

**ZONING BOARD OF ADJUSTMENT  
FEBRUARY 9, 2016 FINAL MEETING MINUTES**

**Present:** Chairman - Jack Dearborn, Member - Stu Richmond, Member - Malcolm Wright, Member - Marc Morette, Alternate ó Michael Meyer, Land Use Coordinator ó Chip Meany, Minute Taker ó Tina Ripley

**Guests:** Dan Farrell, Denise Farrell, Danielle Eriksen, Yvonne Walton, Michael Walton, David Jenkins, Lisa Kazakis, Dean Piper, Cindy Rooney, Mike Rooney

**I. CALL TO ORDER**

The meeting was called to order by Jack Dearborn at 7:30pm. The Board introduced themselves. Jack Dearborn said these members will be seated for all three cases. Jack Dearborn explained how the meeting would be run and how the cases would be heard.

**II. PUBLIC HEARING**

**Case #0116 – Lisa Kazakas – special exception at 75 Pondview Road, Map 108 Lot 42 in Residential Zone concerning Article 19.1.10 – Accessory apartment”**

Jack Dearborn read the application and said they have the special exception, completed documentation checklist, list of abutters, quitclaim deed, dimensional drawing, view of garage showing stairway and foyer/breezeway access, 4.05 acres hand drawn showing house, garage & parking area, a tax schedule, copy of tax map indicating where it is.

Marc Morette moved to accept case #0116. Stu Richmond seconded. Motion passed. 5-0-0

Lisa Kazakas read the application into record.

The undersigned hereby request a special exception as provided in Article 19, Section 19.1.10 of the Zoning Ordinance. The following seven (7) conditions per Article 6, section 6.1.4 of the Zoning Ordinance must be met in the positive to warrant the granting of a special exception:

**1) The specific site is an appropriate location for such use or uses in terms of overall community development:**

Yes, the existing home sits on 4.05 acres and the in-law apartment is constructed without any changes to the exterior of the building.

**2) The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area:**

Yes, the in-law apartment is an already existing structure. There is no change to the exterior of the building.

**3) The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:**

Yes, not a nuisance or hazard. It is for my kids who already lived in the house. There is not a change.

**4) The proposed use will not cause an undue burden on the Town through the provisions of basic Town services:**

Yes, no undue burden except a tiny bit of trash to be recycled at the traffic station.

**5) Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:**

Enough parking in driveway for all cars.

**6) A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees:**

No buffer needed. There are woods on either side of me separating our houses.

**7) The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:**

Our existing house has three bedrooms. There are currently two people using the house - 1 adult and 1 child. My son will move back home with his family - 1 adult and 2 children.

Jack Dearborn asked for any approving abutters.

Cindy Rooney said there was concern about people living on the road and it being an informal association. Ms. Rooney asked if there was any improvement that needed to be done to the road in order for Ms. Kazakas to allow other people to live on the road. Jack Dearborn asked if it was a Town road and Chip Meany said no, it is a private road. Jack Dearborn said not that the Town requires.

Jack Dearborn asked for disapproving abutters. - There was none.

Jack Dearborn closed the public hearing.

Stu Richmond made a motion accept case #0116. Marc Morette seconded. Motion passed 5-0-0.

**Case #0216 Daniel & Denise Farrell, 77 Daniels Road, Map 110 Lot 88 in Residential Zone for variance from Article 18.2.2 – proposed used is 2 story garage with office space on 2<sup>nd</sup> level.**

Jack Dearborn read the application and said they have the completed 5 points of hardship, completed documentation checklist, abutters list, warranty deed, garage shown on an existing house and seasonal porch, pictorial of a garage, property card, tax map and site plan dated 11/14/13 with a surveyor stamp.

Marc Morette moved to accept application #0216, Stu Richmond seconded. Motion passed. 5-0-0

Denise Farrell read the application into record.

- 1) **That the granting of the variance will not be contrary to the public interest because:**  
We are not proposing any changes to the currently approved town zoning and would not be contrary to the public interest. This is a small non-conforming lot.
- 2) **The variance requested, will not be contrary to the spirit of the ordinance because:**  
This is a private addition to an existing house. The addition & garage variance is needed because of the small, non-conforming lot.
- 3) **That through the granting of relief by variance substantial justice will be done because:**  
The staircase is not to code, furniture cannot be brought up or down without removing railings & hasting it up or down. My husband has leg braces and has an unsteady gate. He cannot use these stairs. Staircases would be relocated to the house addition. I also have employees that do data entry and file. Currently they work in my home. The 2nd story of the garage would serve as an office, and provide us some privacy.
- 4) **That by granting the variance, the values of surrounding properties will not be diminished because:**  
This is a residential home, with a proposed residual addition & garage. The addition & garage will increase the value of the house. Residential use in a neighborhood that is also residential and will not reduce values. My business is a medical coding & billing service. Clients & physician's office are located in MS, therefore we have no client traffic.
- 5) **To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for “unnecessary hardship” is set forth in two alternative parts, (Parts A & B), as follows:**
  - A. **“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.**

**Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:**

**A: Please describe the special conditions of your property that distinguish it from other properties in the area:**

There are no distinguishing conditions from other properties. This is a small non-conforming property, that generally requires a variance for any changes to the property, primarily because of the size.

- (i) **No fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application of that provision to the property:**

These are all residential properties. There would be fair & substantial relationship between the general public. This is an addition & garage to a private residence.

- (ii) **And how the proposed use is a reasonable one:**

The request is reasonable because it would allow a normal staircase, one that my husband can use and furniture can be moved more easily up & down. The 2nd level of the garage would provide us some privacy since this would become the office.

**B: If the criteria in subparagraph (A) are not established, an 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 a reasonable use of it.**

**Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:**

**B. Please describe the special conditions of your property that distinguish it from other properties in the area:**

This is a non-conforming property, as is most of the properties in this area. I don't feel that our property does distinguish it from other properties, except for the unusual & totally impracticable staircase. We also have very little in the way of storage, and these changes would also provide much needed storage. The way the house is now is a hardship on both my husband and myself.

**Please indicate how owing to the special conditions identified above, your property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:**

Because it is a non-conforming property. The size of the property in addition to being a waterfront property, does not allow for any changes without a variance.

Jack Dearborn asked for approving abutters. There was no comments.

Jack Dearborn asked for non-approving abutters. There was no comments.

Jack Dearborn closed the public hearing.

Marc Morette moved to accept point 1. Michael Meyer seconded. Motion passed. 5-0-0

Marc Morette moved to accept point 2. Malcolm Wright seconded. Motion passed. 5-0-0

Marc Morette moved to accept point 3. Malcolm Wright seconded. Motion passed. 5-0-0

Marc Morette moved to accept point 4. Stu Richmond seconded. Motion passed. 5-0-0

Marc Morette moved to accept point 5 in entirety. Malcolm Wright seconded. Motion passed. 5-0-0

**Case #0316 Michael & Yvonne Walton, on North side of Maplewold Road in a R/A Zone, Map 407 Lot 119.1, requesting a variance to Article 17.1.1 to build on a private road**

Jack Dearborn read the application and said they have a completed documentation checklist, see attached for 5 points of hardship and variance application with information typed on it (Which one are we using? - using the typed one on application), list of abutters, warranty deed, a couple of tax maps, town schedule, the draft planning board minutes from 1/7/16, Town of Weare agreement and release dated 2/8/16, survey done by Mike Dahlberg dated 8/9/07, a topo map dated 8/9/07 by Mike Dahlberg, and a subdivision plan for Mr. Donald G. Kanton (Chip said this is the original subdivision plan). Chip Meany said there were two subdivisions, one in 1992 and the other in 1998 and said he thinks they were recorded.

Jack Dearborn said his concern about moving forward tonight is the map identifying the easement and said he recommends not moving forward. Jack said they are looking for an updated plan showing the easement for road and deeded easement to the town for drainage on Maplewold. Jack Dearborn said they will extend them until next month.

Chip Meany said this was a bonafied gift back in the 90's. Chip Meany said they had started to develop their land and came in for a building permit and was told they couldn't have one since they didn't have road access. Chip Meany said part of this process is to get the goat path on the map now, as an easement listed across it to all parties that live there and be classified as a private road and given a name. Chip Meany said they did that and it will be known as Sparrow Road. Chip Meany said the second part is the variance that is required since they have no road frontage on a Class V Road.

Jack Dearborn said he would like to see a version of the tax map showing all the lots on it.

Stu Richmond moved to accept case #0316. Marc Morette seconded. Jack Dearborn said he would recommend holding off until March 2, 2016. Motion failed. 0-5-0

Jack Dearborn said they are looking for the easement survey and composite of the two tax map delineating who owns which property. Jack Dearborn said it should be record for the case.

### **III. OTHER BUSINESS**

**Michelle Boutin - variance extension**

Malcolm Wright moved to accept Michelle Boutin extension for variance. Marc Morette seconded. Motion passed. 5-0-0

### **IV. ADJOURNMENT**

Malcolm Wright moved to adjourn. Stu Richmond seconded. Motion passed. 5-0-0

*Tina Ripley*