

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
October 10, 2023, 7:00 PM
*New Durham Town Hall, New Durham, NH 03855***

MEMBERS PRESENT

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

ALSO PRESENT

Susan Stillwell, Land Use Assistant
Sarah Bodwell, via Zoom (Left at 7:10 pm)

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:09 PM.

Introductions were made of the Board members present.

MOTION: *To enter nonpublic session pursuant to RSA 91:A-3II, (l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present. Motion by Chair Jarvis. Second by Mr. Meyer. Roll Call Vote: Mr. Bickford- aye; Ms. Freeman- aye; Ms. Callaway -aye; Mr. Meyer-aye; Chair Jarvis-aye. Motion passed 5-0-0.*

The Board entered nonpublic session at 7:10 PM.

The Board reentered public session at 7:18 PM.

Chair Jarvis stated that while in nonpublic session the Board discussed legal advice from Town Counsel.

Chair Jarvis stated that due to a recent increase in noncompliance, it is necessary to remind attendees of the ZBA rules and procedures:

- When a member decides to step down from a case, their decision is final. It is not subject to any discussion by anyone, other than if the ZBA members ask the opinion of the Board members as to whether they should step down from a case.
- Only Board members may speak during the review of an application to determine if there is sufficient information in the application packet for the Board to make a decision.
- Board members may ask clarifying question without the action becoming a public hearing.

- In accordance with the procedural rules of the New Durham Zoning Board of Adjustment, individuals other than the applicant and abutters will be limited to three minutes of testimony.
- The chair may limit repetitive comments.
- No individual shall speak a second or subsequent time until all other members of the public have had the opportunity to speak.
- All individuals shall address the Board directly and not address any applicants, their representatives or other members of the public.
- All questions shall go through the Board.

Review and Determination for Completion Case #2023-013

Application submitted by Thomas Varney of Varney Engineering LLC on behalf of Brian Boop and Sonja Leigh for property located at Owl's Head Point Road, Map 108 Lot 048/001.

The applicants are requesting Variances to the following within the Shore Front Conservation Area and Steep Slopes Conservation District:

Article VI. General Provisions/Use Regulations for Town of New Durham. C. General Requirements. 3.b.i. 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; and

Article XIV Shorefront Conservation Overlay District, Section C: Dimensional Requirements. 5. 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.

Chair Jarvis stated a letter was received October 10, 2023, requesting a continuance, submitted by Tom Varney.

Chair Jarvis stated after review, it was determined the public notice did not contain all the required information but that will be corrected.

MOTION: *To continue Case #2023-013 to November 14, 2023, Zoning Board of Adjustment meeting as requested by Thomas Varney, PE.* Motion by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Mr. Bickford- aye; Ms. Freeman- aye; Ms. Callaway -aye; Mr. Meyer-aye; Chair Jarvis-aye. **Motion passed 5-0-0.**

Request for Rehearing submitted by Attorney John Ratigan, DTC PLLC on behalf of Peter Rhoades for Case #2023-011 for properties located at Bennett Road, Tax Map 246, Lot 017 and 018.

Chair Jarvis stated when this case was reviewed by the Board, it was determined that it was not materially different from the previous case, #2022-014. Attorney Rattigan submitted a request for rehearing as he feels this current case is certainly materially different because the application seeks only two homes versus three homes; he also addresses the upgrade of the road; however, that is not under the purview of the Board but rather the Board of Selectmen.

Ms. Callaway stated the relief being sought between the first and second proposals is virtually the same; the proposals result in the same burden on the Town and public and she doesn't believe the cases are materially different. She stated:

1. There is nothing unique about the two lots; both are on a class VI road.
2. Not requesting a variance on lot 16, which is closest to Jenkins Road and opting for the two farthest lots seems counterintuitive to mitigating the impact to the town.
3. The fact that two properties and not three would be sharing the road maintenance expenses does not change the overall expense and impact to the Town and doesn't support a claim of material difference between the two cases.
4. The statement that this case is less profitable for the applicant doesn't mean the Town is impacted less.

Ms. Callaway stated she does not believe there needs to be a rehearing.

Mr. Meyer stated there were never concerns about the number of houses so reducing the number doesn't factor into the equation.

Chair Jarvis stated she had many concerns, especially that the zoning ordinance is very specific that there is to be no building on a Class VI road; permission was granted a single time to build on a Class VI road and there was only one member of this current Board who heard that case which granted the variance. Chair Jarvis stated she doesn't know what is unique about the property and that is why she can't vote for a rehearing.

Ms. Freeman stated that she has reviewed all the files in both cases and she disagrees with Atty. Ratigan and doesn't believe this case is materially different.

Mr. Bickford stated his opinion has not changed and he doesn't believe a rehearing is needed.

MOTION: *To deny the Motion for Rehearing because the second application is not materially different from the first and it was not modified to meaningfully resolve the Board's concerns which include but are not limited to: building on a Class VI road which is prohibited by the Zoning Ordinance and there being no evidence that the property is unique.* Motion by Chair Jarvis. Second by Ms. Freeman. **Roll Call Vote:** Mr. Bickford- aye; Ms. Freeman- aye; Ms. Callaway - aye; Mr. Meyer-aye; Chair Jarvis-aye. **Motion passed 5-0-0.**

Additions to the "Table of Required Information"

Chair Jarvis stated there needs to be the distance from the septic tank to abutters' homes on the list; she suggested they go through the various applications and add this to the Table of Required Information. There was discussion of additional information that is needed on the application for clarification. The following are to be added:

- Distance from septic tank to abutters' homes
- Add Article VI Section 3A to table
- Steep slopes feet should be square feet
- Is the house on a slab or on grade?

- Does the House have a full basement; If yes, specify usage of basement
- Are there other applications for the property which have been decided or are in progress?
- Date/Revision Number on Plans.

The Board concurred with the changes discussed.

Review and Approval of Draft Special Exception Application and Draft Equitable Waiver of Dimensional Requirements Application.

The Board reviewed and discussed the edits made to the applications. Chair Jarvis suggested that when fees are changed, it becomes automatically acceptable for the Land Use Assistant to update the application form. The Board concurred.

MOTION: *To approve the revisions to the Special Exception Application and the Equitable Waiver of Dimensional Requirements Application as presented on October 10, 2023.* Motion by Mr. Bickford. Second by Mr. Meyer. **Roll Call Vote:** Mr. Bickford- aye; Ms. Freeman- aye; Ms. Callaway -aye; Mr. Meyer-aye; Chair Jarvis-aye. **Motion passed 5-0-0.**

CORRESPONDENCE

The Board reviewed the Notice of Decision from Planning Board RE: Map 270, Lot 001 and Notice of Decision from Planning Board RE: Map 101, Lot 039-008.

Chair Jarvis noted after reviewing the records, it was determined conditions were placed on these cases and questioned whether the Planning Board considers the decisions by the ZBA and whether the same set of plans are reviewed. She stated she is concerned the plans in the second case are different from the plans approved by the ZBA. The Board discussed the cases. Chair Jarvis will ask NHMA if when the ZBA specify a specific set of dated plans and the Planning Board requires changes to the plans does it invalidate the ZBA approval? Who is responsible to determine if the Planning Board approval of a different set of plans affects our decision?

APPROVAL OF MINUTES

Meeting of September 12, 2023, – Edits were made. **MOTION:** *To approve the minutes as amended.* Motion by Ms. Freeman. Second by Ms. Callaway. **Roll Call Vote:** Mr. Bickford-aye; Ms. Freeman-aye; Ms. Callaway-aye; Mr. Meyer-abstain; Chair Jarvis-aye. **Motion passed 4-0-1.**

NEXT MEETING: November 14, 2023

ADJOURN

MOTION: *To adjourn the meeting.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 5-0-0.**

The meeting was adjourned at 8:21 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary