

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
August 12, 2021, 7:00p.m.
New Durham Town Hall
Approved October 28, 2021**

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PRESENT

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Stephanie Richard, member – excused absence

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant

Tom Varney, Varney Engineering, LLC

Deb Randall, Architect – via Zoom

Scott Dunn – via Zoom

Sara Barley – via Zoom

Tracy Fillion, applicant – via Zoom

Michael Fillion, applicant – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:15PM.

CONTINUED PUBLIC HEARING of Case #2021-019

Application submitted by Varney Engineering, on behalf for Michael and Tracy Fillion of 128 South Shore Road, Map 122, Lot 019.

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: General Provisions/Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed.

Article VI Section C.3.b: General Provisions/Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks. No part of a leach field shall be located 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.c: Shorefront Conservation Overlay District Dimensional

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

Article XXI Section C.1: 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.1.a: Non-Conforming Buildings, Land or Uses. Non-conforming setback: Leach fields: Not less than ten (10) ft from a lot line.

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) ft from open surface water or hydric A wetlands or fifty (50) ft 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 ft (75) ft from any water body or river course.

Chair Jarvis stated at the previous meeting of August 10, 2021 when this case was accepted and the public hearing opened, no member of the Board indicated they had a real or perceive conflict with hearing this case; she confirmed that has not changed. She stated the public hearing was opened on August 10 and continued so that Vice Chair Anderson had time to review the necessary documents which had been submitted.

Vice Chair Anderson stated she does not have any questions.

Tom Varney, Varney Engineering, LLC, stated the plan has a building with two or three parking spaces, and a walkway to the lake. There is a shed but nothing else; there are woods with a mounded septic system. There are trees on the roadside of the property; to the left is a 20ft strip used by the person across the street, but it is not developed and appears to be part of the Fillion property. On the other side there is a 20ft strip owned by the same person and there is a perennial stream through that area. The direction of the septic system would be changed to be further back from the lake; the current plans call for it to be 110ft from the lake; it was previously 100ft.

Vice Chair Anderson stated she doesn't have any concerns and there isn't much space to do anything different.

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Chair Jarvis asked the size of the deck, noting it will be behind the 50ft setback with a pervious pavers. Mr. Varney stated the deck would be 12ft wide and 34ft long; it will overlook the patio below. It is on the first floor, being 1ft below the floor of the house with a step down to the patio which is level with the ground. There is no deck on the second floor.

Mr. Bickford stated he is concerned about adding more structure in the 75ft setback area that is not supposed to have anything. He stated the ordinance is very clear about expansion in this area and he doesn't see a good reason to have a bigger place.

Ms. Callaway stated she is also concerned about the amount of expansion into the 75ft setback; she pointed out there are also three proposed parking spaces while two is more common. She stated the house is under the amount allowed but the amount within the setback is a problem.

Mr. Bickford suggested seeing if they could put the septic field in the driveway area. Ms. Callaway suggested that may be a way to get more of the house back out of the 75ft setback.

Chair Jarvis stated it would be helpful if plans outlined the percentage of expansion within the setbacks.

Ms. Callaway stated it appears only about 20% of the house is not within the setback.

Vice Chair Anderson stated she is pleased with the lot size coverage, the minimal 3% increase overall.

Chair Jarvis opened the public hearing to input from the public.

Deb Randall, architect, pointed out that at the last meeting the Board approved a situation almost exactly like this one; most of the house was within the 50ft setback and the lot coverage was at 15%. She stated the lot coverage for these plans are well under 15% and she doesn't see how this project differs from the Reiss application. Chair Jarvis explained every case has to be considered individually; the Board looks at the property presented and, in the statute it talks about precedent does not get set from one case to another. Ms. Randall asked why the Board is concerned about setbacks in one project, but not another. She stated the Fillions have taken their house completely out of the 50ft setback and designed an entire new footprint in order to address the concerns by the Board; she stated they have made the best attempts to put the house in the best possible location and meeting as many ordinances as possible.

Michael Fillion, applicant, stated the lot is 100ft deep and the house is outside the 50ft setback and suggested there are few houses outside the 75ft setback around the lake. He asked what percentage of rebuilds are actually outside the 75ft setback.

Vice Chair Anderson asked if the trees around the house will remain. Mr. Varney stated they would.

Mr. Varney reiterated there is not much flexibility with the movement of the septic; it cannot be moved under the driveway due to the water table and proximity to a stream.

Ms. Callaway asked where the water table is. Mr. Varney stated it is about 18in.

Ms. Randall stated there was discussion about not setting precedent but unfortunately things built in the past are being brought into play when assuming things may be done down the road; she stated they have done everything they can to get a house that will fit the family and fit within the

current streams and trees, and she wants the Board to understand these applicants are doing everything they can.

Ms. Fillion stated they tried to address the concerns the Board raised in June, particularly in regards to getting away from the 50ft setback and believes they did a good job meeting the requests of the Board.

Chair Jarvis closed the public hearing at 8:07PM.

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

Findings of Fact

- Applicants proposed to tear down and rebuilt a house;
- Current building coverage is 7%; the proposed is 12.8%;
- Impervious surface is 10.5%; the proposed is 13.3%;
- The current house is 33.5ft from the lake; the proposed is 51ft, putting the entire house behind the setback;
- The leach field is about 100ft from the lake and will go to 109ft
- The septic tank from the stream is 32.5ft and will remain 32.5ft
- The septic tank from the lake is 90ft and will go to 95ft
- The home is currently two bedrooms and will remain two bedrooms;
- The current home is one story and the proposed is two stories;
- The current home is 837 sq ft; the proposed is 1422 sq ft;
- The deck will be about 1ft lower than the level of the first floor;
- The lot is 122ft at the shortest side;
- The paved walk is being replaced with a porous walkway;
- A new well is being installed;
- The leach field is moving back from the lake;
- The impervious materials of the driveway are being replaced with porous materials;
- The deck will be on the lake side of the house and 12ft wide;
- A shed will remain;
- There is a perennial stream on one side of the property and an intermittent stream on the other side;
- The current septic system was installed in 2018, and the proposal is to turn the septic tank to move it back from the lake; and
- The intent of the applicant is to keep the trees between the proposed residence and the south property line.

Discussion Article V, Section E; Article XIV, Section C.1.b; Article XXI Section G.2.b

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated the deck and patio are still where the existing cottage is; the house is expanded to the 50ft and thinks it could be back further. She stated the septic tank could also be moved closer to the side setback. Vice Chair Anderson stated one reason the house can't be moved back is because they

are trying to maintain the vegetation and trees which are currently there; she stated maintaining that is important to her. Chair Jarvis agreed and stated she sees maintaining trees and shrubs as being helpful in keeping the lake clean. She stated she doesn't think it is contrary as a lot is being gained. Vice Chair Anderson agreed and stated the septic is being improved but can't be pushed closer to the stream just to move the house back; she stated the house can't be moved any further from the lake. She stated it is a modest house and the increase in permeability is less than 3%, which is still less than what is allowed. Mr. Bickford stated he doesn't see a need for a bigger house, and it is not the job of the Board to make houses fit. He stated this is a classic example of tearing down a small home and replacing it with something bigger. Ms. Callaway stated if they sacrifice three trees, a considerable percentage of the home could be moved back. She stated this is a small lot but more can be done to get more past the 75ft setback.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated she believes the spirit is met because the house has gone from inside the 50ft setback to outside; the applicants are doing their best to improve the lot with moving the septic tank further from the lake even though it is not required. Vice Chair Anderson stated she agrees; she stated she doesn't see how reducing pavement would move the house any further. She stated she believes it's a modest house and the ordinance is observed. Ms. Callaway stated she feels taking the house back past the 50ft and doubling the amount within the 75ft is not within the ordinance. Mr. Bickford stated he agrees and doesn't feel it's a modest house. He stated they are putting in something they don't need.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated the house has been moved out of the 50ft setback and when septic systems and houses are moved further back, it is doing substantial justice. Ms. Callaway stated what the property owners are getting far outweighs what the Town is getting. She stated sometime bigger modifications have to be made for long term benefits. Mr. Bickford agreed there is not enough gain to the public versus the applicant. He stated there is not enough to offset the expansion. Vice Chair Anderson stated she believes substantial justice is being done; the modifications were made in response to concerns by the Board.

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

Unnecessary Hardship: Mr. Bickford stated there is no hardship; there is already a house there, they could expand upwards, and the proposal uses up too much of the area in the 75ft setback. Vice Chair Anderson stated the square footage coverage is a separate issue from this; she stated they cannot put a house completely outside the 75ft. Chair Jarvis stated she agrees the house cannot be moved further back; she stated she doesn't see this as a huge house. Ms. Callaway stated the house could be moved back further; she doesn't feel the long-term impacts of putting the impermeability in the 50ft to 75ft setback is worth it.

Motion: Based on the plans dated July 14, 2021, the application signed July 13, 2021 and information received at the August 10 and August 12, 2021 public hearing to grant the following variance requests:

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) from any water body or river course.

With the following conditions:

- The applicant must receive a Shoreline Permit from New Department of Environmental Services.
- The applicant must receive an approved septic system from New Hampshire Department of Environmental Services.

Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Motion failed, 2-2-0.** Ms. Callaway and Mr. Bickford opposed.

Chair Jarvis asked Mr. Varney if he wanted to continue with the additional variance requests. Mr. Varney replied no.

NEW BUSINESS

Newspaper Fees

Chair Jarvis stated they have been reviewing the bills for advertising public notices in the newspaper. She suggested the fee charged to applicants be increased as well as consider a per page charge. After discussion, the Board agreed to adjust the fees as follows:

The Baysider		\$100.00
Administrative Appeal (3 pages)		\$150.00
Equitable Waiver of Dimensional Requirements (3 pages)		\$150.00
Special Exception (3 pages)		\$150.00
1 to 3 Variances (2 pages)		\$150.00
4 to 6 Variances (3 pages)		\$200.00
7 or more Variances		\$225.00
Fosters		\$300.00

Other

Chair Jarvis read into the record a letter which was received from Sarah Barley in regards to the request for rehearing for Walter and Carol Shanahan.

APPROVAL OF MINUTES

Town of New Durham Zoning Board of Adjustment Meeting

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241 Meeting of July 13, 2021- Edits were made. **Motion:** *To approve the minutes as amended.*

242 Motion by Chair Jarvis. Seconded by Vice Chair Anderson. **Motion passed, 4-0-0.**

243

244 **ADJOURN**

245 **Motion:** To adjourn. Motion by Chair Jarvis. Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

246 The meeting was adjourned at 10:30PM.

247 Respectfully Submitted,

248 *Jennifer Riel*

249 Jennifer Riel, Recording Secretary