

Final



WEARE ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
July 13, 2021

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

**GUESTS:** Laura Spector-Morgan, Esquire; Phil Greco; Laura Greco; Travis Corcoran; Dan Higginson; Tom Page; Lynda and Art Bustam; Jordan Estrada

Chairman Dearborn called the meeting to order at 7:31 pm.

**I. INTRODUCTION/ADMINISTRATIVE ITEMS:**

Chairman Dearborn stated there are four cases before the Board, Case #13-2020, Case #10-2021, Case # 11-2021 and Case #13-2021. Board members hearing the cases this evening introduced themselves: Marc Morette, Mike Meyer and Malcom Wright.

The Chair stated each case is heard, decided and then on to the next case. Once variance applications are reviewed for completion, they are accepted. He will then ask for a motion, in the positive, and then a second. Next, a discussion on the motion followed by a vote. Then, public input, and questions from the Board. The Chair will ask the applicant to read their application with the five points of hardship and their answers. Approving abutters, disapproving abutters, public at large and other boards to speak. The applicant will then rebut, followed by a second round of Board members, 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 #13-2020** Gill 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 rehear the variance application for construction of a garage within the required setbacks.

Chairman Dearborn explained this Variance Case was heard and a decision was made. Within 30 days a request for a rehearing is allowed. Travis Corcoran has come forward and requested a rehearing for this application for the construction of a garage within the required setbacks. NOTE: The ZBA will take no input on this item.

Continuing, Chairman Dearborn explained ZBA member Bobbi-Jo Plamondon entered the meeting room this evening wearing a mask. She stated she had been sick and was not feeling well, consequently, uncomfortable staying for the meeting. She went home. Chairman Dearborn thought that was appropriate. Unfortunately, being that she was the fifth Board member for this rehearing and an original Board member who heard this case, it had

to be moved to the next meeting. The Chair asked for a motion to reschedule the rehearing of Case #13-2020 to August 3rd.

**Vice Chairman Meyer moved, Marc Morette seconded to reschedule Case #13-2020 for the next Board meeting on August 3, 2021.** The Chair asked for a discussion, there was none. **Passed 4-0-0**

**B. Case #10-2021** Jordan Estrada (applicant); Louis Page (owner) Bart Clough Road, Tax Map 409, Lot 20, Rural Agricultural District Request for Rehearing: Tomas Page, through his attorney Jeremy Eggleton requests that the ZBA rehear the variance application to build a new home on a private roadway. 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 stated after consulting with Town Counsel, and pursuant to RSA 677.3, I move that we suspend our decision to allow us to clarify it. No new hearing will be held; we will only be further explaining the decision that has already been made. That meeting to be held on August 3, 2021. Marc Morette seconded.** The Chair asked for a discussion, there was none. **Passed 4-0-0**

**C. Case #11-2021 (Continued from 6-1-21):** Woodridge Properties, 1225 River Road, Weare, NH. (owner); Higginson Land Services, 76 Patterson Hill Road, Henniker, NH. (applicant). Variance Property of Peaslee Hill Road, Tax Map 405-020, 0.3 acres Rural Agricultural Zone Variance – Article 28, Section 28.9 Applicant is seeking a variance to upgrade existing culvert and driveway to build a single family residence, both of which will impact the wetland.

The Chair read through the application with attachments to determine completeness and asked for a motion to accept. The Chair stated he has seen the property, part of a subdivision prior to zoning laws. Properties on either side are roughly the same size lot. An adjacent property has wetland up the hill.

**Vice Chairman Meyer moved, Malcolm Wright seconded to accept Case #11-2021 application as complete.** The Chair asked for a discussion, there was none. **Passed 4-0-0**

The Chair asked the Board if they had any questions of the applicant. There was none.  
The Chair asked Dan Higginson to present and read the five points of hardship.

Dan Higginson explained it is an existing lot. To the left of the lot there is a wetland. A manmade ditch with a culvert comes across the front of the property, along with a driveway start. He stated they are looking to continue the driveway towards the back of the property and build. Dan is seeking relief from the buffer, 1175 SF impact. The widest point of the area is 22 ft.

Dan Higginson began with the five points of hardship:

Case #11-2021

**1. The Variance will not be contrary to the public interest:** *We are seeking adequate access to the site, the lot fronts on Peaslee Hill Road from which access is sought. For this access, the Wetland Buffer will have to be impacted as it runs the entire frontage of the lot. Providing access to a lot is consistent with all other lots in the area and not contrary to the public interest.*

**2. Please describe how the spirit of the ordinance is observed:** *The intent of the ordinance is to protect jurisdictional wetlands not to prevent land from being developed. Denial of this variance would prevent access to the lot. The proposed access was located at the point of least impact to the wetland buffer.*

**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 when the benefit to the landowner far outweighs the burden to the general public. In this instance, that is the case. Denying this variance would prevent development of the lot. Approval of the variance would allow a use of the lot that complies with the town regulations.*

4. **Please describe how the values of surrounding properties are not diminished:** *The variance only pertains to the access to the site. All developed lots in town have site access. Proposed is construction of a single-family residence similar in nature to surrounding 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:** *The special conditions of this property that distinguish it from other properties in the area is that a wetland buffer exists along the entire frontage of the property preventing the developable portion of the lot from being built upon.*

**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 purpose of the ordinance is to protect the area surrounding wetlands, not to prevent access to buildable portions of a property. The proposed driveway will be constructed using best management practices and will protect the wetland buffer to the best extent possible.*

**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:** *We are proposing a use that is consistent with every other developed lot in the zone; the issue is access to the lot. We have situated entrance to the site in the location that will have the least impact to the wetland buffer.*

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. He was all set.

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

The Chair closed the public hearing at 7:50 pm and asked for a motion to approve point 1.

Case#11-2021

Non-Public: Board Deliberation

**Point 1: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case #11-2021.** Discussion: Chairman Dearborn stated it is not contrary to public interest. Residential lots can expect to have residences on them. Zoning laws protect wetlands from being built on and this case is a reasonable minor incursion through the wetland. The Board agreed. The Chair asked for a discussion, there was none. **Passed 4-0-0**

**Point 2: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point two.** Discussion: Chairman Dearborn stated residential lots are for residential buildings, spirit of the ordinance. Minimal wetland impact. The Board agreed. **Passed 4-0-0**

**Point 3: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point three.** Discussion: Chairman Dearborn explained substantial justice will be done for the applicant. Variance needed in order to build a house. Minimum impact for the town of Weare's wetland. Vice Chairman Meyer stated it is a residential lot. **Passed 4-0-0**

**Point 4: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point four.** Discussion: Vice Chairman Meyer restated it is a residential lot Peaslee Hill is well populated. A community in and of itself, this adds to it. Does not diminish it. Marc Morette stated it can only be improved. The Chair asked for further discussion, there was none. **Passed 4-0-0**

**Point 5: Vice Chairman Meyer moved, Marc Morette seconded to accept point five in its entirety.** Discussion: Vice Chairman Meyer restated it is a residential lot that has no value if you cannot build a house on it. Chairman Dearborn stated reasonable use and it would be an unnecessary hardship to the property if the variance was not granted. The Chair asked for further discussion, there was none. **Passed 4-0-0**

This variance passed.

**D. Case #13-2021** Philip Greco (owner & applicant) 137 B High Rock Road, Tax Map 409-157.8, Rural Agricultural Zone Variance – Article 18, Section 18.2.3 Applicant is seeking a variance to construct a 20 x 30 detached garage that intrudes approximately 10' into the side setback.

The Chair read through the application and attachments. The applicant is looking to construct along the boundary line, 50 ft. back. No closer than 15 ft. from the property boundary.

**Malcolm Wright moved, Vice Chairman Meyer seconded to accept Case # 13-2021 as complete.** The Chair asked for a discussion, there was none. **Passed 4-0-0**

The Chair asked the Board if they had any questions of the applicant. There was none.  
The Chair asked Phil Greco to begin by reading the five points of hardship as follows:

Case #13-2021

**1. The Variance will not be contrary to the public interest:** *The proposed use of said structure will eliminate the need for multiple temporary storage units for motor vehicles. This will improve the aesthetic and character of the neighborhood.*

**2. Please describe how the spirit of the ordinance is observed:** *The purpose of the setback ordinance is to prevent from building improvements too close to the proximity of a neighbor's dwelling as to cause crowding. There is significant distance (over 500') between the setback and the primary abutting neighbor's dwelling with mostly woods in between. I have spoken to the abutting neighbor and he has no objection to the variance.*

**3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed but harm to the general public:** *There does not appear to be any harm to the general public, thus there is nothing to outweigh the benefits to the applicant. Ultimately, the occupying tenants of the duplex will enjoy the benefit of covered storage for their vehicles.*

**4. Please describe how the values of surrounding properties are not diminished:** *Any well constructed improvement will add value to the surrounding properties. The 20 x 30 structure could be built within the setback requirement, but it would intrude into the existing driveway and cause the property to be cluttered and unsightly. This would bring down the value of the neighborhood.*

**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:** *There is no other space appropriate for such a structure with proximity to driveway egress to the property. Space on the opposite side of the driveway is part of the septic system and cannot be disturbed. Any remaining space on the land-lot is heavily sloped making egress from such a structure impossible. The special conditions are listed in section 5B.*

**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:**

**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:**

**Or (this is filled out if you cannot meet 5Ai and 5Aii)**

(If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to specific conditions of the property that distinguish it from other properties in the area, 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 definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.**

**B. Please describe the special conditions of the property that distinguish it from other properties in the area;** *Due to the position of the primary improvement (the duplex) and the slope of the land lot, much of the front of the property was built up with fill material. This limits the level, build-able area on the lot for additional improvement. Other properties in this neighborhood have more undisturbed flat land and are less challenged to construct improvements upon them within setback requirements.*

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

The Chair asked approving abutters to speak. Arnold Bustam, 147 AB High Rock Road, an abutter, stated he has no issue with the applicant building his garage. The applicant takes very good care of his property, whatever he builds will be a nice looking structure. It will improve the neighborhood.

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 if the applicant would like to speak. Phil Greco stated he had the land cleared by Jim Dow two years ago. In retrospect, the temporary red conex containers he purchased for storage are ugly. He has decided to remove them and build a garage.

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

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

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

Case#13-2021

Non-Public: Board Deliberation

**Point 1: Vice Chairman Meyer moved, Marc Morette seconded to accept point one of the five points of hardship for Case #13-2021.** Discussion: Marc Morette stated he has seen the lot and finds no problem with it. Chairman Dearborn stated garages are allowed and the layout of the lot causes a lot of hardship. The Chair asked for a discussion, there was none. **Passed 4-0-0**

**Point 2: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point two.** Discussion: Chairman Dearborn stated the only issue is the setback, no burden to the neighbors. The Board agreed. The Chair asked for further discussion, there was none. **Passed 4-0-0**

**Point 3: Vice Chairman Meyer moved, Marc Morette seconded to accept point three.** Discussion: Vice Chairman Meyer explained houses are typically allowed to have garages, justice to the applicant. Malcolm Wright added the case is well presented and makes perfect sense. The rest of the Board agreed. **Passed 4-0-0**

**Point 4: Vice Chairman Meyer moved, Marc Morette seconded to accept point four.** Discussion: Chairman Dearborn stated it cannot possibly diminish property values. Vice Chairman Meyer added replacing the storage units is an improvement, increasing property values. The Board agreed. **Passed 4-0-0**

**Point 5: Vice Chairman Meyer moved, Malcom Wright seconded to accept point five in its entirety.** Discussion: Vice Chairman Meyer stated limitations, wetland and slopes have been discussed. It is a reasonable use, no need to burden the applicant. The Board agreed. **Passed 4-0-0**

The variance passed.

### **III. MINUTES:**

June 1, 2021 Minutes: Vice Chairman Meyer moved, Marc Morette seconded to accept the minutes of June 1st, as amended, passed 4-0-0.

### **IV. NEXT MEETING:**

August 3, 2021

Being that there was no more business to come before the Board, Marc Morette moved, Vice Chairman Meyer seconded to adjourn the meeting at 8:14 pm., passed 4-0-0.

### **ADJOURNMENT**

A True Record.

*Karen Nelson*

Karen Nelson transcribed from  
You Tube recording & TA Bolton notes