

**TOWN OF HOLDERNESS
Zoning Board of Adjustment**

Regular Meeting Minutes July 10, 2018

Members Present: Robert Maloney, Chairman, Bill Zurhellen, Member, Kristen Fuller, Member, Eric Macleish, Member, Jude Ruhm, Member

Members Absent: none

Staff Present: Michael Capone, Town Administrator

Others Present: Attorney, Chris Boldt, Constance Kieley, Jenna Teeson, John Kieley, Norman Larson, David Bourne, Jonathan Bourne and Nicol Roseberry

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 May 8, 2018 meeting as written."

Motion: B. Zurhellen

Second: K. Fuller

Discussion: K. Fuller noted a grammatical correction to be made at the bottom of page 4. The spelling of the word "do" should be corrected to "due". There was no further discussion.

Motion Passed: 5 – Yes, 0 – No-to approve the minutes as amended.

NEW APPLICATIONS: Case #427-06-18: Application submitted by Attorney Christopher Boldt as agent for Constance C. Kieley Trust, Et Al for their property located at 56 Laurel Island Lane identified as Tax Map #245-017-001 in the General Residential District, Town of Holderness, for Variances to the degree necessary from Article 400.8.12 (Minimum Shore Setback), Article 400.8.1 and 400.8.2(Minimum Septic Setback) and/or from Article 700.2 et seq. concerning installation of a new crawl-space foundation under the existing cottage, construction of a connector with crawl-space foundation to a compliant addition with full basement and the installation of an upgraded septic system.

B. Maloney opened the hearing at 6:21 and asked the applicant to begin his presentation. Attorney Christopher Boldt of the legal firm Donahue, Tucker and Ciandella informed the Board that he would be presenting on behalf of the applicant.

Attorney Boldt made reference to the narrative contained in the application as well as the attachments detailing the conditions on the lot and the proposed changes contained in the application. He reviewed attachment "A" which detailed the existing conditions on the property. He then reviewed attachment "B" which detailed the proposed changes to the lot. Included was a request to place a three-foot crawlspace foundation under the existing dwelling to replace the posts it currently is sitting on. It also shows where a new septic tank and leach field will be placed. More detail is provided on the septic plan in Exhibit "E". It shows an upgraded septic system that would allow for a new septic tank further back from the lake and a leach field that is more compliant in that it would meet the State setback, but not the Town setback. Presently, it meets neither.

Attorney Boldt stated that the language of our ordinance allows for the maintenance and repair of non-conforming structures within the setback. He further maintains that since the square footage of the connector that is within the setback is less than the square footage being removed a variance would not be required as the change is making the lot less nonconforming.

Attorney Boldt also stated that since the changes proposed for the septic system components are making it more compliant a variance would not be required. He noted that moving the septic tanks further away from the lake was the better option.

B. Maloney asked if this would be a be a new system. Attorney Boldt replied in the affirmative. It will be a new engineered system that does meet State regulations.

B. Maloney asked if the system was failing. Attorney Boldt replied that it was not.

E. Macleish asked if there were any case law Attorney Boldt could refer to in support of his assertion. Attorney Boldt reference Bartlett versus Manchester as the one case that addresses the question of whether a variance is needed. With regard to this specific instance, he was not certain if the State Supreme Court had addressed it in terms of it being more conforming.

E. Macleish asked if there was a way for the Board to provide an advisory opinion with regard to a variance being required.

Attorney Boldt replied that was the basis of the Bartlett vs. Manchester case.

Attorney Boldt then stated that if a variance or variances were required for any of the three issues under discussion, he would address them individually.

B. Maloney, speaking only for himself, had no concerns with the crawlspace. He does have a concern with the part of the connector that is within the setback. He likes the fact that relocating the septic tanks and replacing the leach field seems to improve circumstances on the lot.

Attorney Boldt provided more detail on the septic system components and their proposed new locations. The new tank location, while further from the lake, does not meet the Town's setback.

B. Maloney asked if you could bring the septic tank back further to meet the setback.

Attorney Boldt replied that it would require some blasting as there is ledge in that area.

B. Maloney mentioned that he felt a variance would be required for the section of the addition ("Sliver") within the setback. The other Board members were in agreement.

Attorney Boldt stated that while he was not in agreement given that they are removing the utility room, he is prepared to make a case for granting the variance on the Sliver.

B. Maloney still was not certain about a variance for the septic tank.

W. Zurhellen questioned whether a variance would be required for the Septic tank.

K. Fuller had a similar concern. Attorney Boldt was of the opinion that the overall changes to the septic system would improve the situation on the lot.

B. Maloney commented that the Board has a right to depend on professionals and their opinions with respect to solutions offered. He felt the new location of the tank was an improvement.

E. Macleish questioned why the tank would not require a variance if it was not compliant with the setbacks. The Board reviewed the details of the septic plan (exhibit "E") with Attorney Boldt.

W. Zurhellen commented that it appears the existing tanks are presently outside of the well setback.

Attorney Boldt commented that one tank is completely in and one is partially within the setback.

W. Zurhellen asked about the type of well on the property.

It was noted that it is a deep artesian well.

B. Maloney asked the Board to consider the issue of the tanks.

W. Zurhellen expressed concern that the new tank location moved it closer to the well.

Alternate placements were discussed.

Attorney Boldt mentioned that the protective well radius requirements were generally considered as a protection for neighboring wells. He also stated that you could make any approval for a variance conditional on NHDES approval of the plan.

W. Zurhellen agreed that NHDES approval would have to be a condition.

B. Maloney commented that we should make any decision subject to NHDES approval. The Board was in agreement.

B. Maloney suggested that the issues be addressed one at a time. He asked for a motion to eliminate the need for a variance on the crawlspace foundation under the house.

MOTION: "To not require a variance to permit the crawlspace foundation to be placed under the existing dwelling"

Motion: E. Macleish

Second: K. Fuller

Discussion: none

Motion Passed: 5 – Yes, 0 – in favor of the motion.

B. Maloney stated that he thinks that a variance is required for the tank.

Attorney Boldt called the Board attention to exhibit "E" and noted that the plan as developed by Ames Associates puts the tank in the best possible location given all of the factors to be considered.

E. Macleish agreed with the improvements the plan provides but also agrees that the tank needs a variance. He asked Attorney Boldt to speak to the two provisions he outlined on page 6 of his application narrative.

Attorney Boldt felt the special conditions outlined in his narrative are applicable for both the septic tank and the sliver, that being the conditions existing on the lot with the competing setback requirements. Also, to his knowledge this is the only lot that has two wells on it. Given their proposal is reasonable, the proposed conditions meet the State requirements and it offers the best possible solution to the existing conditions on the lot, he feels they meet the criteria for hardship.

B. Maloney asked if there were any more questions from those present prior to closing the public portion of the meeting.

David Bourne expressed concern with the location of the leach field and how it might impact his ability to drill a well if necessary in the future. He presently has a dug well but may need to drill one someday.

Attorney Boldt reviewed the specifics of the plan with Mr. Bourne. He noted that the new leach field would be smaller than the existing leach field.

B. Maloney asked Mr. Bourne if he viewed this proposal as an improvement.

Mr. Bourne indicated that he preferred the older style systems to the newer ones as they tend to last longer and are less prone to having the filtration fabric become clogged.

E. Macleish asked if Mr. Bourne felt approving the improvements was going to make it harder for him to put in a drilled well in the future.

There was a question with regard to adding bedrooms to the system and its impact on possible expansion of the system.

There are no plans to add bedrooms.

Mr. Bourne wants to be a good neighbor, but he does not want to limit his options in the future.

B. Maloney indicated that if it were the case in the future, he would have the basis for a hardship claim in seeking a variance.

E. Macleish asked if by granting the variance we would make it harder for Mr. Bourne to drill a well in the future.

Mr. Kieley stated that their reason for addressing the septic was to get it away from the lake and further away from the Bourne's property line. If David has some ideas to further improve the situation he would be happy to entertain them.

E. Macleish asked if the variance was allowed would it make the situation worse.

Attorney Boldt and members of the Board felt that it would not.

Mr. Bourne provided some of the history on the lot and how the subdivision of the lot was never approved by the planning Board.

B. Maloney closed the public hearing at 7:04PM and the Board went into deliberation.

The Board was of the opinion that a variance would be needed for the septic.

MOTION: "To approve a variance for the location of the septic tanks as shown on exhibit "E"

Motion: W. Zurhellen

Second: E. Macleish

Discussion: The Board reviewed the first four criteria individually and agreed each of the criteria were met. There was some discussion with regard to the fifth criteria and how the particular circumstances on this lot made it different from other lots. The members agreed that the fifth criteria had been met.

The condition of NHDES approval was added to the motion.

Motion Passed: 5 – Yes, 0 – in favor of the motion.

The Board next took up the matter of the leach field.

MOTION: "To not require a variance to allow the leach field to be located as shown on Exhibit "E"

Motion: W. Zurhellen

Second: E. Macleish

Discussion: none

Motion Passed: 5 – Yes, 0 – in favor of the motion.

The Board next took up the question of a variance being required for the portion of the addition within the setback or the 'Sliver'.

MOTION: "To approve a variance for the location of the addition to the existing dwelling as shown on exhibit "C"

Motion: W. Zurhellen

Second: K. Fuller

Discussion: The Board reviewed the five criteria individually and agreed each of the criteria were met. The condition of NHDES approval was added to the motion.

Motion Passed: 5 – Yes, 0 – in favor of the motion

The Board thanked Attorney Boldt for his presentation and all of those present for attending.

The Town Administrator advised the applicant that he has thirty days from the date of the decision to appeal. The thirty-day period begins on Wednesday, July 11, 2018.

OTHER BUSINESS:

Election of Vice-Chair – B. Maloney noted that, with the recent resignation of Wendell Broom, the Board needed a new Vice-Chair. He opened the floor to nominations. Given their seniority on the Board, the Chair asked both J. Ruhm and K. Fuller if they wished to be considered. Both J. Ruhm and K. Fuller declined. The Chair asked W. Zurhellen if he would accept the nomination and he agreed.

MOTION: "To appoint William Zurhellen as Vice-Chair of the Zoning Board."

Motion: B. Maloney

Second: E. Macleish

Discussion: None

Motion Passed: 4 – Yes, 0 – No, 1 - abstention

M. Capone noted that no new applications had been received to date, but he was anticipating the receipt of a variance request. He will update the Board next week after the application deadline.

M. Capone advised the Board that the Select Board had recently selected new legal representation for the Town. The firm of Gardner, Fulton and Waugh will now be providing Counsel. They will also be conducting a review of our existing Zoning Ordinance and offering possible suggestions for any edits/addition to be considered in the next Town Meeting cycle.

M. Capone also noted that Linda Levy will begin her duties as Part Time Land Use Board Assistant on July 23. He will continue to provide support for the Land Use Boards with Linda until such time as she can assume the role independently.

ADJOURNMENT:

At 7:20P.M. the following motion was made:

MOTION: "To adjourn."

Motion: E. Macleish

Second: K. Fuller

Discussion: None

Motion Passed: 5 – Yes, 0 – No

Respectfully submitted,

Michael Capone
Town Administrator