

To: Members of the Durham ZBA
From: Judith Spang
Date: July 11, 2016
Re: Renner's Request for Special Exception

Dear Members of the Durham ZBA,

For the past three decades, I have been working at both the town and State level to bring about protection of our water resources. I was instrumental in crafting Durham's shoreland and wetland ordinances and now serve in the Legislature as a key advocate for both groundwater and surface water statewide.

Consequently, recently, I have been an active participant in the many efforts to address the water quality problems of Great Bay. A major concern is the need for greater adherence by Planning Boards and ZBA's to the municipal regulations already in place in the Great Bay watershed communities. As you know, the way we regulate activities in the wetland and shoreland zones of each property in the watershed can, in the aggregate, determine how clean or polluted our rivers and the Bay will be. The operative word is "aggregate". In many instances, a particular variance or special exception may seem trivial. But in municipalities that set and follow a precedent for granting them, the impact adds up.

I am therefore writing to express this concern relative to the second recent request before the ZBA for a Special Exception regarding location of a septic system within the wetlands buffer. Robin Mower has stated that giving unwarranted variances and special exceptions is "death by 1000 cuts" to our environment. It is not that simple. The ZBA must determine how to apply environmental regulations that are scientifically-based and reflective of town goals in the face of property owners arguing the advantages to them of granting their request?

Fortunately, State regulations (reflected in our Town's) give clear legal guidance on how ZBA's should navigate the sometimes convoluted applications before them. I urge the ZBA to uphold these eight criteria.

Here are the Criteria for Special Exception that clearly are not met by the application before you:

#2 The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District or Shoreland Protection Overlay District without undue hardship.

The Renners already have an approved septic system and house lot for the parcel, thus it is clear that their objective of creating a house lot has already been met.

#3 Due to provisions of the Wetland Conservation District or Shoreland Protection Overlay District, no reasonable and economically viable use of the lot can be made without the exception.

First, since the Renners already have an approved lot, clearly they have an economically viable use for the lot. Second, I understand that a private citizen has offered to purchase the parcel at 140% of its assessed value (\$17,000 over the value of a recent appraisal) in order to give the land to the town for a park. Thus the Renners do have a reasonable and economically viable alternative to intruding in a wetlands buffer. This alternative also meets their stated goal of protecting the viewshed from their house and for the public travelling Rte. 108.

Additionally, I would like to address some misinformation the ZBA received in letters from the Conservation Commission. First, the Conservation Commission never reviewed this request to place the septic tanks and pipe in the wetlands buffer. Mr. Renner made it clear that he was there to discuss the placement of the well only. Thus any positive statements should refer only to the location of the well, which was discussed. This is not clear from the letters submitted.

Second, due to limitations of road frontage, only one lot is permitted on the parcel, not two. Thus to state, "The Commission noted that the owner's intention to get approval for a single home would be more desirable than a two house plan which might be possible on this property" is misleading. Two lots is not a legal option.

Members, I thank you for your willingness to serve on this very challenging Board. Your decisions are critical to both landowners and to the welfare of the Town as a whole, and frequently it is not possible to satisfy both. Adhering to the legal constraints set by the State and Town would appear to be the best way to achieve the necessary impartiality in applying our regulations to specific cases.

Sincerely,

Judith Spang,
Wiswall Road