

TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
March 31, 2023
New Durham Town Hall

PRESENT

Terry Jarvis, Chair
Wendy Anderson, Vice Chair
Linda Callaway, Member
David Bickford, Member
Bill Meyer, Member

ALSO PRESENT

Scott Lacroix, Building Inspector/Code Enforcement Officer
Joseph Driscoll, Esq., Mitchell Group - Town Counsel
Tom Varney, Varney Engineering LLC
Deborah Randall, Architect
Sean O'Brien, applicant
Margaret O'Brien, applicant
John Ratigan, Esq., representative for the applicant
Peter Rhoades, applicant
Will Cardinal, Road Agent
Ron Gehl, resident
Jon Chase, resident

CALL TO ORDER

Chair Jarvis called the meeting to order at 9:03AM.

Roll call was taken for Board members present.

Chair Jarvis stated all of the proposed zoning changes on the Town Warrant passed by voters in March. This included the petition warrant article to repeal Article XIV Section G. She stated the Board of Selectmen passed regulations on subsurface wastewater and the Health Officer will be enforcing those regulations relative to any septic systems around any body of water. All the regulations and ordinances are available on the Town website.

Agenda Review

Chair Jarvis stated a letter was received from Varney Engineer, LLC, dated March 27, 2023, regarding Case #2023-001, requesting a continuance to the April 11, 2023, meeting due to a death in the family.

Motion: *To continue the Review and Acceptance of Case #2023-003 to April 11, 2023, 7:00PM, at the New Durham Town Hall.* Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Review and Acceptance of Case #2023-001

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 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.

Chair Jarvis stated on January 10, 2023, the application was deemed to be materially different from Case #2022-009 and the Board found the application to be complete. Due to the number of

cases on the agenda for the January 10, 2023, meeting, the Public Hearing was postponed to March 16, 2023. Prior to the meeting of March 16, 2023, the applicant's representative was notified that only three Board members would be present at that meeting. Chair Jarvis stated a letter dated March 13, 2023, was received from Varney Engineering, LLC, on behalf of the applicant, requesting a continuance to March 31, 2023, as the applicant would like their case heard by a full Board of members. The Board voted to grant the continuance to today, March 31, 2023.

Chair Jarvis stated when the application was submitted, both a Special Exception and eight Variances were requested. She stated Article XIV Section G was repealed on March 14, 2023, so that request will not be considered.

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

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

Chair Jarvis read the Public Notice into the record.

The Public Hearing was opened at 9:13AM.

Chair Jarvis read a letter into the record from an abutter at 326 South Shore Road dated January 20, 2023; no objections were indicated in the letter.

Tom Varney, Varney Engineering, LLC, representative for the applicant, stated the proposal is to demolish the existing house and rebuild; the new house would be reconfigured, being narrower and expanding the width. The deck would remain; the house would be reduced in size and further back from the lake than the existing structure. The driveway accommodates four parking spaces; the existing steps, walkways and patios would be made porous. Stormwater management study has been completed; NH DES Shoreline Permit will be required. Mr. Varney stated the O'Briens also own the land across the road; a survey plan was submitted along with photos of the existing house. Mr. Varney stated the current house is not a camp, it has a foundation; the lot is professionally landscaped, and the proposal is trying to maintain the character of the lot. Mr. Varney stated the existing building is within the 50-foot shoreline setback; the driveway is flat; there are some retaining walls. He stated there is also a boat house and shed on the property; the septic system was NH DES approved and installed in 1990. The shoreline buffer of trees will remain. The proposal is to reconfigure the house and keep the distance from the lake; the existing deck will be removed, and the proposed size of the building will be the same as the existing. The lot size coverage will be reduced to 23.3%; the building size will remain the same at 14.1%. The basement will not be finished space.

Chair Jarvis stated even though the application was received in January, it may be subject to the new subsurface water regulations, but she will check with the Building Inspector to confirm.

The Board reviewed and discussed the map and plans presented.

Ms. Callaway asked why the deck is not going to be made standard (12 feet) within the ordinance. Mr. Varney stated the existing deck is 16.5 feet and the property owners want to keep as much as they can with the larger size. Ms. Randall stated her understanding of the ordinance is that a deck can be added to a structure, 12 feet towards the lake; this is a new structure so it's not adding a deck to an existing structure. She clarified nothing is being added but it is being made smaller overall.

Ms. Callaway noted lawn is being proposed to the left side of the house and questioned why they aren't doing something with a better root system for infiltration. Mr. Varney stated an elaborate set of stairs is being removed, along with an elaborate fireplace; these are what are being replaced with greenery, but it could be shrubbery, not necessarily a lawn.

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

The Board agreed a site walk is not necessary; it was agreed the plans do not need to go to an outside consultant for review.

Chair Jarvis closed the public hearing at 9:36AM.

Findings of Fact:

- The lot has 183.7 feet lakeside, 110.08 feet roadside and the sides are 118.20 feet and 117.49 feet.
- The proposal will tear down the current house and rebuild it on a smaller footprint.
- The current deck will be made smaller and will not be demolished.
- The proposed house is being reconfigured, so the width goes from 63 feet wide to 52 feet wide.
- The deck setback was granted a variance in October 1995.
- In July of 2005 Lots 38 & 39 were merged.
- The current septic system was built in 1989 and is being replaced.
- The leach field remains in its current location.
- The leach field is approximately 10 feet from the property line (same location as current.)
- A retaining wall will be constructed on the road side of the house.
- The fireplace, path, steps and wall on the west side of the house will be removed and replaced with lawn.
- Porous walkways will be constructed.
- Existing steps are to be reconstructed as infiltration steps.
- There are four parking spaces.
- The impervious surface is currently 29.5% and is going to 23.4%.
- The building size is 14.1% and will remain.
- The house is currently 16.5 feet from the lake and will go to 21 feet.
- The septic from the lake is 69.7 feet and is going to 75.4 feet.
- The leach field remains 86 feet from the lake.

- It will be a 2-story house with three bedrooms.
- The basement will not be a finished basement.
- There are four parking spots on the property.
- It will continue to be a year-round home.
- The existing patio will be converted to a porous patio.
- Drip edges will be installed under the eaves.
- A Storm Water Management Plan has been submitted but was not reviewed by the Board as that section of Article XIV, no longer applies.
- A NH DES Shoreland permit is required.
- A NH DES septic system approval is required.
- A New Durham Conditional Use Permit is required.
- Approval from the Health Officer is required for the new septic tank.

Discussion- Variances Article V, Section E and Article XIV, Section C.2

Granting the variance would/would not be contrary to the public interest because:

Ms. Callaway stated it is not contrary; the building lot coverage has been reduced and the house will be moved back from the water; she stated it can be beyond the 75-foot setback. Vice Chair Anderson stated they have done the best they can with the lot. The Board agreed.

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

Mr. Meyer stated it would be observed as the conditions of the lot are being improved with the house and septic tank being moved further back from the reference line. Vice Chair Anderson stated the spirit of the ordinance is to protect the lake and that is what is being done with moving those as far back as possible. The Board agreed.

Granting the variance would/would not do substantial justice because:

Mr. Bickford stated it would do substantial justice, as it is an improvement on the entire property with moving the house and septic back; he stated the surface water will also be better managed. Vice Chair Anderson stated the applicants are getting a new house while doing their best to follow the rules to protect the lake. Ms. Callaway stated it would be substantial justice as both the homeowner and the town are getting a property that better protects the lake. The Board agreed.

For the following reasons the value of surrounding property would/would not diminish because:

Chair Jarvis stated there is no evidence that property values would be diminished; she stated the new house will be more attractive; moving it back will increase the value. Ms. Callaway stated moving the house back from the water will improve the look of crowding in the neighborhood. Mr. Meyer stated it will not diminish the values. Vice Chair Anderson stated the best attempts are being made to improve the water quality for themselves and their neighbors, which will improve values.

A. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- *There is/is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance to this property because:*

Mr. Bickford stated it would cause a hardship to deny the variances. Chair Jarvis stated due to the size of the property, strict compliance with the codes is not possible but they are moving the house and septic as far back as possible. The Board agreed.

- *The proposed use is reasonable because:* The Board agreed the use is reasonable.

Motion: *Based on the application signed December 15, 2022, plans dated February 21, 2023, and information received at the public hearing of March 31, 2023, to grant variances to the following:*

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

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 applicant shall obtain a Conditional Use Permit from the New Durham Planning Board.
- The applicant shall obtain New Hampshire Department of Environmental Services Shoreline Permit and Septic System approval.
- The applicant shall comply with all applicable federal, state, county and municipal laws.
- The applicant shall receive approval from the New Durham Health Officer for the septic tank.
- The applicant shall submit “As-Built” plans at the conclusion of construction before a Certificate of Occupancy is issued.

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Discussion- Variances Article VI Section C.3(a)(i), Article VI Section C.3.(a)(ii), Article VI Section C.3.(b)(i), Article XIV Section C.3, Article XXI Section G.1.a:

Granting the variance would/would not be contrary to the public interest because:

Chair Jarvis stated it would not be contrary; the leach field cannot go in another place and there will be a new septic tank which is being moved further back from the lake. Ms. Callaway stated the leach field is in a previously approved location, it is still working, and a new septic tank is being put in, but with the dimensions of the lot, all the standards cannot be met. The Board agreed.

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

Mr. Meyer stated there will be a new septic tank in a better location; the leach field seems to be working. Ms. Callaway stated it is being observed because the lake is being protected. Vice Chair Anderson stated the septic is being placed as far as it can be from the lake as well as from the abutting wells. The Board agreed.

Granting the variance would/would not do substantial justice because:

Chair Jarvis stated substantial justice is being done as the septic tank will be new and moved further from the lake; the leach field cannot go back 125 feet from the lake as the lot is not even that deep. The Board agreed.

For the following reasons the value of surrounding property would/would not diminish because:

Chair Jarvis stated the values will not be diminished; if anything, values will be increased with moving the house and septic back from the lake. Ms. Callaway stated the improvements will not diminish surrounding values. The Board agreed.

A. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- *There is/is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance to this property because:*

Chair Jarvis stated there is a fair relationship; the purpose is to protect the lake and the property is not deep enough to strictly comply with the ordinance.

- *The proposed use is reasonable because:* The Board agreed the proposed use is reasonable.

Motion: *Based on the application signed December 15, 2022, plans dated February 21, 2023, the information received at the public hearing of March 31, 2023, to grant variances to the following:*

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

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.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 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.*

With the following conditions:

- The applicant shall obtain a Conditional Use Permit from the New Durham Planning Board.
- The applicant shall obtain New Hampshire Department of Environmental Services Shoreline Permit and Septic System approval.
- The applicant shall comply with all applicable federal, state, county and municipal laws.
- The applicant shall receive approval from the New Durham Health Officer for the septic tank.
- The applicant shall submit as-built plans at the conclusion of construction before a Certificate of Occupancy is issued.

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Discussion- Variance Article XIV Section C.5

Granting the variance would/would not be contrary to the public interest because:

Chair Jarvis stated granting the variance would not be contrary as the impervious surface is being reduced. Mr. Meyer stated the lot will be improved. Ms. Callaway stated the situation is being made better. Vice Chair Anderson stated it would not be contrary, as the purpose is to keep the runoff from the lake, the lot has a slope to it, and steps are needed to safely access the lot. Mr. Bickford stated the plans stay within the grandfathering.

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

Mr. Meyer stated it is being observed as the intent is to preserve the lake and the plans will do that. Ms. Callaway stated the house is being made narrower which will reduce the appearance of crowding, which is part of the ordinance. Vice Chair Anderson stated the ordinance is to protect the lake and the plans will do that. The Board agreed.

Granting the variance would/would not do substantial justice because:

Mr. Bickford stated it will do justice as both the property owner and the town will benefit from the improvements. Vice Chair Anderson stated the homeowners will get a home the same size as the existing home; she stated there will be less runoff into the lake. Chair Jarvis stated substantial justice will be done as the public is gaining by having a septic tank moved back from the lake; there will also be storm water management measures installed. The Board agreed.

For the following reasons the value of surrounding property would/would not diminish because:

Chair Jarvis stated the values would not be diminished for reasons previously discussed. The Board agreed.

Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- *There is/is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance to this property because:*

Vice Chair Anderson stated it would be a hardship if the variance was denied; the public purpose of the ordinance is to keep the lake clean, and the applicants are doing the best they can. Ms. Callaway stated it would be an unnecessary hardship and significant improvements have been made to the property because of the site restraints such as septic, parking, and required vegetation.

- *The proposed use is reasonable because:* The Board agreed the proposed use is reasonable.

Motion: *Based on the application signed December 15, 2022, plans dated February 21, 2023, the information received at the public hearing of March 31, 2023, to grant variances to the following:*

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.

With the following conditions:

- The applicant shall obtain a Conditional Use Permit from the New Durham Planning Board.
- The applicant shall obtain New Hampshire Department of Environmental Services Shoreline Permit and Septic System approval.
- The applicant shall comply with all applicable federal, state, county and municipal laws.
- The applicant shall receive approval from the New Durham Health Officer for the septic tank. The applicant shall submit "As Built" plans at the conclusion of construction before a Certificate of Occupancy is issued.

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The Board took a five-minute recess.

Rehearing for 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 applicant was requesting the variance “to permit construction of dwellings on a Class VI Road”.

Chair Jarvis stated at both the December 13, 2022, and January 10, 2023, meetings no member of the Board felt they had a real or perceived conflict of interest. She asked if this had changed. No changes were indicated.

Chair Jarvis stated at both the December 13, 2022, and January 10, 2023, meetings no member of the public felt a ZBA member has a real or perceived conflict of interest and asked if this has changed. None were indicated.

Chair Jarvis stated the application was reviewed at the December 13, 2022, meeting and the Board found the application to be incomplete.

At the January 10, 2023, Zoning Board of Adjustment meeting, the application was determined to be complete. At the meeting of January 10, 2023, a public hearing was opened, the ZBA discussed and considered the five variance criteria. The Board then voted 4-0-0 to not grant the variance.

Chair Jarvis stated a letter dated February 10, 2023, was received from Attorney Ratigan, Mr. Rhodes’ representative, requesting a rehearing. At the February 14, 2023, ZBA meeting, the Board voted: 3-1-1 to approve the request for a rehearing: Ms. Callaway – yes; Mr. Meyer – no; Mr. Bickford - yes; Chair Jarvis – aye; Vice Chair Anderson - abstain.

The rehearing was scheduled for March 16, 2023; however, the applicant and the applicant’s representative requested a continuance as only three Zoning Board of Adjustment members would be present. At the March 16, 2023, meeting, the Board approved the request and continued the rehearing to today, March 31, 2023.

Chair Jarvis confirmed a notice of this hearing was put in *The Baysider* and all abutters were sent a Public Hearing Notice.

Chair Jarvis read the Public Notice into the record. She stated all of the information from the initial hearing and testimony from all the parties, has been made available to all the Board members and will be incorporated as part of the record for the rehearing.

Chair Jarvis read into the record a letter received on March 30, 2023, from abutter, Melanie McGuire, Jenkins Road, in opposition to application.

The public hearing was opened at 10:39AM.

Peter Rhoades, applicant, addressed comments made in the letter and by abutters; he stated he purchased his house on Jenkins Road, almost 30 years ago; he studied the Class VI Road guidelines in effect at the time. He stated ever since he bought the properties, there has been a policy for building on a Class VI Road; he stated per state law, the Board of Selectmen have a right to restrict but they have not said that and there is a policy which permits building, with guidelines. He stated the guidelines were only changed in the last 10 years. Mr. Rhoades stated that he was approved years ago to build on Jenkins Road, with only widening the road, with approval from the Board of Selectmen and the Road Agent. He stated he wasn't ready to build at that time. He reiterated that he bought the properties at a time when there were not substantial hurdles to build on the road. Mr. Rhoades stated when he lived on the road, he took care of it and the current residents are now taking care of it; he stated the odds are good that future owners will also take care of it. He stated he talked to the Fire Chief about this, and he did not have concerns about future passage of the road as he has legal right to come in and do what's necessary to make it passable and assess the owners of the road. Chair Jarvis stated she hasn't been able to find the statute supporting that degree of authority to the Fire Chief.

Attorney Ratigan stated Mr. Rhoades' request is consistent with all the zoning criteria; he stated the proposal to upgrade the portion of the road, Bennett Road, adjacent to the lots owned by Mr. Rhoades, is consistent with what was discussed at the Technical Review Committee meeting. He stated it is also consistent with the variance for the road upgrade that the Board granted to the Whites on Libby Road. Attorney Ratigan stated the house formerly owned by Mr. Rhoades, on the opposite side of the road, would have greater public safety and health benefits because travel will be along the upgraded portion of the road. He stated photos were submitted showing the current standard of Bennett Road and the current conditions of Jenkins Road. He stated the three lot owners can be responsible in their deeds, for this portion of the Class VI road.

Ms. Callaway asked if this is upgraded to Class V standards and construction is allowed, will the property owners on the opposite side of the road be able to build. Attorney Ratigan stated the road would continue to be a Class VI road with only a portion of it (Bennett Road) being maintained by the three land owners. Ms. Callaway questioned if there is any way to ensure costs or levies aren't placed on land owners on the other side, who do not have permits to build. Attorney Ratigan stated the tax assessment is separate from the Zoning Board; he stated it is up to the Board of Selectmen to grant building permits and assessing as needed.

Chair Jarvis asked Road Agent Cardinal if Jenkins Road is a Class V or Class VI at its intersection with Bennett Road. Road Agent Cardinal confirmed it is Class VI; he confirmed Jenkins Road in that area is not built to Class V standards and would need to be upgraded. He stated he would want to see Bennett Road built to Class V standards, without paving.

Chair Jarvis asked if having construction vehicles on the road could possibly damage Jenkins Road. Road Agent Cardinal stated that is certainly possible.

The Board reviewed the *"Town of New Durham Guidelines for the Board of Selectmen Guidelines Regarding Construction on Class VI Road"*. Chair Jarvis asked if the standards are stricter than Class V standards. Road Agent Cardinal stated they are pretty much identical. Mr.

Rhoades stated he received an email from the Fire Chief, confirming there are no concerns. Chair Jarvis stated she does not have a copy of that.

Chair Jarvis referenced the meeting minutes of the July 27, 2022, Technical Review Committee meeting indicating Mr. Rhoades would need letters of approval from the Fire and Police Chiefs. Mr. Lacroix confirmed he does have copies of that correspondence.

Mr. Rhoades asked the Board to consider that his proposal will work to preserve the rural character of the neighborhood; he stated a total of 70 acres would only be three house lots. Chair Jarvis asked if the variance were granted, would he be agreeable that there be no further subdivision of the properties. Mr. Rhoades stated he would. Chair Jarvis stated the road would need to be inspected regularly, with necessary maintenance costs assessed to the current owners. Mr. Rhoades stated he believes that would be unfair and isn't sure he would want to agree to that and it is not being done in the White case. Ms. Callaway stated previous cases don't set a precedent and she wasn't around for that case. Mr. Rhoades stated the White case involved a woodlot which the deed restricted to any building. Mr. Rhoades stated he has enough road frontage, he could put in a parallel road, and create a large subdivision on the land. He stated he is willing to do this proposal instead, which will have a much smaller impact on the area.

Chair Jarvis opened the hearing to input from the public.

Jon Chase, resident on Jenkins Road, stated per the Guidelines, this proposal should be viewed as a subdivision and the Planning Board's guidance after reviewing the case, was that it should be treated as such. Mr. Chase stated the proposed upgrades are not to Class V standards and the proposal is worded such that it is to be similar to Jenkins Road, and not actual Class V standards. Mr. Chase stated he thinks the petition from all the local residents addresses the justice and public interest criteria; he stated in regard to property values, the area residents value that property in its natural state.

Ron Gehl, resident, Jenkins Road, stated this case has been before many boards and entities in Town, with various plans being rejected over the last few years. He stated the road upgrade would be a minimum requirement and the regulations require pavement for Class V standards. He stated the threat by Mr. Rhoades, to put in a new subdivision, would be extraordinarily difficult and costly; he finds it unlikely that proposal would pass muster with the Planning Board since it is at the end of a $\frac{3}{4}$ mile cul-de-sac (Jenkins Road). Mr. Gehl stated the statement of purpose of the Class VI guidelines specify that the Board may entertain a petition to reclassify a road or there can be a petition warrant article to lay out a Class V road. He stated the history of these lots shows that there have been numerous rejections over the last 20 years. Mr. Gehl stated what this Board enunciated at the prior hearing was well laid out and there is no reason to believe conditions have changed since that time.

Mr. Bickford questioned why this case would be treated differently and paving not required. Chair Jarvis stated she only put that out as a possibility; she stated Class V standards do require pavement but it is very expensive. Attorney Ratigan pointed out that not all Class V roads currently in town are paved. Mr. Meyer stated it doesn't mean that it is acceptable now. It is

unclear when Jenkins Road was classified as a Class V (Town maintained.) road. Chair Jarvis stated she is concerned about the testimony received that the Class V portion of Jenkins Road is not built to Class V standards, but going forward any new roads in Town would need to meet Class V standards. She stated she doesn't want to see any road go in that doesn't meet those standards. She noted one of the conditions of the variance granted on Libby Road was it be built to Class V standards, with the exception of paving. It was noted it was only a single lot and not a subdivision.

Chair Jarvis closed the public hearing at 11:35AM.

Findings of Fact:

- Lot 16 is 2.8 acres and is bordered with 480 feet on Libby Road, 610 feet on Bennett Road 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 the property owners.
- There is one other house on Bennett Road at 10 Bennett Road – (Chase/McGuire). They can access their house from Ridge Road.
- The applicant plans to build three houses – one on each lot.
- 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 is proposing to upgrade approximately 1440 feet of Bennett Road from his three lots to Jenkins Road “to the same quality of road construction as Jenkins Road”.
- Regarding the condition of Jenkins Road: Testimony has been received stating Jenkins Road is:
 - “Literally and structurally superior to Bennet Road.”
 - Has substantial washed out areas.
 - Jenkins Road is a substandard Class V Road.
 - The Road Agent has stated it is not totally compliant with Class V standards.
- Three letters have been received opposing the request for a variance.
 - Melanie McGuire, two letters, dated December 12, 2022; second one received March 3, 2023.
 - Kristen Guilmette, email dated December 13, 2022.
- A petition signed by 14 people or 90% of the residents of the neighborhood (according to testimony) has been received opposing this request.
- The applicant is agreeable to restrictions being on any approval he might receive which would restrict subdivisions on all three lots for up to 25 years and until the Legislative Body accepts Bennett Road.
- Regarding the proposal changing the character of the neighborhood: Conflicting testimony has been received.
 - The applicant states “it will not alter the essential character of the neighborhood.”

- Other individuals have stated if subdivisions are allowed it will change the essential character of the neighborhood due to increased traffic and less wildlife in the area.
- It is also felt this is premature development in the area.
- A letter was received from Paula Fuller, a local realtor who stated “this variance request, when granted, will not have the effect of diminishing the value of surrounding properties.”
- The July 27, 2022, minutes of the Technical Review Committee state: “Mr. Lacroix said that Mr. Rhoades would need a letter from Police Chief Bernier along with Fire Chief Varney’s approval.” Those letters are attached to the minutes of the meeting.
- Comparisons have been made between Bennett Road and Libby Road; however, they have different classifications since Libby Road is a discontinued road while Bennett Road is a Class VI road. (Later stricken as a fact.)
- Guidelines of the Board of Selectmen Regarding Construction on a Class VI Roads state: The standards for existing multiple lots or dwelling units, two or more lots and or two or more dwelling units, to which the Class VI road may be brought, are those set out in the roadway related subdivision relations initially approved by the New Durham Planning Board on November 15, 1988.

Mr. Bickford questioned if Libby Road is truly a discontinued road. The Board agreed to strike that fact.

Vice Chair Anderson noted the Planning Board previously reviewed the case, and she believes it was ruled that the subdivision standards would have to be followed, including the road standards within the subdivision regulations; however, confirmation would be needed. Attorney Driscoll stated the Planning Board opinion is not part of this rehearing for a variance request.

Ms. Callaway stated the guidelines for issuing a permit on Class VI roads stated that where more than one house is being proposed, it is to be considered a subdivision. She questioned if there is a difference in how they incorporate that into this case. Chair Jarvis confirmed that the guidelines indicate such a proposal is not considered a subdivision, but subdivision regulations have to be followed.

Chair Jarvis stated Board members have previously scheduled obligations, so this meeting needs to end strictly at noon time. She suggested continuing the public hearing at this point before moving to the Discussion portion.

Motioned: *To continue the Public Hearing for Case #2022-014 to April 11, 2023, at 7:00PM, at the New Durham Town Hall.* Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Review and Acceptance of Case #2023-003

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

Continued to April 11, 2023, at New Durham Town Hall.

Town of New Durham Zoning Board of Adjustment Meeting
March 31, 2023
Approved May 19, 2023

APPROVAL OF MINUTES

February 14, 2023 – Postponed.

FUTURE MEETINGS

April 11, 2023, 7:00PM, New Durham Town Hall

ADJOURN

Motion: *To adjourn.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer - aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The meeting was adjourned at 11:55AM.

Respectfully Submitted,
Jennifer Riel, Recording Secretary