

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
February 13, 2024, 7:00 PM
*New Durham Town Hall, New Durham, NH 03855***

MEMBERS PRESENT

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

ALSO PRESENT

Susan Stillwell, Land Use Assistant
Andrew Shagoury, Abutter
Dave Shagoury, Abutter
Jeffrey Gilmore, Applicant
Erinn Gilmore, Applicant
Stephanie Richard, Changing Seasons Engineering, PLLC
Sheryl Bansfield, Resident
Don Bansfield, Resident
John Ratigan, Esq., DTC Lawyers

CALL TO ORDER

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

Introductions were made of the Board members present.

Review and Determination for Completeness Case #2024-001.

Application submitted by Stephanie Richard of Changing Seasons Engineering, PLLC, on behalf of Jeffrey and Erinn Gilmore for property located at Merrymeeting Road, Map 110, Lot 008.

The applicants are requesting a Variance to the following:

Article VI. Use Regulations, Section C.3.b. Sewage Disposal-Leach Field Setbacks.

Chair Jarvis stated the notices for the public hearing were posted on the bulletin boards and mailed to abutters; however, the public notice that was sent to *The Baysider*, was not published. Therefore, in order to comply with the RSA requiring 10 days' notice, the public hearing for this case had to be continued to the Zoning Board of Adjustment meeting of February 13, 2024.

Chair Jarvis asked if any Board member has a real or perceived conflict of interest.

Chair Jarvis stated she had worked with Dave Shagoury on several town boards. She was also on the Fire Department with Andy Shagoury

Mr. Bickford stated he had also worked with the Shagourys on various town boards.

Ms. Callaway stated Mr. Shagoury had managed her house while she was out of town for a few years.

Chair Jarvis asked if any member of the public feel any Board member has a real or perceived conflict of interest. None were indicated.

Chair Jarvis stated the applicants have submitted a request for two waivers. The application is strictly for leach field setbacks:

- “Building and floor plans to include all dimensions of any new structure” and
- “Building elevations from all sides”.

Reason: The variance request is relevant only to the proposed leach field and not the proposed building. The applicants are in the process of purchasing the property and do not want to commit the time and money into a full building design before first determining what they will be able to construct on the property.

MOTION: *To grant the request for two waivers so that “Building and floor plans to include all dimensions of any new structure” and “Building elevations from all sides” do not need to be submitted as part of this application.* Motion made by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Mr. Meyer, aye; Ms. Callaway, aye; Ms. Freeman, nay; Mr. Bickford, aye; Chair Jarvis, aye. **Motion passes: 4-1-0**

Chair Jarvis asked if there is sufficient information in the application package so the Board can make a decision?

MOTION: *The application for case #2024-001 has sufficient information in the application package for the Board to make a decision.* Motion made by Chair Jarvis. Second by Ms. Callaway. **Roll call Vote:** Mr. Bickford, aye; Ms. Freeman, aye; Ms. Callaway, aye; Mr. Meyer, aye; Chair Jarvis, aye. **Motion passes: 5-0-0**

Chair Jarvis read the public notice into the record.

The Public Hearing was opened at 7:07PM.

Stephanie Richard of Changing Seasons Engineering, PLLC, representative for the applicants, stated they are looking to construct a single-family home on the lot; she stated the lot is small and there are constraints with the wetlands. In order to meet the setback for the wetlands, there will be encroachment on the property line. Ms. Richard stated she doesn't believe there will be an impact to future development on the abutting lot. She stated the variance is not contrary because it's in an area where there is no development now and the large lot in the back doesn't have any frontage so won't likely be developed. Ms. Richard stated to meet the ordinance would require the leach field be closer to the wetlands. She stated the septic plan has been submitted

and the NH DES has requested that it be moved back as far as possible from the wetlands. She stated the State regulations are 50 feet.

Chair Jarvis stated there is a conflict between the regulations; to meet the Town requirements, the leach field needs to be closer to the wetlands; to meet the NH DES requirements, it needs to be moved closer to the property lines.

Chair Jarvis noted the abutting properties, Lot 008 and 009 do not have sufficient road frontage to be subdivided in the future; these two lots, as well as another abutting lot, are owned by Mr. Shagoury. She stated nothing is preventing those from being merged and developed.

Chair Jarvis stated a letter was received from Robin Dionne, a realtor with Coldwell Bankers Realty, stating she believes the values of surrounding properties will be maintained or increased with the addition of the home.

The Board reviewed and discussed the plans presented. Mr. Bickford suggested turning the configuration to move it further from the boundary line. Ms. Richard stated she can't determine that without looking at the contours of the land; she stated NH DES doesn't typically give waivers and, in that case, the applicant wouldn't be able to build on the land. She stated they have maximized the distances for both the leach field and the tank as much as possible.

Ms. Freeman confirmed the size of the system is for a two-bedroom home. Ms. Richard stated that is correct and that is the minimum size based on the state rules. Ms. Freeman asked if there is any intent at this time to request waivers for the building as well. Ms. Richard stated at this time, the only variance is for the leach fields from the lot line. Chair Jarvis stated there can be a condition that the house doesn't exceed two bedrooms.

Mr. Bickford asked about the Right-of-Way on the property; he noted the edge of the leach field is against the Right-of-Way. Ms. Richard stated she isn't sure what that is for.

David Shagoury, abutter, stated the lot is not just wet but it has running water on it which goes across the road, into a brook then directly into the lake; he stated it is that way all year long. He stated there is a Right-of-Way that was a wood road on the lot and it goes to a lot that he owns. He stated a driveway cannot be put at the end of the lot because there is a culvert on the road, and they have to access the lot via the right-of-way. Mr. Shagoury stated the Road Agent will have to approve a driveway there. Chair Jarvis noted the proposed driveway is off the Right-of-Way. Mr. Shagoury stated there will need to be a lot of fill in order to level it out and referenced the contour lines on the plans. He stated the proposed well is also in the Right-of-Way. He also explained the boundary lines and Right-of-Way, which he states needs to remain open at all times.

Chair Jarvis noted there are steep slopes on the lot so the applicant will need to go to the Planning Board for a Conditional Use Permit. Ms. Richard noted there is only 1,880 square feet of disturbance, so a CUP will not be required. The Board reviewed and discussed the Stormwater Ordinance.

Ms. Freeman asked for clarification of Mr. Shagoury's concerns. Mr. Shagoury stated he is concerned about the environmental impact as well as the effect on the Right-of-Way.

Andrew Shagoury, abutter, stated he has experience designing septic systems and subdivisions; he stated a variance is requested for one corner of the leach field, but two corners will need a variance. He stated his father, Dave Shagoury, owns a lot of property along Durgin Brook and there is, in fact, plenty of frontage to subdivide his property in the future. He stated if a smaller house is constructed, they may be able to adjust the setbacks for the septic; he said a licensed surveyor did his father's property and it was depicted differently than what is being presented, noting the deed calls for the property to go along the edge of the Right-of-Way so a distinction of just a few feet can make a difference. Mr. Shagoury stated there are also problems with the design as it was done with innovative technology and uses an advanced enviro-septic design which has a manual that needs to be followed and this design does not follow it. No trees or rocks can be within 10 feet of the system; the fill slope is not appropriate for the system; there is no room to put in a diversion; and he reiterated the size of the house could be reduced even though the septic system cannot.

Chair Jarvis stated since no variances are being requested regarding the house, they cannot require the house to be made smaller, but they can have a condition that restricts the size of the house on the lot and within the building envelope. She stated as far as the specifics of the septic system are concerned, that it is up to NH DES to decide.

Mr. Bickford asked if the easement could be used for the septic. Mr. Shagoury stated they have not been approached about that. He questioned if this lot is in the Shoreline Conservation Overlay District, and noted the wetlands clearly go beyond what is depicted within the plans. The Board referenced the shoreline ordinance; Chair Jarvis stated she does not see that this wetland is contiguous to a lake, pond or stream. She suggested they may need a hydrologist to look at the property.

Erinn Gilmore, Applicant, stated they have been in Town a long time and also care about the lake and conservation; she stated they worked with a state certified wetlands engineer to develop the plans.

Jeffrey Gilmore, Applicant, stated in regard to the runoff mentioned, it is seasonal, and they have been on the property at times when there is no water on the lot. He stated when they first looked at the property, the culvert was so blocked it wasn't allowing the water to drain; that has been resolved and the water flows through now.

Ms. Gilmore stated the house size is maximized based on the professionals' experience and believes this is the best design for the property.

Ms. Callaway asked if this is approved, what happens if there is an impact to the leach system due to proximity to the Right-of-Way. Ms. Gilmore stated it would be up to the engineers to make recommendations to prevent the leach field being damaged. Mr. Gilmore stated the leach field will be 7 feet from the Right of Way and will be contained on this lot. He stated based on

the delineation of the wetlands, changing the size of the house will not allow the leach field to move further from the property line. He stated they would make a smaller home but it is not going to change the issue with this.

Chair Jarvis stated an easement isn't going to eliminate the need for a variance. She stated that would be something advised by the Planning Board, after variances have been obtained.

Ms. Freeman asked for Ms. Richard's opinion on the house being smaller. Ms. Richard stated it seems reasonable. It was confirmed that the proposed septic is not going to be in poorly drained soils. Ms. Freeman asked if the land were to become more wet or be reclassified, would it impact the system. Ms. Richard stated it would have an impact, but the current wetland is definitely flagged, although it could change. Ms. Freeman asked if there is a risk that heavy equipment going across the Right-of-Way could damage the leach field. Ms. Richard stated as long as it's not tracking over the leach field, there is no issue and suggested there be boundary markers.

Mr. Shagoury stated the design manual for the system requires 10 feet from trees to the leach field and there will be trees within the area along the rear property line and it could cause system failure. Chair Jarvis stated these concerns would be the responsibility of the designer and NH DES.

Chair Jarvis closed the Public Hearing at 8:13 PM.

Findings of Fact and Evidence in the Record

- The applicants propose to construct a 1,160 square foot 2-bedroom single family residence with a driveway and associated utilities, including a well and septic system.
- The applicants have received a waiver from the New Durham Zoning Board of Adjustment to waive submitting:
 - "Building and floor plans to include all dimensions of any new structure" and
 - "Building elevations from all sides".
- The lot is an existing non-conforming lot.
- The property is located in the Residential, Agricultural, Recreational District and Steep Slope Conservation Overlay District.
- The property is 0.38 acres or 16,725 square feet making it approximately 21% of the required lot size.
- The property has 152 feet of road frontage where 150 feet is required.
- The property length on the right side is 136 feet and 137 feet on the wetlands left side.
- A total of 5,650 square feet of land on the property will be disturbed.
 - 3,770 square feet with slopes less than 15% will be disturbed; and
 - 1,880 square feet with slopes between 15% and 25% will be disturbed.
- Currently impervious coverage is 0%. The proposed impervious coverage will be 10.6 % or 1,770 square feet which complies with the New Durham Zoning Ordinance.
- Currently the building coverage is 0%. The proposed building coverage will be 6.9% or 1,160 square feet, which complies with the New Durham Zoning Ordinance.
- The proposal is to install a septic system and leach fields behind the house.

- The septic tank to the right property line is 95 feet and to the left property line 22 feet.
- The New Hampshire Department of Environmental Services requires the leach fields be 50 feet from wetlands.
- The proposed leach field is 97 feet to the right property line which complies with the New Durham Zoning Ordinance.
- The proposed leach field is seven (7) feet from the left property line rather than the twenty (20) feet required by the New Durham Zoning Ordinance.
- A letter from Robin Dionne, Realtor with Coldwell Banker Realty, was submitted stating she believes building a home would increase or at a minimum maintain the value of surrounding properties. It does not address the location of the leach field and the need for a variance.

Chair Jarvis asked if any member of the Board believes a Site Walk is necessary. She stated she does not. The Board agreed.

Variance Discussion

Granting the variance would/would not be contrary to the public interest: Mr. Meyer stated it would not be contrary because the public interest is for not polluting wells; with the road there, there is still 20 feet and no well will be closer than that point. Ms. Callaway stated it would not be contrary because the leach field can't be moved further from the wetlands; it is more important to have it close to the road than the wetlands. She stated some adjustments could be made to get it further from the property lines and the design is one of the better ones for the property. Chair Jarvis stated it would not be contrary because they are protecting the wetlands; she stated she is frustrated that NH DES is stricter than the ordinances, but there is no place to put a leach field on the property without being less than 50 feet from the wetlands. Ms. Freeman stated granting the variance would not be contrary because it minimizes environmental impacts, and a survey was done to determine the wetlands delineations. Mr. Bickford stated it is not contrary for the reasons previously outlined.

The spirit of the ordinance would/would not be observed because: Mr. Meyer stated it would be observed as it maximizes the distance to the wetlands. Ms. Callaway stated she agrees with Mr. Meyer. Ms. Freeman agreed. Mr. Bickford stated the spirit would be observed.

Granting the variance would/would not do substantial justice because: Ms. Callaway stated it would do substantial justice because the applicant could have a reasonable sized home and the leach field is as small as possible. Mr. Meyer agreed. Ms. Freeman stated it would do substantial justice because the leach field is at the minimum size for any type of structure and reducing the house size would not significantly add to the options. Mr. Bickford stated it does justice because it's a small taking compared to the loss. Chair Jarvis stated it would do substantial justice; no matter where the house is located on the property, they are still trying to meet the NH DES requirements of being 50 feet from the wetlands.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated values would not be diminished but would perhaps be increased; the realtor is in the process of trying to sell the property and doesn't mention the need for a variance. She stated she doesn't see how granting the variance would decrease surrounding properties, even considering the fact there is a right-of-way and there is an abutter who owns a large amount of land behind this property. Ms. Freeman stated the values would not diminish and she appreciates the abutters expressing their concerns; she stated no concerns were raised specifically regarding values of properties in the area. Mr. Bickford and Ms. Callaway agreed values would not be impacted. Mr. Meyer stated it would improve the value of the property.

Unnecessary Hardship: Chair Jarvis stated if the variance is not granted, it would be an unnecessary hardship to the current property owner and to the proposed property owners. She stated she doesn't see how else it can be done due to the wetlands on the lot. Ms. Callaway stated it would be an unnecessary hardship; there is not a fair and substantial relationship because without the variance the lot would not be buildable. Mr. Meyer stated it is fair because it allows the property to be used. Ms. Freeman stated it would be an unnecessary hardship because the specific application would not reduce impact further than what has already been done; it would preclude building a residence with a septic system and would limit it to something like a camp, but the purpose is to encourage the use of septic systems. Mr. Bickford stated without the variance there would be unnecessary hardship.

MOTION: *Based on the plans dated December 1, 2023, the application signed November 25, 2023, tonight's Public Hearing, the Findings of Fact and evidence in the record, I move to grant a variance to: Article VI. Use Regulations, Section C. 3.b. Sewage Disposal-Leach Field Setbacks. b. No part of a leach field shall be located less than: i. twenty (20) feet from a property line on a lot less than 80,000 square feet.*

With the following conditions:

- The applicant shall comply with all applicable federal, state, county and municipal laws, regulations, and ordinances.
- Before a Building Permit is received the applicant shall:
 - Obtain a Steep Slopes Conditional Use Permit from the New Durham Planning Board unless it is determined a Conditional Use Permit is not required.
 - Obtain New Hampshire Department of Environmental Services Septic System approval.
 - Receive approval from the New Durham Health Officer for the septic system.
- When future construction is completed, it shall:
 - Not exceed 1,160 square feet (6.9%) of building coverage.
 - Not exceed two bedrooms.
 - Not exceed 1,770 square feet (10.6%) of impervious coverage.
- The applicants shall submit "As Built" plans to the Building Inspector at the conclusion of construction.

Motion by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Mr. Meyer – aye; Ms. Callaway – aye; Ms. Freeman – aye; Chair Jarvis – aye; Mr. Bickford – aye. **Motion passes 5-0-0.**

APPROVAL OF MINUTES

Meeting of January 9, 2024 – Edits were made.

MOTION: *To approve the minutes as revised.* Motion by Mr. Meyer. Second by Ms. Freeman. **Roll Call Vote:** Mr. Meyer – aye; Ms. Callaway – abstain; Ms. Freeman – aye; Chair Jarvis – aye; Mr. Bickford – abstain. **Motion passes 3-0-2.**

CORRESPONDENCE

The Board reviewed the following correspondence:

- Planning Board Notice of Decision – Shanahan, Map 114, Lot 069
345 South Shore Road
- Conceptual Consultation with Planning Board RE: Map 255, Lot 003, 358 Old Bay Road
(Mone & Foster)

Next Meeting: Thursday, March 14, 2024

Other

Chair Jarvis stated Ms. Stillwell is researching costs for posting and recordings at the Registry of Deeds; they will discuss fee adjustments further at the next meeting.

ADJOURN

MOTION: *To adjourn the meeting.* Motion by Ms. Callaway. Second by Ms. Freeman. **Roll Call Vote:** Mr. Meyer – aye; Ms. Callaway – aye; Ms. Freeman – aye; Chair Jarvis – aye; Mr. Bickford – aye. **Motion passes 5-0-0.**

The meeting was adjourned at 8:44 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary