

*New Durham Zoning Board of Adjustment Meeting
July 14, 2020
Approved July 23, 2020*

**TOWN OF NEW DURHAM
ZONING BOARD OF ADJUSTMENT
MEETING
July 14, 2020, 7:00 PM
at “ZOOM” Virtual**

In accordance with Governor’s Executive Order #12, pursuant to RSA 91-A: 2

Attendees log into:

<https://us02web.zoom.us/j/89623772148?pwd=Z2kvdGpVbTRybTllN0VHeWlvSjJjZz09>

Meeting ID: 896 2377 2148 Password: 306684 Or

via telephone number: 1-646-558-8656; Meeting ID: 896 2377 2148 Password: 306684

Technical difficulties contact Town Administrator Scott Kinmond at skinmond@newdurhamnh.us or by phone at

603-556-1516. Assistance with Zoom application please contact Brian Cauler at

ndlanduse@newdurhamnh.us or

contact Planning Board.

Note: Town of New Durham offers no security assurances to those connecting via PC to a third party software and hardware not configured or controlled by our IT Service provider.

PRESENT

Terry Jarvis, Chair of Zoning Board of Adjustment – via Zoom
Wendy Anderson, Vice Chair of Zoning Board of Adjustment – via Zoom
Stephanie Richard, Zoning Board of Adjustment – via Zoom
Linda Callaway, Zoning Board of Adjustment – via Zoom
Paul Raslavicus, Zoning Board of Adjustment – via Zoom

ALSO PRESENT

Scott Kinmond, Town Administrator – via Zoom
Thomas Varney, Varney Engineering, LLC – via Zoom
Cristopher Salomon, Samyn D’Ella Architects -via Zoom
David Miller, resident – via Zoom
Kara Miller, resident – via Zoom
Bruce Philbrick, resident – via Zoom
Deborah Randall, architectural designer – via Zoom
Wendy Hume, resident – via Zoom
Joseph Hume, resident – via Zoom

CALL TO ORDER

Chair Jarvis called the Zoning Board of Adjustment meeting to order at 7:02pm.

Chair Jarvis confirmed the meeting was posted appropriately with access numbers. She stated that in

the event the public is unable to access the meeting, it would be adjourned and rescheduled. Chair Jarvis stated all motions would be taken by roll call; roll call attendance was taken for those participating in the Zoom meeting. Chair Jarvis asked Zoning Board members to introduce themselves and identify anyone in the room with them. Chair Jarvis asked all members of the public, applicants and applicants' representatives to identify themselves. She confirmed with the applicants and applicants' representatives that they do not object to hearing these cases electronically. No objections were indicated.

Agenda Review

The Board concurred with moving the Review and Approval of Minutes to the end of the meeting.

Review and Acceptance of Case # 2020-009

Application submitted by Amelia Martin Brock of Samyn D'Ella Architects, on behalf of Beverly Grappone. They are requesting variances to the following:

- **Article V Section E:** Dimensional Requirements for Town of New Durham. 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 1(b):** Shorefront Conservation Overlay District Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy five (75) feet from the normal high water level.
- **Article XV Section C. 2 (a):** Water Quality Protection Overlay District Dimensional Requirements. Riparian Buffer Zone Setback Requirements. Riparian areas are generally defined as those areas that influence or are influenced by aquatic systems. For the purposes of Article XV. Water Quality Protection Ordinance, a Riparian Buffer Zone shall be defined as an upland area that is contiguous, and within the buffer setback requirements outlined in Table 8: Buffer Setback Distances in Feet by Resource and Use Category, to a water resource that is considered jurisdictional by the NH Wetland Bureau as defined in RSA 482-A, the boundary of which has been delineated by a Certified Wetland Scientist, and the definition of which shall include vernal pools. Table 8. Buffer Setback Distances by Resource and Use Category below identifies the base buffer setback requirements for each identified resource type. Buffer setback distances in Table 8 refer to the total horizontal distance in one direction from a water resource Reference Line. In cases where an area qualifies under more than one resource category, the largest buffer/setback distance shall apply.
- **Article XXI Section G 2 (b):** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.

The property is located at Map 103, Lot 021, 180 Pine Point Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis asked if any member of the Board feel that they have a real or perceived conflict of interest in this case or have any disclosures to make. None was indicated. Chair Jarvis asked if any member of the public feel that a ZBA Member has a conflict. None was indicated.

Chair Jarvis noted Article XV as requested may not be applicable. Mr. Salomon stated the Building Inspector advised them this variance was needed and concurred with Chair Jarvis that it may not be applicable. The Board concurred.

Chair Jarvis made a motion that a variance to Article XV, Section C.2.a is not required for this application. Vice Chair Anderson seconded the motion.

Roll Call Vote: Ms. Callaway – aye; Ms. Richard –aye; Mr. Raslavicus –aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The Board reviewed the application for completeness. Chair Jarvis stated she confirmed at Town Hall the permanent file shows an easement and right-of-way over Pine Point is on file as it is a private road. However, there is no waiver of liability to the Town; Chair Jarvis suggested that should the variance be granted, it be with the condition that a waiver of liability be filed and accepted by the Board of Selectmen. The Board concurred.

Chair Jarvis noted this is a non-conforming lot and asked if the proposal makes the lot more nonconforming than it currently is. She noted there is no variance request for Article XXI Section C.1 and asked the Board if it should be included. Mr. Raslavicus stated it does. The Board concurred and agreed that Article XXI, Section C.1 and C.2 do apply.

Chair Jarvis stated the applicant has two options: request the ZBA to act on the application as presented and submit a new application at a later date to address any missing variances, or submit all missing materials at least 21 calendar days before the next meeting, which would be due July 21, 2020 for the August meeting.

Chair Jarvis made a motion that the application for Case #2020-009 is not complete as variance requests are required for Article XXI, Section C.1 and Article XXI, Section C.2. Mr. Raslavicus seconded the motion.

Roll Call Vote: Ms. Callaway – aye; Ms. Richard –aye; Mr. Raslavicus –aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Chair Jarvis noted she doesn't see the location of the septic on the plans. Ms. Richard noted the leach field is indicated but the tank is not. Mr. Salomon stated he does not know where it is located, and they will need someone to come locate the tank. Chair Jarvis stated she wants to be sure there is a tank. Ms. Callaway asked where the low wall will be located. Mr. Salomon stated there is an existing deck off the southeast corner of the building; the proposal is to construct a screen porch and add an 18" wall so seasonal storm panels can be installed. Mr. Salomon presented an elevation map for review by the Board. He stated it won't be less nonconforming and won't expand the footprint. Mr. Raslavicus noted a variance for Article XXI, Section F is also needed. Chair Jarvis stated the septic needs to be located. Ms. Richard stated she disagreed that Article XXI, Section F is needed. Mr. Salomon stated it will remain a seasonal screened deck. Vice-Chair Anderson stated it applies as its part of the structure. Ms.

Callaway asked if the roofline would be extended. It was confirmed it will be; the current structure is a deck with a partial overhang so the extension of the roof necessitates the additional variance. Mr. Salomon asked to follow up on the variances requested and then review the remaining three at a later date.

Review and Acceptance of Case # 2020-010

Application submitted by Varney Engineering LLC, on behalf of David and Kara Miller.

They are requesting variances to the following:

- **Article XIV Section C 1(e):** Shorefront Conservation Overlay District Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage 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 2 (c):** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.
- **Article XXI Section G 2 (d):** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.
- **Article V Section E:** Dimensional Requirements for Town of New Durham. 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 1(b):** Shorefront Conservation Overlay District Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level.
- **Article XXI Section G 2 (b):** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.
- **Article XXI Section C 1:** 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 they conform to Non-Conforming Setback and height requirements below;
- **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.

- **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: i. 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. Sewage Disposal and Leach field Setbacks 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: i. twenty (20) feet from a property line on a lot less than 80,000 square feet;
- **Article XIV Section C 1 (c):** Shorefront Conservation Overlay District Dimensional Requirements Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the normal high water level. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities.

The property is located at Map 118, Lot 040, 345 Merrymeeting Road. If the application is deemed to be complete, a Public Hearing may be held.

Chair Jarvis asked if any member of the Board feel that they have a real or perceived conflict of interest in this case or have any disclosures to make. None was indicated. Chair Jarvis asked if any member of the public feel that a ZBA Member has a conflict. None was indicated.

The Board reviewed the application for completeness. It was noted a 35' variance was granted in 1997. Mr. Varney stated he is not sure what it was for, but it appears to be for an addition. The Board agreed it doesn't make a difference to this case and agreed to proceed. Mr. Raslavicus stated he just wanted to know if it was already expanded. Mr. Philbrick, stated he is an abutter to the property and explained a variance was needed at that time as it was going to be too close to the lot line for the addition of a bedroom.

Chair Jarvis made a motion to accept the application for Case #2020-010 as complete. Ms. Richard seconded the motion.

Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Public Hearing – Case #2020-009, 180 Pine Point Road

Chair Jarvis confirmed all fees have been paid, abutters notified and required posting done.

Chair Jarvis opened the public hearing at 7:56pm.

Chair Jarvis read the case into the record.

Mr. Salomon, with Samyn D'Ella Architects, and representative for applicant Beverly Grappone, stated this property is a unique lot; overall three sides of the property are non-conforming with the way the waterfront wraps around the lot. He stated the plans will not expand the footprint, they are looking to utilize an existing deck on the southeast side of the residence and expand upwards and cover the deck; the plans include an 18" wall around the edge of the new screened porch so seasonal glass or plexiglass panels can be placed during the winter, but there is no intention to make this a three season porch. Photos of the existing house and deck were presented for review. Mr. Salomon noted that if it was simply going to be a screen porch, variances would not be needed but since they are adding the 18" wall to the perimeter, variances are needed.

Chair Jarvis asked when the panels would be utilized. Mr. Salomon stated the Grappones go south for the winter and the panels would be used to enclose the structure during the winter. He stated they want to be able to maintain the screen panels and structures while they are away. Chair Jarvis noted there is a fireplace on the plans. Mr. Salomon stated it would be for cool nights in the summer but it is not meant to be a heated structure.

Chair Jarvis stated there was a NH DES application for a three-bedroom septic system in 2007 and asked if this was ever installed. It was noted there are currently three bedrooms in the house; no additional bedrooms are proposed. It was confirmed the proposed screen porch is 325 square feet. Vice-Chair Anderson asked if the existing deck is permeable. Mr. Salomon stated the existing deck is not permeable, water sheds off it to the ground. Mr. Raslavicus noted the extension proposed would be vertical and it will be on the deck not the house. Mr. Salomon confirmed that is correct. Mr. Raslavicus asked if the expansion will increase living space. Mr. Salomon stated it would not. Mr. Raslavicus stated it is his opinion that this will make it more nonconforming as it will be additional living space $\frac{3}{4}$ of the year. He referenced page 20 of the ordinances which references any increase in 3-season, accumulated living area, and is defined as "new development." Ms. Callaway noted this discussion is directed more towards the variances which were not requested and suggested postponing further discussion of these variances as it may affect how they look at Article XXI. Ms. Callaway asked if the drip edge will go over the steps. Mr. Salomon stated those steps would remain down to the patio and would not be covered. It was confirmed the steps are impervious; the structure would be supported by 6x6 posts and the removable panels built into it.

Ms. Richard confirmed they were directed to the ZBA by the Building Inspector because of the roof. Mr. Salomon stated it was the opinion of the Building Inspector that because of the low wall, they need variances. Mr. Raslavicus asked if there is living space in the dormer depicted on the plans. Mr. Salomon confirmed there is a room there but there will not be second floor space over the porch area as it will remain open gable space.

Chair Jarvis then opened the public hearing to comment from abutters. No comments were made. She

opened the public hearing to members of the public. No comments were made. Chair Jarvis closed the public hearing at 8:29pm.

Chair Jarvis stated the members of the Board discussing this case would be Vice-Chair Anderson, Ms. Richard, Ms. Callaway, Mr. Raslavicus and Chair Jarvis.

Findings of Fact:

- The property is 0.75 acres;
- The property has a deeded right of passage over Pine Point Road;
- There is no waiver of liability in the permanent file;
- The property is surround by water on 3 sides, all of which are subject to the 75 ft setback from water;
- The house and vertical expansion will be on the footprint of the current house, but the screened porch will be on a previous open deck;
- The enclosed porch is 340 sq. ft. and will be located where the existing deck and patio are;
- The new porch will be a 3-season porch with seasonal panels and a fireplace;
- The home currently has three bedrooms and will remain three bedrooms;
- The seasonal panels may be used during early spring and late fall as well as during the winter;
- The existing deck is non-permeable;
- There will be no additional living space in the dormer; and
- The seasonal panels and the screened porch will not be insulated.

Chair Jarvis suggested discussing the following variance requests together: Article V, Section E; Article XIV, Section C.1(b); Article XXI, Section G.2.b. The Board concurred.

Discussion- Article V, Section E; Article XIV, Section C.1(b); Article XXI, Section G.2.b

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated its not contrary because there is no change in the impervious area, no change to the overall footprint of the developed area and no expansion to the heated or conditioned living area. Chair Jarvis concurred. Ms. Callaway noted the living space is not being expanded but the usable space is. Mr. Raslavicus stated he doesn't believe it is in the public interest to approve this change in use of the building. Vice-Chair Anderson stated she believes granting the variance would be contrary to the public interest as it is for a building that is less than 75' from the water and it should be considered as part of the building. She doesn't see how the roof, which will be attached, is not being considered a part of the building and will therefore be expanding the building closer to the lake.

The spirit of the ordinance would/would not be observed because: Mr. Raslavicus stated it doesn't support the spirit of the ordinance; he stated if one is in a nonconforming situation, they are allowed to keep what they have but they cannot expand further. Ms. Richard stated she believes the spirit is observed for the reasons previously given. Ms. Callaway stated she believes the spirit is being observed in this case as its utilizing space already created; it is not actual living space. Vice-Chair Anderson

stated the spirit of the ordinance is to keep buildings away from the water and she doesn't believe this follows the spirit of the ordinance.

Granting the variance would/would not do substantial justice because: Vice-Chair Anderson stated she doesn't believe granting the variance would do substantial justice, and the public is not gaining anything although the applicant is. Ms. Richard stated the public isn't gaining anything but also isn't losing anything; the homeowners are gaining more usable area. Mr. Raslavicus stated he is concerned about the cumulative effect of nonconforming buildings expanding closer to the water, and it is important for the public to know that expansion towards the lake is not okay. Chair Jarvis stated it is already an impervious surface, and it is building up on what's there.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated that by adding the screened porch, it will be taxable; she doesn't think it will be visible from other surrounding properties. Ms. Richard stated she doesn't believe it will diminish the values of surrounding properties. Mr. Raslavicus stated it would be visible from the lake and may encourage others to do the same with decks going towards the water. Vice-Chair Anderson stated the values would not be diminished. Ms. Callaway concurred.

Unnecessary Hardship: Chair Jarvis stated if the variances are denied, she doesn't see it resulting in unnecessary hardship. Vice-Chair Anderson concurred; she stated the purpose of the ordinance is to keep buildings back from the lake and the porch is not a needed space for the house. Mr. Raslavicus stated denial will not create a hardship; while it is expanding the space, but taking the deck and making it part of the building. Ms. Callaway stated it is a reasonable use of the space. Chair Jarvis stated it is an impervious deck which when enclosed will still be impervious so the amount of impervious surface will not be increased. Ms. Richard stated the uniqueness of the lot makes it a hardship. Ms. Callaway concurred.

Chair Jarvis made a motion to grant the requests for variances to:

Article V Section E: Dimensional Requirements for Town of New Durham. 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.1.(b): Shorefront Conservation Overlay District Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high- water level;

Article XXI Section G.2.(b): Non Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course;

With the following conditions:

- The "3 season porch" is to remain as such and never be converted to year-round use;
- A signed release of liability for the Town for building on a private road, shall be signed in a format acceptable to the Board of Selectman;

- Requests for variances shall be received from Article XXI Section C.1, Article XXI, Section C.2 and Article XXI, Section F; and
 - Revised plans will identify where the septic system is located. Ms. Richard seconded the motion.
- Roll Call Vote:** Ms. Callaway – aye; Ms. Richard –aye; Mr. Raslavicus –no; Vice Chair Anderson – no; Chair Jarvis – aye. **Motion passed, 3-2-0.**

Public Hearing – Case #2020-010, 345 Merrymeeting Road

Chair Jarvis confirmed all fees have been paid, abutters notified and required posting done.

Chair Jarvis opened the public hearing at 9:20pm.

Chair Jarvis read the case into the record.

Thomas Varney, Varney Engineering LLC, representative for applicants David and Kara Miller, stated this cottage shares a driveway with four other cottages; the Millers purchased the property in 2016 and own an abutting property as well. Mr. Varney stated the cottage on the property is small, the septic system is old and there is a small well on the property. The proposed plan is for the cottage to be demolished and replaced with a building on a full foundation with a second story. Decks are to be built on the sides and lake side; the building would be moved 12.4' further back from the lake. The driveway and tree cover will remain the same and shrubs will be planted along the shoreline. A well and new septic system are to be installed; stormwater measures are to be installed; a New Durham Conditional Use Permit will be required because of the steep slopes, and a NH DES Shoreline Permit will also be required. There will be porous patios under the decks; the water runoff will be infiltrated into the ground from a downspout off the roof.

The existing lot size coverage is 34.2%; the proposed is 38.3%. The building size is 13.5% and will increase to 19.4%. The setback from the lake is 18' currently and the proposed building is 30.4' from the lake. Mr. Raslavicus asked about the road agreement. Mr. Varney stated there is a court agreement on file for it. Chair Jarvis confirmed the Millers own lot 39 and 40; she noted the lot coverage is being increased and suggested a voluntary lot merger. Mr. Varney stated he doesn't see an advantage to that; each lot has its own landscape. Chair Jarvis noted the plans show an existing shed and asked if it would be removed. Mr. Varney replied the proposed plans do not include a shed. Mr. Raslavicus noted that on the water side, due to the elevation, it ends up with three levels. Mr. Varney stated the basement would be a walk-out; the main floor is at the deck level, 10' higher than the floor of the basement. Ms. Randall stated the first-floor sill is 9' off the ground.

Chair Jarvis asked how the driveway is maintained in the winter and whether there is a maintenance agreement with the property owners. Mr. Miller stated they plow their driveway, but there is no formal maintenance agreement with their neighbors. Chair Jarvis stated she is concerned that there is no waiver of liability with the Town and no maintenance agreement. Mr. Varney confirmed there are no buildings after lot 42.

Chair Jarvis asked if the gravel driveway is impervious. Mr. Varney replied it is. Mr. Raslavicus stated there is a significant increase in the percentage of the lot being covered by the house and asked if the house could end at the 50' set back and still have the deck in the front; the building is also expending

upwards and downwards. He suggested making it smaller and moving back more. Mr. Raslavicus stated he would be interested in a site-walk, noting it is a historic part of houses on the lake and sometimes smaller is better. Ms. Randall stated they pulled it back from the lake 12' and moving it up the hill so the shortest part of the house is at the lakeside; it is not obtrusive from the road or the lakeside. The proposed cottage is one story at the closest point to the lake, while the current cottage is two stories; the taller part of the building is past the 50' setback. Ms. Randall stated the proposed cottage will be set further back than the adjacent properties. The current house is 716 square feet; the proposed is 1400 square feet.

Ms. Callaway stated her concern is the building size and the deck being into the 50' setback. Ms. Randall stated the current gravel driveway which is shared by the neighbors is a hinderance; they could move the cottage to meet the roadside setback but it would obliterate the neighbor's driveway. Chair Jarvis noted the house is behind the 50' setback. Mr. Varney stated if they try to elongate the building, they would lose trees but those need to be saved. Mr. Raslavicus recommended the applicant consider looking at what the State wants during the first 50' rather than lawn. Mr. Varney stated that since the lot is over 30% coverage, they have to meet the tree requirements so shrubs and trees will be planted.

Chair Jarvis opened the public hearing to input from abutters.

David Philbrick, applicant, directly adjacent to the lot, stated he supports the project. In regards to the roads, the access road has been unchanged since they've been there since 1985. The neighbors all respect one another and ensure each other can get in and out.

Mr. Varney stated the existing cottage is old and has a crawlspace; overall it is getting obsolete.

Chair Jarvis closed the public hearing at 10:07pm. The members of the board deliberating the case would be Vice-Chair Anderson, Ms. Callaway, Ms. Richard, Mr. Raslavicus and Chair Jarvis.

Findings of Fact:

- The lot is 0.24 acres;
- The lot is 127 feet deep;
- The property shares a driveway with 3 other properties;
- The Millers own Lot 39 which is adjacent to lot 40;
- The proposal will change the impervious surface from 34.2% to 38.3%;
- The building coverage will go from 13.5% to 19.4%;
- The building height is currently 16 feet and will go to 32 feet;
- The house is currently 18' from the lake will move to 34 feet from the lake;
- The entire current house is in the 50 foot setback the proposed house will have about 26% in the setback;
- None of the house will be in the 75-foot setback; approximately 73% of the house will be in the setback;
- All sheds will be removed;
- The ordinance requires the septic tank be 125 feet from the water; the proposed plan is 62 feet;
- The ordinance requires the septic tank be 75 feet from the dwelling; the proposed is 20.5 feet;

- The ordinance requires the leach field from the dwelling be 75 feet; the proposed is 62 feet;
- A new well will be drilled;
- A new septic system will be installed;
- A Steep Slope Conditional Use permit from the ND Planning Board is required;
- A Shoreland Protection permit from DES is required;
- DES approval of the septic system is required;
- Stormwater measures are to be installed;
- The current house is 716 square feet; the proposed is 1380 square feet; and
- A second story is being developed and the building is being expanded in living space below the sill.

Chair Jarvis suggested considering the following four variance requests together as they all speak to lot coverage and impervious surfaces. The Board concurred.

Discussion - Article XIV, Section C.1.(e); Article XXI, Section G2.(c) and Article XXI, Section G 2. (d)

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated she believes this is contrary to the public interest as it is a significant increase in building and impervious coverage. Ms. Callaway concurred and stated for this lot, since they are tearing down the old building, there could be a sufficient building put in beyond the 50' setback which would clear more space for more shrubbery; this would not require the trees being touched. Mr. Raslavicus concurred and stated he is concerned about the vertical and downward expansion; it effectively is a smaller lot and the public interest would be to preserve and restore the structure without doing a massive expansion. Vice-Chair Anderson agreed it is contrary to the public increase due to the significant increase and believes they could get something newer and remain within the bounds of the ordinance. Chair Jarvis stated she is concerned with the increase in impervious surface; the ordinance states 20%, it is 34% and they want to go to 38% which is almost double the ordinance. The building coverage, which is currently within the confines of the ordinance, will increase. She stated the property owners own an abutting lot which could provide other options.

The spirit of the ordinance would/would not be observed because: Ms. Callaway stated the spirit would not be observed for the same reasons as stated above. These ordinances are to keep buildings in proportion to the lots, and there is no way it could go back to the Town limit of 75' but at least back to the 50' would be possible. She stated the ordinance states they don't want to overcrowd the small lots. Ms. Richard concurred. Mr. Raslavicus stated the ordinance is not being observed, mainly due to crowding on the lot and increase in building size. He stated it would be a disservice to the Town to erect this structure at this location. Vice-Chair Anderson stated she concurred; the ordinance is intended to keep the proportion down as a percentage specified, not square footage. She stated they could get a new house within the 15% building size.

Granting the variance would/would not do substantial justice because: Ms. Richard stated she does not think substantial justice will be done; the public is losing out because of the increased coverage in building footprint size. There are other ways to improve it. Ms. Callaway concurred and stated the

Town is not gaining anything by crowding this lot. Vice-Chair Anderson stated that even with the stormwater measures, it is not enough to outweigh the increase in lot coverage. Mr. Raslavicus stated Mr. Varney indicated the building is moved back as far as possible. However, the huge increase in nonconformity is greater than the gain achieved by moving the house further from the lake.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't think surrounding property values would be diminished but wonders if they may be affected due to crowding of the land. Vice-Chair Anderson stated she concurs. She stated it is unknown how the house will be perceived from the lakeside. Mr. Raslavicus is concerned with setting a precedent on crowding these small lots. Ms. Callaway stated she doesn't think it will diminish the values but it depends on the neighbors.

Unnecessary Hardship: Chair Jarvis stated there is not unnecessary hardship as there are other options that won't result in increases in building size and lot coverage. Vice-Chair Anderson stated the applicants may still get a usable size house that is within the ordinance requirements. Mr. Raslavicus stated it comes back to the need to avoid overcrowding small properties; they are too small for this size structure. Ms. Richard concurred and stated the split driveway is a unique feature but it doesn't have any bearing on the issue of lot coverage. Ms. Callaway stated there are things that can be done on this property which would make a nice dwelling for the area.

Chair Jarvis stated all the properties in the area appear to be the same size so, it is not unique to this property. Mr. Raslavicus stated an unnecessary hardship does not exist as there are no distinctions between this property and others in the area. Vice-Chair Anderson stated the property could be used within the ordinances, except with the lot coverage which is already over the 20%. Ms. Richard concurred that it is a unique lot, but it doesn't affect the variances being required; the lot is already over 20% ,but the proposal increases that. Ms. Callaway stated there are options, but this particular structure doesn't fit this lot.

Chair Jarvis made a motion to deny the variance requests to the following:

Article XIV, Section C. 1.(e): Shorefront Conservation Overlay District Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage 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. 2. (c): Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.

Article XXI, Section G. 2. (d): Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No more than a total of t20% of the lot area shall be covered by all impervious surfaces.

Vice Chair Anderson seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard –aye; Mr. Raslavicus –aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

*New Durham Zoning Board of Adjustment Meeting
July 14, 2020
Approved July 23, 2020*

Chair Jarvis noted the time is 10:49pm and noted there are nine variance requests remaining and asked if the Board wants to continue or to schedule a special meeting to review the remaining requests. The Board concurred with continuing the public hearing.

Chair Jarvis suggested considering the following three variance requests together as they all speak to a building's being set back 75 feet. The Board concurred.

Mr. Varney stated they should abandon the remaining variance requests until they come back with another plan. Mr. and Mrs. Miller concurred. The Board concurred. Chair Jarvis requested this be in writing from Mr. Varney and the Millers. Town Administrator Kinmond stated the entire application will need to be withdrawn and refiled. Ms. Randall asked for clarification on the comments of overcrowding and setting a precedent for lot coverage. She noted the side setbacks are being met. Chair Jarvis stated they can't tell her how to redesign. She stated there have been court decisions that say it is within the jurisdiction of zoning boards to determine overcrowding in a given area and can be grounds for denying a variance. Mr. Raslavicus cited NH Supreme Court Case 2017-0294. Ms. Randall stated she understands the Board feels it is overcrowded and wants to know if that is due to the lot coverage or the portion within the 50' setback. Chair Jarvis stated she believes there are alternatives which can be done to allow for an increase in the size of the home beyond what is there now and perhaps decrease the impact on impervious surfaces. She stated they are restricted with what they can say and suggested it would be beneficial for them to listen to the various comments made by the Board. Vice-Chair Anderson stated it comes down to doing the best they can within the ordinances.

Future Meetings

July 23, 2020, 7:00pm, for Review and Approval of Minutes

August 11, 2020, 7:00pm

ADJOURN

Vice-Chair Anderson made a motion to adjourn. Mr. Raslavicus seconded the motion.

Roll Call Vote: Ms. Callaway – aye; Ms. Richard –aye; Mr. Raslavicus –aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The meeting was adjourned at 11:09pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary

Attachment 1

A Checklist to Ensure Meetings Are Compliant with The Right-to-Know Law During the State of Emergency

As Chair of the New Durham ZONING BOARD of ADJUSTMENT, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing **ZOOM** for this electronic meeting. All members of the ZBA and Town Administrator have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone # **1-301-715-8592**, meeting **ID: 896 2377 2148 Password: 306684** or by clicking on the following website address: Join Zoom Meeting

<https://zoom.us/j/769973993?pwd=ek1NSkI3SGZRvYtaWkdzVXZldElpOT09>

Please note the ZOOM electronic meeting will also be on Town Hall Stream via the video link on the website.____

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Select Board at: www.newdurhamnh.us.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:

If anybody has a problem, please call **603-556-1516** or email at: skinmondnewdurhamnh.us.

d) Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that **all votes** that are taken during this meeting shall be done by **roll call vote**.

e. Public Input and Muting

Only members of the ZBA will remain UNMUTED during the meeting. When the Board calls upon an individual they will be unmuted. If you have a question or comment, and are muted, you can click on **participants** (bottom of screen). This will ring a list up on the right side of your screen. At the bottom of the participant list you can click on "raise your hand". During Public input **or** when the Board is accepting public input- public attendees will be unmuted. Please start by restating your name.