

**ZONING BOARD OF ADJUSTMENT**  
**JANUARY 8, 2019 FINAL MEETING MINUTES**

---

**Present:** Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Stuart Richmond, Member; Malcolm Wright, Member; Marc Morette, Member; Gary Shelto, Alternate; Don Rogers, Alternate; Chip Meany, Land Use Coordinator.

**Guests:** Denise Fox, Ray Menard, Tom Zalenski, Stacey Zalenski, Marcel Labonvill Jr.

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

**I. ADMINISTRATIVE ITEMS:** Chairman Dearborn stated we have a defined procedure for the meeting. He then read the agenda for the evening, asked all members present to introduce themselves and additionally, stated to everyone that all questions posed should be addressed to the Chair. He then reminded the audience that all cases will be taken separately and explained the course of action for the following hearings; first he will ask for a motion to accept the application to be heard, then review the synopsis of the front page of application, ask the Board if they have any questions concerning the application, then he will ask the applicant to come forward to state his name and speak to the seven conditions needed for a special exception that has been included in the application. The applicant will be asked to sit down. Next, the Chairman will ask for approving abutters, disapproving abutters, public at large and other boards. The applicant would then come back up and refute anything necessary. The process will be repeated, with the close the public hearing just after. Chairman Dearborn indicated that once the public hearing is closed, the Board will deliberate and come up with one of the following positions; approval with or without conditions, denied with conditions, continued with pending issues that require further information or should the Board want a legal opinion. All motions will be made in the affirmative.

Mr. Shelto rose, and joined the Board to participate in the hearings.

**II. CASE #1118 Administrative Appeal; Continuation of *George W. Merrill*** An appeal of the Planning Board Decision regarding a driveway approval at Tax Map 406, Lot 51.3; West side of River Road in a Residential Zone. Notice was received from Attorney Marshall who requests "to continue to conduct a dialogue to find an amiable resolution to the problem." Mr. Menard stated that he and his wife have been present for this hearing to speak, but all the previous meetings seem to have been continued. A motion was made by the Chair to move this continuance to the March 5th meeting. Mr. Morette moved to continue the Case #1118 to March 5th, Mr. Meyer seconded. All in favor 5-0. Passed without hindrance.

**III. CASE #1418 Variance from Article 3.5.1, Article 28.9 and Article 17.1.1; Continuation Nicholas & Denise Fox, 48 East Shore Drive, Tax Map 101, Lots 3&4.** Requesting to allow building a single family home on a Class VI Road, relax set back requirements and allow to impact a wetland buffer with a driveway. Mr. Morette stepped down, then Mr. Rogers stepped up to hear the case. The Chair asked that Denise Fox approach the Board to state her case. Ms. Fox then handed the Board out several documents that included: approving letter from Fire Chief, approving abutter letter from Shaun and Anna Marie O'Shea, site plan,

Mrs. Fox read thru her variance requests:

**Case #1418A**

\*Property description: The proposed residence will be constructed on 2 Lots created prior to the adoption of the ordinance. Total acreage of the 2 Lots combined is 0.32 acres. Total frontage of the 2 lots is 149.2', and the sidelines vary from 106.4' to 95.4'. The rear of the lots is 128.1'.

\*Proposed use: The lots presently are vacant. Drive under garage. The septic system will also be for 2 bedrooms. It should be noted that NHDES subsurface Bureau permits 2 bedroom designs if a 75' setback to well and open water can be maintained, which it is here.

\*Reason for appeal to the Board: The existing lots of record have some features that require the house, driveway and garage take place in the location shown on plan. These features include a wetland/drainage way, steep topography on a portion of the lot and the Towns requirement of a driveway with a 10% slope or less.

**The undersigned hereby requests a variance to the terms of Article 3, Section 3.5.1 and asks that terms be waived to permit:** the construction of a dwelling no closer than 6' from a lot line, where 15' is specified in Article 3.5.1. It would be for a side line setback - no closer than 6' to the North East corner boundary.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** It does not markedly conflict with the spirit of the ordinance, as it does not alter the essential character of Horace Lake and East Shore Drive. The Proposal set forth will not threaten the public health, safety or welfare of Weare citizens. The lot is similar in size to adjacent properties and possibly larger since 2 lots have been merged.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The spirit of the ordinance is observed because the ordinance guards the Health, Safety and General Welfare of the Community. By granting this variance, there will be no negative impact on the Health, Safety or General Welfare of the Community.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** without a variance, the owner will not be able to use the lot consistent with its highest and best use. There is no benefit to the public to prohibit this building in this location. It should be noted that the lot was created in 1950 as a building lot, which precedes the zoning restrictions.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The proposed 2 bedroom residence will be of high quality and will enhance other properties in the area.
- 5.) **To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for "unnecessary hardship" is set forth in two alternate parts, (Parts A & B), as follows:**
  - A. **"unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:**

- i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**
- ii. **The proposed use is a reasonable one.**

**Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:**

- A. Please describe the special conditions of your property that distinguish it from other properties in the area:** It should be noted that Mr. Fox also owns lots 100-1 and 100-2. These lots presently have a sewage disposal system located on them for other lots owned by Mr. Fox across the road. In summary with all 4 lots combined there will be only 1 dwelling on that side of the road for several hundred feet which is not typical in this area. The special conditions are the slope at the front of the lots and the wetland which bisects it. Many of the existing developed lots do not appear to confirm to the zoning.

**Please indicate how, owing to the special conditions identified above,**

- i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Because allowing the Variance of 9' to a sideline setback will have no negative impact on neighbors and will not negatively affect traffic on the street. This is created in 1950 +/- to be used as a building lot and the use is consistent.
- ii. **And how the proposed use is a reasonable one:** Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because of restrictions placed on this lot since the 1950's. Due to the proximity of wetlands and steep slopes and building setbacks, Mr. Fox would not be able to use the lot to its highest and best use.

**'... (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special 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.**

**Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:**

- B. Please describe the special conditions of your property that distinguish it from other properties in the area:** n/a

**Please indicate how, owing to the special conditions identified above, your property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:** n/a

Chairman Dearborn asked for approving abutters. There were none.  
Chairman Dearborn asked for disapproving abutters. There were none.  
Chairman Dearborn asked for public at large. There were none.  
Chairman Dearborn asked for other boards. There were none.

At 7:49 PM the public hearing closed.

The Board then granted the Variance by voting the following:

Point #1: Mr. Meyer moved to approve point #1; Mr. Wright seconded. Vote: 5-0

Point #2: Mr. Meyer moved to approve point #2; Mr. Shelto seconded. Vote: 5-0

Point #3: Mr. Meyer moved to approve point #3; Mr. Shelto seconded. Vote: 5-0

Point #4: Mr. Meyer moved to approve point #4; Mr. Shelto seconded. Vote: 5-0

Point #5: Mr. Meyer moved to approve point #5 in its entirety; Mr. Shelto seconded. Vote: 5-0

### **CASE #1418 B**

**The undersigned hereby requests a variance to the terms of Article 28 Section 9 and asks that terms be waived to permit:** In order to construct the driveway it will be necessary to impact 12.5 feet of the wetland buffer. Upon completion of the driveway the impacted area will be returned to its natural vegetative state, and grading for both the driveway and house.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** It does not markedly conflict with the spirit of the ordinance, as it does not alter the essential character of Horace Lake and East Shore Drive. The Proposal set forth will not threaten the public health, safety or welfare of Weare citizens. The lot is similar in size to adjacent properties and possibly larger since 2 lots have been merged.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The spirit of the ordinance is observed because the ordinance guards the Health, Safety and General Welfare of the Community. By granting this variance, there will be no negative impact on the Health, Safety or General Welfare of the Community.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** The spirit of the ordinance is observed because the ordinance guards the Health, Safety and General Welfare of the Community. By granting this variance, there will be no negative impact on the Health, Safety or General Welfare of the Community.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The proposed 2 bedroom residence will be of high quality and will enhance other properties in the area.
- 5.) **To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for “unnecessary hardship” is set forth in two alternate parts, (Parts A & B), as follows:**
  - A. **“unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:**

**i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**

**ii. The proposed use is a reasonable one.**

**Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:**

**A. Please describe the special conditions of your property that distinguish it from other properties in the area:** With respect to this variance request, other lots in this area do not have a wetland/drainage way bisecting it. Due to the grades at the front part of the lot and to access the proposed house area with a 10% slope driveway, additional driveway length was needed and the result is this wetland crossing. A NHDES wetlands permit is being prepared for submittal.

**Please indicate how, owing to the special conditions identified above,**

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Because allowing the variance to grade in a wetland buffer is needed for the protect and conform to Weare driveway requirements. It will have no negative impact on neighbors and traffic on the street. These lots were created in the 1950's as building lots and the proposed use is consistent with the area.

**(ii) And how the proposed use is a reasonable one:** Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because of restrictions placed on this lot since the 1950's. Due to the proximity of wetlands and steep slopes and building setbacks, Mr. Fox would not be able to use the lot to its highest and best use.

**‘... (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special 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.**

**Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:**

**B. Please describe the special conditions of your property that distinguish it from other properties in the area:** n/a

**Please indicate how, owing to the special conditions identified above, your property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:** n/a

Chairman Dearborn asked for approving abutters. There were none.  
Chairman Dearborn asked for disapproving abutters. There were none.  
Chairman Dearborn asked for public at large. There were none.  
Chairman Dearborn asked for other boards. There were none.

At 8:18 the public hearing closed. Mike Myers clarified construction of driveway will be no closer than 12.5' of the wetland and it will be put back in original condition at the time of the Certificate of Occupancy.

The Board then granted the Variance by voting the following:

Point #1: Mr. Meyer moved to approve point #1; Mr. Shelto seconded. Vote: 5-0

Point #2: Mr. Meyer moved to approve point #2; Mr. Shelto. Vote: 5-0

Point #3: Mr. Shelto moved to approve point #3; Mr. Myers seconded. Vote: 5-0

Point #4: Mr. Shelto moved to approve point #4; Mr. Myers seconded. Vote: 5-0 - ????

Point #5: Mr. Shelto moved to approve point #5 in its entirety; Mr. Myers seconded. Vote: 5-0

### **CASE #1418C**

**The undersigned hereby requests a variance to the terms of Article 17, Section 17.1.1 and asks that terms be waived to permit:** The construction of a single family residence on a Class VI road (East Shore Drive). The 2 Lots, 101-3 and 101-4 were subdivided in the early 1950's, as building lots. Many of the lots have already been developed.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** It does not markedly conflict with the spirit of the ordinance, as it does not alter the essential character of Horace Lake and East Shore Drive. The Proposal set forth will not threaten the public health, safety or welfare of Weare citizens. The lot is similar in size to adjacent properties and possibly larger since 2 lots have been merged.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The spirit of the ordinance is observed because the ordinance guards the Health, Safety and General Welfare of the Community. By granting this variance, there will be no negative impact on the Health, Safety or General Welfare of the Community.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** Without a variance, the owner will not be able to use the lot consistent with its highest and best use. There is no benefit to the public to prohibit this propose building in this location. It should be noted that many of the lots on this Class VI road have already been developed and the lot goes back to the 1950's and precedes zoning.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The proposed 2 Bedroom residence will be of High Quality and will enhance the property values in the area.

5.) To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for “unnecessary hardship” is set forth in two alternate parts, (Parts A & B), as follows:

A. “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. And how the proposed use is a reasonable one:

Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:

A. Please describe the special conditions of your property that distinguish it from other properties in the area: These lots (101-3 & 101-4) are located on a Class VI Road which the Town of Weare Through the Zoning, Does not allow new Residences to be constructed. This conflicts with what is presently located on the road, many lots have been developed either by building before this Article was enacted or by variance after the Article.

Please indicate how, owing to the special conditions identified above;

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: Allowing a house to be constructed on these 2 lots of record will have no negative impact on neighbors and will not negatively affect traffic on the street. These lots were created in the 1950's as building lots and the proposed use is consistent with the area.

ii. And how the proposed use is a reasonable one: Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because of restrictions placed on this lot since the 1950's. Due to the proximity of wetlands and steep slopes and building setbacks, Mr. Fox would not be able to use the lot to its highest and best use.

‘... (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special 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.

Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:

B. Please describe the special conditions of your property that distinguish it from other properties in the area: n/a

**Please indicate how, owing to the special conditions identified above, your property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it: n/a**

Discussion: The Chair stated conditions to be met, and read a statement for the audience.

*The following are minimum conditions and requirements for a Variance Approval of a residence on a Class VI Road; Town of Ware Zoning Ordinance 17.1.1.*

*Condition 1: The applicant shall be required to post the necessary sign(s) at the transition from a Class V road to a Class VI Road 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 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.***

*Condition 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 Deeds, and be consistent with NH RSA 674:41, I, (c) - Class VI Road.*

*Condition 3: The 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.*

*Also, specifically implement and maintain two locations (20' by 50' - Per Article 36) on East Shore Drive in order for two large vehicles (Fire Trucks) can pass: One located approximately half way from the start of East Shore Drive/Nichols Road intersection and the Fox Property (48 East Shore Drive); and one located near (Tax Map 101, Lots 1-4) property at 48 East Shore Drive. These two locations shall be reserved for and signed as "Town of Weare Fire Department Use Only". The Town of Weare Public Works Director shall determine and approve the location.*

*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.*

The Board then granted the Variance by voting the following with the conditions stated above:

Point #1: Mr. Richmond moved to approve point #1; Mr. Shelto seconded. Vote: 5-0

Point #2: Mr. Richmond moved to approve point #2; Mr. Meyer seconded. Vote: 5-0

Point #3: Mr. Meyer moved to approve point #3; Mr. Shelto seconded. Vote: 5-0

Point #4: Mr. Shelto moved to approve point #4; Mr. Richmond seconded. Vote: 5-0

Point #5: Mr. Meyer moved to approve point #5 in its entirety; Mr. Shelto seconded. Vote: 5-0

**IV. CASE # 1019 Variance from Article 28.9: Thomas & Stacey Zalenski to impact a wetland buffer at 57 Woodfern Road, Map 107-47 in a Residential zone.** The Board representatives remained, and Mr. Morette remained seated in the audience. The Chair read thru the application, cited the accompanying documents, then invited Mr. Zalenski to speak.

Mr. Zalenski then read the following:

**The undersigned hereby requests a variance to the terms of Article 28.9 (Buffers) and asks that terms be waived to permit:** 1. To bring in a piece of equipment to set concrete pylons as footings. 2. There will be approximately 8 pylons and a concrete block wall to protect the pylons from frost and erosion. 3. In the scope of this project, it will also include a deck added to the front of the house with a depth of 12 feet.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** This variance is being requested to improve the safety, stability, and appearance of the property thus enhancing the property value of the home and surrounding abutters/neighbors. It is NOT contrary to the public interest on the lakefront properties that are located within 25 feet of this buffer zone and have been afforded the same variance for home improvements. A DES waiver has also been obtained to support the building of the deck and the wall.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** Within this buffer zone there has been existing impact that pre-dates the ordinance where man made alteration were made to the land. The work had never been completed. Beginning at the water edge to the existing home therefore making the land very, very difficult to navigate. It is very limited on any vegetation as well.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** By allowing this property improvement the overall property appearance, value, stability and safety will be improved upon which will help abutting property values and avoiding this property from falling into disrepair.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The front of this property is in disrepair and its external appearance is poor in comparison to the abutting neighbors. These improvements proposed will improve the appearance and the value of the property and surrounding property values. In theory, abutting property value would be increased. If the repairs and improvements are not allowed, in theory this would only diminish this property value and abutting property values.
- 5.) **To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for “unnecessary hardship” is set forth in two alternate parts, (Parts A & B), as follows:**
  - A. **“unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:**

i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**

ii. **The proposed use is a reasonable one.**

**Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:**

A. **Please describe the special conditions of your property that distinguish it from other properties in the area:** The property was built close to the water in the 1960's and which now is considered part of the buffer zone of 25' of jurisdictional wetlands with previous alterations and impervious impact. This scenario exists for many other lakefront owners who have had to make improvements within the buffer zone. As a result, allowing the improvements to the property afford us the same opportunity.

**Please indicate how, owing to the special conditions identified above,**

i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Because of the properties location to the lake as identified above, no fair and substantial relationship exists.

ii. **And how the proposed use is a reasonable one:** Continued use, for residential use only, the proposed improvement is reasonable based on the need for home and property maintenance and improvement to support personal usage, safety, enjoyment and investment.

**'... (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special 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.**

**Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:**

B. **Please describe the special conditions of your property that distinguish it from other properties in the area:** The existing property was built in close proximity to wetlands than today's standards will allow.

**Please indicate how, owing to the special conditions identified above, your property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:** In order to repair or maintain our property, we need to work within the 25 ft buffer area. Therefore, we cannot do this in strict conformance of the ordinance. Our property is unmaintained and in disrepair in its external appearance in comparison to its abutters/neighbors. Lack of maintenance by previous owners has resulted in the improvements requested to support property safety, stability, usage, and investment.

Chairman Dearborn asked for approving abutters. There were none.

Mr. Marcel Labonville Jr. spoke. He explained about 41/2 yrs. ago he was approved for virtually the same thing, and it has been very helpful.

Chairman Dearborn asked for disapproving abutters. There were none.

Chairman Dearborn asked for public at large. There were none.

Chairman Dearborn asked for other boards. There were none.

The Chair closed public hearing at 8:37 PM.

The Board then granted the Variance by voting the following:

Point #1: Mr. Meyer moved to approve with condition point #1; Mr. Shelto seconded. Vote: 5-0

Point #2: Mr. Meyer moved to approve point with condition point #2; Mr. Shelto seconded. Vote: 5-0

Point #3: Mr. Meyer moved to approve point with condition point #3; Mr. Shelto seconded. Vote: 5-0

Point #4: Mr. Meyer moved to approve point with condition point #4; Mr. Shelto seconded. Vote: 5-0

Point #5: Mr. Meyer moved to approve point #5 in its entirety with a condition granted that states 'no closer than 13' on the shortest side high water mark'; Mr. Shelto seconded. Vote: 5-0

## **V. APPLICATION FOR RECONSIDERATION OF ADMINISTRATIVE APPEAL**

The Chair moved to vote to reconsider the administrative appeal to February 5th. Mr. Meyer seconded. All in favor, 5-0 with the accepted the application

## **VI. UPCOMING MEETINGS**

\*Tuesday, February 5, 2019

\*Tuesday, March 5, 2019

## **VII. ADJOURNMENT**

Adjournment was called at 8:43 PM

*Respectfully submitted,*

*C. Provencher, Recorder*

*Transcribed from notes*