

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

May 20, 2026

**Hand Delivered**

Neil Niman, Chair  
Town of Durham  
8 Newmarket Road  
Durham, NH 03824

RECEIVED  
Town of Durham

MAY 20 2026

Planning, Zoning  
and Assessing

Re: Applicant: Benjamin Segil  
Property: 26 Colony Cove Road  
Tax Map 217, Lot 11  
Residence Coastal (RC) Zoning District

Dear Chair Niman:

On behalf of the owner and applicant, Benjamin Segil, we are pleased to submit the enclosed supplemental materials in support of his request for zoning relief for the above-referenced property. These materials are intended to supplement the application previously submitted by Michael Sievert/Verdantas.

Enclosed please find an original and eight (8) copies of the following documents:

1. Site Photos
2. Tax Map 217

Please do not hesitate to contact us should you need anything further.

Very truly yours,



Kevin M. Baum, Esq.  
Stephanie J. Johnson, Esq.

KMB:kc

Enclosures

cc: Ben Segil, Michael Sievert (via email)

---

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS In Memoriam
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	CHRISTOPHER P. MULLIGAN	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	STEPHANIE J. JOHNSON	JOHN AHLGREN

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
APPLICATION FOR VARIANCE**

**TO:** Durham Zoning Board of Adjustment (“ZBA”)  
**FROM:** Kevin M. Baum, Esq.  
Stephanie J. Johnson, Esq.  
**DATE:** May 20, 2026  
**RE:** Benjamin Segil, Owner/Applicant  
26 Colony Cove Road  
Tax Map 217, Lot 11  
Residence Coastal (RC) Zoning District

On behalf of Benjamin Segil (“Segil”), please accept this Supplemental Memorandum and attached exhibits in support of an Application for Variance to be considered by the Zoning Board of Adjustment (“ZBA”) at its June 9, 2026 meeting.

**I. EXHIBITS<sup>1</sup>**

- A. Site Plans – Verdantas
  - Boundary Survey Plan
  - Proposed Site Plan
- B. Architectural Plans – Isaak Design, PLLC
  - Floor Plans
  - Exterior Elevations
  - 3D Views
- C. Site Photos
- D. Tax Map 217

**II. OVERVIEW OF PROPERTY/SUMMARY OF REQUEST**

Segil owns the property located at 26 Colony Cove Road (also identified as Tax Map 217, Lot 11) (the “Property”) in the RC Zoning District. The Property is currently developed with a single-family residence, shed, and detached garage. Exhibit A – Boundary Survey Plan. The existing home is approximately eighty-six years old. Similar to other lots in the area, the lot is relatively small, long, and narrow. The Property’s average width is fifty-six feet (56’) and it is approximately one hundred feet (100’) long. *Id.* The home is worn given its age and proximity to Little Bay as well as fire damage sustained in November, 2025. Because it was previously used

---

<sup>1</sup> Exhibits A and B were provided as part of the original application submitted by Michael Sievert, P.E. of Verdantas on April 21, 2026. Exhibits C and D are provided with this memorandum.

as a summer residence, the existing home is not insulated or modernized. It is currently unoccupied and without power.

A newly-existing three-bedroom septic system is sited between the house and garage. In light of the current condition of the house and the owner's desire for a more livable/modernized home, Segil proposes to remove the existing home and replaces it with a new, code-compliant, 2 ½ single-family home (the "Project"). The waterfront side of the replacement home will be moved two to three feet back from the Highest Observable Tide Line ("HOTL"), while expanding outward on the sides, centering the structure on the lot as much as possible. The existing brick walkway leading from the driveway will end at the newly proposed front entrance. A stone drip strip will be installed along the waterfront side of the home to catch and treat stormwater runoff from the roof, an improvement over existing conditions. The home will be reconstructed further from the HOTL and stormwater management is part of the Project. Nevertheless, given the small size of the existing home and need to update it with a more livable/modern structure, relief is needed from dimensional requirements due to the size and location of the Property.

### III. REQUESTED RELIEF

1. DZO Art. IX, Section 175-30.D.3.c (Requirements for Nonconforming Buildings and Structures in the Shoreland Protection Overlay District) -- to permit an increase in building footprint of by greater than 15%.
2. DZO Art. IX, Section 175-30.D.3.d (Requirements for Nonconforming Buildings and Structures in the Shoreland Protection Overlay District) -- to permit expansion of habitable space by greater than 30%.
3. DZO Art. XII, Table 175-54 (Table of Dimensions) -- to permit a right side setback of 8.3' where 8.6' exists and 50' is required.
4. DZO Art. XII, Table 175-54 (Table of Dimensions) -- to permit a left side setback of 9.6' where 15.24' exists and 50' is required.
5. DZO Art. XII, Table 175-54 (Table of Dimensions) -- to permit impervious coverage of 31.5% where 29.4% exists and 20% is permitted.
6. DZO Art. XIII, Section 175-74.A (Dimensional Requirements) -- to permit a structure to be set back 23.7' from the reference line of Little Bay where 23.2' exists and 125' is required.

#### IV. Variance Requirements

1. The variance will not be contrary to the public interest.
2. The spirit of the ordinance is observed.

The first step in the ZBA's analysis is to determine whether granting the variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." *Id.* "Mere conflict with the zoning ordinance is not enough." *Id.*

The proposed variances do not conflict with the general purposes of the DZO. The DZO was enacted "to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham." DZO §175-3.

Specifically, the DZO is designed to:

- Implement the Master Plan and other policies designed to promote orderly growth – The proposed variances meet the Master Plan's stated vision of housing stock being environmentally conscious, attractive, and improves over existing conditions by moving the structure further from the HOTL and adding a stone drip edge to promote filtration and capture of stormwater runoff. The proposal allows for a reasonable reconstruction of an older damaged home consistent with others in the surrounding area.
- Preserve air and water quality – The Project will not negatively impact air or water quality. The new construction adds stormwater management where the home currently sits.
- Conserve open space and agricultural resources – The Project will make use of the existing footprint to the extent possible, only expanding over already impervious areas and moving farther back from Little Bay.
- Encourage the installation of renewable energy systems and protect access to renewable energy sources – There is no impact on any renewable energy systems if the requested variances are granted.
- Protect natural and scenic resources from degradation – As noted above, the proposal moves the structure back from Little Bay and incorporates stormwater management to reduce runoff concentration, improving over existing conditions.
- Provide for recreational needs – The proposal does not disturb the existing waterfront access.
- Protect life and property from flooding and other natural hazards – Not applicable. There are no changes proposed that would create risk of hazard from flooding or other natural hazards.

- Preserve historic sites and structures – Not applicable. Although aged, the existing house is not of historical significance nor in the Historic Overlay District.
- Ensure development is commensurate with the character and physical limitations of the land – The project is constrained by the Property’s small size, but works with the existing footprint and developed areas on the lot to minimize disturbance. The new home is consistent with others in the area.
- Ensure the timing, location and nature of new development considers the immediate and long-range financial impacts of proposed uses and enhances the Town’s economic development goals – Single family residential use is permitted in the zone. The proposal is to replace a fire damaged structure with a new, to-code, single-family home situated farther back from Little Bay and incorporating stormwater management.

DZO Part B sets forth the general requirements within each zoning district. With respect to the RC District, the stated purpose is “to protect the water quality of the community’s principal surface waters and to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water.” DZO §175-41.A. Residential development in the RC District “shall be limited to housing that is designed so that the character of the district is maintained, the scenic quality of coastal areas is protected, and a significant amount of open space is permanently preserved.” *Id.* Segil’s proposal comports with the DZO’s stated purpose, utilizing the existing developed areas on the Property, situating the replacement home farther from Little Bay, increasing available living space while conforming to the neighborhood’s character. As noted above, the project includes siting the home farther from Little Bay and installing stone drip edge to capture stormwater runoff from the roof, providing greater protection for the water body than currently exists. Thus, the proposal is consistent with DZO Part B’s stated purpose.

Clearly the requested variances do not “[i]n a marked degree conflict with the ordinance such that it violates the ordinance basic zoning objectives.” *Malachy Glen*, supra which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added).

The requested variances, to permit replacement of a single-family residence on a previously existing nonconforming lot of record, is wholly consistent with the character of the surrounding

area. Exhibit C – Site Photos; Exhibit D – Tax Map. The proposal would not result any change to the area nor the public health, safety or welfare as it will simply maintain the lot's use for a single-family residence. The project does not impinge on any public rights, safety, or access. The expansion of living space is mostly vertical, avoiding substantial increase to impervious coverage on the lot. The newly proposed structure will be to code and incorporate stormwater management. A newly installed septic system exists and there will be no change to bedroom counts. The proposal does not conflict with the DZO's basic objectives. There will be no threat to public health, safety, or welfare. Accordingly, the first two variance criteria are met.

**3. Substantial justice will be done by granting the variance.**

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109. The requested variances allow the owner to develop the Property in a way that expands living space and allows for a more livable, to-code home, while blending in with the existing waterfront neighborhood. There will be no gain to the general public by denying the variance. The proposal offers expansion of living space while largely preserving the existing footprint, not noticeably encroaching beyond the existing structure. The proposal is fully consistent with others in the surrounding area. Thus, granting the variances poses no harm to the general public. Conversely, denial deprives Segil reasonable use of his Property restricting his ability to replace the existing aged and fire damaged home. There is no benefit to the public that outweighs the harm to the owner if the requested variances are not granted. Denial would result in an unreasonable and unconstitutional taking of the owner's rights.

**4. Granting the variance will not diminish surrounding property values.**

The proposal essentially maintains the status quo of the Property and Colony Cove neighborhood. Their replacement home is situated farther from the HOTL, incorporates modern stormwater management infrastructure, and makes use of the existing footprint to the extent practicable. This Project will not result in any noticeable change to the surrounding property owners. Rather, the new, more modern, to code home replacing the existing aged, fire-damaged residence, will likely improve the value of the Property, and therefore, those in the surrounding area. Certainly, granting the requested variances will not diminish surrounding property values.

**5. Denial of the variances results in an unnecessary hardship.**

a. Special conditions distinguish the property from others in the area.

The Property is a 0.33 acre lot measuring just under sixty-five feet across and slightly more than one hundred thirteen feet long, burdened by a required one hundred twenty-five feet setback to Little Bay's HOTL. The Property does not and cannot comply with the DZO's dimensional requirements, which means that any development of the Property will require relief. These factors combine to create special conditions distinguishable from others in the area.

b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

The general public purpose of the DZO's lot dimension, impervious surface, and limit on increase of nonconforming structures is to preserve adequate light and air, promote orderly development, and ensure protection of natural resources. The proposal meets these general public purposes, conforming the size of the replacement structure to the existing footprint and impervious surfaces on the lot, expanding upward to increase living space while minimizing setback encroachment. Segil's proposal expands living space vertically, makes use of the existing footprint and impervious areas on the lot, and incorporates stormwater management infrastructure to better protect Little Bay. The proposal is fully consistent with the existing Colony Cove neighborhood. As proposed, the replacement home will improve over existing conditions by incorporating stormwater management features and moving the home farther from the Little Bay HOTL.

c. The proposed use is reasonable.


If the use is permitted, it is deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). Residential use is permitted in the RC Zone. The proposal is to replace a single-family home on the Property with a new, to-code single-family home. As such, and for all of the reasons stated above, the proposed use is reasonable.

**IV. CONCLUSION**

For all of the reasons stated, the Owner/Applicant, Benjamin Segil, respectfully requests that the Zoning Board of Adjustment grant the requested variances to allow the proposed grading on the Property.

Respectfully Submitted,

Benjamin Segil

By:   
Kevin M. Baum, Esquire  
Stephanie Johnson, Esquire  
Hoeftle, Phoenix, Gormley & Roberts, PLLC  
127 Parrott Avenue  
Portsmouth, NH 03801  
(603) 436-0666



26 Colony Cove Rd

Google Maps

EXHIBIT C











