

Town of New Durham Zoning Board of Adjustment Meeting
April 28, 2022

APPROVED July 14, 2022

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
April 28, 2022, 7:00 PM
New Durham Town Hall
APPROVED July 14, 2022**

PRESENT

Terry Jarvis, Chair - via Zoom
Wendy Anderson, Vice Chair
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.

CONTINUED PUBLIC HEARING- 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 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.*

APPROVED July 14, 2022

- *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:** No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces

Chair Jarvis stated at the March 10, 2022 ZBA meeting, there was a question about the ownership of the public right-of-way. The applicant's representative was requested to meet with the Road Agent to see what could be done.

Chair Jarvis stated at the April 12, 2022 ZBA meeting, the applicants requested waivers that they do not have to include the building elevations for all sides and building and floor plans for the new structures. The request was granted. The application was found to be complete, and it was determined the variance request to Article V, Section D was not needed. The public hearing was opened and closed, findings of fact discussed, and deliberations began at the April 12, 2022 ZBA meeting.

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 the Board needs to discuss the draft conditions for the motion of April 12, 2022, granting the variance requests for **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*

APPROVED July 14, 2022

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 **and 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.

Mr. Bickford stated he doesn't believe it's within the purview of the Board to make decisions on this. Chair Jarvis explained the Board has already discussed the articles, a motion was made and seconded; now they need to go over the draft conditions which need to be part of the motion. The Board discussed the necessity of the conditions. Mr. Bickford noted he disagrees with the condition about the turnaround; he stated this is determined by the Fire Chief and Board of Selectmen.

Chair Jarvis asked if the applicants have any concerns with the conditions as discussed.

Ms. Fontaine stated the Road Agent confirmed the Town maintains the road from Kings Highway to the private right-of-way and she doesn't understand why they need to now maintain from Kings Highway to the new driveway. Chair Jarvis stated large equipment is going to be going through the right-of-way and there will be an increased use of the right-of-way with them living there year-round and she doesn't feel taxpayers should have to pay for the additional wear on the right-of-way. Mr. Fontaine stated the majority of the traffic is people going to and from the boat ramp/water access. Ms. Fontaine stated they will not be loving there full-time.

Mr. Fontaine stated the waiver of liability can't be used for the portion of the right-of-way they don't even own. Chair Jarvis noted the waiver of liability is written by Town Counsel. Ms. Fontaine asked to leave it as written by the Road Agent, with the Fontaines maintaining the camp road to their driveway. Edits were made to the condition.

Motion: Based on the application signed 2/14/22, plans dated 2/14/22 and the information received at the April 12, 2022 Public Hearing I move to grant 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.

With the following conditions:

- The building is to be no more than 6.6% of the lot and is to be located as depicted on the plans dated 2/14/22.
- A Conditional Use Permit shall be obtained from the New Durham Planning Board;
- Comply with the requirements of Article XVII (Stormwater Management and Erosion Control) of the New Durham Zoning Ordinance;

APPROVED July 14, 2022

- Receive a Shoreland Impact permit from NH DES;
- Receive approval for the Septic System from NH DES Subsurface Bureau;
- Based on the application signed February 14, 2022, plans dated February 14, 2022 and the public hearing of April 12, 2022, the New Durham Zoning Board of Adjustment has determined that direct access from the Class V Road (Kings Highway) or better is impractical. As such the following conditions shall be met:
 1. The Property Owners shall receive written permission from the New Durham Board of Selectmen to build a house on Map 209 Lot 2.
 2. The property owners shall receive written permission from the New Durham Board of Selectmen to utilize the public R.O.W. from Kings Highway to the west side of the proposed driveway access.
 3. The New Durham Board of Selectmen shall specify what – if any – road standards, conditions or maintenance for the Public R.O.W. from Kings Highway to the end of the west end of the proposed driveway access. All required standards or conditions shall be completed before a Certificate of Occupancy is issued.
 4. The property owners shall consult with the New Durham Fire Chief and Police Chief for any requirements for building on Map 209 Lot2. Any recommendations or requirements shall be implemented. The Town of New Durham shall not be responsible for the maintenance of the public R.O.W. from Kings Highway to the end of the of the west end of the proposed driveway access.
 5. In order to assist in access by emergency vehicles if the property is occupied during the winter months the public R.O.W. shall be plowed from Kings Highway to the end of the west end of the proposed driveway access.
 6. The property owners shall sign and execute a Waiver of Liability, which must be approved by the New Durham Board of Selectmen, confirming the Town of New Durham is not responsible for any injuries to persons, animals and or livestock or damages to property resulting from the use of the Public ROW from Kings Highway to the end of the west end of the proposed driveway access.
 7. The Waiver of Liability shall be recorded with the Strafford County Registry of Deeds. Proof this document has been filed shall be provided to the Building Inspector before a Building Permit is issued.
 8. A Certificate of Occupancy shall not be issued until all of the above conditions have been complied met.
 7. The Property Owners shall receive written permission from the New Durham Board of Selectmen to build a house on Map 209 Lot 2.
 8. The property owners shall receive written permission from the New Durham Board of Selectmen to utilize the public Right of Way (R.O.W.) from Kings Highway to the west side of the proposed driveway access.
 9. The New Durham Board of Selectmen shall specify what – if any – road standards, conditions or maintenance for the Public R.O.W. from Kings Highway to the west side of the proposed driveway access. All required standards or conditions shall be completed before a Certificate of Occupancy is issued.
 10. The property owners shall consult with the New Durham Fire Chief and Police Chief for any requirements for building on Map 209 Lot 2. Any recommendations or requirements shall be implemented

Commented [TJ1]: These all need to be revised based on the new NOD>

Town of New Durham Zoning Board of Adjustment Meeting
April 28, 2022

APPROVED July 14, 2022

11. In order to assist in access by emergency vehicles if the property is occupied during the winter months, the Public R.O.W. shall be plowed from Kings Highway to the west side of the proposed driveway access.
12. The property owners shall sign and execute a Waiver of Liability, which must be approved by the New Durham Board of Selectmen, confirming the Town of New Durham is not responsible for failure of emergency services being provided to Map 209 Lot 2.
7. The Waiver of Liability shall be recorded with the Strafford County Registry of Deeds. Proof this document has been filed shall be provided to the Building Inspector before a Building Permit is issued.
8. A Certificate of Occupancy shall not be issued until all of the above conditions have been met.

Motion by Chair Jarvis. Seconded by _____

Roll Call Vote: Ms. Callaway – aye; Mr. Bickford -no; Vice Chair Anderson – aye; Chair Jarvis -aye. **Motion passed, 3-1-0.**

Discussion - Article VI Section C.3.a.i, Article VI Section C.3.a.ii and Article XXI Section G.1.b:

Granting the variance would/would not be contrary to the public interest: Mr. Bickford stated it would not. Vice Chair Anderson stated it is not contrary; the house will be as far from the water as possible. Ms. Callaway agreed. Chair Jarvis stated the lot is too small.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated she believes the applicants have done the best they can with the size of the lot and avoid impinging on the neighbors. Vice Chair Anderson stated it is in the spirit of the ordinance and will help keep the water clean and safe for everyone. Mr. Bickford agreed.

Granting the variance would/would not do substantial justice because: Mr. Bickford stated justice would be done. Vice Chair Anderson stated the applicants gain a residence and the public gains a safe septic system.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't believe values will be diminished but it may improve the value of surrounding properties. Ms. Callaway stated with the development, it will be an improvement for other houses in the area. Mr. Bickford agreed.

Unnecessary Hardship: Chair Jarvis stated to deny the variance would be a hardship. Mr. Bickford agreed. Vice Chair Anderson and Ms. Callaway concurred.

Town of New Durham Zoning Board of Adjustment Meeting
April 28, 2022

APPROVED July 14, 2022

Motion: Based on application signed February 14, 2022 and plans dated February 14, 2022, and information received at the public hearing of April 12, 2022, I move to grant the request for variances to the following:

- **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 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.

With the same conditions as listed in the previous motion. Ms. Callaway seconded the motion.

Motion by Chair Jarvis. Seconded by Ms. Callaway.

Discussion: Mr. Bickford questioned why this was needed. The Board discussed the application and reviewed the plans. After discussion, it was determined the leach field is more than 75' from the water.

Chair Jarvis withdrew her motion. Ms. Callaway withdrew her second. Motion: That Article XXI, Section G.1.b does not apply to this case. Motion by Mr. Bickford. Seconded by Chair Jarvis.

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

Motion: Based on application signed February 14, 2022 and plans dated February 14, 2022, and information received at the public hearing of April 12, 2022, I move to grant the request for variances to the following:

- **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.

With the same conditions as listed in the previous motion.

Town of New Durham Zoning Board of Adjustment Meeting
April 28, 2022

APPROVED July 14, 2022

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

Mr. Bickford stated he doesn't believe Article XIV Section C.1.e applies; he noted the proposed total impervious coverage is 32.9%. Chair Jarvis stated the camp road is part of the property and it is impervious surface. Mr. Bickford stated there is an area at the end of the road where people park for the boat ramp and it's his understanding at the last meeting that it was added into the impervious coverage. Chair Jarvis noted the current impervious surface with the camp road is 19%; the driveway itself will be about 17.3% and because the applicants own the property, they need the variance. The Board reviewed the plans and maps as well as the calculations. Mr. Bickford stated he doesn't think the parking area should be counted in the impervious coverage and removing it would reduce the coverage. Vice Chair Anderson stated she also asked for clarification about the parking area and turn around area near Shaw's Pond. Ms. Callaway stated the property owners indicated they would be marking the area as private property and so it should be considered part of the calculations. Vice Chair Anderson confirmed it is included in the impervious calculations. Ms. Callaway noted her calculations for just the house and driveway come to 13.9%. The Board discussed how the impervious coverage should be calculated; the Board agreed to continue the discussion so Ms. Richard can submit recalculations.

Motion: *To continue Case #2022-002 to May 2, 2022 at 9:00AM in the New Durham Community Room.*

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

Mr. Bickford stated Article XXI, Section G.2.d on the application indicates 20% but the agenda and posting notice shows 15%. Chair Jarvis stated the application takes precedence over an agenda and the application has already been accepted as complete by the Board. Vice Chair Anderson confirmed the ordinance indicates 20% and it was confirmed the agenda is incorrect. Chair Jarvis stated she will look into this further. Vice Chair Anderson stated the application is correct, the public posting is correct, but the error occurred in the agenda.

ADJOURN

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

The meeting was adjourned at 9:26PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary