



TOWN OF DURHAM
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DURHAM, NH 03824
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Town of Durham
OCT 24 2018
Planning, Assessing
and Zoning

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ZONING BOARD OF ADJUSTMENT REQUEST PROCEDURE

MEETINGS: The Zoning Board of Adjustment (ZBA) will meet on the second Tuesday of each month in the Council Meeting Room at the Town Hall.

FILING OF APPLICATION: Applications for ZBA are available at the Town Office. The application must be filed at the Town Office at least 15 days prior to a meeting, along with an application fee. A notice of the meeting will be published in the Foster's Daily Democrat and a similar notice will be sent, by certified mail, to abutters and nearby property owners. The filing fee will be used to meet these expenses. If the expenses exceed the filing fee, the applicant will be billed for the difference.

LIST OF ABUTTERS: You must prepare a list of all abutting property owners, have it verified at the Town Office, and attach it to your application. If you have any difficulty, consult the Assessor's Office, but **THE ACCURACY OF THE LIST IS YOUR RESPONSIBILITY**. An "abutter" means any person whose property adjoins or is directly across the street or stream from the land under consideration. The list of abutters must also include any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4 (I) (a) of the New Hampshire Planning and Land Use Regulations.

PLOT PLAN: Applications must be accompanied by plot plans in order to be considered by the ZBA. Plans should show the location and shape of the subject structure in relation to lot lines and required setbacks, in addition to location and identification of abutters. Neither the review of any applications or plans by officials of the Town of Durham, nor any subsequent inspection of the premises, should be relied upon as an assurance of conformity to legal requirements. The applicant shall remain fully responsible for complying with all applicable United States, New Hampshire or Durham laws, ordinances, regulations or conditions.

PRESENTATION AT MEETING: The Petitioner should bring all documentation, which will assist the Board in understanding the proposal. Do not assume that anything submitted to a different Town Board will find its way to the ZBA file.

NOTE: Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal of Administrative Decision must be filed with the Board no later than 30 days from the date of the original decision as per the Zoning Board Rules of Procedure Section D(1)(b).

It is necessary that the applicant or his legal representative attend the meeting held for the review and consideration of this petition.

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: ARNE LLC c/o Ray Donahue, Member

Address: 37 Leonard Avenue, Hookset, NH 03106

Phone # 603-264-1034

Email: arne.llc@yahoo.com

Owner of Property Concerned: Same as Applicant

(If same as above, write "Same")

Address: Same as Applicant

(If same as above, write "Same")

Location of Property: Tax Map 17, Lot 13-2 - 221 Packers Falls 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) Tax Map 17, Lot 13-2; See Site Plan and Narrative filed

herewith which are incorporated by reference.

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 IX Section 175.56.F

Please see Site Plan and Narrative filed herewith which are incorporated by reference.

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: _____

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 _____ Section _____ of the Zoning Ordinance to permit _____

**TOWN OF DURHAM
NARRATIVE IN SUPPORT OF
SPECIAL EXCEPTION REQUEST**

Arne LLC (Owner/Applicant)
Ray Donahue, Member
221 Packers Falls Road
Durham, NH 03824
Tax Map 17, Lot 13-2

INTRODUCTION

ARNE LLC is the owner of property located at 221 Packers Falls Road, shown on Tax Map 17 as Lot 13-2 (the “Property”). The Property is located in the Rural - Residential Zoning District (the “R Zoning District”). In addition, the Property is located within the Wetlands Conservation Overlay District (the “WCOD District”).

The Property is unique. The origins of the original lot, which was later increased in size via a boundary line adjustment, goes back to a deed recorded in 1910.¹ The Property is a “vacant” lot that does not contain any structures outside of a shed. The Property does not comply with the minimum lot area requirement set forth in the Durham Zoning Ordinance (the “Ordinance”) for the R Zoning District. It contains just over 1/3rd (55,444 sf.) of the total lot area required in the R Zoning District (150,000 sf.). Aside from being an undersized lot by current zoning standards, a significant portion of the lot is also encumbered by wetlands, as depicted on the Site Plan submitted herewith (the “Site Plan”). Much of the Property falls within the 100’ wetland buffer. Due to the zoning restrictions affecting the Property, no viable use of the Property can be made without relief being granted from the Ordinance by the Board of Adjustment (the “Board”). In fact, there is not enough land outside of the 100’ buffer to develop a residential structure on the Property without the need for zoning relief.

The Applicant, at the October 9, 2018 meeting of the Board, received a Special Exception, pursuant to Article IX, Section 175-29(B) of the Ordinance, to construct a single-family home within the WCOD District on the Property with the following condition: that the lower non-slope portion of the driveway be of pervious construction. Because the vast majority of the Property is encumbered by the wetland buffer, the Applicant was able to site the proposed location of the structure in the southeast corner of the Property, with said location complying with the front yard and side yard setbacks. One of the main reasons for siting the house in this location was due to

¹ The Property is described as two distinct parcels of land in the current and past deeds to the Property – “Tract I” and “Tract III”. However, the Town has reached the conclusion that “Tract III” as described in the current deed to the Property was never created as a separate lot. Rather, it represents a land area that was appended to (merged with) Tract I per a boundary line adjustment approval granted by the Durham Planning Board in 1984 and subsequent deed conveyance. The plan depicting the land area referred to as “Tract III” in the chain of title to the Property was recorded in the Strafford County Registry of Deeds as Plan 0025-0019 (entitled “Subdivision of the Property of Albert Laroche Wiswall Road, Durham, N.H.”). As demonstrated on Durham Tax Map 17, the Town considers Tract I and III to be one parcel of land (Tax Map 17, Lot 13-2; 221 Packers Falls Road). The first recorded deed describing the parcel referred to as “Tract I” was executed in 1910 and recorded at Book 359, Page 197 in the SCRD.

the fact that the most suitable test pits performed for the septic system were also located in the southeast corner of the Property. Furthermore, due to this location, the septic system and leach field must be located within the front yard setback. Therefore, a Special Exception pursuant to Article XII.1 Section 175-56(F), via Article VIII Section 175-26(A), to construct the septic system and leach field within the 30' front yard setback is required.

SPECIAL EXCEPTION REQUEST

The Applicant seeks a Special Exception pursuant to Section 175.56(F) of the Ordinance to allow the construction of the septic system and leach field within the 30' front yard setback. In order to obtain this requested relief, the Applicant must satisfy the criteria for a Special Exception pursuant to Section 175-26 of the Ordinance.

SPECIAL EXCEPTION CRITERIA

1. That 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.

This proposed use (the installation of the septic system and leach field within the front yard setback) will not be detrimental to the character or enjoyment of the neighborhood. Once constructed, the septic system and the leach field will not be visible to the neighboring properties, nor the public at large, as it will be placed underground. The accompanying septic system and leach field (to the already approved construction of the single-family residence within the WCOD District) will be consistent with the neighborhood as the Property is abutted by single family residences to the north and the east, large wooded area to the south, and a farm to the west.

2. That 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.

The proposed use will, in fact, be the exact opposite of injurious or noxious, and thus not detrimental to the neighborhood. Since the Board has already granted a Special Exception for the single-family residence, placing the septic system and leach field in any other location on the Property would force the system and field to be within the wetland buffer; thus, potentially creating a scenario where greater danger and harm could be caused to the wetland buffer, the wetland, and the neighborhood. By allowing the use to be within the front yard setback, all but a small portion of the septic system and leach field will be outside of the wetland buffer, and the farthest it could be from the actual wetland, making it the most logical and least impacting location for the Property and the nearby wetlands.

3. That 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 emission or waste disposal or similar adverse causes or condition.

The Applicant first incorporates its responses in #2 above to this response. Additionally, the Applicant will be installing a new, modern “Enviro-Septic” system designed by Presby Environmental, Inc. that will meet all DES subsurface regulations. This type of system is considered to be better than the typical stone and pipe systems. The bio-mat from the effluent forms all around the diameter of the enviro-septic pipe, not just underneath the perforated pipes of a stone and pipe system. Moreover, the system will be installed in the most suitable location of the Property that is farthest from the edge of wetlands. Accordingly, it will not represent any threat to individual or public health, safety and welfare, and it will not create unsanitary or unhealthful emission or waste disposal.

CONCLUSION


In conclusion, the Applicant has demonstrated that it has met the full criteria for granting the Special Exception relief requested. Accordingly, the Applicant respectfully requests that the Board approve the application.

Respectfully Submitted,

Dated: October 24, 2018

ARNE LLC

By:



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Portsmouth, NH 03801
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