

FINAL



WEARE ZONING BOARD OF ADJUSTMENT MEETING MINUTES December 1, 2020

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; MALCOLM WRIGHT, MEMBER (absent); MARC MORETTE, MEMBER; BOBBI-JO PLAMONDON, MEMBER; GARY SHELTO, ALTERNATE; KELLY DEARBORN-LUCE, LAND USE COORDINATOR

GUESTS: John (Jack) Meaney, Frederick Hippler, Frank & Mary Jo Campana, Amanda Eaton, Tommy Cooper, Gil & Shelley Duquette, Travis Corcoran

Chairman Dearborn called the meeting to order at 7:30 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

Chairman Dearborn stated there are three cases before the Board. First, continuance of Case #11-20, legal advice was sought from Town Counsel for this case. Second, Case #12-20 application for a Special Exception and thirdly, Case #13-20, application for a variance on Quaker Street. Chairman Dearborn explained each case will be looked at separately, a motion to accept the application, a second, and then a motion to complete. Voting will be up or down to accept or with conditions. Positive going forward, applicant proceeds to the podium; all questions go through the Chair. The Board will ask questions before the individual's testimony. Applicant reads his application, as with a variance there are five points of hardship, must read both the question and response. Applicant then sits down, approving & disapproving abutters, public at large or the Boards speak. Applicant then approaches the podium to rebut any points. Second round of abutters, public and Boards, then the hearing is closed. Case is then considered. Hardships dealt with individually, three yes votes needed for each.

II. PUBLIC HEARING

A. Continuation of Case #11-20

Administrative Appeal from applicant Frank Campana of 322 Quaker Street, for the issuance of a driveway permit, which was in violation of 36.3.5.1, also by definitions of Driveway, Common and Driveways. Permit for Tommy Cooper of 334 Quaker Street, Tax Map 201-113-1.

Mike Meyer moved, Gary Shelto seconded to accept the application for Case #11-20. Passed 5-0-0

Frank Campana presented handouts and photos to the Board. Noted for the record: Mr. Cooper addressed his driveway/plans and the concerns of impact to Mr. Campana's property with Frank & Mary Jo Campana.

Driveway appeal: Mr. Cooper who proposed a common driveway from his property, Lot 201-113-1 over an easement on John D. Reed's property, Lot 201-113 to Quaker Street. Mr. Campana's property, Map 404, Lot 76 is on Quaker Street. Background: two lots, approved by the Planning Board 1994, frontage required was on Thorndike Road, not Quaker Street. Note: any driveway permit previously granted shall be completed within one year from the date of issuance, at which time the permit shall expire, Weare Zoning Ordinance 36.2, page 84. Driveway permit of July 20, 1993.

Mr. Campana stated four reasons the driveway permit was improperly granted:

- proposed driveway is a common driveway, serves two lots, needs PB approval
- driveway serving Mr. Cooper's property must connect to town road, lot frontage is on Thorndike, easement access from Quaker may not serve as a location for driveway
- Quaker easement is too narrow; width 10.64 ft., minimum is 16 ft.
- wet areas on easement, requires State approvals

Mr. Campana stated his findings:

- March 10, 1994 Planning Board minutes, along with previous meeting minutes, categorize the permit as a minor subdivision with no mention of a driveway
- October 13, 2020 was the Board of Fireward's meeting, but the permit was issued October 7, 2020.
- 2007 Variance - Real Estate agent, representing the Reed property, applied to ZBA, permission to access both lots with a common driveway, via waterway. Chairman Dearborn challenged the 10.64 ft. entrance.

Mr. Campana stated this is a new driveway permit, steps were not taken, his issue is with not following procedural town warrant articles.

Land Use Coordinator Kelly Dearborn-Luce stated:

1. the driveway permit application was because it is a new owner, to obtain a new house number
2. research showed '93 -'94 driveway application preapproved
3. common driveway article adopted 2013
4. PB minutes show approved existing access, culvert installed, active permit
5. Zoning Article 36 adopted 2015

Chairman Dearborn asked the following questions, Land Use Coordinator Kelly Dearborn-Luce responded:

1. What was the purpose for processing this application? Mr. Cooper is a new property owner requesting a street address.
2. What rights does Mr. Cooper have based on the approved driveway permit? Approval for the property's access.
3. What is the purpose? Because he is a new owner.
4. Can he use that as a driveway to a building permit? I would have to look into it.

Chairman Dearborn stated no building permit would be issued this way, it is to document the new Owner, 334 on his mailbox.

5. Is this the extent to the rights Mr. Cooper would have as a result of the driveway permit? Yes.
6. Did this diminish any rights for using that access to his property? No.

Chairman Dearborn stated Mr. Campana's statements are appropriate for somebody asking for a building permit today, 1993 driveway permit, minimum 10 feet. Town Counsel is in agreement, driveway permit

approval only provides name for the property, and street number. Going forward the owner would need a variance for Zoning Article 36 and a common driveway.

Mr. Campana asked for clarification on Land Use Coordinator Dearborn-Luce's remark the culvert was installed. Chairman Dearborn answered the minutes of the Planning Board stated it was.

Mr. Campana declared they are not. Chairman Dearborn replied then there is a wetland problem. Mr. Cooper can use it today as he did in '93 & '94, along with his name and street number.

Mr. Campana asked if the new mailbox is now the new frontage. Chairman Dearborn answered I am not attesting to anything.

Mr. Campana asked where can he go for an explanation. Chairman Dearborn responded to Land Use Coordinator Dearborn-Luce tomorrow morning.

Chairman Dearborn asked Land Use Coordinator Dearborn-Luce if she had any rebutting remarks. She stated she was all set.

Approving abutters:

Amanda Eaton, girlfriend to John D. Reed, no letter to speak on his behalf. Chairman Dearborn allows her to speak. Driveway to go through John D. Reed's property, previous site plan was done on the property, not possible to build on unless you own both pieces, Reeds and Coopers, grade on Thorndike frontage access is almost not legal, hill would need removing, creating erosion problems. John D. Reed was shut down for a building permit. They use the property as a wood lot. She nor Mr. Cooper is interested in destroying the hill; she is comfortable in what Mr. Cooper wants to do.

Mr. Cooper introduced himself, having met with the Board of Firewards regarding the driveway access, he understands rules about moving stones/stonewalls. If a variance is not allowed for a building permit and driveway then the land is useless. His plan is for a future driveway and building permit.

Chairman Dearborn read from the 1994 subdivision plan, topography along Thorndike Street prevents a driveway access to both lots, Reeds and Coopers. The subdivision plan approved by the Town of Weare, through the Planning Board, granted access with 10.64 ft., this presents a lot of challenges.

Chairman Dearborn called for disproving abutters, public at large and the Board to speak. None.

Chairman Dearborn called for the second round for approvers to speak.

Mr. Cooper stated he has spent a great deal of time researching with Land Use Coordinator Dearborn-Luce. He wants to be a good neighbor and steward to the land. He states he is concerned for getting approval for a variance for a future build.

Chairman Dearborn replied Land Use Coordinator Dearborn-Luce decides if you get a variance or not.

Amanda Eaton asked the Board for clarification as to the purpose of tonight's discussion. Mr. Cooper will have a house number, but what about the driveway.

Chairman Dearborn responded you have to see Land Use Coordinator Dearborn-Luce. Tonight is a court, information presented, questions answered, hearing closed, deliberations begin.

Amanda Eaton stated John D. Reed offered the right of way to the previous owner, Sherry McKenzie, for the purpose of a driveway as the Reed property could not put a driveway access anywhere else.

Chairman Dearborn asked the Board if they had any questions. None.

Chairman Dearborn closed the Public Hearing at 8:25 pm. and asked for a motion in the positive. Motion to uphold the appeal, granting Frank Campana's administrative appeal.

Vice Chairman Mike Meyer stated before the vote could we hear the attorney's opinion.

Chairman Dearborn stated based on what was in the building permit, with standing challenges, being 2020, Land Use Coordinator Dearborn-Luce reports Town Attorney Bill Drescher said the only purpose was to grant a name change and 334 street number. To that end, Land Use Coordinator Dearborn-Luce was compliant.

Chairman Dearborn asked again for a motion to uphold the administrative appeal for Frank Campana to deny Mr. Cooper's driveway permit.

Marc Morette moved, Gary Shelto seconded to uphold the administrative appeal. Chairman Dearborn explained a yes vote would be for Frank's position overturning the driveway permit, meaning, a no to Land Use Coordinator Dearborn-Luce's decision. **Failed 0-5-0**

Chairman Dearborn clarified the motion to appeal failed, nothing more.

B. Case #12-20

Application for a Special Exception from Jack Dearborn Revocable Trust, Jack Dearborn Trustee for property on 162 Gould Road, Tax Map 411, Lot #98 in the Commercial District. *The special exception is for residential use in the commercial district by the Zoning regulation section 3.4.2 which states: When any existing nonconforming use of land or buildings has been destroyed or discontinued for two (2) years, the land, structures, and buildings shall thereafter be used only in conformity to this ordinance, except that the Zoning Board of Adjustment, after a public hearing, may permit the resumption of said nonconforming use.*

Vice Chairman Mike Meyer stated he will now take over as Chairman because Chairman Dearborn is the applicant in Case #12-20. He read the description. Application has a signature, description, tax map, warranty deed, abutters list, and eight exhibits. The Board reviewed the application.

Marc Morette moved, Gary Shelto seconded to accept the application. Chairman Meyers reiterated this is a special exception, not a variance. Seven conditions that must be met.

SPECIAL EXCEPTION

The undersigned hereby request a special exception as provided in Article 3, Section 3.4.2 of the Zoning Ordinance. The following seven (7) conditions per Article 6, Section 6.1.3 of 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, it has been used as a residence since the early 1940s to 2016.
- 2) The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: No, continued residential use for over 70+ years.
- 3) The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: No, already an established driveway.
- 4) The proposed use will not cause an undue burden on the Town through the provisions of basic Town services: No, already an established residence. Future single family residence.
- 5) Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: Yes, acre and a half area. Future 300 ft driveway 20 ft. wide.
- 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: Not necessary, some maple trees, consistent with prior use.
- 7) The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

Signed: Jack L. Dearborn, Trustee
November 3, 2020

Any and all conditions or restrictions required by the ZBA will be accepted and followed.

Chairman Meyer asked in the time the property was zoned commercial was it ever used as such.

Mr. Dearborn answered no.

Chairman Meyer asked the Board if they had any questions. None.

Chairman Meyer then asked the applicant to have a seat.

Chairman Meyer asked for approving abutters; there were none.

Chairman Meyer asked for disapproving abutters; there were none.

Chairman Meyer asked for other boards; there were none.

Chairman Meyer asked for public-at-large; there were none.

Chairman Meyer asked Mr. Dearborn if he anything else to say. Mr. Dearborn replied no.

Chairman Meyer closed the Public Hearing.

Chairman Meyers asked the Board for a discussion. None.

Chairman Meyers stated the Special Exceptions seven points must be met to approve.

**Gary Shelto moved, Marc Morette seconded to accept and approve the Special Exception.
Passed 4-0-0**

Chairman Dearborn resumed as Chair.

C. Case #13-20

Application for a variance from Gil and Shelley Duquette of 271 Quaker Street. Tax Map 404, lot 84 in the Residential District. The variance application is for Article #3, section 3.5 and 3.5.1, which authorizes reduced setbacks on a single-family residence.

Chairman Dearborn stated the property is 1.62 acres. Purpose: garage for personal use, permit approved October 2018, neighbors argued the permit was illegal, the U.S. Superior Court, Hillsborough - North, TRAVIS CORCORAN & JENNIFER CORCORAN V. TOWN OF WEARE, #216-2019-cv-00297, ruled November 4, 2020, the decision to grant the Duquettes a building permit for the structure was reversed.

Chairman Dearborn asked the Board if they had any questions. None.

Vice Chairman Meyer moved, Marc Morette seconded to accept the application. Passed 5-0-0

Gary Shelto moved, Marc Morette seconded to continue the case and look at the property. Site Walk scheduled for Tuesday, December 8, 2020 at 3:00pm Passed 5-0-0

Case #13-20 continued till January 5, 2020.

III. OTHER BUSINESS:

2021 meeting dates were approved.

IV. MINUTES:

November 3, 2020 Minutes: **Marc Morette moved, Bobbi-Jo Plamondon seconded to accept the minutes of November 3rd, as written, passed 4-0-1 Gary Shelto abstained.**

October 6, 2020 Minutes: **Marc Morette moved, Bobbi-Jo Plamondon seconded to accept the minutes of October 6th, as written, passed 4-0-1 Gary Shelto abstained.**

Motion to adjourn at 8:55pm.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from
YouTube recording and LUC Dearborn-Luce notes