

**MINUTES  
NEW DURHAM ZONING BOARD OF ADJUSTMENT  
8 SEPTEMBER 2015**

Vice Chair Anderson called the meeting to order at 7:01 pm.

**Roll Call:** Wendy Anderson (Vice Chair), Joan Swenson, Cecil Williams, Stephanie Richard, Joan Martin, Dave Shagoury (Alternate), Recording Secretary Amy Smith.

**Others Present:** Videographer Peter Pijoan, Paul Raslavicus, Tom Varney, PE, Charles and Doris Healey, David Nelson, Darlene Checchi, Bill Wood.

Vice Chair Anderson designated Mr. Shagoury to sit in as a voting member. Vice Chair Anderson informed the audience and viewing public that a full Board consists of five members and tonight there are only four. Vice Chair Anderson asked the applicants if they wished to proceed with the hearing tonight or request a recess in the hopes of having a full Board at the next meeting. Mr. Varney and Mr. & Mrs. Healey stated they wished to proceed.

Ms. Martin and Ms. Richard arrived. Ms. Smith noted as Ms. Martin and Ms. Richard are both full members, alternate member Mr. Shagoury would not need to sit in for someone. It was made clear to audience members and the viewing public that alternate member Mr. Shagoury would remain seated at the table and participate in discussion but would not be a voting member.

**Public Hearing - Case 2015-03- Application submitted by Thomas Varney, PE on behalf of Charles & Doris Healey. 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 tear down an existing cottage and build a new one less than 75' to the lake and a Variance to Article VI Section C 3 (a) 1 [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 to be 95' from the lake. The property in question is located at 36 South Shore Road (Tax Map 120, Lot 15).**

Vice Chair Anderson asked the Healeys and Mr. Varney if they believed anyone sitting on the Board has a conflict of interest. Ms. Swenson informed Board members and the public she also lives on South Shore Road. The Healeys and Mr. Varney stated there was no issue with a conflict of interest.

Vice Chair Anderson read the public hearing notice and opened the hearing. Mr. Varney stepped forward and stated the Healeys have owned the property for 30+ years. Mr. Varney continued to state they would like to tear down the existing cottage and build a new one. Mr. Varney noted the new cottage will meet the State of New Hampshire Shoreland setback of 50' but not the Town's setback of 75'. Mr. Varney stated the proposed cottage will be the same size as the existing cottage, other than a sun room will be added off the second floor. Mr. Varney also noted the exiting cottage has an existing State approved septic system but he has redesigned the septic and a new septic system will be put in 95' from the lake, which is as far back from the lake as

possible. Mr. Varney also stated the existing trees will be saved on both sides to conform with Shoreland Protection regulations.

Board members reviewed the plans and application materials. Ms. Swenson asked the height of the structure as she did not see it on the plan. Mr. Varney stated per the Town's regulations the structure cannot be more than 35' and noted this is a stipulation of the building permit. Ms. Swenson questioned if the view of the lake for the owner of lot 50 (Tax Map 120) would be impacted. Mr. Healey stated they have no view of the lake currently as there is a line of trees between lots 14 and 15. Ms. Swenson asked if the trees are remaining. Mrs. Healey stated they are. Ms. Swenson asked if the design that was submitted for the house is the final design. Mrs. Healey stated it is. Ms. Swenson stated to clarify, the septic system, leach field, and house will all be moved back further from the lake than where they are currently located. Mr. Varney stated that is correct. Ms. Martin asked if the entire basement is below grade. Mrs. Healey stated half of the basement is below grade.

Vice Chair Anderson opened the hearing to public comment and asked if there are any abutters who would like to speak on the application. David Nelson stepped forward and asked Mr. Varney if the diagram submitted was representative of what is out in the field. Mr. Varney stated it is. Mr. Nelson asked if the proposed house was a two bedroom house. Mr. Varney stated it is a 3 bedroom house. Mr. Nelson asked if the home was a year round home. Mr. Varney stated it will be built as a year round home. Mr. Nelson stated he is opposed to the granting of a variance and noted the Healeys own a back lot that they could put their septic on. Vice Chair Anderson noted the ZBA must look at the lot and application before them and not at any other lots the Healeys may own. Mr. Nelson presented Board members with some documents. Mr. Nelson also stated he believes the Healey's property line extends to South Shore Road. Mr. Nelson described an issue that occurred in the 80's where it was agreed upon by the Town Administrator and Selectmen at the time that the property line for the properties along that section of South Shore Road extended to the edge of the pavement. Mr. Nelson stated he believes the property line (along the road) shown on the plan prepared by Mr. Varney for the Healey's application is not an actual boundary line but a tie line. Bill Wood, who owns property across from Mr. Nelson but is not an abutter to the Healeys, also stated he was told the same about the edge of the pavement being the property line. Mr. Shagoury stated he believes whoever told Mr. Nelson & Mr. Wood this was incorrect. Mr. Shagoury stated he has never heard of anyone using the edge of a paved roadway as a property line as this is variable depending on the work the road crew does on the road. Vice Chair Anderson agreed. Vice Chair Anderson also stated the Board has to go by the stamped survey plan prepared by a licensed land surveyor that is in front of them. Mr. Shagoury stated he has seen many surveys prepared by George Christon (the surveyor who prepared the survey plan) and they are well done.

Abutter Darlene Checchi stated she did not have a lot of time to prepare for the hearing as she just received her notice on 1 September 2015. Ms. Smith noted the original notices were mailed out 21 August 2015 but hers was returned to the Town as she failed to notify the Town of her change of address. Ms. Smith also noted the second notice, mailed 31 August 2015, still met the State statutory guidelines of 5 'clear' days notice - RSA 676:7 I (a).

Ms. Checchi stated she does not have an objection to the new house but she is concerned with the property markers. Ms. Checchi also stated there were ribbons put up by Mr. Varney that she thought were put on her property. There was some discussion regarding missing and possibly moved property markers. Vice Chair Anderson stated the ZBA is basing their discussion and ultimate decision on the paperwork submitted and not what is out in the field. Vice Chair Anderson noted the Board has a survey plan prepared by a licensed land surveyor and a plan for the variance application prepared by a licensed engineer and these are the documents the Board is using to look at property line locations.

Paul Raslavicus stepped forward and noted the Zoning Ordinance allows for replacement of structures in the existing footprint, however, new structures must meet the 75' setback from the lake. Mr. Raslavicus noted this was changed by the Planning Board and approved at the March 2015 Town meeting. Mr. Varney noted that is why the application is before the ZBA because it does not meet the 75' setback from the lake. Mr. Varney also noted the proposal is environmentally upgrading the property.

Mr. Varney explained how he felt the application 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 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 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, the septic tank meets State and industry standards.
- 5) The use is not contrary to the spirit of the ordinance - moving the existing cottage footprint back from the lake provides more conformity with the zoning ordinance. The cottage meets the 50' State shoreland setback and the septic tank meets the State (NHDES) requirements. The septic tank is located as far away from the lake as possible while still remaining on its own lot.

Vice Chair Anderson closed the public input portion of the meeting. Audience member Paul Raslavicus stated he has another commitment and needed to leave. Mr. Raslavicus asked Vice Chair Anderson if she would be re-opening the public input portion of the meeting. Vice Chair Anderson stated she would not. Vice Chair Anderson reiterated the public input portion of the meeting was closed and the Board would be deliberating on the merits of the case.

Vice Chair Anderson asked Board members if they had any issue with the survey presented. Mr. Williams stated he did not. Mr. Shagoury stated he has never seen a problem with one of George Christon's surveys. Mr. Shagoury also noted the amount of detail shown on the plan regarding

the lake side corner of the property where it specifies “Granite Bound set at former location of Iron pipe found on 26 August 1956. Witness reinforcing bar set 0.4’ from corner”. Mr. Shagoury stated he didn’t believe the boundary line shown along the road is anything but the boundary line or Mr. Chrisenton would have marked them as such considering the very precise information on the rest of the plan. Board members agreed.

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

1) The proposed use would not diminish surrounding property values- Ms. Swenson stated the current house is quite old and a new home would enhance the value as it is an improvement and not diminish the value. Ms. Martin stated, as a former tax assessor, she agrees with Ms. Swenson surrounding property values would actually increase and not decrease. Mr. Williams agreed the proposal would not diminish values but would increase them. Mr. Shagoury stated the proposal is making an existing situation better and therefore is not a diminishment.

2) The variance would not be contrary to the public interest- Ms. Martin stated in her opinion it depends on who the ‘public interest’ is. Ms. Martin noted the downside of increased property values is that some homeowners in the area may no longer be able to afford to pay their taxes as property values have gone up. Ms. Anderson stated she views the ‘public interest’ as Town wide, so if the Town’s people voted to increase the setback from the lake from 50’ to 75’, then the proposal is not in the public interest. Mr. Shagoury stated, in his opinion, this particular case is in the public interest as the overall existing situation is being improved. Ms. Richard stated she agrees with Mr. Shagoury. Ms. Swenson also agreed stating everything (septic, leach, and cottage) is being moved back improving the situation. Mr. Williams stated he does not believe the application is contrary to the public interest either. Mr. Williams stated that when the ordinances are drafted, the drafters may mean well but they also need to look at the practicality of what they are doing.

3) Denial of the variance would result in unnecessary hardship - Board members agreed what the Healeys are proposing is not an unreasonable use. Ms. Swenson also noted the goal of the ordinance is to protect the lake and by moving the cottage, septic, and leach field back they are improving the overall situation. Ms. Richard noted the trees on the sidelines are remaining, no views are being blocked and the structure cannot exceed 35’. Mr. Williams noted he sees nothing in the proposal that is injurious and believes the proposal to be an improvement.

4) Granting the variance would do substantial justice- Board members agreed the proposal allows the cottage and septic to be moved back from the lake, the cottage and septic will meet State guidelines and the proposal improves an existing situation.

5) The use is not contrary to the spirit of the ordinance - Mr. Williams stated the spirit of the ordinance is to protect the lake and water quality. Updating the septic and moving the cottage back from the lake does that. Mr. Shagoury stated the proposal makes a non-conforming lot less non-conforming. Vice Chair Anderson stated the proposal makes the situation better and agreed with Mr. Williams that the spirit of the ordinance is to protect water quality. Ms. Martin and Ms. Richard agreed.

**Ms. Anderson made a motion to approve the application of Thomas Varney, PE on behalf of Charles & Doris Healey for 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 tear down an existing cottage and build a new one less than 75' to the lake and a Variance to Article VI Section C 3 (a) 1 [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 to be 95' from the lake. The property in question is located at 36 South Shore Road (Tax Map 120, Lot 15).**

**The approval is contingent upon the height of the structure not exceeding 35'.**

**Ms. Richard seconded the motion.**

**Ms. Anderson made a motion to amend the motion to include -The approval is based on the plan presented to the ZBA on 8 September 2015 entitled "ZBA Variance-Land of Charles Healey" prepared by Thomas W. Varney, PE dated 17 August 2015. Ms. Swenson seconded the motion. The amendment was unanimously approved.**

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

#### **Election of Officers**

**Ms. Swenson made a motion to elect Wendy Anderson as Chair. Mr. Williams seconded the motion. The motion was approved with four affirmative votes (Martin, Richard, Swenson, Williams) and one abstention (Anderson).**

**Ms. Anderson made a motion to elect Joan Swenson as Vice Chair. Ms. Martin seconded the motion. The motion was approved with four affirmative votes (Anderson, Martin, Richard, Williams) and one abstention (Swenson).**

#### **Review of Minutes**

Ms. Martin stepped down as a voting member. Chair Anderson designated Mr. Shagoury to sit in as a voting member for the approval of minutes.

Board members reviewed the minutes of 10 February 2015.

**Mr. Williams made a motion to approve the minutes of 10 February 2015 as printed. Mr. Shagoury seconded the motion. The motion was approved with three affirmative votes (Richard, Shagoury, Williams) and two abstentions (Anderson, Swenson).**

Board members reviewed the minutes of 14 July 2015.

**Ms. Richard made a motion to approve the minutes of 14 July 2015 as printed. Mr. Shagoury seconded the motion. The motion was approved with three affirmative votes (Richard, Shagoury, Swenson) and two abstentions (Anderson, Williams).**

Ms. Martin returned as a voting member and Mr. Shagoury returned to non-voting alternate status.

## 2016 Budget

Board members reviewed their year to date expenditures for 2015 and discussed their proposed budget for 2016. Board members agreed to keep 'Registry Costs' at \$125.00, 'Printing' at \$1.00, 'Advertising' at \$500.00 and 'Postage' at \$200.00. Due to the retirement of two veteran members and the need for training of new members, the Board agreed to increase 'Training' to \$250.00 and 'Mileage' to \$100.00. 'Books & Subscriptions' was increased to \$100.00 to cover the cost of the "New Hampshire Planning and Land Use Regulation" book that contains the State statutes relative to land use. Ms. Smith noted previously the books were included in the cost of the Strafford Regional Planning Commission's (SRPC) dues but the Town is no longer part of SRPC. Ms. Smith stated Selectmen Bickford informed her the books are available through the State of New Hampshire Office of Energy and Planning and the cost is around \$6.00/ book.

Ms. Smith read the budget figures:

Registry Costs - \$125  
Printing - \$1  
Advertising - \$500  
Training - \$250  
Postage - \$200  
Books & Subscriptions - \$100  
Mileage - \$100

**Chair Anderson made a motion the ZBA approve the proposed 2016 budget figures as read by Ms. Smith. Vice Chair Swenson seconded the motion. The motion was unanimously approved.**

**At 9:47 pm Chair Anderson made a motion to adjourn. Vice Chair Swenson seconded the motion. The motion was unanimously approved.**

Respectfully submitted,

Amy Smith  
Recording Secretary