

TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
August 9, 2022, 10:00AM
New Durham Town Hall
APPROVED SEPTEMBER 12, 2022

PRESENT

Terry Jarvis, Chair – via Zoom

Wendy Anderson, Vice Chair

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Tom Varney, Varney Engineering LLC

Margaret O'Brien, applicant

Sean O'Brien, applicant

Deb Randall, architect

Josh Tebo, Varney Engineering LLC

Scott LaCroix, Building Inspector

Alex Raslavicus, resident

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00PM.

Chair Jarvis stated the Chair of the Planning Board has asked for input from the ZBA on the changes made to Article XIV which will be presented at the next Planning Board meeting.

Review and Acceptance of Case #2022-008

Application submitted by Varney Engineering LLC, on behalf of Timothy and Lori Roukey, for property located at 6 Marsh Hill Road, Map 118 Lot 15.

The applicants are requesting Variances to:

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 VI Section C.3.(b)(i): General Provisions/Use Regulations for Town of New Durham: General Requirements: Sewage Disposal and Leach field Setbacks: No part of a leach field shall be located less than: twenty (20) feet from a property line on a lot less than 80,000 square feet.

Chair Jarvis confirmed all fees were paid, abutters notified and public postings done.

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.

42 The Board reviewed the application for completeness.

43 Chair Jarvis stated she feels additional variances are needed; however per advice from Town
44 Counsel, it is not the job of the Board to interpret the ordinances or to determine whether
45 additional variances are needed.

46 Mr. LaCroix, the Building Inspector clarified there is a disagreement with what is needed for
47 variances but in the end, per Town Counsel, he has the final say on what is needed.

48 **Motion:** *The application for Case #2022-008, application submitted by Varney Engineering*
49 *LLC, on behalf of Timothy and Lori Roukey, for property located at 6 Marsh Hill Road, Map 118*
50 *Lot 15, is complete. Motion by Vice Chair Anderson. Seconded by Ms. Callaway seconded the*
51 *motion. Roll Call Vote:* Ms. Callaway -aye; Mr. Bickford – aye; Vice Chair Anderson-aye;
52 Chair Jarvis – no. **Motion passed, 3-1-0.**

53 Chair Jarvis explained one place on the plans indicates the current lot coverage is 30.6% while
54 another indicates its 31.9%. She stated all are over the 20% coverage so she questions the square
55 footage of the footprint.

56 ***Review and Acceptance of Case #2022-009***

57 *Application submitted by Varney Engineering, LLC, on behalf of The O'Brien Revocable Trust,*
58 *Sean and Margaret O'Brien – Trustees, for property located at 324 South Shore Road, Map 113*
59 *Lots 38 and 39.*

60 The applicants are requesting a Special Exception to:

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

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

78 The applicants are seeking to add an addition of 587 square feet onto existing cottage and are
79 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.

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 VI Section C.3(b)(i): General Provisions/Use Regulations for Town of New Durham: General Requirements: Sewage Disposal and Leach field Setbacks: No part of a leach field shall be located less than: twenty (20) feet from a property line on a lot less than 80,000 square feet. **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 seventyfive 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.

Article XIV Section C.5: 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 XIV Section 7.b: Nonconforming Structures: Existing structures may be demolished and rebuilt utilizing the same square footage as the original footprint and may include a foundation and two stories of living space. The new footprint square footage cannot increase, however, the dimensions can be reconfigured.

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 non-conforming 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.

Article XXI Section G.1.a: Non-Conforming Buildings, Land or Uses: Non-Conforming Setbacks The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article: **Leach fields:** Not less than ten (10) feet from a lot line.

Chair Jarvis confirmed all fees were paid, abutters notified and public postings done.

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

127 The Board reviewed the application for completeness.

128 **Motion:** *The application for Case #2022-009, application submitted by Varney Engineering LLC,*
129 *on behalf of The O'Brien Revocable Trust, Sean and Margaret O'Brien – Trustees, for property*
130 *located at 324 South Shore Road, Map 113 Lots 38 and 39 is complete.* Motion by Chair Jarvis.
131 Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Callaway -aye; Mr. Bickford – aye; Vice Chair
132 Anderson-aye; Chair Jarvis – no. **Motion passed, 3-1-0.**

133 **PUBLIC HEARING – Case #2022-008**

134 *Application submitted by Varney Engineering LLC, on behalf of Timothy and Lori Roukey, for*
135 *property located at 6 Marsh Hill Road, Map 118 Lot 15.*

136 Chair Jarvis read the public notice into the record. The public hearing was opened at 7:13PM.

137 Tom Varney, Varney Engineering, LLC, stated the applicants would like to make this property a
138 year-round home; the new building will be constructed on a foundation, and reconfigured over
139 the existing footprint. Retaining walls will be installed; an existing shed will be removed and a
140 NH DES approved septic system will be installed. A Conditional Use Permit from the Planning
141 Board will be required. Mr. Varney stated the lot was surveyed in Spring 2022.

142 Mr. Varney showed plans depicting the existing lot conditions and the proposed plans; he noted
143 most of the property is outside of the shoreline conservation district. He stated this lot is
144 challenging due to the size and location. The proposed building will be on the existing footprint
145 and expanded a bit into the building envelope. Mr. Varney stated there will be infiltration for rain
146 water, along with a series of existing steps and walkways removed. He stated some trees will be
147 removed but those are outside the shoreline zone. Mr. Varney stated the lot size coverage is 30.6
148 % and will be reduced to 27.1%; the building size coverage is 26% and will be reduced to
149 25.8%.

150 Deb Randall, architect, explained the calculations are based on the proposed building foot print;
151 it will be a two-bedroom home.

152 Chair Jarvis asked where the existing septic located. Mr. Varney stated its covered under
153 concrete in the ground with a pipe going to it but they don't know what the system is.

154 Chair Jarvis stated they will need updated plans indicating the lot size coverage of 30.6%.

155 Chair Jarvis asked how many parking spaces there will be. Ms. Randall stated currently the
156 parking is in front of the existing footprint but the proposed plans will have a two-car garage
157 underneath and space to park four cars in the driveway.

158 Mr. Bickford stated he would like to see more information and questioned whether more
159 variances are needed. Chair Jarvis stated it helps that the property is so far back from the water
160 and the house is back from the road. Ms. Randall stated because they are utilizing the existing
161 footprint, less variances are needed. Part of the home is being torn down and replaced. Chair

162 Jarvis stated because it is being changed from a seasonal home to a year-round home, they need
163 to consider more aspects.

164 Chair Jarvis opened the hearing to input from abutters. None was indicated.

165 Chair Jarvis opened the hearing to input from the public. None was indicated.

166 Chair Jarvis asked if the Board believes a site walk is necessary for this case. The Board agreed
167 no site walk is needed. Chair Jarvis asked if the Board wants these plans to go to the Town
168 Engineer. The Board agreed it does not.

169 Chair Jarvis closed the public hearing at 7:35PM.

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

172 Alex Raslavicus, resident, suggested any time there is a case like this requesting a variance, a site
173 walk should be part of the procedure.

174 ***Findings of Fact-***

- 175 • The cottage is being torn down and replaced with a year-round home on a new foundation on
176 the existing footprint.
- 177 • The property is 50ft wide and 100ft deep making it impossible to comply with some
178 ordinances.
- 179 • The property is 0.11 acres.
- 180 • The property has 24% slopes.
- 181 • Current lot coverage is 30.6%; the proposed is 25.8%.
- 182 • Plans submitted have an error on them and should the variances be granted, revised plans will
183 be required.
- 184 • Current building coverage is 26%; the proposed is 25.8%.
- 185 • There is currently one bedroom; the proposed will have two bedrooms.
- 186 • The current leach field and septic tank location are unknown but “under the concrete.”
- 187 • The proposed leach field will be 6ft’ from the well, 61ft’ and 64ft from dwellings.
- 188 • The proposed septic tank will be 41ft and 53.5ft from a well and 6.5ft from the side lines.
- 189 • There will be parking for 4 to 6 cars.
- 190 • The two sheds will be removed.
- 191 • A retaining wall will be installed.
- 192 • Approval from NH DES for a septic system must be obtained.
- 193 • A Conditional Use Permit from the New Durham Planning Board must be received.
- 194 • On July 9, 1997, a variance was granted for the artesian well to be 10ft from the road.
- 195

196 Vice Chair Anderson asked for clarification whether the house is being demolished. She stated
197 there were concerns about the location of the foundation and building on the footprint. Chair
198 Jarvis stated per the narrative the existing building will be demolished and a new house built on
199 the existing foundation. Vice Chair Anderson asked the definition of “demolition” in this case;
200 she stated if further clarification isn’t within their purview and the reasoning that there aren’t

additional variance requests, they need to drop it. The Board agreed that if anyone has further questions, they can go to the Building Inspector.

