

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

APPROVED December 14, 2021

<https://us02web.zoom.us/j/88996906980?pwd=bUJ5RFJkL2VuY0xSUlNFUnlYNEt6dz09> Meeting ID: 8899
9690 6980 Password: 784832 Or via telephone number: 1-646-558-8656; Meeting ID: 889 9690 6980
Password: 784832

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
Tom Varney, Varney Engineering, LLC
Joshua Thibault, Varney Engineering, LLC
Ben Johnson, North and South Construction
Brian Locke, Milton resident
Deborah Collura, resident
Kathy Tilipan, resident
Field Family, resident
Sarah Barley, abutter
Phil Summers, resident
Chris Kiezula, abutter
Jeff Allard, abutter
Paul Tiralla, applicant
Tammy Tiralla, applicant

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:03PM.

PUBLIC RE-HEARING 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.

They are 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 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

Chair Jarvis stated as of 5:15PM tonight, Ms. Anderson was planning to attend the meeting however since that time she is unable to do so for medical reasons.

Chair Jarvis stated Attorney Ratigan, representative for Walter and Carol Shanahan, was notified that four deliberating members of the Board would not be present to hear the continued case for Case #2021-015; a letter was submitted by Attorney Ratigan which was read into the record. Attorney Ratigan requested the public hearing for Case #2021-015 as only three members of the Board would be present, and they would like a full Board.

Motion: *To accept the letter of November 9, 2021 to request a continuance of Case #2021-015 to December 14, 2021, an 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.

Review and Acceptance of Case #2021-026

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

The applicant is requesting variances to:

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.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 Nonconforming 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 setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy-five feet (75) ft from any water body or river course.

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

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 stated the application was found to be incomplete at the October 12, 2021 meeting; the Board reviewed the application for completeness.

Motion: *To accept the application for Case #2021-026 as complete.* Motion by Ms. Richard. Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-027

Application submitted by Varney Engineering LLC, on behalf for Paul and Tammy Tiralla of 362 South Shore Road, Map 114 Lots 11 and 12.

The applicants are requesting variances to:

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 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-five feet (75) ft from any water body or river course.

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

Ms. Richard stated she met with the applicants to discuss the possibility of working together prior to the project plans being started. The Board agreed there was no conflict of interest.

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.

The Board reviewed the application for completeness. Chair Jarvis suggested variances may be needed to Article XXI, Section C.1 and C.2. She noted the building coverage is going from 10.9 to 11.4%. Ms. Callaway noted more of it will be in the 75 ft setback as well.

Motion: *The application for Case #2021-027 is incomplete.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

Chair Jarvis stated the applicant has the option to ask the Board to act on the variances requested with this application or they can resubmit with the additional variances. Mr. Varney stated they would like to proceed with the requested variances.

PUBLIC HEARING 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 applicant is requesting variances to:

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.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 Nonconforming 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 setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy-five feet (75) ft from any water body or river course.

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

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

Chair Jarvis opened the public hearing at 7:25PM

Ben Johnson, North and South Construction, representative for the applicant, stated the proposed plans are for an existing garage to be moved back 1 ft and build a larger 24 ft by 24 ft garage. He stated most of the driveway would be replaced with porous pavers. The garage will be moved from 62.4 ft to 63.1 ft from the highwater mark. Chair Jarvis asked why there is a deck on the second floor of the garage. Mr. Johnson stated it is so they can park a vehicle at the side of the garage. Ms. Richard asked if the new deck is included in the lot coverage; it was confirmed that it is included. Chair Jarvis noted the building coverage is 8.9% going to 13.3%; the impervious coverage is going from 31.3% to 23.85% which is over the ordinance. Mr. Johnson noted the driveway is very steep and the grades throughout the lot are steep.

Chair Jarvis stated the files indicate the house was built in 2009 but there was no variance for it to be in the 75 ft setback; the septic did not have a variance for being less than 125 ft from the lake. It was confirmed the NH DES Shoreland Permit has been received. Chair Jarvis asked why additional impervious area is needed for parking. Mr. Johnson stated if there are multiple people there, there can be adequate parking for everyone to come and go. Chair Jarvis noted there is already a 522 sq ft deck on the house and questioned why an additional deck of 244 sq ft, all within the 75 ft setback, is necessary.

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

Chair Jarvis closed the public hearing at 7:41PM.

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 retaining wall will be slightly altered.
- There will be a two-storage garage with the second floor used as storage.
- The purpose of the deck is to allow a car to be parked underneath it.
- The current house has a deck which is 522 sq ft; the garage will have a 244 sq ft deck; both decks would be within the 75 ft setback.
- They do not want to move the garage 10 ft to the right in order to save one of the trees.
- The building coverage is going from 0.9% to 13 % which is under the maximum of 15%.
- The impervious coverage is going from 31.3% to approximately 23.8%, depending on whether the space under the deck is deducted.
- The current house, which had a demo permit in 2009, does not have any variances in the file.
- The current septic system does not have any variances.
- The garage is currently 62.4 ft from the water; it will be pushed back to 63.1 ft from the water.
- The garage will be 24 ft wide with a single garage door.
- A Conditional Use permit is not needed from the Planning Board as the amount disturbed is less than 2000 ft.

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: Mr. Bickford stated it would be contrary as the deck is unnecessary and is too much. Ms. Richard stated the under deck would be porous stones but with parking on it, this area would become compacted over time, becoming impervious. Ms. Callaway stated she agrees the deck is unnecessary; there is already a house with a deck; she stated a tree is being removed to build the larger garage; the deck is not in the public's interest. Chair Jarvis stated the garage could be moved further out of the setback; a tree is already being removed so removing another isn't a big issue.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit would not be observed for reasons previously outlined. Ms. Richard stated trying to maintain trees is a good thing and doesn't necessarily agree with removing the trees in order to shift the garage. Mr. Bickford stated there is too much building within the 75ft setback. Ms. Callaway agreed.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would not do justice as the deck is overkill; a garage is a luxury and they could have a two-car garage outside the setback without a deck. 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 but this property may be diminished because of overcrowding. The Board agreed.

Unnecessary Hardship: Chair Jarvis stated denial would not be a hardship. She stated the property can be reasonably used without the variance. The Board agreed.

Motion: *Based on plans dated October 8, 2021, the application dated May 20, 2021 and the public hearing of November 9, 2021, to deny the following variance requests:*

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 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-five feet (75) ft from any water body or river course.

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

Chair Jarvis asked the applicant if they wanted to continue with the remaining variance requests. Mr. Johnson stated they would like to hold off on the remaining variances.

PUBLIC HEARING Case #2021-027

Application submitted by Varney Engineering LLC, on behalf for Paul and Tammy Tiralla of 362 South Shore Road, Map 114 Lots 11 and 12.

The applicants are requesting variances to:

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 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-five feet (75) ft from any water body or river course.

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

Chair Jarvis opened the public hearing at 8:09PM.

Tom Varney, Varney Engineering, stated they are proposing additional living space for an elderly family member; the space would be over an existing deck and attached to the house. The

303 building area will have minimal slope; the house will remain two bedrooms; the well and septic
304 system are not impacted. Mr. Varney stated stormwater measure; swill include the removal of
305 non-porous walkways; a NH DES Shoreland Permit is required, and a Conditional Use Permit is
306 not required. Mr. Varney explained the location of the house on the lot, noting the lot has slopes
307 of about 23%. He stated the house has a partial basement with a new well and new septic system;
308 he outlined where the wooden walkways are located around the house. He stated the best place to
309 put the additional space is on the side because the front area is steep; the lot coverage will remain
310 under 20%. The wooden walkway will be converted to infiltration steps and some wooden
311 walkways will be removed. Mr. Varney stated the addition is within the 75 ft setback. He
312 outlined the stormwater measures which will include rain gutters and a drywell.

313 Chair Jarvis noted the lot is 0.3 acres with the deepest point being 114 ft; she asked if there are
314 plans to extend the deck, since the addition will cover some of the existing deck. Mr. Varney
315 stated only a small portion of the deck will remain.

316 Chair Jarvis opened the public hearing to input from members of the public.

317 Jeff Allard, resident, abutter, asked if the addition will be built as far back from the water as
318 possible. He stated he is not opposed to the project. Mr. Varney stated to move it back further
319 would cause more disturbance to the lot and they run into steep slopes. He confirmed it will not
320 be closer than the home is currently to the water. The size of the addition is 24 ft by 18 ft. Mr.
321 Varney stated the total lot disturbed will be over 15%, about 1100 ft.

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

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

325 *Findings of Fact*

- 326 • The lot is 0.3 acre.
- 327 • The lot is 114 ft deep on one side.
- 328 • The addition is 424.8 sq ft.
- 329 • Building coverage will go from 10.9% to 11.4%.
- 330 • The impervious surface will go from 20% to 19.9%.
- 331 • The change in impervious surface is due to removing the wooden walkways and replacement
332 with pervious pavers.
- 333 • The house is 50.3 ft from the lake and the house with addition will remain 50.3 ft from the
334 lake.
- 335 • The house is currently two bedrooms and will remain two bedrooms.
- 336 • There is a modern septic system and relatively new well.
- 337 • The property has slopes of approximately 23% with the land on the roadside of the house
338 having most of the slopes.
- 339 • There will be rain gutters and down spouts directed to a drywell.
- 340 • A Conditional Use Permit is not required.
- 341 • The septic and leach bed are within the building envelope.

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: Ms. Richard stated it is not contrary; most of the space is over an existing deck; there isn't a way to build this and meet the ordinance. Mr. Bickford stated he is opposed as more area is being added within the 75 ft setback. Ms. Callaway agreed; she stated where the house was originally built was on steeper slopes and there is a way to put the entire addition behind the house, albeit more slopes would have to be disturbed. She stated it may not be as convenient, but there is a way to have the space outside the 75 ft setback. Chair Jarvis noted 40% of the addition is going over a deck which is already existing; she questioned whether moving the addition to the back of the house would disturb the well and the septic. She stated storm water measurements are being improved and impervious surface is being reduced.

The spirit of the ordinance would/would not be observed because: Ms. Callaway stated it is not observed for reasons previously stated; she stated there are options for all of the addition to be outside the setback. Ms. Richard stated she believes putting the addition somewhere else would not be in the spirit of the ordinance because this is the location which will cause the least land disturbance; to move elsewhere would affect steep slopes; the addition is not going any closer to the water and is as far back as possible. Mr. Bickford stated if one can't do it outside the setback, then don't do it at all; he stated they can't keep adding on.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated if it was going over the same decking and not expanding it would be fine, but she is concerned about expansion into the setback. Ms. Richard stated justice would be done as the intention is for space for an elderly family member. Chair Jarvis stated the number of bedrooms is being maintained; she doesn't want to see steep slopes disturbed as additional land may have to be disturbed if the septic is then too close to the house. Mr. Bickford stated this addition isn't a need situation and it adds to the pollution of the lake to continue building in the area.

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 she agrees they need to protect the lake and not overburden the land, but the fact is that with the proposed addition the impervious surface is being reduced, and it's an improvement to the land and the water. She stated the proposed use is reasonable; it would be an unnecessary hardship if denied. Ms. Callaway stated it is a substantial addition, primarily within the 75 ft setback. She stated there are ways to do this without additional building in the setback. Ms. Richard stated the reason for the use makes it hard to deny it; she stated she believes it would be a hardship to deny the variance.

Motion: Based on plans dated October 15, 2021, the application signed October 17, 2021 and the public hearing of November 9, 2021, to grant the following variance requests:

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.

November 9, 2021

Approved December 14, 2021

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 setback: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy-five feet (75) ft from any water body or river course.

With the following conditions:

- A New Hampshire Department of Environmental Services Shoreland Permit must be received.
- Variances to Article XXI, Section C.1 and C.2 must be obtained from the New Durham Zoning Board of Adjustment.

Motion by Chair Jarvis. Seconded by Ms. Richard. **Motion failed, 2-2**(Bickford, Callaway)**0.**

APPROVAL OF MINUTES

Meeting of October 28, 2021 -Edits were made. **Motion:** *To approve the minutes as amended.*

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

Rules and Procedures

The Board reviewed and discussed suggested edits to the procedures.

Chair Jarvis noted there was a public hearing by the Planning Board for changes to the Shoreland Conservation Overlay District. Mr. Bickford stated there will be changes and another public hearing will be held.

Next Meeting: December 14, 2021

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

Jennifer Riel, Recording Secretary