

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
November 10, 2020
New Durham Town Hall –7:00 PM**

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

Join Zoom Meeting

<https://us02web.zoom.us/j/88574336667?pwd=a0xIVE5qU1VMMVM2TW84cURPTEVxUT09>

Meeting ID: 885 7433 6667 Password: 836780

Or via telephone number: 1-646-558-8656; Meeting ID: 885 7433 6667 Password: 836780

Technical difficulties contact Town Administrator Scott Kinmond at skinmond@newdurhamnh.us or by phone at 603-556-1516. Assistance with Zoom application please contact Brian Cauler at ndlanduse@newdurhamnh.us or contact Zoning Board.

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

PRESENT

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

ALSO PRESENT

Scott Kinmond, Town Administrator – via Zoom
Tom Varney, Varney Engineering, LLC – via Zoom
Deborah Randall, architect for Millers – via Zoom
David Miller, applicant – via Zoom
Kara Miller, applicant – via Zoom
Martin Wendt, applicant – via Zoom
Jody Wendt, applicant – via Zoom
Leslie Wendt, applicant - via Zoom
Bob Craycraft, resident – via Zoom
Hal Sanborn, resident – via Zoom
Christopher Berry, Berry Surveying and Engineering, LLC – via Zoom
J. R. Jones, resident – via Zoom

Wendy Hume, resident – via Zoom
Joe Hume, resident – via Zoom
Bruce Philbrick, resident – via Zoom
Saphspencer Lessard, applicant – via Zoom
Samantha Lessard, applicant – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:03 PM.

Chair Jarvis stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, 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 all motions would be taken by roll call; roll call attendance was taken for those participating in the Zoom meeting.

Chair Jarvis confirmed there are no objections to these cases being heard electronically. None were indicated.

Review and Acceptance of Case # 2020-013

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

They are requesting variances to the following:

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

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

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

Article VI Section C 3 (b) i: General Provisions/ Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks. No part of a leach field shall be located less than: i. twenty (20) feet from a property line on a lot less than 80,000 square feet.

Article XIV Section C 1(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 (c): Shorefront Conservation Overlay District Dimensional Requirements Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the normal high-water level. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities.

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: 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 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 118 Lot 040 – 345 Merrymeeting Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis confirmed all fees were paid, abutters notified, and public postings done.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. None was indicated. 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 they need to determine if this application is materially different than the application submitted July 14, 2020: it was noted the impervious surface decreased from 38.3% to 33.9% which is less than is currently occurring on the property; the building size has been

decreased to 14.9% and it was previously at 19.4%. The house is moved back so approximately 12% of the house is within the 75' setback from the lake. The Board concurred the application is materially different.

Chair Jarvis made a motion to declare that the application submitted by David and Kara Miller for November 10, 2020, is materially different than the application submitted at the July 14, 2020 meeting. Vice Chair Anderson seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The Board reviewed the application for completeness.

Mr. Raslavicus stated that the application shows a lake front deck extending towards the reference line and within the 50-foot setback. Such structure is permitted without a variance on existing buildings by Art. XXI -F, but is silent in respect to buildings yet to be built if a variance were granted. He opined that the deck should be part of the variance request in this case.

Ms. Richard made a motion to approve the application for Case #2020-013 as complete. Vice Chair Anderson seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Review and Acceptance of Case # 2020-014

Application submitted by Varney Engineering LLC, on behalf of Martin and Jody Wendt. They are requesting a Special Exception to the following:

Article VII Section A 1(a): Special Exceptions. A. 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. Refer to Article XII: Aquifer Protection Overlay District and the Article XIII: Wetland Conservation Overlay District for special exceptions required in those areas.

Table 4. Special Exceptions Summary Use Area of Town Article Reference
Commercial Use (including Minor Commercial Use) In areas designated “Developable” or “Constrained Developable” on Land Use Suitability Map. VII.A.1. & VII.B. Industrial Use In areas designated “Developable” or “Constrained Developable” on Land Use Suitability Map. VII.A.2. & VII.B. Multi-Family Developments Residential/Recreational/Agricultural District VII.A.4. & VII.B. Conditionally permitted in Town Center Mixed Use District Mobile Home Parks In areas designated “Constrained Developable” on Land Use Suitability Map. VII.A.5. & VII.B. Camping Areas and Campgrounds In areas designated “Constrained Developable” on Land Use Suitability Map. VII.A.6. & VII.B. Utilities All Zoning Districts VII.A.7. & VII.B.

1. Commercial Use (a.) Commercial uses of land in the Town of New Durham may be permitted as a Special Exception in the areas designated “Developable or Constrained Developable” as shown on the Land Use Suitability Map

The property is located at Map 270 Lot 020 – 397 Berry Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis confirmed all fees were paid, abutters notified and public postings done.

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 abstaining from this case. 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 applicants have the right to have a five-member board to hear a case and asked if the applicants want to proceed with four members. The applicants and applicant’s representative indicated they are okay with proceeding.

Chair Jarvis stated she doesn’t have the site plans for this case so would step down from reviewing the case. She asked if the applicants want to proceed with three members. Mr. Varney stated that’s not recommended. The owner was present at the meeting.

Review and Acceptance of Case # 2020-015

Application submitted by Berry Engineering LLC, on behalf of Saphspencer and Samantha Lessard. They are requesting variances to the following:

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.

They are requesting a Special Exception to: **Article VII Section A 1 (d): Special Exceptions. Commercial Use Minor Commercial Use** may also be permitted as a Special Exception in all areas of the Town of New Durham where single-family dwellings or duplexes are permitted provided an impact assessment proves to the ZBA the commercial use would have an impact equal to or less than a single-family dwelling.

The property is located at Map 257 Lot 007 – 210 Route 11. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis confirmed all fees were paid, abutters notified and public postings done.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. None was indicated. 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 Board reviewed the application for completeness. It was noted the abutters list and assessing cards are missing. The Board concurred the application is not complete. It was agreed by the Board that a request for a variance to Article XIII is needed.

Mr. Berry stated he doesn't believe Article XIII is applicable as there is on-site soil data which overrules GIS mapping data; he asked what the Board received because everything including site plans were added to the packages before leaving his office. It was confirmed the maps need to be submitted in full size format as well.

The Board concurred the property is in the wetland conservation overlay district and a variance is needed for Article XIII B.1. or B.3. The application will also require review and comment by the Conservation Commission and the Planning Board. Mr. Berry clarified they are not going to be disturbing any wetland areas. It was agreed the Board would have a better idea when they are able to review large scale plans.

Chair Jarvis made a motion that the application for Case #2020-015 is incomplete. Mr. Raslavicus seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Chair Jarvis made a motion to postpone the Public Hearing for Case #2020-015 until December 8, 2020. Ms. Richard seconded the motion. Roll Call: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The Board returned to review of the application for Case #2020-014. The Wendts stated they want to continue with three members of the Board hearing the case.

Vice Chair Anderson made a motion that the application for Case #2020-014 is complete. Ms. Callaway seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – abstain; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – abstain. **Motion passed, 3-0-2.**

PUBLIC HEARING– Case #2020-13

Chair Jarvis read the case and public notice into the record.

Chair Jarvis opened the public hearing at 8:03 PM.

Tom Varney, Varney Engineering, LLC, stated the Millers submitted an application on July 14, 2020 to replace the existing cottage and were denied; a new cottage has been redesigned with a better fit on the land and meets the building size. The lot size coverage proposed is less than the current; the new building is 6' further from the lake than previously proposed; the septic pump

chamber is further from the property line and the tree cover is to remain the same. A new well and septic system will be installed; a Conditional Use permit will be required due to steep slopes. Mr. Varney presented maps and outlined the location of the property as well as the site plan, comparing the existing and proposed plans. He stated there will be a drywell and catch basin in the back of the driveway.

Deborah Randall, architect, presented a video of a 3-D model of the proposed building. She stated the deck will be further back from the lake than the existing cottage. It was noted the current cottage is 2 bedrooms and the proposed home will remain 2 bedrooms. The approximate square footage of the first floor is about 1,000 square feet; the basement will be unfinished and the top floor is 500 square feet. The current cottage is 716 square feet.

Mr. Varney stated they don't have septic plan that has been approved by NH DES yet as they need approval from the ZBA before they can submit a Shoreland permit and septic design.

Chair Jarvis summarized the proposed plans:

- Impervious surface is currently 34.2% and the plans reduce it to 33.9%;
- Lot coverage is 13.5% and goes to 14.9%;
- The building is currently 16' tall going to 32' tall;
- Currently the house is 18' from the lake and this will 32' from the lake;
- All of the current house is within the 50' setback and with the proposed plans 12.5% will be within the 50' setback and an additional 60% will be within the 75' setback;
- The sheds are being removed;
- The septic tank from the water is currently 125' and is going to 65';
- The septic tank is 75' from the well and going to 53.5'; and
- The leach field from the water is going from 75' to 89.4'.

Mr. Varney stated the land where the cottage was, will likely be planted with trees. It was noted the slopes are 25%. Mr. Raslavicus stated he is concerned about the steep slopes as well as the driveway access which seems difficult to access from Merrymeeting Road. He also has reservations about the size of the building on the slope as it changes the appearance of the property.

Mr. Miller stated the driveway is shared with neighbors but they have not had problems with parking. It was noted the road is two-cars wide at the end of the road.

Chair Jarvis opened the public hearing to members of the public.

Bruce Philbrick, abutter, stated he agrees with Mr. Varney that it would be difficult to try and change the road to go up further and come back down; the road is a little wide so propane and septic trucks can access his and the Miller's property. Mr. Philbrick stated he agrees with what the Millers want to do with their property.

Joe Hume, abutter, stated they have no objections to the Miller's proposed project.

Chair Jarvis closed the public hearing at 8:45PM.

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

Findings of Fact:

- The lot is 0.24 acres
- The lot is 127' feet deep
- The driveway is shared with 3 +/- other properties
- The Millers own lot 39 which is adjacent to lot 40
- A new well will be drilled
- The property has slopes of 25% or more
- A steep slope Conditional Use Permit is required from the New Durham Planning Board
- A Shoreline permit from NH DES is required
- A new septic system will be installed
- NH DES approval of the septic system will be required
- Currently the home is two bedrooms and will remain two bedrooms;
- the square footage will be going from 716 square feet to 1500 square feet.

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

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated it is not contrary, noting the building has been moved back as far as possible, the design is narrower and even though it's larger, it is situated better and reduces the appearance of crowding. Mr. Raslavicus stated the applicant provided a statement in respect to this prong that the proposed home would be more modern. What is happening, he said, is that a small cottage is being made into a much larger structure with significant new development on very steep slopes on nonconforming land that may not be what people want to see. To go forward he would like the Board to consider attaching conditions for approval such as having the Fire Chief and Road Agent provide their opinion on access to the property when access requires vehicles to make a 180 degree turn in a tight circle. Another condition to consider is the return of the 50 feet closest to the lakefront to natural vegetation-with the lawn removed and trees planted.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the building size has been reduced and the proposed building lot coverage are within the ordinance; the impervious coverage is reduced. Vice Chair Anderson stated she believes the ordinance is observed for those reasons. Ms. Callaway and Ms. Richard concurred. Mr. Raslavicus stated that while the current application is a significant improvement over the previous it still fails in meeting the spirit of the ordinance which is closely aligned with the public interest. He also pointed out that the proposal is contrary to the provisions of RSA (483-B:11 (V)) which permits a deck to be built within 50 feet of the waterfront only when attached to buildings built before 1994.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated it does as the proposed plans will cover less of the small lot towards the lake; the design of the building makes it seem smaller. Ms. Richard and Ms. Callaway concurred. Mr. Raslavicus stated the public interest is to ensure the size of the building is not too big; he suggested sprinklers be put in the building.

For the following reasons the values of surrounding properties would/would not be diminished:
The Board concurred values would not be diminished as a new building would bring in higher taxes and may increase the value of surrounding properties.

Unnecessary Hardship: Chair Jarvis noted the size of this lot presents difficulties for anything to be done and doesn't feel there is relationship between the general public purpose and the specific application of the ordinance for this issue. Ms. Anderson and Ms. Richards concurred. Mr. Raslavicus stated the dimensional constraints are self-induced by the creation of a deeded right of way that occupies about a quarter of the lot. It is a man-made limitation by previous owner and is not a natural hardship of the lot.

Chair Jarvis made a motion to approve the variance request to

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; **and**

Article XXI, G.2.(d) Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings. No more than a total of twenty (20) percent of the lot area shall be covered by all impervious surfaces,

With the following conditions:

- **The applicant shall obtain a Conditional Use Permit from the New Durham Planning Board;**
- **The applicant shall obtain a NH DES Shoreline Permit;**
- **The applicant shall obtain NH DES approval of the septic sys**
- **The applicant shall submit all the required Steep Slope documentation to the New Durham Building Inspector/Code Enforcement Officer on a schedule determined by the CEO; and**
- **No additional lawn shall be added within 50' of the lake.**

Ms. Richard seconded the motion.

Mr. Raslavicus made an amendment to the motion so that the 50' area is to meet the requirements of the State as far as the amount of vegetation and the lawn should be removed; the opinion of the Fire Chief be obtained as to public hazards related to the roadway and proposed structure and whether a sprinkler system should be required. Ms. Callaway seconded the amendment. Discussion: Chair Jarvis noted it would only be a suggestion of the Fire Chief and a sprinkler system could not be required; Ms. Anderson stated she doesn't see the proposed building being any more of a fire hazard than the current building. Mr. Raslavicus noted he wants his amendments to be separate.

Mr. Raslavicus withdrew his amendment.

Mr. Raslavicus made an amendment to the original motion that the lawn be removed and it be made into a naturally vegetative buffer up to the 50' mark. Ms. Callaway seconded the amendment. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – no; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – no. **Amendment passed, 3-2-0.**

Chair Jarvis called for a vote on the motion as amended. **Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – Abstain; Vice Chair Anderson – aye; Chair Jarvis – aye.

Amended motion passed, 4-0-1.

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: Chair Jarvis stated she doesn't think it would be contrary; the lot is so small and the applicants have done their best to reduce their impact on the property and the lake. Mr. Raslavicus stated he disagrees and believes the impact would be less if the current structure would have been remodeled and restored at the current size and left where it is.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated she believes it is observed and the ordinance tries to keep everything back from the lake, which they are doing and are saving the existing woodland vegetation. Ms. Callaway and Ms. Richard concurred. Mr. Raslavicus disagreed the spirit of it limits the expansion of small buildings into multistory structures on very steep slopes and within the required setback

Granting the variance would/would not do substantial justice because: Ms. Callaway stated it would do substantial justice; so much effort has been put forward to minimize the impact and still give the homeowners what they want. Ms. Richard concurred, noting there is no way to build on this lot without a variance from the lake setback because of the location of the driveway. Vice Chair Anderson concurred.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't see the value being diminished and would raise the taxes on this property and potentially surrounding homes. The Board concurred.

Unnecessary Hardship: Chair Jarvis stated based on everything said previously, it would be hardship. Ms. Richard and Ms. Callaway concurred. Mr. Raslavicus stated that the hardship is a self-induced problem by previous owners deeding away a significant part of the lot on which a conforming building could be built without variances and within the building envelope indicated on the plans.

Chair Jarvis made a motion to approve the variance request to:

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

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

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.

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

Discussion Article VI Section C 3 (a) i: Article VI Section C 3 (a) ii; Article VI Section C 3 (b) I; Article XIV Section C 1 (c); Article XXI Section C 1, and Article XXI Section C 2:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated for the reasons previously discussed, it would not be contrary. Vice Chair Anderson stated the new system will be further from the lake, updated and better for the lake. The Board concurred.

The spirit of the ordinance would/would not be observed because: Mr. Raslavicus stated that in respect to the septic system articles the spirit is observed. The rest of the Board felt it would be observed.

Granting the variance would/would not do substantial justice because: The Board concurred it would do substantial justice because the public gains due to a new septic system.

For the following reasons the values of surrounding properties would/would not be diminished:

The Board concurred that values would not be diminished as the new home will be more attractive, taxable at a higher amount and may increase the value of surrounding properties.

Unnecessary Hardship: The Board concurred that to deny this would be an unnecessary hardship due to the small size of the lot.

Chair Jarvis made a motion to grant the variance request to:

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

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

Article VI Section C 3 (b) i: General Provisions/ Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks. No part of a leach field shall be located less than: i. twenty (20) feet from a property line on a lot less than 80,000 square feet;

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

Article XXI Section C 1: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: They conform to Non-Conforming Setback and height requirements below; and

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.

Ms. Callaway seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – abstain; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed 4-0-1.**

PUBLIC HEARING– Case #2020-14

Chair Jarvis stepped down from this case.

Ms. Callaway noted the time is 9:50 PM. The Board concurred with setting a special meeting for the Public Hearing for Case#2020-14.

The meeting was set for Wednesday, November 25, 2020 to hear Case #2020-14.

REVIEW of CHANGES to the ZBA RULES of PROCEDURE – Postponed.

APPROVAL OF MINUTES

Meeting of October 13, 2020 – The minutes were reviewed and edits were made. **Vice Chair**

Anderson moved the minutes be accepted as revise. The motion was seconded by Ms.

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

Next Meeting:

November 25, 2020, 7:00 December 8, 2020, 7:00 PM

ADJOURN

Vice Chair Anderson made a motion to adjourn. Ms. Richard seconded the motion. Roll

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

The meeting was adjourned at 10:12pm.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary