

**TOWN OF HOLDERNESS
Zoning Board of Adjustment**

Regular Meeting Minutes February 12, 2019

Members Present: Robert Maloney, Chairman; Bill Zurhellen, Vice Chair; Kristen Fuller, Member; Eric MacLeish, Member; Jude Ruhm, Member

Members Absent: none

Staff Present: Linda Levy, Land Use Assistant

Others Present: Anne Field, Walter Field, Travis Elliott, Thomas Michel, Sara M. Lewis, Alice Field, Patrick Kane, Alan M. Barnard, Matt B. Barnard

CALL TO ORDER:

The meeting was called to order at 6:15 P.M. A roll call of the members was taken and a quorum was present.

APPROVAL OF MINUTES: May 8, 2018

MOTION: "To approve the minutes of the July 10 2018 meeting as written."

Motion: E. MacLeish

Second: K. Fuller

Discussion:

Motion Passed: 5 – Yes, 0 – No

NEW APPLICATIONS:

Case #428-02-19: Application submitted by Thomas Duffield as agent for Frank Jones for the property located at 180 Shephard Hill Rd. identified as Tax Map #241-018-000 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Article 400.8.2 (Minimum Septic Setback) and the installation of an upgraded septic system.

The agent for this case has asked for a continuance to the March 12, 2109 meeting.

Case #429-02-19: Application submitted by Thomas Duffield as agent for Virginia Connor for the property located at 565 US Rt. 3. identified as Tax Map #241-122-000 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Article 400.8.1 and 400.8.2 (Minimum Septic Setback) and the installation of an upgraded septic system.

The agent for this case has asked for a continuance to the March 12, 2109 meeting.

Case #430-02-19: Application submitted by Patrick Kane as agent for Bluebird Realty Trust for the property located at 71 Finisterre Rd. identified as Tax Map #235-009-000 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Article 400.8.1 and 400.8.2 (Minimum Septic and Well Setback) and the installation of an upgraded septic system, and a Variance from Article 400.8.1.1 (Minimum Side Setback).

B. Maloney opened the hearing at 6:16 and asked the applicant to begin his presentation.

P. Kane introduce the engineers.

M. Barnard described the lot, explained the septic system and how it will work, acknowledging that the placement is nonconforming. The placement can meet state standards, but not the town standards. The septic chambers are protected so that nothing can penetrate in or out. Setbacks for the well can meet the state setback from the septic, but the septic does not meet the town or state setbacks. The existing tank is off to the side of the house, we think. The town requires 35', but we can meet the state requirement of 10'. The town wants the septic to be 75', but we can't make that on this size property. The well will be drilled, not drawn from the lake. It will be within the setback requirements from the septic. He showed pictures of the shed that will be removed and will be replaced by the septic.

Members of the board asked questions about the elevation, the right of way, and if the neighbors were asked about the placement of the well.

B. and M. Barnard answered the questions. The septic will require 3' of elevation and the neighbors were not notified of the placement of the well.

A. Barnard showed multiple drawings detailing various parts of the property. He described the impact of the demolition of the shed and the addition of that footage onto the house. It will reduce the setback impact by 18.5%.

B. Maloney asked if the house is currently on the property line.

A. Barnard replied that the chimney is 3" from the property line.

P. Kane showed an enlarged version of the south elevation. The camp is being replaced by new construction. It will have similar volume.

B. Maloney asked if the foundation is a slab?

P. Kane replied, yes. He shared that the square footage of the shed will be relocated and added onto the house. The volume will be less nonconforming as will the total house. The house will have 2 bedrooms, no new bedrooms.

E. MacLeish commented that there are 4 variances. How does the variance for the addition of the house meet the hardship requirement?

A. Barnard answered that the addition should be able to be a trade-off.

B. Maloney stated, that's not true, there will be more square footage. When you build new structures, the additional space needs to be within the setback.

A. Barnard said the they are taking down the shed to put the septic in. The septic could be under the driveway.

B. Maloney stated that we have the legal authority to let the experts decide on the septic and well.

T. Elliot was recognized and read a letter from the abutters – see Appendix A.

B. Maloney thanked Mr. Elliot and asked if anyone else wanted to speak.

T. Michel provided support of those abutters against the approval of the variances. He explained his reasons for speaking. He showed a photo of the property from his porch and explained how the addition would impede his view in width as well as height. He calculated a 50-75% increase in the size of the building, saying it would diminish his property value. He said that the property owners' statements were false and misleading. He then read his abutter letter. See Appendix B.

B. Maloney asked Mr. Elliot how he felt about the septic variance.

T. Elliot answered that he was ok with that variance.

B. Maloney asked if anyone else wanted to share comments.

W. Zurhellen wanted to know the existing septic placement.

M. Barnard said that another designer gave them his best guess from when the previous owners (Doggett) sold the property.

W. Zurhellen said that the septic was pumped frequently and they had water from the lake. It seems that these owners want to make a seasonal camp into a year-round dwelling. Is that a change of use of the property?

B. Maloney said that it is not a change of use.

E. MacLeish asked if the town had an engineer that could go out and check the placement of the system.

L. Levy commented that the town does not have engineers.

W. Zurhellen said that the water table is 2.5-3' in that area causing the septic to be raised above current grade, so it cannot go under the driveway.

M. Barnard said that they are trying to do the best with what they've got.

P. Kane shared that the owner could not be at the meeting, but was listening via telephone. The owner would not want to give up the shed.

B. Maloney explained the options for the proposals. They could table the discussion to have the property owner present. There is a real good chance that something could be denied. We want to make decisions based on facts.

A. Barnard said that they could withdraw the proposals so that they could make changes to the plan. If we table, we have to keep the same drawings. If we withdraw, we could reapply with new drawings.

B. Maloney said that in his opinion, something is going to be denied.

A. Field shared their history of their property as abutters. Our concerns are with the location of the septic. It will devalue our property if we sell. Our house is about 30' from the proposed septic. There will be high decibel levels from the pump, the smell, the increase in grade of 3' during bad weather, any privacy protection that we have now with the shed, the right of way is deeded for parking, walking to the adjoining property and bringing in items to the camp.

T. Elliot reasserted the right of way saying that the septic truck would have to back down the right of way and come close to the placement of the well. He also talked about their impression that the variances were linked.

B. Maloney said that the board will treat them as 4 separate variances.

S. Lewis talked about the conservation values. It impacts the view of everyone who comes down the road. People will look at the house. It is great that they are putting in a new septic, but the sound of the pump would devalue our property. It will increase the decibel levels that come from the site. It would generate noise to us and the rest of the neighbors 12 hours a day, 365 days a year. The owner was asked to meet with the neighbors and declined.

E. MacLeish said that the owner is not here and that is outside the scope of this case.

B. Maloney said that it is not a criterion for making a decision. Are there any other comments? What do you want to do?

P. Kane said we are going to withdraw.

A. Field asked if they will have to resubmit everything.

B. Maloney affirmed that they will have to submit anything that they will present if they withdraw. He thanked the abutters for coming and closed the public session at 7:47.

OTHER BUSINESS:

B. Maloney asked if there was any other business. Hearing none, he entertained a motion to adjourn.

ADJOURNMENT:

At 8:00P.M. the following motion was made:

MOTION: "To adjourn."

Motion: W. Zurhellen

Second: J. Ruhm

Discussion: None

Motion Passed: 5 – Yes, 0 – No

Respectfully submitted,

Linda Levy
Land Use Assistant

Appendix A

February 10, 2019

Abutters to 235-009
Holderness Zoning Board

Re: Three (3) Applications for Variance on Map 235-009

Below are observations and concerns regarding referenced Variances that we ask the ZBA to consider. We would like this document to be read into record at the February 12 Hearing.

There are Three (3) variance requests: one (1) for water supply within waterfront buffer 400.8.1.2., one (1) for Subsurface Sewage Disposal (SDS) system placement 400.8.2, and one (1) for new construction within 35' setback 400.8.1.1. If this is correct please let us know at the hearing. Although germane, we don't see a variance application to expand a non-conforming structure 700.2.1.1.

It is difficult to tell what is happening exactly. It appears an existing garage (accessory structure) is being demolished. The new SDS will be located at or near that location. An addition to the house is proposed expanding the existing setback encroachment which is all of 3' away from abutting property. There is no indication other than "living space" what the structure is for or what the increased encroachment calculations may be.

Obviously, proper infrastructure for potable water and sewage treatment are of great concern and challenging to accomplish within confine of such small land area within environmentally sensitive location but there appears to be an area of similar dimensional nature where SDS could be installed without removing accessory structure. Why does SDS have to be located there, what soils are present or other site conditions that limit SDS placement and just how high will final grades be?

We acknowledge the benefit of updated sewage disposal on the site but need to be assured that the location shown is the only one suitable. It would be ideal if SDS could be located without demolishing accessory structure and be constructed in a manner that supports parking to also satisfy deed-associated encumbrance.

The cottage has been a two bedroom cottage used seasonally for generations. There is mention of energy efficiency, is cottage to be renovated, heat installed, foundation improvements, seasonally converted etc.? The cottage addition appears to be facilitated by re-locating the accessory structure dimensional encroachment. If so that is contrary to 700.2.1.2 for which no variance is being requested. The Facts supporting these requests seem vague and nebulous, some interconnected and some not- but none address the expansion of a non-conforming structure.

In terms of Facts supporting SDS request:

(1) The public interest would be served by improving sewage loading to the greatest extent possible. Meeting NH DES standards for setback, though less restrictive than that of Holderness, is beneficial unless SDS placement is used to facilitate increased non-conformity elsewhere on site.

(2) The spirit of the ordinance would be met by ensuring residential occupancy can remain without deleterious affect facilitated by sub-standard or improper subsurface sewage disposal if the location is not tied to expanding a non-conforming structure.

(3) Here the Applicant links building and SDS projects to argue Substantial justice being done. "The proposed reconstruction in addition to state approved effluent disposal area on site water and energy efficient building outweighs any harm to general public." The SDS should be placed on site based solely on environmental concerns; which would do Substantial justice. What does building reconstruction, its expansion or energy efficiency of a seasonal structure have to do with placement of SDS?

(4) Here too the SDS variance request is linked to building expansion. "The overall enhancement of the new construction and proposed landscaping will enhance the area". To not diminish surrounding properties values? Certainly an updated SDS should not diminish values, *but* an expansion of a structure directly adjacent to and in fact within 3' of a boundary line would likely diminish the value of that specific property. Again why are building and SDS projects linked when 3 variances are requested?

(5) Although the property was developed prior to the ordinance and is significantly undersized at .36 acres it has been in use occupied as 2 bedroom seasonal cottage for generations. There is hardship in properly placing SDS but not in terms of the buildings use or a need to expand. Here the building expansion and SDS are inextricably linked by Applicant to result in a more nearly conforming property, really? Relocating an encroachment from one side to another is hardly more nearly conforming. Removing such encroachment all together to satisfy SDS dimensional variance would be more nearly conforming.

Where Applicant requests SDS variance not solely for sewage loading purposes but also to facilitate unrelated other building footprint encroachment, in our opinion the town engineer or one retained on towns' behalf should undertake a separate study that considers options for SDS design. It should be established the best environmental approach is being pursued and location chosen was not chosen to facilitate expansion of non-conforming structure by relocation of existing accessory structure encroachment.

In terms of Facts supporting Building Expansion request:

(1) "Proposed setback is greater than current living space setback. Bedroom capacity will not be increased." Applicant bases belief variance will not be contrary to public interests in those statements but what about demolition of preexisting nonconforming structure and re- locating its encroachment to expand a nonconforming structure 3'-5' away from boundary line? Public interests are best served when encroachments are maintained, diminished or removed rather than relocated to expand a nonconforming structure.

(2) Applicant claims spirit of the ordinance observed by removing accessory structure, of which a small segment of its roof overhangs are at boundary line, and that the "Current non-conforming footprint will not be increased." ; however, by constructing the expansion proposed and attaching it to rear appendage, the structure as whole is increased within setback. Not sure how that claim can be met. The angle takes expansion away slightly from the existing under 3' from boundary line location but it appears an expansion of living space within the setback and therefore increases footprint. Even if expansion is an accessory structure, increased footprint occurs as well as expansion of a non-conforming structure. At the very least, expanded encroachment occurs where no encroachment currently exists.

(3) Applicant claims "Proposed setbacks are more conforming" supports Substantial justice being done. Which setbacks are being used in comparison? How far from which boundary, how much square footage? The former garage in contrast with new construction? What about 700.2.1.2? Existing encroachments may be demolished but "any reconstruction must be completed within the existing footprint and no expansion of any kind shall occur within that part of the structure that is in the setback". This seems seems to preclude relocating an existing encroachment to another location on the property unless such location conforms as well as expansion of nonconforming structure. None of which has been clearly represented or addressed by the Applicant. Substantial justice would be done by maintaining or lessening rather than relocating or expanding encroachment.

(4) "Upgrade and increased energy code compliance of new building will increase value." That may be true of the Applicants value but not the adjacent property value with a new structure being placed 3'-5' from boundary line. Is existing cottage being razed and replaced and this a new building in total? If so were demolition and building permit applications submitted for denial which show demolition extent and existing cottage renovation? It is unclear whether seasonal occupancy continues or structure is going through seasonal conversion pursuant 400.14. Either way the affect of expansion along boundary line so closely would diminish value of adjacent property.

(5) "Setbacks from lake, property lines and need to improve septic and water supply make meeting setbacks impossible" is Applicants hardship claim. There is no unnecessary hardship with respect to the cottages use in its current state and location as it has been in use for generations as two bedroom seasonal dwelling. Although it is difficult to meet any setbacks given the properties size, that doesn't constitute an unnecessary hardship triggering need to expand. Nothing precludes existing structures occupancy as the property has been and can continue being used in same manner.

As abutters we believe the existing cottage should remain as it is currently configured and may be repaired and upgraded but not expanded. In addition the building permit application submission would provide us with a greater understanding as to the scope of cottage renovations. We also believe the septic system design should be further researched in unrelated manner to the cottage expansion prior to making any decisions with respect to variances.

We thank you in advance for your consideration.

Thomas Michel and Sara M. Lewis
Parcel # 235-006-000
65 Finisterre Point Road
Sara M. Lewis Revocable Trust

Walter, Anne, and Alice Field
Parcel 235-010-000
68 Finisterre Point Road
Field Family Revocable Trust

Travis Elliott and Tucker Pierson
Parcel 235-008-000
73 Finisterre Point Road
Camp Finisterre

February 12, 2019

Appendix B1

ZBA Presentation February 12, 2019

Thomas Michel, abutter, 65 Finisterre Point Road, Holderness

I want to object to the granting to Bluebird Realty Trust of a variance under Article 400 section 8.1.1, of the Town of Holderness Zoning Ordinance: "To allow structures to be closer than 35 feet from the property lines".

I would like to present some history and context to my objection.

My wife Sara and I have been coming to Squam Lake and Holderness since 1970s- first as students, then as renters. We purchased our home on Finisterre Point in 2000 from Jim and Laura Hall, and we come up to our Holderness home from Boston whenever we can. Sara and I plan to retire here.

When we purchased our home we were aware that the adjacent structure (then owned by the Doggets) just across the property line could not be legally expanded because of Holderness zoning bylaws and the Shoreline Protection Act. For nearly 20 years, we have been good neighbors with the Dogget family. With the property being sold to Bluebird Realty Trust this past summer, I am concerned that the new owners are seeking changes that will adversely affect our property values, our view of the lake, and our enjoyment of our home.

The Bluebird Realty application for variance is requested to permit: "to allow additional living space within the 35 foot setback from the northern property line."

The current structure is located right against our property line: if you stick your arm out the window of their house, it's over the property line.

So let's take look at proposed building plan:

1. The current house is 40 linear feet plus a porch, located within zero to 6 inches of our property line. They *do* propose to increase the setback from 6 inches to 36 inches. That is a trivial consideration, because they ALSO propose to add 26 linear feet to the structure, to a total of 66 linear feet plus porch. 26 additional feet of a structure that is proposed to be 20 feet high- *where no structure whatsoever exists now*.
2. The proposed increase in linear feet of cottage from 40 to 66 feet increases the length of house by 65% to 165% of current cottage dimensions- all of this 3 feet from our property line.
3. They propose an increase in square footage from 800 to 1400- this represents near-doubling of square feet, to 175% of the current area.
4. No mention is made of the current roof height or how much the cubic feet of the structure will be increased.

There is no doubt that the proposed new structure will interfere with our view of the lake, and will diminish our property values.

Now I would like to discuss the "FACTS" formally submitted by Bluebird Realty Trust supporting this request for variance. Many of these "FACTS" are at best misleading, and some are patently false:

1. "The variance will not be contrary to the public interest"

The Bluebird Realty response states "the proposed setback is greater than current". That is deeply misleading. Their proposed "greater setback" goes from 6 inches to 36 *inches* from the property line- this allows just enough room for silt barriers to be placed for the new construction- otherwise the silt barriers would be on our property. They are proposing to replace the current structure with a much longer and much larger structure- 26 feet long and 20 feet high where *no structure currently exists*- the 30 inches "additional setback" from our property line is basically meaningless: the proposed larger structure will negatively impact on our view and will adversely effect our property value.

2. "The spirit of the ordinance is observed".

The Bluebird Realty Trust says that "the current nonconforming building footprint will not be increased". They fail to mention that they're proposing to convert a storage shed to year-round living space; as I understand it, these are not interchangeable uses. Ordinance 700.2.1.2 states "no expansion of any kind shall occur in any setback". They are not even filing a request for variance under this ordinance!

3: "Substantial justice is done".

Bluebird Realty Trust says the "proposed setbacks are more conforming". This statement is quite misleading if not blatantly false, as I have already discussed.

4: "The values to surrounding properties are not diminished"...

Here Bluebird Realty Trust makes another dubious assertion that "the overall enhancement of the new construction and proposed landscaping will enhance the area".

I fundamentally disagree with this assertion. The view from our property will definitely be adversely affected- and a much larger house will now be 36 inches from our property line. And regarding their "proposed landscaping", I must say that we are perfectly happy with the current landscaping, which consists of a view of Squam lake and beautiful trees.

5: "Literal enforcement of the ordinance would result in unnecessary hardship"

Bluebird Realty Trust states that the "setbacks from lake, property lines, and need to improve septic and water supply make meeting setbacks impossible". I think that is another very misleading statement: he applicants appear to be confounding the septic/water supply issues with the house expansion issues.

Bluebird Realty Trust purchased the Doggett property *fully aware* that the lot and house were entirely nonconforming and that any changes to the footprint of the house would require variances. Not one of the issues that I have raised tonight can come as any surprise to the new owners. I really fail to see the hardship here. Replacement of the current house with another structure with the same footprint and volume would not even require a variance and we'd be fine with that.

I object in strenuous terms to the proposed variance to the property setback for all of these reasons. The proposed construction will have a direct impact on our view of the lake, will negatively impact our enjoyment of our property, and will have an adverse impact on the value of our property.

Other abutters will speak to the variances requested for septic and water supply.

The proposed construction is contrary to the letter and to the spirit of the Holderness Zoning Bylaws, and I respectfully request that this variance be denied.