

Final



WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 5, 2021

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

ZOOM INVITES: Madison Albee, Dylan Boisvert, Thomas Carr, Travis Corcoran, Marc Descoteaux, Brian Dunbar, Gil & Shelley Duquette, Nicole Fradette, Linda Goonan, Melanie & Robert Gordon, Kelly Hebert, Rory Miller, Larry Price, Art Siciliano, Jeff Spring

ZOOM HOST: Naomi Bolton, Town Administrator

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 #13-20, application for a variance from Gil and Shelley Duquette of 271 Quaker Street. Second, Case #01-2021 application for a variance from R. John and Rodalynn Knox for property on South Sugar Hill Road. Thirdly, Case #02-2021, application from Dylan Boisvert and Madison Albee for property on Jewett Road. Chairman Dearborn explained each case is viewed separately; the first case overview was done previously. A motion to accept the application will be made making sure the minimum requirements are presented, a second, and then a discussion. Board members will vote individually, and then the applicant will come forward, speaking on behalf of their application. Once questions of hardship and answers are read, approving abutters will speak. Then disapproving abutters, other Boards, and the public at large will speak. The applicant then responds, followed by another round of abutters, other Boards and the public. The Case is then closed. The Chair will ask for a motion in the positive to approve, second, then a discussion and conditions noted. All five variances will be done individually; three yes votes are needed to pass. If the motion fails, the applicant can reapply with new information, next it can move to Superior Court.

II. PUBLIC HEARING

A. Continuation of Case #11-20 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.

Board Members hearing this case are: Gary Shelto, Mike Meyer, Bobbi-jo Plamondon, Marc Morette, Jack Dearborn. The Chairman established this case is open, seconded, voted on in the affirmative and recognized Gil & Shelley Duquette to speak.

Shelley Duquette stated they want a continuance because of the pending 3.5 Zoning Ordinance changes. The Chair recognized Kelly Dearborn-Luce, Land Use Coordinator, to respond. Kelly stated the Planning Board is proposing to change Article 3.5 by adding the words *Sensory Dwelling*, so that a garage or a shed can be constructed on a non-conforming lot with reduced setbacks. A 2021 warrant article for the March vote. Such changes, continued Kelly, may or may not affect any upcoming applications or ZBA cases. The Chair stated the Planning Board had a public hearing December 10, 2020, proposed changes were approved and language sent to town counsel to be included in the 2021 Town Warrant. The Chair asked for a motion to postpone Case #13-20 until April 6, 2021.

Mike Meyer moved, Marc Morette seconded to postpone this case until April 6, 2021. Passed 5-0-0

The Chair stated this case will be heard in April. If the Warrant Article fails, this case will continue as if there was no break. If the Warrant Article passes, the Chair will asked for the case to be dismissed.

B. Case #01-2021 Application for a variance for R. John and Rodalynn Knox for property on South Sugar Hill Road, Tax Map 406, lot 33.1 in the Rural Agricultural & Commercial Districts. The variance is to construct a driveway through the 25-foot wetland buffer.

Board Members hearing this case are: Mike Meyer, Bobbi-Jo Plamondon, Marc Morette, Malcom Wright, Jack Dearborn. The Chair stated the wetlands impact is 3060 square feet and asked for a motion to accept the application.

Mike Meyer moved, Bobbi-Jo Plamondon seconded to accept Case #01-2021.

Chairman Dearborn stated there is a driveway culvert on the road in place with an additional culvert to be installed roughly 50 feet back for seasonal runoff.

Passed 5-0-0

The Chair recognized Art Siciliano, Surveyor, to speak.

Art Siciliano asked the Chair if the applicant, John Knox, should be called to authorize Art to present this case. The Chair answered in the affirmative. John Knox, via phone, stated he authorized the representation.

Art Siciliano continued with the five points of hardship:

- 1. The Variance will not be contrary to the public interest:** This disturbance of the 25' wetland buffer is for a private driveway. The disturbance will take place away from the road. The public will not be using the private driveway.
- 2. Please describe how the spirit of the ordinance is observed:** The ordinance allows wetland crossing for driveways. This is the only way to get to the buildable area on the lot. So, the spirit of the ordinance would and should allow disturbance of the 25' wetland buffer for this residential driveway. The driveway is a normal view to the public passing by the lot and not injure public rights.
- 3. Please describe how substantial justice is done:** The owner will be able to gain access to the buildable dry area of the land for residential use.

4. **Please describe how the values of surrounding properties are not diminished:** This portion of the lot zoned for residential use, as are the surrounding properties. The proposal is to construct a driveway thorough the wetland and 25' wetland buffer for a residential home. Similar uses in the same neighborhood will not diminish values.

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:** The wetland and wetland buffer on this lot bisects the property from side to side. In order to get access to the dry buildable land on the lot that special condition must be crossed.

i. **Owing to 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 purpose of this ordinance provision is to protect all wetland areas, regardless of where they are in town. Application of that provision to this lot would deny residential use of the lot. The provision is there to protect all wetland, but in this case, a variance will allow use and not deny use.

ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** The owner will be able to gain access to the buildable dry area of the land for residential use.

B. **Please describe the special conditions of the property that distinguish it from other properties in the area:** Same response as A.

i. **Owing to 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:** Application of the ordinance provisions to the lot would not allow access to the useable area of the lot. The lot is zoned for residential use. In order to reasonably use the lot, a variance is needed to construct a driveway to a home on the buildable dry area of the lot.

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

The Chair asked any approving abutters to speak.

Melanie and Robert Gordon, 238 South Sugar Hill Road, asked for clarification, this application was strictly for a driveway for Lot 33.1 parcel and not for the applicant's parcel behind. Art Siciliano responded that is correct, the other land is to be added to their house lot. Melanie Gordon restated this is separate from their commercial property behind. Art Siciliano responded yes. Melanie Gordon then asked about the Rural Agricultural Conservation Overlay which states you have to have *twice as much dry land*. Chairman Dearborn replied the applicant will be addressing this with the Planning Board. Art Siciliano stated he believes when the Rural Agricultural Zone lot size went to 5 acres the *twice as much dry land* was eliminated. Melanie Gordon stated she understands this is a Planning Board issue.

The Chair asked any more approving or disapproving abutters, other Boards, or the public at large to speak. There was none.

The Chair asked Art Siciliano if he wanted to add anything. He responded no.

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

The public hearing was closed at 8:01pm.

The Chair stated the plan speaks for itself, impacting 3060 sq. ft., access to the property.

The Chair asked for a motion to accept prong 1.

Marc Morette moved, Mike Meyer seconded to approve prong 1. Passed 5-0-0
Mike Meyer moved, Bobbi-Jo Plamondon seconded to approve prong 2. Passed 5-0-0
Marc Morette moved, Bobbi-Jo Plamondon seconded to approve prong 3. Passed 5-0-0
Mike Meyer moved, Marc Morette seconded to approve prong 4. Passed 5-0-0
Mike Meyer moved, Marc Morette to approve prong 5 in its entirety. Passed 5-0-0

Variance is approved.

C. Case #02-2021 Application for a variance for Dylan Boisvert and Madison Albee for property on Jewett Road, Tax Map 410, lot 16 owned by Marc Descoteaux in the Rural Conservation District. The variance request is to construct a single family home on a Class VI Road.

Board members hearing this case are: Mike Meyer, Bobbi-Jo Plamondon, Marc Morette, Malcolm Wright, Jack Dearborn. Malcolm Wright asked the Chair to sit this case out as he is a neighbor of Dylan Boisvert. Chairman Dearborn asked if Malcom had a financial interest in the case. Malcom replied no and said he will stay.

The Chair asked for a motion to accept Case #02-2021.

Mike Meyer moved, Bobbi-Jo Plamondon seconded to accept Case #02-2021. Passed 5-0-0

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

The Chair recognized Dylan Boisvert & Madison Albee to speak.

Dylan Boisvert continued with the five points of hardship:

1. The Variance will not be contrary to the public interest: The primary purpose of conservation lands is to conserve and manage important habitat for the benefit of regionally or internationally significant fish and wildlife species. With our proposal, we would keep the majority of the lot in “current use.” The subject lot is almost 20 acres; we would only utilize 2 – 5 acres as the building lot and keep the remaining acreage in “current use” to maintain the general purpose of the ordinance and the essential character of the area. The proposal would not threaten the public health, safety or welfare or otherwise injure the public’s rights, as much of the lot would remain as it is today.

2. Please describe how the spirit of the ordinance is observed: The proposed use will not conflict with the general purpose of ordinance and will not alter the essential character of the neighborhood, would not threaten the public health, safety or welfare or otherwise injure the public’s rights as much of the lot would remain as it is today as over 24 acres will remain in conservation as currently zoned.

3. Please describe how substantial justice is done: While inherently rigid, there are mechanisms in zoning to allow for flexibility. We are asking for flexibility with the variance application where the benefit of granting such request will not be outweighed by the neighbors or general public. The proposed building sight would be closer to the road whereas maintaining the ability for public use of the remaining acreage as it is done today. Further, there is potential if variance is granted, the road maintenance would be shared with the new occupants of the dwelling. The concept of substantial justice raises issues of fairness for the community and neighbors and peculiar to the property, whereas other similar lots on Jewett Road have had the benefit of selling lots to constructing dwellings in the past.

4. Please describe how the values of surrounding properties are not diminished: The proposed use would not diminish surrounding property values. If the variance is granted. The proposed lot would have a small two-story dwelling constructed of not more than 2000 sq. ft. The proposal would result in an overall increase in property value and tax base created by such improvements. The dwelling would have a 3-bedroom septic; the dwelling would be aesthetically pleasing that would fit in with the existing homes. The dwelling would

be a minimum of 1500 ft from the Hebert family and approximately 700 ft from the Fradette family, from proposed building plan.

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: The following special conditions of the property make an area variance necessary in order to allow the development as designed. The fact that the ordinance in place would restrict building a dwelling on subject lot whereas others on the same road have been afforded the ability to sell their homes or lots for gain without the zoning restrictions is an undue hardship as the property does not have any substantial special conditions, such as the lot is not considered a “wetland,” acreage is considered sloping. As stated above, the dwelling would be aesthetically pleasing, and much of the acreage would remain the same as today.

i. **Owing to 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:** No special conditions exists to this subject lot when compared to other properties on Jewett Road.

ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** The proposed use is a reasonable request and it is unjust to the existing owner to have such restrictions placed on him when others have been afforded the opportunity to perform construction, sales of property and such for similar properties as the owner is requesting for the subject lot.

B. Please describe the special conditions of the property that distinguish it from other properties in the area: As described above there are no special conditions of the property that distinguish it from other properties in the area.

i. **Owing to 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 same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden due to the rigid permit restriction. The subject lot cannot be put to a reasonable use. The hardship is due to circumstances unique to the property location where other buildings have occurred on Jewett Road. The variance will not alter the essential character of the area. The variance is minimum necessary. Hardship is not self-created; the current owner or previous owner did not create the need for the use variance. It is not reasonable for the current owner to use the property as restricted and eliminate undue hardship under the strict conformance with the ordinance.

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

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

The Chair asked for any disapproving abutters to speak.

First to speak was Kelly Hebert, 97 Jewett Road, she stated her concern is though there are a lot of houses on Jewett Road, her house, built in 1987, is the only one on the side of the road the applicant is trying to build on. It is her understanding the road would need to be brought up to a Class V.

Next to speak was Nicole Fradette, 294 Mountain Road, her concern is where the house will be sited as the front of the applicant's property is very wet, and if built further back, it would be too close to her horse field. She asked the Board if environmental studies have been done to address if this build site would affect her horses' grazing. In her opinion, approving this variance could prevent her future plans of operating a horse training facility. She asked the Chair for conformation as to whether an environmental study had taken place. Chairman Dearborn responded no, it is unreasonable to expect every residential property to have

conservation/environmental studies before a build. He continued this Zoning Board meeting pertains to Jewett Road, life and safety issues. This application is roughly thirty acres, with 1600 ft. of road frontage for the applicant to build on; he does not see any issues. The state of NH has to approve a septic design.

Nicole Fradette reiterated her concern for her horses' grazing adjacent to the applicant's property if a house lot is approved. Chairman Dearborn questioned how the applicant's house lot of roughly five acres out of the property's thirty acres could affect the adjacent property's horses grazing. Nicole replied the house placed in the back of the property would be too close to her field. Chairman Dearborn stated Zoning Laws allow the applicant to build 25' of the property boundary and 50' from the road frontage.

Mike Meyer stated the only reason the applicant has come forward is the Ordinance does not allow him to build on a Class VI road. Chairman Dearborn and Bobbi-Jo Plamondon clarified the Board directives align with Article 17.1 PERMITTED USES AND RESTRICTIONS, No building permit for new homes shall be issued on any Class VI or private road.

Nicole Fradette stated her dismay, approving the applicant's house lot would be disregarding her concerns for the hardship to her fields. Specifically, an environmental contamination, with the brook her horses will be drinking from and her fields as her property is south of the applicant's proposed build site.

Chairman Dearborn stated if the applicant's property is a wetland, then he/she has to stay a specific amount of feet away, according to Zoning Laws. Setback protection from side boundaries and frontage from the road. No variance for a wetland buffer to be discussed tonight. Approval would be needed in compliance with the state for septic, water supply and pollution control regarding a wetland. Restating, tonight's meeting pertains to the road; conditions will need to be met.

Nicole Fradette asked the Chair if the state would make sure neighboring properties could not be contaminated. Chairman Dearborn replied that would be a civil matter in court. If this Board approves the application, the applicant then goes before the Board of Selectmen, who regulate the Class VI road.

Mike Meyer stated following the Zoning and Select Board a building permit would have to be issued. If there are any violations at that time, it will come back to the Zoning Board.

The Chair asked for other disapproving abutters.

Kelly Hebert spoke again, in reference to lots sold on Class VI roads to buyers unaware a variance is required in order to build. She stated this needs to be made known if this house is approved. The Chair noted this will be addressed in tonight's conditions.

The Chair asked for the public at large to speak.

Linda Goonan, 133 Jewett Road, stated her concern is for the maintenance of the road. Specifically, the culvert and a needed bridge replacement. The culvert is in disrepair, stone and registered with the Historical Society. Emergency vehicles would have a hard time negotiating the current road condition and dangerous curve approaching from Mountain Road. Chairman Dearborn stated he witnessed the culvert with water going over the road and a commercial LP gas truck that refused to cross.

Linda Goonan explained with tonight's approval other lots on the road would come before the Board for variances. Chairman Dearborn explained they can come before the Board.

Linda Goonan also stated she has another concern that directly relates to the road. They have problems with ATV use on Jewett Road. Destroying the road while the homeowners have to repair and maintain. More house lots could aggravate this situation. She stated ATV use is illegal; her frustration is the town does little to stop it. Though it is illegal for them to ride their horses on the road as well, even though they maintain it, the ATV use would make it impossible. Chairman Dearborn stated this would be a discussion for the Board of Selectmen. Linda Goonan asked the Chair if signs could be placed to help with enforcing the law. The Chair suggested going to the Board of Selectmen.

The Chair asked for other Boards to speak. There was none.

The Chair asked if the applicants would like to speak.

Dylan Boisvert & Madison Albee had some follow up statements. To Nicole Fradette's concern with the placement of his house lot in reference to her fields and the mentioning of wetlands. After measuring, his house lot would be 600 ft. from her fields and 700 ft to her house. As to the term wetlands, they are not; it is a runoff with the brook resulting in no contamination to her horses' drinking water. He also pointed out, there would be no increased ATV activity associated with him. As to the road maintenance, they are fully prepared to help; happy to plow long passed his driveway. With regards to the historical culvert, he has already verbally agreed to be part of that repair. The Chair explained the culvert would be an issue for DPW Director Knapp as the culvert would need to be augmented, not repaired.

The Chair asked for any approving abutters or disapproving abutters, public at large or other Boards to speak for the second time. There was none.

The public hearing was closed at 8:52pm.

The Chair asked for a motion for prong 1.

Marc Morette moved, Mike Meyer seconded to approve prong 1 with the following conditions.

The Chair offered the following conditions:

1. The applicant shall be required to post the necessary sign(s) at the transition from a Class V/Class VI in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41, I, (c) Class VI road.

Required Sign Wording Policy: This road has not been accepted to 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

2. The applicant shall be required to complete a Town of Weare Liability Disclaimer and file the Liability Disclaimer at the Hillsborough County Registry of Deed, and be consistent with NH RSA 674:41

3. The applicant shall take the necessary actions to be in practical compliance with the 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.

4. The 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 responses.

5. In the vicinity past historical stone culvert on Jewett Road along the future land of Boisvert, implement a widening of Jewett Road for a minimum of 16 ft. wide by 50 ft. long, so two emergency vehicles can pass safely. Passed 5-0-0

Nicole Fradette asked if the road widening would affect her property. The Chair responded there would be no impact to anyone's property.

Marc Morette moved, Bobbi-Jo Plamondon seconded to accept prong 2. Passed 5-0-0

Marc Morette moved, Mike Meyer seconded to accept prong 3. Passed 5-0-0

Marc Morette moved, Malcolm Wright seconded to accept prong 4. Passed 5-0-0

Mike Meyer moved, Marc Morette seconded to accept prong 5 in its entirety. Passed 5-0-0

Variance was approved.

The public hearing was closed.

III. OTHER BUSINESS:

Bobbi-Jo Plamondon is no longer an alternate, but now a member to the Zoning Board.

IV. MINUTES:

December 1, 2020 Minutes: **Mike Meyer moved, Marc Morette seconded to accept the minutes of December 1st, as amended, passed 5-0-0**

December 8, 2020 Site Walk Minutes: tabled

Being that there was more business to come before the Board, Mike Meyer moved, Bobbi-Jo Plamondon seconded to adjourn the meeting.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from

Zoom recording, TA Bolton notes & LUC Dearborn-Luce notes