

August 7, 2018

VIA EMAIL

Sean Starkey, Chair
Durham Zoning Board of Adjustment
8 Newmarket Road
Durham, NH 03824

Re: Mary Lohnes Ehrenworth & Richard Hallett
Location: Colony Cove Road (#18, #22) and additional lots
Tax Map 12/Lot 23-0, 24-0, 25-0 and 26-0
Residence Coastal (RC) Zone

Dear Mr. Starkey and Board Members:

On behalf of Mary Lohnes Ehrenworth and Richard Hallett (“Applicants”), we are pleased to submit the enclosed additional information in support of the pending application to be considered by the Durham Zoning Board of Adjustment (“ZBA”) at its August 14, 2018 meeting.

1. Denial of the variances results in an unnecessary hardship.

- a. Special conditions exist that distinguish the property/project from others in the area.

Lots 23-0, 24-0, 25-0 and 26-0 are all smaller than the required 150,000 s.f. While this is not unusual for the Edgerly-Garrison Road and Colony Cove Road lots, Lots 25-0 and 26-0 are located in a peninsula and lack street frontage. Lots 24-0, 25-0, and 26-0 are also burdened by a right-of-way benefitting each other and Lot 27-0. As originally laid out, Lot 26-0 had no street frontage and no shore frontage. This does not exist elsewhere in the Colony Cove Road/Edgerly-Garrison Road Neighborhood. The above factors combine to create special conditions.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

In addition to the general purposes of the Durham Zoning Ordinance (“DZO”), the purpose of the Residence Coastal District is “to protect the water quality of surface waters, . . . preserve rural character and scenic beauty of the coastal areas, including the view as seen from the water.” DZO Article 12, §175-41. “Residential development is limited to housing that preserves the character of the district, protects the scenic quality of the coastal areas, and preserves a significant amount of open space.” Id. The proposed lot line revisions are have no impact “on the ground” with respect to the land or water: No development of any kind is proposed on any of the lots at issue and in fact, preservation of open space is increased by merging Lots 23-0 and 24-0 with Lot 26-0. Lot 25-0 previously had between 95’ and 100’ of shore frontage and has 120’ under the current proposal, with no development proposed on the 75’ given to Lot 26-0. Similarly, Lot 25-0 currently contains two docks; one will be removed offsetting the addition of a dock on the shore frontage given to Lot 26-0. The lack of changes “on the ground” ensure that the purposes of the Residence Coastal District are satisfied.

The purpose of setback requirements is to ensure adequate light, space, and air between homes. The current proposal for Lot 26-0 to access the water involves no change to the wooded area leading to the water, again supporting the position that the lot line adjustment is on paper only. The proposal also dictates that a shed on Lot 26-0 near the proposed lot line, would be removed. The resulting setback of 28.15’ from the existing home on Lot 25-0 is still generous by many standards, particularly when the only thing proposed near the existing home is a wooded area.

Because the this proposal contains no development of any new structures, no intensification of use, and no net change to the land or waterfront no fair and substantial exists between the general public purposes of the ordinance and its specific application in this instance.

c. The proposed use is reasonable.

Here there is no change in use proposed, all lots will remain single-family residential, a use which are permitted in the Residence Coastal District and therefore deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). A dock is also a permitted use in the Residence Coastal District. Part of determining reasonableness rests upon an analysis of the property's unique setting in its environment. *Simplex Technologies v. Town of Newington*, 145 N.H. 727, 732 (2001). Even cases preceding *Simplex* noted the importance of reviewing the surrounding environment of a project in determining its reasonableness. In *Walker v. City of Manchester*, a use variance for a funeral home was upheld after a review of the surrounding area indicated that other business uses were prior nonconforming uses, or had been permitted by variance. *Id.*, 107 N.H. 382 (1966). (See also *Belanger v. City of Nashua*, 121 N.H. 389 (1981), upholding reversal of use variance denial where current character of neighborhood had evolved since its original classification as single-family residential).

The best analysis is perhaps found in the post-*Simplex* case of *Rancourt v. City of Manchester*, 149 N.H. 51 (2003), where applicants had been granted a variance for a barn and two horses, where livestock had recently been prohibited. Noting that after *Simplex*, hardship exists "if special conditions of the land render the use for which the variance is sought is reasonable." Noting that special conditions are referred to as the "property's unique setting in its environment", the Court examined the record and opined that the trial court's finding that the oddly shaped large lot located in an overall country setting, made the proposed stabling of horses reasonable. *Id.* At 54. Although the proposal here involves dimensional relief, the analysis of the surrounding area supports the conclusion that this proposal is reasonable. In the Residence Coastal District, there are several other properties with shore frontage under the required 200'.

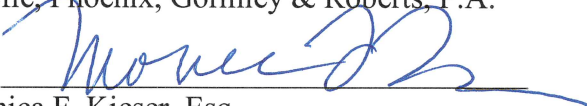
On Tax Map 12, there are approximately a half-dozen properties in the immediate area where shore frontage is below 200'. On Tax Map 20, there are another five properties, located just south of lot 27-0. Similarly, on the smaller coastal lots, it is not unusual for the setbacks from structures to the property line to be less than 50'. Accordingly, the proposed use is reasonable.

CONCLUSION

Applicants incorporate by reference herein all previous applications, submissions and evidence provided to the ZBA. We look forward to discussing this project at the next meeting on August 14, 2018,

Respectfully submitted,
Mary Lohnes Ehrenworth &
Richard Hallett
By their attorneys,
Hoefle, Phoenix, Gormley & Roberts, P.A.

Dated: August 7, 2018

By: 
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