



*Town of Weare*  
*Zoning Board of Adjustments*  
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**Zoning Board**  
Jack Dearborn, Chairman  
Forrest Esenwine, Vice Chair  
Stu Richmond, Member  
June Purington, Member  
Malcolm Wright, Member  
Neal Kurk, Alternate  
Donald Rogers, Alternate  
Marc Morette, Alternate

## **ZONING BOARD – SEPT. 9, 2014 FINAL MEETING MINUTES**

**Present:** Chariman Jack Dearborn, Vice Chairman Forrest Esenwine, Member June Purington, Alternate Marc Morette, Code Enforcement Officer Chip Meany, and Recording Secretary Wendy Stevens.

**Guests:** Wendy Clark, Nick Spadaro, Jim Spadaro, Deb Spadaro, Ginger Esenwine, Chris Provost, Abigale Chesley.

### **I. CALL TO ORDER**

The meeting was called to order by Chairman Dearborn at 7:32 pm. Chairman Dearborn acknowledged Mr. Morette as a full voting member.

### **II. PUBLIC HEARINGS**

CASE #0214, Nick Spadaro, 123 Gettings Rd., Map 410, Lot 189

Chairman Dearborn explained that variances, once turned down, cannot be applied for again once denied unless there is a material change to the subject. He continued stating the property is on Gettings Rd., and is the last property on the road. This application is proposing to build a dwelling on Lot 189 on Gettings Rd..

Ms. Purington moved to accept the application. Mr. Morette seconded. Vice Chair Esenwine noted the location map is a reduced town map and he is having trouble finding any site plan. Mr. Spadaro stated the location of the proposed dwelling is marked, and Chairman Dearborn acknowledged the location was marked but the map was non-dimensional. The motion passed 3-0-1 with Vice Chair Esenwine abstaining.

Chairman Dearborn asked about the length of the road and Mr. Spadaro replied the length is roughly 3,000 feet. Chairman Dearborn stated since the Town of Weare does not own the road, it is not actually a Class VI road, because it is a private road, it is actually not classified. Chairman Dearborn stated the road narrows, and what was their intention for improving access? Mr. Spadaro stated he would like to do as little as possible in going with the wishes of the abutters. Chairman Dearborn stated his impression is that it is going to take a lot of work, with gravel needs, and some of the hills being higher than 10% grade which then involves fill.

Mr. Spadaro read his five points of hardship into the record:

#### **1) The variance will not be contrary to the public interest:**

“There are already dwellings within the neighborhood. Inhabitants of the dwelling will plow Gettings Road in the winter and maintain its accessibility. Also, the proposed dwelling is less than 3,000 feet down the private road, which is a distance shorter than some driveways. These factors do not make access to the property any more difficult than many properties in Weare.

The town can access the property if there is ever a point in time when it is a major concern. There are no dwellings (and subsequently inhabitants) currently on Gettings Road to be affected by the proposed new home on lot 189. Previously there was already a camp located on the property. The proposed home would merely be in a different location on the property and be utilized legitimately year round. The proposed use would allow the property to be used in the most practical way for both the town and the owner. It would also increase the town's tax base while not adding to the burden on the town."

Vice Chair Esenwine asked about the proposed dwelling being 3,000 feet down a private road, and that it is shorter than some driveways in town. He questioned the statement of other driveways existing in the town of this length.

2) **The spirit of the ordinance is observed:**

"Accessibility to the lot and proposed dwelling will be on par with many other dwellings in town and this lot has had a camp on it previously. The length of the private road is short enough to allow it to be utilized in a similar fashion as a long driveway, granting a new home permit will enable reclamation of the property and a return to the intent of the original owners. The only changes to current use would be a change of building placement and using the property legitimately year round."

Chairman Dearborn stated a shed/lean-to on the parcel would be a seasonal campsite, not a dwelling currently on the parcel. Mr. Spadaro replied that there was but it burned down. Chairman Dearborn clarified that this was not a building lot that was being rebuilt upon.

3) **Substantial justice is done:**

"Importance should be placed on keeping young, Weare raised, community members in town. A variance would enable a code compliant, energy efficient home to be built. Access will be maintained and the property will be developed in a desirable way that builds community. Rejuvenation of the property will increase surrounding property values, and boost the town's tax base."

Vice Chair Esenwine stated that currently on the private road, nobody trims branches or plows it in the winter and that Mr. Spadaro is saying that is something he would undertake. Vice Chair Esenwine asked how could he guarantee that? He furthered that in other cases with private roads with residential homes on it, the same question comes up and these other cases have developed associations that pay dues into a fund that they use to maintain the roads and anybody who tries to build on any remaining lots are required to sign onto this document to ensure that they contribute their fair share and that the road is maintained. He summarized there is no way of assuring that the place won't be isolated from a storm, that it would be passable by emergency vehicles, and he is concerned with how he is going to address that.

4) **The values of surrounding properties are not diminished:**

"The granting of a variance will only enable the property to be developed in a way that is beneficial to the community, thereby creating a new and good neighbor. Property values will increase dramatically for the property in question. Subsequently the surrounding properties' values will increase, if there is any change at all. A new, small, esthetically pleasing and energy efficient home will add to the atmosphere and taxable base of the community, while not contributing to any burdens on the town."

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

A. "The property is a reasonable distance (less than 3,000 ft) from a town maintained road,

which enables easy access. It also originally had a fully furnished camp on it. All the utilities (Electric, Septic, and a well) are already in place on the property, and it is cleared.”

Chairman Dearborn asked where is that road he is speaking about? Mr. Spadaro responded Gettings Rd., the 3,000 feet.

- 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:**

“The general public purposes of the ordinance are to prevent NEW homes from being built on inaccessible non-town maintained roads. Though the proposed home will technically be new, it will be on a property that has all utilities, driveway and clearing already in place. It also is on a very accessible short stretch of private road that has already been in use by the inhabitants of the camp in the past.”

Chairman Dearborn asked what was inhabited? Mr. Spadaro stated the campsite was inhabited.

- ii. **The proposed use is a reasonable one:**

“Building on a new home on a property that currently only has ruins, on an accessible road poses no threat to public interest and only increases property value and the town’s tax revenue. It is also a great restoration of an otherwise unusable property. It will not strain public services in any way and will only add to the community by creating a new neighbor and developing the property in a beneficial way.”

**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 reasonable used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance:**

“The property is zoned residential and is on an easily accessible road that is short and of outstanding quality, rivaling that of many driveways in town. The property previously had an inhabited building on it, with all utilities still in place.”

Vice Chair Esenwine asked on an easily accessible road that is short and of outstanding quality, which was he talking about, the driveway? Mr. Spadaro stated he was talking about Gettings Rd. which was a short private road with a cul-de-sac.

Mr. Spadaro continued to read: “Because of the ordinance, the property cannot be reasonably used. The utilities in place for a home cannot be connected, and a seasonal camp would be the only use permitted. The only change to current use would be the building location and the official ability to live in it year round. Such changes are perfectly reasonable and do not violate the spirit of the ordinance.”

Chairman Dearborn invited any approving abutters to speak. There were none.

Chairman Dearborn invited any disapproving abutters to speak. Wendy Clark of Bogue Rd. stated she resides on the back side of that lot. Their property abuts at the clearing where the shed is. Chairman Dearborn confirmed the location as 218.1. Ms. Clark stated that there is no impact on the town is not agreeable as there could be children

living there in the future. Her other concern is that of the two houses at the beginning of Gettings Rd., the first house is occupied year round and the second house is a seasonal camp. She added where he is looking to build, he would have to cross the swamp/pond which floods over and she would assume they would have to put some type of bridge similar to the one at Ferrin Pond. She added it floods further down as you go into Weare and water is flowing there also. She added where the blasting sign is, they (Jeff Tinker) also had requested to build and it was denied due to firetruck access, and her concern is that the entire road would have to meet the requirements for Fire & Rescue.

Chairman Dearborn asked where was the culvert? Ms. Clark stated there is no culvert. Chairman Dearborn stated he did not see any evidence of washout and Ms. Clark stated you have to see it in the spring. She added it is bad, and every year the beavers add to the problems and it is very sandy in that area. Her final concerns are egress, Fire & Rescue, and the waterways.

Abigale Chesley of 228 Bogue Rd. stated she owns a lot on Bogue Rd. as well as a lot on Gettings Rd. She stated her concerns are similar to Ms. Clark's in regards to maintenance. She stated at certain times they cannot drive on Gettings Rd. due to washout. She stated beavers are in the entire area, and water completely covers the road. Her other concern is emergency services. She added her largest concern is if his application gets granted, who is to say what else will get granted, and the reason they bought the property was due to the woods and wild nature.

Chairman Dearborn asked for the public at large to speak. There were none.

Chairman Dearborn asked for comments from other boards. There were none.

Mr. Spadaro stated that he has not seen any evidence of flooding or water at all.

Ms. Clark would like to look and see if she has photos in order to prove the point to the board.

Mr. Meany stated he could attest to the fact that he has turned around in his vehicle in the past as the road was completely flooded.

Chairman Dearborn closed the public hearing. Vice Chair Esenwine moved to close the hearing. Ms. Purington seconded. The motion passed 4-0-0.

Chairman Dearborn stated the applicant does not have a plan as to what he would do. He clarified that the Zoning Board is not a Planning Board, and they are not here to negotiate plans with Mr. Spadaro. Chairman Dearborn stated if this application gets denied, then the land has to live with the decision. He added at this time, some people choose to withdraw their application. Chairman Dearborn stated there is also a member missing tonight with four members voting instead of five. He stated driveway requirements include a 16 foot width, with no grade or slope being greater than 10%, and in addition due to the length of the driveway, the safety requirement would be a turnaround where two trucks could pass each other. Mr. Spadaro stated he would still like to go forward with the process.

Ms. Purington made a motion to accept Point 1. Vice Chair Esenwine seconded. Vice Chair Esenwine stated that he thinks this falls way beyond the scope of the Ordinance. 3,000 feet of private road is not in the condition that they require of residences. He added there is a major concern regarding safety vehicles, and there is no guarantee that the road will be maintained year round. He finalized he thought this was definitely contrary to the public interest. Chairman Dearborn noted the wetlands in and among the properties. The motion failed 0-3-1 with Ms. Purington abstaining.

Mr. Moretti made a motion to accept Point 2. Ms. Purington seconded the motion. Vice Chair

Esenwine questioned the claim that the accessibility is on par with other properties. Chairman Dearborn stated due to the wetlands and the slope of the road, he would consider it a seasonal road. The motion failed 0-4-0.

Mr. Moretti made a motion to accept Point 3. Vice Chair Esenwine seconded the motion. The motion failed 0-4-0.

Mr. Moretti made a motion to accept Point 4. Ms. Purington seconded the motion. Vice Chair Esenwine stated as far as creating a benefit to the neighborhood, he does not see any factual information to support the statement. The motion failed 0-4-0.

Mr. Moretti made a motion to accept Point 5. Vice Chair Esenwine seconded. Chairman Dearborn stated withstanding the characteristic of the access, he does not think it is a reasonable distance, and if there was a new property to be built in the Town of Weare today, it would have to meet the driveway requirements and he sees it as falling short. The motion failed 0-4-0.

Chairman Dearborn stated this case has been denied by the Zoning Board.

### **III. REQUEST FOR VARIANCE EXTENSIONS**

1. Mr. Wilson requesting extension of variance for Map #403-101 Mr. Moretti made a motion to accept the extension. Ms. Purington seconded. The motion passed 4-0-0.

2. Carl Landon requesting extension of variance for Map #103-18, 33, 36 on Russell Dr. Mr. Moretti made a motion to accept the extension. Ms. Purington seconded. The motion passed 4-0-0.

### **IV. OTHER BUSINESS**

The May 6<sup>th</sup> minutes were reviewed. Vice Chair Esenwine made a motion that the third draft minutes be approved as printed and distributed. Mr. Moretti seconded. The motion passed 4-0-0.

Ms. Purington asked about Vice Chair Esenwine's question regarding the location map, and is there any way they can get better maps in their applications? Mr. Meany stated he will make sure and get the maps as large as possible.

### **V. ADJOURNMENT**

Vice Chair Esenwine made a motion to adjourn. Mr. Moretti seconded the motion. The motion passed, and the meeting was adjourned at 8:25pm.

A true record,

*Wendy J. Stevens*