

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
April 11, 2023, 7:00PM
*New Durham Town Hall***

PRESENT

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

ALSO PRESENT

Joseph Driscoll, Esq., Mitchell Group- Town Counsel
Tom Varney, Varney Engineering LLC, representative for the applicant
Matthew Lopiano, applicant
Peter Rhoades, applicant
John Ratigan, Esq., DTC PLLC representative for the applicant
Nancy Rhoades- via Zoom
Will Cardinal, Road Agent

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:02 PM.

Roll call was taken for Board members present.

Election of Officers

Motion: *Terry Jarvis continue as Chair of the Zoning Board of Adjustment.* Motion by Mr. Bickford. Seconded by Ms. Callaway. **Motion passed, 4-0-1. (Chair Jarvis abstained).**

Motion: *Wendy Anderson to continue as Vice Chair of the Zoning Board of Adjustment.* Motion by Ms. Callaway. Seconded by Mr. Meyer. **Motion passed 4-0-1. (Vice Chair Anderson abstained).**

Continued 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 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 the ZBA and considered the five variance criteria. The Board then voted 4-0-0 to not to grant the variance.

Chair Jarvis stated a letter dated February 10, 2023, was received from Attorney Ratigen, 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 3 Zoning Board of Adjustment members would be present. At the March 16, 2023, meeting, the Board approved the request and continued the rehearing to March 31, 2023. Due to time constraints, the public hearing of March 31 was closed and the deliberations continued to April 11.

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, 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 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.

Chair Jarvis stated since the last meeting, she was informed that she attended the October 6, 2022, Planning Board meeting via Zoom and made comments. She stated her comments were to ask the Board of Selectmen for additional information and she stated she did not want to see premature development and increased burden to the Town. Mr. Bickford stated he was also at the meeting as a member of the Planning Board. No objections to Chair Jarvis and Mr. Bickford continuing with the hearing of the case were indicated.

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 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 (Jenkins Road) is not totally compliant with Class V standards.
- Three letters have been received opposing the request for a variance.
 - Melanie McGuire sent two letters, one dated December 12, 2022, and a second one received March 30, 2023.
 - Kristen Guilmette sent an 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 a 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.
- Guidelines of the Board of Selectmen Regarding Construction on 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.”

Discussion- Variance Article V Section B.1

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

Mr. Bickford stated it would be contrary because he hasn't heard reasons why they should go outside the ordinance to allow this; he stated he is concerned about using a Class VI Road to build homes on and building on a road that is owned but not maintained by the Town. He stated a road needs to be opened before permits are granted for building. Vice Chair Anderson stated it would be contrary as she doesn't see a reason why granting a variance for three lots at once is necessary; she stated there is nothing in the public interest to allow this. Ms. Callaway stated she believes it would be contrary; Town residents have been clear on the regulations they want in place for going forward with development and she doesn't see any supporting information that says why these particular lots should be granted a variance to go forward. Mr. Meyer stated it increases the burden on Town resources due to inadequate infrastructure.

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

Ms. Callaway stated it would not be observed and making an exception for these properties would go against all the planning that has been done in Town; she stated the spirit is to make sure development and building in Town can be supported with sufficient services. Mr. Meyer stated it would not be observed as the intent is to minimize building on Class VI roads; he stated it would increase the burden on the Town. Vice Chair Anderson stated the spirit is to control development and ensure healthy growth; she stated there are no compelling reasons to allow development and to add more area of coverage for the Fire and Police departments. She stated the Town has not planned for this additional development; she stated there needs to be controlled development so there can be appropriate planning. Mr. Bickford stated it is not in the spirit of the ordinance as it clearly states no development on a Class VI Road.

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

Chair Jarvis stated substantial justice would be done to the applicant; she stated even if the road was upgraded for the Town, the Town resources must be considered, and the fact is there is no way to compel future residents to maintain the road. Mr. Meyer stated it would do justice to the applicant, but it would not do justice to the Town as there would be an increased burden on the Town resources and infrastructure. Ms. Callaway stated the justice to the applicant far outweighs any benefit to the Town. Vice Chair Anderson stated there is no loss to the applicant as they have lots that aren't buildable now and she doesn't see a gain to the public by granting the variance and there would be more of a strain to the public. Mr. Bickford stated there is no justice to the public.

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

Chair Jarvis stated a letter was received from a realtor whose opinion is that values would not be diminished; she stated she doesn't see anything in the proposal that would decrease the values. Vice Chair Anderson stated she doesn't see any compelling reason at this point that values would be diminished. 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:*

Mr. Meyer stated nothing has been presented that indicates these lots have any unnecessary hardships or to distinguish it from other properties in the area. Ms. Callaway stated there are no unique characteristics for these three lots that would support a hardship. Chair Jarvis stated she doesn't see anything that distinguishes these lots from other lots in the area. Vice Chair Anderson stated these lots have no special conditions when compared to other lots in the area, and she doesn't see a hardship. Mr. Bickford stated he doesn't see any special conditions.

- *The proposed use is reasonable because:*

Chair Jarvis stated this area is residential, recreational, and agricultural and putting houses on these lots is reasonable. Mr. Meyer agreed. Ms. Callaway agreed the use is reasonable if not on a Class VI Road. Mr. Bickford stated the use is not reasonable as it is on a Class VI Road. Vice Chair Anderson stated the use would be reasonable if not on a Class VI Road.

Have the criteria in A been established?

- *If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use.*

Ms. Callaway stated there are no conditions that distinguish the properties from other properties in the area. Mr. Meyer stated no special conditions were presented. Mr. Bickford agreed. Vice Chair Anderson stated they are being asked to distinguish between properties but no special conditions have been presented for these three lots and there is nothing special about them. Chair Jarvis stated she doesn't recall any special conditions being presented that would distinguish these lots from other lots in the area.

Motion: *Based on the plans with a revision date of November 12, 2022, the revised application signed November 2022, the March 31, 2023, Public Hearing, and the Findings of Fact at that meeting I move to grant the variance request 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.*

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Mr. Meyer – nay, Ms. Callaway – nay, Vice Chair Anderson – nay, Mr. Bickford – nay, Chair Jarvis – nay. **Vote:** 0-5-0. **Motion fails.**

Motion: *Based on the plans with a revision date of November 12, 2022, the revised application signed November 2022, the March 31, 2023, Public Hearing, the Findings of Fact outlined at that meeting I move to deny the request for a variance to:*

Article V Section B.1: *Dimensional Requirements for Town of New Durham. 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 being issued.*

The variance request is contrary to the Public Interest and contrary to the Spirit of the Ordinance because this would increase the burden on Town resources while at the same time providing development where none is permitted. The ordinance specifically states all buildings shall be on a Class V or better Road.

The variance would not do substantial justice as development would provide a significant gain to the applicant but a loss to the public due to the strain on Town resources. Denying the variance poses minimal loss as the applicant's property has not been distinguished from other properties similarly situated and the Town's resources would not be strained.

The variance request does not demonstrate that literal enforcement would result in an unnecessary hardship because, although the use is reasonable, the applicant has not presented any evidence that there are special conditions of the property that distinguish it from the others in the area. Rather, the applicant presented evidence of his willingness to upgrade the road.

The variance request does not demonstrate an unnecessary hardship under the alternative statutory test, as special conditions that distinguish it from other properties are required to grant a variance and none were presented.

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Mr. Bickford – nay, Vice Chair Anderson – nay, Ms. Callaway – nay, Mr. Meyer – nay, Chair Jarvis – nay. **Vote:** 5-0-0 **Motion passes.**

The Board took a five-minute recess.

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 26s and 69.

Applicant is requesting 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 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.

Chair Jarvis stated the application was originally scheduled to be reviewed on March 10, 2023. Since there were only three Board members present, the applicant's representative requested a continuance to March 31, 2023. A second request for a continuance was received and granted on March 31, 2023, as the applicant had a family funeral to attend.

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.

The Board reviewed the application to determine if it was materially different from Case #2022-015. Chair Jarvis stated when she reviewed the plans for this case, she noted the proposed structure has been moved back completely; the proposed shed has been reduced in size to 124 square feet; the impervious surface has been reduced from 29% to 12.9%; the driveway is becoming a porous infiltration driveway; 116 square feet of gardens have been added.

MOTION: *The application for Case #2023-003 is materially different than the application for Case #2022-015.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Motion passed, 4-0-1.** Vice Chair Anderson abstained as she doesn't have the current application to review.

MOTION: *The application for Case #2023-003 is complete.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Motion passed, 4-0-1.** Vice Chair Anderson abstained as she doesn't have the current application to review.

Review and Acceptance of Case #2023-004

Application submitted by Varney Engineering LLC, on behalf of Joseph and Alison Opolski for property located at 181 North Shore Road, Map 101 Lots 39 and 086.

They are requesting Variances to:

Article VI Section C.3.a.: General Provisions/Use Regulations for Town of New Durham. General Requirements.

a. Sewage Disposal and Leach field Setbacks

- i. 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.
- ii. 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 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.

The applicants wish to add a garage addition to the existing house.

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.

The Board reviewed the application for completeness.

MOTION: The application for Case #2023-004 is complete. Motion by Chair Jarvis. Seconded by Mr. Meyer. **Motion passed, 4-0-1.** Vice Chair Anderson abstained as she doesn't have the current application to review.

PUBLIC HEARING– Case #2023-003

Chair Jarvis read the case and Public Notice into the record.

Chair Jarvis opened the public hearing at 8:19 PM.

Chair Jarvis read a letter into the record from Anthony and Deborah Bonanno, abutters at 315 South Shore Road, received on March 15, 2023. The abutters strongly recommended that no variance be granted because the water related structure in the proposal is 12 feet by 12 feet and is large enough to be a bunkhouse; the 20-foot right-of-way overflows every spring and causes erosion into the lake and is sensitive to disturbance as it's sandy and loose and they are opposed to any changes to the right-of-way.

Tom Varney, Varney Engineering LLC, representative for the applicant, stated the applicant is proposing to construct a shed for storage of water-related items; the building would be recessed

into the existing slope and retaining walls will be placed with the regrading of the slope. Mr. Varney stated the driveway will be reconfigured and storm water measures will be installed. He stated an application has been submitted to NH DES for a Shoreline Permit. He stated the shed will be behind the 75-foot setback and within the side 15-foot setbacks. Mr. Varney stated there will be two catch basins near the road. He stated there are not four parking spaces as no one lives at the property and they don't need that many spaces. It was noted there are two parking spaces on the lot but there is space on the lot across the street. Mr. Varney stated the Town is doing work along the road to mitigate the stormwater runoff.

Chair Jarvis asked how much the driveway width has been reduced. It was noted the driveway is going from 20 feet wide to 12 feet wide. It was noted garden space is being added as well as a retaining wall along the middle and upper portions of the property; a fence will be installed along the property line and be four feet or less in height as well as along the retaining walls.

Chair Jarvis asked if Mr. Varney is familiar with an engineering study that was done. Mr. Varney stated the plans would be for runoff outside the property.

Road Agent Cardinal explained there will be catch basins, and these will be tied into the main culvert, which will be replaced; the work is planned for this year, and they will probably work in conjunction with this project.

Mr. Lopiano stated, ideally, he would like to see the Town's work completed and then they can tie in their systems and the retaining walls; he stated Mr. Varney looked at the concerns outlined by the Bonannos, and the conditions aren't as the Bonannos are describing. He stated the Bonannos have done unpermitted projects which violate setbacks. Mr. Lopiano stated these plans meet all the setbacks, and Mr. Varney's plans for storm water management will catch more of the runoff than is currently there. He stated his goals are to protect the lake and make it easier for him to utilize his property. He asked the Board to consider that his objective is to better the environment and the longevity of the property.

Chair Jarvis opened the Public Hearing to members of the public. No one spoke.

Chair Jarvis closed the public hearing at 8:48PM.

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

Findings of Fact:

- The applicant proposes to construct a utility shed for the storage of water related items and maintenance of the lot.
- The property has 20 feet on the lake shore; 20 feet on the road and 102 and 104 feet on the sides.
- The lot is 2,116 square feet (0.048 acres).
- Lot 26 has space for three vehicles, not the required four.
- The proposed building will be 77 feet from the lake.

- The proposed building will be 144 square feet.
- The building coverage is currently 0%; the proposed is 16.8%.
- The impervious surface is currently 14.1%; the proposal will be 12.9%.
- The shed will have electricity; no living space is proposed.
- There will be 116 square feet of gardens installed.
- About 60 square feet of garden will be a 2-foot wide, 18 foot long and 20 foot deep infiltration trench.
- The proposed shed is 12 feet wide and 12 feet long.
- The ordinance requires a building to be 15 feet from the property lines on each side. There will be 2 feet on the eastern side and 6 feet on the western side.
- There will be a set of 4.5-foot-wide stairs on the western side of the property.
- There will be a retaining wall along the lower portion of the property, and eastern and western sides of the property which is 16 inches wide, 34 feet long and 1 foot high.
- There will be a retaining wall along the middle portion of the property, which is 16 inches wide, 11.5 feet long and will have a four-foot-high fence.
- On the top portion of the eastern side of the property, there will be a two feet high by two feet long retaining wall.
- There will be a retaining wall along the middle and upper portion of the property on the western side of the property that is 0.5 feet wide and 38 feet long.
- The driveway will be made porous with an infiltration bed.
- The driveway size will be decreased from approximately 20 feet wide to 12 feet wide.
- On the western side of the driveway there will be a two-feet wide by 11 feet long retaining wall.
- Across the top of the lot in front of the driveway there will be a two-feet wide 12 foot long retaining wall.
- According to the plans, the year-round brook is located on the property of Map 113, Lot 25.
- 1,009 square feet of land will be disturbed.
- A NH DES Shoreline Impact Permit for this project is required.
- Item #2 of the deed states “no building except a boat house shall be erected on this strip of land providing shore frontage for the back lots.”
- The proposed shed is eight feet lower than the parking lot.
- The Town is planning to replace two catch basins in 2023.

Vice Chair Anderson suggested discussing Article XXI Section C.2 first, in the event they deny that variance for nonconformity, then they may not continue with the remaining variance requests. The Board agreed.

Discussion- Variance Article XXI Section C.2:

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

Mr. Meyer stated he doesn't believe it would be contrary. Ms. Callaway stated a lot of improvements are being made particularly with regard to storm water management as well as reducing the impermeable surface; however, she is still concerned with the large size of the shed which seems to be too big for the lot. She stated it seems like a shed, impermeable steps and retaining walls are going to be significant obstacles for infiltration. She stated they are proposing a lot to be done to improve the permeability of the lot; she suggested if the shed was smaller there would be less roof space. Mr. Meyer agreed that the shed is big for the lot. Chair Jarvis stated she believes it is in the public interest as the impervious surface is being reduced from 29% to 12.9%; infiltration trenches will be constructed to gather water along with other storm water management including a porous driveway. Ms. Callaway stated the encroachments on the side setbacks will make the lot more nonconforming; she stated there is no building envelope for this lot. Chair Jarvis stated the building size and lot coverage are within the ordinance. Vice Chair Anderson stated there are great improvements for infiltration of water and safety but she is concerned about the actual building; she stated the expansion makes an existing lot more nonconforming and she is concerned these access lots are for access and not building although water related structure is allowed by deed. She stated she believes it changes the use of the lot. Vice Chair Anderson stated she is also concerned about the stream on the western side possibly eroding the retaining wall on the abutting lot; she is also concerned about making a lot more nonconforming and changing a lot from an access lot to a building lot. Mr. Bickford stated he is concerned with setting precedent in allowing access lots to have a building; he suggested it needs to go before the Planning Board to see if they want to allow building on access lots; he stated it would make a lot more nonconforming.

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

Mr. Bickford stated the spirit is not observed for reasons previously outlined. Ms. Callaway stated she doesn't believe it's being observed for the same reasons as previously discussed. Mr. Meyer stated he believes it is in the spirit. Chair Jarvis stated she believes it is in the spirit as significant improvements are being made to the storm water management and impervious surface; the building is within the ordinance requirements.

3. Granting the variance would/would not do substantial justice because: Chair Jarvis stated she believes substantial justice is being done as the applicant gets a storage building he can use; the public gains significant improvements in storm water management as well as a 16% decrease in impervious surface. Mr. Bickford stated they shouldn't be doing tradeoffs and doesn't believe its substantial justice. Ms. Callaway stated the improvements to storm water management are good but she is concerned about all the retaining walls and whether the rain water will actually go into the catch basins; she stated they are looking at putting a building where there shouldn't be a building. She stated she has concerns with the size of the building as it is larger than needed for a shed. Mr. Meyer stated it is a large shed but it improves the functionality of the lot. Vice Chair Anderson stated she appreciates the storm water management improvements but she is still concerned with the size of the building; she stated the loss to the applicant is not outweighed by the loss to the public; she stated it's still an access lot and they retain access to the lake which

was the intention of the lot. She stated the public isn't gaining anything as the lot is changing from an access lot to a building lot.

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

Chair Jarvis stated she doesn't believe the values would be diminished as there are going to be improvements with the stormwater management. Mr. Meyer agreed. Ms. Callaway stated she doesn't see an affect one way or another. Vice Chair Anderson and Mr. Bickford agreed.

5. 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 there is nothing special about this lot to warrant a variance. Vice Chair Anderson stated the special conditions of the property don't make a hardship because it is an access lot not a building lot; she stated the applicant still has access. Ms. Callaway stated there are no hardships; she stated an access lot doesn't convey any additional uses for the property. Mr. Meyer stated the current conditions are that it's a grassy slope and the ground is crowned so probably floods to the abutting property; he stated he believes for these reasons the variance should be granted. Chair Jarvis stated between many lots in the area with a house on it, there is an access lot so it's hard to say the property has features which make it different from the other properties. She stated she agrees there is a significant slope and it could be difficult to get up and down it to access the water but she isn't sure if it's enough to meet the criteria of making the lot significantly different.

- *The proposed use is reasonable because:*

Vice Chair Anderson stated she doesn't believe it's reasonable to change an access lot to a lot with a building which goes past the setbacks and makes the lot more nonconforming. Mr. Bickford and Ms. Callaway agreed. Mr. Meyer stated he believes the use is reasonable as it will remain an access lot with improvements. Chair Jarvis stated the storm water management and improvements in safety for getting up and down the hill are reasonable; putting a shed on a lot is reasonable but the size is not reasonable in her opinion.

Have the criteria in A been established? B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use.

Mr. Bickford stated the lot is usable for its intended use and unnecessary hardship does not exist. Vice Chair Anderson stated a variance is not necessary to allow continued use of the access lot; she stated the lot does not have any special conditions compared to other access lots. Ms. Callaway stated the property can be reasonably used without a variance. Mr. Meyer agreed. Chair Jarvis stated she doesn't see any special conditions for this lot; she stated it is an access lot

and many access lots on South Shore Road have the same problems with accessing the water. She stated the reasonable use is as an access lot.

Motion: *Based on the plans dated February 2, 2023, application signed February 20, 2023, and the public hearing of April 11, 2023, and identified Findings of Fact, to grant the request for a variance to the following:*

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.*

With the following conditions:

- The applicant will receive a Conditional Use Permit from the New Durham Planning Board.
- The applicant will receive a Shoreline Permit from NH DES for the installation of the shed.
- The applicant shall comply with all required permits and permissions from any federal, state, county or municipal government.
- The applicant will provide the Building Inspector/Code Enforcement Officer with as-built plans.

Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Mr. Meyer - aye; Ms. Callaway - no; Vice Chair Anderson – no; Mr. Bickford - no; Chair Jarvis - aye. **Motion failed, 2-3-0.**

MOTION: *Based on the plans dated February 2, 2023, application signed February 20, 2023, and the public hearing of April 11, 2023, and identified Findings of Fact, to deny the request for a variance to the following:*

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.*

Based on the following reasons:

- *The variance request is contrary to the public interest and the spirit of the ordinance. It would not be in the public interest to build a building into the setbacks especially since it is an access lot. It makes the use more nonconforming and allows a building to be built within setbacks and would increase the crowding.*
- *It is not in the spirit of the ordinance to change from an open space access lot to a lot with a building.*
- *Granting a variance would not do substantial justice because it is still an access lot which is usable to access the water and water activities.*
- *There is no hardship because there is no evidence that there are special conditions that would distinguish it from others in the area.*

- *The proposed use is not reasonable to build a building within the setbacks because it is an access lot not meant for building; a variance is not necessary to use it as an access lot.*

Motion by Vice Chair Anderson. Seconded by Ms. Callaway. **Roll Call Vote:** Mr. Meyer - no; Ms. Callaway - aye; Vice Chair Anderson – aye; Mr. Bickford - aye; Chair Jarvis - no. **Motion passed, 3-2-0.**

Mr. Varney stated they would not continue with the remaining variance requests.

Motion: *To continue the Public Hearing for Case #2023-004, Joseph and Alison Opolski for property located at 181 North Shore Road, Map 101 Lot 39 and 086, to May 9, 2023, 7:00PM, at New Durham Town Hall.* Motion by Chair Jarvis. Seconded by Mr. Meyer seconded the motion. **Roll Call Vote:** Ms. Callaway – yes; Mr. Bickford - yes; Mr. Meyer- aye; Vice Chair Anderson - aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

APPROVAL OF MINUTES

Postponed.

FUTURE MEETINGS

May 9, 2023, 7:00PM, New Durham Town Hall

ADJOURN

Motion: To adjourn. Motion by Mr. Meyer. 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 10:07PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary