

May 19, 2020

*Approved 7-07-2020*

**NEW DURHAM PLANNING BOARD**  
***Joint meeting with New Durham Zoning Board of Adjustment***  
**May 19, 2020, 7:00p.m.**  
***Final: Approved 7-07-2020***

*Under the emergency provisions of RSA 91A, this meeting took place electronically via Zoom.*

*DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. The draft will be posted on the website as a draft copy for public informational use only.*

***IN LIGHT OF THE COVID 19 (CORONA VIRUS) SOCIAL DISTANCING ADVICE MADE BY THE GOVERNOR AND CDC, THE TOWN OF NEW DURHAM NH FOLLOWING A DECLARATION OF EMERGENCY BY THE PLANNING BOARD CHAIRPERSON, IS PROVIDING A MEETING PARTICIPATION VIA TELEPHONE CONFERENCE FOR YOUR SAFETY.***

*This meeting is for members and the public to utilize the zoom platform to prepare for future meetings and public hearings. All members of the Planning Board and Town Administrator have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following:*

*Join Zoom Meeting*

*Phone# 1-301-715-8592, Meeting ID:843 0003 3799 Password: 745963 or by clicking on the following website address:*

*<https://us02web.zoom.us/j/84300033799?pwd=endHQW5IVTdZSGhEOFVLSGpQcTJSUT09>*

*Any technically difficulties contact Town Administrator Scott Kinmond @  
skinmond@newdurhamnh.us. or 603-556-1516.*

**PRESENT**

Jeff Allard, Chair – via Zoom

Bob Craycraft, Vice Chair – via Zoom

Scott Drummey – via Zoom

Dorothy Veisel, Board of Selectmen representative – via Zoom

David Bickford, alternate member– via Zoom

**ALSO PRESENT**

Scott Kinmond, Town Administrator – via Zoom

Terry Jarvis, Chair – via Zoom

Wendy Anderson, Vice Chair– via Zoom

Stephanie Richard – via Zoom

Linda Callaway– via Zoom

*New Durham Planning Board – Joint Meeting with Zoning Board of Adjustment*

*May 19, 2020*

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Paul Raslavicus– via Zoom

Thomas Varney, Varney Engineering LLC– via Zoom

Kate Varney, Varney Engineering, LLC- via Zoom

Karen Spohn, applicant- via Zoom

Peter Spohn, applicant – via Zoom

Please note: All abbreviations must be spelled out the first time they are used and the abbreviated form may be used thereafter.

**CALL TO ORDER**

Chair Allard called the meeting to order at 7:02pm. Chair Allard appointed Mr. Bickford to sit on the Planning Board in Mr. Wessel's absence.

Chair Allard confirmed the meeting was posted appropriately with access numbers. He stated that in the event the public is unable to access the meeting, it would be adjourned and rescheduled. Chair Allard stated all motions would be taken by roll call; roll call attendance was taken for this participating in the Zoom meeting. Chair Allard asked Planning Board members to introduce themselves and identify anyone in the room with them.

**Zoning Board of Adjustment Public Hearing for Case# 2020-007**

Application submitted by Varney Engineering LLC. on behalf of Karen and Peter Spohn. The applicant is requesting a variance from:

**Article VI Section L.1 (I):** General Provisions Use Regulations for Town of New Durham. Accessory Dwelling Units.

Please note: all ordinance titles should be capitalized

A Conditional Use Permit shall be required before any building permit is granted for an Accessory Dwelling Unit (ADU), which may be attached, detached or stand alone as defined in Article III Definitions. Applications for a Conditional Use Permit shall include proof that the following relevant requirements and standards have been met. On a conforming lot, the ADU may be either attached, detached, or stand-alone. On a nonconforming lot, only attached ADUs may be allowed.

The property is located at Map 114, Lot 049–399 South Shore Road.

Chair Jarvis asked if any applicants, applicants' representatives or members of the public object to these cases being heard electronically. No objections were indicated.

Chair Jarvis confirmed all fees were paid and required notifications and postings were

The Zoning Board reviewed the application for completeness. Ms. Callaway asked if the supporting documentation was received for the easement. Chair Jarvis confirmed it was. Ms. Richard noted there were two applications and confirmed the one for review was

received April 23. It was confirmed that is the application to be considered. Mr. Raslavicus noted he does not have the application packet and recused himself from hearing this case. Chair Jarvis asked the applicant and applicants' representative if they wish to continue with four members of the Zoning Board hearing this case. She explained they have the right to having a five-member board present. Mr. and Mrs. Spohn stated they are fine with the four members.

**Chair Jarvis made a motion to accept the application for Case #2020-007 as complete. Vice Chair Anderson seconded the motion. Roll Call Vote: Ms. Anderson – aye; Ms. Richard –aye; Ms. Callaway –aye; Mr. Raslavicus – abstain; Chair Jarvis – aye. Motion passed, 4-0-1.**

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. None was indicated. Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

Chair Jarvis read the case into the record. The Public Hearing was opened at 7:19pm.

Tom Varney, Varney Engineering LLC, stated the property is at the end of South Shore Road; the garage was built last year under a conditional use permit approved in 2018. The plan was to tear down the cottage and replace it with a house, garage, new driveway, septic system and well. He stated the applicants would like to live in the garage while the house is being rebuilt and continue to use it as an accessory dwelling unit. The Conditional Use Permit (Note: All Conditional Use Permit references should be capitalized) hearing was held on May 5 with the Planning Board; it was continued to this joint meeting. Mr. Varney stated the request is for a variance to build an ADU on a nonconforming lot. He stated the septic system was updated to accommodate a one-bedroom unit in the garage; the Conditional Use Permit presented two weeks ago shows the location of the new well and septic. The NH DES Shoreline permit was approved along with the septic design for a two-bedroom house and one bedroom apartment (ADU). Chair Jarvis asked what the minimum lot size is for this property. Mr. Varney stated it starts at 60,000 but with the steep slopes it is increased to 90,000; the square footage for the ADU would be less than 750 square feet. Chair Jarvis noted the application indicates it is to be temporary living space while the cottage is being demolished and rebuilt but then indicates on page 4, "for future use and thereafter". Mr. Varney stated it might be used as an ADU for in-laws. Ms. Callaway asked for explanation on the ordinance limit of 850 square feet of living space. Chair Jarvis asked Mr. Allard for further explanation. Chair Allard stated that refers to the total building area; the 750 square feet refers to the living space and would not include the first floor garage. Ms. Veisel stated it could also include a deck or storage area but it's the total building space versus the living space. Mr. Spohn stated when they originally applied for the Conditional Use Permit, they didn't consider the amount of time it would take for this process and now want to be able to use it in this way.

Chair Jarvis opened the Public Hearing to input from the Planning Board. Chair Allard explained the Planning Board would be continuing their Public Hearing after the conclusion of the ZBA meeting.

Chair Jarvis opened the Public Hearing to members of the public. None was indicated.

Chair Jarvis closed the Public Hearing at 7:35pm. Chair Jarvis stated the members of the Board deliberating on this case would be Vice Chair Anderson, Ms. Richard, Ms. Callaway and Chair Jarvis.

***Findings of Fact:***

- The lot is 38,768 square feet; 90,000 is needed to be a conforming lot with an ADU
- The square footage of the second floor of the garage is just under 750 square feet
- There is NH DES approval for a septic system for a two bedroom residence and one bedroom apartment
- The new house will have a maximum of two bedrooms; the ADU a maximum of one bedroom
- Once the new home has been built the ADU may be used by parents or other relatives which comply with the terms of the ordinance

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated she doesn't feel it would be contrary to the public interest; it seems to be a reasonable use. Vice Chair Anderson stated if it became an apartment where someone lived full time, traffic could become an issue; she wants to be sure that won't be the case. It was confirmed the occupant of an ADU does not need to be a relative. Mr. Allard explained the State requirements are that the owner must occupy one of the two dwellings but beyond that there are no stipulations on who can occupy the ADU. Chair Jarvis suggested adding a condition that an occupant must be a relative. Mr. Drummey suggested a condition that would be reasonable might be that rather than limiting to relatives, limit it to double occupancy. He stated there have been concerns about bunkhouses in the past, particularly with these open type of spaces. Vice Chair Anderson noted there is also the requirement of parking for ADUs. Mr. Allard stated it is one bedroom so one space would be required. The plans were reviewed and confirmed there is parking for three vehicles.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated the ordinance would be observed; she noted the fact the lot is nonconforming, in this case, there seems to be sufficient space on the property for not only the garage but also the new home and doesn't believe it will be overcrowding by allowing an ADU on the second floor of the garage. The garage will be there whether the ADU is or not. The Board concurred. Ms. Richard stated she has heard talk about there not being many low cost rental options in Town and this would be in the public interest in regards to that.

*Granting the variance would/would not do substantial justice because:* The Board concurred it would do substantial justice for the applicant and is not taking away from the public; it is adding to the functionality of the property.

*For the following reasons the values of surrounding properties would/would not be diminished:* The Board concurred the values would not be diminished.

*Unnecessary Hardship:* The Board concurred it would be a hardship for the applicants if the variance is not granted.

**Chair Jarvis made a motion to approve the variance request for Article VI Section L.1 (l): General Provisions Use Regulations for Town of New Durham. Accessory Dwelling Units. A Conditional Use Permit shall be required before a Building Permit is granted for an ADU which may be attached, detached or stand-alone as defined in Article 3 definitions. The application for a Conditional Use Permit shall include proof that the following relevant requirements and standards have been met: on a conforming lot the ADU may be either attached, detached or stand-alone; on a nonconforming lot only attached ADUs may be allowed; with the following conditions: the applicants must obtain a Conditional Use Permit for an attached ADU from the New Durham Planning Board; the ADU is to have only one bedroom of maximum double occupancy. Ms. Callaway seconded the motion. Roll Call Vote: Ms. Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. Motion passed, 4-0-0.**

Chair Allard stated both boards have repeatedly discussed the issue of building and rebuilding on nonconforming lots; he stated many issues have been raised and suggested the Zoning Ordinance needs to be looked at in regards to these. The Board concurred this would be beneficial. Mr. Raslavicus suggested including legal counsel as well.

The Zoning Board of Adjustment meeting was adjourned at 8:18pm.

**Planning Board Public Hearing for Conditional Use Permit: Karen & Peter Spohn, Map 114-049 located at 399 South Shore Road**

Chair Allard reopened the Public Hearing that was continued from April 7, 2020. He stated this was previously reviewed and asked if anyone has further questions. Mr. Drummey noted the question previously, was whether the ADU was allowed as a detached ADU. Chair Allard noted there is an abutter to the property but its quite a distance away. He asked if the increased septic system is complete. Mr. Varney stated it is designed for a two bedroom home and one bedroom ADU but to his knowledge it is not installed at this time. Chair Allard stated he notified the Building Inspector of the silt fencing issue and at this time has still not been resolved so wants that to be a condition of approval. He asked what the impervious coverage would be. Mr. Varney replied the proposed impervious area is 14.4%. Chair Allard noted the ordinance indicates the parking requirements are outlined in the Zoning and Land Use ordinance. Mr. Drummey

May 19, 2020

*Approved 7-07-2020*

noted the garage has three spaces which accounts for both the home and ADU. It was noted there are no parking requirements for a home. The Board reviewed the maps for steep slopes; it was noted that 17.7% of the lot includes 25-30% steep slopes; and 29.6% of the lot is greater than 30% slope.

Chair Allard closed the Public Hearing

**Mr. Drummey made a motion to approve the request for a Conditional Use permit to build an Accessory Dwelling Unit on Map 114, Lot 049, at 399 South Shore Road, owned by Karen and Peter Spohn, with the following conditions: the enlarged septic system would be completed before a Certificate of Occupancy is issued for the ADU; construction fencing and silt filtration be implemented prior to beginning construction on the ADU; the ADU be restricted to the building of a single building only. Ms. Veisel seconded the motion. Roll Call Vote: Mr. Craycraft – aye; Mr. Drummey –aye; Ms. Veisel – aye; Mr. Wessell – aye; Chair Allard – aye; Motion passed, 5-0-0.**

### **Other**

Chair Allard stated Mr. Wessel has decided to resign from the Planning Board at this time. He suggested appointing Mr. Bickford to fill in as a member for Mr. Wessel's place. Chair Allard noted they also need to make an appointment for a Planning Board representative to the Capital Improvement Plan Committee (CIP) although he won't be able to do so. Ms. Jarvis stated the CIP typically has 6 to 7 meetings, beginning in June but the scheduling is around the needs of the members. Mr. Drummey stated he would take the role as the Planning Board representative to CIP.

The Board discussed whether the packets could be sent out electronically. Ms. Jarvis noted the Building Inspector can now receive plans and applications electronically. There are concerns whether this would be secure. Chair Allard stated he would discuss this further with the Land Use Assistant and Town Administrator Kinmond. Town Administrator Kinmond stated many communities are converting to more electronic formatting and he continues to look at various options.

### **APPROVAL OF MINUTES**

Meeting of April 7, 2020 – Edits were made. **Mr. Drummey made a motion to approve the minutes as amended. Ms. Veisel seconded the motion. Roll Call Vote: Mr. Craycraft – aye; Mr. Drummey –aye; Ms. Veisel – aye; Mr. Bickford– aye; Chair Allard – aye. Motion passed, 5-0-0.**

Meeting of April 21, 2020 – Edits were made. **Mr. Drummey made a motion to approve the minutes as amended. Mr. Craycraft seconded the motion. Roll Call Vote: Mr. Craycraft – aye; Mr. Drummey –aye; Ms. Veisel – aye; Mr. Bickford– aye; Chair Allard – aye. Motion passed, 5-0-0.**

### **ADJOURN**

*New Durham Planning Board – Joint Meeting with Zoning Board of Adjustment  
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**Mr. Drummey made a motion to adjourn. Ms. Veisel seconded the motion. Roll Call  
Vote: Mr. Craycraft – aye; Mr. Drummey –aye; Ms. Veisel – aye; Mr. Bickford–  
aye; Chair Allard – aye. Motion passed, 5-0-0.**

The meeting was adjourned at 9:47pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary