

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
June 16, 2022, 9:00 AM
New Durham Community Room
APPROVED SEPTEMBER 12, 2022**

PRESENT

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Linda Callaway, member
David Bickford, member

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant
Tom Varney, Varney Engineering
Eugene Dean, via Zoom
Brenda Mullaney, applicant
Michael Mullaney, applicant
Erik Dodier, applicant
Rachel Dodier, applicant
Kelly Bisson, resident
Paul Raslavicus, resident
Don Roberts, representative for applicants
Monica Kieser, representative for applicants

CALL TO ORDER

Chair Jarvis called the meeting to order at 9:00AM.

Review of ZBA procedures, application and check list for compliance with the Zoning Ordinance amendments.

The Board reviewed the changes that were made based on voter's approval on March 2, 2022.
Chair Jarvis stated the applications have been changed to reflect the changes.

Review and Acceptance of Case #2022-003

An application submitted by Varney Engineering, LLC, on behalf of Brenda and Michael Mullaney for property located at 32 Elly Point Road, Map 111 Lot 8.

The applicants are requesting a Special Exception to:

Article XIV Section G: Deviations from the requirements of this Article may be permitted by Special Exception. Such a Special Exception is required in addition to any other relief which may be required herein, such as a Conditional Use Permit. Special Exceptions granted under this Article for one or two family homes shall be exempt from the requirements of Article VII. Other uses listed in Table 4. in Article VII must comply with the requirements of Article VII. The Zoning Board of Adjustment shall grant a Special Exception if all of the following requirements are met:

1. *The proposed use must otherwise be allowed in this Shorefront Conservation Overlay District.*
2. *The proposed use will not reduce water quality in the adjacent water body measured by methods such as increased stormwater runoff and increased phosphorus and nitrogen runoff.*
3. *The structure is proposed to be moved as far back from the reference line as possible.*
4. *Property values in the district will not be reduced.*
5. *The use will not place excessive or undue burden on Town services and facilities.*
6. *The proposed use or structure is consistent with the spirit of this Article as described in paragraph XIV.A.1 above.*

The applicants are seeking to demolish an existing cottage and construct a new cottage in a slightly different location and

They are also requesting Variances to:

Article V Section E: Dimensional Requirements for Town of New Durham. E. Flood Hazard Area and Water Body Setbacks. *No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river.*

Article VI Section C.3.a.i: General Provisions/Use Regulations for Town of New Durham. General Requirements. *No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than one hundred twenty-five (125) feet from the edge of a public water body; or*

Article VI Section C.3.a.ii: General Provisions/Use Regulations for Town of New Durham. General Requirements. *No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than seventy-five (75) feet from any well, or from a dwelling other than to which it is appurtenant.*

Article XIV Section C.8: Dimensional Requirements *All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. All New Development, as defined in Article III, within this Overlay District, must provide parking for a minimum of four vehicles with dimensions of 9 ft wide by 21 ft long. Parking may be provided on the same lot, or on lots abutting the waterfront property over which the waterfront property owner has an easement.*

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. *New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any nonconforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.*

At the 6/16/22 meeting:

No member of ZBA member had a real or perceived conflict of interest. Has that changed?

The members indicated it had not.

No member of the public felt a ZBA member had a real or perceived conflict of interest. Has that changed? No one indicated it had.

Chair Jarvis read the public notice into the record. The Board reviewed the application for completeness. Chair Jarvis questioned whether Article XIV, C.2 and Article XIV, Section C.3

are needed. Mr. Varney explained he left those off as the issues are already addressed in the other requests. Chair Jarvis stated nowhere does the ordinance indicate that a special exception supersedes a variance request.

Motion: *Requesting a Special Exception under Article XIV does not relieve an application for the need to request other variances under Article XIV and all other articles. Motion by Chair Jarvis. Seconded by Ms. Callaway. Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - nay Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 3-1-0.* Mr. Bickford opposed.

Ms. Callaway stated it's not fair that the Board is conflicted over this procedural aspect and should not have additional fees at this point. Chair Jarvis stated the law requires the applicant pay all fees. Ms. Callaway suggested continuing the public hearing. Chair Jarvis stated all abutters still need to be re-notified.

The Board discussed whether the additional variances are needed. Mr. Bickford stated he doesn't believe the additional variances are needed based on the previous motion.

Motion: *The application submitted by Varney Engineering, LLC, on behalf for Brenda and Michael Mullaney for property located at 32 Elly Point Road, Map 111 Lot 8 is incomplete., Motion by Chair Jarvis. Seconded by Ms. Callaway seconded the motion. Motion passed, 3-1-0.* Mr. Bickford opposed.

Chair Jarvis asked the applicants if they want to continue with the public hearing for the variances as requested, noting the approval will have the condition that the additional variances be requested and granted. The applicants chose not to continue

Review and Acceptance of Case #2022-004

An application submitted by Varney Engineering, LLC, on behalf for Eugene Dean for property located at Valley Road, Map 257 Lot 1.

The applicant is requesting a Special Exception to:

Article VII Section A.1: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception: Commercial Use

Chair Jarvis read the public notice into the record. The Board reviewed the application for completeness.

Motion: *To accept the application for Case #2022-04, application submitted by Varney Engineering LLC, on behalf of Eugene Dean for property located at Valley Road, Map 257 Lot 1, as complete. Motion by Chair Jarvis. Seconded by Mr. Bickford. Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0*

Review and Acceptance of Case #2022-005

An application submitted by Hoefle, Phoenix, Gormley and Roberts, PLLC, on behalf of the Dodier Living Trust, Rachel and Erik Dodier, Trustees for property located at 376 South Shore Road, Map 114 Lot 24.

The applicant is requesting Variances to:

Article V Section E: Dimensional Requirements for Town of New Durham. E. Flood Hazard Area and Water Body Setbacks. No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river.

Article XIV Section C.5: Shorefront Conservation Overlay District. Dimensional Requirements; All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any nonconforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Chair Jarvis read the public notice into the record. The Board reviewed whether the application is materially different than the application submitted for Case #2021-026. Chair Jarvis noted the garage is now past the 75ft reference line.

Motion: The application for Case 2022-005 is materially different than the application for Case #2021-026. Motion by Chair Jarvis. Seconded by Ms. Callaway seconded the motion. **Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.**

The Board reviewed the application for completeness. Chair Jarvis asked what the height is of the proposed new garage. It was noted the height will not be more than 35ft. Chair Jarvis suggested Article V Section E may not be needed. The Board agreed to accept the application as complete and if testimony determines the variance is not needed, the Board will make a decision at that point.

Vice Chair Anderson stated there are some missing contours on the plans; she wants to be sure the areas being proposed may not have been properly considered and the area may be too steep to do what is being proposed.

Motion: The application for Case #2022-005 is complete. Motion by Chair Jarvis. Seconded by Mr. Bickford seconded the motion. **Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.**

PUBLIC HEARING -Case #2022-003

An application submitted by Varney Engineering, LLC, on behalf for Brenda and Michael Mullaney for property located at 32 Elly Point Road, Map 111 Lot 8.

Chair Jarvis asked if any member of the Board has a real or perceived conflict with hearing this case. None was indicated.

163 Chair Jarvis asked if any member of the public believes a Board member has a real or perceived
164 conflict with hearing this case. None was indicated.

165 Chair Jarvis read the public notice into the record.

166 Chair Jarvis opened the public hearing at 9:58 AM.

167 Tom Varney, Varney Engineering, LLC, representative for the applicants, stated the applicants
168 have owned the property for many years and it is on a dead-end road. He stated they are
169 proposing to demolish the existing cottage and replace it with a new cottage with basically the
170 same footprint size; the cottage is shifted slightly to meet the 50ft setback; the cottage is as far
171 back from the lake as possible. A new septic system will be installed; the artesian well will be
172 relocated; there will be two parking spaces; storm water measures will also be installed. A
173 stormwater management study was done, and a NH DES Shoreline permit is required. Mr.
174 Varney stated the lot was surveyed and an architect did the plans to meet the requirements. He
175 also presented pictures of the existing building and the property. Mr. Varney stated Elly Point
176 Road is a private road; he stated the old cottage has a deck which goes over to the property line;
177 the driveway will remain the same. He stated the existing cottage is 1455 square feet; the
178 proposed is 1424 square feet. Two decks are being eliminated. Mr. Varney stated the parking
179 area is not going to change, but the parking requirements are met. He stated the entire old
180 foundation is being removed; the building size is 15.4% and it will be increased to 15.5%. No
181 conditional use permit is required for steep slopes. It was confirmed the open porches are
182 included in the square footage calculations.

183 Ms. Mullaney noted two neighbors submitted letters of support.

184 Chair Jarvis opened the public hearing to members of the public.

185 Paul Raslavičius, resident, asked what the coverage of the lot is by the new construction. Chair
186 Jarvis stated the total impervious surface coverage will be 25% which is down from 29.2%. Mr.
187 Raslavičius stated his issue is that the current version of the ordinances, approved by voters, says
188 that all development on nonconforming lots, alterations or building shall meet the 150ft frontage.
189 He stated this is clearly development and unless they keep what is existing, the frontage is
190 required.

191 Mr. Raslavičius stated buildings are also to be 75ft back from the shoreline and leach fields 120ft;
192 lot coverage can be no more than 20%. He stated the proposal violates nearly everything in
193 section C.6. Mr. Raslavičius outlined other things in the new regulations including the
194 requirements for a conditional use permit. He stated the road is a private, dead-end road and
195 there doesn't appear to be the ability for fire trucks to turn around; he also noted the
196 requirements are now that all conforming and nonconforming lots have to have four parking
197 spaces. Mr. Bickford asked for clarification whether Mr. Raslavičius believes additional variances
198 are needed. Mr. Raslavičius stated the Special Exception requirements are clear; he stated as far
199 as the road is concerned, it would be the Planning Board's jurisdiction. Chair Jarvis stated it's a
200 private road so Board of Selectmen permission will be required.

Mr. Varney stated the building is essentially the same size. Ms. Mullaney stated the side setbacks have been made conforming, but it will remain the same distance from the lake as the existing building. Mr. Varney stated the driveway will remain the same; the decks are removed so they don't encroach on the abutting property; there are significant environmental upgrades including catch basins and infiltration of runoff. Mr. Varney stated nothing can be done with the waterfront buffer but no work will be done in that area.

Chair Jarvis closed the public hearing at 10:29 AM.

Chair Jarvis stated the Board members hearing and deliberating the case would be Chair Jarvis, Vice-Chair Anderson, Ms. Callaway and Mr. Bickford

Findings of Fact:

- The lot is 0.24 acres
- The property has 107.2 ft of lake frontage
- The property has 81.99ft of road frontage acres
- The property has sides that are 99.58 and 100ft deep. Making it impossible to comply with some required setbacks.
- The property is located in the Shorefront Conservation and Steep Slopes Conservation areas.
- The proposal is to tear down the current house and rebuild it a few feet away from the footprint, so the new house is within the side setbacks.
- The current lot coverage is 29.2%; the proposed is 25%
- The building size will go from 15.4% to 15.5%
- The building setback will remain at 26.2ft from the lake
- The artesian well to be moved
- The septic tank will be replaced with a new one
- Leach fields will be added
- Septic tank will go from 67.4ft to 65ft from the lake
- Leach field will replace a dry well and be located 84ft from the lake
- House will go from 1423.8 square ft to 1455 square ft (31.2ft increase)
- Current nonporous driveway to become porous
- Adding two parking spaces.
- Total parking space is 80ft which is 4ft less than required.
- Tree and shrub coverage to remain the same
- Stormwater management report dated 3/20/22 by an engineer submitted.
- Per the Stormwater Management Report after development the nitrogen and phosphorus runoff will decrease after the development
- Letters of support from neighbors were presented.
- Elly Point Road is a private dead-end road.

238 ***Special Exception Discussion - Article XIV Section G:***

239 The Zoning Board of Adjustment shall grant a Special Exception if all of the following
240 requirements are met:

241 *1. The proposed use must otherwise be allowed in this Shorefront Conservation Overlay*
242 *District.*

243 Chair Jarvis stated this property is in an area where a single-family residence is allowed; Article
244 XIV Section G also states a single-family home is allowed. The Board agreed.
245

246 *2. The proposed use will not reduce water quality in the adjacent water body measured by*
247 *methods such as increased stormwater runoff and increased phosphorus and nitrogen runoff.*
248 Chair Jarvis stated according to her reading of the Storm Water Management Plan, after the
249 project is completed there will be a decrease in the phosphorus runoff. The Board agreed.
250

251 *3. The structure is proposed to be moved as far back from the reference line as possible.*
252 Chair Jarvis stated the proposed structure is moved as far back from the reference line as
253 possible. Vice Chair Anderson stated where the leach bed and septic tank has to be, as well as the
254 parking space requirements, the house is located as far back as possible from the reference line.
255 Mr. Bickford agreed. Ms. Callaway stated she disagrees; she stated the existing cottage is being
256 torn down and there are more options for modifications to get more of the house behind the 75ft
257 setback and less of the house in the 50' setback. She stated they need to take another look at the
258 placement of the septic tank and find ways to move it back further. Chair Jarvis stated that
259 making the house wider would encroach on side setbacks. Vice Chair Anderson stated to move
260 the house more is going to affect the roots and trees with more disturbance to the lot overall.
261 Chair Jarvis stated she is concerned if they turn the angle of the house, how much damage and
262 disruption to the soils will there be. Mr. Bickford stated he thinks the plan is reasonable with the
263 fact the septic is going to be upgraded.

264 *4. Property values in the district will not be reduced.*
265 Chair Jarvis stated the house will be new, meaning more tax revenues; she stated she doesn't
266 believe values will be reduced in the area. The Board agreed.
267

268 *5. The use will not place excessive or undue burden on Town services and facilities.*
269 Chair Jarvis stated it is a private road, so there won't be an increase in work for the Highway
270 Department; although she is concerned about access for safety vehicles but that can be handled
271 by the Board of Selectmen. Vice Chair Anderson stated more room will be left on the roadways,
272 as parking areas off the road are being created; they are giving as much space back as they
273 possibly can.
274

275 *6. The proposed use or structure is consistent with the spirit of this Article as described in*
276 *paragraph XIV.A.1 above.*

277 Chair Jarvis stated the requirements are intended to prevent overcrowding of the shoreline,
278 preserve wildlife and protect water quality; she stated the proposed use is consistent with the
279 ordinance in totality. She stated the Storm Water Management plan has provisions for preserving
280 water quality. Mr. Bickford and Vice Chair Anderson agreed. Ms. Callaway stated the water

quality is being improved but a purpose of this ordinance is because the houses were built before the ordinances and now when a new structure is put in, there needs to be closer alignment with the setbacks and she doesn't agree all efforts have been made to keep with the spirit of the ordinances. Ms. Callaway stated the house is not moved back as far as possible; nothing in the ordinance says the size of the house has to be the same size so it may need to be reduced to meet the ordinance. Mr. Bickford stated today's septic tanks are much larger than in the past so more space is needed for an upgrade system. Vice Chair Andersons stated she believes they did a good job with balancing all the different components. Chair Jarvis stated the new septic system is important to her in protecting the lake; she stated waste disposal is a major contributor to nitrogen and phosphorus issues with the lake and the small tank and dry well are being removed. Vice Chair Anderson stated the overall structure is also being simplified which will aid in catching the runoff.

Motion: *Based on the application signed March 18, 2022, plans dated March 21, 2022, and the information received from today's public hearing, to grant the request for a Special Exception to the following Article:*

***Article XIV Section G:** Deviations from the requirements of this Article may be permitted by Special Exception. Such a Special Exception is required in addition to any other relief which may be required herein, such as a Conditional Use Permit. Special Exceptions granted under this Article for one or two family homes shall be exempt from the requirements of Article VII. Other uses listed in Table 4. in Article VII must comply with the requirements of Article VII.*

With the following conditions:

- Apply for and receive variances to Article XIV, Section C.2 and C.3.
- Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008, as it's a private road.
- The property owner shall consult with the New Durham Fire Chief and Police Chief to build on Map 111, Lot 008, as it's a private road. Such requirements shall be complied with.
- Applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.
- Receive any and all required permits from federal, state, county or municipality.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Discussion:** Mr. Bickford questioned whether the ZBA has the authority to require the Board of Selectmen approve the building on a private road. The Board discussed whether it is considered new development. Ms. Callaway noted the square footage is increasing. Chair Jarvis stated it is a new building so its new development.

Amendment to the Motion: The requirement regarding the Board of Selectmen will read: *Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008 as required by law.*

Motion by Chair Jarvis. Seconded by Vice Chair Anderson seconded the amendment. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. **Amendment passed, 4-0-0.**

Roll Call Vote: Ms. Callaway – nay; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. **Amended Motion passed, 3-1-0.**

Variance Discussion – Article V, Section E

Granting the variance would/would not be contrary to the public interest: Vice Chair Anderson stated she doesn't believe it would be contrary. Mr. Bickford agreed. Ms. Callaway stated she believes it is contrary as the house could be moved back further out of the 50ft setback.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated the ordinance is being observed with the measures that will protect the water quality. Ms. Callaway stated she doesn't believe it is observed for the same reasons as before; she stated the purpose of the ordinance is to make modifications to improve the distance of new construction from the water. Chair Jarvis stated she believes it is observed, as it's a difficult lot to do anything. Mr. Bickford agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do justice; there will be a reduction in the phosphorus and nitrogen going into the lake. She stated the current house is old and will be replaced with a modern structure; she stated the septic system is going to be upgraded. Vice Chair Anderson stated the improved septic will benefit both the applicant and the public; she stated the owner is getting a new house and there will be improved protections to the land and water. Ms. Callaway stated she doesn't believe it will do substantial justice as further efforts could be made to benefit both the applicant and the Town. Mr. Bickford stated he believes substantial justice is being done; he stated its about as good as it can get and doesn't see the minor increase in square footage as being a big problem.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't believe values will be diminished; she stated it will be a new, more attractive building and will improve the lot and neighborhood. Vice Chair Anderson stated it also increases the health and safety of the neighborhood. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated there would be a hardship if the variance is denied; she stated there is a decrease in potential contamination of the lake; the proposed use is reasonable and it's an appropriate use.

Motion: Based on the application signed March 18, 2022, plans dated March 21, 2022, and the information received from today's public hearing, to grant the request for variance to the following:

Article V Section E: Dimensional Requirements for Town of New Durham. E. Flood Hazard Area and Water Body Setbacks. No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river.

With the following conditions:

- Apply for and receive variances to Article XIV, Section C.2 and C.3.
- The property owners shall consult with the Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008, as required by law.
- The property owner shall consult with the New Durham Fire Chief and Police Chief to build on Map 111, Lot 008, as it's a private road. Such requirements shall be complied with.

- Applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.

- Receive any and all required permits from federal, state, county or municipality.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote: Ms. Callaway – nay; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 3-1-0.**

Variance Discussion - Article VI Section C.3.a.i.; Article VI Section C.3.a.ii:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary; she stated the lot is not 125ft deep so there is no way to have a septic tank in compliance. The Board agreed.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated the septic is moved back as far as possible and believes the spirit is observed. Chair Jarvis stated there is no other place to put the septic so it is observed. The Board agreed.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated a new septic and leach field benefits the public and the lake just as much as the applicants and substantial justice is done. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated values would not be reduced. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated there would not be a hardship to the general public. The Board agreed.

Motion; *Based on the application signed March 18, 2022, plans dated March 21, 2022, and the information received from today's public hearing, to grant the request for variance to the following:*

Article VI Section C.3.a.i: General Provisions/Use Regulations for Town of New Durham.
General Requirements. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than one hundred twenty-five (125) feet from the edge of a public water body; or

Article VI Section C.3.a.ii: General Provisions/Use Regulations for Town of New Durham.
General Requirements. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than seventy-five (75) feet from any well, or from a dwelling other than to which it is appurtenant.

With the following conditions:

- Apply for and receive variances to Article XIV, Section C.2 and C.3.
- Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008, as required by law.
- The property owner shall consult with the New Durham Fire Chief and Police Chief to build on Map 111, Lot 008, as it's a private road. Such requirements shall be complied with.
- Applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.

- Receive any and all required permits from federal, state, county or municipality.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.**

Variance Discussion - Article XIV Section C.8; Article XXI Section C.2:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated that given the size of the lot, they did get 4 spaces in and are only 4ft short of the required 80'. She stated that considering the lot, granting the variance is not contrary. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated for a small lot, they have done a lot of juggling and doesn't believe 4ft is an issue. Vice Chair Anderson noted most vehicles average 9x18ft. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated granting the variance will do substantial justice. The Board agreed.

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

Unnecessary Hardship: Chair Jarvis stated that considering the unique features of the lot and the fact that by industry standards, they comply; it would be a hardship to deny the variance. The Board agreed.

Motion: Based on the application signed March 18, 2022, plans dated March 21, 2022, and the information received from today's public hearing, to grant the request for variance to the following:

Article XIV Section C.8: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. All New Development, as defined in Article III, within this Overlay District, must provide parking for a minimum of four vehicles with dimensions of 9 ft wide by 21 ft long. Parking may be provided on the same lot, or on lots abutting the waterfront property over which the waterfront property owner has an easement.

With the following conditions:

- Apply for and receive variances to Article XIV, Section C.2 and C.3.
- Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008, as required by law.
- The property owner shall consult with the New Durham Fire Chief and Police Chief to build on Map 111, Lot 008, as it's a private road. Such requirements shall be complied with.
- Applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.
- Receive any and all required permits from federal, state, county or municipality.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.**

Chair Jarvis stated a variance was requested to Article XXI, C.2 and asked the Board whether they believe this should be required. She stated she doesn't believe the plans will make the lot more nonconforming. Mr. Bickford stated there has been expansion so it needs to be addressed. Ms. Callaway agreed.

Variance Discussion - Article XXI Section C.2:

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated it is contrary to the public interest; she stated the building is being expanded within the 75ft setback and more effort could have been made to get less of the structure in the setback. Mr. Bickford stated the applicants have done as much as they can and to try and do more might cause more problems. Chair Jarvis agreed and stated she doesn't believe it's contrary, noting it's an expansion of 31.2 square ft. If it was moved back there would be more damage and disturbance to the soils and trees. Vice Chair Anderson stated that technically they are requesting that the building be 1% more and agrees it is minimal, but in regard to balancing all the considerations, technically they probably could have kept it within the square footage and not expand at all. She stated when considering the bigger sizes of modern amenities and space required to accommodate it, it seems to be a minuscule increase and doesn't believe its impactful. She noted the runoff from the roof will be able to be infiltrated and the driveway will be permeable.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is observed; she stated the increase is 0.01% and if the ordinances had not been changed recently, the distances would be smaller and the parking space number would not be required. Ms. Callaway stated she doesn't believe the spirit is being observed and doesn't think the trade-off is enough, noting there could have been more effort with moving the house back from the water. Mr. Bickford agreed with Chair Jarvis.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated she believes justice will be done for reasons previously discussed. Vice Chair Anderson agreed; she stated it is balancing what the applicant gets and what the public gets. She stated in relation to being not more nonconforming, the increase is so little but it is doing a great job on other areas such as water protection. Mr. Bickford agreed. Ms. Callaway stated she agrees the increase is minimal but more effort could have been done to keep the size down.

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

Unnecessary Hardship: Chair Jarvis stated to deny the variance would result in a hardship; she stated the proposed use is reasonable, strict compliance to the ordinance would not be reasonable; there is not much that can be done with this particular lot. The majority of the Board agreed. Ms. Calloway dissented.

Motion: Based on the application signed March 18, 2022, plans dated March 21, 2022, and the information received from today's public hearing, to grant the request for variance to the following:

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. *New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any nonconforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.*

With the following conditions:

- Apply for and receive variances to Article XIV, Section C.2 and C.3.
- Apply for and receive written permission from the New Durham Board of Selectmen to build on Map 111, Lot 008, as required by law.
- The property owner shall consult with the New Durham Fire Chief and Police Chief to build on Map 111, Lot 008, as it's a private road. Such requirements shall be complied with.
- Applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.
- Receive any and all required permits from federal, state, county or municipality.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote: Ms. Callaway – nay; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 3-1-0.**

Chair Jarvis stated the remaining cases will need to be continued.

Motion: *To continue the public hearings for Case #2022-004 and Case #2022-005 to Tuesday, July 12, 2022 at 7:00PM.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.**

APPROVAL OF MINUTES

Postponed.

ADJOURN

Chair Jarvis made a motion to adjourn. Mr. Bickford seconded the motion. Roll Call Vote: Ms. Callaway – aye; Mr. Bickford - aye; Vice Chair Anderson – aye; Chair Jarvis - aye. Motion passed, 4-0-0.

The meeting was adjourned at 12:11PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary