

Town of New Durham Zoning Board of Adjustment Meeting

October 12, 2021

Approved October 28, 2021

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
October 12, 2021, 7:00 PM
New Durham Town Hall
OCTOBER 28, 2021**

PRESENT

Terry Jarvis, Chair

Stephanie Richard, member

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant

Tom Varney, Varney Engineering

Joshua Thibault, Varney Engineering

Brad Jones, Jones and Beach Engineering

Tim Shanahan, applicant

Carol Shanahan, applicant

John LaRochelle, applicant

Lynne LaRochelle, applicant

John Ratigan, attorney

Dan Glenney, applicant

Ben Johnson, North and South Construction

Brian Locke

Stephan Macknight, resident

Erin Badger, applicant's daughter

Nancy Bodwell, abutter

Melody Hughes, resident

CALL TO ORDER

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

AGENDA REVIEW

No changes were made to the agenda.

Public Rehearing of Case #2021-015

Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan, Tax Map 108 Lot 107, Owls Head Point Road.

The applicants requesting variances to:

Article XXI Section C.1: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: 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 nonconforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.

Chair Jarvis asked members of the Board if they have any real or perceived conflicts with hearing this case. Ms. Richard stated she would be recusing herself as a representative for the applicants. The applicants were asked if they want to continue the hearing with only three members. Attorney Ratigan did not.

Chair Jarvis stated the applicant has the right to have the case heard by a full board and asked if they want to continue the re-hearing with only three members. Attorney Ratigan stated they want to continue.

Motion: *To continue the public re-hearing on Case #2021-015 to October 28, 2021 at 7:00PM at New Durham Town Hall.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Motion passed, 3-0-0.**

Review and Acceptance of Case #2021-024

Application submitted by Jones and Beach Engineers, on behalf of John and Lynne LaRochelle of 153 South Shore Road, Map 121 Lot 70.

The applicants are requesting variances to:

Article XIV Section C.1.e: Shorefront Conservation Overlay District. 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 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.a:** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Leach fields: a. Not less than ten (10) Ft from a lot line.

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

Article XXI Section G.2.d: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: The total square-footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.

The Board reviewed the application for completeness. Chair Jarvis noted the application was reviewed last month and a new packet was submitted. She stated the letter of authorization was only signed by John LaRochelle but the property is owned by Lynne LaRochelle as well. Ms. LaRochelle was present to sign the authorization.

Chair Jarvis noted the plans for the existing conditions are not the required 1 in to 20 ft scale. Brad Jones, Jones and Beach Engineers, explained it was submitted but they enlarged it for ease of viewing. The Board agreed with accepting the plans as presented.

Motion: *To accept the application for Case #2021-025 as complete.* Motion by Ms. Richard. Seconded by Mr. **Bickford.** **Motion passed, 3-1-0.** Chair Jarvis opposed.

Review and Acceptance of Case #2021-025

Application submitted by Jones and Beach Engineers, on behalf of Susan Sullivan Glenney of 208 South Shore Road, Map 116 Lot 13.

The applicants are requesting variances to:

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 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.

The Board reviewed the application for completeness. The Board discussed with the variance to Article VI Section C.3.a.ii: is needed as there doesn't appear to be any wells in the area. Chair Jarvis noted a conflict of information in regard to sewage loading. It was confirmed by applicant's representative that the sewage load would be increased. Ms. Richard noted the applicant's own well will be within the radius and Chair Jarvis noted the size of the house is expanding, the lot is still nonconforming.

Motion: *To the application for Case #2021-025 as complete.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Motion passed, 3-1-0.** Chair Jarvis opposed.

Review and Acceptance of Case #2021-026

Application submitted by North and South Construction, on behalf of Erik Dodier of 376 South Shore Road, Map 114 Lot 024.

The applicants are requesting variances to:

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 V Section E: Dimension 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 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.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 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.

The Board reviewed the application for completeness. Chair Jarvis questioned whether variances are needed to Article XXI Section C.2 and G.2.d. She stated the current impervious surface is 31.3% and it's going down to 23.8%. Chair Jarvis noted the size of the plans dated 9/20/2021 are incorrect. Ms. Richard noted page 4 of 8 is missing for two of the five variance requests. The Board discussed whether Article XXI, G.4 applies.

Chair Jarvis stated the review could be continued to the November meeting with materials received at least 21 days prior; if the application is declared incomplete or the entire process with notifying abutters will restart.

The Board discussed whether the shed structure is affected by the setback. The Board discussed the variances which may be needed to Article XXI, C.1, G.2.d and G.4 due to the size of the building and for the 75 ft setback and agreed Article XXI, C.1, G.2.d are needed.

Motion: *Article XXI, G.4 does not pertain to this case. The garage, although not attached, is just a structure being built on the property.* Motion by Ms. Callaway. Seconded by Ms. Richard.

Motion passed, 4-0-0.

Chair Jarvis stated page 4 of 8 for several variance requests for additional variances and the 1 in = 20 ft plans need to be submitted.

Motion: *To continue the application review for Case #2021-026 to November 9, 2021, 7:00PM at New Durham Town Hall, provided all information is received by 4:00PM on October 18, 2021.* Motion by Chair Jarvis. Seconded by Ms. Richard. **Motion passed, 4-0-0.**

PUBLIC HEARING Case #2021-022

Application submitted by Varney Engineering, on behalf of Kelli and James Beauparlant of 323 Merrymeeting Road, Map 118 Lot 46.

The 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) ft from any water body or river.

Article VI Section C.3.a.i: 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 one hundred twenty-five (125) ft from the edge of a public water body; or.

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 Ft (75) ft from any water body or river course.

Chair Jarvis stated the application was reviewed and found to be complete on September 14, 2021.

Chair Jarvis asked the applicants if they want to continue with four members of the Board hearing the case as they have the right to a full Board. Mr. Varney stated they would like to proceed with the public hearing.

Chair Jarvis asked members of the Board if they have any real or perceived conflicts with hearing this case. None was indicated.

Chair Jarvis asked members of the public if they have any real or perceived conflicts with any Board members hearing this case. None was indicated.

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

Chair Jarvis opened the public hearing at 8:05PM.

Tom Varney, Varney Engineering, stated the applicants want to replace the existing cottage; the size will remain the same, with a 10Ft wide deck added to the lake side. The cottage less the deck will be moved 9 ft further from the shoreland than the current site, a well will be installed, a foundation placed under the entire cottage, and a septic system was approved and installed in 2013. The new cottage will be 1 ft above the 100-year flood elevation and a NH DES shoreline permit will be required. Mr. Varney stated a conditional use permit will not be required. He presented maps showing the layout of the lots, noting this is a small lot, about half of the average size lot in the area. He also presented photographs of the lot and confirmed a survey plan was done. The existing cottage is 17 ft from the water; Mr. Varney stated there are good, healthy standing woods on the property, a rocky shoreline and currently the water is taken from the lake. He stated the septic tank is 300 gallons although it was supposed to be 2,000 gallons and this will be updated to 2,000. Mr. Varney stated the 75 ft. setback would be in the road. The cottage will be moved back but it will be the same size except for the deck. It was confirmed the proposed house is less than 35 ft. high.

Chair Jarvis asked if the pump chambers are still there with the leach field across the street. Mr. Varney confirmed it is. Ms. Callaway confirmed the house is 26.5 ft. from the lake; Chair Jarvis stated if the house is between 50 and 75 ft. from the high water mark they are allowed a deck. Chair Jarvis noted the current house is 1 bedroom; Mr. Varney explained the septic design is approved for 3 bedrooms but the proposed plans have 2 bedrooms. Chair Jarvis asked if there will be anything in the lower level. Mr. Varney stated it will have utilities.

Mr. Bickford asked about the septic tank. Mr. Varney stated the 300 tank would have been a holding tank but it is going to be upgraded.

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

Chair Jarvis closed the public hearing at 8:23PM.

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

Findings of Fact

- The septic tank is currently 49ft. 2 in from the shorefront and the proposed is 5 ft.1 in.
- The leach field will remain across the street.
- The building size will remain the same however, a deck will be added to the lake side of the house.
- The existing lot coverage is 24%; the proposed is 18.8%.
- A Conditional Use Permit is not needed.
- Underneath the deck will be a porous patio.
- The current house is 2 bedrooms and the proposed is 2 bedrooms.
- The lot is 0.15 acres and less than 75 ft from the water.
- A catch basin will be installed in the driveway.
- The house will be less than 35 ft in height.

- The current driveway will be removed.

Discussion Article VI, C.3a.i and Article C.3.a.ii

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated the lot isn't even 75 ft deep and it would not be contrary. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it is observed because it's a minuscule lot; the proposal isn't impinging on anything, and the septic is being upgraded for a major improvement to the lake. The Board agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated justice is being done; the septic tank is being upgraded and moved further from the lake. The Board agreed.

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

Unnecessary Hardship: Chair Jarvis stated there isn't much that can be done with a lot this small, and there is no option to be outside the 75 ft setback. The Board agreed.

Motion: *Based on the application signed August 21, 2021, plans dated August 23, 2021 and information received at the public hearing of October 12, 2021, to grant the following requests for a variance:*

Article VI Section C.3.a.i: 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 one hundred twenty-five (125) ft from the edge of a public water body; or.

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.

With the following condition:

- The house shall remain a 2-bedroom home.

Motion by Chair Jarvis. Seconded by Ms. Callaway.

Discussion: Mr. Bickford questioned the condition of 2 bedrooms. Chair Jarvis stated it allows the town to take action if they don't abide by the limit. Ms. Richard stated she doesn't agree with limiting them when the septic is approved for 3. Chair Jarvis stated the plans and testimony indicate the plans are for 2 bedrooms. Ms. Callaway commented that part of the rationale for two bedrooms on these small lots on the lake had to do with more occupants in the homes and potentially more cars which would/could crowd the narrow roads.

Motion to amend: *To remove the restriction of 2 bedrooms and change it to 3 bedrooms per the approved NH DES approved septic system.* Motion by Ms. Richard. Seconded by Mr. Bickford.

Discussion: Mr. Bickford questioned the need for any condition. Chair Jarvis stated the basis of the variances were for a 2-bedroom home. Mr. Bickford stated he doesn't want to take away the option for a 3rd bedroom.

Amendment failed, 2-2-0 (Jarvis, Callaway opposed)

Motion passed, 4-0-0.

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 it is not contrary as the lot doesn't allow for a 75Ft setback. Ms. Callaway stated they are able to do the water infiltration but just not meet the setback. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it is observed as the lot is very small. The Board agreed.

Granting the variance would/would not do substantial justice because: The Board agreed justice would be done as attempts were made to move the house as far back as possible.

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

Unnecessary Hardship: The Board agreed to deny the variances would be an unnecessary hardship; the septic is being moved back.

Motion: *Based on the application signed August 21, 2021, plans dated August 23, 2021 and information received at the public hearing of October 12, 2021, to grant the following requests for a variance:*

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) 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 Ft (75) ft from any water body or river course.

With the following condition:

- The house shall remain a 2-bedroom home.

Motion by Chair Jarvis. Seconded by Ms. Richard. **Motion passed, 4-0-0.**

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

Granting the variance would/would not be contrary to the public interest: Ms. Richard stated it would not be contrary for reasons previously stated. Ms. Callaway stated it's good that the square footage was not expanded. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is observed because the lot is so small. The Board agreed.

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

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

Unnecessary Hardship: The Board agreed it would be a hardship to deny the variances.

Motion: *Based on the application signed August 21, 2021, plans dated August 23, 2021 and information received at the public hearing of October 12, 2021, to grant the following requests for a variance:*

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.

With the following condition:

- The house shall remain a 2-bedroom home.

Motion by Chair Jarvis. Seconded by Ms. Richard. **Motion passed, 4-0-0.**

Chair Jarvis noted the time is now 8:50PM.

Motion: *Case #2021-02 , an application submitted by Jones and Beach Engineers, on behalf of Susan Sullivan Glenney of 208 South Shore Road, Map 116 Lot 13, be continued to October 28, 2021, 7:00PM.* Motion by Chair Jarvis. Seconded by Ms. Richard. **Discussion:** Chair Jarvis stated no new cases are started after 9:30PM. **Motion passed, 4-0-0.**

PUBLIC HEARING Case #2021-024

Application submitted by Jones and Beach Engineers, on behalf for John and Lynne LaRochelle of 153 South Shore Road, Map 121 Lot 70.

The applicants are requesting variances to:

Article XIV Section C.1.e: Shorefront Conservation Overlay District. 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 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.a:** Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Leach fields: a. Not less than ten (10) ft from a lot line.

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

Article XXI Section G.2.d: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.

Chair Jarvis asked members of the Board if they have any real or perceived conflicts with hearing this case. None was indicated.

Chair Jarvis asked members of the public if they have any real or perceived conflicts with any Board members hearing this case. None was indicated.

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

Chair Jarvis opened the public hearing at 8:54PM.

Brad Jones, Jones and Beach Engineers, stated the current driveway runs along the lot line; there is a substandard leach field in the rear of the property, and a well. The applicants also own a 20' strip of land with right of way to the water and the property is bordered in the rear by conservation lands. The lot is .19 acres. Mr. Jones noted the application includes letters from the two abutters, and neither have issues with the project after looking at the plans.

Mr. Jones presented maps showing the existing and proposed conditions; he stated the new home would be closer to the center of the lot; the septic system would be replaced with a NH DES approved system. He explained the setback infringed by the septic is on land which will never be developed, as it's in a conservation easement. The proposed house will fit within all zoning setbacks.

Mr. Jones stated the driveway will have pervious pavers; the impervious coverage will be reduced from 3500 square Ft to 2825 square Ft. The building will be going from 18% to 39%; Mr. Jones stated the unique features of the proposed house is two garages which will take up

much of the square footage, with the rational being to store vehicles on the small lot. He stated they have not received a shoreline permit from NH Department of Environmental Services, but they will go there from here. Mr. Jones stated a Conditional Use Permit is not needed. The driveway will be 30 ft in length; the garages will be a single and a double garage, one on the ends of the proposed home.

Chair Jarvis asked what percentage of the building coverage is from the garage. Mr. Jones replied there is no living space above the garages; it is currently two bedrooms and will remain two bedrooms; the garage area takes up about 750 sq ft. He confirmed a boundary line survey was done. He stated the total proposed building is 2500 sq ft.

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

Chair Jarvis closed the public hearing at 9:15PM.

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

Findings of Fact

- The lot is 0.19 acres.
- It is two-bedroom home and will remain a two-bedroom home.
- The current home has no garages, and the proposed will have a single and a double garage.
- The current lot coverage is 42.6% and will be reduced to 33.9%.
- The building coverage is 18.4% and will go to 33.9%.
- The current house and garage cover 1532 square ft; the house alone is 1342 square ft.
- The proposed house and garages will be 2556 square Ft, and the house alone will be 1806 square ft.
- A New Hampshire Department of Environmental Services Shoreline permit is needed.
- A New Hampshire Department of Environmental Services septic system approval is needed.
- The property abuts South East Land Trust (SELT) conservation land.
- The proposed home will have, in addition to two bedrooms, an office, a gym, a family room with a cathedral ceiling to the second floor.
- The proposed location of the leach bed is 6Ft 1In from the lot line of the South East Land Trust (SELT) conservation land.

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

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated it would be contrary; the lot is small, and a smaller structure should be on the lot. She stated although some impervious surface is being removed, the size of the building increase is much too big for this size lot. Ms. Richard and Mr. Bickford agreed. Mr. Bickford stated adherence to the ordinance is possible on a lot this size; he stated there are improvements but not enough.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it would not be observed; she doesn't object to the height, but for a lot this small, it's a lot of building.

She stated it's good the septic is being upgraded, but it's too much building for this lot. Mr. Bickford stated they can work within the ordinances to build on this lot. The Board agreed.

Granting the variance would/would not do substantial justice because: Mr. Bickford stated it would not for reasons previously stated. The Board agreed.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't think values would be diminished; it may be an attractive building, but it's too much building on the lot. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated the size of the lot is something to consider for a hardship, but the proposed plans are nearly 40% of the lot. Ms. Callaway stated it's not an unnecessary hardship; improvements can be made, and the lot can be used. The Board agreed.

Motion: *Based on the application signed September 15, 2021, plans dated August 3, 2021, the public hearing of October 12, 2021, to deny the requests for variances to the following:*

Article XIV Section C.1.e: Shorefront Conservation Overlay District. 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 Buildings, Land or Uses. Non-Conforming Setbacks. *Buildings: The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.*

Motion by Chair Jarvis. Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

Chair Jarvis asked the applicants if they want to proceed with the additional variance requests. She stated they have 30 days from the date of decision to request a rehearing, or a new application and plans can be submitted but must be found to be materially different.

Mr. Jones asked if the existing house was torn down and rebuilt on the exact footprint, would variances be needed. Chair Jarvis explained if the well and or septic are replaced, and those encroach on setbacks then variance would be needed; if the house was built on the footprint but a deck is added, a variance would then be needed as well.

Mr. Jones stated they do not want to go forward with the remaining variance requests.

APPROVAL OF MINUTES

Postponed.

ADJOURN

Motion: *To adjourn.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Motion passed, 4-0-0.**

The meeting was adjourned at 10:02PM.

Respectfully Submitted,

Jennifer Riel

Town of New Durham Zoning Board of Adjustment Meeting

October 12, 2021

Approved October 28, 2021

Jennifer Riel, Recording Secretary