

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
October 13, 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:

Page numbers i.e 3 of 5

Join Zoom Meeting

<https://us02web.zoom.us/j/82818236396?pwd=a3ZPdJEyVGllb2d2WGZWL0tYMHNZUT09>

Meeting ID: 828 1823 6396 Password: 034693

Or via telephone number: 1-646-558-8656; Meeting ID: 828 1823 6396 Password: 034693

*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 **Non - conforming through out**
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
Dave Bonisteel, applicant – via Zoom
Karen Bonisteel, applicant – via Zoom
Jeremy Bonin, Bonin Architects – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00 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 in the event they need to go into non-public session, a separate phone number will be used for the Zoning Board of Adjustment members to use and they will then reenter nonpublic session. Chair Jarvis stated all motions would be taken by roll call; roll call attendance was taken for those participating in the Zoom meeting.

APPROVAL OF MINUTES

Meeting of September 10, 2020 – Edits were made. **Vice Chair Anderson made a motion to approve the minutes as amended. 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.**

Review of Proposed Changes to ZBA Fees

The Board reviewed the proposed changes in fees. Chair Jarvis stated they are trying to bring some consistency between the ZBA and Planning Board; they are also working to make the ZBA self-funding. She stated she compared fees with surrounding communities, which are all significantly higher than New Durham. Chair Jarvis stated there has been a volunteer for a webmaster for the Town website which may give them the option of utilizing the website for advertising public notices instead of the newspaper. It was noted the Public Hearing for these fee changes is October 26, 2020.

No changes were made to the proposed fee changes.

Vice Chair Anderson made a motion to accept the proposed changes to the fees as presented. 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.**

Request for Rehearing Case 2020-012 an application submitted by Varney Engineering LLC., on behalf of David and Caren Bonisteel. Previously requested variances to the following:

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. **Variance granted 4-0-1.**

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. **Variance not granted 2-2-1.**

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. **Variance not granted 2-2-1**

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. **Variance granted 4-0-1.**

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.

The Board reviewed the letter submitted on behalf of the Bonisteels, stating the decision on Article XXI, C.1 and C.2 was unreasonable and outlined the reasons. These include that in May 2020 multiple requested variances were granted; at the September 10, 2020 meeting the Board granted variances relating to impervious surface and square footage, however, denied the request for nonconforming buildings, land and uses. The request by the Bonisteels is to reconsider the decision specifically regarding building on a non-conforming lot.

Chair Jarvis stated this is a request for re-hearing, not a public hearing and is not open to comment from the public; she stated the Board needs to consider only the request, not the discussions or decisions of the hearing. She stated the Board needs to determine whether the decisions were unreasonable and whether a re-hearing needs to be scheduled.

Chair Jarvis opened the discussion to members of the Board.

Mr. Raslavicus noted several variances were granted in May; then in September, the application was determined to be materially different.

Vice Chair Anderson stated they should not be reconsidering a re-hearing of the denied variance request unless they consider all the variances with the same exact parameters are in place. Chair Jarvis stated the only variances for discussion are the ones which did not pass by a 3 vote.

Ms. Callaway suggested there may be a conflict with the Board approving going over the 15% building coverage but denying the variances for making the lot more non-conforming.

Chair Jarvis stated the Board now needs to consider whether they appropriately decided on of all the information presented; she explained they can remain with their decisions and possibly have the case go to Superior Court or they can reconsider their decisions.

Ms. Richard stated she believes the Board typically has good discussion and covers the details of the case well and suggested sticking with their decisions. Mr. Raslavicus concurred. He stated it was a large building for a small lot, there was a significant increase in square footage of the building and would become two stories.

Ms. Richard made a motion to accept the request for re-hearing. Ms. Callaway seconded the motion. Roll Call Vote: Ms. Callaway – no; Ms. Richard – no; Mr. Raslavicus – no; Vice Chair Anderson – no; Chair Jarvis – aye. **Motion failed, 1-4-0.**

Chair Jarvis stated this case is now closed; the applicants have the right to appeal to the Strafford County Superior Court or they may submit an application which is substantially different from the previous application.

Review of Suggested Changes to Procedural Rules for the Town of New Durham ZBA

The Board reviewed the proposed changes.

Ms. Callaway suggested they consider the hard end time for meetings; she stated going through a case for an hour and a half past 10:00 is not in the best interest of the Board or the applicants.

The Board discussed meeting end time. Chair Jarvis noted if they end in the middle of a public hearing, they have to schedule a special meeting. The Board concurred with meeting endings at 10:30 PM; no new cases started after 9:30 PM. The Board will submit suggestions to Chair Jarvis for further discussion and possible inclusion in the rules.

The Board discussed the costs for advertising and the option for utilizing the website for posting public notices; Chair Jarvis noted the budget was cut to \$1. Vice Chair Anderson questioned what happens if there are glitches with websites and notices aren't available to the public. Town Administrator Kinmond stated he doesn't see any real issue with that; notices are also posted on bulletin boards. He stated errors in posting can occur with printing in newspapers too. Vice Chair Anderson suggesting allowing the applicant the option of paying for print notices to avoid possible delays on a website. Chair Jarvis stated posting to the website is more convenient and the time frames aren't as tricky as with print publications. The Board also discussed the file and packet distribution process.

Next Meeting:

November 10, 2020, 7:00 PM

ADJOURN

Vice Chair Anderson made a motion to adjourn. 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.**

The meeting was adjourned at 9:21 PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary