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Town of Durham

JUN 19 2017

Planning, Assessing
and Zoning

Nancy P. Sandberg Trust
15 Langley Road
Durham NH 03824

19 June 2017

Durham Zoning Board of Adjustment
8 Newmarket Road
Durham NH 03824

RE: ZBA Application submitted by MJS Engineering PC for Eric & Amber Sirles (hereinafter “the Applicant”) 12 Mathes Cove Road Map 12 Lot 9-12 Special Exception request from Article XIII Section 175-62 in accordance with the provisions of Article IX Section 175-29B of the Durham Zoning Ordinance.

Dear Mr. Chairman and Members of the Board,

We understand that the Board voted to close the Public Hearing for the above referenced application at its June 13th meeting. We further understand that the Board decided to not vote on the application after determining that a vote at that time would result in the Board denying approval of the application.

The Applicant, while insisting that the plan must be for a 5-bedroom residence, accepted the Board’s offer to submit a revision of the plan. The Board voted to continue the public hearing after having closed the hearing. We are concerned that there may be some confusion among interested parties as to whether further public participation will be allowed.

Assuming the Board will accept further comments for consideration, we submit the following:

1. The Applicant testified that building an alternative septic system is “possible” but would be “difficult”.

Response: *The fact that alternatives would be more “difficult” does not mean the proposed use cannot be carried out without undue “hardship”. The Applicant must show that the lot cannot be developed for residential use without intrusion into the setback zone. We assert, again, a smaller residential proposal may well meet requirement #2 (Art. IX, Section 175-29 (B-2)) and ask that you require evidence that a septic system cannot be fitted outside the restricted area.*

2. The Applicant testified that fewer bedrooms would reduce the size of the leach field.

Response: *The applicant must demonstrate that a 2-4 bedroom home with a smaller septic system is not a viable option for the site. (see RSA 674:33, I, (b), (5), (B))*

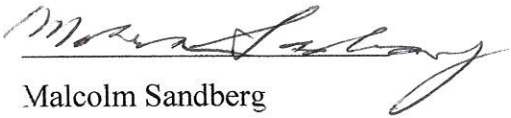
3. The Applicant stated that the “hardship” suffered is not “self-imposed”.

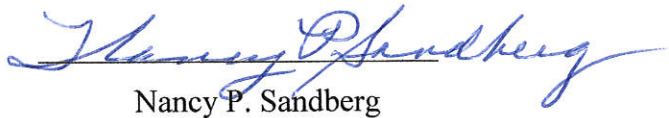
Response:

- a. *At the time the applicant purchased the property the current zoning ordinance was in place. He knew, or should have known, that a 5-bedroom, 2407 sq. ft. footprint would be difficult, if not impossible, to accomplish on this lot.*
- b. *While fewer than 5 bedrooms may not suit the needs of the current owner, it is not the Town’s responsibility, nor is it within its power, to waive its wetland setback requirements simply because the Applicant wants a 5 bedroom home. “... an unnecessary hardship will be deemed to exist if, **and only if**, owing to special conditions of the **property** that distinguish it from other properties in the area, the property cannot be reasonably used in **strict conformance** with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.” (RSA 674:33, I, (b), (5), (B)) [**Emphasis added**]*

We are unable to attend your meeting scheduled for July 11th, but will follow with interest your deliberation.

Sincerely,


Malcolm Sandberg


Nancy P. Sandberg