

Final



WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
June 1, 2021

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

ZOOM INVITES:

Case #07-2021: Michael & Jackie Colburn

Case #11-2021: Stacy Tower

Case #12-2021: Brittany & Porter Weeks, Zachary Gosztyla, Joel Lehrer

Case #13-2020: Shelley Duquette, Brian Dunbar, Jack Meaney

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 four cases before the Board, Case #07-2021, Case #11-2021, Case #12-2021 and Case #13-2020.

The Chair received a request for a continuance for Case #11-2021, Woodridge Properties (owner); Higginson Land Services (applicant) Peaslee Hill Road, Tax Map 405-020, Rural Agricultural Zone Variance – Article 28, Section 28.9 Applicant was seeking a variance to upgrade existing culvert and driveway to build a single family residence, both of which would impact the wetland.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to continue Case #11-2021 to July 13, 2021. Passed 5-0-0

The Chair stated each case would be dealt with individually. He then asked the Board to introduce themselves. All five members are present. The Chair stated he will read the synopsis of each case and will ask for a motion in the positive. Then a second, followed by a discussion to accept the application. If additional information is required, the case may be dismissed or granted a continuance with conditions. Next, the Chair will ask for the applicant to be unmuted and read their application, their questions of the five points with answers. Naomi Bolton will then unmute boards, abutters approving and disapproving, other boards and the public at large. The applicant will then be asked to rebut, followed by a second round of boards, abutters, other boards and the public at large. The Chair will then close the public hearing. The ZBA members will deliberate and vote.

II. PUBLIC HEARING

A. **Case #07-2021** (Continued from 4-6-2021). Lake Shore Village Realty Holdings, LLC, Michael Colburn, 18 Chester Drive, Tax Map 103-001, 2.05 acres Residential Zone. Applicants address is 133 Cottage Road, Weare, NH. Variance – Article 3, Section 3.5.1 Applicant is to construct a 24 x 28 garage within the front setback.

The Chair read through the application with attachments and asked for a motion to accept.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept Case #07-2021 as complete. Passed 5-0-0

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

The Chair asked Michael Colburn to begin by reading the five points of hardship.

Michael requested to give a brief history of the property. The Chair welcomed Michael to do so.

His grandfather developed the property in the 40s with lakeside rental cabins. Michael's home on the property is where the original ski lodge was located, with two rope tows and a couple trails. Operating for roughly 13 years until 1960 when Pat's Peak Ski Area was developed, a much bigger option for skiers. The property changed hands a few times until Michael purchased it a few years ago, demolishing the dilapidated lodge, building his new home in its place with large windows overlooking the lake.

The steep topography limits his placement for a garage. Michael begins with the five points of hardship:

1. **The Variance will not be contrary to the public interest:** *This is a residential neighborhood where most other houses have garages. Therefore, a garage on this lot will not conflict with character of the neighborhood, threaten the public health, safety, or welfare or otherwise injure any public rights.*

2. **Please describe how the spirit of the ordinance is observed:** *This garage would be built on a non-conforming residential lot, but would not negatively impact the comfort, peace, quiet or enjoyment of the neighborhood, or cause significant disturbance or unreasonable annoyance to anyone in the area. It will not reduce property values - it is likely to enhance them.*

3. **Please describe how substantial justice is done; benefits to the applicant must not be outweighed but harm to the general public:** *This is a residential lot where a single family house already exists. This lot is non-conforming because it was created prior to 1988, before the zoning setbacks were created. An average sized garage is needed to benefit the house, particularly given the inclement weather we experience in the winter. There is only one reasonable place to put the garage, which falls within the front setback due to the extreme slopes on the lot.*

4. **Please describe how the values of surrounding properties are not diminished:** *This is a very nice residential neighborhood, where all homes are of above-average value and most have garages. This lot and it's home (constructed in 2019) is of the same character. A house such as this, and the surrounding houses, will benefit from the enhancement of a garage. It would likely enhance property values, not diminish them.*

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 slopes dictate where the garage can be built on this lot - within the front setback, adjacent to the private road provides access to this home. That is the only place it can be built. Literal enforcement of the setback provision would prevent the construction of any garage on this residential 2.05 acre lot.*

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: *Article 3.5 contemplates buildings on non-conforming lots. The creation of this residential lot pre-dated the creation of lot setbacks. The slopes of this lot require some accommodation for a garage to exist. The resulting construction of a garage is consistent with the purpose of the ordinance and residential living in a rural residential area on a private road.*

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 zoning restriction interferes with the reasonable use of the property: *Given that the lot sizes and houses in this neighborhood are not dense, there will be no actual impact on any other resident. In fact, the side property line closest to the proposed garage abuts a large open space owned by Lake Shore Village Resort - where a community septic system exists. There is no dwelling unit for a significant distance. It is also worth noting that the front setback is adjacent to the private road - "Chester Drive" - the bulk of which is owned and maintained by Lake Shore Village Realty Holdings LLC (the LLC which I am a partner in).*

The Chair asked if there were any questions from the Board. 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 the applicant if he would like to speak. Michael asked the Board if they had any questions and offered a video to show the placement of the proposed garage. The Chair granted the video to be viewed. It began on Chester Drive showing two nearby homes, proceeding to Michael's property depicting the steep topography along with the proposed garage area.

The Chair asked for a second round of speakers. There was none.

The Chair closed the public hearing and asked for a motion to approve point 1 of Case #07-2021.

Case #07-2021

Non-Public: Board Deliberation

Point 1: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point one with the condition the garage is no closer than 8.5 ft. to Chester Drive in the five points of hardship for Case #07-2021. Discussion: Chairman Dearborn stated the road to a 50 ft. setback would bring you to the applicant's doorstep. The video showed the severity of the drops on the property. The applicant needs a variance at 8.5 ft. With a setback relief to Chester Drive of no more than 8.5 ft. The area is well established homes in a nice neighborhood. No impact or issues. Vice Chairman Meyer stated the video was helpful, standard garage, he agreed with Chairman Dearborn's assessment. The Board agreed. **Passed 5-0-0**

Point 2: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Discussion: Chairman Dearborn stated it is reasonable/allowed in the zone to have the garage. The slope of the lot and the proximity of the road are the only issues. The Chair is in favor of the variance. The Board agreed. **Passed 5-0-0**

Point 3: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Chairman Dearborn explained the nature of the lot implies no injustice to the town with significant justice for the applicant. The Board agreed. **Passed 5-0-0**

Point 4: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: Chairman Dearborn stated it is a nice area, not diminishing to neighborhood properties. The Board agreed.

Passed 5-0-0

Point 5: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated it is reasonable use, if the variance did not pass it would create hardship for the applicant. The Board agreed. **Passed 5-0-0**

This variance passed.

B. Case #12-2021 Joel Lehrer & Robyn Parets (owner): Brittany & Porter Weeks, Highland Design (applicant). 104 Pondview Road, Tax Map 108-073, Residential Zone Variance – Article 28, Section 28.9 Applicant is seeking a variance for the installation of stone stairs to provide safe access to existing dock and pond; and implementation of 168 SF perched beach adjacent to the dock.

The Chair read through the application and attachments.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept Case #12-2021 as complete. Discussion: Chairman Dearborn stated he viewed the property today and spoke to the owner. Existing walkway to Mount William Pond was rocky with stumps. He understands the need for improvement. **Passed 5-0-0**

The Chair asked Brittany Weeks to begin by reading the five points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The proposed stairs will be made from natural bluestone and will range in width from 3-4'. They will be built to minimize disturbance to the surrounding vegetation and terrain. The landings between the flights of steps will be constructed in a way that allows them to be pervious. Natural boulders will be strategically placed in areas adjacent to the steps to transition grade and provide planting pockets for native vegetation flanking the path. The pathway will be located so as to minimize tree removals and maintain the natural beauty and character of the shoreline of Mount William Pond. The proposed perched beach will be located within a very small footprint and is only intended to allow enough space for 2 or 3 chairs at most. The beach configuration will be quite biomorphic and will ultimately be informed by the surrounding ledge and larger boulders. It will be constructed using no more than 6 cubic yards of clean, washed beach sand. Natural boulders will be added to the existing hardened shoreline allowing the perched beach to be level and to separate it from the water. Filter fabric will be placed underneath the sand to prevent erosion, and plantings will be added around the beach to further inhibit runoff. A combination of filter socks and silt fencing will be installed prior to any construction to prevent erosion.*

2. Please describe how the spirit of the ordinance is observed: *The intent is simply to provide safe access to Mount William Pond so that the homeowner and their family are able to enjoy low-intensity uses such as swimming, kayaking, and wildlife viewing. The homeowner loves the natural appearance of the shoreline and wishes to minimize disturbance and maintain this character. Therefore, the design of the walkway and perched beach is such that it will allow for safe access and enjoyment by using the smallest footprint to do so and employing the best construction practices to ensure the long term health and safety of the surrounding environment. The intent is not only to do no harm, but to leave the site improved upon by minimizing erosion through the use of pervious technology and through the addition of beneficial native plant material.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed but harm to the general public: *Substantial justice is done because there is currently no access to the water and existing dock besides walking over rough and steep terrain. In addition, most of the neighboring properties around Mount William Pond currently have access to the pond in ways that have either a similar or much larger impact on both the health and character of the pond and shoreline. Therefore, this project would not be setting a new precedent based on what currently exists in this community. The proposed stairs and small perched beach would merely be providing the homeowner with an equitable opportunity to access and enjoy the pond that is currently afforded to the majority of their neighbors.*

4. Please describe how the values of surrounding properties are not diminished: *The installation of a natural stone stairway to access the existing dock and a small sitting area (perched beach) and addition of native plant material would not diminish the values of the surrounding properties because these are common improvements that are implemented on shorefront properties of this nature, as is evident by viewing the neighboring properties. The proposed changes will be subtle from the vantage point of the neighboring properties because there will be very few tree removals, and the footprint of the path and perched beach are small and take advantage of the existing grades to create the most natural appearance and ease of implementation. The values of the surrounding properties would likely be improved based on the proposed improvements due to the addition of native plant material and natural stone that will be part of this project's success.*

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: *This property is distinguished from other similar properties because it is perched high above the pond in elevation and does not currently have safe access to the shoreline or its existing dock which most of the other surrounding properties have.*

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: *Literal enforcement of the provisions of the ordinance would prevent the homeowner from installing stairs to access their dock which would set them apart from their neighbors who either have a more level piece of land that makes it easy to access the shoreline safely or who already have a set of stairs in place.*

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 zoning restriction interferes with the reasonable use of the property: *The proposed use is reasonable because it would allow the homeowner to safely access and enjoy Mount William Pond, which is one of the main reasons that they purchased the property. Article 28.2.7 states it is the purpose and intent of the Weare Zoning Ordinance to "encourage those low-intensity uses that can be harmoniously, appropriately and safely located close to Wetlands". The proposed stairs and small perched beach would allow the homeowner to partake in those low-intensity uses that the ordinance wishes to encourage that promote a further appreciation for the importance of protecting these natural resources. In addition, this project, as designed would consolidate access and foot traffic along one permanent pathway and sitting area, thus limiting disturbance and foot traffic throughout other areas of the property which can compact soils and contribute to erosion and inhibit understory growth. Beyond that, the addition of native plant material along the path and around the proposed perched beach would contribute to the natural beauty of the shoreline, provide food and habitat for wildlife, reduce erosion and slow storm water runoff.*

The Chair asked if there were any questions from the Board. There was none.

The Chair asked approving abutters to speak. Zachary Gosztyla, 113 Pondview Road, asked if the beach was going to impact natural existing waterfront. There are many other neighbors who already have beaches. There are not many trees along the shoreline for natural life nesting. Will many trees be removed, along with the blueberry bushes that are in place now?

Brittany Weeks responded there would be a small area enough for two chairs, no sand landing at the water's edge. Their goal is it would not be viewed from the water. Porter Weeks added roughly 4000# boulders would be used to create the perched beach, a naturally integrated design.

Zachary Gosztyla was pleased with the Week's response.

The Chair asked other 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 Brittany if she wanted to speak. Brittany emphasized the homeowner is looking to maintain trees to keep it private. Their number one goal is a safe access path while creating a natural setting. Porter added they are very aware of the disturbance bringing in large equipment; the pervious system minimizes the forest disturbance.

Chairman Dearborn asked about the L1 symbol on the design plans from Highland Design. Brittany replied she is the designer, Stone Blossom Landscape & Design, LLC. would be doing the installation.

Chairman Dearborn stated Brittany Weeks, Highland Design, would be held accountable for the proposed design. He requested Brittany to explain that to L1 Design. Brittany stated this plan has been approved by the wetlands and shoreland, she has permits in hand.

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

The Chair closed the public hearing.

Case #12-2021

Non-Public: Board Deliberation

Point 1: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point one with the condition the design to be compliant to the L1 plan within the five points of hardship for Case #12-2021.

Discussion: Chairman Dearborn stated he viewed the property and met the owner. There are large pine and oak trees in place. The existing pathway is a 45° angle going down, treacherous rocks, boulders and small stumps. Consistent to what the Weeks described. Marc Morette stated from the pictures you could see that it is currently unusable. The proposed design is nice with minimal impact. Bobbi-Jo Plamondon agreed the plan looked great. Lakefront property owners should be able to use your dock without breaking an ankle. Using the filter socks along with the chosen stone shows care and integrity with respect to the environment. Vice Chairman Meyer added the steepness of the grade lends itself to erosion. This proposal makes good sense. Malcolm Wright stated it is sympathetic to the pond, users and the spirit of the ordinance. Chairman Dearborn noted the steep topography lines on the plan, two-foot gradient downward. **Passed 5-0-0**

Point 2: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Discussion: Chairman Dearborn stated their intent is to protect the wetlands/shoreline providing a safe access to the water with minimum impact. The Board agreed. **Passed 5-0-0**

Point 3: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Chairman Dearborn explained there is substantial justice to the property, no downside to the town. Marc Morette and Malcolm Wright stated there would be an impact to the town if this access upgrade were not installed. The rest of the Board agreed. **Passed 5-0-0**

Point 4: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: Chairman Dearborn stated this does not bother surrounding properties. The Board agreed. **Passed 5-0-0**

Point 5: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated denying this variance would result in unnecessary hardship. This proposed construction will put the area in its proper state for usefulness. Marc Morette confirmed the L1 design plan shall be compliant with Wetlands Plan Permit L, dated April 15, 2021. The Board agreed. **Passed 5-0-0**

The variance passed.

C. **Case # 13-2020:** Gil and Shelly Duquette (owner); Travis Corcoran (appellant) 271 Quaker Street, Tax Map 404, Lot 84, Residential District Request for Rehearing; Travis Corcoran requests that the ZBA rehearing the variance application for construction of a garage within the required setbacks. NOTE: The ZBA will take no input on this item. Should a rehearing be granted, the board will determine the scope of that rehearing and whether further testimony will be taken.

Chairman Dearborn, after consulting with Town Counsel and pursuant to RSA 677:3, moved that we suspend our decision to allow us to clarify it. The decision was for Case #13-2020. No new hearing will be held. We will only be further explaining the decision that has already been made. The Case will be taken up for the purpose of discussion on July 13, 2021. Marc Morette seconded. Discussion: Marc Morette stated a lot of time has been put into this case, this is a good move. Vice Chairman Meyer had nothing to add. Malcolm Wright responded he is not adversely affected at clarity. Bobbi-Jo Plamondon gave permission to proceed.

Vice Chairman Meyer abstained, Malcolm Wright abstained, Bobbi-Jo Plamondon voted yes, Marc Morette voted yes, Chairman Dearborn voted yes. Passed 3-0-2

III. MINUTES:

May 4, 2021 Minutes: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept the minutes of May 4th, as amended, passed 5-0-0.

IV. NEXT MEETING:

Chairman Dearborn moved, Bobbi-Jo Plamondon seconded to have the next meeting July 13, 2021, not sure if zoom or in person. Passed 5-0-0

Being that there was no more business to come before the Board, Marc Morette moved, Vice Chairman Meyer seconded to adjourn the meeting at 8:34 pm., passed 5-0-0.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from
Zoom recording & TA Bolton notes