

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
July 13, 2021, 7:00 PM
New Durham Town Hall
Approved August 12, 2021**

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PRESENT

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Stephanie Richard, member – excused absence

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant

Jessica O'Neill, resident

Joshua Thibault, Varney Engineering, LLC

Tom Varney, Varney Engineering, LLC

Kevin Dube, applicant

Deborah Randall, architect

Carol Shanahan, applicant

Walter Shanahan, applicant

Tracey Fillion, applicant

Steve O'Neil, applicant

Stephanie Richard, Changing Seasons PLLC

John Ratigan, Esq. representing the Shanahans

Sarah Barley, abutter

Nancy Bodwell, abutter

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00PM.

Review and Acceptance of Case #2021-013

Application submitted by North & South Construction, on behalf of Erik Dodier of 376 South Shore Road, Map 114 Lot 24. Applicants are requesting variances to the following:

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

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-Conforming

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

Chair Jarvis read the 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 members of the board hearing the case. None was indicated.

Chair Jarvis read the case into the record. The Board reviewed the application for completeness.

Chair Jarvis noted there are no wells or septic locations indicated on the plans. She noted there is also conflicting information about the amount of impervious coverage, whether there is 20 or 30% impervious coverage, between the large and small sets of plans. It was confirmed pictures of the house on the lot were submitted. Chair Jarvis suggested additional variance requests may be needed including Article V, Section E (75 ft setback) and a variance request to Article XXI C1 and C2 due to making a nonconforming lot, more nonconforming. She explained the existing garage is 192 sq ft and the proposed is 577 sq ft.

Motion: *The application for Case #2021-013 is incomplete.* Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-014

Application submitted by Varney Engineering, on behalf of Kevin and Keesha Dube, of Pine Point Road, Map 103 Lot 14. Applicants are requesting variances to the following:

Article VI Section C.3.a: General Provisions/Use Regulations for Town of New Durham. General Requirements: Sewage Disposal and Leach field Setbacks. Sewage Disposal and Leach field Setbacks a. 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; or, less than seventy-five (75) ft from any well, or from a dwelling other than to which it is appurtenant.

Article VI Section C.3.b: General Provisions/Use Regulations for Town of New Durham. General Requirements: No part of a leach field shall be located less than: twenty (20) ft from a property line on a lot less than 80,000 sq ft; less than thirty (30) ft from a property line on an eighty thousand (80,000) sq ft to one hundred fifty thousand (150,000) sq ft lot; or less than forty (40) ft from a property line on a one hundred fifty thousand (150,000) sq ft lot.

Article XIV Section C.1.b: Shorefront Conservation Overlay District. Dimensional Requirements. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) ft from the normal high-water level.

Article XIV Section C.1.c: Shorefront Conservation Overlay District. Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Leach Field

Setback: Any leach field shall be set back a minimum of 125 ft 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: 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: New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-conforming setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy (75) ft from any water body or river course.

Chair Jarvis read the 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 members of the board hearing the case. None was indicated.

Chair Jarvis stated this property was before the Board in 2019; multiple variances were granted for the property, however all will expire July 16, 2021. She stated there were also some changes to the plan. The previous owner received purchased the right of passage from the owner of Pine Point Road. Permission was also received from the Board of Selectmen to build on a private road, and both of these were recorded on the deed with the Strafford County Registry of Deeds. Chair Jarvis stated a Conditional Use Permit was received from the New Durham Planning Board on April 20, 2020, but there is no evidence this was filed with the Strafford County Registry of Deeds as required. She stated if any variances are granted, there needs to be a condition that the Conditional Use Permit is filed with the Registry of Deeds.

The Board reviewed the application for completeness. Chair Jarvis questioned whether a variance request is needed for Article V, Section E; it was noted the building was beyond the 75 ft setback, but the deck is not. Ms. Callaway asked if a patio is considered a water related structure. Chair Jarvis replied it is not a building.

After review and discussion of the application, the Board agreed a request for Article V, Section E is needed. Chair Jarvis asked Mr. Varney if they want to continue without that variance request. Mr. Varney stated they would; it was suggested to go back and see if Article V, Section E was requested with the last application. Chair Jarvis confirmed it was not required in 2019, but it needs to be now.

Motion: To accept the application for Case #2021-014 as complete. Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-015

Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan of Owl's Head Point Road, Tax Map 108 Lot 47. Applicants are requesting variances to the following:

Article V Section D: Dimensional Requirements for Town of New Durham. Setbacks. No new building shall be less than twenty (20) ft from the road frontage property line of any road or fifteen (15) ft from the property line of an abutter.

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

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

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

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

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) ft from any water body or river course.

Article XXI Section G.2.e: Non-Conforming Buildings, Land or Uses. Non-Conforming

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Setbacks. Buildings: No new building shall be less than fifteen (15) ft from the property line of an abutter or less than thirty (30) ft from an abutter's building.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. None was indicated. Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

Chair Jarvis read the case into the record. She noted the Board needs to determine whether the application for Case #2021-015 is materially different from the application submitted for Case #2021-008 which was acted on by the Board on June 8, 2021.

Chair Jarvis stated the differences she found between the applications are in regards to setbacks: this house is further from the road setback but closer to a sideline, the building from an abutter has gone from 36 ft to 41 ft, the leach field from the dwelling was 19 ft and is now 23 ft, the location of the septic tank has been moved from the side of the driveway, and the leach field was moved back to 56 ft from the lake.

The Board agreed the application of Case #2021-015 is materially different from Case #2021-008.

Motion: *The application for Case#2021-15 is material different from Case #2021-008.* Motion by Chair Jarvis. Seconded by Vice Chair Anderson **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Vice Chair Anderson – aye; Chair Jarvis –aye. **Motion passed, 4-0-0.**

The Board reviewed the application for completeness.

Motion: *To accept the application for Case #2021-015 as complete.* Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Vice Chair Anderson – aye; Chair Jarvis –aye. **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-016

Application submitted by Varney Engineering LLC, on behalf of BJW Enterprises, represented by Mike Wawrzkieicz of 30 Depot Road, Map 250 Lot 138. The Applicant is requesting a Special Exception for the following:

Article VII Section A.1: Special Exceptions. Uses Permitted by Special Exception. The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception. Refer to Article XII: Aquifer Protection Overlay District and Article XIII: Wetland Conservation Overlay District for special exceptions required in those areas. Commercial Use

Chair Jarvis read the 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 members of the board hearing the case. None was indicated.

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Chair Jarvis stated the Board granted a request for a variance in April 2020 to Article XII, Section A1 and Article XII, Section E. The applicant is proposing to add retail sales for small lawn and garden equipment, small engine sales and repair, snow blower and watersports equipment. Chair Jarvis stated a Special Exception was granted for sporting goods to a previous owner of the property; she stated she doesn't believe that business was closed for more than two years before the applicant purchased it, so that Special Exception is still valid.

The Board reviewed the application for completeness. Chair Jarvis noted there is no environmental impact study, although there was one in 2020, and doesn't see how this change would affect that, with the caveat that should they hear something that changes that belief, they could then require a revised environmental study.

Motion: *To accept the application for Case #2021-016 is complete.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Chair Jarvis asked if the applicant and applicant's representative are available to meet July 16, 2021 if the case needs to be continued due to lack of time at this meeting. Mr. Varney confirmed that would be fine.

PUBLIC HEARING - Case #2021-014

Application submitted by Varney Engineering, on behalf of Kevin and Keesha Dube of Pine Point Road, Map 103, Lot 014. The applicants are requesting variances to the following:

Article VI Section C.3.a: General Provisions/Use Regulations for Town of New Durham. General Requirements: Sewage Disposal and Leach field Setbacks. Sewage Disposal and Leach field Setbacks a. 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; or less than seventy-five (75) ft from any well, or from a dwelling other than to which it is appurtenant.

Article VI Section C.3.b: General Provisions/Use Regulations for Town of New Durham. General Requirements: No part of a leach field shall be located less than: twenty (20) feet from a property line on a lot less than 80,000 sq ft; less than thirty (30) ft from a property line on an eighty thousand (80,000) sq ft to one hundred fifty thousand (150,000) sq ft lot; or, less than forty (40) ft from a property line on a one hundred fifty thousand (150,000) sq ft lot.

Article XIV Section C.1.b: Shorefront Conservation Overlay District. Dimensional Requirements. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) ft from the normal high-water level.

Article XIV Section C.1.c: Shorefront Conservation Overlay District. Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Leach Field Setback: Any leach field shall be set back a minimum of 125 ft 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: 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: New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-conforming setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) ft from any water body or river course.

Chair Jarvis opened the public hearing at 8:09PM.

Tom Varney, Varney Engineering LLC, representative for applicants Kevin and Keesha Dube, stated they purchased this vacant lot in December 2020 from Al Wysocki. He stated Mr. Wysocki obtained variances for the construction of a cottage on the property on July 7, 2019. A Conditional Use Permit was received in the spring of 2020; NH DES Shoreline Permit and NH DES Septic Design permit approvals were obtained and will be renewed. Mr. Varney stated the variances, which were approved, expire on July 16, 2021, and the Dube's would like to renew those in order to construct a cottage. The proposed size of the house has increased, with an increase in the deck from 43 ft to 47 ft long. A Conditional Use Permit for the steep slopes has been submitted to the New Durham Planning Board. Mr. Varney presented a pictures of the lot, which is wooded, along with a diagram of the proposed cottage. He stated the deck is over the 75 ft setback line but the house does not need a variance as it is outside the setback. The septic tank will be moved back; the leach field and walkways will remain the same. Mr. Varney stated the deck as approved is 40 ft long, and they are requesting to expand it to 46 ft.

Chair Jarvis asked how many bedrooms the house would be. Mr. Varney stated it is two bedrooms. Chair Jarvis asked if it's a walkout basement. Mr. Varney confirmed it is, and the house is two stories. Chair Jarvis asked what material would be under the deck. Mr. Varney stated it would be regular patio under the deck; there will be drip edge to direct the rainwater.

Chair Jarvis opened the public hearing to input from the public. None was indicated.

Mr. Bickford questioned the use of other properties to accommodate parking. Chair Jarvis confirmed written permission was received by the previous owner for use of the private road in perpetuity; this was recorded in the deed. Mr. Varney confirmed permission allows building on the property and there is an easement with deeded right-of-way.

Chair Jarvis closed the public hearing at 8:12PM.

The Board members deliberating this case are Chair Jarvis, Vice Chair Anderson, Ms. Callaway and Mr. Bickford.

Findings of Fact

- The property is on a private road and there is a deeded right of way for the road.
- Permission was received from the New Durham Board of Selectmen to build on a private road.
- The deck is 67 ft from the water.
- The septic tank is 101 ft from the water.
- The leach field is 118 ft from the water.
- The house will be two stories with a full walkout basement.
- The entire house is behind the 75 ft setback, but the 8x47 ft deck is within the 75 ft setback from the lake.
- There is no building currently on the property.
- The property has a significant amount of steep slopes greater than 15%.
- A new New Hampshire Department of Environmental Services Shoreline permit will need to be obtained.
- A Conditional Use Permit from the New Durham Planning Board will be required.
- The material under the deck will be impervious.
- A copy of the Notice of Decision from the previous case was provided, and Article V, Section E was included.

Discussion of Article VI, Section C.3.a, Article VI, Section C.3.b and Article XIV, Section C.1.c

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated she believes it would not be contrary to the public interest; it's a lot on one side that is 99 ft from the lake, and it would be difficult to get a 125 ft setback. Vice Chair Anderson stated it would not be contrary as they are moving the septic system as far away from the lake as they can. Ms. Callaway concurred. Mr. Bickford stated there isn't much more they can do to move the septic system.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated the spirit is being observed, as they are keeping the septic system as far from the lake as possible. The Board agreed.

Granting the variance would/would not do substantial justice because: Mr. Bickford stated it would do justice. Vice Chair Anderson stated the leach field is as far from the lake as possible which is in the interest of the public, and it is the only place it can be located. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the surrounding property is a vacant lot; based on the plans it appears to be an

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attractive house and she doesn't see any way values would be diminished. Vice Chair Anderson stated the house is a reasonable size and the septic is located as far from other properties as possible. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated things are placed as far back from the lake as possible; she stated it would be a hardship to deny the variance as there is no other location for the septic system. The Board agreed. The Board agreed the proposed use is reasonable.

Motion: *Based on the plans dated June 14, 2021, the information and the application presented during the public hearing of July 13, 2021, I move to grant the variance requests for the following:*

Article VI Section C.3.a: General Provisions/Use Regulations for Town of New Durham. General Requirements: Sewage Disposal and Leach field Setbacks. Sewage Disposal and Leach field Setbacks a. 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; or less than seventy five (75) ft from any well, or from a dwelling other than to which it is appurtenant.

Article VI Section C.3.b: General Provisions/Use Regulations for Town of New Durham. General Requirements: No part of a leach field shall be located less than: twenty (20) feet from a property line on a lot less than 80,000 sq ft; less than thirty (30) ft from a property line on an eighty thousand (80,000) sq ft to one hundred fifty thousand (150,000) square feet lot; or, less than forty (40) ft from a property line on a one hundred fifty thousand (150,000) sq ft lot.

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

With the following conditions:

- A New Hampshire Department of Environmental Services Shoreline permit must be obtained.
- A New Hampshire Department of Environmental Services septic system approval must be obtained.
- A Conditional Use Permit must be obtained from the New Durham Planning Board.
- A variance to Article V, Section E shall be obtained from the New Durham Zoning Board of Adjustment.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Discussion of Article XIV, Section C.1.b and Article XXI, Section G.2.b

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Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary as it is a deck, and historically a deck has been considered okay as it would be acceptable if it were within the 50 ft setback, but because it's in the 75 ft setback, that a variance is required. The Board agreed.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated it would be observed as the house is behind the 75 ft setback. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do substantial justice, as houses closer to the water are allowed to have decks. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated values would not be diminished as it is currently a vacant lot and the construction of the house will add to the tax roll. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated it would be an unnecessary hardship if the variance is not granted. Vice Chair Anderson stated it would do justice, because others are allowed to have decks and they are not. The Board agreed the proposed use is reasonable.

Motion: Based on the plans dated June 14, 2021, the information and the application presented during the public hearing of July 13, 2021, to grant the variance requests for the following:

Article XIV Section C.1.b: Shorefront Conservation Overlay District. Dimensional Requirements. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) ft from the normal high-water level.

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-conforming setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) ft from any water body or river course.

With the following conditions:

- A New Hampshire Department of Environmental Services Shoreline permit must be obtained.
- A New Hampshire Department of Environmental Services septic system approval must be obtained.
- A Conditional Use Permit must be obtained from the New Durham Planning Board.
- A variance to Article V, Section E shall be obtained from the New Durham Zoning Board of Adjustment.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Discussion of Article XXI, Section C.1 and C.2

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Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary to the public interest. Ms. Callaway stated the land is being used properly. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it is being observed, as the applicants have done the best they can with the size and shape of the land. The Board agreed.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated it would do substantial justice. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated it will improve the property with a new house. The Board agreed values would not be diminished.

Unnecessary Hardship: Chair Jarvis stated it would be an unnecessary hardship to deny the variances; she stated the property is not large enough to comply with the ordinance. Mr. Bickford stated they worked to move the structures as far back from the lines as possible.

Motion: Based on the plans dated June 14, 2021, the application signed June 17, 2021, and the information and the application presented during the public hearing of July 13, 2021, to grant the variance requests for the following:

Article XXI Section C.1: 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: 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:

- A New Hampshire Department of Environmental Services Shoreline permit must be obtained.
- A New Hampshire Department of Environmental Services septic system approval must be obtained.
- A Conditional Use Permit must be obtained from the New Durham Planning Board.
- A variance to Article V, Section E shall be obtained from the New Durham Zoning Board of Adjustment.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Chair Jarvis noted the time is now 8:45PM and suggested they continue the public hearing for Case #2021-016 to another meeting. The Board agreed.

Motion: *To continue and or postpone the public hearing for Case#2021-016 to Thursday, July 16, 2021 at 7:00PM at the New Durham Town Hall.* Motion by Chair Jarvis. **Motion failed for lack of second.**

There was discussion whether the case would need to be postponed or continued. It was pointed out that meeting notices need to be posted 24 hours in advance of a meeting, but notices for public hearings require 10 days.

Motion: *To continue and or postpone the public hearing for Case #2021-016 to Thursday, July 16, 2021 at 7:00PM at the New Durham Town Hall.* Motion by Chair Jarvis. **Motion failed for lack of second.**

Motion: *To continue Case #2021-016 to Thursday, July 16, 2021 at 7:00PM at the New Durham Town Hall.* Motion by Mr. Bickford. Seconded by Ms. Callaway. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

PUBLIC HEARING Case #2021-015

Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan for property at Owls Head Point Road, Map 108 Lot 47. Applicants are requesting variances to the following:

Article V Section D: Dimensional Requirements for Town of New Durham. Setbacks. No new building shall be less than twenty (20) ft from the road frontage property line of any road or fifteen (15) ft from the property line of an abutter.

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

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

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

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

Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses. All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) ft from any water body or river course.

Article XXI Section G.2.e: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No new building shall be less than fifteen (15) feet from the property line of an abutter or less than thirty (30) ft from an abutter's building.

Chair Jarvis stated at the June 8, 2021 meeting, based on plans dated April 27, 2021, variances were granted to Article V, Section E, Article XIV, Section C.1b and Article XXI, G.2.b; variances were denied for Article VI, Section C.1.a.1 and Article XXI, Section G.1.b.

Chair Jarvis opened the public hearing at 8:55PM.

Stephanie Richard, Changing Seasons PLLC, representative for the applicants, outlined the changes made to the plans which include moving the septic under the driveway, the leach bed has been shifted, and in doing that the residence is also shifted 5 ft to make room for the leach field. The variance requests are for the deck and to have the house less than 15 ft from an abutting lot line. They also need a variance for the leach field as it is 56 ft from an abutting well and less than 75 ft from an abutting dwelling as it is only 23 ft away. Ms. Richard presented a sketch showing what it might look like if the leach field was put in the upper area of the lot, noting the leach bed would have to be shifted closer to a lot line and there would be less space for the building. A variance is also required as they are making the lot more nonconforming; Ms. Richard stated it is very difficult to comply with all the ordinances. She noted the septic components are all within the setback ordinances; they are as far away from the abutters as they can reasonably be.

Chair Jarvis asked about the change in elevation with moving the septic tank to under the driveway. Ms. Richard stated there is still enough of a grade for it to be a gravity fed system.

Mr. Bickford suggested the leach field be placed near the driveway. Ms. Richard noted there is no variance request for the leach field as all the setbacks from the lake are met. Mr. Bickford stated it seems like a large house for a small lot. Chair Jarvis noted the building size is below the maximum allowed. Mr. Bickford asked if the two-car garage is necessary when it comes to getting the septic system moved back. Ms. Richard explained the steep grade of the lot and that the finish grade needs to come up for the system to work. Chair Jarvis noted when they did the

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Site Walk, it was wet. Ms. Richard stated there is a hard, compacted layer they are dealing with to build on top of. Ms. Callaway stated in order to get the leach field as far as possible it can be from abutters, it appears they have done the best they can.

Mr. Bickford suggested reconfiguring the leach field. Chair Jarvis noted it would then encroach even more on the side setback. She noted significantly more trees would also need to be taken down.

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

Nancy Bodwell, abutter, stated she has reviewed the new case, and she continues to have concerns including that the size of the proposed house has not been altered, noting it will be the second biggest house on the second smallest lot on the point. She stated she is also concerned about the septic system placement, as well as the possible future use of undesignated space on the second floor of the house and the possible use of the walk out basement as living space. Ms. Bodwell stated numerous trees are flagged on the property and questioned who is in charge of determining which trees will come down.

It was confirmed this is a two-bedroom house.

Carol Shanahan, applicant, stated this property is an answer to a dream, and they plan to retire on the first floor. She explained the area above the garage is their first-floor bedroom, and they have done all they can on this lot, which is nonconforming. Ms. Shanahan stated they plan to live here year-round.

Ms. Richard presented documentation from a licensed realtor in regard to property values.

Walter Shanahan, applicant, stated that in regard to an abutter's comments, he plans to have a woodworking area in the basement of the house; the tagged trees indicate those which are a hazard, dead or have multiple bird holes and are falling over. He stated they will have those removed at some point. Mr. Shanahan stated the house will be 1200 sq ft. Chair Jarvis confirmed the size of the house is within the ordinance.

John Ratigan, Esq., council for the Shanahans, stated he thinks the plan developed was as responsive as possible to the concerns expressed by the Board, as well as those of the public. He reiterated the plans are within the ordinances.

Sarah Barley, abutter, asked for clarification about the site plan in regards to the distance of the leach bed to the well which is indicated as 51 ft on the application. Ms. Richard stated the true distance is 56 ft, and this was confirmed when the well head was located with the abutter.

Chair Jarvis closed the public hearing at 9:26PM.

The Board members deliberating this case are Chair Jarvis, Vice Chair Anderson, Ms. Callaway and Mr. Bickford.

Findings of Fact

- The impervious surface will be 16.2%.
- The building size will be 14.3%.
- The house is beyond the 75 ft setback.
- The deck is within the 75 ft setback.
- The septic tank is proposed to be 126 ft from the water.
- The septic tank location is under the driveway.
- The septic tank from the dwelling is 80 ft.
- The leach bed from the water is 75 ft.
- The leach bed from the well is 56 ft.
- The leach bed from the property line is 13 ft.
- The leach bed from the abutter's dwelling is 23 ft.
- In June 2021, the Board granted variances to Article V, Section E; Article XIV, Section C.1.b; Article XXI, Section G.2.b.
- The lot is wooded.
- The abutting property on Map 108, Lot 4 is undeveloped.
- The property is 0.31 acres.
- The property is 119 ft deep on one side and 157 ft on the other.
- The driveway will be porous.
- Owls Head Point Road is a private road maintained by the property owners.
- Permission will be required from the Board of Selectmen to build on a private road and a Waiver of Liability will need to be signed.
- A Conditional Use Permit will be required from the Planning Board.
- A Wetland and Shoreline Permit from New Hampshire Department of Environmental Services is required.
- A septic approval from New Hampshire Department of Environmental Services is required.
- There must be continual compliance with the storm water management plans.

Discussion of Article V, Section E; 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: Chair Jarvis stated this is the 50 ft versus 75 ft setback quandary; she stated the deck is within the 75 ft but if it was less than 50 ft a variance would not be needed and stated she doesn't believe this is contrary to the public interest. The Board agreed.

The spirit of the ordinance would/would not be observed because: Ms. Callaway stated the house is where it needs to be and the deck is small. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would do substantial justice. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the value of the property will be increased along with an increase in taxes. The Board agreed values would not be diminished.

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Unnecessary Hardship: Chair Jarvis stated it would be an unnecessary hardship to deny the variance. The Board agreed the proposed use is reasonable.

Motion: *Based on plans dated July 10, 2021 and the application signed on June 1, 2021 and information presented at the public hearing of July 13, 2021 to grant the request for variances to the following:*

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

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

Article XXI Section G.2.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) ft from any water body or river course.

With the following conditions:

- Permission to build on a private road shall be obtained from the New Durham Board of Selectmen.
- A Waiver of Liability acceptable to the New Durham Board of Selectmen shall be signed and filed with the Strafford County Registry of Deeds.
- Owls Point Road shall be identified in a manner acceptable to the New Durham Police Chief and Fire Chief.
- The lakeside deck shall not be enclosed; the ground underneath shall remain porous.
- Compliance with the New Durham Storm Water Management ordinance shall be continuous.
- The house will have no more than two bedrooms.
- The basement will not be used for living space.
- Before a Building Permit is issued, copies of the following will be provided to the Building Inspector:
 - A Conditional Use Permit from the Planning Board
 - Steep Slopes Conditional Use Permit from the Planning Board
 - A Shoreline Permit from NH DES
 - A septic approval from NH DES

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Discussion:** Mr. Bickford suggested including the dimensions of the deck. It was confirmed the plans include the square footage of the deck which is 264 sq ft.

Amendment to the motion: To include the condition that the deck will be no more than 264 sq ft as per the plans presented and a maximum of 12 ft towards the lake. Motion by Vice Chair Anderson. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Amendment passed, 4-0-0.**

Roll Call Vote on the Motion as Amended: Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Amended Motion passed, 4-0-0.**

Discussion of Article V, Section D and Article XXI, Section G.2.e

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated the septic and house have been moved back as far as possible. Ms. Callaway stated they have also made sure the septic system and house was as far from the abutters as possible, and good efforts were made to make it work. Vice Chair Anderson stated the most concerning issue was the distance of the septic to everything, and that was fixed so the building being close to the line is a more acceptable variance. Mr. Bickford stated he disagrees and thinks too much is being squeezed in this area and suggested there are other configurations which would keep the septic further from the reference line.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated previous concerns were addressed and it resulted in the house being moved into the setback and believes the spirit is being observed. Vice Chair Anderson stated she agrees. Mr. Bickford stated he does not believe the spirit is being observed.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated she understands the reason the building was shifted for the septic; but she questions what the public is gaining in allowing the building to be shifted rather than reducing the size of it. Chair Jarvis stated she believes granting the variance is not contrary to the public interest. Vice Chair Anderson stated she doesn't think the public is gaining as much as the applicant. Ms. Callaway stated she thinks justice will be done as the septic is moved back from the lake and the neighbor, and they are keeping a lot of the land undisturbed down to the lake. Chair Jarvis stated she sees substantial justice because the septic is being moved away from the adjacent property.

Chair Jarvis noted it was 10:00PM; it was the consensus of the Board to continue the deliberation to another evening.

Motion: *To continue the public hearing for Case #2021-015 to Thursday, July 15, 2021 at 7:00PM.* Motion by Mr. Bickford. Seconded by Ms. Callaway. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – no. **Motion passed, 3-1-0.**

OTHER

Chair Jarvis stated the Board needs to discuss how they will proceed with having hybrid meetings. It was agreed to discuss this at the next meeting.

APPROVAL OF MINUTES

Meeting of April 22, 2021- Postponed.

Site walk April 29, 2021- Postponed.

Meeting of May 11, 2021- Postponed.

Meeting of June 8, 2021- Postponed.

Meeting of June 17, 2021- Postponed.

Vice Chair Anderson stated she is concerned about postponing meeting minutes and suggested the minutes be taken care of at the beginning of the meeting to ensure their memory is fresh. Ms. Callaway suggested moving the end time for public hearings to an earlier time. The Board agreed to continue doing minutes at the end of the meeting; Chair Jarvis suggested including the time of 9:30PM for cases to end be on the agendas.

FUTURE MEETINGS

July 15, 2021, 7:00PM.

August 10, 2021, 7:00PM.

ADJOURN

Motion: *To adjourn.* Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call**

Vote: Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye.

Motion passed, 4-0-0.

The meeting was adjourned at 10:32PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary