

Town of New Durham Zoning Board of Adjustment Meeting

July 11, 2023

Approved August 8, 2023

TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
July 11, 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

Heather Freeman, Member

ALSO PRESENT

Susan Stillwell, Land Use Assistant

Christine Bonoli-Stohlberg, applicant

Tom Varney, Varney Engineering, LLC

Deborah Randall, architect

Denise Bonoli – via Zoom

Michael Teller – abutter, via Zoom

Aimee and Mark Federico, applicants – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00 PM.

Chair Jarvis stated a letter of resignation was received July 1, 2023, from Vice Chair Wendy Anderson. She stated Ms. Anderson has been on the Board for over 17 years and thanked Ms. Anderson for her service.

Chair Jarvis stated at the last meeting she presented a suggested change to the Rules and Procedures that Section H.12, should be deleted in its entirety; this section regards making all motions in the affirmative.

MOTION: *To delete Section H.12 of the New Durham Zoning Board of Adjustment Rules and Procedures.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 4-0-0.**

Chair Jarvis presented a copy of the current fee list for review by the Board; she stated the advertising costs in *The Baysider* are consistently higher than the fees collected. It was confirmed with New Hampshire Municipal Association that eliminating the newspaper advertisement requirement per RSA is not applicable to Zoning Boards of Adjustment so print publications must continue.

MOTION: *To increase the newspaper fees for cases from \$100 to \$150.* Motion by Chair Jarvis. Second by Mr. Meyer. **Motion passed 4-0-0.**

Chair Jarvis introduced Heather Freeman who expressed interest in becoming a member of the Board. Ms. Freeman explained her experience and background, indicating she is happy to fill a vacancy; she has watched the online recordings for a while.

MOTION: *To appoint Heather Freeman as a regular member to the vacancy on the Zoning Board of Adjustment.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 4-0-0.**

Ms. Callaway administered the oath of office to Ms. Freeman.

Due to "some issues of non-compliance, it is necessary to remind attendees of some of the ZBA's Rules for Public Hearings

- If a ZBA member decides to step down from a case, their decision is final. It is not open to debate by anyone in the audience. If they wish, they can consult with other members of the board, but they do not have to. Their decision is final.
- Only ZBA members shall speak during the review of applications for completeness. Board Members may ask the applicant or their representative(s) clarifying questions without the action being a Public Hearing. It is not the time to submit evidence in support of the case.
- In accordance with the Procedural Rules for the Town of New Durham Zoning Board of Adjustment individuals other than the applicant and abutters will be limited to three (3) minutes of comments. The Chair may limit repetitive comments. Any individual that has spoken shall not speak a second time until all other members of the public have had the opportunity to speak. All individuals shall address the Board directly and not address any applicants, their representatives, or other member of the public.
- All questions shall go through the Chair."

AGENDA REVIEW

No changes were made to the agenda.

Deliberations and Decision for Case # 2023-007

Application submitted by Thomas W. Warney, PE of Varney Engineering, LLC on behalf of Christine A. Bonoli for property located at 149 Merrymeeting Road, Map 240 Lot 048.

The applicant is requesting Variances to:

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.8: Shorefront Conservation Overlay District Dimensional Requirements: All development with water frontage or with rights of access to water frontage 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 feet wide by 21 feet 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 G.1.a: Non-Conforming Buildings, Land or Uses. The following setbacks are required for non-Conforming buildings, land and uses addressed by this Article. Leach fields: Not less than ten (10) feet from a lot line.

The applicant wishes to replace the septic system and allow for two parking spaces.

Chair Jarvis stated at the May 9, 2023, meeting of the Zoning Board of Adjustment, the application was deemed to be complete; at that time, no member of the Board had a real or perceived conflict of interest with hearing the case.

Ms. Callaway noted the building is moved back to the 75-foot setback and will be within the zoning ordinance.

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

Chair Jarvis read the public notice into the record and opened the public hearing at 7:23 PM.

Tom Varney, Varney Engineering, LLC, representative for the applicant, stated there is currently a mobile home on the property and the applicant wants to replace it with a house within the setbacks; a new well and septic system will be installed. A NH DES Shoreline permit is required as well as a New Durham Conditional Use Permit from the Planning Board. Maps and plans, along with photos were presented of the existing lot as well as the proposed plans. Mr. Varney stated the lot is 50 feet wide and 150 feet long; it is level and goes down to Jones Pond. He stated the proposed house will be within the building envelope and meet all setbacks; the mobile home and foundation will be removed. Mr. Varney stated there is only room for two parking spaces due to the locations of the septic tank and leach field. He stated the house will be two stories; the mobile home has two bedrooms, and the proposed house will have two bedrooms.

Ms. Freeman noted not all abutters' septic systems are indicated on the plans; she questioned if there would be an impact. Mr. Varney stated the proposal leach field could be shifted a couple feet to give more space.

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

Chair Jarvis closed the public hearing at 7:38 PM.

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

Findings of Fact

- The property is located in the Aquifer Protection Overlay District.
- The property is located in the Conservation Focus Area and the Shorefront Conservation Area.
- The property is 50 feet wide and 150 feet deep.
- The property is mostly cleared with lawn areas and primarily level with a steep slope down to Jones Pond.
- The proposal will remove the current mobile home and replaces it with a two-story house.
- The proposed house will have a partial slab foundation and a partial full foundation.

- Currently 17.1% of the property is covered by impervious surface; the proposal is 19.1% which is within the Zoning Ordinance.
- The current building coverage is 8.7%; the proposed is 12.6% which is within the Zoning Ordinance.
- The mobile home is 43 feet from the high-water mark; the proposal has the house 75 feet from the high-water mark which makes it conforming with the ordinance.
- The mobile home has two bedrooms; the proposed house will have two bedrooms.
- The current septic tank is 96 feet from Jones Pond; the proposed tank is 125 feet from Jones Pond, which is conforming.
- The current leach bed is 125 feet from the Pond; proposed leach bed is 139 feet from Jones Pond. The proposed leach field will be installed within 6 feet of the property line and 3 feet of the road.
- A new well will be installed.
- The property currently has two parking spaces; the proposal is for only two spaces as additional spaces would put the property over the 20% impervious surface.
- Pervious technology cannot be used in the driveway area due to the proposed location of the septic system.

Discussion – Variances Article VI Section C.3.b (i) and Article XXI Section G.1.a

Granting the variance would/would not be contrary to the public interest: Mr. Meyer stated it would not be contrary as it's the only way to fit the home on the lot. Ms. Callaway stated it is not contrary; it is more important that the leach field be further from the water and the neighboring properties and the road; she stated a new system will be an improvement. Chair Jarvis stated she agrees it would not be contrary because the septic is being moved back from the water and a new system is going to be more compliant with current standards. Ms. Freeman stated she agrees with previous comments, and it demonstrates the best attempt to comply with the ordinances. Mr. Bickford agreed it is not contrary because of the limited space and it won't cause any detriment to the future of the area.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is being observed with a new system being moved back from the lake; the soil in the area is conducive to leaching and she doesn't see what else could be done. The Board agreed.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated it would to substantial justice because a new leach field is being installed; it is the only place that it could go in order for the applicant to get the new house which is beyond the 75-foot setback; she stated the applicant went to great lengths to comply with as many of the rules as possible. Mr. Meyer stated he agrees substantial justice will be done. Chair Jarvis stated it will give the property owner a new house and the Town will get a new septic system further back from the water; the house will be outside the 75-foot setback. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't believe property values will be diminished. The Board agreed.

Unnecessary Hardship: Mr. Meyer stated the proposal is a presentable two-story house and it fits the lot as well as possible. Chair Jarvis stated due to the size of the lot, it makes it difficult to put the system this far back from the pond without encroaching on the side setbacks but to deny the variance for a new septic system would be an unnecessary hardship. Ms. Freeman stated there is a fair and substantial relationship and denial would result in unnecessary hardship because the intent of the ordinance has been complied with. Mr. Meyer agreed an improved septic is reasonable. Ms. Callaway stated the new septic system is reasonable and in the only possible location. Chair Jarvis stated the use is residential and will remain residential; it would not do substantial justice to the Town as it would allow an old system to remain.

MOTION: *Based on the plans dated April 14, 2023, the application signed April 17, 2023, and tonight's public hearing, the findings of fact and evidence in the record, to grant the request for a variance to the following:*

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 XXI Section G.1.a: Non-Conforming Buildings, Land or Uses. *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 a New Hampshire Department of Environmental Services Shoreline Permit and septic system approval.
- The applicant shall comply with all federal, state, county, and municipal laws.
- The applicant shall receive approval from the New Durham Health Officer for the septic system.
- The applicant shall submit As-Built plans at the conclusion of construction before a Certificate of Occupancy is issued.

Motion by Chair Jarvis. Second by Mr. Meyer. **Motion passed 5-0-0.**

Discussion - 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 because it is a single-family home with two bedrooms being replaced with a single-family home with two bedrooms; there is no adequate space for additional parking areas without increasing the impervious surface; she stated she would rather see just two parking spaces than more land covered. Mr. Meyer stated he agrees there is no room for more than two spaces and that is adequate for a two-bedroom home. Ms. Callaway stated it would not be contrary and the road is wide enough for a designated parking area and it would not cause a road hazard. Ms. Freeman stated she doesn't believe it would be contrary to the public interest. Mr. Bickford stated he believes it would be contrary; the house is being expanded 45% and the

ordinance is to restrict expansion of houses on small lots unless adequate parking spaces can be made.

The spirit of the ordinance would/would not be observed because: Ms. Callaway stated she doesn't believe it is contrary to the ordinance; she noted the building coverage is 12.6% which is under the ordinance limit and the impervious coverage is also under the limit; she doesn't believe the house is too big for the lot. Chair Jarvis stated she believes it is in the spirit of the ordinance to move the septic and leach field back; because those are moved back, impervious surface for more parking spaces cannot be added. Mr. Meyer agreed. Ms. Freeman stated she doesn't think it is unreasonable to have a house under 900 square feet on this size lot; she stated it is consistent with the spirit of the ordinance as this size house with two car spaces is reasonable. Ms. Callaway stated it is more important to have the house and septic behind the setbacks than the two extra spaces.

Granting the variance would/would not do substantial justice because: Mr. Meyer stated he believes justice is done because it allows construction. Ms. Callaway stated it allows for a reasonably sized house on a small lot which is centered as much as possible and won't appear crowded. Chair Jarvis stated it will do justice; the Town is benefiting because of moving the house out of the 50-foot setback with an updated leach field and believes it is reasonable. Ms. Freeman agreed. Mr. Bickford stated there is a 25% expansion with a second floor; he stated with more expansion there will be more people and believes there needs to be the required parking spaces.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the value won't be diminished as there is a new house and new septic system. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated she thinks the requirements for four parking spaces is superseded by the gains with the property; she stated the property is so small, 0.17 acres, which is significantly less than other lots in the area, she prefers to see less impervious surface. Ms. Callaway stated it would be an unnecessary hardship as the lot is small and cannot support four spaces and a reasonably-sized home. Mr. Meyer stated four spaces are not needed for a lot this small. Ms. Freeman stated she agrees the small lot creates a hardship for four spaces. Mr. Bickford stated he believes there needs to be four spaces and doesn't agree there is a hardship. The Board agreed the proposed use is reasonable.

MOTION: *Based on the plans dated April 14, 2023, the application signed April 17, 2023, and tonight's public hearing, the findings of fact and evidence in the record, to grant the request for a variance to the following:*

Article XIV Section C.8: Shorefront Conservation Overlay District Dimensional Requirements: *All development with water frontage or with rights of access to water frontage 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*

feet 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.

With the following conditions:

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

Motion by Chair Jarvis. Second by Ms. Callaway. **Motion passed 4-1-0.** Mr. Bickford opposed.

Review and Acceptance of Case #2023-009

Application submitted by Varney Engineering LLC, on behalf of Mark and Aimee Federico for property located at 342 South Shore Road, Map 113, Lot 052.

The applicants are requesting Variances to:

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

Article XIV Section C.8: Dimensional Requirements

8. 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.

The applicants wish to remove the existing cottage and build a new house back from the lake.

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

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

The Board reviewed the application for completeness. There was discussion regarding the need to have half of the septic plan being part of the record.

MOTION: *That the plan regarding half of the septic be admitted to the record of the application.* Motion by Ms. Freeman. Second by Mr. Bickford. **Motion passed 3-2-0.** Chair Jarvis and Mr. Meyer opposed.

MOTION: *To accept the application for Case #2023-009 as complete.* Motion by Chair Jarvis. Second by Ms. Callaway. **Motion passed 5-0-0.**

Chair Jarvis read the public notice into the record and opened the public hearing 8:38 PM.

Chair Jarvis read a letter from the New Durham Building Inspector into the record, indicating the plans he originally reviewed on May 30, 2023, did not include four parking spaces, however, the plans submitted to the ZBA on June 15, 2023, do include four parking spaces. He requests to withdraw the request for a variance to Article XIV, Section 8.

MOTION: *A variance to Article XIV, Section 8 is not needed.* Motion by Chair Jarvis. Second by Mr. Meyer. **Motion passed 5-0-0.**

Tom Varney, Varney Engineering LLC, the representative for the applicants, stated the applicants want to tear down the existing house and construct a new building further back from the lake. The proposed house will be within the building setbacks; the lot coverage is reduced from 30.8% to 19.1%; the leach bed will be moved across the road; a NH DES Shoreline Permit will be required. The existing septic system was approved by NH DES in 1993.

Mr. Varney stated the proposed house will be within the side and front setbacks; the well stays the same. He stated the parking lot will be porous, there will be a porous patio for stormwater management. He noted there is serious erosion on the lot and when the existing house is removed, the hole of the foundation will be filled in. Mr. Varney noted about 1/3 of the house and garage is in the 50-foot setback; behind the 75-foot setback is not quite the whole garage. The proposed house will have two bedrooms and the current house has three bedrooms.

Chair Jarvis notes the warranty deed of 1994 grants permission to have the leach field on the lot across the street.

Ms. Callaway asked if there are any plans for revegetation where the existing home is located. Mr. Varney stated the plan is for shrubs and natural ground cover.

Ms. Freeman suggested they be sure the deeds are clarified for the lots and make sure the numbers are documented. Mr. Varney stated a new and updated deed will be created for an easement to tie the two properties together when the septic plan is sent to NH DES. Mr. Federico clarified there is currently an easement in the deed but the two properties have not been combined yet until there is approval for this process.

Deb Randall, Architect, stated they tried hard to meet every ordinance with the plans and reiterated the entire house is behind the 75-foot setback.

Michael Teller, abutter, via Zoom, stated they are in favor of the proposal; it is overall better for the lake and moves everything further back from the shoreline.

Chair Jarvis closed the public hearing at 8:53 PM.

Findings of Fact

- The property is 0.3 acres.
- The property has 107 feet of frontage; 109 feet of lake frontage; 89 feet and 122 feet of side depths. The side depths are insufficient to meet the 175-foot setback from the shoreline for the septic tank.
- The property has 5% to 36% slopes.
- The proposal is to tear down an existing three-bedroom house with a garage and build a new three-bedroom house with a full foundation and no garage.
- Currently one-third of the house is within the 50-foot setback; two-thirds of the house is in the 75-foot setback.
- Currently the house is 19 feet from the lake; the proposed house is 75 feet from the lake.
- Current lot coverage is 40.8%; the proposed is 19.1%.
- Current building coverage is 13.2%; the proposed is 15.0%.
- The current septic system will be replaced with a new New Hampshire Department of Environmental Services approved system.
- Currently the septic tank is 54.5 feet from the lake; the proposed is 99.5 feet from the lake.
- Currently the leach bed is 81 feet from the lake; the proposed is 177 feet from the lake.
- The warranty deed signed October 6, 2016, includes permission to have a leach field on what was previously known as Lot 510-A which is now known as Lot 59.
- The driveway will be reconfigured; the width to be a maximum of 30 feet and will be porous.
- The existing deck and walkway will remain.
- Rain gutters and drip edges will be installed; a porous patio is to be installed.

Discussion - 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; while the septic tank is not 125 feet back, it is significantly better at 99.5 feet, than the previous system; the entire property is being improved and made more conforming. Mr. Bickford stated it is not contrary; the septic is being pushed back as far as possible. Mr. Meyer stated it would not be contrary and the approved system is moved back as far as possible. Ms. Callaway stated it is not contrary and the whole plan adds to the wellbeing of the lake. Ms. Freeman stated she doesn't think it will be contrary and doesn't see how it could be placed further back.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is being observed with a new septic being placed as far back as possible. She stated the entire proposed plan will improve runoff going into the lake. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do justice to the applicants, the Town, and the lake. Ms. Callaway stated it does justice for both the homeowner and the public. The Board agreed.

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

Unnecessary Hardship: Chair Jarvis stated denial would result in a hardship; the property is 0.3 acres and is not deep enough to meet the ordinance; the leach field will be across the street and there is no other place to put the septic within the ordinance. The Board agreed.

MOTION: *Based on the plans dated June 15, 2023, the application signed June 14, 2023, and tonight's public hearing, the findings of fact and evidence in the record, to grant the request for a variance to the following:*

Article VI Section C.3.a.i: General Provisions/Use Regulations for Town of New Durham. General Requirements Sewage Disposal and Leach field Setbacks. *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.*

With the following conditions:

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

Motion by Chair Jarvis. Second by Mr. Meyer. **Motion passed 5-0-0.**

APPROVAL OF MINUTES

Meeting of June 13, 2023- Postponed.

Review of Rules and Procedures

The Board reviewed and discussed the Rules and Procedures presented. Chair Jarvis stated this draft includes all edits previously submitted. Further edits were made.

MOTION: *To accept the Procedural Rules for the Town of New Durham Zoning Board of Adjustment as amended on July 11, 2023, and send to Town Counsel for review.* Motion by Mr. Meyer. Second by Ms. Freeman. **Motion passed 5-0-0.**

ADJOURN

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

The meeting was adjourned at 9:48 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary