

TOWN OF NEW DURHAM  
**ZONING BOARD of ADJUSTMENT**  
**April 22, 2021, 7:00 PM**

*In accordance with Governor's Executive Order #12, pursuant to RSA 91-A: 2  
Attendees log into:*

Meeting ID: 889 9690 6980 Password: 784832

Or via telephone number: 1-646-558-8656; Meeting ID: 889 9690 6980 Password: 784832

*Technical difficulties or For Assistance with Zoom application please contact Land Use  
Administrative Assistant Robin McClain at [ndlanduse@newdurhamnh.us](mailto:ndlanduse@newdurhamnh.us)*

*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– via Zoom  
Wendy Anderson, Vice Chair– via Zoom  
Stephanie Richard, member – via Zoom  
Linda Callaway, member – via Zoom  
David Bickford, member – via Zoom

**ALSO PRESENT**

Robin McClain, Land Use Administrative Assistant – via Zoom  
Tom Varney, Varney Engineering, LLC – via Zoom  
Paul Raslavicus, resident – via Zoom  
Ron Gehl, Chair of Conservation Commission – via Zoom  
Christopher Berry, Berry Engineering and Surveying – via Zoom  
Saphspencer Lessard, applicant – via Zoom  
Samantha Lessard, applicant – via Zoom  
Dot Veisel, resident/abutter – via Zoom  
Walter Shanahan, applicant – via Zoom  
Carol Shanahan, applicant – via Zoom  
Greg Field, resident – via Zoom  
Donna Reiss, applicant – via Zoom  
Joseph Reiss, applicant – via Zoom  
Stephen Rollins, applicant – via Zoom  
Nancy Rollins, applicant – via Zoom  
Sarah Barley, abutter – via Zoom  
Nancy Bodwell, abutter – via Zoom

**CALL TO ORDER**

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

Chair Jarvis stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, pursuant to Executive Order 2020-004, the Town is authorized

to meet electronically. She stated there is no physical location to observe this meeting. However, in accordance with the Order, it was confirmed that they are providing public access to the meeting by telephone, with additional access possibilities by video (Zoom); all members of the Zoning Board of Adjustment and Town Administrator have the ability to communicate contemporaneously during this meeting; the public has access to contemporaneously listen and participate via links posted on the agenda. Chair Jarvis confirmed the meeting was posted appropriately with access numbers. She stated in the event the public is unable to access the meeting, it would be adjourned and rescheduled. Chair Jarvis stated in the event they need to go into non-public session, a separate phone number will be used for the Zoning Board of Adjustment members to use and they will then reenter nonpublic session.

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 if there are objections to these cases being heard electronically. None were indicated.

**CONTINUED PUBLIC HEARING Case # 2021-005**

*Application submitted by Berry Engineering and Surveying LLC, on behalf of Saphspencer and Samantha Lessard.*

Applicants are requesting Special Exceptions to the following:

**Article VII Section A.1.(b) Special Exceptions. Uses Permitted by Special Exception. Uses Permitted by Special Exception.** The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception.

**Article VII Section A.1.(d): Special Exceptions. Uses Permitted by Special Exception. Uses Permitted by Special Exception.** The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception.

They are also requesting Variances to:

**Article VI Section C.3.(b)(iii) 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: less than forty (40) feet from a property line on a one hundred fifty thousand (150,000) square feet lot.

**Article XII Section F.2 Aquifer Protection Overlay District.** Prohibited Uses. Automobile service stations junk or salvage yards.

**Article XV Section C.2.(a) Table 8: 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. a. 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.

The property is located at 210 NH Route 11, Map 257, Lot 007-001.

The application was originally reviewed on February 9, 2021 and found to be complete. Due to the lateness of the hour at that meeting, the review could not be completed and was postponed to February 18, 2021. Unfortunately, only three members were present and it was continued to March 3, 2021 and the public hearing was opened at that time. Shortly before 10:00PM, the Board motioned to continue the case to April 13, 2021. Prior to the March meeting, the Board requested documentation in regards to the Planning Board decision of March 4, 2021 declaring this to be an application that had the impact equal to or less than a single family dwelling.

At the Zoning Board meeting of April 13, 2021, the public hearing was continued and it was determined that a Site Walk would be necessary and which conducted on April 18, 2021 at 6:00PM.

Chair Jarvis reopened the public hearing.

Mr. Berry stated the only concern which came up from the Site Walk was the location of the propane tank. He stated they would be working with the Fire Chief to rectify this concern.

Mr. Bickford asked how large an area the dry land is. Mr. Berry stated he would have to calculate that figure. Mr. Bickford stated it would be important to know as he is concerned how much of the lot is wet versus dry. Mr. Berry noted he is aware Mr. Bickford opposed the subdivision years ago, but at this time they are only requesting variances in regards to use; he stated the lot is conforming and meets all the setbacks requirements for a building lot at this time.

Ms. Callaway noted that per the Conservation Overlay District requirements, wetlands are excluded from being considered for minimum lot size calculations. She stated she too is concerned so much of the lot is wetlands and poorly drained. Mr. Berry confirmed the wetlands were excluded from the calculations to consider the lot conforming.

Mr. Berry shared screens showing the areas of existing conditions and wetlands, noting these designations were determined by a wetlands scientist. Chair Jarvis noted the information shared at the Site Walk indicated there would be about 3' of fill in the areas being used.

Ms. Callaway suggested it is the size of the building that is making the setbacks so tight with the wetland buffers.

Mr. Berry stated if the concerns by the Board are the size, the applicants are willing to keep the same use but reduce the size of the structure by one bay, which would pull the structure 10 feet further from the wetlands. Ms. Callaway stated that would help her. Mr. Berry stated the parking could not change much. Chair Jarvis asked if it would then mean vehicles would be kept outside; Mr. Berry stated a vehicle would be in the other bay and it would simply mean a downsize of the proposed business, which isn't something the applicant wants to do but will modify plans in order to move forward.

Mr. Bickford stated it's still not meeting the 75' setback, and they should make protecting the wetlands more of a priority when looking at cases like this. Mr. Berry stated there is nothing that can be built on this site without variances and this was made clear at the subdivision hearing.

Chair Jarvis closed the public hearing at 7:29PM.

Chair Jarvis stated the members deliberating this case would be Vice Chair Anderson, Ms. Richard, Ms. Callaway and Chair Jarvis. Mr. Bickford has not been on the Board since this case was originally started.

#### *Findings of Fact*

- The property is a commercial site of about 7-8 acres and abuts the Ella River.
- The rear of the site is largely within the flood zone and much of the rear portion is also wet.
- The original plan was to construct a 2,400 square foot, 3-bay garage; the applicant and applicant's representative have stated they are agreeable to making the structure a 2-bay garage.
- The purpose of this application is to operate an automobile repair and service station; it would not be a full service station; it will not be a junk yard.
- The only employee will be the applicant.
- There will be no bulk storage of items or material.
- The lot is located in the aquifer protection zone.
- The State wetlands setback is 50'; the Town is 75'; the
- A spill prevention plan, storm water management plan and maintenance manual have been submitted for review.
- There will be no dumpster.
- The applicant will work with the Fire Chief to determine the best location for the propane storage tanks.

#### *Discussion - Article VII Section A.1.(b) and Article VII Section A.1.(d)*

According to the "Land Use Suitability Map" what is the designation of the area in question?

Chair Jarvis stated per the application, the land is listed as “unconstrained, developable.” The Board agreed.

*This special exception shall not cause undue hazards to: A. The health of other individuals as evidenced by: or B. The safety of other individuals as evidenced by:*

Chair Jarvis stated she doesn’t see how it would affect the health of other individuals; all activities will be within the building. Ms. Richard stated she agrees; even though it’s in the aquifer protection area, there are measures in place for any spills and all materials are being contained within the building. Ms. Callaway stated if it’s going to be a 2-bay garage, the plans need to be changed to show how the change in use of space will be used. Vice Chair Anderson stated she doesn’t see any evidence that the health of others would be affected; she stated she is concerned about the type of business as far as the chemicals go. Ms. Richard stated there could be safety issues with having an entrance on Route 11 but there is a good sight distance for entrance to the road. Ms. Callaway agreed it is not an issue; she suggested sign location should be considered to avoid blocking drivers’ views. Chair Jarvis noted that would be covered by the Planning Board’s site review.

*This special exception shall not diminish the property value of other land owners as evidenced by:*

Chair Jarvis stated she doesn’t see how it would affect the values, stating they want to encourage small business in Town. Vice Chair Anderson stated she is concerned about the potential for contamination of the ground with accidental spills and subsequent impact on the values of surrounding properties. Ms. Richard stated she doesn’t have any concerns about the property values. Ms. Callaway agreed but noted she is also concerned about flooding in that area.

*This special exemption is not offensive to the public due to:*

*A. Noise as evidenced by:* The Board agreed the noise is to be inside the building so there will be no impact.

*B. Vibration as evidenced by:* The Board agreed it would not.

*C. Excessive traffic as evidenced by:* The Board agreed per the plans proposed, there will not be excessive traffic.

*D. Unsanitary conditions as evidenced by:* The building will be heated with conventional heating systems. The Board agreed that it would not be any less sanitary than a single family home.

*E. Noxious odor as evidenced by:* The building will be heated with conventional heating systems. The Board agreed there would be no noxious odors.

*F. Smoke as evidenced by:* The Board agreed there would not be excessive smoke.

*G. Other similar reason as evidenced by:* The Board agreed there is no other reason.

**Motion:** *To grant the request for Special Exceptions to:*

**Article VII Section A.1.(b) Special Exceptions. Uses Permitted by Special Exception.**

Uses Permitted by Special Exception. The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception.

**Article VII Section A.1.(d): Special Exceptions. Uses Permitted by Special Exception.**

Uses Permitted by Special Exception. The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception.

**With the following conditions:**

- There will be no more than 10 new or used tires on site.
- Used tires will be stored inside until used or properly disposed of.
- There will be no more than 1 case of quart sized bottles of oil housed on the site.
- The business will not conduct retail oil changes.
- Radiator fluids will not be held or stored on site.
- Brake fluid that is housed on site will be stored in quart size containers.
- Brake cleaners and other parts will be stored in the shipping containers commonly found in pressured cans.
- The applicant will not run a fueling station or operate a full service station as it is known in the traditional sense.
- Plans will be submitted to the Land Use Assistant reflecting the decrease in size of the building from 3-bays to 2-bays.
- The business is not to operate as a junk or salvage yard.
- The applicant must receive approval from NH DES for the proposed septic system.
- The applicant must receive approval from the New Durham Planning Board for a Site Plan Review.
- A Spill Prevention Plan must be submitted to the Building Inspector Code Enforcement Officer on an annual basis and whenever changed.
- The annual report of the Storm Water Management System Plan must be submitted to the Building Inspector Code Enforcement Officer on an annual basis.
- All services activities are to be conducted inside the building.
- All activities or signs must comply with the New Durham Zoning Ordinance.
- Any disturbed areas are to have at least 6' of loam and seed, or other appropriate plantings.

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

Chair Jarvis stated the request fails as it needs three votes in the affirmative to be granted. She asked if the applicant wants to proceed with the remaining variance requests. Mr. Berry stated no; he asked if there is additional information which they could provide to help the Board understand

the basis for the application. Vice Chair Anderson stated it was presented well; she stated it is this type of business that she is concerned with. Ms. Callaway agreed; she stated it is the type of business, proximity to the wetlands and seasonal fluctuations with possible flooding concerns her.

**CONTINUED PUBLIC HEARING - Case #2021-007**

*Application submitted by Changing Seasons Engineering PLLC, on behalf of Marjack Oasis LLC, Thomas O'Neil, Representative.*

Applicant is requesting a Variances to the following:

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

**Article XIV Section C.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 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 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: 1. 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 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 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.

The property is located at Map 111, Lot 027, 43 Meaders Point Road.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. Ms. Richard stated she would be recusing herself from this case as she is a representative for the applicant. Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

Chair Jarvis stated the Board members deliberating the case would be Vice Chair Anderson, Ms. Callaway and Chair Jarvis. She asked if the applicant or applicant's representative have a problem with only three members of the Board hearing this case. Mr. O'Neil stated he would like to continue with the three members.

Chair Jarvis read the case into the record. She stated this public hearing was opened on March 11, 2021 and continued at that time so a Site Walk could be done. A Site Walk was done on March 21, 2021.

Chair Jarvis reopened the public hearing at 8:15PM.

Vice Chair Anderson stated at the Site Walk she saw that it's a densely covered site with large, old trees covering the lot; she stated to move the house back to better meet the setbacks would disturb more of the older trees.

Ms. Callaway noted the steps down to the house are very steep and doesn't see how that can be improved.

Chair Jarvis stated after the Site Walk, it appears there would have to be extensive rearrangement of the soils, hills and trees, as well as the septic system, in order to get the house back past the 50' setback.

Stephanie Richard, Changing Seasons Engineering PLLC, on behalf of Marjack Oasis LLC, Thomas O'Neil, representative, stated the proposal is to lift the existing house; the relief from the 75' setback is to put a small first floor addition for a bedroom on the road side.. She explained two of the owners have doctor-noted mobility issues. The number of bedrooms will remain the same as an existing bedroom will be converted to an office. Ms. Richard stated the wooded areas are to be maintained although some trees closest to the house may need to be trimmed or removed. She stated that while they are requesting a variance from the impervious coverage, that total coverage is actually decreasing from what it is currently. She stated the benefit to the public will be the decrease of impervious surfaces and enhancement of storm water management. Mr. O'Neil stated the walkway headed down the hill is one of the areas to be removed and replaced with pervious pavers.

Steven O'Neil, family member of the applicant, stated the two-bedroom house was built in 1964 and the footprint has remained the same; he stated they are only asking to put on 240 square feet of space to the first floor in order to accommodate the elderly homeowners. He stated it has been in the family 50 years and they want to keep the home in the family.

Mr. Bickford noted there is also a proposed covered porch which adds to the impervious coverage. Mr. O'Neil stated they are enclosing the porch and only expanding a small amount to the back.



Ms. Richard stated the situation is being improved with pervious stone pad near the porch and walkway area.

Ms. Callaway asked if there is anything to show the thickness of the trees and their location in relation to the house. Ms. Richard noted the tree line is depicted on the plans and photos were presented for review. Mr. O'Neil clarified no trees would be coming down because of the porch. Ms. Callaway questioned if removing the trees near the house could impact the stability of the soils. Chair Jarvis suggested some trees may need to come down for safety reasons. Mr. O'Neil stated at the Site Walk he indicated they would have experts come in and advise them regarding the trees.

Mr. Bickford stated this entire building is in the no-build zone and now they want to expand it; he stated the covered and enclosed porch is right on the 50' State line and is something the Planning Board is going to be concerned with. Ms. Richard stated the next step for this project will be to obtain a Shoreline Permit from the State of NH DES.

Chair Jarvis closed the public hearing.

#### *Findings of Fact*

- The current building is built on posts and open underneath; the proposal is to put in a concrete foundation.
- The applicant would like to avoid disturbing more than 2000 square feet of the property in order to not need a conditional use permit.
- The applicant does not want to demolish the cottage so it can be moved it back past the 50' shoreline setback because it would affect both the septic and leach field and have a large impact on the rest of the site
- The lot is in the steep slopes area, averaging 16% slope throughout the property.
- The proposal is to put on a small 240 square foot addition on the rear/road side of the house for the purpose of a bedroom on the first floor; there are currently two bedrooms on the second floor and after construction there would be one bedroom on the first floor and one bedroom on the second floor with the second bedroom on the second floor becoming an office.
- Currently impervious surface is 22.1%; the proposal would be 21.3%.
- The building coverage is 7.2%; the proposal would be 10.2% and is within the requirements of the ordinance.
- The current septic system is functioning and State approved and applicants do not want to replace it.
- Drip edges will be added to the house along with an increase in the impervious surface.
- The goal is to not disturb as much of the property as possible.
- The lot is approximately 180' deep.
- The lot is wooded with trees of significant age.

#### ***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:* Vice Chair Anderson stated there are things she considers not contrary such as the need for the bedroom but the

expansion of the deck, the coverage to the enclosed porch within the 75' setback, is contrary as the property coverage is increased and is not needed for the use of the home. Ms. Callaway agreed and stated there is nothing between the building and the water such as vegetation to stabilize things. She stated so much is within the 50' setback and while the proposed changes are more convenient and preserve the sentimental home, more should be done to make the entrance safer to the house, improve the setbacks and put the vegetation back closer to the water. She stated since the footprint isn't being maintained, the grand-fathered status is not maintained. Chair Jarvis stated she has no problem with the addition on the roadside of the house and the first floor bedroom; she stated prior to the Site Walk, she was supportive of moving the house back but after seeing the property and the amount of ground disturbance that would be involved, including moving the septic system, along with the cost factors, it would do more damage to the property than what is proposed. She stated changing a deck to be an enclosed porch is contrary to the ordinance but adding the bedroom is not.

*The spirit of the ordinance would/would not be observed because:* Vice Chair Anderson stated the ordinance is to protect the lake; while the bedroom is needed, it is on the opposite side of the lake so it is with the spirit. However, the deck does not fit with the ordinance and is not needed to use the home. Ms. Callaway concurred.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated granting the variance would do justice to the property owners but she doesn't think it would do justice to the lake or the Town, due to the enclosed porch which is within the 50' setback. The Board concurred.

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

*Unnecessary Hardship:* Vice Chair Anderson stated the purpose of the ordinance is to protect the lake; she stated overall she believes it is applied properly. She stated the building is difficult to move because of the trees on the property, but parts of the proposal are above and beyond the necessary use of the property. Ms. Callaway stated the public purpose needs to be enforced to protect the lake. Chair Jarvis stated the ordinance is to protect the lake and a great deal of effort has gone into developing a plan that will leave a significant amount of the property undisturbed, however, there is still the proposal to turn currently pervious surface into impervious surface with the enclosure of the deck. Chair Jarvis stated the proposed use is reasonable, it's just not in compliance with the ordinance. Vice Chair Anderson stated she doesn't believe the proposal is reasonable in regards to the deck even though it is for the bedroom. Ms. Callaway stated she doesn't consider it reasonable to add more building within the setback.

The Board discussed whether the lot can be used within strict conformance with the ordinance for a reasonable use. Chair Jarvis stated with the medical restrictions of some of the owners it may make it difficult to use the home without a first floor bedroom. She stated she sees the bedroom as reasonable but doesn't consider the lack of an enclosed porch a hardship. Ms. Callaway stated she thinks the lot can be used within the ordinances. The Board agreed.

**Motion:** *To deny the request for a variance to the Article V Section E, Article XIV Section C.1.b, Article XXI Section G.2.b.* Motion by Vice Chair Anderson. Seconded by Ms. Callaway.  
**Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Chair Jarvis asked if the applicant or applicant’s representative want to move forward with the remaining variance requests. Mr. O’Neil replied no.

Mr. O’Neil asked if they change the plans and remove the roof from the coverage porch if the variances would be approved. Chair Jarvis replied she can’t give any indication in regards to that but recommends they consider the discussions of the Board in any future applications.

### **CONTINUED PUBLIC HEARING – Case #2021-008**

*Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan.*

Applicants are requesting variances to:

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

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

**Article VI Section C.3.a.ii:** General Provisions/Use Regulations for Town of New Durham. General Requirements. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant.

**Article 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 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: 1. 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 XX1 Section G.1.b:** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article. 1. Leach fields: Not less than seventy five (75) feet from open surface water or hydric A wetlands or fifty (50) feet from hydric B wetlands.

**Article XX1 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 108, Lot 027, Owls Head Point Road.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. Ms. Richard stated she would be recusing herself from this case as she is a representative for the applicant. Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

The members of the Board deliberating this case are Ms. Callaway, Mr. Bickford, Vice Chair Anderson and Chair Jarvis.

Chair Jarvis read the case into the record. She stated this application was reviewed and determined to be complete at the March 11, 2021 meeting. It was confirmed at that time there would be two bedrooms and plans were resubmitted to reflect two bedrooms.

Chair Jarvis opened the public hearing at 9:22PM.

Stephanie Richard, Changing Seasons Engineering PLLC, on behalf Walter and Carol Shanahan, stated this lot is wooded and undeveloped but surrounded by lots with homes on them. She stated the applicants purchased the lot recently and wants to build a two-bedroom retirement home. Photos were shared with the Board for review. Ms. Richard stated the driveway will be pervious. The entire building is behind the 75' setback, although the deck does encroach. The septic system encroaches on an abutter's well radius as well as the lake setback.

Chair Jarvis questioned the variances requests regarding the 75' setback. Ms. Callaway noted that is because there is nothing in the variance to permit a deck in the setback.

Chair Jarvis asked if Owl's Head Point Road is a Town road. It was confirmed the road is private and any proposal will need to go before the Board of Selectmen for approval.

It was confirmed the abutting lot is also undeveloped. Ms. Callaway suggested moving the driveway so the septic could be moved further from the well radius. Ms. Richard stated it would be more complicated with the septic system as the hill would require pumps but at this point it is a gravity-fed design system.

Mr. Bickford suggested the house is too big for the lot; it is taking up a lot of a 14,000 square foot lot. Ms. Richard stated they meet the lot size coverage requirements so it's not technically too big for the lot. Chair Jarvis stated the building lot coverage is 14.2%, which is under the 15% limit and the impervious coverage is 16%, which is also under the limit of 20%. Mr. Bickford stated there isn't a place to put the septic within the ordinance setbacks.

Sarah Barley, abutter on an adjacent lot, stated her cabin was built in the 1960s and it is truly a seasonal dwelling for four months of the year. Ms. Barley stated they don't object to development on the lot but they do have objections to some parts of the proposed plans which include the size and style of the house and the two-bedroom septic. Ms. Richard explained there are state requirements in regards to the size of the septic system and it is the minimum size allowed. It was confirmed there are plans to put in a whole-house generator; the exact location has not yet been determined but it would be on the opposite side of the lot from Ms. Barley. Ms. Richard confirmed discrepancies were found with the boundary lines shown on GIS; however, these were reviewed and discussed with the Building Inspector and he is fine with using the lines shown on the plans. Ms. Barley stated she is very concerned about the septic being located only 19' from their well.

The Board agreed a Site Walk would be helpful. The Site Walk was set for April 29, 2021 at 6:00PM.

**Motion:** *To continue the public hearing for Case #2021-008 until May 11, 2021 at 7:00PM.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Chair Jarvis noted the time is 10:04PM and no new cases are started after 10:00PM.

**Motion:** *To continue the public hearings for Case #2021-009, application submitted by Varney Engineering LLC on behalf of Joseph and Donna Reiss and Case #2021-010, application submitted by Varney Engineering on behalf of The Rollins Family Trust, Stephen and Nancy Rollins, representatives to May 11, 2021 at 7:00PM.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Ms. Richard – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

**Motion:** *To postponed approval of meeting minutes.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Ms. Richard – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

### **FUTURE MEETINGS**

April 29, 2021, 6:00PM – Site Walk for Case #2021-008

May 11, 2021, 7:00PM – Regular Meeting

### **ADJOURN**

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

The meeting was adjourned at 10:09PM.

Respectfully Submitted,

*Jennifer L. Riel*

Jennifer Riel, Recording Secretary