

Conditional Use Hearing  
Andrew Kehler & Victoria VonHessert  
April 27, 2016

*To consider a conditional use and variance application by Andrew Kehler & Victoria VonHessert to relocate and enlarge an existing accessory structure on their property at 164 Cheney Road.*

The application requires a review under the following sections of the Greensboro Zoning By-Law: 2.7 Shoreland Protection District; 5.4 Conditional Uses; 5.5 Variances; and 8.9, 3 – 6 Nonconforming Uses and Structures within the Shoreland Protection District.

**Warnings** were posted on April 11, 2016 at the Greensboro Town Hall, the Greensboro Post Office and Greensboro Bend Post Office, and Willey's and Smith's Stores. Also on that date the warning was sent to the following abutters and neighboring property owners: Laurie Callahan & William & Daniel Davis; Christine B. Perry for the R. Arnold Trust; and William Davis for Caspian Lake Properties, LLC. It was published in the Hardwick Gazette on Wednesday, April 19, 2016.

**Development Review Board members present:** MacNeil, Linda Romans, Sean Thomson, Jane Woodruff, Wayne Young, Lee Wright (alternate) and BJ Gray (alternate).

**Development Review Board members absent:** Nat Smith, Janet Travers

**Others present:** Andrew Kehler, applicant and Kristen Leahy, Zoning Administrator; and June Cook.

**Correspondence from interested persons:** None

**During the course of the hearing the following exhibits were submitted:**

#1 An email chain submitted by Christine Armstrong

**Summary of Discussion**

Ms. Woodruff, chair, began the hearing at 7:04 PM. She noted the hearing was quasi-judicial, explained the procedure for the hearing and the summary of the request. Andy requested to be notified of the decision via email. The chair then read into the record as Exhibit #1 an email chain from Christine Armstrong with concerns related to the septic system. The chair asked the clerk if the warnings were posted appropriately, which was affirmed. She then asked the clerk to swear in all those who wished to speak at the hearing, which was completed. Ms. Woodruff then asked Mr. Kehler to explain what he wants to do on his property at 164 Cheney Road.

The existing accessory structure is in disrepair and in need of replacement. There is nothing salvageable in the existing structure. They are asking to enlarge it by 4 feet in width and 4 feet length for additional storage, including for a boat. He believes that the existing structure is sitting over the leach field. In consult with a septic expert in Vermont, it was recommended that the leach field have grass over it, a covering with an evaporative quality. Andy was able to locate PVC improvements underground for the septic. Therefore, the goal is to remove the old structure and leave grass in its place. They are looking to maintain the character of the neighborhood and decrease the level of non-conformity of their camp.

The current structure is only 60 feet from the lake. The new structure, as requested will be 100 feet from the lake. Additionally, move the footprint of the structure will increase the effectiveness of the septic system.

The depth of the property from the lake to Cheney Road is 135-140 feet. Therefore, there is no way to develop this lot to be completely conforming due to its size and proximity to both the lake and the road. This condition of the property makes this lot a pre-existing, non-conforming lot.

The requested new structure will be 40-feet from the center line of the road, 10 feet shy of the setback. The road side property line is on the edge of Cheney Road. Again, the structure will be moved further from the lake.

The other setbacks will be in compliance, as the requested structure will be 28-30 feet from the

Perry Side and the setback from the Davis' side is well over 100 feet.

The hearing ended at 7:19 pm. The Board went into deliberative session at 7:21 pm and came back into public session to announce their decision at 7:43 pm.

### **Findings of Fact:**

Based on the application and testimony, the Development Review Board makes the following findings:

### **2.7 Shoreland Protection District**

The accessory structure is a permitted use in the Shoreland Protection District. The proposed accessory structure would not conform to all lot line regulations in the Shoreland Protection District, however this lot is a pre-existing, non-conforming lot and cannot be developed within compliance.

### **5.4 Conditional Uses**

#### *B) General standards*

*The proposed conditional use will not have an adverse effect on:*

- 1. the capacity of existing or planned community facilities.*
- 2. the character of the area.*
- 3. traffic in the vicinity.*
- 4. by-laws and ordinances presently in effect.*
- 5. the utilization of renewable energy resources (this is not applicable to this request)*

#### *C) Specific Standards:*

- 1. The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.*

**This property is pre-existing, non-conforming and therefore this standard does not apply.**

- 2 Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.*

**This property is pre-existing, non-conforming and therefore this standard does not apply.**

- 3. Fencing/ landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.*

**The board strongly urges the use of rain barrels and rain gardens as proposed in the development request.**

- 4. Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.*

**Does not apply**

- 5. The proposed structure is compatible with other structures in the area.*
- 6. The proposed structure adheres to the uses allowed in the relevant district.*
- 7. The proposed structure will not affect the noise or air pollution in the area.*

### **5.5 Variances**

**The variance request is only with respect the setbacks from the road.**

*(A) Variance Criteria. The Development Review Board (DRB) shall hear and decide requests for variances as required by 24 V.S.A. §4469(a). In granting a variance, the DRB may impose conditions it*

*deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The DRB may grant a variance and render a decision in favor of the appellant only if all of the following facts are found, and the findings are specified in its written decision:*

*1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not to the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;*

**The pre-existing, non-conforming status of this property does not allow it to be developed within full compliance due to the fact that the lot depth, at 145 feet, is shallower than required setbacks.**

*2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;*

**Accessory structures are permitted uses but the physical circumstances of this lot require a variance for a reasonable request.**

*3. The unnecessary hardship has not been created by the appellant;*

*4. The variance, if authorized, will not:*

*(a) Alter the essential character of the neighborhood or district in which the property is located;*

*(b) Substantially or permanently impair the appropriate use or development of adjacent property;*

*(c) Reduce access to renewable energy resources;*

*(d) Be detrimental to the public welfare.*

*5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.*

**The variance represents minimum relief and also allows for the increased protection of the more valuable resource of Caspian Lake.**

## **8.9 (3-6) Nonconforming Uses and Structures within the Shoreland Protection District**

*A. Any structure or use of land legally in existence or legally permitted as of the effective date of these regulations that does not meet the requirements of these regulations shall be considered nonconforming. Nonconforming uses and structures within the Shoreland Buffer Resource Zone are subject to the following conditions:*

### **Sections 1-2, 5, and 7-8 are not applicable to this application**

*3. A Nonconforming Structure may be enlarged, extended, reconstructed, expanded, modified or relocated only with the approval of the DRB, subject to conditional use review under Section 5.4. The DRB must determine that the enlargement, extension, expansion, modification or relocation does not increase the degree of nonconformity or else it compensates for lost Shoreland Buffer through Mitigation measures (See #4 below) and meets all other applicable requirements of these regulations.*

**The planting of grass as an evaporative covering and the removal of the existing**

**accessory structure will increase the effectiveness of the septic's leach field, and is thus considered a mitigation measure.**

4. *Where the expansion of a Nonconforming Structure is permitted, the DRB shall require the applicant, as a Mitigation measure, to return a significant portion of any mowed or cleared areas in the Shoreland Buffer Resource Zone to a naturally vegetated state with supplemental planting of appropriate non-invasive vegetation. At a minimum, slopes of 20% or greater shall be returned to natural vegetation cover. Other areas not essential to intended use of the development may be returned to natural vegetation cover as well in order to bring the development closer to compliance with the development standards of the Shoreland Buffer Resource Zone.*

**While the slope is not applicable to this application, Rain Barrels and Rain Gardens are considered mitigation measures for this application and the Board strongly urges their installation.**

6. *Expansion of Nonconforming Structures shall comply with the erosion prevention and sediment control standards in Section 8.11 of these regulations.*

**Silt fencing will be used during construction to mitigate any sediment runoff. Rain barrels and rain gardens will minimize erosion from rainwater diversion from the roof of the new structure.**

## Decision and Conditions

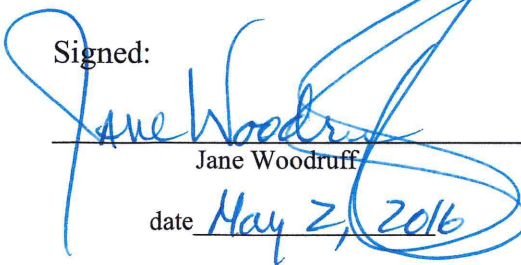
The conditional use application was for the relocation and enlargement the new accessory structure, while the variance was considered for the less than 50-foot setback from center of the road.

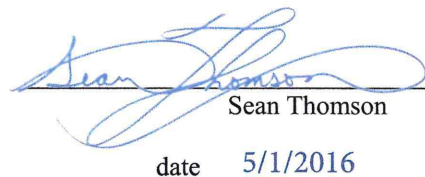
Based upon these findings, the Development Review Board voted unanimously (7 – 0) to approve the application.

## Conditions:

1. Any and all necessary state and federal permits must be in place before construction can begin.
2. Mitigation plan will be as per the proposal.
3. The footprint and location will be as proposed for an 18-foot by 24-foot accessory structure 100 feet from Caspian Lake and 40 feet from the center of Cheney Road.
4. The maximum height of the structure will not exceed the allowable maximum height of the Greensboro Bylaws as approved in 2015.

Signed:

  
\_\_\_\_\_, chair  
Jane Woodruff  
date May 2, 2016

  
\_\_\_\_\_, temporary clerk  
Sean Thomson  
date 5/1/2016

## NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.