



WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
December 7, 2021

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; MALCOLM WRIGHT, MEMBER; BOBBI-JO PLAMONDON, MEMBER; MARC MORETTE, MEMBER; NAOMI BOLTON, INTERIM LAND USE COORDINATOR

Absent: none

GUESTS: Andrew Volckmann, Dylan Boisvert, Madison Albee, Heather Olson, Chris Olson, Ryan Hyjek

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment December 7, 2021 meeting to order at 7:30 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

The Chair stated there are two cases before the Board, Case #17-2021 and Case #18-2021 and read the agenda explaining how the meeting will run. He then asked the Board to introduce themselves, all being seated for the hearings tonight.

II. PUBLIC HEARING

A. Case # 17-2021: : Christiane Barriere (owner); Andrew Volckmann (applicant) Pondview Road, Tax Map 408 Lot 137, Residential Zone Variance – Article 14, Section 14.2 Applicant is seeking a variance for the construction of a 3700 square foot duplex on Pondview Road.

The Chair went through the application for completeness and asked for a motion to accept. **Malcolm Wright moved, Vice Chairman Meyer seconded to accept ZBA Case #17-2021.** Discussion: Being none.
Passed 5-0-0.

Chairman Dearborn asked if the Board had any questions for the applicant. Being none, the applicant stepped up to the microphone, introduced himself, read the five points of hardship with answers.

Andrew Volckmann, Volckmann Custom Building and Design, LLC., explained his reason for being here, to construct a 3700 sq. ft. duplex on a lot with 3.24 acres, and proceeded with the five points of hardship as follows:

1. The Variance will not be contrary to the public interest: *We believe the variance will not be contrary to public interest because the property can easily accommodate the additional septic loading of a duplex within the soils. Although we do not meet the square footage requirements, we do meet the states requirements for lot loading. The leach field is located in an area of Category 1 soil, which is, classified as rapidly permeable soils formed in sands and gravels that provide the greatest amount of groundwater recharge. Soil based lot sizing is based on the capabilities of the soil to assimilate nitrate loading from septic systems. The goal is to provide nitrate levels in groundwater at drinking water quality and our calculations show that we can meet these standards.*

The required square footage for the lot according to table 1-1 of article 14.2 would be 168,000 square feet. The lot is 141,134 square feet which leaves the owner 26,866 square feet (roughly 16%) short of the required space.

2. Please describe how the spirit of the ordinance is observed: *We believe that the intent of the ordinance is to regulate density in order to protect the soils. The site was designed to utilize the highly permeable area where the leach field is shown. The environmental engineer calculated that .33 acres will be needed to accommodate the designed system and there are .75 acres of contiguous category 1 soils. We meet double the Lot Loading Requirements per state rule, which is in concert with the Spirit and Intent of the Ordinance.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *Substantial justice will be done because the environmental load of the site will not exceed the soils ability to properly dilute nitrates introduced by the septic systems. Because the soil is able to adequately absorb precipitation, we believe no harm will be done to the environment, the lot specified, or the general public.*

4. Please describe how the values of surrounding properties are not diminished: *The values of the surrounding properties will not be diminished; as no additional surface water will be leaving the site and the environmental load from the (2) two bedroom septic systems will not exceed the soils ability to dilute the nitrates produced.*

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

A. Please describe the special conditions of the property that distinguish it from other properties in the area, explain any details of the property, structure, that are different from surrounding properties such as slopes and wetlands: *The portion of the property to be used for the structure and ISDS are located on a relatively flat and sandy area. The surrounding land is primarily highly sloped areas with large amounts of ledge and silty soils that are most classified as category 3 - 5.*

i. Owing the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property: *We believe that the ordinance was created in a way that it could accommodate the vast differences between any given site in the town of Weare and provide a simplified scale of square footage per unit to determine its ability. By taking into account additional specific factors of our site, we were able to determine that our sites soils are capable of handling the designed load despite the town ordinance that bases this on square footage.*

ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property): *We believe the proposed use to be reasonable because the proposed structure will only be a total of 4 bedrooms (2 per unit) which is relative to a single family home which would be permitted without variance on this lot. Although a single family home could be built here, the cost of site development, coupled with the current construction costs would make this lot unbuildable for the current owner.*

Chairman Dearborn asked if their intent for building a duplex was to rent out half, as a single family home would be cheaper to build. Andrew Volckmann replied he is engaged to the owner's niece, they will utilize one side and his sister will occupy the other side, accommodating the two family members.

The Chair asked approving abutters to speak. There was none.

The Chair asked disapproving abutters to speak. There was none.

The Chair asked the public at large to speak. There was none.

The Chair asked other boards to speak. There was none.

The Chair asked the applicant if he would like to speak. Andrew Volckmann mentioned the lot size based on square footage, current average bedrooms in a single family home is 3.6. He is asking for four bedrooms, which is similar.

Vice Chairman Meyer asked what is the distinction between a four bedroom septic and a (2) two bedroom septic design. Andrew Volckman they are the same septic system. He explained this plan would share a leach field with separate tanks.

The Chair asked the Board for more questions of the applicant. There was none.

The Chair asked for a second round of abutters, public at large and other boards. There was none.

The Chair closed the hearing at 7:47pm and asked for a motion to approve point 1.

Case #17-2021

Board Deliberation

Point 1: Marc Morette moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case 17-2021. Discussion: Marc Morette mentioned the numbers have been done nicely, requirements not far off. Chairman Dearborn stated the size of this lot easily fits the State's requirements. Public interest is served. Vice Chairman Meyer agreed, population density, no issues with the septic system, lot accommodates two families easily. **Passed 5-0-0**

Point 2: Marc Morette moved, Vice Chairman Meyer seconded to accept point two. Discussion: Chairman Dearborn stated it is zoned residential, duplexes allowed. **Passed 5-0-0**

Point 3: Marc Morette moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Chairman Dearborn stated the statutes of justice have been done, burden on the individuals, best septic soil. **Passed 5-0-0**

Point 4: Marc Morette moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: Vice Chairman Meyer stated a residential property, not diminishing other properties by developing. Marc Morette added based on the plan it is a nice layout. Chairman Dearborn stated the lot frontage is 680 ft., no immediate neighbor. **Passed 5-0-0**

Point 5: Marc Morette moved, Vice Chairman Meyer seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated the unnecessary hardship was explained. Though lacking slightly on size, it would be a hardship if failed. **Passed 5-0-0**

The variance was approved.

B. Case #18-2021: Dylan Boisvert (owner) Jewett Road, Tax Map 410 Lot 16, RA Conservation Zone Variance – Article 28, Sections 28.6 & 28.9 Applicant is seeking a variance for the construction of a driveway to access the buildable part of the property. Access cannot be gained without relief to the wetland and buffer ordinance.

The Chair went through the application for completeness and asked for a motion to accept. **Malcolm Wright moved, Vice Chairman Meyer seconded to accept ZBA Case #18-2021.** Discussion: Being none. **Passed 5-0-0.**

Chairman Dearborn asked if the Board had any questions for the applicant. Being none, the applicant stepped up to the microphone, introduced himself, read the five points of hardship with answers.

Dylan Boisvert explained his reasoning for being here, construction of a driveway to access his buildable part of his property. Access cannot be gained without relief to the wetland and buffer ordinance.

Chairman Dearborn clarified the total disturbed area is 1862 sq. ft. and asked the Board if they had any questions of the applicant. Being none, Dylan proceeded with the five points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The purpose of the ordinance is to avoid and/or minimize impact to the wetland and wetland buffers in our Town. The property has wetland along the entire frontage of the lot restricting access to the building site. Access must be through the wetland and buffers on either side. A NH DES Wetlands and Non-site Specific permit has been filed with the State for review and approval. The driveway has been placed at the narrowest portion of the wetland and therefor minimizes the necessary impacts to the wetland complex. The crossing is entirely on private property and the general public will not be impacted in any capacity by the proposed driveway.*

2. Please describe how the spirit of the ordinance is observed: *The spirit of the Ordinance is observed by crossing the wetland at the narrowest part limiting impacts to the wetland and the buffer on either side of the wetland. The proposed*

use therefor does not conflict the spirit and intent of the ordinance. The driveway is proposed for a single-family residence consistent with the neighborhood and the project will not threaten public health, safety or welfare.

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *Access to the building site must cross through wetland and the associated buffers at some location. The proposed location is the least impacting alternative. By granting the waiver, substantial justice to the applicant is achieved, as the lot would otherwise be un-buildable. The general public will not be harmed by this request as the lot is a single family residential property with building rights consistent with the abutters and surrounding properties.*

4. Please describe how the values of surrounding properties are not diminished: *The proposed wetland and buffer impacts are entirely on private property owned by the applicant. The driveway is sinuous after the wetland crossing leading to the house location so; it will be difficult to see the proposed home, if at all, from Jewett Road. The driveway and slopes through wetland and buffer impacts will be stabilized by loaming and seeding. Proper erosion control are shown on the construction plans to reduce potential impacts to down gradient properties.*

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;
A. Please describe the special conditions of the property that distinguish it from other properties in the area, explain any details of the property, structure, that are different from surrounding properties such as slopes and wetlands: *Literal enforcement of the ordinance would result in unnecessary hardship to the property owner since the wetland complex cuts off the building location from Jewett Road. Denial of the Variance request would render the property unbuildable. Wetlands bisecting the lot is a special and unique circumstance that triggers the request for a variance to access the building location.*

i. Owing the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property: *Due to the special circumstances associated with this property: The general public all have rights to access their building locations if a property has similar wetland issues. The NH DES Wetlands Bureau recognizes this through laws and rules and they simply cannot deny access through wetlands as long as the request is necessary for productive use and impacts are minimized to the greatest extent possible. The state permit has been filed at the time of this application.*

ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property): *As noted, the building location on this lot is inaccessible without relief to the wetlands and wetlands buffer ordinance. The proposed use is residential consistent with zoning therefor the use and need is reasonable.*

The Chair asked the Board if they had any questions of the applicant. There was none.

The Chair asked approving abutters to speak. There was none.

The Chair asked disapproving abutters to speak. There was none.

The Chair asked the public at large to speak. There was none.

The Chair asked other boards to speak. There was none.

The Chair asked Dylan if he would like to speak. Dylan stated he has received approval from the State, NHDES #2021-03251 issue date of 11/17/2021 expires in five years.

The Chair asked the Board for more questions of the applicant. There was none.

The Chair asked for a second round of abutters, public at large and other boards. There was none.

The Chair closed the hearing at 8:07pm and asked for a motion to approve point 1.

Case #18-2021

Board Deliberation

Point 1: Marc Morette moved, Malcom Wright seconded to accept point one of the five points of

hardship for Case 18-2021. Discussion: Chairman Dearborn stated it is an engineered drawing approved by the State, minimum impact. **Condition: work designed to the requirement on the drawing of the Meridian Land Services project #11680.00. Passed 5-0-0 accepted as amended.**

Point 2: Marc Morette moved, Vice Chairman Meyer seconded to accept point two. Discussion: Vice Chairman Meyer stated the wetland buffer offers protection, but also intended to allow a variance for a residential property, bare minimum impact. Chairman Dearborn pointed out the lot is 29.3 acres, 1169 sq. ft. of frontage, chosen spot has the least impact. Marc Morette added with State approval. **Passed 5-0-0**

Point 3: Marc Morette moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Chairman Dearborn stated if not approved the lot is unbuildable. **Passed 5-0-0**

Point 4: Marc Morette moved, Vice Chairman Meyer seconded to accept point four. Discussion: Chairman Dearborn stated the applicant is building a compliant house that has to cross wetland to access the lot, long way from the neighbors. **Passed 5-0-0**

Point 5: Marc Morette moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated an unnecessary hardship for the owner if not allowed for the reasonable use as zoned. **Passed 5-0-0**

The variance was approved.

IV. MINUTES:

October 5, 2021 Minutes: **Marc Morette moved, Vice Chairman Meyer seconded to accept the minutes of October 5, 2021 as written, passed 4-0-1 Malcolm Wright abstained.**

V. NEXT MEETING:

January 4, 2021

Being that there was no more business to come before the Board, Marc Morette moved, Malcolm Wright seconded to adjourn the meeting at 8:14 pm., passed 5-0-0.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from
You Tube recording & TA Bolton notes