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Town of Durham

OCT 24 2018

Planning, Assessing  
and Zoning

Joseph Ullman and Barb Green (JU Family Trust)  
23 Cedar Point Road  
Durham, NH 03824

Zoning Board  
Durham, NH

October 20, 2018

Regarding our application for a variance which was tabled pending additional information October 9. You had requested a picture of the lot depicting the distance of the deck from the property lines; this is from our contractor and I believe should answer the questions you have. Copy of our application which was reviewed by ZB on October 9 is attached with new information highlighted in **yellow**.

Regarding several other points the Board brought up during the closed hearing:

1 – hardship is caused by variance granted by the zoning board to lot 1-17, to exceed zoning dimensions and setbacks; this 3 story building substantially cuts down on our water view, decreasing the value of our home. See attached photos. This building went from a one story bungalow to a 3 story home 50% larger footprint and 300% larger volume (existing regulations say 15% and 30% respectively).

2 – attached is survey and chart showing how proposed decks might encroach on existing setbacks.

3 – There are already stone patios/steps outside of each doorway which encroach on the setbacks. Both were in place when we bought the house. One in the back is 6 feet and on the side is 10 feet, so we are only proposing a deck which would expand that between 2 (side) and 4 (back) feet. Both patios are in dangerous disrepair with loose pavers, so both patios would be replaced by the deck(s).

4 – Many of the abutters themselves already have variances encroaching on existing setbacks far more than this would. For example, Lots 1-17 and 1-21 are within 10 feet of the road.



Sincerely,

  
Joseph M. Ullman (JU Family Trust)





Please send this form with Plot Plan and List of Abutters to the Town of Durham, 8 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

**Appeal for Applicant**

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: joseph m. ullman

Address: 23 cedar point road

Phone # 207-233-7560

Email: chimayred@aol.com

Owner of Property Concerned: J. U. Family Trust

(If same as above, write "Same")

Address: same

(If same as above, write "Same")

Location of Property: 23 cedar point road

(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) \_\_\_\_\_

12-1-18 dimensions: frontage 150' on cedar point road, side lines 115', rear line 100'.

**Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.**

**SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION**

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: \_\_\_\_\_

Number \_\_\_\_\_

Date \_\_\_\_\_

Article \_\_\_\_\_ Section \_\_\_\_\_ of the Zoning Ordinance in question.

**SECTION 2: APPLICATION FOR SPECIAL EXCEPTION**

\*\*Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article \_\_\_\_\_ Section \_\_\_\_\_

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**SECTION 3: APPLICATION FOR EQUITABLE WAIVER**

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: \_\_\_\_\_

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**SECTION 4: APPLICATION FOR A VARIANCE**

**STANDARD OF REVIEW:** Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

\*\*Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.\*\*

A Variance is requested from Article 175 Section 54 of the Zoning Ordinance to permit \_\_\_\_\_

a deck to be built on the side and back of the house in question

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The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

1. No decrease in value of surrounding properties would be suffered because:  
Values would increase as a result of proposed improvements

The proposed expansion merely continues a long standing trend of substantial upgrades

2. Granting the variance would not be contrary to the public interest because:  
It will increase the tax base and it will not impact wetlands, aquifer, or septic requirements  
street setback is consistent with the neighborhood. it will not impair light or air to adjacent property ,  
increase risk of fire or other dangers to our or adjacent properties, increase traffic, create a nuisance or  
result in an increase in public expenditure.

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

There is no imposition on abutters, no obstruction of views, increased risks or costs; no additional living space or increase in volume of the dwelling. There's no encroachment on wetlands or shoreline. Requires no additional infrastructure, septic, water, visible electrical lines or plumbing.

and

- b. the proposed use is a reasonable one because:

It will enhance our view, alleviate the hardship of having our view substantially decreased by building on lot 1-17, increase our property value and tax revenue to the town, eliminate the hardship/danger of the deteriorating stone patios we inherited when we purchased the home, and enhance our enjoyment of

the outdoors and bayview and enhance the aesthetics of our home.

Or

3(B). Owing to special conditions of the property that distinguishes 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.

with 50' side and back setbacks, the house required a variance to be built in the first place at the existing dimensions, which are modest. A deck, which enhances our outdoor enjoyment of the neighborhood and our water view, cannot be built because of the size of the lot and the existing setbacks. The deck requires no septic or additional infrastructure, will not use additional water or resources, require cutting down of trees or infringe on wetlands or the shoreline, and will enhance the appearance of the house, but cannot be undertaken without a variance.

4. By granting the variance substantial justice would be done because:

– it would permit us to occupy and enjoy our property in a fashion that is consistent with our neighbors.

~~We purchased the property in part because it had a water view. With the construction of the dwelling at lot 12-1-17 part of our view is now obstructed, so we wish to improve our water view. Both the side and back decks would provide that~~

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5. The use will not be contrary to the spirit and intent of the ordinance because:

The intent of the ordinance is to provide sufficient space between abutters and the public right of way;

~~the proposed design maintains one current sideline setback and provides a roadside setback which exceeds that of several examples in the neighborhood. A setback variance for the deck will not impact the view, safety, value, access, egress, or character of the neighborhood or of any abutters home.~~

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**Side and Rear Setbacks of Abutters to 23 Cedar Point:**

<b>Cedar Point Address:</b>	<b>West facing side setback</b>	<b>East facing side setback</b>	<b>North Facing back or road setback</b>
#19	65'	30'	180'
#24	12'	11'6"	14'
#25	25'	25.5'	50'
#23 Existing:	57'	44.8'	45'
Proposed:	47'	32.8'	38'

Presented to Zoning Board of Adjustment for 11/13/18 meeting  
By JU Family Trust

23 Cedar Point Road  
Durham, NH 03824