

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
May 2, 2022, 9:00 AM
New Durham Community Room
APPROVED July 14, 2022**

PRESENT

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

ALSO PRESENT

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

CALL TO ORDER

Chair Jarvis called the meeting to order at 9:00AM.

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.*
- *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.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 the application was reviewed and accepted as complete on April 12, 2022; variances were granted 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 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, with conditions.

At the last meeting, April 28, 2022, a motion was made to grant variances to:

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; and

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.

It was also agreed by the Board that a variance to Article XXI, G.1.b was not needed.

Motion: Based on the 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.

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.**

Discussion - Article XIV Section C.1.e; Article XXI Section G.2.d:

Granting the variance would/would not be contrary to the public interest: Mr. Bickford noted there are new plans and notes since the meeting of April 28, 2022 where the parking area was removed from the impervious area calculations. The Board reviewed the new information submitted. It was noted with the change, the total impervious surface is 25.6% which is down from 32.9%.

Mr. Bickford stated it would not be contrary to the public interest; the camp road was underutilized, and he doesn't think it's very impervious or see the camp road becoming more of a problem. Vice Chair Anderson stated it would not be contrary because the property should be allowed to be developed; the applicants have remediated some of the area which will no longer be used and significantly decreased the impervious surface to a more amenable amount. Ms. Callaway stated she agrees; the size of the building for the lot is acceptable in this area and a majority of the setbacks are met. Chair Jarvis stated the problem could be rectified by closing the camp road but then there would be legal issues with passage rights for other individuals.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it would be observed; she stated the house will be back from the water; it's unusual to see so much of it conforming other than the impervious surface, which the applicants can't change. Vice Chair Anderson stated the spirit would be observed; the 75' setback is met and the impervious surface is reduced outside of the 75' setback. Ms. Callaway stated she agrees. Mr. Bickford stated the improvement he would like to see is to have the driveway as pervious pavers or asphalt but it's close.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated granting the variance would do substantial justice; the applicants have significant efforts on this plan and made adjustments as needed; this would allow them to do what they want with the property. Mr. Bickford agreed. Vice Chair Anderson stated the public is getting a reduction in impervious surface while still allowing the applicant to develop the lot.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't see the values being diminished; the property is going to become

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more taxable. Mr. Bickford stated the values would not be diminished. Vice Chair Anderson stated that if anything, the values may go up with the care and maintenance of the camp road. Ms. Callaway agreed.

Unnecessary Hardship: Vice Chair Anderson stated there isn't a fair and substantial relationship; she stated they are already at maximum impervious coverage before they start, but the use is reasonable and it is a buildable lot. Chair Jarvis stated it is on a class IV road, but the property is unique in that over 19% is already impervious. She stated she doesn't see a substantial relationship and is impressed that the house will be more than 75' back from the water. Vice Chair Anderson stated the size of the residence and driveway are reasonable and the percentage increase in impervious coverage is minimal. Chair Jarvis noted the house won't be visible from Shaw's Pond. Mr. Bickford stated the proposed use is reasonable; he stated to deny the variances would be a hardship.

Motion: *Based on the application signed February 14, 2022, plans dated February 14, 2022, revised plans dated April 29, 2022, and information received at the public hearing of April 12, 2022, I move to grant the request for variances to the following:*

- *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 G.2.d: No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces*

With the same conditions as listed in the motion concerning Article V, Section B.1 and Article V, Section C.

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.**

Discussion - Article XXI Section C.1 and Article XXI Section C.2:

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it would not be contrary; all the setbacks are met as closely as possible, and those not met have been granted variances. She stated the applicants can't do anything to make the lot less nonconforming. Ms. Callaway stated she agrees; it would not be contrary as the lot already had a lot going on, on it and nothing had to do with the applicants developing the lot to live on. She stated any nonconformities are beyond the setbacks. Mr. Bickford stated something could have been done with the driveway to improve the impervious area, but it's not bad.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated it is being observed and attempts are being made to observe the ordinance. The Board agreed.

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Granting the variance would/would not do substantial justice because: Ms. Callaway stated it would do justice to the Town and the applicant; great efforts were made to be in compliance. Vice Chair Anderson stated justice is done, the applicants get to develop the lot. Mr. Bickford agreed.

For the following reasons the values of surrounding properties would/would not be diminished: The Board agreed values would not be diminished. Vice Chair Anderson stated she doesn't see a reason why values would be reduced.

Unnecessary Hardship: Chair Jarvis stated she doesn't believe there is a fair relationship; it would be an unnecessary hardship to deny. The Board agreed.

Motion: *Based on the application signed February 14, 2022, plans dated February 14, 2022, revised plans dated April 29, 2022, and information received at the public hearing of April 12, 2022, I move to grant the request for variances 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 same conditions as listed in the motion concerning Article V, Section B.1 and Article V, Section C.

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.**

APPROVAL OF MINUTES

Meeting of December 14, 2021- Edits were made. **Motion:** *To approve the minutes as amended.* Motion by Mr. Bickford. Seconded by Ms. Callaway. **Motion passed, 4-0-0.**

Meeting of March 10, 2022- Edits were made. Ms. Callaway made a Motion: *To approve the minutes as amended.* Motion by Ms. Callaway. Seconded by Mr. Bickford **Motion passed, 3-0-1.** Vice Chair Anderson abstained.

Other

Town of New Durham Zoning Board of Adjustment Meeting

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197 The Board discussed the new process for having the Building Inspector review applications prior
198 to being submitted to the Zoning Board of Adjustment and Planning Boards.

199

200 **ADJOURN**

201 **Motion: To adjourn. Motion by Chair Jarvis. Seconded by Ms. Callaway. Motion passed, 4-**
202 **0-0.**

203 The meeting was adjourned at 11:00AM.

204 Respectfully Submitted,

205 *Jennifer Riel*

206 Jennifer Riel, Recording Secretary