



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: Scott J. Winslow

Address: 15 Garden Lane, Durham, NH 03824

Phone #: (518) 260-2510 Email: sottwinslow83@gmail.com

Owner of Property Concerned: Same
(If same as above, write "Same")

Address: Same
(If same as above, write "Same")

Location of Property: 15 Garden Lane, Durham, NH 03824
(Street & Number)

Tax Map & Lot number Map 6 Lot 5-55

A Variance is requested from Article(s): IX NONCONFORMANCE & XXI OFF-STREET PARKING Section(s):

175-28. Nonconforming Uses.

D. Enlargement of a Nonconforming Use.

A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.

175-30 Nonconforming Structures and Buildings

C. Alteration of a Nonconforming Building or Structure.

A building or structure that is nonconforming with respect to height, setback or coverage may be altered or extended if the alteration or extension does not further deviate from this chapter except as provided in D. below.

D. Requirements for Nonconforming Buildings and Structures in the WCOD and SPOD.

1. Legally nonconforming buildings and structures existing prior to the date on which this Article was enacted may be continued, provided that such buildings and structures shall not be expanded further to encroach upon the wetland, water body, or designated buffer zone.

2. Where an existing building or structure within the Wetland Conservation Overlay District or Shoreland Protection Overlay District is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall occupy the same footprint as, or be situated within the footprint of, the original building or structure, not extend closer to the wetland, water body, or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland or water body.

3. The construction of attached additions or other expansions to nonconforming one- and two-family dwellings shall be permitted within the Wetland Conservation Overlay District and Shoreland Protection Overlay District provided that: 58 a. The dwelling lawfully existed prior to the date on which this Article was enacted. b. The number of dwelling units shall not be increased. c. The building footprint existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than fifteen (15) percent. d. The habitable floor area existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than thirty (30) percent. e. The proposed construction shall conform to all other applicable ordinances and regulations of the Town of Durham.

175-111 General Requirements. A. Parking – General Provisions

2. Number of vehicles – There shall be no more than 3 vehicles parked on a regular basis on a residential lot in the Residence A and Residence B Districts. However, more than 3 vehicles may be parked on the lot if the property owner demonstrates that they are for 166 use by lawful occupants of the dwelling unit, as demonstrated by records acceptable to the Zoning Administrator.

B. Setbacks and placement of parking Spaces

1. The following setbacks apply to parking spaces and parking areas: a) Front setback. Up to 3 vehicles per household are permitted in the front setback area. b) Side setback. All vehicles must be set back at least 10 feet from side lot lines. c) Rear setback. All vehicles must be set back from rear lot lines in accordance with the standard rear setbacks for the zoning district.

2. The parking requirements in 1, above, may be adjusted by special exception subject to: a) a finding that it is not practical to restrict parking to the areas and setbacks specified; b) a finding that allowing the parking to be situated as proposed will not have an adverse impact upon abutting properties nor upon the character of the streetscape; and c) a finding that the proposed parking spaces will serve on-site dwelling units only.

3. For all uses other than single-family and duplex residences, in the Residence A and Residence B Districts no parking areas shall be permitted in the front court except as part of site plan or conditional use review with a finding by the Planning Board that it is not practical to place parking to the side or rear of the building.

C. Driveways

1. A driveway must be provided for each lot (except where the Planning Board approves an alternative access and parking arrangement).

2. Driveway width and setbacks a. For all uses, within the Town right of way the driveway may not exceed 12 feet in width (excluding turning radii) unless approved by the Durham Public Works Department. b. The driveway shall be single lane (i.e., with a maximum width of 10 feet) except as needed to provide access to parking areas and garages. A wider driveway may be allowed by special exception where warranted by site conditions.

Ordinance to permit:

We are requesting to add a porch awning to our front stoop and extend the width and depth of the front stoop landing to 8 ft wide by 4 ft deep. The newly proposed roof addition over the stoop would come out 12” further into the front setback. We are also requesting to widen the driveway to allow for an additional parking space for the senior-citizen and related resident of the approved accessory apartment. The current driveway configuration poses safety concerns and frequent moving of vehicles. We would also like to request a variance to park our registered and owned vehicles in our driveway, which total more than 3.

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.

RSA 674:33 Powers of the Zoning Board of Adjustment:

I(a)The zoning board of adjustment shall have the power to:

(1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

The requested variances seek to improve the safety of the lot and improve the overall appearance of the lot and subsequently the neighborhood.

(B) The spirit of the ordinance(s) is/are observed;

The spirit of the ordinances are observed as they have been written to allow for these variances to be approved.

(C) Substantial justice is done;

Permits have been applied for and denied. Research has been conducted into the ordinances and variance process. I have garnished abutting neighbors’ support on the proposed variances and the variances are in keeping with the spirit of the ordinances.

(D) The values of surrounding properties are not diminished; and

The values of the surrounding properties will not be diminished and will instead increase as a result if the variances are approved and the requested improvements are made.

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

We are currently experiencing unnecessary hardship and safety concerns with the current configuration due to the literal enforcement of these provisions. The proposed wider landing and awning will allow us to open the door into the house while standing on the landing. The awning will allow for protection from inclement weather. Both of these benefits will help tremendously while transitioning our infants into the house. The additional parking space and wider driveway will eliminate the frequent movement of vehicles in order to allow the accessory apartment resident in and out of the driveway. The proposed location would also minimize the walking distance to the entry to the accessory apartment an important consideration, especially in the winter, as the senior citizen resident has difficulty walking.

(b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:
(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
(B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish 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.

(3) The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

EXPIRATION PERIOD FOR VARIANCES

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.

Addresses and Names of Abutters:

11 Garden Lane; Bud & Noelle Khlif
12 Garden Lane; Robert Carrier
14 Garden Lane; Francis Ounan's address: 303 Milburn Ave. Suite 201 Milburn, NJ 07041
2 Croghan Lane; Joan Friel
4 Croghan Lane; Scott & Mariellen Bogel