



**TOWN OF DURHAM**  
**ZONING BOARD OF ADJUSTMENT**  
8 NEWMARKET RD  
DURHAM, NH 03824  
PHONE: 603/868-8064  
www.ci.durham.nh.us

**VARIANCE**

**Prior to seeking a variance, the property owner must have been denied a building permit by the Building Inspector or denied an approval by the Planning Board.**

Name of Applicant Charles & Trisha Waters, Trustees of the Charles Waters II and Trisha Ann Waters 2000 Revocable Trust

Address: 83 Mill Road, Durham, NH 03824

Phone # 415-944-0045

Email: fourh2os@outlook.com

Owner of Property Concerned same

(If same as above, write "Same")

Address: same

(If same as above, write "Same")

Location of Property: 83 Mill Road

(Street & Number)

Tax Map & Lot number Map 7, Lot 2

A Variance is requested from Article XII.1, Section 175-53 of the Zoning Ordinance to permit:

An accessory apartment in the RB zone.

**All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.**

**CHARLES & TRISHA WATERS  
83 MILL ROAD  
APPLICATION FOR VARIANCE FOR DETACHED ACCESSORY APARTMENT**

A variance is requested from Article XII.1, Section 175-53 of the Zoning Ordinance to permit a detached Accessory Apartment in the RB Zone where such use is not permitted.

**INTRODUCTION**

Charles (Dinny) Waters and Trisha Waters own property at 83 Mill Rd., Durham, New Hampshire. The lot is quite large in relation to other lots nearby in the RB zone, and while their home can be viewed from the street and possibly by some neighbors, the balance of the lot to the rear of the home, is largely unable to be seen by the public due to the slope of the lot and the buffering along the boundaries of the lot. The proposed accessory apartment will be contained in an existing structure which is approximately 250' from Mill Rd, and will contain only one bedroom with a maximum of two occupants.

**STANDARD OF REVIEW:**

**1. No decrease in value of surrounding properties would be suffered because:**

The Applicant is proposing a detached accessory apartment which will contain one bedroom. The proposed apartment will lie within an existing structure identified on the attached plan as an existing 4 bay garage on the property. There will be no exterior changes to the building. The existing structure is situated at least 25' feet away from the nearest neighboring property to the west. To the east, the existing structure lies at least 150' feet away from the nearest property line and there is a wooded buffer to the east of the existing structure. To the north, the structure is at least 250' feet from Mill Road and is hidden from passing traffic due to the configuration of the lot and the long drive. To the south, the structure is approximately 400' from the property line. These factors, taken together, means that there will be no visual impact on neighboring properties from the detached accessory dwelling unit and the level of activity generated by the one-bedroom apartment will have minimal impact on neighboring properties. Accordingly, there will be no decrease in the value of the surrounding property.

2. Granting the variance would not be contrary to the public interest because:

The grant of the requested variance will not unduly and to a marked degree violate the zoning objective's basic zoning objective. Nor will the grant of the variance alter the essential character of the locality, or threaten the public health, safety, or welfare.

While the zoning ordinance is silent as to why accessory apartments are not allowed in the zone, it is helpful to look at the definition of "accessory apartment" in the zoning ordinance. The definition indicates that it is a dwelling unit in an accessory structure, used in conjunction with, and as an accessory use for, a single family residence. As with an accessory dwelling unit, an accessory apartment does not change the status of the single family residence from that into a duplex. Rather, it continues to be regarded as a single family residence.

The proposed use of a one-bedroom apartment in an existing structure, detached from the single family residence, but shielded from view from neighbors will not violate any basic zoning objectives. Further, adding an accessory apartment in the proposed location and in the proposed size will not alter the essential character of the RB zone nor threaten public, health, safety or welfare.

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 an unnecessary hardship because:

The property contains special conditions which distinguish it from other properties in the area. First and foremost, the attached tax map shows that the subject parcel identified as Map 7, Lot 2-0, dwarfs the size of adjacent lots. Second, the existing structure which will house the proposed, detached accessory dwelling unit sits well back from the road and homes on other abutting properties and is on a long driveway. The approximate location of the existing structure and the approximate location of the nearest abutting structure which is located on Map 7, Lot 1-24 is identified on the attached map.

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:

While the zoning ordinance is silent as to why accessory apartments are not allowed in the RB zone, it is fair to assume that the purpose is to maintain the medium density residential character of the zone as reflected in 175-40 (A) Purpose of Residence B District. Here, the large size of the lot , the fact that the accessory apartment will utilize an existing structure and be limited to a one bedroom apartment, and the fact that the accessory apartment will be largely out of sight of neighbors and the public , all mean that there is no fair and substantial relationship between the general public purpose of the ordinance and the application of same to this property.

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

The Waters would like to have an accessory apartment on their property, and at least initially, the purpose will be to provide a dwelling for their adult son. Although an attached accessory dwelling unit is permissible, it is not reasonable to require the applicant to construct an accessory dwelling unit attached to the existing dwelling unit even though such a use would be permitted as of right.

To do so would mean that, if constructed on the east side of the existing dwelling, trees would need to be cut along the eastern border, thus damaging or destroying the buffer and privacy currently enjoyed by the lot owners along Hemlock Way. As well, the existing propane tank, gas line and hot tub, all of which are shown on the attached plan, would need to be disturbed. If constructed on the south side of the building, light would be blocked coming into the main house and the existing waterfall shown on the plan might be impaired. Similarly, construction on the north side of the existing dwelling would block light coming in and it could be architecturally problematic to design an addition that would not look "tacked on". Finally, construction on the west side would end up interfering with the garage and the driveway. For these reasons, it is reasonable to construct a detached accessory dwelling unit, particularly given that the proposed location of same will not have any negative impacts on neighboring properties.

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

This criteria requires that the interest of the applicant be balanced against the needs of the public or individuals. If the benefit to the applicant is outweighed by harm to the public or to the individual, then the variance should be denied. If not, the variance should be granted. Here the applicant will benefit from the granting of the variance because it provides the most practical solution to the immediate need for housing a family member. By contrast, for the reasons specified above, there is no known harm to the public or individuals by allowing the use of an accessory apartment on the property as proposed. Therefore, on balance, substantial justice requires that the variance be granted.

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

Under New Hampshire law, the interpretation of this criteria is identical to that of the public interest criteria discussed above.