

APPLICATION OF KIMBERLEY LARIS
228 Piscataqua Road, Durham, Tax Map 12-2-5

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, Kimberley Laris, seeks to subdivide her 3 acres lot in the unique Cedar Point community, to create a total of two lots, within the Residential Coastal Zone requiring a minimum lot size of 3.25 acres, and set-backs as listed below.

NH Law requires consideration of lot size zoning variance requests within the unique contexts of a lot's surrounding environment. A Cedar Point community uniqueness within the Residential Coastal Zone, are lot sizes well under .75 acres allowing few conforming structure set-backs. The proposed new lot without a building will be 1.82 acres, retaining 1.18 acres with the current residence (as shown on the proposed subdivision line filed with this application). The resulting 2 lots would conform more closely to the other local Cedar Point environment enclosing the lots.

Note: The structure side variances requested would facilitate preserving large contiguous spaces by sharing a driveway, and co-locating a leach field with greater distance to a small wetland buffer.

In order to subdivide the 3 acre lot, the applicant requests the following relief:

- Variance from Article 175-54 requiring a 150,000 square foot minimum lot size (3.25 acres);
- Variance from Article 175-54 requiring a 50 foot side set-back (15 feet);
- Variance from Article 175-59 (A.2) requiring a 100 foot wetland set-back (30 feet);
- Special Exception for Article 175-56 (F) 50 foot septic structure set-back (50 feet to co-locate leach field);
- Condition: Planning Board approval for well in wetland set-back

II. VARIANCE CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance, is whether or not the variance being granted would substantially alter the

characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property will continue to be a residential use, which is the permitted right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance.

Substantially, the request is to allow a property owner the reasonable use of his or her property. Here, the proposed lot of 1.82 acres and set-backs will be substantially larger than the majority of surrounding parcels. The proposed building area reduces side and septic setbacks, for the public benefits of a shared driveway, leach fields, and nature stewardship. It would be an injustice to the applicant to deny the variances requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The project will result in 2 lots more consistent in size to the surrounding parcels, without impacting neighbor views or shoreline sightlines. The land stewardship of two landowners is also more likely to control invasive species to positively impact value of surrounding properties.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. A property hardship exists when zoning requirements make a property unable to enjoy its surrounding community's unique shared environment benefits. The Cedar Point community is comprised of 37 homes situated on 23 acres of land. The lots' small sizes and narrow setbacks allow Cedar Point landowners to enjoy a tight knit community, with highly desirable lower land stewardship burdens. The applicant's lot is uniquely large, compared to the surrounding Cedar Point lots. Subdivision reduces an unnecessary hardship, to enjoy these benefits of Cedar Point's smaller lot ownership.

The use is a reasonable use. The residential use proposed is permitted within this district. Use is therefore reasonable, and compatible with the surrounding residential properties (*Vigeant v. Town of Hudson*, 151 N.H. 747 (2005); Clarified by *Rancourt v. City of Manchester*).

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the 150,000 square foot minimum lot area and set back restrictions are to avoid unhealthy overcrowding. Non-compliance with these requirements by all of the surrounding smaller properties within this community have not caused any appreciable deleterious effects. In addition, placement of a new structures near a side set-back, allows sharing a driveway and leach field, and increases distance to a small wetland buffer. Large contiguous open spaces are retained. The introduction of a single additional home with more than twice the average acreage and preservation of open areas, will not increase density to any appreciable affect. It is clear there is no fair and substantial relationship between the purposes of the ordinances and their application to this property.

III. SPECIAL EXCEPTION CRITERIA:

The Applicant believes the within Application meets the criteria necessary for the Board to grant the requested special exception for Article 175-56 (F) 50 foot septic structure set-back.

The use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood. (§175-26.A.1). As noted above, the use proposed is residential which is permitted by right and is consistent with the essential characteristics of the neighborhood. The two proposed lots are in fact more consistent in size with the majority of surrounding parcels. The existing surrounding lots within the neighborhood are primarily small lots with narrow setbacks. Some neighboring homes share septic systems across lots, with few more than 50 feet from a from a lot line. What the applicant is proposing simply does not present any undue variation in kind or nature from abutting properties, nor would it create any obvious or adverse violation of the character or appearance of the neighborhood.

The use will not be injurious or noxious and thus detrimental to The neighborhood by reason of any of the causes stated in Part B. of this chapter. (§175-26.A.2). The residential use proposed is permitted by right in this zone. The purpose of the Residence Coastal District is to protect the water quality of the community's principal surface waters and to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water. §175-41A. Residential development is to be limited to housing that promotes the protection of the scenic quality of coastal areas, and preservation of a significant amount of open space. Id. The introduction of an additional single family dwelling on a 1.82 acre lot does not run afoul of any of these goals and will not create any injurious or noxious effects on the neighborhood.

The use will not be contrary to the public health, safety or welfare by

reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions. (§175-26.A.3). The proposed addition of one single family residential lot on 1.82 acres will not create any undue traffic congestion or hazards within this neighborhood. Residential use does not pose any undue risk to life or property, nor does it present any unsanitary or unhealthful emission or similar adverse conditions. As noted above, there are already presently 37 dwellings on 23 acres within the larger community. As proposed, both non-shoreland lots are designed to meet modern NH State septic soil area requirements not achievable by the surrounding grandfathered shoreland lots. The introduction of a single additional home with more than twice the average acreage and preservation of open areas, will not increase density to any appreciable affect.

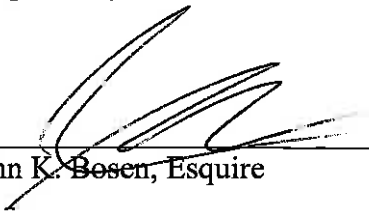
IV. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: 1/29/19

By:



John K. Bosen, Esquire