

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT**

June 16, 2023, 7:00 PM

New Durham Town Hall, New Durham, NH 03855

MEMBERS PRESENT

Terry Jarvis, Chair

Linda Callaway, Member

David Bickford, Member

Bill Meyer, Member

Wendy Anderson, Vice Chair – Excused absence

ALSO PRESENT

Susan Stillwell, Land Use Assistant

Matt LoPiano, Applicant

Josh Thiebeault, Varney Engineering

Tom Varney, Varney Engineering

Debra and Anthony Bonanno, Abutters/Residents

CALL TO ORDER

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

AGENDA REVIEW

No changes were made to the agenda.

Review and Acceptance of Case #2023-008

Application submitted by Varney Engineering LLC, on behalf of Matthew Lopiano, for property located at 309 South Shore, Map 113 Lot 26 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 asked if any member has a real or perceived conflict of interest. None was indicated.

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

The Board reviewed the application to determine if it was materially different from Case #2023-003.

MOTION: *The application for case #2023-008 is materially different than the application for case 2023-003.* Motion by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

The Board reviewed the application for completeness. It was noted the plans submitted are not the correct scale size although the ones submitted do appear to have sufficient detail.

MOTION: *To waive the requirement for plans to be 1 inch = 20 feet.* Motion by Mr. Bickford. Second by Mr. Meyer. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

MOTION: *To accept the application for Case #2023-008 as complete.* Motion by Chair Jarvis. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Chair Jarvis read the case and public notice into the record. She confirmed the public notice was advertised in *The Baysider*, posted at Town Hall and the post office; all abutters were notified by certified mail.

Chair Jarvis stated the public hearing was originally scheduled for June 13, 2023; at that meeting, a motion was made and passed by the Board to continue this application to June 16, 2023, due to time constraints.

Chair Jarvis opened the public hearing at 7:23 PM.

Tom Varney, Varney Engineering, representative for the applicant, stated the proposal is for the construction of a utility shed for storage of water-related items; the building will be recessed into the steep slope; retaining walls will be placed and the driveway will be reconfigured. Stormwater measures will be installed. A hedge is to be installed in front of the shed to block it from the view from the lake. The building coverage has been reduced from 6.8% to 3.8%. Mr. Varney explained the property was altered in the 1990s when the driveway across the road was put in and materials were dumped here; there is a steep slope to get up the hill from the water and the proposal will bring the land back to a more natural topography. There will be steps down to the shed and the lake; the driveway will be reconfigured to direct water away from the stream that goes to the lake. He stated the lot is grass and the applicant uses the right-of-way area to enjoy the lake.

Mr. Lopiano stated the Town has easements for the catch basin areas along the sides of the right-of-way; stormwater management work is proposed for this year by the Town on the sides of the 20-foot right-of-way. He stated this will reduce silt and runoff. A video showing water runoff in the area was presented for review. Mr. Lopiano stated he is trying to do what is best for the lake, and neighbors and his goal is to improve the runoff into the lake. He stated he would like to have a user-friendly access lot; he stated he has made efforts to meet the setbacks and reduced the size of the shed. Mr. Lopiano confirmed the State approved the Shoreline Permit. Chair Jarvis asked how much parking is on this lot; she stated across the street parking would only be considered if the lots are tied by deed. Mr. Varney stated two cars can park on this lot. It was noted the building will be 77 feet from the lake. Mr. Lopiano stated there will be four-to-five-foot arborvitaes installed behind the flower beds/shrub garden; a new flower bed/shrub garden will be installed near the shoreline. There will also be a hedge row of arborvitaes along the side of the shed.

Chair Jarvis noted the driveway is decreasing from 20 feet to 12 feet wide. She noted the Shoreline Permit is dated May 5, 2023. Ms. Callaway suggested alternatives to grass, something with a better root system. Mr. Lopiano stated he has also considered blueberry and raspberry bushes.

Chair Jarvis opened the public hearing to abutters.

Anthony Bonanno, abutter, stated they have owned their property since 1950 and haven't cut any trees since then; he explained the natural contour of his lot and the proposed shed is going to be below the natural contour in that area. He stated 2 feet will also be shaved off the height of his property line; a 40-foot concrete retaining wall is needed because of the depth of the land being cut out. Mr. Bonanno stated he has 100-year-old trees along the property line and is very concerned about the excavation destroying the roots. He stated he has watched Mr. Lopiano create a beach and rebuild a dock in the last few years; he presented a copy of documentation from NH DES indicating there is no permit on file for the beach and the deck doesn't meet the permit requirements. Mr. Bonanno stated the proposed plans are in complete violation of excavation guidelines for waterfront property and he is very concerned about the effects on the area.

Mr. Lopiano stated the Johnsons, abutters, have no concerns about the proposal.

Chair Jarvis stated in the record is an NH DES Shoreline Permit 2023-00824 and it indicates the requirements of RSA 483-B.

Debra Bonanno, abutter, stated the Johnsons have nothing on their side of the lot that would be destroyed by the proposed work. She stated work being proposed is drastic and she is very concerned about the effects it will have on their trees.

Mr. Lopiano stated many things the Bonannos have said are incorrect; he stated their property has been manipulated. He stated the beach on his property as well as the dock, were existing and he only replaced it.

Chair Jarvis opened the public hearing to members of the public. None was indicated.

Chair Jarvis closed the public hearing at 8:02 PM.

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

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; 20 feet on the road; 102 and 104 feet on the sides.
- The lot is 2,116 square feet or 0.048 areas.
- 1693 square feet of land will be disturbed.
- Lot 26 has space for two vehicles, not the required four.
- The proposed building will be 77 feet from the lake.
- The building coverage is currently = 0%. Proposal = 3.8% which is within the ordinance.
- Impervious surface is currently = 14.1%. Proposal = 9.9% which is within the ordinance.
- The proposed building will be 80 square feet. (8 feet wide and 10 feet long)
- There will be approximately 115 square feet of garden installed.
- Above the area of 60 square feet of flower bed/shrub garden there will be two foot wide, 18-foot long and two-foot-deep infiltration trench.
- Four-to-five-foot Arborvitaes will be installed behind the flower beds/shrub garden.
- A hedge is to be installed in front of the shed to block it from view from the lake.
- A new flower bed and shrub garden will be installed near the shoreline.
- The ordinance requires a building to be 15 feet from the property line on each side. There will be two feet on the eastern side and six 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 on both the eastern & western property line 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 on the eastern property line which is 16 inches wide, and 11.5 feet long with a four-foot-tall fence on top.
- On the top portion of the property on the eastern side there will be a two-foot wide by 12 feet long retaining wall.
- There will be a retaining wall along the middle and upper portion of the property on the western property line that is 0.5 feet wide and 38 feet long.
- There will be approximately five feet of porous patio surrounding the shed.
- The driveway is to be made porous with an infiltration bed.
- The driveway size has been decreased from approximately 20 feet wide to 12 feet wide.
- On the western side of the driveway there will be a 2-foot wide by 11-foot long retaining wall.
- Across the top of the lot in front of the driveway there will be a two-foot wide 12-foot long retaining wall.
- According to the plans the year-round brook is located on the property of Map 113 Lot 25.
- The distance from the perennial stream to the property line is 4+/- feet at the lake end.

- NHDES Shoreland Impact Permit: Approval dated 5/5/23 “Impact 1,693 sq ft to construct a shed, retaining wall series and a pervious stepped walkway, convert a parking area to pervious surface, landscaping and regrading.”

Discussion Variance – Article XXI, Section C2

Granting the variance would/would not be contrary to the public interest: Mr. Meyer stated granting the variance would be reasonable; he stated a storage shed for water-related items is not contrary. Ms. Callaway stated an 8 by 10-foot shed for water-related items is reasonable and would not be contrary however, she is concerned that when this is all done, it will be a developed lot for multiple purposes, other than just access. She stated she understands physical limitations of an owner but the percentage of disturbance near the water bothers her. Ms. Callaway asked if the catchment system when installed properly will alleviate the water issues or will other mitigation factors be needed. She stated she is concerned that there is so much else being done to the lot, that it is no longer going to be just an access lot; the shed alone to serve a purpose is reasonable but there is more going on with the lot, making it more non-conforming due to the amount of disturbance. Chair Jarvis stated a permit has already been obtained with NH DES for the work around the shoreline; the applicant would not have to come before the Board to do any of the excavation and retaining walls. She stated she is favorable to getting rid of the lawn areas and improving the contours to improve the runoff into the lake; she stated the proposed plants will help with stormwater management. Mr. Meyer reiterated the terrain is not natural and was disturbed many years ago from the driveway across the road. Chair Jarvis stated she doesn't believe it is contrary to the public interest. Mr. Bickford stated he is concerned about the shed and there is no reason enough to have the shed on this lot that is an access way.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated she believes the spirit is observed with the stormwater management changes being made which are in line with the ordinance. She stated that a large number of plantings have been incorporated with the plans. Ms. Callaway stated she agrees with the small shed; however, she is uncomfortable with the busyness and while there are efforts to improve the stormwater management she would feel better with less lawn and bigger root systems. She stated they also need to ensure the neighbors' property line is not going to be impacted. Chair Jarvis suggested adding a condition that the remaining lawn be replaced with something with a greater root system. Mr. Bickford stated it would not be in the spirit of the ordinance because the ordinance prohibits it.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated she believes it would do substantial justice to both the applicant as well as the public because it will greatly improve the storm water runoff to the lake. Mr. Meyer stated the storm water measures will improve the runoff going into the lake which benefits everyone. Mr. Bickford stated it would not do substantial justice because it is an access lot and this development is not allowed on this lot in the ordinance.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't see how it would be diminished. Mr. Bickford stated if it kills the

trees along the property line, it will be detrimental and affect values. Ms. Callaway stated she doesn't believe values will be diminished.

Unnecessary Hardship: Chair Jarvis stated it will be difficult to use the lot in compliance with the ordinance; she stated the lot is difficult to get up and down and it's a safety factor. Mr. Meyer stated the lot is difficult to use and creates a hardship. Ms. Callaway stated the steps are a good safety measure and a narrow pathway is allowed to access the water so she is fine with that. Mr. Bickford stated he doesn't believe there is an unnecessary hardship because there are other lots with the same steepness.

Chair Jarvis stated an 8 by 10 foot shed is reasonable. Ms. Callaway and Mr. Meyer agreed. Mr. Bickford stated it is not reasonable because the ordinance doesn't allow it.

MOTION: *Based on the plans dated May 15, 2023, the application signed May 22, 2023, tonight's Public Hearing, the Findings of Fact and Evidence in the Record I move to grant a variance to:*

***Article XXI Section C.2. 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: 2. 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 shall obtain a Conditional Use Permit from the New Durham Planning Board if required.
- The applicant shall comply with all applicable federal, state, county and municipal laws.
- The applicant will submit a revised cover letter with a revised plan date.
- The lawn remaining as depicted on the May 15, 2023 plan shall be replaced with plantings with aggressive root systems.

Motion by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-no; Chair Jarvis-aye. **Motion passed, 3-1-0.**

Discussion Variance – Article V, Section D

Granting the variance would/would not be contrary to the public interest: Mr. Meyer stated it would not be contrary to the public interest because the ordinance would not allow anything to be built on the lot. Ms. Callaway stated it would not be contrary because the shed is smaller; the orientation means that there is no encroachment on abutting properties. She stated the lot is narrower when looked at from the lake and the shed will be partially obscured by shrubs. Chair Jarvis stated it is not contrary; she stated without the variance, the walls and steps could be put in anyway; she stated the changes with the stormwater management will increase the quality of runoff into the lake. Mr. Bickford stated it is contrary because it is not allowed on this lot.

The spirit of the ordinance would/would not be observed because: Mr. Meyer stated it would be observed for the reasons listed previously. Ms. Callaway agreed. Mr. Bickford stated it would not be observed because it's not allowed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated justice will be done to both the property owner and the lake with improvement to the water runoff into the lake. She stated there will be improvements to the stormwater management systems. Mr. Bickford stated all these things can be done without a shed. Ms. Callaway stated she agrees there will be justice. Mr. Meyer stated granting the variance will allow for improvements to the lake in a trade-off.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't believe values will be diminished for values previously stated. Ms. Callaway and Mr. Meyer agreed.

Unnecessary Hardship: Chair Jarvis stated due to the steepness of the lot, it is a hardship. Mr. Meyer stated the purpose of the land is to access the lake and due to the steepness, there is a hardship. Ms. Callaway agreed. Mr. Bickford stated he doesn't agree there is a hardship and there are many lots with steep slopes; he stated this should go before the Planning Board first.

Chair Jarvis stated the proposed use is reasonable. Ms. Callaway and Mr. Meyer agreed. Mr. Bickford stated he doesn't believe the proposed use is reasonable.

MOTION: *Based on the plans dated May 15, 2023, the application signed May 22, 2023, tonight's Public Hearing, the Findings of Fact and Evidence in the Record I move to grant a variance 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.

With the following conditions:

- The applicant shall obtain a Conditional Use Permit from the New Durham Planning Board if required.
- The applicant shall comply with all applicable federal, state, county and municipal laws.
- The applicant will submit a revised cover letter with a revised plan date.
- The lawn remaining as depicted on the May 15, 2023, plan shall be replaced with plantings with aggressive root systems.

Motion by Chair Jarvis. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-no; Chair Jarvis-aye. **Motion passed, 3-1-0.**

Discussion Variance – Article XIV, Section C.8

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary; she stated even though the lots aren't connected by deed, there is sufficient parking on Lot 69. Ms. Callaway stated it is not a lot with a house on it so having just two spaces is reasonable. Mr. Meyer and Mr. Bickford agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it is being observed; there are two spaces and the parking area is being made smaller and pervious. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do substantial justice, particularly if there was an easement or the lots were tied by deed.

Ms. Callaway stated there is evidence in the record that the properties are tied by deed.

MOTION: *Based on the plans dated May 15, 2023, the application signed May 22, 2023, tonight's Public Hearing, the Findings of Fact and Evidence in the Record, a variance to Article XIV, Section C.8 is not needed.*

Motion by Chair Jarvis. Second by Ms. Callaway. **Discussion:** Mr. Bickford asked if these variances were recommended by the Building Inspector. Chair Jarvis confirmed they were but she isn't sure if deeds are reviewed by the Building Inspector. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-no; Chair Jarvis-aye. **Motion passed, 3-1-0.**

APPROVAL OF MINUTES

Meeting of March 16, 2023- Edits were made. **MOTION:** *To approve the minutes as amended.*

Motion by Ms. Callaway. Second by Mr. Meyer. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Meeting of May 19, 2023- Edits were made. **MOTION:** *To approve the minutes as amended.*

Motion by Chair Jarvis. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Meeting of May 12, 2023- Edits were made. **MOTION:** *To approve the minutes as amended.*

Motion by Chair Jarvis. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Meeting of May 12, 2023- Non-public session. Edits were made. **MOTION:** *To approve the minutes of the nonpublic session as amended.* Motion by Chair Jarvis. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Meeting of March 31, 2023- Non-public session. Edits were made. **MOTION:** *To approve the minutes as amended.* Motion by Mr. Meyer. Second by Ms. Callaway. **Roll Call Vote:** Ms. Callaway-aye; Mr. Meyer-aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 4-0-0.**

Review of Zoning Board Procedures

The Board reviewed and discussed the Procedures. Ms. Callaway suggested edits; she stated she would like to see square footage, lot coverage, impermeable and impervious calculations and percentages included in the application. She also suggested the date of septic system approval would be helpful to have included. The Board discussed revising procedures to address the length of testimony and restricting back and forth discussions during public hearings. Chair Jarvis will work on the edits discussed.

Town of New Durham Zoning Board of Adjustment Meeting

June 16, 2023

Approved August 8, 2023

NEXT MEETING

July 11, 2023

ADJOURN

MOTION: To adjourn the meeting. Motion by Chair Jarvis. Second by Mr. Meyer **Motion passed, 4-0-0.**

The meeting was adjourned at 10:03 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary