

**TOWN OF NEW DURHAM  
ZONING BOARD of ADJUSTMENT  
April 12, 2022, 7:00 PM  
New Durham Town Hall  
*APPROVED July 14, 2022***

**PRESENT**

Terry Jarvis, Chair  
Wendy Anderson, Vice Chair – via Zoom  
Linda Callaway, member  
David Bickford, member

**ALSO PRESENT**

Robin McClain, Land Use Administrative Assistant  
Rob Fontaine, applicant  
Gevry Fontaine, applicant  
Mary Patry, applicant  
Stephanie Richard, Changing Seasons PPLC

**CALL TO ORDER**

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

***Election of Officers***

**Motion:** *That Terry Jarvis continue as Chair of the Zoning Board of Adjustment.* Motion by Ms. Callaway. Seconded by Ms. Anderson. **Roll Call Vote:** Ms. Anderson -aye; Ms. Callaway – aye; Mr. Bickford-aye; Ms. Jarvis-abstain. **Motion passed, 3-0-1.**

**Motion:** *That Wendy Anderson continue as Vice Chair of the Zoning Board of Adjustment.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Ms. Anderson -abstain; Ms. Callaway – aye; Mr. Bickford-aye; Chair Jarvis-aye. **Motion passed, 3-0-1.**

**Withdrawal of Case #2022-001**

***Application submitted by Varney Engineering LLC, on behalf for Kenneth Lance of 213 Middleton Road, Map 246 Lot 3.***

The applicant is requesting a Special Exception to:

- *Article VII Section A.1: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception. He wishes to increase the hours of operation at the Brewery and Restaurant.*

Chair Jarvis stated a letter was received dated March 15, 2022 from Varney Engineering, LLC, requesting that the case for Mr. Lance be withdrawn.

Chair Jarvis stated this will close the case and any further action will require a new application.

**Review and Acceptance of Case #2022-002**

***Application submitted by Changing Seasons Engineering PLLC, on behalf of Joseph & Mary Patry and Robert & Gevry Fontaine of 224 Kings Highway, Map 209 Lot 7.***

Applicants are requesting Variances to:

- *Article V Section B.1: Dimensional Requirements for Town of New Durham. The following dimensional requirements shall apply to land within the Town of New Durham. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.*
- *Article V Section C: Dimensional Requirements for Town of New Durham. Road Frontage. The minimum road frontage on a road built to Town Standards and approved by the Planning Board shall be based on lot size and specified in Table 2.*
- *Article V Section D: Setbacks. No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter.*
- *Article VI Section C.3.a.i: General Provisions/Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks a. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed: less than one hundred twenty-five (125) feet from the edge of a public water body.*
- *Article VI Section C.3.a.ii: General Provisions/Use Regulations for Town of New Durham. General Requirements. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than seventy-five (75) feet from any well, or from a dwelling other than to which it is appurtenant.*
- *Article XIV Section C.1.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; 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.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. The following setbacks are required for non-Conforming buildings, land and uses addressed by this Article. 1. Leach fields: Not less than seventy-five (75) feet from open surface water or hydric A wetlands or fifty (50) feet from hydric B wetlands.*
- *Article XXI Section G.2.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 asked if any member has a real or perceived conflict with hearing this case. None was indicated.

Chair Jarvis asked if the applicant or anyone in the public has a real or perceived conflict with hearing this case. None was indicated.

Chair Jarvis stated a waiver request was received for the requirement of plans showing elevations for all sides of buildings and all floor plans; she stated the reasoning given in the request was that the applicants want to obtain variances from the ZBA before spending money on detailed building designs. Vice Chair Anderson stated as long as the information about the footprint is presented, that is what will be important. The Board concurred to grant the waiver request.

**Motion:** *To grant the waiver request that the application does not have to include the building elevations for all sides and building and floor plans for the new structure; the building and driveway will be located as depicted on the plans dated February 14, 2022.* Motion by Chair Jarvis. Seconded by Mr. Bickford for discussion. Chair Jarvis stated she included the 6.6% coverage as that is what is indicated on the plans presented and if it is not specified, there is nothing preventing them from increasing the coverage. Vice Chair Anderson stated the driveway should not be mentioned in the motion as that is yet to be discussed. Ms. Callaway stated she thinks it still important to include the part of the driveway as well.

**Vice Chair Anderson made a Motion to amend the motion:** *To grant the waiver request that the application does not have to include the floor plans and building elevations with comparable style and location as shown on the plans dated February 14, 2022 on the condition that the building will be no more than 6.6% of the lot.* Motion by Vice Chair Anderson. Seconded by Ms. Callaway for discussion. Ms. Callaway stated she thinks it still important to include the reference to the driveway as well as the request was only for the house. **Roll Call Vote:** Vice Chair Anderson -aye; Ms. Callaway – aye; Mr. Bickford-no; Chair Jarvis- aye. **Motion passed, 3-1-0.**

**Roll Call Vote on the Motion as Amended:** Vice Chair Anderson -aye; Ms. Callaway – aye; Mr. Bickford-aye; Chair Jarvis- aye. **Amended motion passed, 4-0-0.**

124 Chair Jarvis asked who owns the camp road. It was clarified the applicants own the camp road.  
125 She suggested a variance to Article V is not needed. The Board reviewed the section and  
126 concurred. Vice Chair Anderson questioned whether Article VI, Section C.3. is correct, noting  
127 the plans indicate Article V Section C.3.1. Ms. Richard stated Article VI, Section C.3 will be  
128 needed.

129 **Motion:** Based on the application dated February 14, 2022 and plans dated February 14, 2022,  
130 that a variance to Article V, Section D, is not needed. Vice Chair Anderson seconded the motion.  
131 **Roll Call Vote:** Vice Chair Anderson -aye; Ms. Callaway – aye; Mr. Bickford-aye; Chair Jarvis-  
132 aye. **Motion passed, 4-0-0.**

133 **Motion:** *The application for Case #2022-002 is complete.* Motion by Chair Jarvis. Seconded by  
134 Ms. Callaway seconded the motion. **Roll Call Vote:** Vice Chair Anderson -aye; Ms. Callaway –  
135 aye; Mr. Bickford-aye; Chair Jarvis- aye. **Motion passed, 4-0-0.**

136  
137 **PUBLIC HEARING– Case #2022-002**

138 Chair Jarvis opened the public hearing at 7:33PM.

139 Chair Jarvis read the case and public notice into the record. She confirmed all abutters were  
140 notified by certified mail.

141 The Board reviewed the plans and application for the difference in Article V, Section C.3 and  
142 Article VI, Section C.3. Chair Jarvis stated a set of updated plans will be needed to reflect Article  
143 VI, Section C.3.

144 Stephanie Richard, Changing Seasons PLLC, representative for the applicants, stated the  
145 property is ½ acre in size, on a camp road; there is 115’ of road frontage with 22’ of frontage on  
146 Kings Highway. She stated the lot is flat overall and is wooded; it is accessed by the right-of-way  
147 and a copy of the Road Agent’s suggestions was submitted for review by the Board; She stated a  
148 driveway permit application has been submitted. Ms. Richard stated the proposal is to build a  
149 three-bedroom residence with a porch on the lakeside. She outlined the locations of the well and  
150 septic as well as the property line setbacks on the maps presented. Mr. Bickford asked if perc  
151 tests have been done. Ms. Richard confirmed they have been done. It was confirmed the camp  
152 road is owned by the applicants; lots 1, 4 5 and 6 all have deeded right-of-way over the camp  
153 road.

154 Chair Jarvis noted the current impervious surface coverage is 19.1%. She asked if the driveway  
155 would be pervious or impervious. Ms. Richard stated she is proposing impervious, and it would  
156 be about 7% coverage. Ms. Callaway stated the building envelope, without the camp road,  
157 calculates to about 18,200 square feet so the building would be 6% and with the driveway, the  
158 impervious surface would be under the 20% limit at 13%.

159 Chair Jarvis stated she is concerned about the road, noting it is a Town right-of-way, which is not  
160 maintained year-round. She asked if the septic tank is as far back from the lake as possible  
161 without getting close to the camp road and house across the street, noting it is 116’ from the lake.  
162 Ms. Richard confirmed it is.

Vice Chair Anderson asked about the multiple paths and parking areas on the maps to the lake. It was clarified these paths don't cross the lot other than just one corner. Ms. Richard stated the path was counted as part of the impervious coverage. Vice Chair Anderson suggested there is plenty of land to do what they want to do if that impervious coverage of the Camp Road is taken out, the paths seem larger than needed. Mr. Bickford noted boats and trucks back down in there to access the lake so to reduce it would make it more difficult to access the shore front.

Chair Jarvis opened the public hearing to members of the public. No one spoke.

Chair Jarvis closed the public hearing at 8:02PM.

***Findings of Facts:***

- The property is 0.49 acres which is currently wooded, undeveloped and basically flat.
- The property has 22+/- feet of frontage on a Class V Road.
- The property has 115 +/- feet of frontage on Shaw Pond.
- Average depth of the lot is 150 feet.
- The applicants propose to build a new 3-bedroom home with a porch which will be behind the 75 feet water setback.
- The property is accessed via a public right-of-way owned by the Town of New Durham.
- The Town of New Durham does not maintain the public right-of-way year-round.
- A camp road exists on the property. It is used for access to adjacent properties.
- Adjacent Lot #s 1,3, 4, 5 and 6 on Map 209, have deeded rights to pass via the camp road.
- Total building coverage will be 6.6%.
- Currently the lot has 19.1% impervious surface and it will go to 32.9%.
- The proposed building and driveway will be 13.9%.
- Having a public right-of-way and a camp road is a unique issue for this property.
- The septic tank will be 116 feet from the water rather than 125 feet.
- The septic tank will be 64 feet from abutting dwellings rather than 75 feet.
- The leach bed will be 121 feet from the water rather than the 125 feet as required by Article V.
- A driveway permit application has been submitted.
- The camp road and right-of-way total impervious surface is 16.2%.
- The camp road is not a public right-of-way which is not maintained by the Town.

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

***Discussion - Article V Section B.1 and Article V Section C:***

*Granting the variance would/would not be contrary to the public interest:* Vice Chair Anderson stated it would not be contrary as she doesn't see how allowing it will affect the public. Ms. Callaway stated its not contrary as there is no other access to the property to allow the applicants to use their property. Mr. Bickford stated he doesn't see where this article applies as it refers to subdivisions. Chair Jarvis explained this article is in reference to all lots having frontage on a Class V road or better; as this lot cannot meet that requirement a variance is needed. She stated

203 its not contrary to the public interest but she is concerned about the right-of-way could cause  
204 water to run onto the property.

205 *The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated she  
206 believes the spirit is being observed. Vice Chair Anderson stated the spirit of the ordinance isn't  
207 stated, whether it is about health, safety or to ensure percolation. Chair Jarvis stated the purpose  
208 is to regulate building on steep slopes and so the septic can pass the percolation test. Vice Chair  
209 Anderson stated the purpose is to avoid crowding, ensure the septic can function properly and  
210 protect health and safety of the lake. Mr. Bickford stated this is on a Class VI road and it needs to  
211 go before the Board of Selectmen to grant permission to use the right-of-way; they need more  
212 than just the review of the Road Agent. Chair Jarvis suggested a condition of approval be  
213 permission from the Board of Selectmen; she stated they can't require the permission before  
214 variance approval. There was extensive discussion about the article and whether there would be  
215 any health or safety compromise by allowing the applicants to access their lot from the road.  
216 Vice Chair Anderson stated she believes the spirit would be observed. Ms. Callaway agreed. Mr.  
217 Bickford stated he does not think the spirit would be observed.

218 *Granting the variance would/would not do substantial justice because:* Vice Chair Anderson  
219 stated granting the variance would do substantial justice because the public isn't losing  
220 anything to allow the applicants to build on a lot that was previously allowed to be built on; if  
221 they deny the variance, the applicants won't be able to use their property. Ms. Callaway stated  
222 using the camp road as access to the property is safe and does substantial justice. Vice Chair  
223 Anderson stated they are proposing to use an access way which already exists and is off of the  
224 main road; it is an existing curb cut and doesn't make the access to Kings Highway any more  
225 dangerous.

226 *For the following reasons the values of surrounding properties would/would not be diminished:*  
227 Chair Jarvis stated the surrounding properties won't be diminished. Vice Chair Anderson stated  
228 it may improve as there will be more of a reason to keep the public right-of-way more accessible.

229 *Unnecessary Hardship:* Chair Jarvis stated it is a buildable lot, in a rural residential district  
230 where homes are allowed; she stated it is an existing right-of-way and with conditions it would  
231 be a logical use of the property. Ms. Callaway agreed. Vice Chair Anderson stated it would be a  
232 hardship for the applicants to not be able to use their property; she stated the public right-of-way  
233 is there to use and is used by other lots. Mr. Bickford stated he is okay with using the right-of-  
234 way for putting a building on the lot.

235 **Motion:** *Based on an application dated February 14, 2022, plans dated February 14, 2022 and*  
236 *tonight's hearing, to grant the request for variances to the following:*

- 237     • *Article V Section B.1: Dimensional Requirements for Town of New Durham. The*  
238 *following dimensional requirements shall apply to land within the Town of New Durham.*  
239 *Except as noted below, all lots shall have frontage on a Class V or better road meeting*  
240 *the requirements for road frontage of this ordinance. Any subdivision approval of such a*  
241 *lot or lots must pass a percolation test and have state approval for a septic facility prior*  
242 *to a building permit to be issued.*

- *Article V Section C: Dimensional Requirements for Town of New Durham. Road Frontage. The minimum road frontage on a road built to Town Standards and approved by the Planning Board shall be based on lot size and specified in Table 2.*

**With the following conditions:**

- 1. The building is to be no more than 6.6% of the lot per plans dated February 14, 2022.*
- 2. A Conditional Use permit shall be obtained from the New Durham Planning Board.*
- 3. The property owners shall comply with the requirements of Article XVII.*
- 4. The applicants shall obtain a Shoreline Permit from the New Hampshire Department of Environmental Services.*
- 5. The applicants shall receive septic system approval from the New Hampshire Department of Environmental Services.*
- 6. The applicant shall receive written permission from the New Durham Board of Selectmen to upgrade the public right-of-way from Kings Highway to the end of the driveway access of their property on the lower side.*
- 7. The public right-of-way from Kings Highway to the end of the driveway on the water side shall be upgraded in accordance with the requirements of the Town of New Durham.*
- 8. Should the public right-of-way not be able to be upgraded to Class V road standards, the Town shall have a consultation with the Building Inspector and Road Agent to specify in writing which requirements shall be complied with.*
- 9. The Town's Engineer shall oversee the upgrade and at completion, certify that it meets the Town's standards; all costs shall be paid by the applicants.*
- 10. The property owners shall build a turnaround for emergency vehicles that complies with the Fire Chief and Police Chief.*
- 11. The Town of New Durham shall not be responsible for the maintenance of the private part of the public right-of-way from Kings Highway to the end of the driveway on the water side.*
- 12. The public right-of-way from Kings Highway to the end of the driveway access on the water side shall be maintained to Class V and Town standards per the requirements of and to above by the property owners and their successors.*
- 13. The Road Agent shall monitor the condition of the road if the Town and or Road Agent believes an engineer is needed to assess the road and right-of-way to the end of the driveway on the water side, all costs will be paid by the property owners.*
- 14. There will be a signed maintenance agreement which all property owners using the public right-of-way and camp road, agreeing to maintain the public right-of-way to the end of the driveway on the water side. The maintenance agreement shall be approved by the New Durham Board of Selectmen.*
- 15. A signed Waiver of Liability must be signed by the New Durham Board of Selectmen.*
- 16. The maintenance agreement and waiver of liability shall be recorded at the Strafford Registry of Deeds.*
- 17. These documents shall be provided to the Building Inspector before a building permit shall be issued.*

285       18. *A Certificate of Occupancy shall not be issued until all of the above conditions have*  
286           *been complied with.*

287 Motion by Chair Jarvis. Seconded by Mr. Bickford. **Discussion:** Chair Jarvis noted these  
288 requirements were used previously when approving building on a road less than Class V  
289 standards. The Board discussed the standards. The Board agreed to accept input from the  
290 applicants. Mr. Fontaine stated that currently, the public uses the right-of-way; he stated that  
291 regardless of whether there is a driveway, it is going to be used and doesn't see why all the  
292 conditions are necessary as they are putting a driveway off a road that already exists; he stated it  
293 is already used year-round including by vehicles. He stated its not plowed but that doesn't stop  
294 vehicles from going down the road. Chair Jarvis stated it would still be an issue of emergency  
295 vehicles going down an unmaintained road. She stated the Road Agent has indicated there is a lot  
296 of water that runs down the road and would then go into their driveway. Mr. Fontaine stated they  
297 haven't ever seen that; there are some rocks that wash out from the water off of boats but its not  
298 caused by the weather. Ms. Fontaine stated this is putting a terrible burden on them, for a road  
299 which already being used by the general public and being maintained by the Town. Vice Chair  
300 Anderson stated she thinks the conditions cover the requirements well to maintain the health,  
301 safety and welfare of the public because they are allowing them to build on a road which is not a  
302 Class V road. Ms. Callaway stated it is the Town which is allowing people to go on the right-of-  
303 way and feels it is an unfair burden to make the applicants pay for damages which will be done  
304 by the public using the roadway as it will be more of an impact than two people using the  
305 roadway. She stated the point should be brought up to the Board of Selectmen whether the road  
306 needs to be brought up to any standards. She stated the applicants should only need to ensure that  
307 where their driveway abuts the right-of-way is free of hazards or won't cause problems. Mr.  
308 Bickford stated the only hazard area is at the top of the hill which the Town should have  
309 responsibility for; he doesn't see any issues where the driveway will abut the right-of-way. The  
310 Board discussed changes to the proposed conditions.

311 Chair Jarvis stated due to the time being nearly 10:00PM, the public hearing is going to be  
312 continued; she noted at least three members of the Board will need to be physically present.  
313 After discussion, it was agreed to continue the public hearing to April 28, 2022.

314 **Motion:** The public hearing for Case #2022-002 will be continued to Thursday, April 28, 2022  
315 at 7:00PM. Motion by Chair Jarvis. Seconded by Mr. Bickford. **Discussion:** Mr. Bickford stated  
316 he would like to have a final answer about denying the direct access from the Road Agent or  
317 Town Engineer. Chair Jarvis stated based on the plans, application and the testimony of the  
318 applicants, they can't have access from Kings Highway. Mr. Bickford stated he wants to verify  
319 it. **Roll Call Vote:** Vice Chair Anderson -aye; Ms. Callaway – aye; Mr. Bickford-aye; Chair  
320 Jarvis- aye. **Motion passed, 4-0-0.**

## 321 APPROVAL OF MINUTES

322 Postponed.

323  
324 **ADJOURN**



Town of New Durham Zoning Board of Adjustment Meeting

April 12, 2022

Approved July 14, 2022

325 **Motion:** *To adjourn.* Motion by Chair Jarvis. Seconded by Ms. Callaway. **Roll Call Vote:** Vice  
326 Chair Anderson -aye; Ms. Callaway – aye; Mr. Bickford-aye; Chair Jarvis- aye. **Motion passed,**  
327 **4-0-0.**

328 The meeting was adjourned at 10:01PM.

329 Respectfully Submitted,

330 *Jennifer Riel*

331 Jennifer Riel, Recording Secretary