

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
April 25, 2022
(DRAFT)

MEMBERS PRESENT: Bruce Kudrick, Chairman, Thomas Hebert, Vice Chairman, Dana Carlucci, Paul Paradis

ALTERNATES PRESENT: Robert Bourque, Wendy Chase, and Blakely Miner III

EXCUSED: Natalie Glisson

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the public hearing to order at 7:00 p.m.

Roll call was taken by the Reporting Secretary.

I. Public Hearing

Case 22-04-Z A request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G & H, Side Setback & Rear Setback**. The applicant, Drina Nadeau, of 613 Buck St., is requesting a variance to install a replacement septic system 12' from the side setback where 25' is required and 11' from the rear setback where 55' is required. The property is located at 613 Buck St., Map 870, Lot 7, in the R-3B Rural/Agricultural-Residential district, and is owned by the applicant.

Applicant: Drina Nadeau

Property Owner(s): Drina Nadeau
613 Buck Street

Property Address: 613 Buck Street
Tax Map 870, Lot 7 in the R-3B Rural/Agricultural-Residential District

Included in the Member Packets: Assessing card, list of abutters.

Present: Drina Nadeau

Chairman Kudrick said that Cases 22-02-Z and 22-03-Z will not be heard tonight. The Applicant asked that the hearings be rescheduled to the next meeting.

Alternate Member Miner recused himself. Chairman Kudrick appointed Alternate Member Bourque to vote in place of Member Glisson.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4)

Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Ms. Nadeau said that she purchased the property in August 2020. She inspected the septic and found that it needed to be replaced. She hired Bruce Fillmore of Weare, NH to design the septic system. He took several samples and found that the most suitable place was where she needed a variance. She is requesting a variance in order to put in a proper septic system.

Chairman Kudrick asked if the location shown on the plan is the location of the present leach field.

Ms. Nadeau said that she does not think that she presently has a leach field.

Mr. Bacon said that she does not have a leach field. It is a holding tank.

Chairman Kudrick asked if the location of the septic tank is at the same location as indicated on the plan.

Ms. Nadeau said no.

Chairman Kudrick clarified that Ms. Nadeau is putting in a brand new septic tank and leach field because there was never a septic tank.

Ms. Nadeau said yes and that there was a metal tank in the ground behind the house. It does not have a cover so it can be pumped.

Chairman Kudrick asked if she had a tank that went to a cesspool.

Ms. Nadeau said yes, that it was behind the garage. She also clarified that the storage area marked on the plan is the garage. She gave the Board a larger copy of the plan.

Chairman Kudrick asked if Mr. Fillmore could place it where the old disposal system was.

Ms. Nadeau said no, that there was only a tank there. There was not enough room for a leach field.

Mr. Bacon said that he spoke with the designer who indicated the test pit data showed that it was the only place on the lot that the leach field could go.

Ms. Nadeau said that one greenhouse is still on the site.

Member Hebert and Chairman Kudrick discussed the past history of the property and what the greenhouses (formerly 3 of them) were used for. Presently only one remains.

They concluded that the reason why Ms. Nadeau has the system that is on the lot today is because it was adequate for the small amount of use that it obtained when the building was used as an office/flower packaging facility.

In favor of the case:

Mr. Miner, 402 Nadine Road, said that he is familiar with the terrain of the house lot. He said that the separation between the house and greenhouse is the area where the current "septic tank" is and that there is not enough space to have an approved septic system at that location. He said that the location that is listed on the plan would be the best location for it.

No one spoke in opposition to the case.

The recording secretary read aloud an email dated April 19, 2022 from Michael Donnelly.

Rebuttal:

Ms. Nadeau said that she was not aware of the problem which Mr. Donnelly spoke of. She said that the chicken coup has been on a strip of land which she does not own and that Mr. Donnelly does not use. She said that they have talked about the property and she parked cars on that strip of land and he never indicated that it was a problem. She was surprised.

Since Ms. Nadeau did not receive a copy of the email, Alternate Member Bourque gave her a copy.

Mr. Bacon said that he assumed that if Mr. Donnelly did not follow up with a real letter or did not come to the meeting that he was not too concerned.

Chairman Kudrick said that even though Mr. Donnelly did not come to the meeting, the email was officially sent to the Board and, therefore, must be entered into the record.

Ms. Nadeau said that Mr. Fillmore searched for the pins when they designed the septic. She said that she did not move any pins.

Chairman Kudrick asked Ms. Nadeau to read the application aloud:

Please give a detailed description of your proposal below. To be no less than 10' from the property line with the replacement septic system.

1. **The variance will not be contrary to the public interest.** Existing septic replacement meeting state septic requirements.

2. **The spirit of the ordinance is observed.** Existing septic replacement meeting State septic requirements.
3. **Substantial justice is done.** Existing septic replacement meeting State septic requirements.
4. **The values of surrounding properties are not diminished.** No effect to surrounding properties.
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one. No other location to place the replacement septic system in order to meet setbacks and be in a decent drainage area.

(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it. Variance needed to install a functioning, legal septic system.

Ms. Nadeau had no further comments.

Mr. Miner, 402 Nadine Road, said that Ms. Nadeau definitely has a hardship for where the new septic system needs to go on the property.

There were no questions from the Board and no one spoke in favor or in opposition to the case.

Member Chase summarized the case as follows: **Case 22-04-Z**, a request has been made for a **Variance under Article V Dimensional and Density Regulations, §143-21, G & H. Side Setback & Rear Setback**. The applicant presented information relative to the need for a full septic system. The property that she purchased 2 years ago does not have one. She hired a professional who advised that due to the drainage, the proposed placement of the system is the only place that it can be. She is requesting a variance. One person spoke on her behalf and said that the Applicant has a hardship in terms of needing the leach field to be placed at the proposed location. An abutter has indicated that they would like to be sure that the applicant is aware of the property line locations and stays within her boundaries.

There were no other comments from the public or the Board.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the

Applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:22 p.m.

ZONING BOARD MEMBER DELIBERATIONS:

Chairman Kudrick said that . . .

1. The variance will not be contrary to the public interest.

- Alternate Member Chase said that she agreed. The applicant purchased the property and probably did not understand what was involved and needs to make it right.
- Vice Chairman Hebert, Chairman Kudrick, Members Carlucci and Paradis, and Alternate Member Bourque agreed with Member Chase.

2. The spirit of the ordinance is observed.

- Alternate Member Bourque said that his concern is the fact that whether or not the leach field is on the adjacent property. He suggested that the property lines be verified to make sure that the system will not be on the neighbor's property. If there is an encroachment, she should make arrangements with Mr. Donnelly.
- Members Paradis and Carlucci and Chairman Kudrick agreed.
- Vice Chairman Hebert said that he think it's a valid concern to make sure that it is on her property. The plan shows that an iron pin was found. Where the septic is designed, it meets the state regulations of being 10' from the property line. The Applicant is asking for 11' and 12', so she has moved it back. The Town regulations dictate that it is not in the setback but it is important that it is verified.
- Alternate Member Chase agreed and said that the conditions of the land are prohibiting her from having it in another spot.

3. Substantial justice is done.

- Alternate Member Chase said that this is what the zoning variance is all about -- coming in and asking for relief.
- Vice Chairman Hebert agreed and said that the Applicant is trying to correct a problem. It does not make sense to deny her the opportunity to correct something that is not presently right and could potentially create more of a problem for the abutters.
- Chairman Kudrick said that she presently has a failed septic system. It does not meet today's standards and needs to be upgraded and it looks like they have done everything correctly considering the limitations of the land.
- Member Carlucci agreed and said that it is beneficial to know the correct property lines.

- Member Paradis and Alternate Member Bourque agreed.

4. The values of surrounding properties are not diminished.

All members agreed.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.

Chairman Kudrick said that she has a hardship of the land. All members agreed.

(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

Chairman Kudrick said that the Board does not have the right to tell a property owner to survey their property. The Board can require the applicant to show the Building Inspector that they are 11’ and 12’ from the property line. He said that the Applicant will have to find the property pins, run a string line, and measure where the leach field will be placed before the contractor starts digging the leach field. The applicant can hire someone to do it or she can do it herself.

The Building Inspector will have to check and make sure that the measurements match the plan and her application and that the system will be on her property.

Chairman Kudrick asked if the septic tank location was a problem.

Mr. Bacon said no.

Chairman Kudrick then said that it is only the leach field itself that must be verified. He told Mr. Bacon that before the Applicant begins construction, she will have to notify him so he can verify the measurements based on their grade stakes. It must be acceptable to the Building Inspector.

Vice Chairman Hebert said that if the leach field will be closer than what the Board has granted relief from, the Applicant would have to come back with another application.

Chairman Kudrick agreed because the Board is approving the presented plans and application.

Mr. Bacon asked if the designer usually stakes out the leach field for the installer.

Chairman Kudrick said yes.

Mr. Bacon said that presumably Mr. Fillmore located the pins and he is the one who measured 12' and 11' from the boundary lines.

Chairman Kudrick said yes, but that he, Mr. Bacon, would still have to go out and verify the measurements and it must be done in accordance with the set of plans that the Board approved.

Vice Chairman Hebert said that Mr. Bacon will be doing an inspection of the bed bottom which will be the second opportunity to check the measurements.

Vice Chairman Hebert said that, in reference to Case 22-04-Z, a request for a variance having been presented to the Board for consideration, a variance is required because the proposed septic system is closer to the setback than what is allowed by code.

MOTION: Vice Chairman Hebert moved to approve the application (**Case 22-04-Z A Variance under Article V Dimensional and Density Regulations, §143-21, G & H, Side Setback & Rear Setback**), as presented with the following conditions: (1) The Applicant must follow all state and local regulations; (2) Construction to adhere to the plans presented and submitted with the application; (3) Prior to construction, the Applicant must coordinate with the Code Enforcement Officer for a site inspection. The purpose of the inspection is to identify the lot lines and the location of the construction in reference to those lot lines, ensuring that it is no closer than 12' from the side lot line and no closer than 11' from the rear lot line. Seconded by Member Carlucci.

VOTE:	B. Kudrick – Y	T. Hebert – Y	D. Carlucci – Y
	R. Bourque – Y	P. Paradis – Y	

MOTION TO APPROVE THE APPLICATION (CASE 22-04-Z A REQUEST HAS BEEN MADE FOR A VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, §143-21, G & H, SIDE SETBACK & REAR SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) CONSTRUCTION TO ADHERE TO THE PLANS PRESENTED AND SUBMITTED WITH THE APPLICATION; (3) PRIOR TO CONSTRUCTION, THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE INSPECTION. THE PURPOSE OF THE INSPECTION IS TO IDENTIFY THE LOT LINES AND THE LOCATION OF THE CONSTRUCTION IN REFERENCE TO THOSE LOT LINES, ENSURING THAT IT IS NO

CLOSER THAN 12' FROM THE SIDE LOT LINE AND NO CLOSER THAN 11' FROM THE REAR LOT LINE PASSED ON A 5-0 VOTE.

IV. Approval of Minutes – March 28, 2022

MOTION: Vice Chairman Hebert moved to approve the March 28, 2022 minutes as amended. Seconded by Member Carlucci. Unanimously approved.

V. Other Business / Correspondence

Chairman Kudrick asked for an update of the Pembroke Street shed removal from a previous hearing.

Mr. Bacon asked if the shed was still in place. The Board said yes.

Chairman Kudrick asked Mr. Bacon to contact the homeowner and remind him that the shed must be removed by May 1, 2022 or be subject to fines. He also told Mr. Bacon to check with Mr. Jodoin as to what he has the authority to do in case he is given a hard time by the homeowner. He said that the Board was nice enough to give the applicant additional time to remove the shed (they could have required him to remove it within 30 days) and, therefore, would expect the homeowner to work with the Board since the Board worked with him.

VI. Adjournment

MOTION: Alternate Member Bourque moved to adjourn the meeting at 7:40 pm. Seconded by Alternate Member Chase. Unanimously approved.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary