

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
December 13, 2022, 7:00PM
New Durham Town Hall**

PRESENT

Terry Jarvis, Chair
Linda Callaway, Member
David Bickford, Member
Bill Meyer, Member

ALSO PRESENT

Robin McClain, Land Use Assistant
Tom Varney, Varney Engineering, LLC
Deb Randall, Architect
Tom Minkler, applicant
Josh Thibeault, Varney Engineering, LLC
Peter Rhoades, applicant
John Chase, resident
Deborah Bonanno, resident – via Zoom
Matthew Lopiano, applicant – via Zoom
Kristin Guilmette, via Zoom
Ron Gehl, resident – via Zoom
Nancy Rhoades– via Zoom
Dot Veisel, resident – via Zoom

CALL TO ORDER

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

Roll call was taken for Board members present.

Agenda Review

The Board discussed a meeting to review minutes and meet with Ms. Randall, as requested.

Meeting was set for Friday, December 16, 2022 at 10:00AM, New Durham Community Room.

PUBLIC HEARING– Case #2022-012

Application submitted by Varney Engineering LLC, on behalf of Thomas and Heather Minkler for property located at 89 North Shore Road, Map 108 Lot 74.

The 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. 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.2: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Building Setback: Except for water related structures, all buildings shall be set back a minimum of seventy-five feet from the reference line.

Article XIV Section C.5: Dimensional Requirements. All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, 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.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 F: Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways. For any building less than seventy-five (75) feet from the reference line, no alteration, addition, or new building shall extend the structure closer to the references line. All stairs and walkways within seventy-five (70) feet of the reference line shall not exceed four (4) feet in width.

Chair Jarvis stated this case was on the agenda for the November 12, 2022 meeting; due to the length of the agenda and lateness of the hour, the case was postponed to November 21. At the November 21, 2022 meeting of the Zoning Board of Adjustment, the public hearing was opened at 12:21PM and closed at 12:54PM with the deliberations continued to December 13, 2022.

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

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

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

Discussion Variance Article V, Section E; Article XIV, Section C.2, Article XXI, Section F

Granting the variance would/would not be contrary to the public interest: Mr. Bickford stated it is pushed back as far as possible so is not contrary. Chair Jarvis stated she doesn't believe it is

contrary as there is only so much that can be done with the property. Ms. Callaway stated the structure is behind the 75' setback and doesn't believe it is contrary. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it's is being observed; the deck is behind the high-water mark; they are replacing stairs which are unsafe and the deck will not be enclosed; the proposed addition is well beyond the 75-foot setback on the street side of the house. The Board agreed.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated substantial justice will be done as issues are being corrected and the property will be more conforming. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated values will not be diminished; the house will be replaced; the septic system and well will be new and better for the lake. Mr. Meyer stated the improvements will make the property safer. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated strict conformance to the ordinance would not be fair; the addition is behind the 75' foot setback; there will be a new well and septic system which is being moved further from the neighbor and the shoreline. Ms. Callaway stated the only structure within the setback is the deck. Chair Jarvis stated part of the current deck will become part of the house and other impervious areas are being removed. The Board agreed.

Motion: *Based on plans dated October 12, 2022, application signed October 14, 2022 and the public hearing of November 21, 2022 and today's deliberation, to grant the request for 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 XIV Section C.2: Dimensional Requirements *All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements: Building Setback: Except for water related structures, all buildings shall be set back a minimum of seventy-five feet from the reference line.*

Article XXI Section F: Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways. *For any building less than seventy-five (75) feet from the reference line, no alteration, addition, or new building shall extend the structure closer to the references line. All stairs and walkways within seventy-five (70) feet of the reference line shall not exceed four (4) feet in width.*

With the following conditions:

- Obtain NH DES Shoreline Permit.
- Obtain a Conditional Use Permit from the New Durham Planning Board if required.
- The applicants will comply with all required permits from any federal, state, county or municipal government.

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

Discussion Variance Article VI Section C.3(a)(i), Article VI Section C.3.(a)(ii):

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated the septic is being moved further back from the water and further from the neighbor and it would not be contrary. Mr. Meyer stated it is improving the lot overall. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated there will be a new septic system; it can't be moved further back than it is. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated both the septic tank and leach field are being moved back and will be a new State approved system so substantial justice will be done. 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 it would be an unnecessary hardship to the Town and the lake to deny a new and improved septic system. The Board agreed.

Motion: *Based on plans dated October 12, 2022, application signed October 14, 2022 and the public hearing of November 21, 2022 and today's deliberation, to grant the request for variances to:*

Article VI Section C.3(a)(i): 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 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.

With the following conditions:

- Obtain NH DES Shoreline Permit.
- Obtain a Conditional Use Permit from the New Durham Planning Board if required.
- The applicants will comply with all required permits from any federal, state, county **or** municipal government.

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

Discussion- Variance Article XIV Section C.5

Granting the variance would/would not be contrary to the public interest: Mr. Meyer stated it would not be contrary to the public interest. Mr. Bickford stated the changes will still be nonconforming and it is contrary. Ms. Callaway stated the lot is already over the 20% limit; the

proposed addition is on the road side; she stated it's an increase of 1500 square feet of impervious coverage. Chair Jarvis noted the overall increase is only 0.9%; solid block steps are being replaced with porous infiltration steps. Mr. Bickford suggested putting pervious pavers in front of the garage. Ms. Callaway stated she is concerned about each little change being more and more over. It was agreed that the Board would give the engineer the option of converting some of the impervious coverage as a condition of approval.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated she believes it is being observed. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it will make the property safer by replacing the stairs and it will do substantial justice. 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 denying it would be an unnecessary hardship due to the dangerous stairway for both the property owners and their family members.

Motion: *Based on plans dated October 12, 2022, application signed October 14, 2022 and the public hearing of November 21, 2022 and today's deliberation, to grant the request for variance to:*

Article XIV Section C.5: Dimensional Requirements. *All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, 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.*

With the following conditions:

- Pervious pavers shall be used on the driveway surface to stay at the existing 21.4% impervious coverage.
- Obtain NH DES Shoreline Permit.
- Obtain a Conditional Use Permit from the New Durham Planning Board if required.
- The applicants will comply with all required permits from any federal, state, county or municipal government.

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

Discussion – Variance Article XXI Section C.2:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated that with the previous condition, which requires the impervious coverage to remain at 21.4%, the building size is increasing but it's still within the 15% and the lot is not being made any more nonconforming.

Motion: *Based on plans dated October 12, 2022, application signed October 14, 2022 and the public hearing of November 21, 2022 and today's deliberation, that a variance to **Article XXI, Section C.2** is not needed.*

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

Review and Acceptance of Case #2022-014

Application submitted by DTC Lawyers, on behalf of Peter Rhoades, for property located at Bennett Road, Map 264 Lots 16, 17 and 18.

The applicant is seeking a variance to:

Article V Section B.1: Dimensional Requirements for Town of New Durham. B. Dimensional Requirements. The following dimensional requirements shall apply to land within the Town of New Durham. 1. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.

The applicant is requesting the variance to permit building on a Class VI Road.

Chair Jarvis asked if the applicant wants to go forward with four members of the Board present or if he wants to wait for a full board. Mr. Rhoades stated he is fine with going forward.

The Board reviewed the application for completeness. Chair Jarvis noted property lines are not indicated; the plans are not 1" equal 20 feet and a waiver request has not been received; the frontage for each property is not indicated. Chair Jarvis noted the application was signed November 1 and that per the copy of the warranty deed submitted, the application did not own lot 16 on November 1. She stated the property owner has to request variances and give permissions as required per the application.

John Rattigan, Esq., representative for the applicant, explained the lots were not owned by Mr. Rhoades but were owned by his wife; he stated the intent was to have just one application for all three lots; he stated now Mr. Rhoades owns all three lots. Chair Jarvis stated the application predates how the property exists currently. She stated all applicants need to be treated the same and waivers were required 21 days prior to a public hearing. Ms. Callaway agreed that the application is not complete and it's only fair to require all the same items for this application as from other applicants. Chair Jarvis noted no requests for waivers were received; she suggested they declare the application as incomplete then the applicant can have time to submit additional documents. Mr. Bickford agreed that the application is not complete.

Mr. Rattigan suggested the Board continue the public hearing to avoid having to re-notice abutters. Ms. McClane noted the public hearing has not been opened so questioned whether there can be a continuance. The Board agreed to continue the review.

Motion: *To continue the review for Case #2022-014, application submitted by DTC Lawyers, on behalf of Peter Rhoades, for property located at Bennett Road, Map 264 Lots 16, 17 and 18 to January 10, 2023 at 7:00PM, New Durham Town Hall.*

Discussion: Chair Jarvis stated there are four additional items needed: date on signature page, the plans, the property lines, and the size of the plans; waivers may be requested.

John Chase, abutter, noted lot 24 has also had changes in ownership, effective tomorrow. Chair Jarvis stated owners of record have been notified and the applicants have done due diligence.

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

Review and Acceptance of Case #2022-015

Application submitted by Varney Engineering, LLC, on behalf of the Matthew LoPiano for property located at 309 South Shore Road, Map 113 Lots 69 and 26.

The applicant is requesting a Special Exception to:

Article XIV Section G: Deviations from the requirements of this Article may be permitted by Special Exception. Such a Special Exception is required in addition to any other relief which may be required herein, such as a Conditional Use Permit. Special Exceptions granted under this Article for one or two family homes shall be exempt from the requirements of Article VII. Other uses listed in Table 4, in Article VII must comply with the requirements of Article VII. The Zoning Board of Adjustment shall grant a Special Exception if all of the following requirements are met:

1. The proposed use must otherwise be allowed in this Shorefront Conservation Overlay District.
2. The proposed use will not reduce water quality in the adjacent water body measured by methods such as increased stormwater runoff and increased phosphorus and nitrogen runoff.
3. The structure is proposed to be moved as far back from the reference line as possible.
4. Property values in the district will not be reduced.
5. The use will not place excessive or undue burden on Town services and facilities.
6. The proposed use or structure is consistent with the spirit of this Article as described in paragraph XIV.A.1 above.

And Variances to:

Article V Section D: Dimensional Requirements for Town of New Durham: Setbacks. No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter.

Article 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.4: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. Maximum Building Height: The maximum height of any dwelling or garage shall be thirty-five (35) feet measured from the lowest grade adjacent to the foundation or piers to the highest point of the roof. Accessory -structures such as sheds or other structures within the 75-foot waterfront setback shall not exceed one story and shall have a maximum height of 12 feet from the lowest adjacent ground level.

Article XIV Section C.5: Dimensional Requirements. All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, 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 XIV Section C.8: Dimensional Requirements All development within the Shorefront Conservation Overlay District, whether on conforming or non-conforming lots, shall meet the following requirements. All New Development, as defined in Article III, within this Overlay District, must provide parking for a minimum of four vehicles with dimensions of 9 ft wide by 21 ft long. Parking may be provided on the same lot, or on lots abutting the waterfront property over which the waterfront property owner has an easement.

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Article XXI Section F: Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways. For any building less than seventy-five (75) feet from the reference line, no alteration, addition, or new building shall extend the structure closer to the reference line. All stairs and walkways within seventy-five (70) feet of the reference line shall not exceed four (4) feet in width.

The applicant is seeking add a shed for maintenance and storage of waterfront accessories.

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

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

The Board reviewed the application for completeness.

Motion: *To accept the application for Case #2022-015, application submitted by Varney Engineering, LLC, on behalf of Matthew Lopiano for property located at 309 South Shore Road, Map 113 Lots 69 and 26.* Motion by Chair Jarvis. Seconded by Ms. Callaway seconded the motion. **Roll Call Vote:** Mr. Bickford - aye; Ms. Callaway - aye; Mr. Meyer – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Chair Jarvis read the Public Notice into the record.

Chair Jarvis opened the Public Hearing at 8:29PM.

Tom Varney, Varney Engineering, LLC, representative for the applicant, stated there is access to the lake from a cottage across the road; there will be a parking area and dock on the lot; they are proposing to construct a building for the storage of water related items and the building will have a small deck. Mr. Varney stated retaining walls will be placed with re-grading the slopes; the driveway will be reconfigured, and stormwater measures will be installed. He stated a

Conditional Use Permit will be required as well as a NH DES Shoreline Permit; he confirmed the lot was recently surveyed. Mr. Varney explained there is a buffer of trees between the neighbors; there is drainage which crosses the neighbor's land. He stated the pavement would be changed to have walkdown steps to access the shed which is recessed into the ground and most of it is not visible from the road. He stated the 20-foot setback from the street are met; the lot size coverage is 29%, and the building size goes to 13%.

Chair Jarvis asked how much parking the two lots currently have. Mr. Lopiano stated there are currently spaces for three cars on the beach side of the road; the house side can easily fit nine cars in the driveway of the house. Chair Jarvis asked if the lots are legally attached. It was confirmed the lots are not, and one could be sold separately from the other. Chair Jarvis stated a waiver would be needed.

Ms. Callaway asked if there will be electricity to the shed. It was confirmed there would be.

Chair Jarvis asked the height of the proposed building as well as the height of the training wall. Mr. Varney stated the wall will go from 2 to 8 feet in height. He explained the adjacent lot is heavily wooded, and the view won't be impacted.

The Board reviewed the requirements for the Conditional Use Permit and the Shoreline Permit.

Chair Jarvis asked if there is already a deck on the property and asked why a deck is needed on a storage building. Mr. Lopiano stated he's buying an Old Hickory prebuilt utility shed and the style is more aesthetic looking from the lake side, so that is the mindset behind the design. He stated he has been mowing and trimming the hill for a long time and it will be helpful to have the storage shed at the bottom of the hill.

Chair Jarvis noted the deck and a small portion of the shed is within the 75-foot setback; she asked why it can't be pushed back to the proposed driveway and there would be little, if any, of the building within the setback; she suggested if the deck was removed it would be easier to get it behind the shoreline setback. Ms. Callaway stated there is still encroachment on the side setbacks; she suggested a 6 by 8-foot shed would be adequate for the purposes outlined; she stated this is not a lot that is intended to have construction on it.

Chair Jarvis stated an email was received in November from the abutters at 314 South Shore Road, and outlined their objections to the proposal. The letter also outlined concerns about runoff and erosion which is already a problem in this area during the spring season.

Mr. LoPiano stated in regard to the runoff, the Town has put catch basins in on both sides of the road and continued work is going to be done in the spring. He stated he talked with other abutters, they are all in support of his proposal, and the Town is taking measures to address the runoff and erosion issues.

Chair Jarvis stated she believes a site walk is necessary and she would like to have the Road Agent accompany them. Mr. Bickford stated he doesn't agree a Site Walk is necessary. Ms. Callaway stated that going by the proposed dimensions, she doesn't see a need for a Site Walk

either but will go along, as its way over the permeability and within the setbacks. Mr. Meyer stated he would do a Site Walk.

Motion: *For Case #2022-15 the Zoning Board conduct a Site Walk.* Motion by Chair Jarvis. Seconded by Mr. Meyer. **Roll Call Vote:** Mr. Bickford - no; Ms. Callaway - aye; Mr. Meyer – aye; Chair Jarvis – aye. **Motion passed, 3-1-0.**

Mr. Bickford noted the deed indicates no building shall be constructed within the setback of the right-of-way.

The Site Walk was scheduled for 10:30AM on December 30, 2022.

Motion: *To continue the Public Hearing for Case #2022-015 to Tuesday, January 10, 2023 at 7:00PM.* Motion by Chair Jarvis. Seconded by Ms. Callaway **Roll Call Vote:** Mr. Bickford - no; Ms. Callaway - aye; Mr. Meyer – aye; Chair Jarvis – aye. **Motion passed, 3-1-0.**

APPROVAL OF MINUTES

Meeting of July 14, 2022 – Edits were made.

Motion: *To approve the minutes as amended.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Mr. Bickford - no; Ms. Callaway -aye; Chair Jarvis – aye. **Motion passed, 3-0-0.** Mr. Meyer abstained.

ADJOURN

Motion: *To adjourn.*

Motion by Chair Jarvis. Seconded by Ms. Callaway seconded the motion. **Roll Call Vote:** Mr. Bickford - aye; Ms. Callaway - aye; Mr. Meyer – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

The meeting was adjourned at 9:35PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary