regulations require a leach field to be 125' from a public water body but the lot in question is not 125' long. Mr. Varney stated he set the septic and leach field back as far as he could but it would have to be located in the road in order to meet the 125' setback. Mr.

Varney stated the proposed house meets the 50' State of New Hampshire shoreland setback but not the Town's 75' setback. Mr. Varney referred to the plans and showed the Board the lot has only a very small buildable area. Board members reviewed the plans. Mr. Varney also noted of the 11 waterfront house lots in the immediate area 8 of them are within the 75' setback. Mr. Varney also stated there was an existing cottage on the property for about 65 years but it was torn down in 2008.

Mr. Varney pointed out some discrepancies between the chart known as Appendix B found in the back of the Ordinance and the Ordinance itself.

Ms. Richard asked how far the proposed septic is from the neighbor's well. Mr. Varney stated it is 80+ feet away from the Roy's well. Ms. Richard questioned what was meant by an excavated terrace. Mr. Varney stated the area would be excavated and would be grass or sand. Ms. Richard asked if it would be a structure. Mr. Varney stated no. Board members continued to review the plans and the application materials.

Acting Chair Swenson opened the hearing to public comment and asked if there are any abutters who would like to speak on the application. Dan Roy questioned why New Durham's setback is 75' from the lake when the State's setback is 50'. Ms. Smith noted the ZBA does not draft the Ordinance that is the realm of the Planning Board. There were no other abutters present.

Acting Chair Swenson asked if there are any members of the public who wished to comment on the application. Paul Raslavicus stepped forward and noted various sections of Appendix B that differed from the text of the Ordinance. Ms. Smith stated she would bring Appendix B to the attention of the Planning Board but it is not as simple as simply making the appropriate changes. Ms. Smith noted the Planning Board would have to draft the changes and put them on the warrant for the March Town Meeting.

Mr. Raslavicus next commented on the applications. Mr. Raslavicus stated the lot is currently a wooded lot with no structure on it. Mr. Raslavicus further stated per the Zoning Ordinance you cannot make a property more nonconforming. Mr. Varney stated he is before the ZBA for variances to the Zoning Ordinance. There was some discussion regarding the classification of the lot. Mr. Shagoury noted the lot is a vacant nonconforming residential lot. Ms. Richard and Acting Chair Swenson agreed. Mr. Varney noted Ms. Corcoran has paid taxes on the property as a residential lot for years. Mr. Varney also stated if the lot is determined to be an 'unbuildable lot' the taxes on it will go way down.

Mr. Raslavicus asked Mr. Varney if he would review his explanation of how he met the five criteria necessary in granting a variance. Mr. Varney stated:

1) The proposed use would not diminish surrounding property values- The proposed house would be setback similar to the neighboring properties. The septic tank/pump chamber will be below ground and not visible.

2) The variance would not be contrary to the public interest-the proposed house will be compatible with other Merrymeeting Lake properties. The septic tank/pump chamber meets the State (NHDES) requirements.

3) Denial of the variance would result in unnecessary hardship because-The lot is an existing lot of record that was created pre-zoning and does not have the sideline depths to meet the zoning requirement for the septic tank or the 75' from the lake.

4) Granting the variance would do substantial justice-the owner will be able to use the lakefront property that she has been paying taxes on as a residential building lot for years.

5) The use is not contrary to the spirit of the ordinance - the ordinance allows for lakefront development. There was a cottage on this lot for many years. The proposal meets NHDES setback requirements. The septic tank/pump chamber is located as far away from the lake as possible while still remaining on its own lot.

Mr. Roy questioned if a hardship really exists as Ms. Corcoran owns other lots. Acting Chair Swenson stated the ZBA has to look at this lot and application individually and not at any other lots she may own.

Acting Chair Swenson closed the public input portion of the hearing.

Acting Chair Swenson suggested the Board take up Case 2015-02 first.

Mr. Shagoury made a motion to approve Case 2015-02 - the application of Thomas Varney, PE on behalf of Jane Corcoran. The applicant is seeking a Variance to Article XIV Section C 1 (b) [Shorefront Conservation Overlay District Section] and Article XX Section E 2 (b) [Non-Conforming Buildings, Land or Uses Section] of the New Durham Zoning Ordinance in order to permit construction of a new cottage/house less than 75' to the lake. The property in question is located at 390 South Shore Road (Tax Map 114, Lot 35). Ms. Richard seconded the motion.

Board members reviewed the five criteria necessary in granting a variance.

1) The variance would not be contrary to the public interest. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met. It was noted it is standard practice that the lake front lots have been built on. The proposed house is similar in size and location to other houses in the area.

2) The use is not contrary to the spirit of the ordinance. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met. It was noted the proposal meets the State of New Hampshire requirements.

3) Granting the variance would do substantial justice. Mr. Shagoury stated he believes it would be an injustice to deny the variance. Ms. Richard stated the lot is very difficult to build on. Acting Chair Swenson noted there used to be a cottage on it and the applicant has paid taxes on the property as a building lot for years. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.

4) The proposed use would not diminish surrounding property values. Acting Chair Swenson noted the proposal is typical of what you see around the lake. Wells and septic systems of neighboring properties are not affected. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.

5) Denial of the variance would result in unnecessary hardship. Board members agreed it is reasonable to want to put a house on the property and noted all State requirements have been met. It was also noted the property is unique in the fact it is a vacant residential lot without a structure where the majority of other lots in the area do have a structure on them. Mr. Shagoury also noted it is not an extreme variance by number. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.

The motion to approve the variance was unanimously approved.

Mr. Raslavicus suggested tying a reference to the approval instead of just ‘less than 75’ to the lake’. Mr. Raslavicus also stated the ZBA could impose additional restrictions such as on the height of the structure. Acting Chair Swenson stated she believed the approval would be based on the plans the Board reviewed at tonight’s hearing but it is a good idea to be more specific in the motion. Acting Chair Swenson stated as far as the building itself is concerned that would be governed by the provisions of the Zoning Ordinance and Building Code. The Building Inspector/Code Enforcement Officer should make sure those regulations are adhered to.

Mr. Shagoury made a motion to amend the motion to approve the variance to include “The approval is based on the plans presented to the ZBA on 14 July 2015 entitled “ZBA Variance- Land of Jane Corcoran” prepared by Thomas W. Varney, PE dated 30 March 2015”. Acting Chair Swenson seconded the motion. The amendment was unanimously approved.

Mr. Shagoury made a motion to approve the motion as amended. Ms. Richard seconded the motion. The motion as amended was unanimously approved.

Ms. Smith read the motion as amended. Mr. Varney noted the address is actually 390 South Shore Road and not 309 South Shore Road. Acting Chair Swenson noted both the application for Case 2015-01 and 2015-02 list the address as 309 South Shore Road. Mr. Varney stated that is a typo. Acting Chair Swenson noted the notices were processed based on the applications submitted so the notices listed the incorrect street address. Mr. Raslavicus questioned if the correct abutters were notified. Ms. Smith stated they were and the map and lot is correct. Acting Chair Swenson suggested the Board continue with the meeting and asked Ms. Smith to contact Town Attorney Justin Richardson to see if he believes the hearings need to be re-noticed due to the street address typo.

Ms. Richard made a motion to approve Case 2015-01 the application of Thomas Varney, PE on behalf of Jane Corcoran. The applicant is seeking a Variance to Article VI Section C 3 (a) 1 & 2 [General Provisions Section] and Article XIV Section C 1 (c) [Shorefront Conservation Overlay District Section] of the New Durham Zoning Ordinance in order to permit a septic tank/pump chamber to be 92’ from the lake and a leach bed to be 46’ to the neighbor’s dwelling. The property in question is located at 390 South Shore Road (Tax Map 114, Lot 35). Acting Chair Swenson seconded the motion.

Acting Chair Swenson stated she is concerned with the distance to the neighbor’s dwelling. Mr. Shagoury asked Mr. Varney if he could put a holding tank on the property. Mr. Varney stated the property owner would not want a holding tank and he doubted the State or Town of New Durham would want one either. Mr. Varney also stated the neighbor’s would not appreciate a

septic truck driving down South Shore Road every few week to pump out the tank. Ms. Smith asked what the State requirement is for the minimum distance between a leach bed and a neighbor's dwelling. Mr. Varney stated the State requires a leach bed to be 15' from any foundation. Mr. Varney noted the dwelling in question is also owned by Ms. Corcoran. Acting Chair Swenson was concerned that a future buyer may not be aware of the proximity of the leach bed to their dwelling. Mr. Shagoury suggested the lot owner of Map 114 Lot 33 sign a waiver acknowledging the proposed leach bed for Map 114 Lot 35 is to be 46' away from their dwelling and including this as a condition of approval. Ms. Richard and Acting Chair Swenson felt this was a good idea.

Mr. Shagoury made a motion to amend the motion to approve the variance to include the following condition "Receipt of a signed waiver from the property owner of Map 114 Lot 33 acknowledging the proposed leach bed is to be 46' away from their dwelling." Acting Chair Swenson seconded the motion. The amendment was unanimously approved.

Board members reviewed the five criteria necessary in granting a variance.

- 1) The variance would not be contrary to the public interest. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.
- 2) The use is not contrary to the spirit of the ordinance. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.
- 3) Granting the variance would do substantial justice. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.
- 4) The proposed use would not diminish surrounding property values. Acting Chair Swenson noted she believes this has now been met with the requirement of the waiver. Board members agreed. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.
- 5) Denial of the variance would result in unnecessary hardship. Mr. Shagoury, Ms. Richard and Acting Chair Swenson agreed this criterion had been met.

Ms. Richard made a motion to approve the motion as amended. Acting Chair Swenson seconded the motion. The motion as amended was unanimously approved.

Acting Chair Swenson informed Mr. Varney that if the Town Attorney decides the notice was fine with the street address typo then he may proceed. Acting Chair Swenson continued to state if the Attorney states the hearings will need to be re-noticed then he will need to submit new applications and a new hearing date will need to be scheduled. Ms Smith noted she is not in on Wednesdays but will e-mail Atty. Richardson on Thursday.

Election of Officers

Board members agreed to hold off on this until there is a full Board.

Review of Minutes

Board members put off approval of the 10 February 2015 minutes as there was not a quorum of members present at tonight's meeting that were also present at the 10 February 2015 meeting.

Review of Mail

Board members reviewed the mail.

ZBA Membership

Acting Chair Swenson suggested the ZBA send a memo to the Board of Selectmen urging them to act on applications of volunteers who express interest in the ZBA. Acting Chair Swenson stated the Selectmen will be appointing an individual to the ZBA at their next meeting (20 July 2015) but there are still openings for four alternates. Acting Chair Swenson further stated there is an individual who has put her name in some time ago and was nominated but her appointment was denied. Mr. Shagoury agreed the ZBA would benefit from more alternates but did not believe specific names should be mentioned in the memo to the Selectmen.

Acting Chair Swenson made a motion the ZBA send a memo to the Board of Selectmen asking them to act on applications of individuals who express interest in serving on the ZBA in a timely manner. Further Acting Chair Joan Swenson is authorized to draft the memo on behalf of the ZBA. Ms. Richard seconded the motion. The motion was unanimously approved.

At 9:35 pm Mr. Shagoury made a motion to adjourn. Ms. Richard seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary