

*Town of New Durham Zoning Board of Adjustment  
September 10, 2020  
Approved October 13, 2020*

**TOWN OF NEW DURHAM  
ZONING BOARD of ADJUSTMENT  
September 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:*

*<https://us02web.zoom.us/j/88574336667?pwd=a0xIVE5qU1VMVM2TW84cURPTEVxUT09>*

*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](mailto:skinmond@newdurhamnh.us) or by phone at 603-556-1516.*

*Assistance with Zoom application please contact Brian Cauler at [ndlanduse@newdurhamnh.us](mailto: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  
Chris Solomon, Samyn D'Ella Architects – via Zoom  
Amelia Brock, Samyn D'Ella Architects- via Zoom  
Beverly Grappone, applicant – via Zoom  
Tom Varney, Varney Engineering, LLC – via Zoom  
Jane Varney Stinson, Varney Engineering, LLC – via Zoom  
Dave Bonisteel, applicant – via Zoom  
Karen Bonisteel, applicant – via Zoom  
Jeremy Bonin, Bonin Architects – via Zoom  
Scott McGovern, resident – via Zoom

### **CALL TO ORDER**

Chair Jarvis called the Zoning Board of Adjustment meeting to order at 7:02 PM.

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 those participating in the Zoom meeting. Chair Jarvis asked Zoning Board members to introduce themselves and identify anyone in the room with them. Chair Jarvis asked all members of the public, applicants and applicants' representatives to identify themselves. She confirmed with the applicants and applicants' representatives that they do not object to hearing these cases electronically. No objections were indicated.

### **Approval of Minutes**

Meeting of August 11, 2020 – Edits were made. **Chair Jarvis made a motion to approve the minutes as amended with approval for Ms. Callaway to amend dashes as necessary. 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 and Acceptance of Case # 2020-012 (Corrected to be 2020-011)**

Application submitted by Samyn D'Ella Architects, on behalf of Beverly Grappone. They are requesting variances to the following:

- Article VI Section C 3 (a) i. General Provisions/ Use Regulations for Town of New Durham. General Requirements. 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 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;
- 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; and
- Article XXI Section F: Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways For any existing building less than fifty (50) feet from the normal high water, no alteration shall extend the structure closer to the public water, except that an addition of an open deck is permitted up to a maximum of twelve (12) feet towards the normal high water. All stairs and walkways within fifty (50) feet of the normal high water level shall not exceed four (4) feet in

width.

The property is located at Map 103, Lot 021, 180 Pine Point 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 member of the Board hearing the case. None was indicated.

Chair Jarvis noted in the permanent file there is an easement and right-of passage over Pine Point Road along with a signed waiver of liability. She stated at the July 14, 2020 ZBA meeting the following variance requests were granted: Article V, Section E, Article XIV, Section C and Article XXI, Section G.2.B.

The Board reviewed the application for completeness.

**Ms. Richard made a motion to approve the application for Case #2020-011 as complete. Ms. Callaway 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 # 2020-013 (Later corrected to 2020-0120)**

Application submitted by Varney Engineering LLC., on behalf of David and Caren Bonisteel. They are requesting 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;
- 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;
- 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; and

- 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.

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 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 member of the Board hearing the case. None was indicated.

The Board reviewed the application for completeness. Vice Chair Anderson noted the Agenda indicates a case number of #2020-012 but wants to be clear it is Case #2020-013. Chair Jarvis stated she will work with the Land Use assistant to be sure the correct case number is used and suggested referring to it as the “Bonisteel Case” for this meeting.

Chair Jarvis stated they need to determine whether this application is materially different from Case # 2020-003, previously submitted by the applicant. She stated the building coverage with Case #2020-003 was 23.4%; this application proposal is 19.3%; the impervious surface under the previous application was 24.1% and the current application is 19.6%; in the previous application the shed was remaining and in the current application the shed is being removed. Mr. Varney stated 11' has been crossed off from the east side; the building has been moved back 4' from the lake and the overall building size is reduced. Mr. Raslavicus stated he has a problem with the percentage changes which do not seem to be correct from the drawings; he stated it seems the coverage is increasing. Chair Jarvis noted they are only determining whether the application is different from Case # 2020-003. Ms. Callaway noted the septic tank is not going to be shifted and will be left as-is. It was confirmed the septic (tank) will not be moved or replaced as there is no need to disturb it due to the fact the previously identified east addition is not present.

**Chair Jarvis made a motion that the application for Case #2020-013 is materially different than the application submitted for Case #2020-003. 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.**

#### **PUBLIC HEARING– Case #2020-12**

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

Chair Jarvis opened the public hearing at 7:28PM.

Chris Solomon, Samyn D’Ella Architects, representative for applicant Beverly Grappone, stated the property is surrounded by water on three sides; what they propose on the south east side of the property

is to provide an enclosed screen porch over the existing deck and patio area. He stated the deck footprint would remain the same. It will have a roof with screened walls. Mr. Solomon stated they had previously proposed a low wall on the water side so the property owners can install seasonal panels throughout the cooler seasons. He stated the enclosure will not be heated but will have a low 18" wall.

Mr. Solomon stated they also reviewed the existing septic field. It was located on the north side of the property and will not be disturbed. He stated the landscape and site will not be changing. Chair Jarvis confirmed the house and vertical expansion will be on the current footprint and the screened porch will be on the current decking; the enclosed porch will be 325 square feet; the new porch will be a three-season porch with seasonal panels. She noted previous plans stated there would be a fireplace. Mr. Solomon stated there would still be a small fireplace in the corner but it is not going to be a heat source for the room. He noted the current deck is a non-pervious surface.

Chair Jarvis asked how far the current septic tank and leach field is from the lake. Mr. Solomon stated he would have to go back and measure but it is as far from the waterfront as possible on the lot; both are on the non-lake side of the house. Ms. Grappone explained it is not a fireplace but a small woodstove, to be vented through the ceiling.

Mr. Raslavicus noted the deck was added after the original building was built and there is an entry in the Building Inspector's record that it was a later addition so it brought the structure, including the deck, closer to the water. He stated these plans now propose to take the permitted open deck, to be enclosed; he stated it started with an open deck closer to the water and now going to an enclosed porch and living space. Mr. Solomon stated that per State definitions, habitable space has to meet energy codes and other requirements but there is no expectation that this would be the case with a screened porch. Mr. Raslavicus noted the State also explicitly forbids alteration of non-conforming additions within the waterfront buffer. Mr. Solomon stated the plans do not expand the existing footprint or impervious surface and it would be permissible under State regulations. Mr. Raslavicus cited the last sentence of the pertinent State regulation RSA 485.B.11.1 Mr. Solomon stated the existing vegetation will remain and the water-flow into the lake won't be affected; it is going to be a single story enclosure over the deck. Mr. Raslavicus stated he is concerned about the amount of lawn in the waterfront buffer although this is regulated by the State. Mr. Solomon stated the Grappones have not added any lawn and purchased the property a year ago; they don't plan to change any of the impervious surfaces. Chair Jarvis noted the deck was added prior to the property being purchased by the applicant. Mr. Solomon confirmed the State indicated a shoreline permit application would not be needed as nothing is being changed in the shoreline and screened enclosure of a deck is allowed. He stated that documentation can be provided.

Chair Jarvis opened the public hearing to members of the public. None was indicated.

Chair Jarvis closed the public hearing at 7:49PM.

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:*

- This application is in response to conditions placed by the Zoning Board of Adjustment on the variances granted on July 14, 2020;
- The property has a deeded right-of-passage over Pine Point Road;
- A waiver of liability is on file at Town Hall;
- The property is surrounded by water on three sides, all of which are subject to the 75' setback;
- The septic system is estimated at 50' from the lake; the leach field is estimated 70' from the lake; and
- The proposed screened porch will be a three-season porch with seasonal panels and a small metal wood stove.

**Discussion Article VI Section C 3 (a) i**

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated even though the septic tank and leach field are less than the required distance from the lake, these were inherited by the new purchasers and according to the permanent file, it was approved by New Hampshire Department of Environmental Services in 2019. It is an existing system and is not contrary to the public interest. The Board concurred.

Mr. Solomon asked why this variance is needed as it's an existing system and its not being affected. It was confirmed this is because there is nothing on file for when the existing system was put in.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated NH DES approved the septic system. The Board concurred.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated errors were made which were out of the control of the applicant; the system is not old or outdated and feels granting the variance would do substantial justice. Vice Chair Anderson stated the system is as far from the lake as possible on the property, it's new and helps keep the lake clean by being updated. The Board concurred.

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

*Unnecessary Hardship:* The Board concurred there is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the ordinance to this property.

**Chair Jarvis made a motion to approve the variance request for Article VI Section C 3 (a) I. General Provisions/ Use Regulations for Town of New Durham. General Requirements. 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.

**With the following condition:**

- **The three-season porch is to remain as such and never to be converted to year-round use.**  
**Ms. Callaway seconded the motion.**

**Discussion:** Vice-Chair Anderson asked if they approve the application for the porch, would the ordinance allow a future request for a deck off the porch. Ms. Callaway suggested there also be the stipulation for no further expansion towards the lake. Mr. Raslavicus suggested the deck needs to remain as a deck at this point with no further expansion. Vice-Chair Anderson stated the ordinances currently allow the addition of a deck.

**Vice-Chair Anderson made an amendment to the motion to include** no further expansion towards the lake, of the house or deck, either open or closed, shall occur. **Ms. Callaway seconded the motion.**

**Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – abstained; Vice Chair Anderson – aye; Chair Jarvis – aye. **Amendment passed, 4-0-1.**

**Roll Call Vote on the motion as amended:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Amended motion passed, 5-0-0.**

Chair Jarvis suggested considering the following articles together. The Board concurred.

**Discussion 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:

*Granting the variance would/would not be contrary to the public interest:* Mr. Raslavicus stated it is contrary as it brings an enclosed space to an area that is already non-conforming. Ms. Callaway stated it would not be contrary as it is going over the existing impervious ground. Vice Chair Anderson stated she believes it's contrary as it expands the house as the roof is being expanded over the deck and it doesn't fit with the ordinance. It makes the house appear much larger and takes away from the cottage and smallness feel they are trying to maintain.

*The spirit of the ordinance would/would not be observed because:* Ms. Richard stated it is observed. Ms. Callaway concurred. Vice-Chair Anderson stated the point of a deck is to not cover it; expanding the roof line, expands the house as a porch which does not fit in the ordinance. Mr. Raslavicus stated the ordinance says if 75' is possible to do that, but the variance was allowed for the deck and this would

expand it further. Chair Jarvis stated if the patio and concrete were not already there, it would be opposed to the ordinance and they are simply adding enclosure to the space and believes it's in compliance with the ordinance.

*Granting the variance would/would not do substantial justice because:* Vice-Chair Anderson stated it doesn't do substantial justice with no gain to the Town or public and is only for the applicant. Ms. Callaway stated it's already an impervious surface and the screens would allow more seasonal use and doesn't see it really impacting anyone else. Mr. Raslavicus stated this increase will be very visible to the public and many would be aware of doing this type of expansion. Ms. Richard stated the property owner will get more out of the property and it won't be a detriment to the public.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated she sees it as an increase in assessment and doesn't see how the values of the surrounding properties would be affected in a detrimental manner. Ms. Callaway concurred. Vice-Chair Anderson stated it may not affect abutters but may affect values to properties on the lake overall.

*Unnecessary Hardship:* Chair Jarvis stated there isn't much room to build on the property and it's presents a hardship to compliance with the ordinance. Ms. Richard and Ms. Callaway concurred. Vice-Chair Anderson stated she doesn't see a hardship as there is currently a deck and usable house; the screened porch isn't necessary to function. Mr. Raslavicus concurred.

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

**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.

**With the following conditions:**

- **All conditions from previous approval of July 14, 2020 shall apply; and**
- **There will be no further expansion of the deck or house towards the lake, either open or closed. Ms. Richard seconded the motion. Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus –no; Vice Chair Anderson – no; Chair Jarvis – aye. **Motion passed, 3-2-0.**

**Discussion Article XXI Section F**

*Granting the variance would/would not be contrary to the public interest:* Ms. Callaway stated the expansion is vertical, not horizontal and wants to be sure the conditions are clear. Vice-Chair Anderson



stated the ordinance clearly states no alteration or structure, which in this case the roofline is part of the structure and the reason for the request to a variance on this article. She stated it would be contrary to the public interest as the intent is to keep structures from getting closer to the water; it is a want not a need in any way and the roof is being extended. Mr. Raslavicus concurred. Ms. Callaway stated she doesn't believe it will be contrary as there will be some woods shielding it from the water but the impervious surface is already there.

*The spirit of the ordinance would/would not be observed because:* Ms. Callaway stated she believes the spirit would be observed. Mr. Raslavicus stated he doesn't believe it would be observed as the ordinance restricts putting structures closer to the water. Vice-Chair Anderson concurred and there is no need in this case.

*Granting the variance would/would not do substantial justice because:* Ms. Richard stated substantial justice would be granted. Ms. Callaway concurred. Vice-Chair Anderson stated the public doesn't gain anything from a variance being granted. Mr. Raslavicus stated the loss is greater to the public.

*For the following reasons the values of surrounding properties would/would not be diminished:* Vice-Chair Anderson stated she doesn't believe values would be diminished but it may affect the overall desirability of people wanting to keep the lake quaint with more encroachment on the water. Mr. Raslavicus concurred. Ms. Richard stated she doesn't believe values will be diminished. Ms. Callaway concurred.

*Unnecessary Hardship:* Vice-Chair Anderson stated she doesn't see a hardship in this case. Mr. Raslavicus concurred and there are no special conditions for this property that would require granting a variance. Chair Jarvis stated she sees this property as unique in that it surrounded by water on three sides and believes if they put the appropriate conditions on the approval, they can protect the lake and uphold the ordinance. Ms. Richard and Ms. Callaway concurred. Vice-Chair Anderson stated when you are looking at a property, the house and decks are usable and doesn't see how it could be a hardship to not have a roof over a deck and have it enclosed. The property has always been surrounded by water and when you buy property on a point, you know beforehand that its exposed to the wind and doesn't see how that excuses one for a hardship and variance to an ordinance.

**Chair Jarvis made a motion to grant a variance to Article XXI Section F - Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways** For any existing building less than fifty (50) feet from the normal high water, no alteration shall extend the structure closer to the public water, except that an addition of an open deck is permitted up to a maximum of twelve (12) feet towards the normal high water. All stairs and walkways within fifty (50) feet of the normal high water level shall not exceed four (4) feet in width.

**With the following conditions:**

- There will be no further expansion of the deck, patio or house towards the lake, either open or closed, shall be allowed; and
- No further variances shall be granted for this property.

**Discussion:** Ms. Callaway questioned whether no further variances would be reasonable. The Board discussed potential conditions to ensure compliance with variances and protection of the lake.

**Motion failed for lack of second.**

**Chair Jarvis made a motion to grant a variance to Article XXI Section F - Non-Conforming Buildings, Land or Uses. Decks, Stairs, and Walkways** For any existing building less than fifty (50) feet from the normal high water, no alteration shall extend the structure closer to the public water, except that an addition of an open deck is permitted up to a maximum of twelve (12) feet towards the normal high water. All stairs and walkways within fifty (50) feet of the normal high water level shall not exceed four (4) feet in width.

**With the following conditions:**

- **All previous conditions outlined in the July 14, 2020 ZBA meeting shall be complied with;**
- **No additional structures shall be constructed within the Town of New Durham's 75' setback;**
- **No further expansion of the currently existing structure or decks shall be allowed, open or closed.**

**Ms. Callaway seconded the motion. Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus –no; Vice Chair Anderson – no; Chair Jarvis – aye. **Motion passed, 3-2-0.**

**PUBLIC HEARING – Case #2020-13**

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

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 member of the board hearing the case. None was indicated.

Chair Jarvis stated this property was previously discussed on May 12, 2020, Case #2020-003, when variance requests were granted for Article V, Section E; Article XIV, C.1.B; Article XXI, Section G.2; conditions of the approvals included receipt of NH DES Shoreline Permit, no bedrooms in the garage, no accessory dwelling units, the property is limited to two bedrooms, if the tank is moved it must be done by a licensed septic installer, the tank condition is to be inspected when exposed and be replaced if the condition is less than ideal. Several variance requests were denied.

Chair Jarvis opened the public hearing at 9:27PM.

Tom Varney, Varney Engineering, LLC, stated the Bonisteels have owned the property for eleven years and their plan is to make it a year-round retirement home. The plan is to demolish the existing cottage and construct a new home. The building size and lot size coverage variances were denied in May 2020 and the new proposed plans reduce the lot size coverage to below 20% from 34%; the building size is reduced to 19.3% from 23.4%. The existing septic system installed in 2005 does not need to be altered; the property is environmentally upgraded with stormwater measures and a NH DES Shoreline Permit is

required. A Conditional Use Permit is not required. Mr. Varney outlined the changes from the previous plans and stated there is no expansion to the existing building to the side; there is a deck in place of stairs. Land features and driveway plans remain the same. Mr. Varney stated the shed was removed; trees on the side are unaffected and none will be lost. He stated he feels this proposal is reasonable.

Jeremy Bonin, Architect, presented a video showing the average rain and water-flow over the current driveway. He stated the big sloped area has been removed and it no longer sheds water. Mr. Raslavicus asked if there was evidence if the driveway was legally constructed. Mr. Bonin stated the driveway was put in prior to ordinances and so whether it's legal or not, they are looking to eliminate it. He stated they have taken an overall impermeable property and made it meet Town regulations. Mr. Bonisteel stated an abutter indicated the driveway was there for over 50 years and water has always gone into the lake. He stated when they purchased the property, it was part of the approved lot. Chair Jarvis stated overall the proposals in stormwater management do appear to be an improvement.

Mr. Raslavicus asked the purpose of the concrete beach walls. It was noted these are existing and the purpose is unclear. Mr. Bonin stated the width isn't sufficient to count as impermeable area. Mr. Bonisteel stated in all the years they've owned the property, the area has not flooded the walls. Mr. Bonin noted the shed is being removed and the area is now permeable. It was confirmed the building size is currently 15%, which is the maximum allowed and the plans go to 19.3%; the impervious surface is going to 19.6%; there is no easterly expansion and no need to move the septic tank. Mr. Bonin explained the floor plans of the first and second floor. He confirmed the prior variance approval conditions are complied with. Mr. Raslavicus asked the proposed use for the area in the basement. Mr. Bonin stated there is none. He stated the building and property is restricted to two bedrooms by the State of New Hampshire.

Ms. Callaway asked if some of the living space could be shifted down there to have it less looming over the garage; the garage is taking over part of the driveway but it's a small piece of property. She stated one purpose of the ordinance is to restrict large structures; this is going from a one story to three story structure. Mr. Bonin noted the proposed plans are under the height restriction; he stated this proposed structure isn't larger than those surrounding it; they want a usable living space for retirement as well as mitigate the water flowing into the lake.

Chair Jarvis noted the ordinance allows vertical expansion up to 35' so that is not a concern of theirs at this point; even if the house is built into the ground, they do need to look at the total size but any objections to the 27' height are irrelevant. Ms. Callaway noted something discussed by the joint Planning and ZBA subcommittee was rebuilding on the footprint and increase in height; she stated within the setbacks is where they look at expansion above the existing height. Chair Jarvis stated there have been no ordinance changes made and this application needs to be evaluated based on the current ordinances. Ms. Richard stated the request for variance is in regards to the building size and that's what they need to consider. Vice-Chair Anderson concurred.

Mr. Varney stated the size of this house will be viewed by a realtor as a two-bedroom home and is certainly a small house.

Mr. Bonisteel stated the 12'x8' area on the plans is part of an existing deck; part of the front and back decks is being removed so the house will be moving back from the water.

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

Scott McGovern, abutter, stated his is the most affected property by this proposal and is in favor of the proposed plans; he is very happy with the improvements to the property so far.

Vice-Chair Anderson asked Mr. Varney to explain the elevation of the house at the road level on the South Shore Road side. Mr. Varney stated the floor of the garage will be level with the road; the lawn area is level to the road as well.

Chair Jarvis noted it is 10:28 PM and asked if the Board wants to continue with the discussion or continue the public hearing to a later date. The majority of the Board concurred with continuing tonight.

Ms. Richard asked if the building setback to the lake of 22' is changed from the previous plans. Mr. Varney confirmed it was an improvement.

Mr. Raslavicus asked about lots 42 and 41, which are across the road from this lot. Mr. Bonisteel stated the house across the street is at a much higher elevation, with his rooftop being about equal to the driveway; the other lot is vacant and also at an incline.

Chair Jarvis closed the public hearing at 10:36 PM.

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.

***Discussion Article XIV Section C 1(e) and Article XXI Section G 2 (c):***

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated she thinks there has been substantial effort to meet the requirements of the ordinance on a lot that is so small. Vice-Chair Anderson noted the lot size coverage is only over a bit but thinks they could meet the 15% and still have a house and garage so the request would be contrary to the public interest. Ms. Callaway concurred. Mr. Raslavicus stated the difference between 19 and 15% on such a small lot is not very many square feet and would like to see them try again. Ms. Richard stated she doesn't believe its contrary to the public interest as there have been many improvements including storm water management.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated she sees many stormwater improvements which will benefit the lake. Vice-Chair Anderson concurred; the increase in stormwater improvements is immense, but the building's square footage increased is significant as well. Ms. Richard concurred; she stated she doesn't see a problem with overcrowding. Mr. Raslavicus

agreed but noted stormwater isn't in the ordinance, nor is height.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated she believes it would do substantial justice, particularly with regards to the stormwater management improvements. Vice-Chair Anderson concurred; she stated the two-car garage being at road level, adds an increase in safety by avoiding a steep driveway. The Board agreed.

*For the following reasons the values of surrounding properties would/would not be diminished:* Chair Jarvis stated new buildings are more taxable and doesn't see how it will decrease the value of surrounding properties. Vice-Chair Anderson concurred; the safety and architecture point to improvements in property values. The Board agreed.

*Unnecessary Hardship:* Chair Jarvis stated the lot was made pre-zoning ordinances but is being environmentally upgraded. Vice-Chair Anderson stated no building would be able to meet the setbacks due to the lot size. The Board agreed the proposed use is reasonable.

**Chair Jarvis made a motion to approve the request for a variance 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 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. **Vice-Chair Anderson 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.**

***Discussion 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 she doesn't see how the proposed plans would be contrary. Vice-Chair Anderson stated she sees its contrary to the public interest by making a nonconforming property, more nonconforming. Ms. Richard stated overall, the lot is being improved because the lot coverage will now be in compliance. Mr. Raslavicus he is concerned they are violating the size of the building by square footage because it's a new component i.e. garage, to be added. Ms. Callaway stated she agrees with Ms. Richard.

*The spirit of the ordinance would/would not be observed because:* Mr. Raslavicus stated the purpose of the ordinance is to keep from building more than what was existing on a lot and this proposed plan also includes a garage. Ms. Richard stated if they have granted variances to this section, a variance is needed to this as well.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated it would as the lot is substandard and if the owners want to retire there, improvements need to be made. Vice-Chair

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Anderson stated the public gains in some way from improving the lot as well as improving the structure; the water will also be safer as the impact is reduced. Ms. Richard agreed.

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

*Unnecessary Hardship:* Vice-Chair Anderson stated the size of the house could be reduced without causing a hardship. Mr. Raslavicus stated all lots in the area are small so that's not a hardship however the proposed use is reasonable.

**Ms. Richard made a motion to approve the request for variances to:**

**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. **Chair Jarvis seconded the motion. Roll Call Vote:** Ms. Callaway – no; Ms. Richard – aye; Mr. Raslavicus –abstain; Vice Chair Anderson – no; Chair Jarvis – aye. **Motion fails, 2-2-1.**

#### **Draft Fiscal Year 2021 Zoning Board of Adjustment Budget**

The Board reviewed the draft budget. Chair Jarvis stated she looked at the activity year-to-date and calculated the average costs per case. She stated she anticipates the publishing costs being reduced once postings are consistently made to the Town website. It was noted the Board's procedures will also need to be updated to reflect the change.

**Ms. Callaway made a motion to accept the Fiscal Year 2021 Zoning Board of Adjustment Budget as amended, in the amount of \$1,982.00. 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.**

#### **Next Meeting**

October 13, 2020, 7:00pm – Location TBD

#### **ADJOURN**

**Chair Jarvis made a motion to adjourn. Ms. Callaway 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.**

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The meeting was adjourned at 11:46pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary