

**New Durham Zoning Board of Adjustment  
Meeting Minutes  
February 23, 2016**

- I. Call to Order:** Chair Anderson called the meeting to order at 7:08 pm.
- Roll Call:** Wendy Anderson (Chair), Joan Swenson (Vice-Chair), Cecil Williams, Stephanie Richard, Joan Martin
- Others Present:** David Shagoury (ZBA Alternate), Freeman Goodrich, Joan Goodrich, Deborah Randall (Randall Design), Jack Szemplinski (Benchmark Engineering), Gregory Anthes (Selectman), Madeline Grandin, Karen Shorette, Tom Varney (Varney Engineering, LLC), David Bickford (Selectman), John Goyette
- Recorder:** Mellisa Seamans

**II. Public Hearing - Case 2015-05**

Application submitted by Thomas Varney, PE on behalf of Freeman & Joan Goodrich. 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 home with attached garage 50' from the lake. The property in question is located at 375 Merrymeeting Road (Tax Map 110, Lot 27).

Mr. Goyette asked about building height restrictions. Mr. Goyette asked what ground vegetation and tree cover will remain on the property and what will be removed.

Ms. Randall explained that the proposed new home plan adds about 14' to existing height, 28 feet from the driveway side and the backside is shorter because the new house is tucked into the hill. The current cottage is a one-story building with a very shallow roof. The proposed plan includes a gable roof that adds 13 feet. Ms. Randall said the building height will not exceed 35' as per the ordinance.

Mr. Varney said there is enough tree cover to meet state requirements and that stormwater runoff has been addressed with drip edges on the back, dry well in the front, and porous pavement that takes the bulk of the water and infiltrates it into the ground.

In response to Mr. Goyette's question, Mr. Goodrich said any attempts to incorporate solar power into the plan would be defeated by the amount of tree cover on the lot.

Chair Anderson said lawn is not as permeable as woodland. Mr. Varney agreed lawn would allow a higher rate of runoff and the plan calls for maintaining a non-manicured, natural groundcover.

Mr. Shagoury said the Goodrich lot is fairly heavily wooded and the new house will likely not be visible from the road. Ms. Randall said the rise to road is higher than the roofline

Public comment closed at 7:39pm.

**Deliberations:**

**1. Granting the variance would/would not be contrary to the public interest because:**

Ms. Swenson said the application does not change the character of the neighborhood, does not seem to harm the welfare of the public in any way. There is some increase in the proposed lot coverage but it is well within what is permissible. The current building is 41' from the lake and the plan is to build a new 50' from the lake. This plan is taking a non-conforming lot and making it less non-conforming. Ms. Martin agreed with Ms. Swenson.

Ms. Richard said the proposal is somewhat contrary to the public interest because it asks for a variance from the 75' setback agreed to by the public with adoption of the zoning ordinance.

Chair Anderson said that everyone has agreed on the ordinance and the 75' setback is needed to protect the lake and habitat, keep runoff from polluting the lake; the lake is a public interest. She expressed concern that the proposed house is twice the size as the current cottage even with modern scientific ways of dealing with runoff and the excavated terrace taking woodland. She said the spirit of ordinance is to protect wildlife in the woodlands and in the lake. The lake is pristine. She said the proposed house is a lot larger and wondered if the house was more in keeping with size of the current house whether it could fit beyond the 75 feet. She said the plan seems excessive and not in keeping with what the zoning ordinance is meant to save and protect.

Ms. Swenson asked about the difference in size between the old cottage and new house/garage. The current cottage is about 800 square feet and the new house/garage is about 2500 square feet.

Ms. Martin expressed concern about ducks not nesting on the property.

Mr. Williams asked if the town voted in an ordinance that was ironclad and should not be tread on.

**2. The spirit of the ordinance would/would not be observed because:**

Chair Anderson said granting the ordinance would not observe the spirit of the ordinance. She reiterated that the townspeople voted in the 75' setback. She said building on an existing foundation is allowed so it doesn't mean you can't build a new house. She said a little flexibility is fair but large changes are "something we are trying to control and shrink because we are really concerned about this lake."

Chair Anderson read a section from the zoning ordinance: "XIV. Shorefront Conservation Overlay District, A. Purpose/Authority, "...These lands require conservation and land management practices that minimize environmental and aesthetic degradation. The following restrictions are applicable to land within the designated shorefront conservation area. They are designed to protect and enhance water quality, prevent overcrowding of the shore land in the interest of public health and safety, and to preserve the natural beauty and wildlife habitat of the water front areas in the Town of New Durham".

Ms. Richard said the height change may not affect abutters but may affect people looking at the shore from the lake.

Ms. Swenson said many houses on the lake are non-conforming. This project makes a non-conforming lot less non-conforming. She said the applicant has addressed the run-off which can be an issue on the lake and the contour of the lot will be preserved.

Chair Anderson said part of the spirit of the ordinance talks about overcrowding and this includes not just how many houses are built but the size of those houses.

Ms. Martin said she walked the shoreline and thinks the applicant should scale back their plans. She said she is concerned about the excavated terrace that extends past the footprint of the existing dwelling.

### **3. Granting the variance would/would not do substantial justice because:**

To define substantial justice, Anderson read, "The guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by granting a variance that meets all other qualifications."

Chair Anderson said if there is no public gain to them getting the variance then the applicant is only getting something for themselves. Is the public gaining anything from this application? "Probably not. It's larger, it's creating runoff, it's getting rid of some woodland, it's getting bigger. I don't see how the public is gaining from that".

Mr. Williams asked what Chair Anderson would you consider a gain to the public?

Chair Anderson said that if the house was falling down and the owner replaced it that would be a gain. She said if the owner was making something better that would be a gain but this is not better.

Ms. Randall said the existing cottage is 100% forward of the 75' foot setback. The new house is less than 50% forward of the 75'. The peak is forward of the 75' by 5 feet.

Ms. Swenson said the current cottage probably has issues with the roof and other aspects. Aesthetically, the proposed plan is up to date and modern and the applicant is improving the aesthetics of their home and surrounding. There will be more taxes to the town. A new house would really add value to that area.

Chair Anderson said seems like an excessive gain, not an equal gain.

Ms. Swenson said if the applicant pushes the home further back it will impact the woods they are trying to maintain and there are significant slopes in the back of the lot that will be disturbed.

### **4. For the following reasons, the values of the surrounding properties would/would not be diminished:**

The members agreed surrounding property values would not be diminished by the variance being granted.

## 5. Unnecessary Hardship:

Ms. Martin said denying the variance would be an inconvenience but not a hardship.

Ms. Anderson said it is not a hardship and the applicant could instead improve the existing house on the existing foundation. Ms. Anderson said the spirit and purpose of the ordinance is to protect and to allow something significantly different than what is there adds to the problems. The proposed use is so much larger and disturbing, so much more than what is necessary to get a new, nice, improved house. She finds the proposal unreasonable.

Ms. Swenson said there is relief that can be given without frustrating the purpose of the zoning ordinance and that this is a reasonable proposal.

Ms. Richard said the steep slope in the back gives this lot a unique setting and unique characteristics, unique in this neighborhood.

Mr. Williams said the proposed house could be moved around and back but it would require excavation into the slope. This is both a disadvantage and a hardship.

**MOTION: "To accept and grant the variance" by Mr. Williams, 2<sup>nd</sup> Ms. Swenson. Motion passed 3-2 with Ms. Swenson, Mr. Williams and Ms. Richard in favor with Ms. Martin and Ms. Anderson opposed.**

Mr. Goyette asked that in the future the board consider allowing a second public comment period prior to voting.

The board recessed for 10 minutes (8:35-8:45 p.m.)

### III. Public Hearing - Case 2015-06

Application submitted by Thomas Varney, PE on behalf of Chris & Karen Shorette. The applicant is seeking a Variance to Article XIV Section C 1 (b), (c), (e) [Shorefront Conservation Overlay District Section] and Article XX Sections C 1, 2 and E 1 (a), E 2 (b), (c) [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 home and garage 31' from the lake and install a septic tank less than 125' to the lake and leach bed less than 10' to the property line. The building size will be greater than 15% of the lot area. The property in question is located at 379D Merrymeeting Road (Tax Map 110, Lot 23).

#### Public Comment

Mr. Goyette offered a historical perspective; this cottage built 1953 and part of old Merrymeeting Lake "not the new Merrymeeting Lake". He spoke to the need for careful regulation of septic/leach systems and potential runoff into the lake.

Mr. Shagoury said the two-car garage takes the project "right above and beyond".

Ms. Swenson agreed the garage didn't exist before and skews what could possibly be done with the lot. She sees no improvement towards making the lot less non-conforming. Not a hardship because there was never a garage before.

9:24 - public comment closed.

## Deliberations

### **1. Granting the variance would/would not be contrary to the public interest because:**

The board was allowed the opportunity to review comments regarding this case sent via email by Paul Raslavicus.

Ms. Richard said the application goes against the ordinance, the interest of the town, and against the abutter by encroaching on their lot line with the leach bed.

Ms. Swenson said the upgraded home is not contrary to the public interest but the application offers no improvement to the non-conforming status or where the proposed buildings sit in relationship to the lake and she is not seeing public benefit of the project.

Mr. Williams said the garage is the biggest problem; septic improvement good, no problem with the house; garage is huge non-porous piece.

Ms. Martin said the proposed garage is the problem because it is too close to the stream; leach bed upgrade is an obvious improvement but she thinks the applicant will have problems down the road with abutter.

Mr. Varney explained the applicant plans to replace the current cottage with a year-round home and would like to retire there. A new septic and leach bed is to be installed. The variance seeks relief from the 75' setback from the lake and the project is slightly beyond the 15% allowable lot coverage in the ordinance. The applicant has a smaller lot than the surrounding lots and the lot is dimensionally insufficient. "The landscape of Merrymeeting Lake with 75 foot setback doesn't jive. Most cottages are closer to the lake," he said. The 75' setback imposes a hardship. The property has an old, antiquated septic system that will be upgraded to a modern system with aerated treatment. Waterfront buffer zone is being improved by moving patio and walkway out of the buffer zone and moving the building back somewhat.

Ms. Martin said the decisions the board makes today forever affect our children's children.

Regarding letters - Grandin and Hanson letters

Ms. Anderson said the 75' setback was adopted for a reason to protect the esthetics, habitat, the feel, and it's there for a reason. It's important that we get stricter to save that lake and save what we have left. As for septic setback, I don't think that is contrary to the public interest because an improved leach field is better. Lot coverage being greater than 15% is definitely contrary to public interest. Garage is throwing everything off, prevents house from being further back. Makes lot more non-conforming.

### **2. The spirit of the ordinance would/would not be observed because**

Ms. Richard said the proposal is making the lot more non-conforming than it is.

Ms. Swenson said the leach and septic improvements observe the spirit of the ordinance.

**3. Granting the variance would/would not do substantial justice because:**

Mr. Williams said the project would benefit the public with a better building.  
Ms. Swenson said how the buildings are laid out and the lot coverage is issues.  
Ms. Anderson said the septic and leach is a public gain no doubt; house and garage absolutely not.

**4. for the following reasons, the values of the surrounding properties would or would not be diminished.**

Ms. Swenson said and upgraded house would not diminish value.  
Ms. Richard noted that encroachment of the leach bed on abutting property may have potential to diminish that property's value.

**5. Unnecessary Hardship**

Ms. Swenson said the ordinance does not interfere with use of the land; the applicant can replace existing home; the garage impacts the ordinance; plan frustrates the spirit of the ordinance; plan makes lot more non-conforming.  
Ms. Anderson said the whole proposal is not a reasonable one; don't think it creates unnecessary hardship because of the garage; the septic is reasonable because the applicant is doing the best that they can do and denying that would be a hardship because clean septic affects everybody.

Ms. Anderson said this is a small lot and cannot be used in strict conformance with the ordinance but the applicant could build on the existing footprint.

Abutter letters read into the record:  
11/23/15 Bill and Joan Hansen  
11/30/15 David J and Julie A Grandin

**MOTION: "To approve the requests for variances application Thomas Varney, PE on behalf of Chris & Karen Shorette for a Variance to Article XIV Section C 1 (b), (c), (e) [Shorefront Conservation Overlay District Section] and Article XX Sections C 1, 2 and E 1 (a), E 2 (b), (c) [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 home and garage 31' from the lake and install a septic tank less than 125' to the lake and leach bed less than 10' to the property line. The building size will be greater than 15% of the lot area. The property in question is located at 379D Merrymeeting Road (Tax Map 110, Lot 23)" by Ms. Anderson, 2<sup>nd</sup> Ms. Swenson. The motion failed 0-5.**

**IV. Review & Approval of Minutes**

**MOTION: "To approve the minutes of December 8, 2015"** by Joan Swenson, 2<sup>nd</sup> David Shagoury. Motion passed.

**MOTION: "To approve the minutes of January 12, 2016"** by Joan Swenson, 2<sup>nd</sup> Stephanie Richard. Motion passed.

**Adjournment**

**MOTION: "To adjourn"** by Ms. Swenson, 2<sup>nd</sup> Mr. Shagoury. The motion was unanimously approved. Meeting adjourned at 10:40 p.m.