

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
May 11, 2021, 7:00 PM**

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

Meeting ID: 889 9690 6980 Password: 784832

Or via telephone number: 1-646-558-8656; Meeting ID: 889 9690 6980 Password: 784832

*Technical difficulties or For Assistance with Zoom application please contact Land Use
Administrative Assistant Robin McClain at ndlanduse@newdurhamnh.us .*

*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– via Zoom
Wendy Anderson, Vice Chair– excused absence
Stephanie Richard, member – via Zoom
Linda Callaway, member – via Zoom
David Bickford, member – via Zoom

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant – via Zoom
Tom Varney, Varney Engineering, LLC – via Zoom
Walter Shanahan, applicant – via Zoom
Carol Shanahan, applicant – via Zoom
Erin Shanahan, relative of applicant – via Zoom
Greg Field, resident – via Zoom
Nancy Bodwell, abutter – via Zoom
Sarah Barley, abutter – via Zoom
Donna Reiss, applicant – via Zoom
Joseph Reiss, applicant – via Zoom
Stephen Rollins, applicant – via Zoom
Nancy Rollins, applicant – via Zoom

CALL TO ORDER

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

Chair Jarvis stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, pursuant to Executive Order 2020-004, 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.

Chair Jarvis asked if there are objections to these cases being heard electronically. None were indicated.

Continued Public Hearing of Case #2021-008

Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan. Applicants are requesting variances to:

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

Article VI Section C.3.a.i: General 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 less than one hundred twenty five (125) feet from the edge of a public water body.

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

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

Article 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.

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.1.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article. 1. Leach fields: Not less than seventy five (75) feet from open surface water or hydric A wetlands or fifty (50) feet from hydric B wetlands.

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

The property is located at Map 108 Lot 027 – Owls Head Point.

Chair Jarvis read the case into the record. She stated this application was reviewed and determined to be complete at the March 11, 2021 meeting. It was confirmed at that time there would be two bedrooms and plans were resubmitted to reflect two bedrooms; the case was continued to April 13, 2021.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest with hearing this case. Ms. Richard stated she would be recusing herself from this case as she is a representative for the applicant. 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 that due to the length of the April 13, 2021 meeting, the case was continued to April 22, 2021. The public hearing was opened at 9:22PM and it was determined a Site Walk was necessary. The Site Walk was conducted on April 29, 2021. Since the Site Walk, revised site plans have been received that now show the location of the well for Map 108, Lot 44, and the plans are changed to reflect the fact that this will be a two - bedroom home.

Chair Jarvis stated the members of the Board deliberating this case would be Ms. Callaway, Mr. Bickford, and Chair Jarvis. Chair Jarvis asked the applicants if they wanted to move forward with three members hearing this case or continue to the June meeting.

Stephanie Richard, Changing Seasons Engineering PLLC, on behalf Walter and Carol Shanahan, stated they would like to continue the public hearing until there is a full board.

Motion: *To continue the public hearing for Case #2021-008, an application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Continued Public Hearing of Case #2021-009

Application submitted by Varney Engineering LLC on behalf of Joseph and Donna Reiss. Applicants are requesting Variances to:

Article XIV Section C.1.e: 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: 1. 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.

Article XXI Section G.1.c: 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 105 Lot 005 – 29 Cedergren Road.

Tom Varney, Varney Engineering, LLC, stated the applicants would like to continue the public hearing until there are five members of the Board present. Chair Jarvis stated a letter was received around May 3 which indicated a change in one of the variance requests. She stated the necessary documents will need to be received by close of business day on May 17, 2021 by the closed of business for the June 8 meeting.

Motion: *To continue Case #2021-009 an application submitted by Varney Engineering LLC on behalf of Joseph and Donna Reiss.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Continued public hearing of Case #2021-010

Application submitted by Varney Engineering on behalf of The Rollins Family Trust, Stephen and Nancy Rollins, representatives. Applicants are requesting variances to:

Article XIV Section C.1.e: Dimensional Requirements 1. 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 G.2.d: Non-Conforming Setbacks. Buildings: No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.

The property is located at Map 101 Lot 007, 24 South Shore Road.

Chair Jarvis read the case into the record. Chair Jarvis stated the application was reviewed and determined to be complete on March 11, 2021. It was continued to April 13, 2021 due to the lateness of the hour at the March meeting; due to the length of the April 13, 2021 meeting, the case was continued to April 22, 2021. It was continued again due to the lateness of the hour to the May 11, 2021 meeting.

Chair Jarvis stated Case #2021-006 was previously heard and variances were granted for Article VI Section C.3a.i.: Article VI Section C.3.a.ii, Article XIV Section C.1.c, Article XXI Section G.1.a: and Article XXI Section G.1.c.

Chair Jarvis opened the public hearing at 7:25PM.

Tom Varney, Varney Engineering, LLC, on behalf of Stephen and Nancy Rollins, stated the plan is to tear down the existing building and rebuild on the same footprint. He stated when the previous variances were granted, it was determined the plans were over 20% lot size coverage, so the revised plans are closer to 20%. He stated the septic is also being upgraded to a modern system.

Plans and designs were presented for review by the Board. Mr. Varney stated the previous plans were 22.5% and these revised plans are 21.8%. He stated there is no encroachment on the 50' setback. It was confirmed the lot is under the 15% slopes.

Mr. Bickford questioned the added area to the deck. Chair Jarvis stated because it is outside the setback, there is an entitlement to a deck and no variance is needed.

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

Chair Jarvis closed the public hearing at 7:40PM.

Chair Jarvis stated the members of the Board deliberating this case would be Ms. Callaway, Mr. Bickford, Ms. Richard and Chair Jarvis.

Findings of Fact

- The variance request was submitted as it was a condition of granting previous variances earlier this year;
- The impervious coverage is being reduced from 22.5% to 21.8%.
- The house remains on the same footprint.
- The deck on the front of the house is allowed under Article XXI, Section F of the ordinance.

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

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated it is not contrary as the coverage is being reduced from the existing coverage amount. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is being observed as the applicants are working to bring the lot into more compliance. The Board agreed.

Granting the variance would/would not do substantial justice because: The Board agreed values would not be diminished.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the changes are making things better with an old house coming down and a new house going up. Ms. Richard stated the driveway is already small and to ask for it to be further reduced would be harsh. The Board agreed.

Motion: *To grant the variance request for the following articles:*

Article XIV Section C.1.e: Dimensional Requirements 1. 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 G.2.d: Non-Conforming Setbacks. Buildings: No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.
Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

APPROVAL OF MINUTES

Meeting of February 9, 2021- Edits were made **Motion:** *To approve the minutes as amended.* Motion by Chair Jarvis. Seconded by Ms. Richard. **Roll Call Vote:** Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Meeting of February 18, 2021- Edits were made. **Motion:** *To approve the minutes as amended.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Meeting of March 3, 2021- Edits were made. **Motion:** *To approve the minutes as amended.* Motion by Ms. Callaway. Seconded by Ms. Richard. **Roll Call Vote** Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Meeting of March 11, 2021- Edits were made. **Motion:** *To approve the minutes as amended.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-0-0.**

Site Walk Meeting of March 21, 2021-Postponed.

Other

The Board discussed the options with advertising public notices. Chair Jarvis stated the prices for advertising in *The Baysider* have increased again. She asked Ms. McClain to check on the exact costs. Clarification is also needed on the number of days the notice is required to be posted prior to the hearing.

NEXT MEETING

June 8, 2021, 7:00PM.

ADJOURN

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

The meeting was adjourned at 8:35PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary