

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
January 10, 2023, 7:00PM
New Durham Town Hall**

PRESENT

Terry Jarvis, Chair
Linda Callaway, Member
David Bickford, Member
Bill Meyer, Member

Excused Absence:

Wendy Anderson, Vice Chair.

ALSO PRESENT

Deborah Randall, Architect
Sean & Margaret O'Brien, applicants
Tom Varney, Varney Engineering, LLC
Matt Lopiano, applicant
Peter Rhoades, applicant
John Chase, resident
Angie & George Hobbs, residents
John Rattigan, Esq., representative for applicant
Ron Gehl, resident– via Zoom
Kristin Guilmette, – via Zoom
Nancy Rhoades, resident – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:04PM.

Roll call was taken for Board members present.

Agenda Review

No changes were made to the agenda.

Continued Review and Acceptance of Case #2022-014

Application submitted by DTC Lawyers, on behalf of Peter Rhoades, for property located at Bennett Road, Map 264 Lots 16, 17 and 18.

The applicant is seeking a variance to:

Article V Section B.1: Dimensional Requirements for Town of New Durham. B.
Dimensional Requirements. The following dimensional requirements shall apply to land
within the Town of New Durham. 1. Except as noted below, all lots shall have frontage on a

Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.

The Board reviewed the application for completeness.

Chair Jarvis stated at the last meeting the Board determined the application was incomplete and a list of needed items was outlined. She stated a Waiver Request was received for the scale plan, 1" equals 20', and instead allow the plans to have a 1" equals 60'.

Motion: *To accept the request for a waiver.* Motion by Chair Jarvis. Seconded by Mr. Meyer.

Motion passed 4-0-0.

Motion: *To accept the application for Case #2022-014 an application submitted by DTC Lawyers, on behalf of Peter Rhoades, for property located at Bennett Road, Map 264 Lots 16, 17 and 18, as complete.* Motion by Chair Jarvis. Seconded by Ms. Callaway seconded the motion.

Motion passed 4-0-0.

Continued PUBLIC HEARING—Case #2022-015

Application submitted by Varney Engineering, LLC, on behalf of the Matthew Lopiano for property located at 309 South Shore Road, Map 113 Lots 69 and 26.

The applicant is 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 applicant is seeking add a shed for maintenance and storage of waterfront accessories.

And Variances to:

Article V Section D: Dimensional Requirements for Town of New Durham: Setbacks. No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter.

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.4: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. Maximum Building Height: The maximum height of any dwelling or garage shall be thirty-five (35) feet measured from the lowest grade adjacent to the foundation or piers to the highest point of the roof. Accessory structures such as sheds or other structures within the 75-foot waterfront setback shall not exceed one story and shall have a maximum height of 12 feet from the lowest adjacent ground level.

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 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 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 F: Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways. For any building less than seventy-five (75) feet from the reference line, no alteration, addition, or new building shall extend the structure closer to the reference line. All stairs and walkways within seventy-five (70) feet of the reference line shall not exceed four (4) feet in width.

Chair Jarvis stated the Board declared the application to be complete on December 13, 2022. She stated the public hearing was opened at that meeting and it was agreed that a Site Walk was needed.

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

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

Chair Jarvis read the Public Notice into the record.

Chair Jarvis continued the public hearing at 7:16PM.

The Board reviewed the draft minutes of the Site Walk. Chair Jarvis stated a letter was also received from an abutter and added to the file.

Matthew LoPiano, applicant, explained the driveway side of the property has been a spill way for all the runoff from the hills for decades; he explained he signed an easement for the Town to do catch basin work in the area and if the driveway is not pitched toward the road, the problem of the runoff through the driveway won't be changed. He stated he wants to do a retaining wall after the catch basin work is complete to help redirect the runoff and alleviate the water problems in this area; he stated they will also level off and square off the ground around the wall. Mr. Lopiano stated getting the runoff into the catch basin will help solve the long existing issue.

Mr. Varney addressed questions brought up at the Site Walk; he explained there would be a shed inserted into the ground which would not be seen from the road. He stated that the plans are well laid out and will provide environmental upgrades to the property; he stated there will only be one driveway and the deck could be removed if need be.

Mr. LoPiano explained the retaining wall will help the property be contained within its lot; he stated he has discussed the proposal with his neighbors and some are supportive; he stated the brook that was raised as a concern by an abutter, will be improved with these changes to the runoff. Mr. LoPiano stated the shed he selected was prebuilt and the smallest available from the maker; he stated the deck is stock and is part of the building but he doesn't need it. He stated he has no intention of making a bunk house or any additional living space.

Chair Jarvis noted the property deed states that no building except a boat house shall be erected on the strip of land providing access to the shore; a shed is not allowed. Mr. Lopiano stated he doesn't want a boat house. He stated he is more concerned with improving the driveway and runoff issues to help preserve the lake; he stated he is willing to plant shrubs or trees if needed.

Chair Jarvis closed the public hearing at 7:37PM.

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

Findings of Facts:

- The property has 20 feet on the lake; 20 feet on the road; 102 and 104 feet on the sides
- The lot is 2,116 square feet or 0.048 acres.
- Lot 26 & 69 have sufficient parking to meet the ordinance.
- The proposed building will be 64.6 ft from the lake rather than 75 feet.
- The ordinance requires a building to be 15 feet from the property line on each side.
- The proposed shed is 12 feet wide, 19 feet long and 12 feet tall with a roof. Research shows sheds are normally 8 feet tall.
- The building will be 228 square feet. Tiny houses average 225 square feet.

- There will be a set of 4.5-foot wide stairs on the western side of the property as opposed to the 4-foot allowed by the ordinance.
- There will be a retaining wall along the eastern property line which is approximately 1.5 feet wide by 11.5 feet long.
- There will be a 0.5-foot wide and 38 foot long retaining wall on the western side of the property.
- Between the width of the shed, stairs and retaining walls 18.5 feet of the 20-foot width will be covered.
- There will be a -four-foot-tall fence on both retaining walls.
- The top two feet of the roof will be visible from the road.
- Building coverage currently = 0% Proposal = 13.0%. The total percentage is within the ordinance
- Impervious surface currently = 14.1% Proposal = 29% which is over the maximum allowance of 20%.
- Stormwater report was submitted.
- The shed will have electricity.
- No living space is proposed.
- Special Exception application says: “Proposing to build a utility shed for storage of water related items.”
- Variance application says, “Building is needed for storage of waterfront items and maintenance of the lot.”
- Could remove the deck and decrease the building by 5 feet then would be behind the 75-foot mark.
- There is a year-round brook located on the property of Map 113 Lot 25.
- There was no evidence of water running down the eastern side of the property going into the lake.
- Across the top of the lot in front of the driveway there will be a 2-foot wide 12 foot long retaining wall.
- The driveway will be changed so it drains towards the street.
- The shed will be built into the slope of the land requiring excavation approximately 8 feet down.
- According to Road Agent Cardinal, the Highway Department is planning to replace 2 catch basins (one on either side of the road) and piping to improve the direction of water flow. This will occur regardless of this proposal being approved.
- The Deed states (item # 2) states: “No building except a boat house shall be erected on the strip of land providing shore frontage for the “back lots”.
- The distance from the perennial stream to the property line is 4+/- feet until it reaches the beach.

Discussion - Special Exception

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

Chair Jarvis stated the ordinance allows a shed; the applicant will have to deal with any issues that may occur because of the information in the deed. Ms. Callaway stated the use is acceptable although it's not a storage shed. The Board agreed.

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.*

Ms. Callaway stated the improvements being made to the property with the construction of the shed will improve the water quality and reduce runoff. Chair Jarvis stated that per the Stormwater Management Plan, the runoff will not be increased. The Board agreed.

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

Ms. Callaway stated that a 12 foot by 19 foot shed on a property this size, along with the deck, is excessive and it does not need to go within the 75-foot setback. Mr. Bickford stated he agrees; the reasoning for relief is not strong enough; he stated many reliefs are being requested in such a small area. Chair Jarvis stated she doesn't have an objection to a shed but feels the size is excessive for a 20-foot-wide lot. Mr. Meyer stated if it was a 12 by 12 foot shed, it would be behind the setback.

4. *Property values in the district will not be reduced.*
The proposal will not decrease property values.

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

Chair Jarvis stated the shed will not place any burden on 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 the proposal is in the spirit of the ordinance because there will be better stormwater management; however, its not within the spirit because of the size of the shed. Mr. Meyer it would be in the spirit of the ordinance if the size was reduced. Ms. Callaway stated at the Site Walk, they saw only grass and sand, no vegetation. She stated the elevation will be changed, but there needs to be things other than grass to help catch and filter runoff.

MOTION: *Based on the plans dated 10/13/22, the application signed 11/21/22 and tonight's Public Hearing to grant the request for 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.*

With the following conditions:

- Receive a Conditional Use Permit from the New Durham Planning Board.
- Receive a Shoreland Permit from NH DES.
- The applicants will comply with all required permits and permissions from any federal, state county or municipal government.

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Ms. Callaway – no; Mr. Bickford – no; Mr. Meyer – no; Chair Jarvis – no. **Motion failed, 0-4-0.**

Chair Jarvis asked the applicant if he wants to proceed with the variance requests. Mr. Varney stated no.

Review and Acceptance of Case #2023-001 and 001A

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.

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.

And 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 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

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 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.

The applicants are seeking to demolish an existing building and rebuild further away from the lake.

Chair Jarvis read the public notice into the record.

The Board reviewed the application for completeness.

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

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

Chair Jarvis stated the Board needs to determine if this application is materially different from Case 2022-009. She stated after comparing the cases: the impervious surface in the previous application had 28.8%; the current has 23.8%; the building size in the previous application had 17.9%; the current is 14.7%; the distance from the lake in the previous application is 16.5 feet; this application is 21 feet; the septic in the previous application was 66 feet from the lake; the current is 75.4 feet; the previous proposal added 590 square feet; the current application is adding 106 square feet. Chair Jarvis stated she feels this application is materially different from Case 2022-009.

Motion: *The applications for Case #2023-001 and 001A are materially different from Case #2022-009.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Motion passed unanimously.**

Motion: **The applications for Case #2023-001 and 001A are complete.** Motion by Chair Jarvis. Seconded by Mr. Meyer. **Motion passed unanimously.**

PUBLIC HEARING – Case#2022-014

Application submitted by DTC Lawyers, on behalf of Peter Rhoades, for property located at Bennett Road, Map 264 Lots 16, 17 and 18.

The applicant is seeking a variance to:

Article V Section B.1: Dimensional Requirements for Town of New Durham. B. Dimensional Requirements. The following dimensional requirements shall apply to land within the Town of New Durham. 1. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.

Chair Jarvis reopened the public hearing at 8:30PM.

Chair Jarvis read the public notice into the record.

Chair Jarvis stated a petition was received; this was read into the record and distributed for review by the Board.

Chair Jarvis read two letters from abutters on Jenkins and Bennett Roads, in opposition to the proposal.

John Rattigan, Esq., representative for the applicant, stated a letter was submitted to the Board on November 14, 2022 addressing the variance criteria; he stated the applicant is proposing to upgrade a portion of Bennett Road which is adjacent to his three lots, to the same quality as Jenkins Road which is a Class V, dirt road. He stated the proposal is for a safe and an attractive improvement to the roads; he stated that just beyond the lots owned by the applicant, there is an existing home and that home will be dramatically benefited by having an improved Class VI Road. Attorney Rattigan stated the responsibility for maintaining that portion of Bennett Road will be with the property owners. He presented pictures showing the roads for review of the Board. Attorney Rattigan stated the applicant requested the Board of Selectmen to grant building

permits on the Class VI Road, pursuant to RSA 674:41. The Board advised Mr. Rhoades to seek a variance from the Zoning Board of Adjustment. He stated the public interest standard of the variance criteria would be met, as well as a substantial justice. The existing lots do not have frontage. Granting the variance would give those lots a benefit as well as to the neighboring property owner. He stated, per a letter submitted by a local realtor, the values of surrounding properties will not be diminished. Attorney Rattigan stated it would be a good opportunity to enhance properties in the area and the spirit of the ordinance is observed by allowing construction on a Class VI road. He referenced an approval to Corey and Jennifer White for the same purpose on Libby Road; he stated when that approval was granted, the Board required the road be upgraded to Class V standards and they are now proposing the same for Bennett Road. Attorney Rattigan stated this will be particularly beneficial to the existing home on the road.

Chair Jarvis asked if all property owners on the road have agreed to a maintenance agreement. Attorney Rattigan replied no; he stated they are not suggesting that anyone is responsible for the maintenance of Bennett Road beyond the property owned by the applicant. He stated Mr. Rhoades will upgrade the portion of the road to his adjacent lots and in the future the road will continue to be maintained to the Class V, Jenkins Road standard, by the three lot owners.

Chair Jarvis asked the short and long term plans for the lots. Attorney Rattigan stated there is no proposal for a subdivision at this time. He stated the largest lot is 56 acres and a condition of no subdivision is acceptable; he stated Mr. Rhoades only wants to put in a house on each of the three lots.

Chair Jarvis asked how this proposal is in line with the spirit of the ordinance and Master Plan, which is a concern raised by abutters. Mr. Rhoades stated he doesn't feel his proposal is a subdivision; he stated there are three lots and they are in line with what the Whites were approved for; he stated this preserves the rural character, noting the three lots together are 68 acres. Mr. Rhoades stated Bennett Road has never been overly improved, it has steep parts but most of it is still accessible by emergency vehicles; he stated with this proposal more of the road will be improved. Mr. Rhoades stated he discussed this proposal with the Road Agent and he has no concerns. He stated the Fire Chief looked at the proposal as well and it was noted that if for some reason the road fell into disrepair, the Fire Chief has jurisdiction to ensure the road is maintained. Chair Jarvis stated she has been unable to find the statute to support that statement.

Ms. Callaway asked why Mr. Rhoades has not considered upgrading the entire road to Class V standards. Attorney Rattigan stated it would be a large investment for three lots; he stated there would be an additional tax assessed each year for those lots if work has to be done. Ms. Callaway stated there are concerns by one homeowner about traffic substantially increasing on the portion that is currently maintained by the owner. Mr. Rhoades stated it is not a passable road most times of the year.

Chair Jarvis asked if the survey plans with homes are set plans. Mr. Rhoades stated those are the best proposed locations per the surveyor; he stated he is only looking for one house per lot.

Chair Jarvis noted the plans show a proposed emergency vehicle turn-around; she asked if it would be maintained the same as the rest of the road. Mr. Rhoades stated that is correct. He explained Fire Chief Varney asked that there not be a proposed driveway off the turn-around area so plans were changed to accommodate that request.

Mr. Meyer stated a building permit cannot be issued on anything less than a Class V road, which this is not, until the Town accepts it; he stated it won't be accepted by the Board of Selectmen because they don't want to be responsible for maintenance. Mr. Rhoades stated that is correct and each property would come with an agreement that the property owners are responsible for maintenance of the road.

Ms. Callaway asked the distance of road that the Whites were going to be responsible for. Chair Jarvis stated it was 1178 feet. Mr. Rhoades stated the White property was purchased as a woodlot and unbuildable so there was no building policy and no hardship; he stated his properties are on a Class VI road, there is a policy in place for building on a Class VI Road after review by the Board of Selectmen. After reviewing the plans, it was noted that the proposal by Mr. Rhoades appears to be about 1500 feet.

Chair Jarvis opened the hearing to input from the public.

John Chase, resident on Jenkins Road, stated the petition really addresses public interest and is signed by 90% of the residents on Jenkins Road. He stated citing the White case is different in that approval was for a section of Libby Road that was discontinued; he stated Bennett Road is a Class VI Town road and entering into a private maintenance agreement could create liability issues for the Town since it is a Town road and there could be problems with enforcement. Mr. Chase stated the proposed upgrades stop before the existing residence on the road; he stated the guidelines for issuance of building permits on a Class VI road indicates that if more than one house is to be built, it is supposed to be considered a subdivision. He stated this proposed road lay-out does not meet the subdivision standards in the Town guidelines; it is not wide enough and there are no provisions for percolation of the lots, infrastructure or power, as the power ends before the road with two different power companies at either end of the proposal. Attorney Rattigan stated the subdivision regulations are not in the purview of the Zoning Board and is something they would address with the Board of Selectmen; he stated the Town is under no obligation to do work or maintenance on a Class VI road.

Angela Hobbs, resident on Jenkins Road, stated she is an adjacent property owner and nobody wants the road in there; she stated they like it the way it is and it would not be a benefit to them.

George Hobbs, resident on Jenkins Road, stated it was suggested by the applicant that value would be added but he doesn't see that; he stated they bought their land and built a home there 35 years ago because of the restrictions that are in the area. He stated they value the serenity and there are no issues with traffic in the area. Mr. Hobbs asked if the three-house subdivision goes in there, how will the traffic on Jenkins Road be impacted and more maintenance will be needed; he stated he owns land that runs along Bennett Road as well.

Ron Gehl, resident on Jenkins Road, stated this is the third attempt at building on these lots along Bennett Road; he stated the Board of Selectmen has previously rejected the layout of a Class V road as well as the granting of building permits on a Class VI road. He stated it would be more accurate that the granting of a variance is needed and then the applicant would need to return to the Board of Selectmen for a building permit along this road. Mr. Gehl stated the Class V road that leads to Bennett Road is under a mile long; he stated there were references to the “superior” quality of Jenkins Road, but it is not; he stated this proposal is an addition of a dead end on a substandard Class V road. He stated this conflicts with everything the Planning Board might suggest as wise land use and have indicated that they would oppose such a proposal. Mr. Gehl stated this is an unfortunate situation that could serve as a precedent for future land use in Town; he stated this proposal is for multiple lots being developed on a Class VI road. Mr. Gehl stated that he believes the White case which is being referenced, was a mistake in his opinion, as well as a different set of circumstances and the Town took the steps to close the loop hole which allowed it to happen. He stated he disagrees with the reasoning from the applicant’s counsel to support the variance, particularly, #2, that the spirit of the ordinance would be observed; he stated this has been heavily weighed in on by the Planning Board. He stated he does not see any unnecessary hardship; the ultimate objective is a layout of a Class V road.

Attorney Rattigan stated he believes the information he presented fully supports the proposal; he stated he has assisted many municipalities on land use matters and the State of New Hampshire is fully supportive in helping municipalities develop residential housing. He stated if the Board of Selectmen wants to move ahead with creating a layout for a Class V road, there are provisions for adjacent property owners to pay the expense for the upgrading. Mr. Meyer noted the 50-acre size lots are not the intention of the workforce housing being supported by the State.

Chair Jarvis asked the Board if a Site Walk is needed. The Board agreed no Site Walk is necessary. It was agreed the plans do not need a review by an outside contractor.

Chair Jarvis closed the public hearing at 9:22PM.

Motion: *To continue the public hearing for Case #2023-001 and 001A to February 7, 2023 at 7:00PM.* Motion by Chair Jarvis, Seconded by Mr. Meyer. **Discussion:** Ms. O’Brien stated they will be unavailable on that date.

Motion: *To amend her motion to continue the public hearing for Case #2023-001 and 001 to March 16, 2023 at 7:00PM, the first item on the agenda for that meeting.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Amendment passed 4-0-0.**

Amended Motion passed 4-0-0.

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

Findings of Facts:

- Lot 16 is 2.8 acres and is bordered with 480 feet on Libby Road, 610 feet on Bennett and 525 feet on the Class VI Jenkins Road.

- Lot 17 is 56 acres, with approximately 1,400 feet on Bennett Road.
- Lot 18 is 19.2 acres with approximately 1,065 feet on Bennett Road.
- There is no Maintenance Agreement for Bennett Road and there is no plan for a Maintenance Agreement among property owners.
- The applicant is agreeable to restrictions being on any approval he might receive which would restrict subdivisions for up to 25 years or until the Legislative Body accepts Bennett Road.
- The applicant has stated if he is able to build on the three lots, he would make sure the construction vehicles access the lots through Jenkins Road and not the other end of Bennett Road.
- The applicant has submitted written documentation stating they will bring Bennett Road to Jenkins Road to the end of their property, to the same standards as Jenkins Road.

Discussion – Variance to Article V Section B.1:

Granting the variance would/would not be contrary to the public interest: Mr. Bickford stated it would be contrary to the public interest; he stated there are many people who have property in the area who are opposed to the proposal; he stated there will be conflicts with people on each end of the road and the Town doesn't need more dirt roads. He stated the Town is already behind on maintaining the existing roads and adding more roads would not be in the public interest. Ms. Callaway stated she agrees; she stated she was not aware of the guidelines for developing multiple properties on a Class VI road and that makes a difference compared to if it were just one property and it could cause unintended consequences. Mr. Meyer stated where so many in the neighborhood are opposed to the proposal, it would be promoting conflict. Chair Jarvis stated she doesn't believe it would alter the nature of the neighborhood if it is restricted to three houses; she stated she doesn't recall any case having so much opposition. She stated upgrading the road would enhance public safety for the three lots but potentially not for the rest of the road and it could contribute to added maintenance cost of surrounding roads. Chair Jarvis stated conditions could be placed on any approval. Mr. Bickford stated the people who own frontage on these roads don't want the upgrades so it would not be fair to make them pay for it.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the applicant indicates that three houses on the road will not change the character of the road and that public health, safety and welfare will be maintained. Ms. Callaway stated the ordinance specifically prohibits building on a Class VI road; she stated there isn't enough certainty with the proposal to ensure the spirit will be observed. Mr. Meyer stated the spirit of the ordinance is that there won't be building on Class VI roads. Mr. Bickford stated the intention of the ordinance is to ensure road frontage is maintained, with very rare exceptions. He stated there cannot be subdivisions on anything less than a Class V road. Chair Jarvis stated the spirit of the ordinance is to protect the natural resources, provide for health and safety, maintain rural character and she doesn't believe three houses will alter the neighborhood, but it might not protect the wildlife.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated substantial justice will be done for the applicant, however, the testimony from numerous

residents in the neighborhood shows they do not want it and don't feel it is right. Mr. Bickford stated these lots have been this way for some time and it has been a Class VI road for a very long time. He stated he doesn't believe substantial justice would be done. Ms. Callaway stated substantial justice would not be done to the Town; the lots have been there for a long time with the owners having no expectations of being able to build on the lots. Mr. Meyer stated justice would be done for the applicant but not the abutters or the Town.

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

Unnecessary Hardship:

Chair Jarvis stated there is a relationship between the general public purpose of the ordinance and how its applied; she stated this is a Class VI road and the expectation is that there won't be building on it. Mr. Bickford stated anyone who purchases land on a Class VI road should not have the expectation of building on the property. Ms. Callaway agreed. Chair Jarvis stated the proposed use is reasonable for this property but building houses on a Class VI road is not reasonable. Mr. Bickford stated the proposed use cannot be done within conformance of the ordinance. Chair Jarvis stated if a road is brought up to full Class V standards, then a lot of the arguments would be met and the reasons for opposition would not exist; she stated the Town would still need to be petitioned to accept the road. Mr. Bickford stated there are options for getting this road to the appropriate standards and to be accepted by the Town, so he doesn't see there is a hardship.

Motion: *Based on the plans with a revision date of 12/19/2022, the revised application signed 11/17/2022, and tonight's public hearing, grant the request for a variance to the following: **Article V Section B.1: Dimensional Requirements for Town of New Durham. B. Dimensional Requirements.** The following dimensional requirements shall apply to land within the Town of New Durham. 1. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.*

Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Callaway – no; Mr. Bickford – no; Mr. Meyer – no; Chair Jarvis – no. **Motion failed, 0-4-0.**

ADJOURN

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

The meeting was adjourned at 10:11PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary