

DRAFT



WEARE ZONING BOARD OF ADJUSTMENT MEETING MINUTES July 12, 2022

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; BOBBI-JO PLAMONDON, MEMBER; MALCOLM WRIGHT, MEMBER; NAOMI BOLTON, INTERIM LAND USE COORDINATOR; TONY SAWYER, ZONING ADMINISTRATOR.

Absent: Marc Morette, Member

GUESTS: Raymond Drabble; Tony Tavares; Amy Chase; David Chase; Roxanne Quirk; Erika Mendez Hadley; Damon Hadley; Harry Hadley; Ryan Remillard; Bill Bolton; Kathrine Cloud; Timothy A. Cloud; Dennis Terrio; Craig Francisco; Tony Sawyer.

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment July 12, 2022 meeting to order at 7:32 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

The Chair stated tonight there are three requests for variances. Chairman Dearborn explained that there are only four members present tonight and in order for a variance to pass you need three yes's. Chairman Dearborn asked members present to introduce themselves. Chairman Dearborn explained all questions come through the Chair. He will ask for a motion to accept the application making sure there is adequate information to proceed. Clarification will be made on any missing information and he will ask the Board if they have any questions. The applicant will then come forward and read the five points of hardship or seven points for a special exception with answers. The Chair will again ask the Board if they have any questions. He will then ask for approving/disapproving abutters, public at large or other boards to speak. The applicant can rebut and then a second round of abutters, public at large and other boards. The Chair will then close the hearing and the Board will deliberate and vote.

II. PUBLIC HEARING

Case #09-2022 & #10-2022: Anthony Tavares (Owner & Applicant-both lots); Wildwood Road - Tax Map 404-024 & 404-025, Residential Zone; Variance – Article 17, Section 17.1.1. Applicant is seeking a variance on each lot for family cabins that are already constructed on a Private Road.

The Board reviewed all documentation submitted with the application for completeness. Vice Chairman Meyer stated that neither of the applications are signed and there is no zoning article number for a variance. Mr. Tavares was present. He signed the applications and added the article numbers. **Vice Chairman Meyer moved, Malcolm Wright seconded to accept both Case #09-2022 and Case #10-2022 as complete. Vote: 5-0-0** It was noted that both applications are identical except for the tax map and lot number, so they would be taken together.

Mr. Tavares explained that he has two lots on Wildwood Road where he already had constructed two cabins before realizing he needed a variance in order to build them. He is here to get approval for already constructed cabins.

Without any further questions, Mr. Tavares proceeded to address the 5 points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The relief will have no effect to the character of the neighborhood because the cabin is very secluded, nearest neighbor is 1000 plus feet away.*

Chairman Dearborn asked if the cabins were built without a permit. Mr. Tavares replied yes. Chairman Dearborn stated that both lots are accessed off lot 24 and need to be 50 feet from the residence per Article 36, which they do not now and will need to be. Chairman Dearborn asked if these cabins are for year round use. No reply. He asked if they were seasonal. Mr. Tavares responded yes. There is no internal water, septic or electric they are “just cabins for the family to hang out”.

2. Please describe how the spirit of the ordinance is observed: *The relief will have no impact on public health and welfare because no traffic.*

Chairman Dearborn stated that the impact is the use of a private road.

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *If relief is denied the loss to the applicant is greater than the gain to the public. The public stands to gain nothing from a denial because the public is not really affected by this project.*

4. Please describe how the values of surrounding properties are not diminished: *Middle of the woods cabin no septic or sewage, no electric, off the grid, no traffic, no parking on street.*

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: *Very Private 2.509 Acres with slope; Private Road; Dead End; 2000 feet from Main Road; 1000+ feet from closest neighbor.*

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: *To promote safety so that the Town can vet and regulate what gets built on private and Class 6 roads. If the relief is granted the existence of the cabin will not frustrate the purpose of the WZO (Weare Zoning Ordinance) because the cabin will have little to no impact on the neighbors or public safety.*

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: *Single family zone; single family cabin, thus the use is reasonable.*

After Mr. Giovagnoli finished going through the 5 points of hardship. Without any further questions, Chairman Dearborn asked him to take a seat and he asked for:

Approving Abutters: none

Disapproving Abutters: none

Public At Large: Bill Bolton, President of the Weare Winter Wanderers Snowmobile Club stated that Wildwood Road is part of a State of NH corridor snowmobile trail for the trail system, not a public maintained road. There are 28 lots on Wildwood Road, with the Town Conservation Commission owning the large lot at the end. Five have existing residences on them and if these two are approved it would make a total of 7, still leaving 21 lots vacant. If approved this opens the door to others to follow suit, build and come back later for approval. Other Boards: none

Being none, for the record Chairman Dearborn asked for a second go around.

Rebuttal of Applicant: Mr. Tavares stated that he is not touching the road he is only looking for variances to leave the already built cabins up.

Approving Abutters: none

Disapproving Abutters: none

Public At Large: Mr. Bolton added public safety really needs to be considered in case of emergency. Especially where it is mostly a snowmobile trail. The club has a very good relationship with the Fire Department and have been called upon in time of need. The club would prefer the roadway be left in its current state beyond the last residence for safety to snowmobilers, vehicles and groomer operators. Any road improvements would just invite unwanted traffic and will be more of a strain on the public safety services.

Other Boards: none

Chairman Dearborn then closed the public hearing at 8:17 PM and moved onto the board deliberation.

Board Deliberations:

Point 1: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case #09-2022 & 10-2022. Discussion: Chairman Dearborn stated that the following are minimum conditions and requirements that need to be met if variance is granted:

1. Approval per Article 4 – DRIVEWAY, COMMON: Shall mean the access to no more than two (2) lots. All common driveways must be approved by the Planning Board. Common driveways must be located on the frontage that was used to determine the minimum lot size of one of the lots. (Amended 3-12-2013)
2. Approval per Article 36.3.5.4: Access must be to within 50 ft. of each dwelling.
3. Approval per Article 36.3.6.1: The Code Enforcement Officer may require a certification or as-built plans prepared by a licensed land surveyor to demonstrate actual centerline grade. The CEO may issue a cease and desist order if this requirement is not met.
4. Applicant shall be required to post the necessary sign(s) at the transition from Class V road to a Private Road in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41, I, (c) – Private Road. Required sign wording policy:

This road has not been accepted by the Town of Weare or it consists of a Class VI or Private Road which the Town has no duty to maintain. The Town assumes no responsibility for maintenance including snow removal, nor any liability resulting from use of a street. RSA 674:41

5. Applicant shall be required to complete a Town of Weare Liability Disclaimer and file the Liability Disclaimer at the Hillsborough County Registry of Deeds and be consistent with NH RSA 674:41, I (d) – Private Road.
6. Applicant shall take the necessary actions to be in practical compliance with the Town of Weare Planning Board Subdivision Regulation for driveway permit requirements and Town of Weare Zoning Ordinance, Article 36. The Town of Weare Public Works Director shall be the authority for interpreting the “Practical” implementation of this requirement/condition.
7. Applicant shall be required to take the necessary actions to comply with the E911 signage requirement for proper residence location identification to support emergency vehicle for life and safety reasons.

Passed 3 – 1 (Wright)

Point 2: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Discussion: Chairman Dearborn stated that question speaks to public safety and it was good up to the driveway. **Passed 4-0-0**

Point 3: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Chairman Dearborn stated this speaks to substantial justice and it appears to meet a reasonable level of life and safety concerns. **Passed 4-0-0**

Point 4: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: Chairman Dearborn stated that this is for any diminished value of surrounding properties that approval of this may cause. The request is for a compliant use to the area. **Passed 4-0-0**

Point 5: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point five in its entirety with the inclusion of the conditions and requirements addressed in point #1. Discussion: Chairman Dearborn stated that if denied this would be a hardship to the owner of the lots. **Passed 4-0-0**

The variance was approved with the list of conditions/requirements stated in point #1.

Case #11-2022: Dennis A. Terrio, Jr (Applicant & Co-Owner); 61 Meadow Drive – Tax Map 402-067.004, Rural Agricultural Zone; Equitable Waiver of Dimensional Requirement, Article 18, Section 18.2; Variance, Article 18, Section 18.2. Applicant is seeking relief for the allowance of two existing chicken coops to remain one is 13.5’ from the side setback and the other is 22.26’ from the side setback.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept Case #11-2022 as complete. Vote: 4-0-0. The case has been filed with both an Equitable Waiver and a Variance. The thought was that if the Board approved the Equitable Waiver the Variance would not be necessary.

Mr. Terrio explained how we got here. The neighbor’s house (abutting neighbors) was sold. New neighbors and Terrio’s have been in dispute regarding the driveway entrance. The Terrio’s had their property surveyed and when surveyed it was realized that they have 14-16’ of his fence onto 3’ of his neighbor’s property. Chairman Dearborn asked Mr. Terrio the evidence to prove the discrepancy has occurred for over 10 years. Mr. Terrio stated that he put up a fence around the chicken coop many years ago without a permit, as he didn’t know he needed one. He now knows he needs a permit. The fence was put up in July/August of 2021. Mr. Terrio then explained to the Board the surveyed map that was included so that everyone understood that is being requested. Without any further questions, Chairman Dearborn asked Mr. Terrio to address the equitable waiver application.

Per RSA 674:33-a, the undersigned hereby requests an equitable waiver of dimensional requirement from **Article 18, Section 18.2** of the zoning ordinance to permit **(2) chicken coops**.

1. **Does the request involve a dimensional requirement, not a use restriction?** YES
2. **Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the Town:** The chicken coops were placed on my property with my prior neighbors consent as to location. The location of coops were to afford proximity to my home and natural cover for the chickens due to the hawks in our area. The coops have been in their current location for approximately 11 years being placed around 2010-2011.

OR

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser: I have my property surveyed by a licensed surveyor due to a property sale and new ownership at 69 Meadow Drive, Weare, NH 03281. I did this to ensure where my property line was in relation to the neighboring property.

AND how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake: Legitimate mistake, myself and Mr. VanBost, my previous neighbor estimated the property line with no survey markers in place. Mr. VanBost thought that the placement of the coops was proper and would not interfere with his property due to the fact that it is located at an incline to his property and was not useful property to Mr. VanBost.

3. **Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future use of other property in the area:** The property where the coops are located is in an unusable section of property according to Mr. VanBost from his perspective. It did not interfere with his business that he ran from his home nor did it affect his property value adversely.
4. **Explain how the cost of correction far outweighs any public benefit to be gained:** To move the coops a few feet from where they are currently located would be costly due to heavy equipment, concrete work, and electrical. There would be virtually no benefit gained from the move. The coops are not restricting activity or use of property.

After Mr. Terrio finished going addressing the equitable waiver application, and being there were no further questions, Chairman Dearborn asked him to take a seat and he asked for:

Approving Abutters: none

Disapproving Abutters: David Chase, 69 Meadow Drive stated that this has been going on for months. The newest issue has to do with this neighbor throwing chicken bones, etc. over the fence onto his property for his dogs to get into. Mr. Chase provided the Board pictures of the location and the chicken bones, etc. Mr. Chase feels the fence needs to be moved ASAP and the coops need to be relocated outside the setbacks.

Public At Large: Kathrine Cloud, daughter-in-law explained that the chickens started as her twin boys brought home two chickens from school, so the grandparents constructed a chicken coop to raise chickens with her sons.

Other Boards: none

Being none, for the record Chairman Dearborn asked for a second go around.

Rebuttal of Applicant: Chairman Dearborn stated that some of this would be cleared up if the missing stockade fence was put up. He asked Mr. Terrio if he would be willing to put up stockade fence versus chicken wire. Mr. Terrio responded that yes he would be willing to consider it, it would be costly but he would agree to it.

Approving Abutters: none

Disapproving Abutters: Amy Chase asked the Board if they do approve this request would there be a time frame. Her concern was again, getting to tonight has been since last fall and she would like to see it done immediately if approved. Chairman Dearborn stated that time frame would be up to Tony Sawyer, Zoning Administrator to enforce.

Public At Large: none

Other Boards: none

Chairman Dearborn then closed the public hearing at 9:20 PM and moved onto the board deliberation.

Malcolm Wright moved, Bobbi-Jo Plamondon seconded to approve the equitable waiver of dimension requirement with the following conditions: A 6' tall contiguous privacy stockade fence to be installed from point A to point B, shown on the surveyed map done by JE Belanger Survey Company, dated 6/16/2020, signed and stamped 5/18/2022. Discussion: Vice Chairman Meyer stated that due to the absence of a survey map at the time the chicken coops were installed an error occurred. **Vote: 4-0-0**
The equitable waiver was approved with conditions.

Case #12-2022: Craig A. Francisco, LLS (Applicant); Harry R. Hadley – Owner – 65 Concord Stage Road, Tax Map 201-032; Rural Agricultural Zone – Variance, Article 18.2.3. Applicant is seeking a variance for permission to subdivide and create a lot line 5 feet from an existing barn where 25 feet is required.

Chairman Dearborn read through the application and noted all the attachments. **Malcolm Wright moved, Vice Chairman Meyer seconded to accept the application as complete. Vote: 4-0-0**

Craig Francisco, surveyor from Bedford Design has proposed a plan for his client, Harry Hadley, to subdivide off a lot for his son, containing approximately 13 acres. The current lot has 53 acres. Due to the layout of the existing lot, the proposed lot line would be within 5' of the existing barn, where 25 feet is required as a side setback.

Mr. Francisco then proceeded through the five points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The variance is necessary to allow a 2-lot subdivision to create a 10+acre lot in the Rural Agricultural Zoning District. The variance request is to reduce the side setback from 25 feet to 5 feet. This is to allow the driveway to access the buildable area behind the barn. This parcel is one of 18 lots zoned rural agricultural located between 2 areas zoned Residential Village on the north side of Concord Stage Road. The south side of Concord Stage Road is also zoned Residential Village. Of the 18 lots located in this neighborhood in the Rural Agricultural Zoning District only 2 are in compliance. Sixteen of these lots do not comply with the setback requirements, according to the Town of Weare GIS. We are seeking relief from the same setback requirement.*

2. Please describe how the spirit of the ordinance is observed: *The setback is established to prevent homes from being closer than 50 feet apart (25-foot setback on each property). The buildable area of the proposed lot is over 300 feet from the barn. The reason for the variance is to allow driveway access to the buildable area.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *The owner is seeking this relief to allow a 2-lot subdivision, so his son can build a house on the new lot. The variance is for the side setback of an existing barn, owned by the applicant, to the proposed lot line. The proposed use is residential and is compatible with the surrounding lots. The loss of the owner's ability to subdivide far outweigh the gain lost by the general public.*

4. Please describe how the values of surrounding properties are not diminished: *This parcel is one of 18 lots zoned rural agricultural located between 2 areas zoned Residential Village on the north side of Concord Stage Road. The south side of Concord Stage Road is also zoned Residential Village. Of the 18 lots located in this neighborhood in the Rural Agricultural Zoning District only 1 is in compliance with the ordinance. The only lot in compliance is owned by the Town of Weare as conservation land. Sixteen of these lots do not comply with the setback requirements. We are seeking relief from the same setback requirement.*

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:

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: *The general public purposes of the ordinance do not fit the existing uses of the neighborhood. Only 2 of 16 developed lots meet the setback requirements in the Rural Agricultural District and those 2 lots are undeveloped. So, the specific application of the setback requirement to this property is unfair.*

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: *The proposed use is residential, and the purpose of this variance is to allow a permitted use. The variance is for the setback from the proposed lot line to the existing barn, owned by the applicant, to allow a driveway to access the buildable area.*

B. Please describe the special conditions of the property that distinguish it from other properties in the area: *The minimum lot size in the Rural Agricultural Zone is 5 acres. This lot is approximately 53 acres and is the only lot located on Concord Stage Road between the 2 Residential Village Zones that is large enough to be subdivided, excluding the Town land which is being held in conservation. All the other lots that front on the north side of Concord Stage Road and are zoned Rural Agricultural are less than 10 acres.*

Owing the special conditions identified above, please indicate how 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. *The proposed use is residential and is consistent with the surrounding use and is in the Rural Agricultural Zone. The variance is required to allow a driveway between the existing barn, which is owned by the applicant, and the proposed lot line.*

Without any further questions, Chairman Dearborn asked Mr. Francisco to take a seat and he asked for:

Approving Abutters: Ryan Remillard, 69 Concord Stage Road stated that he is a direct abutter to this and he has no issues. They are good neighbors and wishes them the best.

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Being none, for the record Chairman Dearborn asked for a second go around.

Rebuttal of Applicant: none

Approving Abutters: none

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Chairman Dearborn then closed the public hearing at 9:35 PM and moved onto the board deliberation.

Board Deliberations:

Point 1: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case 12-2022. Discussion: Chairman Dearborn stated that the request seems like a reasonable one, therefore he does not see the need for any conditions. **Passed 4-0-0**

Point 2: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Discussion: none. **Passed 4-0-0**

Point 3: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: none **Passed 4-0-0**

Point 4: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: none **Passed 4-0-0**

Point 5: Malcolm Wright moved, Vice Chairman Meyer seconded to accept point five in its entirety. Discussion: Vice Chairman Meyer stated that the lot had ample land in the back and it could be a burden to the owner if denied. **Passed 4-0-0**

The variance was approved as requested, no conditions.

V. NEXT MEETING:

August 2, 2022

Being that there was no more business to come before the Board, Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to adjourn the meeting at 9:39 pm., passed 4-0-0.

ADJOURNMENT

A True Record.

Naomi L. Bolton

Naomi L. Bolton

Town Administrator

Interim Land Use Coordinator