Discussion - Article VI Section C.3., Article VI Section C.3.(b)(i):

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary because this lot is so small, the requirements of the ordinance cannot be met. Mr. Bickford stated they have done a good job of fitting the house within the lot and doesn't believe it will affect the neighborhood, noting there were no objections by abutters. Vice Chair Anderson stated it would not be contrary as the lot is small and steep; the neighboring lots are small as well and everything is crunched together; she stated trying to put a leach bed and septic tank is tricky and they've done the best they can. She stated an updated septic system is not contrary. Ms. Callaway agreed.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated the spirit will be observed as the spirit is to keep the leach beds and septic as far from the water as possible and buildings, but in this case the lot is too small to fit within the ordinances. Mr. Bickford and Ms. Callaway agreed. Chair Jarvis stated the septic and leach field will be 300' from the lake and they have done the best they can do.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do justice; with the current location of the septic and leach field being undetermined, what is being proposed is substantial justice. Ms. Callaway agreed. Vice Chair Anderson stated everyone benefits from a functioning septic system. Mr. Bickford agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the building will be new, attractive, there will be landscaping and retaining walls and property value will be increased; she stated she doesn't believe there will be a decrease in surrounding properties. Vice Chair Anderson stated the value will be improved with a new septic system. The Board agreed.

Unnecessary Hardship: Ms. Callaway stated it would be a hardship to deny the variance. The Board agreed.

Motion: *To grant the request for variances for Case #2022-008, application submitted by Varney Engineering LLC, on behalf of Timothy and Lori Roukey, for property located at 6 Marsh Hill Road, Map 118 Lot 15 for the following:*

- *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 VI Section C.3.(b)(i): General Provisions/Use Regulations for Town of New Durham: General Requirements: Sewage Disposal and Leach field Setbacks: No part of a leach field shall be located less than: twenty (20) feet from a property line on a lot less than 80,000 square feet. 3.*

With the following conditions:

- The property owner shall receive septic system approval from the New Hampshire Department of Environmental Services.
- The property owner shall receive a Conditional Use Permit from the New Durham Planning Board.
- The property owner shall submit a corrected set of plans as discussed
- The property owner shall follow any federal, state, county or municipal requirements for this project.

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

PUBLIC HEARING - Case #2022-009

Application submitted by Varney Engineering LLC, on behalf of The O'Brien Revocable Trust, Sean and Margaret O'Brien – Trustees, for property located at 324 South Shore Road, Map 113 Lots 38 and 39.

Chair Jarvis read the public notice into the record. The public hearing was opened at 8:07PM.

Tom Varney, Varney Engineering, LLC, representative for the applicants, stated the applicants want to rebuild the cottage on a new foundation and increase the living space. He stated the building size increases to the side and rear of the property; the developed landscape of the lot will have little change; storm water management will convert the existing patio and steps to porous materials. Mr. Varney stated the tree cover will remain the same; the septic tank pump chamber will be relocated and a storm water management study has been done. NH DES Shoreline and septic approvals will be required. Mr. Varney stated the frontage of the land has no signs of deterioration or erosion; he stated the cottage was well built but it's old. There is an existing modern septic system and an artesian well. Mr. Varney stated part of the building will remain as it is, including the deck and some of the building will be going up but remain on the same footprint. He stated the building will remain the same distance from the lake, the expansion will be in the back area. Mr. Varney stated there is a partial foundation which will be made into a full foundation; the septic tank will be moved. The leach bed will remain the same although a septic design will need to be done as its over 20 years old. There are three parking spaces on the lot and one across the street on a parcel owned by the applicants. There will be no changes made to the wooded areas. The lot size coverage is 30.7% and the proposed is 28.8%. The building size is 14% and the increase is to 17.9%. The building will remain within the side setbacks as well as the 75ft setback from the lake.

Chair Jarvis noted part of the proposal is within the 75ft setback. Mr. Varney explained that is on the existing footprint. Mr. Bickford asked if the 50ft and 75ft lines are bisecting. Mr. Varney stated they are not correct.

Chair Jarvis asked how many bedrooms there are currently. Mr. Varney stated there are three currently and the proposed is three. Chair Jarvis asked for clarification on how close the septic tank will be to the lake, noting the current is 69ft and the proposed is 66ft. It was confirmed that is correct. It was confirmed this will be a year-round home. Chair Jarvis asked the current square footage of the perimeter and what the proposed will be. Ms. Randall stated the current is 1383ft;

280 the proposed is an additional 580ft. She stated there is currently a set of stone steps which cause
281 water to run down to the lake and those will be corrected with the addition.

282 Chair Jarvis asked where the fourth parking spot is located. Mr. Varney stated it's listed as
283 "Woods Road" on the plans but it is a driveway. It was confirmed the space is on lot 65. Chair
284 Jarvis stated there would need to be a condition that the lots must be sold together. Mr. O'Brien
285 stated the driveway could fit six cars so there is adequate space. Ms. O'Brien stated all the
286 properties are on the same deed.

287 Chair Jarvis asked how many rooms will be in the proposed house, noting the current has five.
288 Ms. Randall stated the proposed house will have six rooms.

289 Ms. O'Brien stated they have lived on Merrymeeting Lake for the last 18 years, full time; she
290 stated the original cabin was built in the 1950s; they want to improve the structure, redesign the
291 septic and improve the property with reducing the area and addressing the water runoff on the
292 property and the stone steps.

293 Chair Jarvis opened the hearing to input from abutters. None was indicated.

294 Chair Jarvis opened the hearing to input from the public.

295 Alex Raslavicus, resident, asked what the current setbacks from the lake and the road are. Chair
296 Jarvis stated the current house is 16.5ft from the lake and the proposed is 16.5ft. Mr. Raslavicus
297 stated the current ordinance is 75ft and there is being expansion laterally, not posteriorly. Mr.
298 Varney stated there is a leach bed behind the house as well as a steep grade so there isn't room to
299 expand toward the road; he stated its complicated to expand that direction and would not be
300 desirable but it is possible. Mr. Raslavicus stated per the ordinance, if it is possible, they cannot
301 expand laterally but have to go posteriorly. Chair Jarvis asked him to cite the specific ordinance.
302 Mr. Raslavicus stated he doesn't know. The Board reviewed the ordinances. Chair Jarvis stated a
303 quick search does not find the use of the "posteriorly" in any of the ordinances. It was noted
304 there is that verbiage used in the Shoreline Conservation District in reference to nonconforming
305 structures within the 75ft setback which are demolished but this is not the case when remaining
306 on the current footprint as is in this case. Mr. Raslavicus stated he wants to be sure the shoreline
307 and character are being preserved and not allowing expansion in these close areas. He stated he
308 wants to be sure there is consistency in adjudicating the Town ordinances.

309 Ms. Randall explained the area where the expansion is to the side, is already covered by a
310 nonpermeable surface; she stated they are adding on the roadside of the house and not going any
311 closer to the lake. She stated the design will step back and space be less intrusive to the lake; it
312 will also help mitigate water drainage which is caught by the cottage. Ms. Randall stated there
313 are currently problems with runoff on the side of the house, into the lake, and these plans will
314 mitigate that runoff. She stated the O'Briens are long-time residents of New Durham and do care
315 for the lake as much as anyone.

316 Chair Jarvis closed the public hearing at 8:38PM.

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

319 ***Findings of Fact –***

- 320 • The square footage of the current footprint is 1483; the proposed is 2063 square feet.
- 321 • There are currently 3 bedrooms; the proposed house will have 3 bedrooms.
- 322 • According to the assessing card there are currently 5 rooms; the proposed will have 6 rooms.
- 323 • The house is currently 16.5ft from the lake. The proposed house will be 16.5ft from the lake.
- 324 • There is currently 30.7% of impervious surface. The proposal will have 28.8% impervious
- 325 surface.
- 326 • There is currently 14.0% of building coverage. The proposal will have 17.9% building
- 327 coverage.
- 328 • The 4th parking spot is on Lot 65, currently owned by the applicant.
- 329 • The current septic tank is 69.7ft from the lake. The new septic tank will be 66ft from the
- 330 lake.
- 331 • The house will continue to be a year-round home.
- 332 • The existing patio will be converted to a porous patio.
- 333 • Drip edges will be installed under the eaves.
- 334 • A Storm Water Management Plan has been submitted.
- 335 • A NH DES Shoreland permit is required.
- 336 • A NH DES septic system approval is required.
- 337 • A Conditional Use Permit from the New Durham Planning Board is required.

338

339 ***Discussion - Special Exception***

- 340 *1. The proposed use must otherwise be allowed in this Shorefront Conservation Overlay*
- 341 *District.*

342 Chair Jarvis stated the ordinance states single family homes are allowed in this district. The

343 Board agreed.

- 344 *2. The proposed use will not reduce water quality in the adjacent water body measured by*
- 345 *methods such as increased stormwater runoff and increased phosphorus and nitrogen runoff.*

346 Chair Jarvis stated her concerns with this proposal are that the septic and leach fields are not

347 moved back but the leach field is actually moved closer to the lake. Although this is a new

348 septic system, she can't say the water quality will be improved. Mr. Bickford agreed. Vice

349 Chair Anderson stated even though the tank is new, it is being moved closer to the water. Ms.

350 Callaway stated she too is concerned about moving it closer. Vice Chair Anderson stated she

351 doesn't believe the proposed use will increase stormwater runoff per the stormwater

352 management plan. The Board agreed.

- 353 *3. The structure is proposed to be moved as far back from the reference line as possible.*

354 Ms. Callaway stated the building has not been moved back; she stated if they are going to

355 vary from the current footprint, there can't be more in the setback. She stated the structure is

356 only grandfathered within the setback if it isn't expanded; she stated if anything is done, it

357 should not be done within the 50ft setback. Vice Chair Anderson stated the additional space

358 would need to be added to the back of the existing structure but that's not possible; she stated

359 she understands why the expansion was done to the side but it doesn't fit the ordinance by

360 being behind the reference line as far as possible so it doesn't fit this criteria. Mr. Bickford

stated it is not as far back as possible. Chair Jarvis stated she isn't opposed to creating more living space but questioned why the expansion was not upward to keep within the same footprint. She stated she doesn't accept that its appropriate to tear down and rebuilt within the 50ft setback and doesn't feel the proposal is moved back as far as possible. The Board agreed.

4. *Property values in the district will not be reduced. The Board agrees.*

5. *The use will not place excessive or undue burden on Town services and facilities.*

Chair Jarvis stated the property is a year-round home and will remain a year-round home; she stated she doesn't see how it will increase the Town services or facilities. The Board agreed.

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

Chair Jarvis stated this proposal does everything except protect and enhance the water quality; she stated natural beauty and habitat will be preserved but the water quality is not preserved. Ms. Callaway stated she doesn't believe the lateral expansion is going to just keep the area open especially with the house so close to the water. Vice Chair Anderson stated the proposal doesn't avoid overcrowding or preserve water quality so it doesn't follow the article. Mr. Bickford stated this area is actually a 75ft setback and the reason for that is to allow permeability through the area.

Motion: *Based on the application dated July 14, 2022, the plans dated July 5, 2022, and information received at the public hearing of August 9, 2022, to grant the request for a Special Exception for application submitted by Varney Engineering, LLC, on behalf of The O'Brien Revocable Trust, Sean and Margaret O'Brien – Trustees, for property located at 324 South Shore Road, Map 113 Lots 38 and 39 for the following:*

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.*

With the following conditions:

- The following permits shall be received:
 - New Hampshire DES Shoreline Permit
 - New Hampshire DES septic approval
 - A Conditional Use Permit from the New Durham Planning Board
- The applicants shall comply with all permit requirements from all federal, state, county and municipal governments.
- Lot 33 must be given permanent rights to park on lot 65 and shall be filed with the Registry of Deeds.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Ms. Callaway – no; Vice Chair Anderson – no; Mr. Bickford -aye; Chair Jarvis – no. **Motion failed.**

Motion: *Based on the application dated July 14, 2022, the plans dated July 5, 2022, and information received at the public hearing of August 9, 2022, to deny the request for a Special Exception to Article XIV, Section G for application submitted by Varney Engineering LLC, on behalf of The O'Brien Revocable Trust, Sean and Margaret O'Brien – Trustees, for property located at 324 South Shore Road, Map 113 Lots 38 and 39.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Callaway – yes; Vice Chair Anderson – yes; Mr. Bickford - no; Chair Jarvis – yes. **Motion passed, 3-1-0.**

Chair Jarvis asked the applicant and applicant's representatives if they want to continue with the requests for variances. Mr. Varney stated they do not want to continue.

APPROVAL OF MINUTES

Meeting of June 16, 2022– Postponed.

Meeting of July 12, 2022 – Postponed.

Meeting of July 14, 2022 – Postponed.

ADJOURN

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

The meeting was adjourned at 9:10PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary