

ZONING BOARD OF ADJUSTMENT

September 1, 2020 DRAFT MEETING MINUTES

Present: Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Marc Morette, Member; Bobbi-jo Plamondon, Alternate; Gary Shelto, Alternate and Kelly Dearborn-Luce. Land-Use Coordinator.

Chairman Jack Dearborn called the meeting to order at 7:30 PM.

I. INTRODUCTION/ADMINISTRATIVE ITEMS

Chairman Dearborn asked all members present to introduce themselves. Continuing, he read through the agenda and then explained how the meeting will be run. He will read the outline of the case at hand, then ask the Board for a motion to accept the application, making sure the application is complete. Upon getting a motion and a second, and after discussion, a vote will be made. Only then will the Board hear the case. If at any point during the hearing there is a discrepancy with the application, the Chair will stop the meeting and ask for clarification, and if need be, the hearing will be continued, so the applicant has a chance to return with the additional requested information. Once the Board has accepted the application and the Chair has read the case in more detail, the applicant will be asked to come forward to read the five points of hardship out loud, both the question and the answer. This is necessary as only the Board has the application in front of them to refer to. The applicant must read to the group because it benefits not only the listening audience but provides the opportunity to read the it into the record. After the applicant has had the opportunity to speak, the Chair will ask the applicant to sit down and request that approving abutters, disapproving abutters, public at large and other boards come forward to speak. The applicant would then come back up and refute anything necessary. The process will be repeated, with the close the public hearing just after. The Chair then will ask for a motion to accept (he stated that the reason is yes means yes, and no means no). From that perspective, all five points of hardship of the variance, each individually, shall progress with a motion, a second, a discussion, and then a vote. After the fifth point is read, in order for the variance to carry, the applicant will need to have all five points pass with at least 3 positive affirmations. For example, if you get four points to pass, and one point gets only two or one positive votes, the whole variance fails. In this case, the only action for the applicant would be a re-hearing before the Board, taken on advisement, resulting in a vote on whether the Board wants to hear the case again or not. Additionally, in the case of a special exception, the applicant must meet seven (7) mandatory conditions in the positive, per Article 6, Section 6.1.4 of the Zoning Ordinance.⁵⁴

II. NEW OFFICERS

Mr. Shelto made a **motion**, seconded by Ms. Plamondon and nominated Mr. Dearborn as Chair and Mr. Meyer as Vice Chair. All voted in favor, 5-0.

III. PUBLIC HEARINGS

a. SPECIAL EXCEPTION Belanger Construction representing the owner Mr. Jeffrey Ardini of 8 Greenwood Road [412/82] in a Residential Zone. The purpose is to construct an addition for an Accessory Dwelling Unit (ADU) in accordance with Article 19.1.10 of the Weare Zoning Ordinance.

The board reviewed application submitted. Mr. Meyer made a **motion** to accept the application, seconded by Ms. Plamondon, and all voted in favor, 5-0. Jeff Ardini presented case and explained that his mother and stepfather will occupy the ADU. He then read the questions and answers from the special exception application:

Property Description: Frontage 224'

Proposed use or existing use affected: Proposing to build a 30x28.5', 885² in-law apartment to be connected to the existing house through the basement as well as by a doorway from existing hallway to living room of addition. (basement is still being decided upon at this time).

Why does your proposed use require an appeal to the Zoning Board of Adjustment:

Article 19.1.10 permits an accessory attached dwelling unit to a single-family dwelling residence in the residential zone by special exception.

Special exception application points included:

- 1. The specific site is an appropriate location for such a use or uses in terms of overall community development:** Yes, the proposed in-law apartment is in a residential area which is appropriate for community development.
- 2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring areas:** The proposed use will not adversely affect the neighborhood. It should increase the value of real estate in the neighboring area.
- 3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:** The proposed use will not be a nuisance or a serious hazard to vehicular traffic or pedestrians.
- 4. The proposed use will not case and undue burden on the Town through the provision of basic Town services:** No additional services will be required or needed by the municipality.
- 5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:** There will be adequate parking spaces for two cars with no new curb cut.
- 6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees:** Additional buffer will not be required.
- 7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to ensure compliance with the section:** We are happy to comply with any restrictions or conditions provided by the Zoning Board of Adjustment.

The chair explained that the ADU is allowed by right because of the Special exception and the seven points of conditions must be met. Mr. Meyers questioned the total square footage, as the floor plan submitted shows 855 square feet and the regulations allow for no more than 750 square feet. Owner said he is aware of the 750 square foot limit, but due to his mother's disability he would like to accommodate area for wheelchair if and when necessary. The applicant will need to come back with a variance to be larger than the required 750 square feet, unless the plan is modified to 750 square feet.

The chair proposed to continue the hearing until next meeting to allow for the variance application, which would require the applicant to meet the five points of hardship. Mr. Meyer made a **motion** to continue the hearing for the Special Exception until Oct 6th. The motion was seconded by Mr. Morette, and all voted in favor, 5-0.

b. TWO VARIANCES Sandra and Scott Martel on 124 East Shore Drive [104/ 12] in the Residential Zone.

1. Construction of a new home on a Class VI road (Article 17.1.1 restriction of permitted use on class VI road).
2. A variance for required front setback distance (Article 3, General provisions)

The applicant would like to obtain a building permit for construction a new home on a Class VI road with a two car garage no closer than 13 feet from front setback where 30-foot setback from the property line is required. The board reviewed application submitted. Mr. Shelto made a **motion** to accept the application as complete, seconded by Mr. Morette, and all in were in favor, 5-0.

Ms. Lambert from Wilcox & Barton Engineering presented the case, giving a brief overview of the property and showed the board a map of the area. Discussion involved the road, which is Class 6, the old shed and camper, the foundation there now and how it will be removed. Owners propose to build a single-family home with a garage. The chair then explained that the road and conditions of East Shore Drive is challenging as it is now. It must be maintained by owners and there are concerns that the road doesn't even meet the requirements of Article 36, "driveways" which is concerning, particularly with the Fire Department on life safety issues and having accessibility. A site walk is needed with Board members and Benjamin Knapp, Director of Public Works. The chair then requested the hearing be continued until after the site walk. Ms. Lambert mentioned that the property had a previous variance in 1998 and the condition of the liability waiver is noted in the deed. Legal opinion is needed on the previous variance to see if active. Mr. Meyer made a **motion** to continue the hearing until Oct 6th, seconded by Mr. Morette. All voted in favor, 5-0.

c. VARIANCE Alex Heafield for residential use in the Commercial District for Article 24.10 (Non-permitted uses). The property is on 197 South Sugar Hill Road [406/4]. The applicant would like to renovate an existing use for residence use. The board reviewed and discussed the application package. Mr. Shelto made a **motion** to accept the application, seconded by Mr. Morette. All were in favor, 5-0.

The board reviewed the town zoning map for the commercial and/or residential district lines on South Sugar Hill Rd. Mr. Dearborn asked the applicant when the house did not have a business anymore and Alex said 2005. The chair explained that there is only one use allowed per lot. The request to have the home as their living area would result in two uses, and one of which is non-conforming.

There is a possibility of subdividing the house area into a lot for residential use which would require a vote at town meeting to change the district; i.e. spot zoning. Mr. Heafield asked about the section in the Zoning ordinance (3.4.2 *rearing the non-conforming use: When any existing nonconforming use of land or buildings has been destroyed or discontinued for two (2) years, the land, structures, and buildings shall thereafter be used only in conformity to this ordinance, except that the Zoning Board of Adjustment, after a public hearing, may permit the resumption of said nonconforming use.*)

The chair stated he would need to seek a legal opinion on the ZBA permitting the resumption of the nonconforming use. He also said that has never been done, plus there would be a mix use on the commercial lot. (a residential home and the landscaping business.)

Mr. Heafield explained his Attorney suggested to ask about the zoning article. The chair asked if Alex could obtain the legal opinion from his Attorney and Alex said he could. He should then forward to

Kelly, Land Use Coordinator so that the Town Attorney can review it. The chair suggested to continue the hearing until legal opinion decided if the ZBA could reinstate the house use on the commercial and/or allow the mix use. Mr. Shelto made the **motion** to continue the hearing until Oct 6th, seconded by Plamondon. All voted in favor. 5-0.

Hearings were then closed.

IV. OTHER BUSINESS

a. Variance extension requests – Cases #0318, #2707, #4002 and #0818. A **motion** was made by Mr. Shelto and seconded by Mr. Morette to approve the requested extension of the variances. All voted in favor, 5-0.

b. Site walk scheduled for 124 East Shore (pending confirmation from Road Agent) – **Wednesday 9/9/20 at 3pm at site.**

c. Review of Minutes from February 4, 2020 and March 3, 2020. All were approved.

d. Meeting was adjourned at 9pm

Respectfully submitted,

C. Provencher

Minute Taker, Transcribed from notes