

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
October 28, 2021, 7:00 PM
New Durham Town Hall
APPROVED November 9, 2021**

*<https://us02web.zoom.us/j/88435318628?pwd=eGhreW5lNnZ2cVgvRFRVM28rTTdodz09> Meeting ID: 884
3531 8628 Password: 857377 Or via telephone number: 1-646-558-8656; Meeting ID: 884 3531 8628
Password: 857377*

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

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant
Mark Sullivan, resident
Tom Varney, Varney Engineering
Joshua Thibault, Varney Engineering
Brad Jones, Jones and Beach Engineers
Greg Field, resident
Lynn Sullivan, resident
Dan Glenney, applicant
Susan Glenney, applicant
Sarah Barley, abutter – via Zoom
Nancy Bodwell, abutter – via Zoom
Kathy Tilipan, - via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:01PM.

AGENDA REVIEW

Chair Jarvis added review of notice from Town of Middleton; public notice for Planning Board hearing.

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 stated the applicant has the right to have the case heard by a full board; Vice Chair Anderson notified the Land Use Assistant that she would be unable to attend the meeting and a letter was received from the applicant's legal representative prior to the meeting indicating they want to continue until a full board is present to hear the case. The public hearing will be continued to the next meeting.

Motion: *To accept the letter of October 27, 2021 to request a continuance of Case #2021-015 to November 9, 2021, application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan, Tax Map 108 Lot 107, Owls Head Point Road. Motion by Chair Jarvis. Seconded by Mr. Bickford. Motion passed, 3-0-1. Ms. Richard abstained.*

PUBLIC HEARING 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

81 property may be used for new construction of buildings and/or structures (including septic and
82 leach fields) and any non-conforming building may be altered and expanded provided. Such
83 expansion does not make any existing lot, structure, or use more non-conforming within the
84 terms of this Ordinance.

85 Chair Jarvis stated the applicant has the right to have the case heard by a full board and asked if
86 they wish to proceed. Mr. Jones stated they want to go forward with the public hearing.

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

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

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

92 Chair Jarvis opened the public hearing at 7:17PM.

93 Brad Jones, Jones & Beach Engineers, presented plans for the project which includes expansion
94 to an existing home. He presented plans showing the current, existing conditions and stated the
95 proposed construction is in a flat area; there is an existing well and existing leach field installed
96 in 1974 when the property was previously developed. Mr. Jones stated there is an existing
97 garage; he presented plans showing the location of the proposed septic and leach field. He stated
98 they can't meet the 75 ft setback for the leach field and confirmed the septic system has been
99 approved by NH DES. He stated a Shoreland permit has been received; he confirmed it is
100 currently a two-bedroom home. Chair Jarvis noted the tax card indicates it is one bedroom. Mr.
101 Jones stated the impervious area is increasing to 19.6%; it is currently 18.9%. It was confirmed
102 this is not a tear down and rebuild but only an addition. The two-car garage will remain attached
103 and the driveway is gravel. Chair Jarvis questioned whether the variance is needed for the
104 expansion as it won't have an increase in occupancy. It was confirmed there are bedrooms in the
105 basement but those aren't counted by the Town. Chair Jarvis noted there is a porch and deck; it
106 was confirmed the porch is three-season and the surface under the deck is impervious. It was
107 confirmed the entire home is outside the 75 ft setback; the septic and leach fields are beyond the
108 125 ft setback from the shorefront. The variances are due to the increase in impervious surface
109 although it is under the 20% allowed by ordinance.

110 Mark Sullivan, brother to applicant, explained the foundation for the house and garage run
111 between the leach field and the well.

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

113 Chair Jarvis closed the public hearing at 7:37PM.

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

116

Findings of Fact

- The lot is 0.61 acres.
- The septic tank and leach field will be moved further back from the shorefront.
- The current system will be replaced with an enviro system.
- The current building is 2 bedrooms and will be going to 3.
- The building coverage is currently 8% and is going to 9%.
- The impervious coverage is currently 18.9% and is going to 19.6.%.
- A Shoreline Permit and Septic Approval have been received from NH DES.
- The new location for the septic tank will be 50 ft from the applicant's well.
- Between the well and septic system will be foundations for the house and breezeway.
- The driveway is pervious; under the deck is impervious; the deck and porch are three-season.

Discussion Article VI, Section 3.a.ii

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated it would not be contrary as it is an upgraded system; the only property impacted is the applicant's property. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it would be observed as the septic system is being upgraded and will keep the lake cleaner. The Board agreed.

Granting the variance would/would not do substantial justice because: Mr. Bickford stated it would do justice as they can't put the leach field anywhere else on the lot which would be outside the well radius. 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: The Board agreed this is the only location for the septic system; it would be a hardship to deny the variance; the house is still below the maximum allowed.

Motion: Based on the application signed September 15, 2021, plans dated September 20, 2021, and the public hearing of October 28, 2021, to grant the request for variance to the following:

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.

With the following condition:

- The deck shall not be enclosed.

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

Discussion Article XXI Section C.1; Article XXI Section C.2:

Granting the variance would/would not be contrary to the public interest: Ms. Callaway stated it may be nonconforming but it is well below the 15%; it is within setbacks and is not contrary.

Chair Jarvis stated both the building coverage and impervious coverage are below the amount allowed. The Board agreed.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it would be observed for reasons previously discussed 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 if the variance was not granted.

Motion: Based on the application signed September 15, 2021, plans dated September 20, 2021, and the public hearing of October 28, 2021, to grant the request for variance to the following:

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 deck shall not be enclosed.

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

OTHER

Chair Jarvis stated the ZBA and Planning Board received notice from the Town of Wakefield regarding a public hearing for property on Province Lake Road; the Town of New Durham is being notified as it is being considered a major site plan application to construct a personal wireless service facility tower.

Chair Jarvis stated the ZBA's Rules of Procedures need to be revised to include hybrid meetings. She outlined some other potential edits. All suggestions for changes to the Rules of Procedure and Check List need to be sent to her before 11/9/21 meeting. She will then prepare a draft for the Board to review at its December meeting.

193
194 Chair Jarvis stated the Planning Board held a public hearing on proposed changes to Article XIV
195 of the Shoreline Conservation Overlay District; the public hearing was continued to November 2.
196 A draft of the proposed changes was distributed for review and discussion by the Board.
197 Members of the Board will forward any suggestions to the Land Use Assistant.

198 **APPROVAL OF MINUTES**

199 Meeting of August 10, 2021- Edits were made. **Motion:** *To approve the minutes as amended.*
200 Motion by Mr. Bickford. Seconded by Chair Jarvis. **Roll Call Vote:** Chair Jarvis – aye; Ms.
201 Callaway – aye; Ms. Richard -abstain; Mr. Bickford – aye. **Motion passed, 3-0-1.**

202 Meeting of August 12, 2021 - Edits were made. **Motion:** *To approve the minutes as amended.*
203 Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Chair Jarvis – aye; Ms.
204 Callaway – aye; Ms. Richard - abstain; Mr. Bickford – aye. **Motion passed, 3-0-1.**

205 Meeting of September 14, 2021 - Edits were made. **Motion:** *To approve the minutes as*
206 *amended.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Roll Call Vote:** Chair Jarvis –
207 abstain; Ms. Callaway – aye; Ms. Richard - aye; Mr. Bickford – aye. **Motion passed, 3-0-1.**

208 Meeting of October 12, 2021 - Edits were made. **Ms. Richard made a Motion:** *To approve the*
209 *minutes as amended.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Roll Call Vote:**
210 Chair Jarvis – aye; Ms. Callaway – aye; Ms. Richard -aye; Mr. Bickford – aye. **Motion passed,**
211 **4-0-0.**

212 **NEXT MEETING**

213 November 9, 2021, 7:00PM.

214 **ADJOURN**

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

217 The meeting was adjourned at 10:00PM.

218 Respectfully Submitted,

219 *Jennifer Riel*

220 Jennifer Riel, Recording Secretary