

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
June 8, 2021, 7:00 PM
Approved August 12, 2021**

*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– via Zoom
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
Walter Shanahan, applicant – via Zoom
Carol Shanahan, applicant – via Zoom
Nancy Bodwell, abutter – via Zoom
Sarah Barley, abutter – via Zoom
Kathy Tulipano, abutter – via Zoom
Greg Field, resident – via Zoom
Erin Bajger, relative of applicant – via Zoom
Tom Varney, Varney Engineering, LLC – via Zoom
Donna Reiss, applicant – via Zoom
Joseph Reiss, applicant – via Zoom
Deborah Randall, architect – via Zoom
Mike Fillion, applicant – via Zoom
Tracy Fillion, applicant – via Zoom
Chris Kiezula, abutter – 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.

Review and Acceptance of Case #2021-011

Application submitted by Varney Engineering LLC, on behalf of The Fillion Revocable Family Trust, Michael and Tracy Fillion, representatives.

Applicants are requesting variances to the following:

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 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.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 122 Lot 019 – 128 South Shore Road. If the application is deemed to be complete, a Public Hearing may be held.

Chair Jarvis read the case into the record. The Board reviewed the application for completeness. Ms. Richard stated she would be abstaining from this case.

Motion: *To accept the application for Case 2021-011 as complete.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – abstain; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-1.**

Review and Acceptance of Case #2021-012

Application submitted by Changing Seasons Engineering PLLC, on behalf of Marjack Oasis LLC, Thomas O'Neil, representative.

Applicants are requesting variances to the following:

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 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.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.

If the application is deemed to be complete, a Public Hearing may be held.

Chair Jarvis read the case into the record. The Board reviewed the application for completeness. Ms. Richard stated she would be abstaining from this case.

Chair Jarvis stated Case #2021-007 came before the Board in April; at the April 22, 2021 the Board denied the request to build less than 75' from the water.

Chair Jarvis stated they need to determine if the application for Case 2021-012 is materially different from Case #2021-007. She stated the enclosed porch on the lake side is no longer on the plans. The Board agreed it is materially different.

Motion: *To accept the application for Case 2021-012 is materially different from Case 2021-007.* Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – abstain; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 4-0-1.**

CONTINUED PUBLIC HEARING – 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 XX1 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 Road.

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 due to the length of the agenda.

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 were changed to reflect the fact that this will be a two-bedroom home. The public hearing was then continued to May 11, 2021. Chair Jarvis stated at the May 11, 2021 meeting, Stephanie Richard, Changing Seasons Engineering PLLC, on behalf Walter and Carol Shanahan, stated the applicants would like to continue the public hearing until the June 8 meeting, hoping there would be more than 3 board members present.

Chair Jarvis opened the public hearing at 7:19PM.

Stephanie Richard, Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan, stated the potential total living area of the proposed home is 2,040 square feet, including the unfinished basement. The maximum size of the house is two bedrooms; there was discussion about adding a generator, but it would be a quiet model. Ms. Richard stated the lot line discrepancies were discussed at the Site Walk, noting the lines they used for the plans were based on the boundary survey done in the past, and the measurements on the plans are from pin to pin. The leach field is proposed to be 19' from the abutter; 12' from the applicant's residence. The leach field will be at grade so the roots of the pine tree will not be disturbed. The location of abutters' wells were also added to the plans.

Mr. Bickford asked why the leach field wasn't pushed back further, noting it's right at the 75' setback line. He suggested it's possible to place the septic under the driveway. Ms. Richard stated it would require a pump system and a variance would likely still be needed due to the small space. Chair Jarvis stated she is concerned about the location of the proposed leach field being just over 45' from the well on the abutting property and 19' from the dwelling on Map 108, lot 46. She suggested moving the leach field to where the driveway is. Vice Chair Anderson stated she also has concerns about the location of the proposed septic. Ms. Callaway stated it may not be optimal, but placing it under the driveway is an option, and it would also move it further from the lake.

Ms. Shanahan stated she understands the concerns, but they worked hard to get a house within all the other setbacks on such a small lot and did the best they could. She stated the leach field is behind the 75' setback.

Erin Bajger, relative of the applicants, noted the suggestion to put the septic under the driveway which leads into the garage and questioned whether the garage or driveway would have to be redesigned. Chair Jarvis explained the Board does not dictate the designs and that would be between the applicants and their engineers.

Nancy Bodwell, abutter, asked if the square footage of 2,040 is revised. Ms. Richard stated that is the total footage between the first and second floors. Ms. Bodwell stated she is concerned about the size of the proposed house, noting it's not comparable to other houses on the point and asked why numerous trees near the waterline are currently tagged. Ms. Richard stated they are considering which trees may be removed within the conditions of the Shoreline Permit, but nothing is set in stone at this point.

Ms. Shanahan stated some trees are hazardous and they want those checked before they do anything. She stated this house is planned to accommodate them in retirement, allowing them to live on the first floor for the rest of their lives. She stated the first floor is 1200 square feet and the second floor is to allow their daughter to come live with them when they can no longer live alone, noting the size is under the size allowed by the Town's ordinances.

Chris Kiezula, abutter, stated she is concerned with the proximity of the well which she measured to be 5' closer than indicated on the line. She asked if these were plans were developed by a licensed engineer. Chair Jarvis stated Ms. Richard is a licensed engineer. Ms. Richard stated the location of the well is based on discussions and maps. Ms. Kiezula stated she is also concerned about where natural runoff water will go and whether it will come into their property.

She stated she hasn't seen any plans including a culvert and would want to see those in the plans. Chair Jarvis stated they can only act based on the plans presented.

Greg Field, abutter, stated he is concerned about the variances being requested and the potential negative impact on the lake. He stated this lot was known to be steep and small when the current owners purchased the property so he doesn't understand the claims of hardship.

Sarah Barley, abutter, stated this house is too big for the lot; the leach field remains less than 20' from their house and thinks the plans should be redone to fit better in the neighborhood.

Ms. Richard stated Article XXI permits the leach field to be 75' from the water as it's a nonconforming lot.

Ms. Shanahan stated there are two other houses the same size and one larger in the neighborhood than what they are proposing.

Vice Chair Anderson asked if the liquid propane tank would be buried. It was confirmed it would not.

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

Chair Jarvis stated the members deliberating and voting on this case would be Vice Chair Anderson, Ms. Callaway, Mr. Bickford and Chair Jarvis.

Findings of Fact:

- The lot is wooded, undeveloped, surrounded by lots with homes on them, except for one side.
- The abutting property of Map 108, Lot 004 is undeveloped.
- The property is 0.31 acres, the second smallest on Owls Point Road.
- The property is 119' deep on one side; 157' on the opposite side.
- The entire house is behind the 75' lakeside setback however the proposed deck extends 12' into the setback.
- The proposed deck is open and porous underneath.
- Map 108, Lot 46 does not have a well.
- The building lot coverage is 14.2% which is less than the maximum of 15%.
- The impervious surface is 16% which is less than the maximum of 20%.
- The septic tank is 115' from the water rather than 125' as required in the Shoreline Conservation Overlay District.
- The septic is 51' from the well on Map 108, Lot 44.
- The leach field is 45.5' from the well on Map 108, Lot 44.
- The leach field is 19' from the abutting dwelling on Map 108, Lot 46.
- If the proposed septic system is moved to the driveway area, it will be more complicated as the hill would require pumps; the current proposal is for a gravity fed system.
- The driveway will be porous.
- There is a steep drop off to the lake.
- Abutter has expressed concern about runoff to Map 108, Lot 44.
- Owls Head Point Road is a private road maintained by the property owners.
- The applicants will need permission from the Board of Selectmen to build on a private road.

- A waiver of liability acceptable to the Board of Selectmen will be required.
- The applicants have not consulted with the Fire Chief, Police Chief or Road Agent regarding any requirements they may have.
- The proposed house will have a full walkout basement towards the lake.
- A Conditional Use Permit will be required from the Planning Board.
- A NH DES Shoreline Permit and Wetland Permit will be required.
- NH DES must approve the septic system.
- Compliance with New Durham Stormwater Management will be necessary.
- The total living space of the proposed home is 2,040 square feet while the footprint is 1,996 square feet.
- The proposed home will have a maximum of two bedrooms.
- There is a possibility that a generator will be added to the property, however, the generator will have a noise level that is equal to or less than that of normal conversation.

Discussion 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 granting the variance to the 75' setback would be not be contrary; she stated the lot is 119' deep at one side, and it's only 0.34 acres. Vice Chair Anderson stated she doesn't think it is contrary; there will be pervious surface and any runoff will be handled well. Ms. Callaway stated they did a good job of getting the whole house back as far as they did; she stated it's the same old conundrum in that if it were at 50' they wouldn't need a variance but because they are at 75' the deck variance is needed and it will be pervious underneath. Mr. Bickford agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the house is back as far as it can be. The Board agreed the spirit is being observed because the house is in the 75' setback rather than the 50' setback, which would not require a variance for the deck.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it's a small lot; under the deck will be porous. The Board agreed it would do substantial justice because the public isn't losing anything in this proposal relative to what the applicant is gaining. Vice Chair Anderson noted residences closer to the lake are able to have decks without variances so this does substantial justice. Ms. Callaway stated they did well to keep the size of the building within the limits.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated they are taking an undeveloped lot, putting a home on it, and it won't diminish the values because of a modest and reasonably sized deck. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated other properties that are closer to the lake would be allowed without a variance, so the purpose of the ordinance is to keep house from being closer than 75', not necessarily a deck, which in other parts of the ordinance allows it. The Board agreed.

Motion: Based on the plans dated April 27, 2021, I move 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) feet 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) feet 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) feet 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 Board of Selectmen shall be signed and filed with the Strafford County Registry of Deeds.
- Owls Head Point Road shall be found in a condition acceptable to the New Durham Fire Chief and Police Chief.
- The lakeside deck shall remain unenclosed and the ground underneath the deck to remain porous.
- Compliance with New Durham's Stormwater Management and Erosion Ordinance shall be maintained.
- Before a building permit is issued, copies of the following shall be given to the New Durham Building Inspector:
 - A Conditional Use Permit from the New Durham Planning Board.
 - A Steep Slopes Permit from the New Durham Planning Board.
 - A Wetland Permit from NH DES.
 - A Shoreline Permit from NH DES.
 - Documentation that the septic system has been approved by NH DES.

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 Article VI Section C.3.a.i, Article VI Section C.3.a.ii, Article XXI Section G.1.b:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated she believes it would be contrary because there is a potential for the septic system to be moved and be further away from the house next door. Vice Chair Anderson stated she would have less of a problem with the system being within a road setback and further away from the lake, rather than closer to abutting lines. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it would not be observed even though they have done well moving the house behind the 75' setback.

There is at least one alternative for the placement of the septic system. Vice Chair Anderson stated the plan doesn't protect as much as it could. The Board agreed.

Granting the variance would/would not do substantial justice because: Vice Chair Anderson stated it would not do substantial justice as there is an alternative placement which would offer more safety to the public. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated the only way it would affect surrounding properties would be if there was a failure of the system, but otherwise the values would not be diminished. Mr. Bickford stated it could affect the value of the directly abutting properties, and stated that as a buyer, he would be concerned. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated there is a fair and substantial relationship; she stated they all want to work to protect the lake and the ordinance wants to protect the health of the lake. The Board agreed.

Motion: *Based on the plans dated April 27, 2021, I move to deny the request for 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 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 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.

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

Chair Jarvis asked the applicants if they want to continue to discuss the remaining variance requests. Ms. Richard asked if they would be applicable to future plans. Chair Jarvis replied no, as her motions reference the plans dated April 27, 2021. Ms. Richard stated they do not want to continue with the remaining variance requests at this time.

CONTINUED PUBLIC HEARING – 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.2.d: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No more than a total of twenty (20) percent of the lot area shall be covered by all impervious surfaces.

The property is located at Map 105 Lot 005 – 29 Cedergren Road.

Chair Jarvis stated Case #2021-004 came before the Board on March 3, 2021; four variance requests were granted regarding the septic and leach systems, as well as the house being close to the water. Variance requests for the impervious surface and size of the house over 20% were denied. At that time the impervious surface was considered to be a hardship, but the building size was not.

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 the Board determined that Case 2021-009 was materially different from Case 2021-004; it was reviewed and found to be complete in April 2021. Due to the length of the agenda, it was postponed to April 22, 2021 and then again to May 11, 2021.

Chair Jarvis stated at the May 11, 2021 meeting, 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 from Mr. Varney around May 3 which indicated there was an incorrect variance request and stated the necessary documents would need to be received by the close of business on May 17, 2021 for the June 8 meeting. A revised request was submitted and received for Article XXI, G.2.d, lot size coverage. Chair Jarvis confirmed all abutters were notified of the change.

Chair Jarvis read the public notice into the record.

Tom Varney, Varney Engineering, LLC, on behalf of Joseph and Donna Reiss, stated the new plans have a small building, setbacks are increased from the lake; the shed and patio have been removed. The plans are to replace the cottage with a permanent, year-round residence. Impervious areas have been reduced to only the driveway. Mr. Varney stated the existing house is 16.5' from the lake; there is a lot of storm water runoff into the lake. The proposed house will be moved back to 34' from the lake; the patio, shed and driveway will be removed. A new well and septic system will be installed. The building will be smaller than initially proposed; storm water measures have been added to catch the rain runoff from the roof and infiltrate into the ground; the eaves will empty onto porous materials. Trees are being maintained for tree cover. He stated the property will be upgraded.

Joe Reiss, applicant, stated they listened to the Board's concerns and comments when making changes to the plans. The overall size of the house has been reduced, it is within the ordinance and the main item is the lot coverage, which is dominated by the driveway surface being an impervious area. He stated the plans are an overall improvement for the lot and the impervious area is reduced; the distance to the lake is greater and the lot will be more conforming than it is currently.

Chair Jarvis noted the current building coverage is 10.5% and the proposed is 14%; the impervious currently is 38% and it is proposed to be reduced to 25%; the current distance of the house from the lake is 16.5' and the proposed is 34'. She asked what percentage of the current house is in the 50' setback and what is in the 75'. Mr. Varney stated its 20% or less in the 50' setback; about 75-80% of the current house is in the 75' setback. It was confirmed the nonporous patio and a portion of the driveway will be removed. Mr. Varney stated less than 2000 square feet is being disturbed on the steep slopes so no Conditional Use Permit is required.

Mr. Bickford stated it seems they could do better within the setbacks and asked if the house could be turned in order to get more of it behind the 50' setback.

Mr. Varney explained they have to save 25% of the trees within the 50' setback so he can't move the house as tree cover would be reduced and the Shoreline Permit would be denied.

Mr. Bickford asked about the increase in the footprint. Mr. Varney stated it was increased by about 400 square feet but it is still within the 15% ordinance limit.

Ms. Callaway suggested moving the house back into the driveway space as she would like to see more space on the lakeside preserved. She suggested the leach bed be shifted to the left and closer to the road to open up more of the shoreline setback.

Vice Chair Anderson stated it's convenient to have a circle drive but it's very wide and parking for two cars only needs to be 18' wide; she suggested removing some areas along the width which is 22' in order to reduce the impervious coverage and allow for the house to be moved back. She stated if it's over the lot coverage, it should go.

Chair Jarvis asked if there was anything which would prohibit the driveway on the right-hand side to be completely removed and expand the driveway to the left of the woods. Mr. Varney

stated they can't make that area porous pavement because of the steep grade. Chair Jarvis stated the 28% impervious coverage is still quite high although the lot size coverage has been reduced.

Mr. Varney noted variances were granted at the last meeting for the septic and leach fields as well as the location of the house to the water. Chair Jarvis noted the variances for the impervious surface being greater than 20% and the size of the house were denied and not considered to be a hardship.

Chair Jarvis opened the public hearing to input from abutters and the public. Mr. Varney was asked if there was rationale as to why they left the existing area undisturbed. Mr. Varney replied the land slopes there and it flattens where the house is; porous pavement could not be used there and then they would be working around the trees for the leach bed. He stated the driveway area is 15% slopes.

Chair Jarvis closed the public hearing at 8:58PM.

Chair Jarvis stated the Board members deliberating and voting on the case would be Chair Jarvis, Vice-Chair Anderson, Ms. Richard, Ms. Callaway and Mr. Bickford.

Findings of Fact

- Cedergren Road is a private road.
- The lot is 105.65' deep on one side and 156' on the other side.
- The current building coverage is 10.9%; the proposed is 14% which is within the ordinance.
- The current impervious coverage is 38%; the proposed is 28%.
- The current house is 16.5' from the lake; the proposed is 44' from the lake.
- The current house encroaches on the side setbacks; the proposed does not.
- The current house is 75-80% within the 50' setback; about 20% of the proposed house is within the 50' setback.
- The nonporous patio, shed and 100' of nonporous driveway will be removed.
- The deck will be porous underneath.
- There will be a new well and new location.
- The proposed leach field and septic system are further back from the lake than the current system.
- Approval from NH DES for a Shoreline Permit is needed.
- A Conditional Use Permit is needed from the New Durham Planning Board.

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: Vice Chair Anderson stated it is contrary and reiterated it would be beneficial for the public to reduce the impervious coverage to 20%, particularly through reduction of the driveway. She stated more could be reduced than has been proposed. Ms. Callaway stated she agrees and that more could be done closer to the road to make it better. She stated all the impermeable area of the driveway would be

better pervious or vegetated. The Board agreed the proposed plans are contrary to the public interest.

The spirit of the ordinance would/would not be observed because: Vice Chair Anderson stated it would not be observed as the ordinance wants to see no more than 20% impervious surface; she stated there is room to further improve the coverage. The Board agreed the spirit is not being observed.

Granting the variance would/would not do substantial justice because: Mr. Bickford stated substantial justice would not be done for reasons previously stated, and plans could be closer to what is prescribed in the ordinance. Vice Chair Anderson stated the applicant is getting more than the public and gets to keep a very generous driveway, but the public is not getting as much as they could with the safety of the lake and a circle driveway is not needed. The Board agreed. Mr. Bickford noted circle driveways are no longer allowed to reduce curb cuts. Chair Jarvis stated the two curb cuts are currently existing and would be grandfathered.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't think the values would be diminished. It will be a newer building and could raise property values. Vice Chair Anderson stated surrounding values would not be diminished; the existing woodlands are being maintained and they are improving the property. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated she doesn't think there is a fair and substantial relationship; she stated a lot of work has been done to make the proposal as close to the ordinance as they can. Ms. Richard stated she agrees; she stated the lot with its existing features is the hardship. She stated it's her opinion they cannot reduce the coverage to 20% or less without getting rid of the entire driveway and some sort of relief is needed. Vice Chair Anderson stated there is runoff which won't be fully addressed with the catch basin and doesn't expect the entire driveway to be reduced and understands it can't be pervious but it doesn't need to be so wide or circular. Changing those two things could reduce the impervious surface and she stated a circle driveway is not needed for use of the house. Ms. Callaway agreed, noting the driveway is almost the same amount of coverage as the house and it is substantial justice to uphold the ordinance. Mr. Bickford agreed.

Motion: That based on the plans dated March 19, 2021, the request for variances be approved for the following:

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 G.2.d: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No more than a total of twenty (20) percent of the lot area shall be covered by all impervious surfaces.

Motion by Chair Jarvis. Seconded by Ms. Richard. **Roll Call Vote:** Vice Chair Anderson – no; Ms. Richard – aye; Ms. Callaway – no; Mr. Bickford –no; Chair Jarvis – aye. **Motion failed, 2-3-0.**

Chair Jarvis asked if the applicant wants to continue with the remaining variance requests. Mr. Varney stated they do not wish to continue with variance requests for Article XXI Section C.1 and Article XXI Section C.2.

Chair Jarvis stated it is now 9:24PM and no new cases are started after 9:30PM. However, since meetings are ended at 10:00, case #2021-012 will not be heard tonight.

Motion: To continue the public hearing for Case 2021-012, application submitted by Changing Seasons Engineering PLLC, on behalf of Marjack Oasis LLC, Thomas O'Neil, representative to a special meeting to be held Thursday, June 17, 2021. Motion by Chair Jarvis. Seconded by Mr. Bickford.

Discussion: Chair Jarvis stated earlier this spring the Board agreed to set aside the third Thursday of the month for special meetings. She stated no new cases are considered at this special meeting. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Callaway – aye; Mr. Bickford – aye; Ms. Richard-abstain; Chair Jarvis – aye. **Motion passed, 4-0-1.**

PUBLIC HEARING Case #2021-011

Application submitted by Varney Engineering LLC, on behalf of The Fillion Revocable Family Trust, Michael and Tracy Fillion, representatives.

Applicants are requesting variances to the following:

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 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.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 122, Lot 019 – 128 South Shore Road.

Chair Jarvis read the case into the record.

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 stepping down from deliberating this case. 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 opened the public hearing at 9:34PM.

Tom Varney, Varney Engineering LLC, stated the property is an old camp with no foundation. The plans are to demolish the existing cottage and construct a new cottage. The driveway will be reconfigured and a paved walkway to the lake will be replaced with porous materials. A new well will be installed and the existing landscape will remain the same. A septic system was installed in 2018. A NH DES Shoreline Permit will be required; a Conditional Use Permit from the Planning Board is not required. Mr. Varney presented maps, plans and pictures of the existing and proposed plans. He stated the lot is 100' wide. It was noted there is a perennial stream on the property. Mr. Varney explained there is a boxed culvert put in by the Town. He stated there will be drip edges to catch runoff on both sides of the house; the walkway will be porous. He stated the proposed lot size coverage is 16.2%; the building size is 14.9% so is within the ordinance. The lot size coverage has been increased from 10.5% and the setback from the lake remains the same. Ms. Randall, Architect, noted the proposed house is 1,970 square feet. Mr. Varney confirmed it is currently a two-bedroom house, and it will remain two-bedrooms; the increase is about 800 square feet.. The current house is single story and the proposed house is two stories. Mr. Varney noted there will be no basement on the proposed house, only a crawlspace.

Tracy Fillion, applicant, stated her grandfather built the cottage in 1952; she stated this home in New Hampshire is a special place to her entire family and their plan is to keep the tradition of family gatherings.

Ms. Callaway asked if they tried moving further from the lake. Ms. Randall replied they did everything they could to have it as close to the road as possible, but the septic installed a few years ago limited them, and they didn't move closer to the lake than the current cottage.

Mr. Bickford stated he doesn't see any reason to grant the request; it's on the same footprint as the existing cottage and doesn't meet any of the setback requirements. He stated it's putting more structure in the area they are not supposed to be adding to.

Chair Jarvis asked what percentage of the house is currently in the 50' setback and the percentage with the proposed house; same question for the 75' setback.

Mr. Varney replied the 20% of the proposed building is in the 50' setback; the encroachment over the 75' line is small. The amount between 50 and 75' is about 90% of the house.

Vice Chair Anderson stated she is concerned with the increase in square footage within the 75' setback and suggested reconfiguring to move it out of the 50' setback. Chair Jarvis noted it appears the proposed house is nearly doubling the square footage. Ms. Randall stated that is correct but they are still within the ordinance. She stated they want to keep the character of the cape with the new design, noting the elevation shows single story in the area of concerns of the Board.

Chair Jarvis noted the proposed building size is 14.9%; the current is 7% and confirmed the lot coverage and size are within the ordinance. It was confirmed the setback from the lake is 35.5'. Ms. Callaway stated one tree has already been removed near the walkway and then another will be taken near the building envelope. She stated if the trees nearest the water are being sacrificed, the tree near the road is not an issue. Mr. Varney stated the unaltered tree cover area within the 50' area will remain.

Motion: *To continue the public hearing for Case #2021-011 to June 17, 2021.* Motion by Ms. Callaway. 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.**

APPROVAL OF MINUTES

Motion: *To postpone review of all meeting minutes to the June 17, 2021 meeting.* Motion by Chair Jarvis. Seconded by Ms. Callaway.. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Other

Chair Jarvis stated there is a case coming before the Planning Board in which the Zoning Board of Adjustment had made decisions about variances being needed or not needed; she stated the applicants then went to the Planning Board with a different set of plans, nearly a year later, saying variances were not needed. Chair Jarvis stated she will now begin motions reference the date of the plans. The Board agreed this is an appropriate solution.

FUTURE MEETINGS

June 17, 2021, 7:00PM.

ADJOURN

Motion: *To adjourn.* **Motion by Vice Chair Anderson. Seconded by Ms. Callaway. Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

*Town of New Durham Zoning Board of Adjustment Meeting
June 8, 2021*

Approved August 12, 2021

DRAFT

The meeting was adjourned at 10:12PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary