

*New Durham Zoning Board of Adjustment  
July 9, 2019  
APPROVED*

**NEW DURHAM ZONING BOARD OF ADJUSTMENT  
New Durham Community Room  
July 9, 2019, 7:00p.m.**

**Present**

Terry Jarvis, Chair  
Stephanie Richard, Member  
Linda Callaway, Member  
Paul Raslavicus, Alternate Member  
David Wessel, Alternate Member

**Excused Absence**

Wendy Anderson, Vice Chair  
Art Hoover, Member

**Also Present**

Laura Zuzgo, Administrative Assistant	Tom Varney, Varney Engineering
Alan Wysocki, Applicant	Keith Gibbons, Wysocki Abutter
Ann Gibbons, Wysocki Abutter	Mike Narkis, Applicant
Robert Lenahan, Narkis Abutter	David Grandin, Applicant
Tom Meyer, Resident	Karen Shorette, Grandin Abutter
Chris Shorette, Grandin Abutter	Mario Ranieri, Grandin Abutter
Wes Whittier, Grandin Abutter	Tristan Whittier, Grandin Abutter
Mario Ranieri, Jr., Grandin Abutter Q	Brad Jones, Jones & Beach Engineering

**Call to Order**

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

**Announcements**

Chair Jarvis stated House Bill 136 passed in the legislature and increases the timeframe in which a Zoning Board of Adjustment must hold a public hearing; it is now 45 days and is effective July 9, 2019. She stated this bill would supersede the Rules and Procedures. If an applicant waives the 45 day requirement, it can go longer.

**Ms. Callaway made a motion to postpone the approval of minutes until the end of the meeting. Ms. Richard seconded the motion. Motion passed 5-0-0.**

**Continued Review and Acceptance of Case # 2019-001**

Jones & Beach Engineering Inc., representing David and Julie Grandin, who are requesting variances from:

*Article V Section 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 requirements*

3. Sewage Disposal and Leach Field Setbacks. a. 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 XIV Section C.1.b. Dimensional Requirements*

1. Development with Waterfront Access b. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level.

*Article XXI Section C.1 and 2. C. 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 provide

1. They conform to Non-Conforming Setback and height requirements below; and
2. 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 Setbacks-* The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article;

2. Buildings:

- b. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.

The property is located at Map 110 Lot 022, 383 Merrymeeting Road. If the application is found to be complete, a public hearing may be held.

Chair Jarvis appointed Mr. Raslavicus to sit on the Board in Ms. Anderson's absence and Mr. Wessel to sit on the Board in Mr. Hoover's absence.

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

*APPROVED*

Chair Jarvis asked if any member of the Board has any real or perceived conflicts of interest. None were noted. Chair Jarvis asked if anyone in the audience believes any member of the board has a real or perceived conflict of interest. None was noted.

Chair Jarvis noted the property card indicates a Town easement on the property for drainage and asked to have it pointed out on the plans. It was clarified a boundary survey was done and the easement is not defined; it was also clarified that nothing being proposed will interfere with the drainage easement.

The Board reviewed the application for completeness. Mr. Raslavicus noted a signature line for permission to conduct a Site Walk must be signed by the property owner. The owner was present and signed.

**Chair Jarvis made a motion to accept the application for Case #2019-001 as complete. Ms. Richard seconded the motion. Motion passed, 5-0-0.**

Chair Jarvis confirmed all abutters were notified and the public notice was posted and noted the original post did not include all the variances now being requested as these were added after the initial review of the application.

Chair Jarvis opened the Public Hearing at 7:12pm.

Chair Jarvis read a letter dated April 2, 2019 from the abutters, Christopher and Karen Shorette, 379D Merrymeeting Road, which stated they are unable to attend the meeting but wanted to communicate that they give their support of the project, and believe it will enhance and improve the lake overall, the community and the shoreline.

Brad Jones, Jones & Beach Engineering, gave an overview of the project. He explained two plans were developed, a boundary survey was done, noting the first plan shows what currently exists which is a cottage set within the 50 ft. setback, a bunkhouse 2 ft. from the property line, an existing garage, driveway, septic tank and leach field. It was noted there is a drainage culvert that crosses Merrymeeting Road and this is part of the Town's drainage easement. A list of setbacks was also presented and reviewed. It was noted the current deck is 23.1 ft. from the lake and the proposed deck will be 31ft., which will be less non-conforming. The bunkhouse will be removed and the setbacks for the house and garage will be pushed back. The area of the shoreline which will remain unaltered was highlighted and it was noted this is part of the requirements for the NH DES shoreline permit. It was noted there is a steep slope. The proposed conditions for the new house were outlined and will be less non-conforming; the current cottage is 2023 square feet and the proposed is 3683 and will be less than 15% lot coverage; total impervious surface currently is 4,951 square feet and will be 5,080 square feet with the proposed plans. Chair Jarvis asked about the garage size; it will be 26 x 34 ft. for a two car garage. Chair Jarvis

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

*APPROVED*

asked the setback of the garage from the stream. It will be going from 20 ft. to 10 ft. and Mr. Brad Jones explained it is being considered a concentrated drainage from the road rather than a body of water. The Board reviewed and discussed the maps and plans presented. It was confirmed the proposed plans will meet the State of NH DES setback requirements. Chair Jarvis suggested the house could be pushed back allowing for only a small portion remaining in the 75 ft. setback. The problems with pushing it back include affecting the State required unaltered wooded area. Mr. Raslavicus asked why they have the proposed porous pavement. It is to get below the impervious coverage requirements by the Town and State. Ms. Callaway stated she is concerned about the amount of the proposed building remaining within the 75 ft. setback, noting it is being moved back from the 50' setback but about 45% of the 75 ft. band is being used; the garage is almost twice as long as the existing. She suggested making dimensions smaller for the garage so the house doesn't have to be pushed as far into the 75 ft. setback. Chair Jarvis suggested tree planting along lot lines to keep it less visible as they are so close to the lot lines.

David Grandin, applicant, stated the existing vegetation is large, tall trees, and to get more to grow would require removing those. He stated part of what they are trying to do is to maintain the trees and woods and build within the existing clearing. Mr. Raslavicus stated the issue is stopping at the 50 ft. line and while it meets the State requirements, it doesn't meet the Town ordinance and a fairly large part of the no-build zone is being proposed to be built in. He suggested the garage go where the porous pavement is. It was noted the proposed house will be 2 stories. Mr. Grandin explained that they are trying to come up with something that is in the best interests of everyone and makes the lot less non-conforming and other scenarios were suggested but those plans would not improve setbacks, septic systems or lot coverage. Mr. Grandin stated if they don't get the variances to do the plans proposed, they may do some of the other suggestions but believes this is a superior plan and will overall be less non-conforming. Mr. Raslavicus replied improvements such as septic system can be done if a building is torn down but has concerns with not building on the same foot print as is allowed by the current ordinances. He outlined the increases including total building coverage from 2023 to 3683 square feet and noted it's a very significant increase on a non-conforming lot. Chair Jarvis stated her concern is how much of the building remains within the Town's 75 ft. setback and suggested pushing it out further, with a possible compromise on the size of the garage and amount of porous pavers.

A third proposal was outlined which includes pushing the building back out of the 75 ft. setback, includes an altered wooded area so a shoreline permit will not be able to be obtained; it will also affect the steep slope area. Ms. Callaway suggested putting the building at the 75 ft. setback and shift the garage down the driveway and the garage would not be quite as wide and the green-space would be preserved. Mr. Grandin stated they plan to change this to a permanent, year-round residence which requires more space than a seasonal cottage. He noted they had three buildings and are now asking for two. Mr. Raslavicus explained the purpose of the Shoreline Protection Overlay district and the reasons for the setbacks and regulations to help prevent overcrowding, protect water

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**APPROVED**

quality, preserve natural beauty and wildlife habitats, and minimize environmental degradation. The Board reviewed and discussed the shoreline protection ordinances. Mr. Raslavicus noted that by increasing the building size and the septic system, the number of people in the space is also increased.

Chair Jarvis opened the Public Hearing to abutters.

Chris Shorette, abutter, stated they've been on the lake for 26 years and noted the storm water runoff between their properties, was addressed as coming from the properties but in fact it all comes from the street and the culvert up the street. He asked what the data was that supported the 75 ft. setback, as the State only requires 50 ft. Chair Jarvis explained the Town voted to have a stricter standard than the State, which is allowed. Mr. Shorette suggested other factors should be looked at for the overall plan being proposed. He stated the septic system will be improved and the runoff into the lake will be mitigated as well.

Chair Jarvis closed the Public Hearing at 8:15pm.

Chair Jarvis stated the five board members hearing the case would be Terry Jarvis, Stephanie Richard, Paul Raslavicus, Linda Callaway and David Wessel.

Chair Jarvis summarized the Findings of Fact: the applicant proposes to tear down the current cottage, bunk house and 1.5 car garage and replace with a two-story, four bedroom house and 2.5 car garage. The lot is 27,900 square feet and there is currently 17.7% impervious surface; the proposal would be increased to 18.2% which is below the 20% maximum. The building coverage goes from 7.2% to 13.4% which is below the 15% maximum. The house will increase from 1,043 to 1,860 square feet; the garage will go from 400+ sq. ft. to 1,008 sq. ft.; currently the house at its closest point to the lake is 35 ft. from the lake and will go to 48.5 ft. at its closest point; the house is currently 22 ft. from the road runoff area and will go back to 18 ft; the garage is 21ft. from the road runoff and the new garage will be less than 10 ft. from the runoff; the current septic system will be replaced with a NH DES approved system for year-round use of the home; the septic tank is currently 75 ft. from the lake and will be moved back to 90 ft; a DES Shoreline Permit is required; a NH DES Septic Permit is required; some members of the Board have expressed the believe that the applicant can get the house he desires with some alterations to the plans to the garage and the porous pavers. It was noted the current septic system was State-approved for two-bedrooms in 1984.

Chair Jarvis suggested discussing and considering together, Article V, Section E, Article XIV, Section C.1.b and Article XXI, Section G.2.b. The Board concurred.

***Discussion: Variances to 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 feels it would be contrary to the public interest as they could push the house back towards the road, although some would remain within the setback. They could also minimize the size of the garage. Mr. Wessel stated regardless of where the 75 ft. setback came from, the State declares 50 ft. and allows towns to create a larger distance which this Town has chosen to do through the legislative process. He stated before they approve things within the 75 ft. they should try all options to remain outside it. The Board concurred.

*The spirit of the ordinance would/would not be observed because:* Ms. Callaway stated the spirit of the ordinance would not be observed because everything in the proposed plan is based on the State setback and there doesn't seem to be any consideration for the Town setback. The Board concurred.

*Granting the variance would/would not do substantial justice because:* Ms. Richard stated there appear to be some other options, therefore substantial justice would not be done by granting the variances. The Board concurred.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated the values of the surrounding properties would not be diminished and may increase the value of the area with a newer house there. The Board concurred. Mr. Raslavicus stated in the short term it will increase but long-term the diminishment is possible.

*Unnecessary Hardship:* Mr. Wessel stated although he hasn't been to the property, he doesn't see any distinct aspects which would affect them in this ordinance. Ms. Richard noted there are steep slopes. Chair Jarvis outlined the requirements of the applicant to show hardships. She noted that although it is a non-conforming lot, so are nearly all lots around the lake and doesn't see any special conditions of the property which call for this to be reasonable. Mr. Raslavicus noted this ordinance doesn't interfere with a reasonable use of the property.

**Chair Jarvis made a motion to deny the request for variances to:**

**Article V Section E, Flood Hazard Area and Waterbody Setbacks-**No new building, 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 course;

**Article XIV Section C.1.b. Building Setbacks-**Except for water-related structures, 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.** No new building, 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 course.

**Mr. Wessel seconded the motion.** Mr. Wessel-Aye, Ms. Callaway-Aye, Ms. Richard-Aye, Mr. Raslavicus-Aye, Chair Jarvis-Aye. **Motion passed 5-0-0 vote.**

***Discussion: Variance to Article VI, Section 3.A.1***

Ms. Richard asked if the current system is in failure. It is not.

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated the current system is for two-bedrooms and would be going to four-bedroom, granting the variance would not be contrary to public interest. Ms. Richard stated she doesn't disagree but questioned the additional load which would be added. Chair Jarvis noted the ordinance requires the system being approved by DES when going from seasonal to year-round home and DES will require a larger system. The Board concurred.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated the spirit is being observed because the system would be located further back from the lake than the current system and would be approved under the current DES regulations. The Board concurred.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated an improved system will hopefully decrease any potential pollution to the lake. The Board concurred.

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

*Unnecessary Hardship:* Chair Jarvis stated that by pushing the building back, it puts it close to the steep slopes area. The Board concurred that is reasonable.

**Chair Jarvis made a motion to grant a variance to Article VI Section C.3.a.i - Sewage Disposal & Leach field Setbacks-** No privy, cesspool, septic tank or sewage disposal area shall be constructed or reconstructed less than one hundred Twenty Five (125) ft. from the edge of a public water body, **with the following conditions:**

- 1. The applicant will receive a Shoreland Permit from NHDES, if required**
- 2. The applicant will receive approval from NHDES for a four (4) bedroom septic system that is located no closer than ninety (90) feet from the lake.**

**Mr. Wessel seconded the motion.** Mr. Wessel-Aye, Ms. Callaway-Aye, Chair Jarvis-Aye, Ms. Richard-Aye, Mr. Raslavicus-Aye. **Motion passed: 5-0-0.**

***Discussion: Variance to Article XXI, Section C.1 and C.2***

*Granting the variance would/would not be contrary to the public interest:* Mr. Wessel noted that any time a lot is made less non-conforming; it is in the public interest. Chair Jarvis stated she likes the fact the house is being pushed back beyond the 50 ft. mark but a lot of it could be pushed back past the 75 ft. setback; part of the proposal is contrary to the public interest while some of it is not. Ms. Callaway stated when looking at the entirety of the project, it is more non-conforming. Mr. Raslavicus stated the structure becomes more non-conforming in size and location, and significantly impinges on the setback. The Board discussed how much of the building would be in the 50 – 75 ft. range of the setbacks.

*The spirit of the ordinance would/would not be observed because:* Ms. Callaway stated it would not meet the spirit of the ordinance because in some ways it is less nonconforming and in other ways it is more non-conforming. Ms. Richard agreed with this because in some areas it is less non-conforming, such as in the 50 ft. State setback, however it appears to be more non-conforming within the 50-75 ft range of the Town ordinance. Ms. Callaway stated it is going from approximately 25% in the 50-75 ft. strip to approximately 43%. Mr. Raslavicus felt it was making it more non-conforming.

*Granting the variance would/would not do substantial justice because:* Ms. Richard stated it would not do substantial justice because there appears to be ways to further less non-conforming. The Board concurred.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated the surrounding properties values would not be diminished. The Board concurred.

*Unnecessary Hardship:* Chair Jarvis stated there is a relationship between the application of the ordinance and the public purpose of the ordinance for reasons discussed previously. She stated the proposed use is reasonable even though the proposed location is not. Ms. Richard stated there appears to be options to use the property within the terms of the ordinance. Mr. Raslavicus stated he isn't convinced a variance is needed. The Board concurred.

**Mr. Wessel made a motion to grant a variance to Article XXI Section C.1. and Section C.2. – New Buildings and Structures, Alteration and Expansion of Existing Non-Conforming Uses** 1) They conform to Non-Conforming setback and height requirements below; and 2) Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance. **Ms. Richard seconded the motion.** Mr. Wessel-Nay, Ms. Callaway-Nay, Ms. Richard-Nay, Mr. Raslavicus-Nay, Chair Jarvis-Nay. **The motion failed: 0-5-0 .**

**Chair Jarvis made a motion to deny a variance to Article XXI Section C.1. and Section C.2 New Buildings and Structures, Alteration and Expansion of Existing Non-Conforming Uses. Mr. Wessel seconded the motion. Mr. Raslavicus-Aye, Ms. Richard-Aye, Mr. Wessel-Aye, Ms. Callaway-Aye, Chair Jarvis-Aye Motion passes: 5-0-0.**

Chair Jarvis stated this concludes Case #2019-001.

**Continued Review and Acceptance of Case # 2019-004**

Thomas Varney, Varney Engineering LLC, representing Alan H. Wysocki, who is requesting variances from:

*Article V, Section C- Road Frontage.* The minimum road frontage on a road built to Town Standards and approved by the Planning Board shall be based on lot size and specified in Table 2. Lot Size Road Frontage 80,000 sq. ft. or less -150 feet.

*Article VI, Section C.3.a and b. General Requirements.*

3. Sewage Disposal and Leach field Setbacks a. 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,
  - ii. less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant.
- b. 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. Dimensional Requirements*

1. Development with Waterfront Access
  - b. 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. Dimensional Requirements*

1. Development with Waterfront Access:
  - b. 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 and 2. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses*

1. They conform to Non-Conforming Setback and height requirements below; and

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

*APPROVED*

2. 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 Setbacks.*

3. Buildings:

- b. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.

The property in question is located on Pine Point Road, Map 103, Lot 014. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis stated the five board members hearing the case would be Terry Jarvis, Stephanie Richard, Paul Raslavicus, Linda Callaway and David Wessel.

Chair Jarvis asked if any member of the Board has any real or perceived conflicts of interest. Mr. Raslavicus stated he has is working on another case with Mr. Varney. No concern about conflict of interest was indicated. Chair Jarvis asked if anyone in the audience believes any member of the board has a real or perceived conflict of interest. None was noted.

Chair Jarvis stated she checked the Conservation Overlay and the property is small enough that it is not covered by the wetlands conservation.

The Board reviewed the application for completeness.

**Chair Jarvis made a motion to accept the application for Case #2019-004 for Map 103, Lot 15, as complete. Ms. Callaway seconded the motion. Motion passed, 5-0-0.**

Chair Jarvis stated the public hearing notice was posted on May 22, 2019 for a hearing on June 19, 2019 and confirmed all abutters were notified. No responses were received from abutters.

Chair Jarvis opened the Public Hearing at 9:08pm.

Tom Varney, Varney Engineering, gave an overview of the proposed project on Pine Point Road, noting the land is currently vacant, is wooded and has steep slopes of 2528%. He stated a proposed cottage will require variance for the septic system and deck as well as lot frontage along the road. Mr. Varney stated the building is limited by the steep slopes as well as the DES shoreline requirements; the proposed cottage will have a walkout basement with a deck and a 4ft. path connecting the cottage to the lake with variances. The front of

tank as far back as he can but it doesn't still meet the 125 ft. requirement. Chair Jarvis asked if the eve side of the building was moved closer to the property line, could the whole building be moved back. She asked how much is 15% or greater in steep slopes; Mr. Varney replied it is almost the entire lot. The cottage will be two bedrooms and the lot size coverage will be 12.5%. Mr. Varney confirmed there are no wetlands and no road runoff. Ms. Zuzgo provided a copy of an agreement between the owner of the private road, Mr. McKay, and the applicant and this was reviewed by the Board regarding a right-of-way across Pine Point Road. Mr. Raslavicus asked who owns the space between Pine Point Road and the lot line. Chair Jarvis replied it's either the property owner or Mr. McKay. It was agreed this is something to be resolved between the applicant and Mr. McKay. The Board discussed the details of the proposed cottage and deck.

Chair Jarvis asked for comments from the public. None were given.

Mr. Varney stated the land across the road is owned by Mr. McKay and the lot lines and roadway is not currently, clearly defined.

Chair Jarvis closed the Public Hearing at 9:25pm.

Chair Jarvis summarized the Findings of Fact: the property is located on a private road; granting of variances does not imply permission to travel over the road; the septic tank will be 80 ft. from the well, the leach field will be 118 ft. from the water rather than 125 ft.; the lot size is 0.03 acres; the house would be 800 sq. ft. with a deck of 240 sq. ft.; the property is currently vacant; almost the entire lot has steep slopes of 15% or higher; the deck will be suspended and is 8 ft. over the 75 ft. line; there are no wetlands; the cottage will be two bedroom home; the patio will be pervious and the retaining wall will a maximum of 5 ft.; the steps going down will be infiltration steps. It was noted the deck will actually be 320 sq. ft.. The steps from the driveway to the house will also be infiltration steps. Mr. Raslavicus asked if it is okay with the Board of Selectmen to even consider building on a private road. Chair Jarvis stated if the variances are granted, the next step for the applicant would be to go to the Board of Selectmen; Town Counsel advised that it doesn't matter which board the applicant goes to first. It was clarified this lot is not a designated wood lot, only a wooded lot.

***Discussion: Variance to Article V, Section C***

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated she doesn't see it as contrary to the public interest. Mr. Raslavicus stated he can't make a decision on it as it is his understanding that the Town will not allow building on private roads and would want to have the Board of Selectmen approval prior to this. Ms. Richard stated she does not think it would be contrary.

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**DRAFT**

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated the spirit of the ordinance would be maintained, it is a private road and not Town-maintained, and the Board of Selectmen will make the decision whether it will be allowed, taking into consideration Police, Fire and EMT accessibility.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated she believes it would do substantial justice as the only way the property owner will be able to do anything with the property. The Board concurred.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated the surrounding properties values would not be diminished. The Board concurred.

*Unnecessary Hardship:* Chair Jarvis stated to deny the variance would result in an unnecessary hardship. Mr. Wessel stated that when the lot was purchased it was known to be unable to be built on and the hardship is not being increased although it is a hardship for a property owner being able to use the property.

**Chair Jarvis made a motion to grant the request for a variance to Article V Section C Road Frontage** which requires a minimum road frontage on a road built to Town standards and in this case it is a minimum standard of One Hundred Fifty (150) feet. The granting of this variance does not give the applicant a legal right to use the private road as it exists.

**The conditions on this motion are:**

- 1. Applicant will receive a DES Shoreland Permit**
- 2. Applicant must receive a Conditional Use Permit from the New Durham Planning Board**
- 3. Applicant must receive permission from the New Durham Board of Selectmen to build on a private road**

**Mr. Raslavicus seconded the motion.** Mr. Wessel-Aye, Ms. Callaway-Aye, Chair Jarvis-Aye, Ms. Richard-Aye, Mr. Raslavicus-Aye **Motion passed with a 5-0-0 vote.**

Chair Jarvis suggested discussing and considering together, Article VI, Section C and Article XIV, C.1.C. The Board concurred.

***Discussion: Variances to Article VI, Section C.3.B and Article XIV, C.1.C***

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated she doesn't see it as contrary to the public interest as the lot is dimensionally, very small, a good portion is in steep slopes and she doesn't see any other location for the septic system. The Board concurred.

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**DRAFT**

*The spirit of the ordinance would/would not be observed because:* The Board concurred the spirit of the ordinance is being observed as the building is being located as far back as it can go.

*Granting the variance would/would not do substantial justice because:* The Board agreed there is no other location for the septic tank and leach field.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated the surrounding properties values would not be diminished and a new house would make the property more taxable as well as allowing the property owner to use the property. The Board concurred.

*Unnecessary Hardship:* Chair Jarvis stated there is no fair relationship between the public purpose of the ordinance and this property as there is no other way to meet the criteria. The Board concurred.

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

**Article VI Section C General Requirements-Septic Systems**

3.a. No privy, cesspool, septic tank or sewage disposal area shall be constructed or reconstructed less than one hundred twenty Five (125) from the edge of a public water body; and

3.b. No part of a leach field shall be located less than twenty (20) feet from a property line on a lot less than Eighty Thousand (80,000) square feet;

**Article XIV Section C.1.c. Dimensional Requirement-Leach field Setback-** Any leach field shall be set back a minimum of One Hundred Twenty Five (125) feet from the normal high water level.

**The conditions will be the same as before in regards to receiving a DES Shoreland Permit and receiving a Conditional Use Permit from the New Durham Planning Board**

**Ms. Richard seconded the motion.** Mr. Wessel-Aye, Ms. Callaway-Aye, Chair Jarvis-Aye, Ms. Richard-Aye, Mr. Raslavicus-Aye **Motion passed with a 5-0-0 vote.**

***Discussion: Variances to Article XIV, Section C.1.B and Article XXI, Section G.2.B***

*Granting the variance would/would not be contrary to the public interest:* The Board concurred that granting the variance would not be contrary to the public interest. The applicant made every effort to set the building back as far as possible.

*The spirit of the ordinance would/would not be observed because:* The Board concurred that the spirit of the ordinance would be observed for reasons stated previously.

*Granting the variance would/would not do substantial justice because:* The Board concurred it would do substantial justice for reasons stated previously.

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**DRAFT**

*For the following reasons the values of surrounding properties would/would not be diminished:* The Board concurred the values of surrounding properties would not be diminished because building on the lot will increase the value of the lot.

*Unnecessary Hardship:* The Board concurred it would be an unnecessary hardship to the property owner if the variance is not granted for reasons stated previously.

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

**Article XIV Section C.1.b. Dimensional Requirements-Development with waterfront access-Building Setback:** Except for water related structures, 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 Setbacks- Buildings-** No new building, 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 course, **with the previous conditions of receiving a DES Shoreland Permit and receiving a Conditional Use Permit from the New Durham Planning Board.**

**Mr. Raslavicus seconded the motion.** Mr. Raslavicus-Aye, Ms. Richard-Aye, Chair Jarvis-Aye, Ms. Callaway-Aye, Mr. Wessel-Aye **The motion passed with a vote of 5-0-0.**

***Discussion: Variance to Article XXI, C.1 and C.2***

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated it is not contrary to the public interest as it is the only way to build on this property. The Board concurred.

*The spirit of the ordinance would/would not be observed because:* The Board concurred that the spirit of the ordinance would be observed for reasons stated previously.

*Granting the variance would/would not do substantial justice because:* The Board concurred it would do substantial justice for reasons stated previously.

*For the following reasons the values of surrounding properties would/would not be diminished:* The Board concurred the values of surrounding properties would not be diminished for reasons stated previously.

*Unnecessary Hardship:* The Board concurred it would be an unnecessary hardship to the property owner if the variance is not granted for reasons stated previously.

**Chair Jarvis made a motion to grant the request for a variance to Article XXI Section C.1. and 2. 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 structures including septic and leach fields and any nonconforming building may be altered or expanded providing (1) They conform to

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**DRAFT**

NonConforming setback and height requirements and (2) Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance, **with the same conditions of receiving a DES Shoreland Permit and receiving a Conditional Use Permit from the New Durham Planning Board.**

**Ms. Callaway seconded the motion.** Ms. Richard-Aye, Mr. Raslavicus-Aye, Ms. Callaway-Aye, Mr. Wessel-Aye, Chair Jarvis-Aye. **The motion passed with a vote of 5-0-0**

Chair Jarvis stated this concludes Case #2019-004.

**Review and Acceptance of Case # 2019-005**

Thomas Varney, Varney Engineering LLC, representing 125 South Shore Realty Trust, Michael and Robin Narkis Trustees who are requesting variances from:

*Article VI, Section 3.b* General Requirements.

3. Sewage Disposal and Leach field Setbacks

b. 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 sq. ft.

*Article XXI, Section C.1 and C.2* New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses

1. They conform to Non-Conforming Setback and height requirements below; and
2. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

*Article XXI, Section G(1)(b)* . Non-Conforming Setbacks The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article.

1. Leach fields: b. Not less than seventy five (75) ft. from open surface water or hydric A wetlands or fifty (50) ft. from hydric B wetlands.

The property in question is located at 125 South Shore Road, Map 122, Lot 356.

Chair Jarvis stated when this case came before the Board and the variances were requested, the NH DES disagreed with the Town in regards to Lot 16 not being a right-of-way. She stated she spoke with DES and explained that it is not a buildable lot and asked if anyone felt she needed to excuse herself from hearing this case as she has discussed the case with DES. No concerns were made. Mr. Raslavicus stated he is working on another case with Mr. Varney. No concern about conflict of interest was indicated. Chair Jarvis asked if anyone in the audience believes any member of the board has a real or perceived conflict of interest. None was noted.

The Board reviewed the application for completeness. Chair Jarvis stated that although the application indicates the property is in the Wetlands Conservation Overlay District, it does not meet the definitions and therefore they do not have to consider the applicable articles.

Chair Jarvis summarized the case which was previously heard in which the Board granted variances for placing a septic system across the street. NH DES did not approve the permit as they believe the lot is a right-of-way. The variances being requested now are for the wetlands.

**Chair Jarvis made a motion to accept the application for Case #2019-005 125 South Shore Road, Map 122, Lot 356, Michael and Robin Narkis, Trustees, as complete. Ms. Richard seconded the motion. Roll Call: Stephanie Richard- aye, Paul Raslavicus -aye, Linda Callaway – aye, David Wessel – aye, Terry Jarvis- aye. Motion passed, 5-0-0.**

Chair Jarvis opened the Public Hearing at 9:54pm.

Tom Varney, Varney Engineering, stated a solution to the location for the septic system which was denied by NH DES, is to move it back to Lot 35, in the area of the well. The current well would be discontinued and moved. He stated they now need a variance for the location near the wetlands. The Board reviewed the maps and plans of the proposed septic system. It was confirmed the NH DES Shoreline and NH DES Septic Permit have been received. It was noted the septic tank will be 27 ft. from wetlands; the leach bed will be 21.5 ft. from a poorly drained area instead of 75 ft.; the leach bed is 14 ft. in size instead of the normal 20 ft.

Chair Jarvis closed the Public Hearing at 10:01pm.

Chair Jarvis stated the five board members hearing the case would be Terry Jarvis, Stephanie Richard, Paul Raslavicus, Linda Callaway and David Wessel.

Chair Jarvis suggested considering Article VI, C.3.b and Article XXI, Section G.1.b together as both deal with leach fields. The Board concurred.

***Discussion: Variances to Article VI, C.3.b and Article XXI, Section G.1.b***

*Granting the variance would/would not be contrary to the public interest:* Ms. Callaway stated it is not contrary to the public interest and it's the best option and improves the septic system. The Board concurred it would not be in the public interest to deny, due to the fact that DES denied the alternative plans.

*New Durham Zoning Board of Adjustment*

*July 9, 2019*

**DRAFT**

*The spirit of the ordinance would/would not be observed because:* The Board concurred that the spirit of the ordinance would be observed. Upgrading and moving the septic system will be beneficial in reducing pollution into the wetlands.

*Granting the variance would/would not do substantial justice because:* The Board concurred it would do substantial justice.

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

*Unnecessary Hardship:* The Board concurred it would be an unnecessary hardship to the property owner if the variance is not granted. Chair Jarvis stated there is no fair and substantial relationship between the requirement and what the applicant wants to do as they are being forced into it.

**Chair Jarvis made a motion to grant the request for a variance to:**  
**Article XIV Section C.1.b. Dimensional Requirements-Development with waterfront access-Building Setback:** Except for water related structures, 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 Setbacks- Buildings-** No new building, 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 course, **with the previous conditions of receiving a DES Shoreland Permit and receiving a Conditional Use Permit from the New Durham Planning Board.**

**Mr. Raslavicus seconded the motion.** Mr. Raslavicus-Aye, Ms. Richard-Aye, Chair Jarvis-Aye, Ms. Callaway-Aye, Mr. Wessel-Aye **The motion passed with a vote of 5-0-0.**

***Discussion: Variance to Article XXI, Section C.1 and C.2***

*Granting the variance would/would not be contrary to the public interest:* The Board concurred it would not be contrary to the public interest.

*The spirit of the ordinance would/would not be observed because:* The Board concurred that the spirit of the ordinance would be observed. Upgrading and moving the septic system will be beneficial in reducing pollution into the wetlands.

*Granting the variance would/would not do substantial justice because:* The Board concurred it would do substantial justice to grant the variance.

*For the following reasons the values of surrounding properties would/would not be diminished:* The Board concurred the values of surrounding properties would not be diminished. The property will be improved.

*Unnecessary Hardship:* The Board concurred it would be an unnecessary hardship to the property owner if the variance is not granted.

**Chair Jarvis made a motion to grant the request for a variance to Article XXI Section C.1. and 2. 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 structures including septic and leach fields and any non-conforming building may be altered or expanded providing (1) They conform to Non-Conforming setback and height requirements and (2) Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance, **with the same conditions of receiving a DES Shoreland Permit and receiving a Conditional Use Permit from the New Durham Planning Board.**

**Ms. Callaway seconded the motion.** Ms. Richard-Aye, Mr. Raslavicus-Aye, Ms. Callaway-Aye, Mr. Wessel-Aye, Chair Jarvis-Aye. **The motion passed with a vote of 5-0-0**

Chair Jarvis stated this concludes Case #2019-005.

**Approval of Minutes**

Postponed to the next meeting.

Ms. Richard left the meeting at 10:10pm.

**Adjourn**

**Mr. Wessel made a motion to adjourn. Ms. Callaway seconded the motion. Motion passed, 5-0-0.**

The meeting was adjourned at 10:12pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary