

**NEW DURHAM ZONING BOARD OF ADJUSTMENT**  
**New Durham Town Hall**  
**May 12, 2020, 7:00 PM**  
**at “ZOOM” Virtual**

*Under the emergency provisions of RSA 91A, this meeting took place electronically via Zoom.*

*DRAFT: These minutes are strictly a draft copy and are awaiting amendment or approval at a subsequent, duly noticed public meeting. Amendments to these minutes will be noted in the minutes of said meeting. The draft will be posted on the website as a draft copy for public informational use only.*

***IN LIGHT OF THE COVID 19 (CORONA VIRUS) SOCIAL DISTANCING ADVICE MADE BY THE GOVERNOR AND CDC, THE TOWN OF NEW DURHAM NH FOLLOWING A DECLARATION OF EMERGENCY BY THE PLANNING BOARD CHAIRPERSON, IS PROVIDING A MEETING PARTICIPATION VIA TELEPHONE CONFERENCE FOR YOUR SAFETY.***

*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.*

**Phone # 1-301-715-8592, Meeting ID: 947 2546 7685 Password: 594176**  
**or by clicking on the following website address:**

**<https://zoom.us/j/94725467685?pwd=UUZQWGlkMDRmdElvQThSSGNxcnYvZz09>**

**Meeting ID: 947 2546 7685 Password: 594176**

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

**PRESENT**

Terry Jarvis, Chair – via Zoom  
Wendy Anderson, Vice Chair – via Zoom  
Stephanie Richard -via Zoom  
Linda Callaway- via Zoom  
Paul Raslavicus- via Zoom

**ALSO PRESENT**

Scott Kinmond, Town Administrator- via Zoom  
Tom Varney, Varney Engineering, LLC- via Zoom  
Kate Varney, Varney Engineering, LLC- via Zoom  
David Bonisteel, applicant- via Zoom  
Jeremy Bonin, architect for Bonisteel application – via Zoom  
Scott McGovern, resident

**CALL TO ORDER**

Chair Jarvis called the meeting to order at 7:13pm.

Chair Jarvis made the following statement regarding this meeting:

*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:

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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 this participating in the Zoom meeting. Chair Jarvis asked each ZBA member to introduce themselves and identify anyone in the room with them. She then asked the applicant and applicant's representative to introduce themselves as well as identify anyone in the room with them, followed by any member of the public to introduce themselves.

### **APPROVAL OF MINUTES**

Meeting of April 14, 2020 – Edits were made. The Board concurred additional information is needed in regards to the 75' setback, before final approval. Chair Jarvis asked members of the Board to submit their comments to the Land Use Assistant by the close of business on May 29 for correlation and presentation at the next meeting.

Meeting of April 22, 2020 – Postponed.

### **REVIEW OF NEW APPLICATIONS**

#### **Review and Acceptance of the application for Case # 2020-003**

Application submitted by Thomas Varney, Varney Engineering LLC, on behalf of David and Caren Bonisteel. They are requesting variances to the following:

**Article V Section E: Dimensional Requirements Flood Hazard Area and Water Body Setback.**  
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 Sewage Disposal and Leach field Setbacks** No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed. Less than one hundred twenty five (125) feet from

the edge of a public water body; or,

**Article XIV Section C.1 (b):** Shorefront Conservation Overlay District Dimensional 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. 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. They conform to Non-Conforming Setback and height requirements below; and.

**Article XXI Section C.2:** Non-Conforming Buildings, Land or Uses New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses Such expansion does not make any existing lot, structure, or use more nonconforming within the terms of this Ordinance.

**Article XXI Section G.2 (b):** Non-Conforming Buildings Land or Uses Non-Conforming Setbacks 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 (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. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.

**Article VI Section C.3 (a) (ii):** General Provisions/ Use Regulations for Town of New Durham 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.

The property is located at Map 119, Lot 038, 12 South Shore Road. If the application is deemed to be complete a Public Hearing may be held. Chair Jarvis asked the applicants if they agree to have the case heard via Zoom; they indicated they are. Chair Jarvis asked if Mr. Varney agrees to the case being heard via Zoom. He stated yes. Chair Jarvis asked if Mr. Bonan agrees. He stated yes.

Chair Jarvis stated the application was reviewed by the Board at the April 12, 2020 meeting and determined to be incomplete. A revised application was received at least 21 days prior to this meeting. Chair Jarvis confirmed with the Land Use Assistant that all fees were paid; notices were posted; abutters were notified of the new request. She stated at the April 12 meeting, no Board members indicated a real or perceived conflict of interest. Chair Jarvis asked if any member of the Board has any real or perceived conflict with hearing this case at this point. None was indicated. Chair Jarvis asked if

anyone in the public believes any member has a real or perceived conflict with any members of the Board hearing the case. None was indicated.

Mr. Raslavicus stated the notice printed in *The Baysider* listed both the current address as well as one for a previous study on Pine Point Road. The Board reviewed the notice submitted to *The Baysider* for publication, which was 12 South Shore Road and it was confirmed the Map and Lot numbers were correct. The Board concurred that since the correct address was indicated within the notice, they would go forward.

The Board reviewed the application for completeness. Mr. Raslavicus suggested Article XXI, C.1 would be applicable. Ms. Richard noted there are two sets of plans dated April 20 and April 16. Chair Jarvis stated she does not have plans dated April 20. Mr. Varney explained the April 20 plans have the well radius as well as the shoreline setback indicated.

**Chair Jarvis made a motion to accept the application for Case 2020-003 as completed. Ms. Richard seconded the motion. Roll Call Vote: Vice Chair Anderson – aye; Ms. Richard -aye; Ms Callaway – aye; Mr. Raslavicus – aye; Chair Jarvis – aye. Motion passed, 5-0-0.**

Chair Jarvis opened the Public Hearing at 8:18pm.

Chair Jarvis read the case into the record.

Tom Varney, Varney Engineering LLC, stated this property has been owned by the applicants for 11 years and they would like to make it their year-round retirement home. The plan is to demolish the existing cottage and construct a new home. The house will increase in size, add a garage, the existing paved driveway which conducts stormwater into the lake would be replaced with a smaller porous driveway. The building would be moved further back from the lake; the property would be environmentally upgraded with stormwater measures. A NH DES Shoreline permit will be required; the existing septic system was installed in 2005; the septic tank pump chamber is to be relocated; a Conditional Use Permit will not be required at this site. Mr. Varney presented pictures of the property and the existing cottage. He noted the cottage is currently 17' from the lake; there is tree cover on the sides of the property; he stated the current paved driveway directs runoff from the road to the lake. Mr. Varney stated the property is generally a 15% slope, lot size is about 100' by 100', being smaller than most lots on Merrymeeting Lake. He stated the plans are for the house to be on the same footprint but the deck size will be reduced, bringing it back to 25' from the lake. There would be expansion towards the conforming part of the lot at the 75' mark. Mr. Varney stated there would be a dry well as well as a rain garden to catch rain from the roof. The building is increased in size, going from 15% to 23%; the current lot size coverage will go from 34% to 24.1%. He stated the existing septic tank will need to be rotated; the septic system is 15 years old and state law requires the design to be less than 20 years old so there won't be any changes. Mr. Varney stated the building is as far back on the property as possible and stays within the 20' setback from the road.

Jeremy Bonin, architect, stated the conditions of the property, with the cottage being down from the road, makes usability difficult and currently all the water comes down from the road and goes into the house or down the driveway. He stated the proposed house is within the NH Shoreline requirements for the driveway and the garage; the 75' setback creates a building lot that has no buildable area. Mr. Bonin stated the plans proposed the large paved driveway being removed which will improve accessibility, snow and stormwater management; the material will be pervious. He stated that while there are several

variances to be granted, overall the impermeable surface is being reduced by 30%; the building is moving 8' further from the lake. Mr. Bonin stated this lot has no area that falls into a legal envelope per the zoning requirements. He stated they took every measure to increase anything that would be a betterment for the lake.

Chair Jarvis noted the current building size is 15% with the proposed going to 23.4%; she noted there is no garage currently and confirmed the increase is due to the garage. Mr. Bonin confirmed that is correct but balancing that with the amount of the parking area, there would be a decrease in impermeable area. Mr. Varney noted the portion of the increase attributed to the garage is 4.96%. Chair Jarvis asked if the pump chamber is being just moved or moved and replaced. Mr. Varney replied it could be either way. Ms. Callaway asked if they were to replace it, would it need to be at the current size required. Mr. Varney stated its a two-bedroom system and will remain two-bedroom; he explained 1250 gallon tank is good for up to four bedrooms. He stated its a modern tank and thinks it will just be picked up and rotated; he explained it needs to be kept 5' from the building which necessitates its rotation. Chair Jarvis stated there was a note at the bottom of the application indicated medical accessibility asked if there will be a request for variance based on that. Mr. Bonisteel stated there will be none at this point in time. Chair Jarvis asked why a two car garage is needed. Mr. Bonisteel stated the driveway is not manageable for a year-round residence and the garage will give them the ability to take advantage of the improvements to the lot and it seems to be a good solution to having additional parking versus just building it up into a flat land; it would also support year-round living and direct access to the house from vehicles. Chair Jarvis asked the purpose of the shed on the property. Mr. Bonisteel stated it was originally a boat house but has been gutted and used for a kids playhouse. Mr. Raslavicus confirmed the property was built in two phases. Mr. Bonisteel state when he purchased the property it was newly renovated but he doesn't know any prior history of the house. Mr. Raslavicus stated it appears the original house was all in front of the 50' mark; another segment was added between 2005 and 2007, doubling the size and asked if this was a town-approved/legal addition. Mr. Bonisteel stated he does not know. Mr. Raslavicus noted the current driveway is 22' wide and asked if that was approved to be that big. Mr. Bonisteel stated he does not know; it was there when he purchased the property. Mr. Raslavicus stated the proposed house will again increase the size of structure. Chair Jarvis noted the property card included in the packet, indicates in 2006 there was a request to gut and prep for an 18' by 30' addition; in 2007 there was an addition and remodel; in 2008 there was a complete gut and remodel. She stated these would only go on the property card if there were the appropriate permits.

Scott McGovern, abutter at 14 South Shore Road, stated his property has been his family since 1950; the driveway at Mr. Bonisteel's property has been there since that time; it was gravel at that time and then paved at some point.

Mr. Raslavicus asked how much development there will be on the second floor. Mr. Bonin explained there will be a second bedroom on the second floor with cathedral space out towards the living area of the home; the grade will be brought up to the level of the street so there will be a full basement. It was noted the current house has an area with crawl space and the rest is on footings; the home is a single floor living space. Chair Jarvis asked if it would a hardship to the Bonisteels if there was a condition for approval that there would be no bedrooms in the basement. Mr. Bonisteel stated that would be fine. Chair Jarvis asked if there would be a problem if the garage is restricted from ever having an ADU above. Mr. Bonisteel stated that would be fine. Ms. Richard asked about the existing distance and proposed distance from the lake; it was confirmed the 18' measurement is to a pad under the deck and the existing is from the edge of the deck to the lake. Mr. Bonisteel confirmed the material underneath the deck, there is a cement pad which will be removed. Mr. Bonin explained the conditions for the State

shoreline application require that area to be considered an impervious surface. Mr. Bonisteel stated there is another existing patio which will be removed as well. Ms. Callaway asked if the shed is part of the building coverage; Mr. Varney replied yes. Ms. Callaway stated that with the lot being so small that perhaps a garage isn't justified; she suggested instead of having the extension of the house going out to the right, if they went to the left then they could get the one story living without taking more of the area within the 75' setback. Mr. Bonisteel stated that if they are going to be living here year-round, the garage will be hard to eliminate. Mr. Bonin noted the sides are within the lot setbacks and reiterated that overall the impermeable coverage of the lot is decreasing; he explained that even if they take the garage off, and it remains parking, it will remain impermeable. Mr. Raslavicus stated he is still concerned whether the driveway was legal. Mr. Bonin stated it was put there in the 1950s. Mr. Varney stated years ago there wasn't a permit for a driveway. Mr. Bonin explained gravel is as impermeable as pavement and it is going to be replaced with a permeable material to manage the runoff from South Shore Road. Mr. McGovern stated he has seen the plans, is the most affected by it and doesn't have any objections.

Chair Jarvis closed the Public Hearing at 9:14pm. She stated the members of the board deliberating the case would be Vice Chair Anderson, Ms. Richard, Ms. Callaway, Chair Jarvis and Mr. Raslavicus.

***Findings of Fact:***

- the lot is 100' deep, making it impossible to meet all the ordinances
- the lot is smaller than most lots at the lake
- the square footage of the house will go from 15% to 23.8% for an over 8% increase
- the impervious lot coverage will go from 34% to 21.4% for an over 10% decrease
- the existing septic system was installed in 2005
- the septic tank pump chamber is to be moved but not replaced

the leach field will not be moving

- currently there is no garage; the proposal calls for a garage that is approximately 560 square feet
- the proposed changes will enhance year-round accessibility
- NH DES approval for moving the septic tank must be obtained
- a NH DES Shoreline Permit must be obtained
- there will be improved stormwater drainage due to the decrease in pervious surface
- the deck will be going from impervious to pervious
- the distance of the deck from the lake will increase from ?????
- the right side of the house will be increased by 10'
- none of the original foundation will be used
- the proposed pavements will be porous
- the second bedroom will be above the second floor; the area above the garage will be storage

Chair Jarvis suggested combining the discussions of the following variance requests: Article V, Section E; Article XIV, Section C. 1.b; Article XXI, Section C.2.b. The Board concurred.

**Discussion Article V, Section E; Article XIV, Section C. 1.b; Article XXI, Section C.2.b.**

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated that since the lot is only 100' deep, granting a variance would not be contrary; there is no other way to have a building on the property. Ms. Richard and Vice Chair Anderson concurred. Mr. Raslavicus stated he doesn't believe this is in the public interest and would be abstaining. Ms. Callaway stated with these small lots, a garage is not always possible and the size of the existing structure will be getting bigger.

*The spirit of the ordinance would/would not be observed because:* Vice Chair Anderson stated the spirit would be observed as there is no other place to put a building but within the 75' setback. Mr. Raslavicus stated the garage is something that will help the environmental aspects in protecting the lake however increasing the size of the house to the extent it is being increased, is against the spirit of the ordinance. He stated the ordinance clearly states that what you have can be kept and remodeled but you can't keep on expanding to exceed the maximum building coverage. Ms. Richard stated she believes it is within the spirit of the ordinance as there is no location that would not require this variance. Ms. Callaway stated she agrees with Mr. Raslavicus.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated differentiating between allowing the house to be built 75' back versus the variances to be addressed later in regards to size and impervious surface, she feels that allowing the house to be built less than 75' back would do substantial justice, when looking at just the house. Ms. Richard concurred. Ms. Callaway abstained. Mr. Raslavicus stated it comes down to the square footage involved and doesn't want to see the existing building to be expanded; the platform should remain about the same. Vice Chair Anderson stated the gain of the public is getting an overall increase in distance from the lake; even if they built on the same footprint, it would be a brand new house and no matter where they build, or the size built, it will be in the 75' setback. She stated granting the variance does substantial justice as it allows the applicant to have a house.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated she doesn't think it would diminish the values as it will be a newer house. Vice Chair Anderson stated it may decrease the values as the increased size will make the area more crowded. Ms. Richard stated she doesn't believe it would diminish the values, as one abutter indicated, he has no opposition to the plans. Ms. Callaway concurred. Mr. Raslavicus stated its hard to tell whether the values will be diminished.

*Unnecessary Hardship:* Chair Jarvis stated that no matter how she measured, she couldn't get a house within the setbacks required. She stated she strongly believes in the ordinances and application but there is no way for the applicant to have a house that meets the ordinances. Ms. Richard, Vice Chair Anderson and Ms. Callaway concurred. Mr. Raslavicus stated he disagrees; it is like all other properties in the area and if the ordinances don't allow one to build more than they already have, then that is what the Town wants overall. The ordinances indicate wanting to keep things small; he stated this is not a unique property as there is many other like it and is not an unnecessary hardship.

**Chair Jarvis made a motion to approve the request for variances to**

- **Article V, Section E: Dimensional Requirements Flood Hazard Area and Water Body Setback. 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. 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.; and**
- **Article XXI, Section G.2.b.: Non-Conforming Buildings Land or Uses Non-Conforming Setbacks 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.**
- **Conditions include: there will be a NH DES Shoreline Permit; there will be no bedrooms**

**in the garage and no ADUs. The property will be limited to two bedrooms.**  
**Ms. Richard seconded the motion. Roll Call Vote: Vice Chair Anderson – aye; Ms. Richard -aye; Ms Callaway – no; Mr. Raslavicus – no; Chair Jarvis – aye. Motion passed, 3-2-0.**

Chair Jarvis suggested combining the discussions of the following variance requests: Article VI, Section C.3.a.2 and Article VI, Section C.3.a.1. The Board concurred.

**Discussion: Article VI, Section C.3.a.2 and Article VI, Section C.3.a.1.**

Chair Jarvis stated she likes the idea of moving the septic back even a couple feet but is disappointed that it is only being rotated. She asked Ms. Richard what the probability of a tank that is 15 years old will be able to handle the movement without jeopardizing the surrounding areas. Chair Jarvis stated per the State the design has to be less than 20 years old but is concerned about it being done in a manner that is safe for the lake, abutters and the property. Ms. Richard stated this piece of it is a technicality; its not really moving it but it is a bit so therefor permission is needed. She stated if they dig it up and its in poor condition or not the right size, they will address it at that point. Vice Chair Anderson suggested checking the condition of the tank when it is uncovered. The Board concurred.

*Granting the variance would/would not be contrary to the public interest:* Vice Chair Anderson stated it would not be contrary as it will be moved a bit further away from the lake and if its found to be failing, it will be replaced. The Board concurred. Chair Jarvis stated she would like to see the tank replaced.

*The spirit of the ordinance would/would not be observed because:* Vice Chair Anderson stated the spirit is being observed as the tank is being moved further from the lake and its going to be as far as they can. The Board concurred.

*Granting the variance would/would not do substantial justice because:* Vice Chair Anderson stated the public is gaining as much as the applicant with it being moved further from the lake and the possibility of a new tank if the condition is found to be poor. The Board concurred.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated she doesn't see how other properties would be affected. The Board concurred.

*Unnecessary Hardship:* Chair Jarvis stated the lot is only 100' so there is no way to put it 125' away. The Board concurred it would be a hardship to not allow it.

Chair Jarvis noted it is now 10:00pm and per procedures, new cases will not be started after that time. She stated it would be her preference to continue this case until they are done. The Board agreed to continue.

**Chair Jarvis made a motion to approve the request for variances to**

- **Article VI, Section C.3.a.1. General Provisions/ Use Regulations for Town of New Durham Sewage Disposal and Leach field Setbacks No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed. Less than one hundred twenty five (125) feet from the edge of a public water body;and**
- **Article VI, Section C.3.a.2 General Provisions/ Use Regulations for Town of New Durham 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.

- Conditions include: the tank move is to be performed by a NH licensed septic installer; the tank condition is to be inspected when it is exposed and the tank is to be replaced if the condition is determined to be less than ideal in the opinion of the installer.

Vice Chair Anderson seconded the motion. Roll Call Vote: Vice Chair Anderson – aye; Ms. Richard -aye; Ms Callaway – aye; Mr. Raslavicus – aye; Chair Jarvis – no. Motion passed, 4-1-0.

Chair Jarvis suggested combining the discussions of the following variance requests: Article XIV, Section C.1.e, Article XXI, Section G.2.c, and Article XXI, Section G.2.d. The Board concurred.

**Discussion: Article XIV, Section C.1.e, Article XXI, Section G.2.c, and Article XXI, Section G.2.d.**

Chair Jarvis stated she is happy to see the impervious surface is being reduced quite a bit; however she is concerned about the house size going from approximately 15% to 23.4%. Mr. Raslavicus stated that since the first motion was approved this should be approved as well as they are all related. Chair Jarvis stated that, septic aside, do they want to be encouraging increases in buildings on these lots. Vice Chair Anderson stated its good that the overall lot size coverage is coming down even though its still over the requirement. She stated the down size is the coverage going from 15% and growing to 23.4%; she suggested they could build on the same footprint or with the same square footage further back on the lot; it could still be two story to bring it up to the level of the road and driveway so they can get what they need without increasing the building percentage beyond what it is now. Ms. Callaway stated she still has an issue with the house expanding to the right and the garage to the left. She agrees with having less impermeable surface but has an issue with the garage and doesn't agree it is what they are looking to do with these ordinances. Ms. Richard stated she sees they worked to decrease the overall lot coverage but the increase in the building size is significant but there is no room for them to do anything without a variance. Ms. Callaway stated they are looking at the house and garage as a complete unit but usually its a house and garage separate; she stated it seems odd to look at it as a whole when compared to other cases. Mr. Raslavicus noted often a garage is part of a plan that is denied; he stated he would prefer to do away with the gravel road for runoff and have the garage in its place. Mr. Raslavicus stated he is surprised they are considering allowing such a large increase; he stated it is his opinion that the existing basic footprint is appropriate along with the addition of a garage. Chair Jarvis stated she would find it easier to accept the increase in the building size and suggested the garage be for a single car.

*Granting the variance would/would not be contrary to the public interest:* Vice Chair Anderson stated it would be contrary, even though there is a decrease in the overall coverage, the public is going to see the larger increase in the building size; when looking from the lake it will be almost three times as wide. She stated the purpose of the ordinance is to keep it from appearing crowded. Ms. Callaway agreed that it is too big of a structure for this size property. Ms. Richard stated she believes it is in the public interest because of what the public doesn't see which includes the storm water improvements, elimination of the driveway and the addition of the rain garden. Mr. Raslavicus stated his concern about the expansion to the west of 10' and the garage of 24'; he that if they don't allow them to have a garage then that area would be moved to the left and would be bigger.

*The spirit of the ordinance would/would not be observed because:* Vice Chair Anderson stated the spirit of the ordinance would not be observed as the building size is increasing over 15% of the lot; it is wider and two stories high, making it a significant size change. Mr. Raslavicus and Ms. Callaway concurred. Ms. Richard stated she believes the spirit of the ordinance is being observed as far as protecting the

water quality of the lake as the lot size coverage is being reduced.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated she doesn't believe the requests for these particular variances are warranted. Vice-Chair Andreson stated the overall gain to the public in the decrease of the coverage isn't as much as what the applicant is gaining by surpassing the variance requirements and doesn't believe it would do substantial justice. Mr. Raslavicus stated the public interest is expressed by the language of the ordinances which say you have a small lot and you cannot extend it unless there is room; he stated he thinks the gain is higher for the applicant than the public as those lots should not be overcrowded and the reason for the restriction. Ms. Callaway stated she doesn't believe it would do substantial justice as its just too big for the lot and doesn't see the public is gaining anything by having a more crowded area. Ms. Richard stated she believes there is a big gain to the public for the stormwater improvements being made; there is minimal ways for the applicant to make changes to the existing house without having some sort of increase in the building lot coverage. Ms. Callaway stated she thinks the expansion is too large and if there was a slight expansion on the west side then the same changes would be made in regards to stormwater management.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated a new home would improve property values. Ms. Richard agreed and noted an abutter spoke in support of the proposed changes. Vice-Chair Anderson stated a new designed house and property with the driveway being raised to the level of the house and road, is much safer; the design looks great and in that way would increase values but she is unsure if the crowding issue would diminish values. Ms. Richard stated the house is going to be higher on the ground than it is now but no abutter from across the street had any comments.

*Unnecessary Hardship:* Ms. Richard stated it would be hardship as the building size is already at the 15% and the lot size coverage is already over what it should be; they are trying to rein that back in the best they can. Mr. Raslavicus stated he's not sure when a new house is squeezed on to a lot, that the value of the land gets up higher. He stated there is a substantial reason to oppose this. Vice-Chair Anderson stated she doesn't believe there is a hardship; the applicant can get a a new house with a better design and perhaps more living space, a safer driveway, and better drainage without crossing the 15%.

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

- **Article XIV Section C.1 (e): Shorefront Conservation Overlay District Dimensional Requirements. B 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. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.**

**Vice Chair Anderson seconded the motion. Roll Call: Vice Chair Anderson – aye; Ms. Richard - no; Ms. Callaway – aye; Mr. Raslavicus – aye; Chair Jarvis – aye. Motion passed, 4-1-0.**

Chair Jarvis suggested they consider the following together: Article XXI Section C.1, Article XXI Section C.2. The Board concurred.

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated she likes the fact the building is being moved back but she is not in favor of reusing the septic tank; no the increase in size and the lack of conformance to the current regulations. She stated it is making a non-conforming lot more non-conforming. Mr. Raslavicus stated the public has stated what they want through the ordinances; he noted property can be restored and renovated to keep what they have. Vice-Chair Anderson stated although the impermeable surface is being decreased, it is still nonconforming. Ms. Callaway concurred; it is a much larger building and although it may be nicer, its too big for the lot.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated keeping a 15 year old tank doesn't meet the spirit of the ordinance. Vice-Chair Anderson stated the ordinance allows for a nonconforming lot and this isn't an extreme situation as modifications could be made the existing house. Ms. Callaway concurred. Ms. Richard stated she believes the spirit is observed as the plans keep the same nonconforming of the lot.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated there would be substantial justice to the applicant but does not think there would be substantial justice to the Town and to the lake. Vice Chair Anderson, Mr. Raslavicus and Ms. Callaway concurred.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated she thinks the values would improve. Vice-Chair Anderson stated she doesn't see that the properties would be diminished; Ms. Richard and Ms. Callaway concurred. Mr. Raslavicus stated he doesn't know if there would be any diminished values and it could depend on how many other lots like this are granted these variances.

*Unnecessary Hardship:* Chair Jarvis stated that she agrees the proposed use is reasonable and the lot is small, there are many lots on South Shore Road of the same size and believes that the purpose of the ordinance and specific application has a substantial relationship to this property but the request to make a nonconforming lot more nonconforming is in the best interest of the public. Vice Chair Anderson stated she doesn't see this as being a hardship as they can still improve the property without making it more nonconforming. Ms. Richard stated it would be a hardship to not approve this piece of the request as everything else relies on it. Ms. Callaway stated she doesn't believe its a hardship; it is a nonconforming lot and there are ways to improve it within the ordinances. Mr. Raslavicus concurred and stated the hardship to the individual is not proven; this property is not unique to have an unreasonable hardship.

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

- **Article XXI Section C.1: Non-Conforming Buildings, Land or Uses New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. 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 Such expansion does not make any existing lot, structure, or use more nonconforming within the terms of this Ordinance.**

**Ms. Callaway seconded the motion. Roll Call Vote: Vice Chair Anderson-Aye, Ms. Callaway-Aye, Ms. Richard-No, Mr. Raslavicus-Aye, Chair Jarvis - Aye. Motion passed: 4-1-0.**

*New Durham Zoning Board of Adjustment Meeting*

*May 12, 2020*

*DRAFT*

**NEXT MEETING**

June 9, 2020

**ADJOURN**

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

The meeting was adjourned at 11:24pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary