

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT**

July 14, 2022, 10:00AM

New Durham Community Room

APPROVED December 13, 2022

Portions of audio/video unretrievable

PRESENT

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Tom Varney, Varney Engineering

Michael Mullaney, applicant

CALL TO ORDER

Chair Jarvis called the meeting to order at 10:02AM.

Chair Jarvis stated a notice was received from Cathy Orlowicz, chair of the Zachariah Boodey Farmstead, inviting all town officials, including Board members, to attend the dedication ceremony of the kiosk at the Farmstead site on Saturday, July 16, 2022 at 11:00AM.

Chair Jarvis distributed a copy of a letter from the NH Office of Energy and Planning in regard to a seminar on HB 1661.

PUBLIC HEARING- Case #2022-006

Application submitted by Varney Engineering LLC, on behalf of The Mullaney Family 2018 Revocable Trust, Brenda and Michael Mullaney – Trustees, for property located at 32 Elly Point Road, Map 111 Lot 8.

The applicants are requesting Variances to:

Article XIV Section C.2: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Building Setback: Except for water related structures, all buildings shall be set back a minimum of seventy five feet from the reference line.

Article XIV Section C.3: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the reference line. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities

Chair Jarvis stated the application was reviewed and accepted as complete at the meeting of July 12, 2022. This application was submitted in compliance with the conditions attached to the special exception granted for this property in June 2022.

41 Chair Jarvis read the public notice into the record.

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

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

46 Chair Jarvis opened the public hearing at 10:07AM.

47 Mr. Varney stated they have not changed the plans since the last meeting.

48 Chair Jarvis noted variances were previously granted to the following:

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

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

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

61 **Article XIV Section C.8: Dimensional Requirements** All development within the Shorefront
62 Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the
63 following requirements. All New Development, as defined in Article III, within this Overlay
64 District, must provide parking for a minimum of four vehicles with dimensions of 9 ft wide by
65 21 ft long. Parking may be provided on the same lot, or on lots abutting the waterfront
66 property over which the waterfront property owner has an easement.

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

73 Chair Jarvis asked the Board if they have any questions for Mr. Varney. Mr. Bickford asked for
74 clarification that the plans have not been changed. Mr. Varney confirmed the plans have not been
75 changed. The Board reviewed and discussed the plans.

76 Chair Jarvis asked if the Board believes a site walk is necessary. The Board concurred a site walk
77 is not needed.

78 Chair Jarvis asked if the plans need to go to any outside consultants. The Board concurred an
79 outside consultant is not needed.

80 Chair Jarvis closed the public hearing at 10:13AM.

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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 property is 0.42 acres.
- The property has 107.2 feet of lake frontage.
- The property is 81.99 feet on one side and 100 feet on the other which makes it impossible to comply with the 125 foot setback requirement.
- The property is in the Shorefront Conservation Overlay District.
- The proposal is to tear down the existing house and rebuild it a few feet from the footprint to remain within the side setbacks.
- The current lot coverage is 29.2% and the proposed is 25%.
- The building size will go from 15.4 to 15.5%.
- The building set back will remain at 26.2 feet from the lake.
- The artisan well will be moved.
- The septic tank will be replaced with a new one and a new leach field will be installed 84 feet from the lake.
- The house will go from 1423 square feet to 1455 square feet.
- The nonporous driveway will become porous.
- Tree and shrub coverage will remain the same.
- Elly Mill Road is a private road.
- Applicants have already received special exception to Article XIV, Section G and variances to Article V Section E, Article VI Section C.3.a.i, Article VI Section C.3.a.ii, Article XIV Section C.8 and Article XXI Section C.2.

Discussion - Article XIV Section C.2.

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary as the lot is so small there isn't much that can be done with it; the house is being adjusted and moved a few feet to meet the side setback requirements Vice Chair Anderson stated its reasonable and they are doing their best to stay within a close square footage from the existing footprint; they cannot make it entirely compliant with the 75' setback as there isn't room on the lot. She stated the configuration of the house is close to the old one and will help preserve the significant size trees in the area. Ms. Callaway stated she believes it's contrary as no effort was made to move the house back further from the 75' setback. Mr. Bickford stated he finds the size of the house is 15.5% which is acceptable, and they are mostly within the footprint.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit would be observed; the house is moving off the footprint, but the reason is to get it within the setbacks. Vice Chair Anderson stated it is in the spirit of the ordinance and tree roots are being saved which is extremely important for retaining the soils along with the extensive root systems which is in keeping with protecting the lake from runoff. She stated there are also other things including permeable pavers and French drains which will help mitigate runoff; she stated the size of the house is comparable to the existing structure and the proposed roof line is much simpler

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than in the existing house. Ms. Callaway stated she doesn't believe it is doing substantial justice for the same reasons as previously outlined. Mr. Bickford stated it is in the spirit of the ordinance.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do justice, noting a variance to the 75' setback was granted in June 2022. She stated they have done their best to comply with the setbacks, noting there isn't even 125' of depth to this lot and would prefer to have the house closer to the lake if they can keep the septic and leach field as far away from the lake as possible. Vice Chair Anderson stated it would do substantial justice; the public is gaining a more compliant property and better protection to the lake. She stated the house is positioned as far back as possible and runoff is being mitigated with filtering into the ground. Ms. Callaway stated she doesn't believe it is doing substantial justice for the same reasons as stated before. Mr. Bickford stated he believes it is doing justice for the same reasons he stated previously.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't think values will be diminished; there will be a new cottage, new well, new leach field and it will improve the neighborhood with an approved leach field. She stated the quality of the water will not be diminished. Vice Chair Anderson stated she doesn't see how values will be diminished; she stated the side setbacks are still encroached on but overall there is improvement on the lot. Ms. Callaway stated some improvements are being made and doesn't think values will be diminished. Mr. Bickford agreed.

Unnecessary Hardship: Chair Jarvis stated many of the lots in this area are nonconforming; there is a lack of depth to the property which causes a hardship; she stated as much as possible has been done to conform with the ordinances except the side setbacks. She stated to deny the variance request would be a hardship. Vice Chair Anderson stated there isn't a fair and substantial relationship between the public purposes and there isn't enough room on the lot in order to meet all the requirements. She stated the property has larger trees to be considered and protected; she stated the best has been done to meet as many of the requirements as they can and it would be a hardship to deny. Ms. Callaway stated she doesn't believe it would be a hardship to deny for reasons previously stated. Mr. Bickford stated it would be a hardship and doesn't believe much more could be done to improve the lot.

Chair Jarvis made a Motion: *Based on plans dated May 23, 2022, application dated May 23, 2022 and the testimony at the public hearing of July 14, 2022, I move to grant the request for the following variance: Article XIV Section C.2: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Building Setback: Except for water related structures, all buildings shall be set back a minimum of seventy five feet from the reference line.*

With the following conditions:

- The applicants will 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 owners shall consult with the Police and Fire Departments to build on Map 111, Lot 008 and such requirements shall be complied with.

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- The applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.
- The applicants will comply with all required permits and permissions from the federal, state, county or municipal requirements.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Motion passed, 3-1-0.**

Discussion - Article XIV Section C.3

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary as there will be a new septic system and the lot is not large enough to have the leach field 125' back from the lake. Vice Chair Anderson stated she doesn't believe it will be contrary as the lot is not even 125' long; the septic is being placed as far from the lake as possible. Ms. Callaway stated she believes it is not contrary as the lot is being improved with the septic system. Mr. Bickford stated the septic is being placed in the optimal location and it's the best that can be done.

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42.53

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated

Granting the variance would/would not do substantial justice because: Vice Chair stated it isn't a fair and substantial justice as they wouldn't be able to use their property as a residence without the variances being granted for a leach field to go with the residence. She stated it has been located as far from the lake as possible and the lot isn't 125' deep so it isn't even possible to located it further back. Ms. Callaway and Mr. Bickford agreed.

For the following reasons the values of surrounding properties would/would not be diminished:

Unnecessary Hardship:

Motion: Based on plans dated June 17, 2022, application dated June 18, 2022 and the testimony at the public hearing of July 14, 2022, I move to grant the request for the following variance:

Article XIV Section C.3: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the reference line. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities

With the following conditions:

- The applicants will 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 owners shall consult with the Police and Fire Departments to build on Map 111, Lot 008 and any requirements shall be complied with.
- The applicants shall sign a Release of Liability acceptable to the New Durham Board of Selectmen.

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- 199 • The applicants will comply with all required permits and permissions from the federal, state,
200 county or municipal requirements.

201 Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Motion passed, 4-0-0.**

202 **APPROVAL OF MINUTES**

203 Meeting of April 12, 2022 – Edits were made. **Chair Jarvis made a Motion: To approve the**
204 **minutes as revised to include pagination corrections.** Motion by Chair Jarvis. Seconded by
205 Vice Chair Anderson. **Motion passed, 4-0-0.**

206 Meeting of April 28, 2022 – Edits were made. **Motion: To approve the minutes as revised**
207 **after reviewing the tape and Notice of Decision as discussed.** Motion by Chair Jarvis.
208 Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

209 Meeting of May 2, 2022– Edits were made. **Chair Jarvis made a Motion: To approve the**
210 **minutes as amended.** Motion by Chair Jarvis. Seconded by Ms. Callaway . **Motion passed, 4-0-**
211 **0.**

212 Meeting of June 16, 2022– Postponed.

213 **NEXT MEETING**

214 August 9, 2022, 7:00PM, New Durham Town Hall

215 **ADJOURN**

216 **Motion: To adjourn.** Motion by Chiar Jarvis. Seconded by Ms. Callaway. **Motion passed, 4-0-**
217 **0.**

218 The meeting was adjourned at 11:45AM.

219 Respectfully Submitted,

220 *Jennifer Riel*

221 Jennifer Riel, Recording Secretary