

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
September 12, 2023, 7:00 PM
*New Durham Town Hall, New Durham, NH 03855***

MEMBERS PRESENT

Terry Jarvis, Chair
Linda Callaway, Member
David Bickford, Member
Heather Freeman, Member

Members Absent

Bill Meyer – Excused Absence

ALSO PRESENT

Susan Stillwell, Land Use Assistant
David Shagoury, resident
Andrew Shagoury, resident
Peter Rhoades, applicant
John Chase, resident
Nancy Rhoades – via Zoom
George Hobbs, resident – via Zoom
Ron Gehl, resident – via Zoom
Jeffrey & Erinn Gilmore, applicants – via Zoom

CALL TO ORDER

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

Introductions were made of the Board members present.

Review and Approval of Final Edits to the Procedural Rules for the Town of New Durham Zoning Board of Adjustment

The Board reviewed edits to the draft of the Procedural Rules, which include changes advised by Town Counsel.

MOTION: *To accept the Procedural Rules for the Town of New Durham Zoning Board of Adjustment as amended on September 12, 2023. Motion by Ms. Callaway. Second by Mr. Bickford. Motion passed 4-0-0.*

The Board reviewed and discussed edits to the Variance Application.

MOTION: *To adopt the New Durham Zoning Board of Adjustment Variance Application as revised on September 12, 2023. Motion by Mr. Bickford. Second by Ms. Callaway. Motion passed 4-0-0.*

Review and Determination for Completion Case #2023-011

Application submitted by John Ratigan, Esquire, DTC Lawyers, on behalf of Peter Rhoades, for properties located at Bennett Road, Tax Map 246, Lot 017 and 018.

The applicant is requesting a variance to:

Article V Section B.1: Dimensional Requirements for Town of New Durham. B. Dimensional Requirements. The following dimensional requirements shall apply to land within the Town of New Durham. 1. 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.

Chair Jarvis stated first the Board needs to determine whether this application is materially different from the application previously received for this property, Case #2022-12. She stated the primary issues she saw that are different are that the previous application was three lots; this application is two lots. The previous application was 68 acres; this application is 65.2 acres.

Chair Jarvis asked if any member of the Board has a real or perceived conflict with hearing this case.

Chair Jarvis stated this case has come before both the Board of Selectmen and the Planning Board; she stated she did attend those meetings by Zoom. Mr. Bickford stated he had given input at several meetings dealing with this request. No members of the Board felt she should step down.

Chair Jarvis asked if the applicant or any member of public believes there is a real or perceived conflict. None was indicated.

Mr. Bickford stated he does not believe this application is materially different as the road length and lots involved remain the same.

Chair Jarvis stated when comparing the presentations for this case and the previous case, there are very few differences in the applications.

Ms. Freeman noted there is nothing in the memo from the applicant indicating what the differences are other than being two houses versus three. She noted the cover letter identifies Jenkins Road as a Class V road; elsewhere it identifies Jenkins Road as a Class V standard but not a Class V road.

Ms. Callaway stated the only difference she sees is the number of houses but isn't sure if that qualifies as a substantial change; she stated all the same concerns and issues will come up with two or three houses. She stated she doesn't see this application as being substantially different.

Chair Jarvis referenced various RSAs and information provided by the New Hampshire Office of Planning and Development she received in January 2023 regarding review of applications. Mr. Bickford stated this application is about constructing residential buildings on the lots on a Class

VI road which is the same variance as was requested with the previous application. Ms. Freeman stated she agrees and doesn't see anything materially different from the previous case.

Chair Jarvis asked if this application provides information and reasons which were missing from the prior application that would make it acceptable. The Board agreed it did not.

MOTION: *Based on the review of the application submitted for Case #2023-011, and the application submitted for Case #2022-014, decreasing the number of houses from three to two, and decreasing the involved acreage from 68 acres to 65 acres, does not constitute a significant material difference to warrant acceptance of the new application. Motion by Chair Jarvis. Second by Ms. Freeman. Roll call vote: Ms. Freeman – aye, Mr. Bickford – aye, Chair Jarvis, aye, Ms. Callaway, aye. Motion passed 4-0-0.*

Review and Determination for Completion Case #2023-012

Application submitted by Jeffrey and Erinn Gilmore, on their own behalf, for property at Merrymeeting Road, Tax Map 110, Lot 008.

The applicants are requesting a variance to:

Article XX G. Non-Conforming Setbacks The following setbacks are required for Non-Conforming Buildings, land and uses addressed by this Article. 1. Leach fields: a. Not less than ten (10) feet from a lot line, b. Not less than ten (10) feet from the road frontage property line of any road except with the approval of the road agent.

The Board reviewed the application for completeness. Chair Jarvis confirmed the public notice was posted and abutters were notified.

Chair Jarvis asked if any member has a real or perceived conflict with hearing this case. None was indicated. Chair Jarvis asked if any member of the public has a real or perceived conflict with a member hearing this case. None was indicated.

Chair Jarvis stated she believes there is insufficient information in the application, noting the applicants are identified as the property owners along with Cassandra Deckman, who is the current owner, while the Gilmores have a Purchase and Sales agreement. She noted the Building Inspector identified additional variances needed: Article XXI, Section G; Article XIII, Section D.8; Article VI, Section 3.B.i. Chair Jarvis stated no full-sized or reduced-sized plans were received. Ms. Freeman noted the house will also require a variance, not just the septic. Chair Jarvis noted they can't require an applicant to request variances, but the additional variances identified could be conditions of approval. It was noted the wetlands are not clearly delineated on the plans. Ms. Callaway stated there also needs to be a conversation with the Building Inspector to ensure this is a buildable lot. The Board agreed the application is not complete.

MOTION: **The application for Case #2023-012 does not have sufficient information in the application package for the Board to make a decision. The application is denied without prejudice. Motion by Chair Jarvis. Second by Mr. Bickford. Motion passed 4-0-0.**

Mr. Gilmore stated they have discussed this lot with Scott Lacroix, the Building Inspector, numerous times and were assured this is a lot of record and is buildable with variance. He stated they have had a soil scientist and wetlands scientist do an extensive layout of the property and design a septic system which was submitted to the State; he stated the State recommended seeking a variance from the Town to move the leach field further from the wetlands because there is nowhere else to put it. Mr. Gilmore stated the current owners of the lot have been taxed for a buildable lot for many years. Chair Jarvis noted there may have been issues with the advice given due to the fact that Article XIII was significantly revised in March of 2023. There was extensive discussion regarding the appropriate steps to go forward as well as advice previously given to the Gilmores. Chair Jarvis advised Mr. Gilmore to go through the checklist and review the new application to ensure all the items needed, are submitted.

Budget Review

The Board reviewed and discussed the FY 2024 budget; Chair Jarvis explained she based the budget on the average of 18 cases. She explained advertising and registry costs have increased and that is reflected in the proposed budget.

MOTION: To approve the draft budget of September 12, 2023, as presented, for a total of \$6,375. Motion by Chair Jarvis. Second by Mr. Bickford. Motion passed 4-0-0.

APPROVAL OF MINUTES

Meeting of August 8, 2023 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Ms. Callaway. Second by Ms. Freeman. Motion passed 4-0-0.**

NEXT MEETING

October 10, 2023

OTHER

Ms. Callaway stated she believes the Board needs to discuss and come to a decision on the issue of grandfathering; she explained the Planning Board discussed it at the last meeting and the way the Planning Board handles the issue, seems different than the ZBA is applying it and doesn't believe they are adequately protecting the lake. The Board discussed concerns about grandfathering as well as application of ordinances.

ADJOURN

MOTION: To adjourn the meeting. Motion by Chair Jarvis. Second by Ms. Callaway. Motion passed 4-0-0.

The meeting was adjourned at 8:55 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary