DRAFT

WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
May 4, 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 #13-2020: Jack Meaney, Doug Alwine, Shelley Duquette, Travis Corcoran, Frank & Mary Jo Campana, Larry Prince, Lowell Jacobson, Don & Lynn Carrara, Lori Davis, John Rauscher, Pam Provencher, Patrick Mix, Michael O'Day, Matt Bennett, Ted Kelly
Case #06-2021: William (Jeff) & Gina Stevens, Gerald Mirando
Case#08-2021: Aric Lantiegne
Case#10A&B-2021: Jordan Estrada, Tom Page, Attorney Jeremy Eggleton, Briana Edelblut

Brian Dunbar, Sherry Burdick, John Van, Jon Osborne, Ricky Hippler

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, Continuation of Case#13-2020, Case# 06-2021, Case#08-2021, and Case#10-2021. The Chair began with an oversite of how the meeting will run. A quasi-judicial court only hears cases that are timely and properly filled out. Because of the number of cases to come before the Board this evening, the Chair asked that comments be brought before the Select Board. Applications will be read in order, one at a time. The first step is to accept the application. Three yes votes out of five members here this evening that will hear the case. If more information is needed, or if an issue arises, the case will be continued. The Chair will ask for a motion, in the positive, yes means yes and no means no. Then the Chair will ask for a motion to accept the application. If accepted the applicant will read either their five points of hardship or seven points of a special exception. Reading the questions and answers from their forms. Variance decisions are made only on the testimonial five points of hardship prescribed by NH RSA 674:33. Variances can be granted with conditions. Next approving abutters, disapproving abutters, public

at large and other boards. Once the applicant rebuts, a second round of abutters, etc. begins. After everyone has two opportunities to speak, the public hearing is closed. The ZBA then begins deliberation on the case. Each hardship is voted on individually, conditions on the first one. Three yes votes or the variance fails.

The Chair reiterated this meeting operates in the assembly of a court. Predictability supports clarification for minute takers, accurate documentation.

The Chair asked Zoom Host/Interim Land Use Coordinator Naomi Bolton to turn on the microphones of the ZBA. Each member introduced themselves, Mike Meyer, member; Bobbi-Jo Plamondon, member; Marc Morette, member; and Malcolm Wright, member.

II. PUBLIC HEARING

A. <u>Continuation of Case #13-2020</u> 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.

Chairman Dearborn stated the Board interprets this case as declared by the Judge. Lots less than Table 14.1 in Zoning are allowed to have a lesser setback of frontage and sideline. It applies to the dwelling and not the accessory building. The Chair read the application and instructed the applicant to state their intent.

Gil and Shelley Duquette stated they are requesting a variance to keep their building where it is. In 2018, a variance was granted to build a garage with the setbacks of 30 ft. from the road and 15 ft. from the sidelines. The permit was reversed, Travis Corcoran & Jennifer Corcoran v. Town of Weare, Hillsborough – North Superior Court, Judge N. William Delker residing on November 4, 2020. The building was built based on the initial permit.

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

Shelley proceeded with the five points of hardship as follows:

1. **The Variance will not be contrary to the public interest**: *The variance is for a residential garage to be used on our property. It is not going to increase traffic flow, for private use only, and will not interfere with the neighborhood.*

Chairman Dearborn stated a garage is a compliant use for a residential lot.

2. **Please describe how the spirit of the ordinance is observed:** *We are asking to utilize section 18.2, setbacks and frontage, of the Zoning Ordinance which "Includes single family and two-family dwellings, manufactured housing and all structures." The permit was reversed by the courts because section 3.5.1 refers to authorizing the construction of single-family residence, whereas section 18.2 includes "all structures."*

Chairman Dearborn asked the applicants if they want to relax the 50 ft. frontage to 30 ft. and the sideline from 25 ft. to 15 ft. Shelley responded yes.

Chairman Dearborn stated when the motion is made, they will say no closer than.

3. **Please describe how substantial justice is done; benefits to the applicant must not be outweighed but harm to the general public**: *Justice would be done because we went through the steps, tried in good faith, called before ordering the building. They thought they had accurate information because they called the town representative. Filed for the permit legally, went through the appeal two different times. It doesn't impact the neighborhood, neighbors, traffic, noise or any other circumstances.*

Chairman Dearborn stated most residence can and do have a garage. The only issue is the sideline.

4. **Please describe how the values of surrounding properties are not diminished:** *The properties are not diminished because it is built on our property for private use. Real estate is selling quite easily; estimates are done on the actual home not what your neighbor has in their yard.*

Chairman Dearborn asked if the row of pine trees between the building and the road are referring to the front road. Shelley replied yes.

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 reason that we want it in that section of our property is because it is a flat area, already cleared. The area is adjacent to our driveway. The backyard has the leach field, not allowed to drive over. The other side of the driveway has electrical lines, well, propane tank and several trees would need to be cleared. Also, a steep incline that would require extensive excavation.*

Chairman Dearborn made a point that in December there was a site walk. They looked at the location of the garage, hill, banking, septic area and kennel. If the 25 ft. was put at the 40 ft. width, a substantial driveway and fill would be needed to build. Minutes from the site walk were approved.

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 garage will not interfere with public interest. It is for personal use only.*

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 request for a variance is reasonable because the town of Weare did approve the permit initially. The Land Use Officer looked at the property and markers prior to issuing the permit. The ZBA officers viewed the property during the appeal process and upheld the permit. The use of a garage on my property for personal use only.*

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

The Chair asked for any approving abutters to speak.

Don Carrara, 272 Quaker Street, stated the variance should be approved. He agree with what the Duquettes described, there is a row of trees that partially block the view of the building from the road. They only have 1.6 acres, no other place to put the garage. Living directly across the street, he has no issues with it.

The Chair asked for other approving abutters to speak.

Pam Provencher, 265 Quaker Street, stated she approves the variance. Not much property for them to put a garage.

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

The Chair asked for disapproving abutters to speak.

Travis Corcoran requested his statement, Meridian Land Service Survey of 271 Quaker Street and the full text of his testimony, including footnotes, be added to the minutes.

"The ZBA is in receipt of both an email and a printed copy of both this document and the survey, a month ago," stated Travis Corcoran.

Chairman Dearborn stated he has not seen the survey.

"I sent it to you five times. I can send it a sixth if you like," stated Travis.

Chairman Dearborn asked whom the documents were sent to. Travis replied, "The ZBA. The statement begins, the illegal building…"

Chairman Dearborn requests Travis to hold on a minute, "Please," to make sure the Board has the documents.

"I have a USPS tracking code if that will help you find it," replied Travis.

Chairman Dearborn explains he is not in receipt of the documents and clarifies with Naomi Bolton, Interim Land Use Coordinator, if the town is in receipt or not.

"You have received it. I have a tracking code showing that," stated Travis.

Chairman Dearborn stated it did not go to his house.

"Well, I assume you check the mail for the ZBA, but.. I also cc'd it to your email address," responded Travis.

Chairman Dearborn explained it has to be an official copy through the town.
"Right, that is why I sent it to the town with USPS tracking," replied Travis.

Naomi Bolton stated she has it in the folder. It was sent by Meridian Land Services for Travis.

Chairman Dearborn asked if Naomi could share it on the screen.

“I don’t understand how you don’t have it. I sent it five times,” declared Travis.

Chairman Dearborn explained none of the Board have it.

Travis replied, “O.K.”

Chairman Dearborn explained it was not sent to him in the package. He did not know it existed.

Travis replied, “O.K., I believe you.”

Chairman Dearborn explained the previous Land Use Coordinator recently terminated her position.

Travis explained, “In the past I sent things to the ZBA Town Hall. Should I send it to someone else?”

Chairman Dearborn answered no. Travis replied, “O.K.”

Chairman Dearborn explained it is only official going through the town. Travis replied, “O.K. Good, that’s how I did it so we are all set.” “Excellent.”

Chairman Dearborn requested Naomi to share it on the screen. She explained she could only hold it up to her monitor, as she has no electronic means to share it. It was in the file as of March 11th, long before she stepped in as Interim Land Use Coordinator. She has no idea why the previous Land Use Coordinator did not send it to the Board.

Chairman Dearborn asked if any of the other Board members have received a copy. They did not. It was not part of the application.

“No, it was not part of the application. It was sent on five different occasions though,” stated Travis.

Not your application stated Chairman Dearborn. “Right, O.K.” replied Travis.

Chairman Dearborn asked for a highlighted version of the survey.

Travis responded, “I have included it for your reference and it shows the differences. And, I am bringing it up because at the site visit on 8th December of last year. I mentioned to you face to face that you had a copy of the survey at that point. And,..”

Chairman Dearborn replied that he did not answer at the time because the only reason to show up at a site walk is for a prescribed reason. Not to hold a meeting outside the meeting, stating “O.K., I was very focused on that evening, just to get the input.”

"Right," Travis responded. "Unfortunately, you cut off the second half of my sentence. What I was saying is that the reason, the thing I wanted to highlight about the survey that Naomi has in her hands is that at the site visit, you were asking about the setbacks. And, at the site visit I read out to you the actual setbacks from the survey. But, you didn't want to hear those. You measured with a tape measure. So, that is why I sent a copy of the survey. So that in this meeting we would have the actual measurements of the setbacks. But, anyway..."

Chairman Dearborn asked what are the setbacks. Travis replied, "Well, the Judge said the setbacks were 50 ft. from the front and 25 ft. from the side. Is that what you are asking?"

Chairman Dearborn replied no, what are the actuals you believe Meridian did on the survey.
Travis stated, "I don't have it in front of myself, but I believe that it was 32 ft. from the front and 18.5 ft. from the side, but whatever the copy in Naomi's hands says is the one we want to reference."

Chairman Dearborn stated he shows slightly more than that. Travis replied, "Yes."

Chairman Dearborn asked if Travis accepted Meridian's setbacks. Travis replied, "I accepted them. Yes, they are a certified surveyor."

Chairman Dearborn stated we will accept them. Travis replied, "Wonderful."

Travis begins reading his statement as follows: "The illegal building at 271 Quaker Street fails every prong of the variance test."

Chairman Dearborn asked Travis if he planned on reading his entire document. Travis replied, "I am. There is so many legal issues… set precedence."

Chairman Dearborn, while holding up the document to his screen, explained the Board has the entire document in their possession. Travis replied, "Right, I know."

Chairman Dearborn stated it is 21 pages. Travis replied, "Yup."

Chairman Dearborn stated we have already read this, what is the benefit. Travis replied, "To get it into the record."

Chairman Dearborn explained it is already in the record. Travis replied. "O.K.. I would be amenable to condensing this, however, in the meeting, October 2018, you asked me if I could condense. And, I tried to speed things up so I did condense. But, in that meeting, you then disallowed me to read certain parts of my prepared statement. Saying they weren't written down when they were. So, given that previous experience I really would like to make sure that every single Supreme Court precedent, that is relevant gets read."

Chairman Dearborn reiterates it is in the record. Travis replied, "Excellent."
Chairman Dearborn asked if there was something Travis would like to discuss specifically from the document. There are a lot of cases tonight. He can entertain that. Travis replied, "O.K., it is a long case, delayed three times already. Given that we have waited 2.5 years, I think another fifteen minutes isn't too much."

Chairman Dearborn replied you cannot read 21 pages in fifteen minutes. Travis replied, "In fact, I have timed it myself. I can."

Chairman Dearborn responded ok, direct us to where you want to speak.

Travis replied, "O.K., I am going to start speaking at the first line.

Introduction, the Duquettes have illegally built a 2,400 square foot, 25' tall steel building (4,800 square feet, including the mezzanine level that they intend to build inside) that intrudes into both the front and side setbacks of 271 Quaker Street, despite being told ahead of time that it was illegally situated, despite being told ahead of time that the building permit was invalid, despite the town issuing a cease and desist order, and despite being told that the illegally issued building permit was being reviewed by the court. Having made the decision to violate several laws, the Duquettes now ask for forgiveness. However, they fail each and every prong of the five point variance test in RSA 674-33, and a variance can not be issued.

Prong 1: Public interest, on the variance application, the question is: Explain how the proposed use does not conflict with the purpose of the ordinance and how it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure public rights. The Duquettes' answer is 'It will not interfere with the neighborhood.' This does not address the purpose of the ordinance, it does not address the character of the neighborhood, and it does not address public safety or rights. In short, it does not answer the question. The burden of proof is on the applicant, and having failed to answer the question at all, the applicant fails this prong, and the variance may not be issued. The ZBA handbook explains: For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood? What is the essential character of the neighborhood? Quaker Street is a 250 year old road filled with beautiful historic wooden homes with clapboard siding. There is not a single steel industrial building on the street, and certainly not one intruding into both front and side setbacks. Here Jack, I will enlighten a little bit. Let me quote from my original appeal of the administrative decision back in 2018 which was upheld by the NH Superior Court in November 2020. I have researched the front setbacks of existing barns and utility buildings on Quaker Street. They are as follows."

Chairman Dearborn asked how did you arrive at these. Travis replied, "We talked about this in October 2018."
Chairman Dearborn explained tonight's hearing is not the same, it is a variance. Travis replied, "O.K."
Chairman Dearborn explained October was an administrative appeal, entirely different. Travis replied, "Shelley was saying that it was effectively the same because she built it with that."
Chairman Dearborn asked what is your tolerance, how were the setbacks measured. Travis replied, "Right, I know that tolerances are important. You want to use the proper tools and that's why we called in Meridian Land survey for some of this, but this I did using google aerial photos."
Chairman Dearborn asked what is the + or – on that. Travis replied, "Let's say five feet."
Chairman Dearborn responded why not say twenty. Travis replied, "O.K., let's say twenty."
Chairman Dearborn stated you have an undefined number. Travis replied, "Right, to use google photos is off in the direction of using a tape measure. It's just something you wouldn't do."

Chairman Dearborn asked if this is his best effort. Travis replied, "Yes. Every single barn on Quaker Street meets the 50 ft. setback in Zoning Code, and the average distance from the street is 141 feet. Note further that every single barn on Quaker Street is a wooden structure, averaging one and a half stories in height, while the Duquettes' industrial building is clad in corrugated steel panels and at 25 feet tall, is three stories high. The Duquettes' illegal steel structure that is 18 ft. from the side property line and just 32 ft. from the street line drastically alters the character of the neighborhood, and thus the variance cannot be issued. The fact that the structure alters the essential character of the neighborhood is corroborated by a report from Lou Manias of Capital Appraisal Associates who writes 'I researched the Heritage Building that was erected and it is advertised as a commercial and

industrial building. This is not consistent with the uses and design of other outbuildings and barns found within your neighborhood.' Lou's report will be discussed in more detail in point four below. The structure also negatively impacts public safety, as I'll also address in point four below. Prong 2: Spirit of the ordinance."

Chairman Dearborn asked about public safety. Travis replied, "Right, so, as I'll address in point four below. If its ok with you." Chairman Dearborn stated you brought it up. Travis replied, "I did bring it up and I'll address it in point four below. I will remind you when I get to point four. I want to do it when we get to point four. You asked me to speak of it and I will speak of it, Jack."

Travis continued, "Prong 2: Spirit of the ordinance. On the variance application, the question is: Please describe how the spirit of the ordinance is observed. The Duquettes' text merely states that they want a variance, which has nothing to do with the question, and is effectively blank. The burden of proof is on the applicant, and having failed to answer the question at all, the applicant fails this prong, and the variance may not be issued. What does 'spirit of the ordinance' mean? We look to the New Hampshire Supreme Court, as quoted in the ZBA manual: In Maureen Bacon v. Town of Enfield, 150 N.H. 468, the ZBA denied a variance for a small propane boiler shed attached to the outside of a lakefront house because it would violate the spirit of the ordinance. Focusing on the 'spirit of the ordinance' factor, the court concluded, 'While a single addition to house, a propane boiler might not greatly affect congestion or the overall value. The cumulative impact of many such projects might well be significant. For this reason, uses that contribute to congestion and over development could be inconsistent with the spirit of the ordinance.'

I want to call attention to three things here:
First, the issue in Bacon v. Enfield was a setback issue. The setback was 50 feet exactly the same as the front setback in Weare's zoning code that the Duquettes are violating. Second, the supreme court found that it was correct to deny a variance of that setback not based on the impact of a single project in the setback, but based on the hypothetical case where many such similar projects were approved. So, in keeping to that standard, the ZBA has to consider not just what the Duquettes' 4,800 square foot industrial building infringing on both the front and side setbacks would do to the neighborhood, but what dozens of such buildings up and down Quaker Street, every one of them violating the front and side setbacks, would do. Third, the Supreme Court said that a boiler, a simple 20 square foot box, 7 feet tall, would change the character of the neighborhood. The Duquettes' steel industrial building, which is 40 feet wide, 60 feet long, and 25 feet tall, is 400 times the size of a boiler. If the Supreme Court has already ruled that a boiler in the setback would change the character of a neighborhood and thus does not meet the 'spirit of the ordinance' standard, obviously, the Duquettes' industrial building can't remotely meet the standard, and the variance cannot be issued.

Prong 3: Substantial justice. On the variance application, the question is: Please describe how substantial justice is done, because the benefits to the applicant must not be outweighed by harm to the general public. The Duquettes' text merely explains that the courts overturned the illegally issued building permit. While I agree with them, the court did overturn the illegally issued building permit, this has nothing to do with the question, and failing to describe either benefits or harms is effectively blank. The burden of proof is on the applicant, and having failed to answer the question at all, the applicant fails this prong, and the variance may not be issued. It is not the case that the Duquettes have an inalienable right to build a second building on his land and that the ZBA is here to figure out how to justify it. The Supreme Court explained this in Ouimette v. City of Somersworth, 119 N.H. 292 'The hardship alleged by the defendants is that they cannot expand. Reliance on these factors to support a variance reflects a fundamental misconception of the function of a variance. **The inability to use land for one particular purpose is irrelevant to whether a variance should be granted**. To apply that to this case, even if the setbacks in Weare's zoning code made it impossible for the Duquettes to use their land for the particular purpose of having a steel industrial building, that would be irrelevant to whether a variance should be granted. The Duquettes have had full use and enjoyment of their land for 17 years without a steel industrial building, so obviously, a steel industrial building is not critical to their well being. The good news, though, is that the Duquettes can fit a structure on their land while obeying the setbacks. Mr. Duquette himself admits this, as I'll get to in a moment. The preceding points show that the proposed variance fails the 'substantial justice' prong, and thus it is not necessary to examine the ratio of the benefits to the Duquettes to the costs they seek to impose on others, but if we do so anyway we see that the costs to others, covered in depth in the next section, are much,

much larger than the benefits to the Duquettes, which are zero, given that there are other locations on their property with very gentle slopes where they can build legally with only normal, customary, and expected construction expenses like logging and grading.

Prong 4: The values of surrounding properties are not diminished. On the variance application, the question is 'describe how the values of the surrounding properties are not diminished.' The Duquettes' text doesn't answer the question, it merely states that 'There is a row of pine trees between the building and the road.' The implication is that the building is an eyesore, but that it's hidden. That's half right. The building is an eyesore, but it is exceedingly visible from the road and it's even more visible from my house, because the Duquettes cut down the trees that used to be along the property line. The Duquettes have presented no proof of their assertion that property values are not diminished. The burden of proof is on the applicant and having failed to answer the question, the applicant fails this prong, and the variance may not be issued. The value of my land would be greatly diminished, in two ways.

First, the diminished curb appeal and visual impact from the blight caused by the industrial building diminishes the market value of my home. Lou Manias, of Capital Appraisal Associates, did a study and concluded 'I believe in the absence of an exact duplicate of your situation, then it is appropriate to rely on other market derived information. Based on the four sets of sales analyzed, loss of market value indicated is from 3.15% to 13.25%. The median of all the data sets analyzed is 4.69% and the average is 5.63%.' Applying this to the town's current assessment of my property 404-86, we see a loss of market value of between $16,319 and $68,644, with a median loss of $24,297 and an average loss of $29,167."

Chairman Dearborn asked if this was in the packet or was Travis just reading it. Travis replied, "I'm reading it." Chairman Dearborn asked if he was going to send him a copy. Travis replied, "Yes. I did to your person in December and I mailed another copy four weeks ago. There is a tracking number showing it was received." Chairman Dearborn has the packet, asking what page is Travis reading from. Travis replied, "Approximately, page four or five. If you follow allow I am just going straight in order." Chairman Dearborn stated he is following, but it did not have the percentages. Travis replied, "Then you are dealing with the out of date one that I handed you in December. Not the one I mailed you four weeks ago today." Chairman Dearborn stated this is the one from four weeks ago. Travis replied, "O.K., well you are telling me that you're looking at the one that you got four weeks ago and you can't find… So, look for the bold text that says prong 4, please. Go to the bottom of the page. You are not looking at the current version you received four weeks ago, Jack. O.K. I have a USP tracking number showing. Jack, you were saying earlier that we are short on time. Would you like to move along?" Chairman Dearborn responded no, he needs to make sure that what Travis is saying is trackable. Travis replied, "I agree, we should take the time to do this right." Chairman Dearborn reiterated he needs to make sure it is factual. Travis replied, "O.K. would you like me to take 60 seconds to email you a copy of the report?"

Bobbi-Jo Plamondon stated she has both copies, one from before and one from four weeks ago. They are exactly the same and do not have a lot of what Travis is reading. Travis replied, "I guess it's a good thing I'm reading it because we've got the new part here."

Chairman Dearborn stated he just wants to point it out. Travis replied, "And I'll point out that I have tracking information showing that you received it." Chairman Dearborn stated both copies, one you gave me physically and one he received four weeks ago, are exactly the same. Travis replied, "No that's not correct." Chairman Dearborn stated he is just telling you what we have. Travis replied, "O.K. I believe you've got two copies of the same thing, Jack." Chairman Dearborn told Travis he is wasting his time. Travis replied, " I'm not pausing at all. I actually asked if we can move along, but you didn't want to. So, anyway, I'm happy to continue now." Chairman Dearborn stated he keeps the clock. Travis replied, "O.K." Chairman Dearborn stated Travis has an opinion, "Ok? Go ahead."

Travis replied, "O.K. Based on the four sets of sales analyzed, loss of market value indicated is from 3.15% to 13.25%. Then I worked out the numbers. This is a loss of value of between $16,000 and $68,000. Second, and this is the point that earlier you wanted to talk about. The maintainability and safety of my home would be impacted and has already been impacted.

The illegal structure drastically alters water flow, because of four design decisions:
the impermeable roof, the ground between the structure and my property line which Mr. Duquette contoured away from his structure and towards my property, the lack of French drains, the impermeable perimeter foundation. Before the structure was built, precipitation that landed on the Duquettes' yard soaked into the permeable sandy soil which is soil type 76B Marlowfine sandy loam, according to the USDA NCRS Web Soil Survey and then flowed down a 4% grade to the east, according to the 2 foot LIDAR topographic map at granitview.unh.edu. After the structure was built, 2,400 square feet of absorbent soil was covered with metal roofing, and the precipitation that lands on that western half of that roof is now discharged just 18 ft. from my driveway. Because the Duquettes contoured the ground around the structure to move water away from the dirt floor inside the structure and to the west, that water is actively directed towards my driveway. Because the Duquettes did not install French drains, the water is not routed to the east. Because the Duquettes built a solid 4 ft. deep concrete perimeter foundation that parallels my driveway for 60 ft., the water cannot passively flow to the east. Instead, that water, plus water that lands in the 18 ft. by 60 ft. space between the structure and the property line, is directed west, into a small portion of my driveway."

Chairman Dearborn stated that is an important point. He asked if Meridian did an elevation on Travis's driveway, top of gravel grade to the top of the dirt on the other side. Travis replied, "Right but, if you consider the topographic maps. You do have a topographic map in your possession from…" Chairman Dearborn responded plus minus twenty feet or ten feet. You can't get the granularity. It appears Travis's driveway is higher than that. Travis replied, "So wait a second Jack. You stopped by because you wanted to see the slope issue. That was not called out in the December…" Chairman Dearborn stated he stopped by, just the other day when he read the 18 feet dirt slope… Travis replied, "That's excellent, so you have the most recent copy of the document. That's the one." Chairman Dearborn stated he does not. Travis, replied, "Jack, what I'm saying is you said you physically stopped by because the document you had in your hands said 18 feet, the most recent up-to-date copy." Chairman Dearborn stated Travis has different information than the rest of the Board.

Travis continues, "Weare gets 38" of rain per year, so this combination of impermeable roof, lack of French drains, land contoured to shed runoff towards my property, and impermeable perimeter foundation results in an additional 7,220 cubic feet or 54,000 gallons of precipitation per year being directed into my driveway. To give a sense of scale, that's the equivalent of a 500 gallon-per-minute firetruck pump running for an hour and 45 minutes. The water floods the adjacent section of my driveway, and then runs down the driveway to the south, doing additional damage well beyond the area next to the illegal structure."

Chairman Dearborn declares everything Travis just said is not in his copy of the document.

Travis continues, "A dirt and gravel driveway that was installed by Harry Wetherbee, a trained geotechnical engineer, and which served him well for 7 years, and which served me well for 6 years, has been turned, over the last 2 years, into a muddy swamp with ruts over a half foot deep. This has three effects: it means that it becomes much harder to use my driveway during wet weather; it means that my driveway suffers much more rapid damage, damage that I have to repair. It means that a safety issue has been created where town emergency vehicles may not be able to navigate my driveway during wet weather, but may become bogged down in deep mud. I lost a muffler to driveway damage just a month ago, that's several hundred dollars of loss caused by the Duquettes' illegal structure. Two weeks ago, I had to spend

over $500 to add 18 cubic yards of gravel to my driveway, just to temporarily repair it so I could leave my own house. Lou Manias' report speaks to this, saying 'I spoke with several contractors who indicated that to cure this issue on your property alone, the area along the sides of your driveway and perhaps the driveway, would have to be excavated in order to put in a drainage system that would include a sand and rock base, perforated piping on both sides of the driveway to collect water, and perhaps even a culvert if considered necessary, after site design and engineering were completed. It would also include regrading of the driveway and mixing the existing soil with other materials to make it drain better. The cost estimates for such an endeavor ranged anywhere from $20-$40,000 and could potentially be higher.' If we add together the high-end market value impact caused by the visual blight and the higher of the two estimates for drainage remediation, we end up with a total impact to my property value of $108,000. If we instead use the averages of both numbers, we still end up with a total impact of almost exactly $60,000.

Prong 5: Hardship. On the variance application, question 5A asks: describe the special conditions of the property that distinguish it from other properties in the area. The Duquettes do not answer this question, but merely provide a sketch of the property that is out of scale, implies that their leach field is an acre in size, and does not include half of their property. They describe no special conditions, and the answer is effectively blank. I agree with the Duquettes there are no special conditions that distinguish their property from others in the area.

Question 5A-i asks: 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 Duquettes' text says 'The building was put up on the clear level yard.' This is not an answer to the question, and is effectively blank.

Question 5A-ii asks: explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property. The Duquettes' text says 'the town of Weare did approve the permit.' Yes, it did and the courts ruled that the building department violated the law in doing so. This is not an answer to the question, and is effectively blank. The burden of proof is on the applicant and having failed to answer the questions, the applicant fails this prong, and the variance may not be issued.

5.1 Cause of hardship, violation of C&D. The Duquettes stated that they want the variance because they have already built the steel industrial building. Shelley said that at the beginning of this meeting. This is proof in their own words that it is not literal enforcement of the zoning code that is causing hardship, but the Duquettes' own violation of a Cease & Desist that is doing so. The zoning board is not empowered to grant variances that relieve hardship caused by violations of Cease & Desist orders.

5.2 'A' permitted use, not 'all' permitted uses, the ZBA manual on page D-6, states: If the land is reasonably suited for a permitted use, no hardship can be found. Note the word 'a', the singular article. The full list of permitted uses is found in the Weare zoning code, article 17.2. The Duquettes' parcel is, in fact, suited for a permitted use, specifically, the use of having a house on it, which is listed in 17.2.3.

Since the Duquettes' land is reasonably suited for the permitted use of having a house, no hardship can be found. This argument has been upheld by the Supreme Court. The ZBA manual references the case of Crossley v. Town of Pelham, 133 N.H. 215 which is very similar to this case. The Crossleys, like the Duquettes, had a house on a non-conforming lot and wanted to build a second structure, a 2 car garage, presumably about 400 square feet, much smaller than the Duquettes' 4,800 square foot industrial building. The ZBA manual summarizes the case: Landowners went before the Pelham ZBA for a variance to replace the one-car garage on their nonconforming lot with a larger two-car garage. Neighbors appealed the granting of the variance to the Superior Court, claiming that the requisite unnecessary hardship did not exist in this case, where the landowners simply wanted a larger garage.

The Supreme Court noted that the hardship cited was a result of the landowners' personal circumstances; that **a one-car garage or even no garage would still be a reasonable use consistent with the ordinance** and that therefore the Superior Court erred as a matter of law in finding unnecessary hardship supporting the grant of a variance. Let me repeat that last point: **a house that has no garage at all is a reasonable use of land and therefore it is an error of law to claim that a hardship exists** if literal enforcement of the zoning code entirely forbids a garage on a certain parcel. This is exactly the fact pattern before us, and the Supreme Court has already ruled on it. The ZBA cannot overrule the Supreme Court."

Chairman Dearborn asked the date of these rulings regarding what criteria to the zoning board. Travis replied, "The date of that ruling is 1990 and you can find it in the ZBA manual." Chairman Dearborn stated the criteria for a variance changed significantly in 2010. Travis replied, "O.K. This is in the current copy of the manual for the zoning board, which you know I'm sure. The state of NH. O.K., are you unfamiliar with the ZBA manual Jack?" Chairman Dearborn explained the cases cited may have been overcome by events, stating, "Please continue."

Travis continued, 5.3 "Alternate locations, the other reasonably feasible methods test. The hardship test has two sub-prongs. One is other reasonably feasible methods. If there are other approaches consistent with the zoning code to achieve the goal, no hardship can be found. The first Google hit on buildings and grades, buildingadvisor.com says that 'gentle grades of less than 10% are the easiest to build on. Between 15% and 20%, you should plan to spend a little more on grading.' There are many locations at 271 Quaker Street with grades between 15% and 20% where the Duquettes could build legally and easily. I brought maps showing 6 of these locations where the Duquettes could legally build a structure of exactly the size and shape that they want to the ZBA on 5 March 2019, but unfortunately, the ZBA refused to view them. There's one particular location 127 feet from the front boundary and 25 feet…"

Chairman Dearborn asked Travis, we refused to do what. Travis replied, "You refused to view the maps that I brought on 5 March 2019. But, it doesn't matter I can skip past that." Chairman Dearborn asked what year. Travis replied, "2019." Chairman Dearborn asked if it was a different case. Travis replied, "Well, it was 271 Quaker Street." Chairman Dearborn restated it was a different case, this is a variance. Travis replied, "Great, I'll defer to you Jack."

Travis continued with his testimony, "There's one particular location 127 feet from the front boundary and 25 feet from the east boundary where a building of exactly the size the Duquettes want could be built on a very shallow 10% grade 'a gentle grade that is easiest to build on.' I was hoping to show this location to the ZBA on the 8 December 2020 site visit, but unfortunately, the ZBA chair refused all three of my requests.

Finally, we know that it's possible to build on the eastern portion of the parcel, because it's already been done. There's a foundation of an old building there right now. If building on the eastern portion of the parcel was possible with 19th century technology, it is possible with 21st century technology. Given that there are other reasonably feasible methods to accomplish the goal, the applicant fails this sub-test.

5.4 Special Conditions of the property, the unique in its surroundings test. The second sub-prong of the hardship test requires that 'the applicant demonstrate that the property is unique in its surroundings.' Garrison v. Town of Henniker No. 2005-471, 2006**,** the application notes that 'the front yard has electrical wires and trees that would need to be cleared.' This is the point Shelley brought up earlier in her application. She listed the problems with other locations. That there are power lines, propane tank and that there are trees. Presence of electrical wires is not a unique special condition of the property. The Duquettes desire to avoid paying the electric company does not

justify a variance. Likewise, the presence of trees is not unique in the state, or even on Quaker Street. The Duquettes' desire to avoid paying loggers does not justify a variance. Finally, land that is not perfectly level is not unique in the Granite State. Yes, there are portions of the parcel that have a noticeable slope, but there are other areas of the 1.6 acre parcel that have grades of 15%, 10% or less. The Duquettes' desire to avoid paying for one day of bulldozer service does not justify a variance. I note that the location mentioned above, 127 feet from the front boundary and 25 feet from the east boundary, has a 10% slope. It is common in Weare to build on 10% or even on much steeper slopes."

Chairman Dearborn clarifies this is the material that has not been received by the Board. Travis replied, "No, I did give it to you. I've got a tracking number showing you got it about four and a half weeks ago." Chairman Dearborn asked how much longer, you are out of time. Travis replied, "Just one paragraph left."

Travis continues, "It is common in Weare to build on 10% or even on much steeper slopes. Houses on Cortland Ave. in Weare were built last year on steeper slopes. Houses on Duck Pond Estates in Weare are being constructed on steeper slopes as we speak. Closer to 271 Quaker Street, I note that the barn at 76 Quaker Street is on an overall 12% grade, and parts of it are on a 20% grade. Portions of the Duquettes' own house, in fact, are built on a 23% grade, as evidenced by the house's walk-out basement. The applicant has not demonstrated even a single special condition of the property, and thus fails this sub-test.

5.5 Mr. Duquette's testimony. You don't have to trust my maps or the 2 foot resolution topographic LIDAR GIS data. You can trust Mr. Duquette himself. Mr. Duquette stated, on 15 September 2020, in court, and on the record, that there are other locations on his property where he could fit his building.

This is in the transcript, on page 37 of **TRAVIS CORCORAN, ET AL, Plaintiffs, vs. TOWN OF WEARE ZONING BOARD OF ADJUSTMENT, ET AL, Defendants.** Quoting Mr. Duquette, 'We did have other spots that we were looking at, but we would have ended up having to move the power lines. We would have to move my propane tank. My well would have been right in the middle of the doorway of my second garage door. So it made absolutely no sense to continue to go there, where the site where it is now it was completely clear. It was the most cost-effective way.' Note that Mr. Duquette said spots, plural. Mr. Duquette said that could have sited the building in one location, but he didn't want to, because he would have had to move his propane tank."

Chairman Dearborn stated that is a long paragraph. Travis replied, "That was section 5. I was saying.. and this is a different section, but anyway if we can move along."

Travis continues, "Mr. Duquette said he could have sited it in a second location, but he didn't want to, because he didn't like the aesthetics of his well head being between the two doors of the building. Mr. Duquette said he could have sited it in a third location, but he didn't want to, because that would have cost him a bit of money to relocate a power line. Mr. Duquette has gone on the record in court and said that there are other locations where his building would fit. The Duquettes' desire to not spend $200 to have Suburban Propane move his tank, recall his words: 'It was the most cost-effective way' does not create a hardship that lets the ZBA overrule the zoning code and destroy $60,000 to $100,000 of my property value. The Supreme Court has ruled that if other approaches to the same goal exist that do not require a variance, then there is no hardship. Mr. Duquette has other approaches to the same goal he has said so himself. The ZBA cannot overrule the Supreme Court. The members of the ZBA are human. This is the conclusion now."

Chairman Dearborn asked if this is the *feeling bad* part of his testimony refereeing to his documents, do you feel this is important. Travis replied, "Yes, I do."

Travis continued, Felling Bad. " I'm sure that they feel bad for the situation that the Duquettes are in. However, it is important to remember that the Duquettes are not in this position because of the zoning law. The Duquettes are in this position because they chose to ignore the town, and they chose to violate the law. Mrs. Duquette said at the beginning, that she wanted a variance so that she could keep the building where it is and recall that the building was built in violation of the Cease and Desist Order.

In November 2013, I was about to make an offer on what is now my house. To make sure that my investment would be protected, I read the zoning code from start to finish and identified, correctly, as the court has pointed out that the setbacks on both my land and on adjacent lots were 50 ft. front and 25 ft. side, and saw that those could only be reduced for the construction of a primary residence, a term that is defined in the zoning code. Because I knew that the zoning code would protect my property values, I purchased my house.

On 8 October 2018, before excavation started, I saw stakes in the Duquettes' yard, and I informed Mr. Duquette that the proposed location violated the zoning code. **Mr. Duquette ignored this.** I returned with the zoning code, with the setbacks circled in red. **Mr. Duquette ignored this.**

On 11 October 2018, I emailed Mr. Duquette and asked him to attend the planning board meeting. **Mr. Duquette ignored this.**

On 12 October 2018, I emailed Mr. Duquette and offered to pay for his logging so he could situate the structure legally. **Mr. Duquette ignored this.**

On 24 October 2018, I emailed Mr. Duquette asking to meet him face to face so that I could reiterate the offer to pay for logging. **Mr. Duquette ignored this.**

On 1 November 2018, I emailed Mr. Duquette, increasing my offer to pay for not just logging, but to contribute towards new excavation. **Mr. Duquette ignored this.**

On 3 November 2018, I walked down my driveway to contact Mr. Duquette and make sure that he had received my email and to reiterate my offer. **Mr. Duquette ignored this** and instead chose to scream F-bombs at me for 15 minutes and say that my objections didn't matter because building officer Chip Meany had told Mr. Duquette that 'they' would give Mr. Duquette a variance no matter what the zoning code said.

On 7 November 2018, I emailed Mrs. Duquette reminding her of my offer to pay to help relocate the building. **Mrs. Duquette ignored this.**

On 5 March 2019, knowing that a Cease & Desist was in effect, **Mr. Duquette ignored this** and continued construction, beginning work on his Sonotube foundation.

On 15 April 2019, Mr. Duquette received a letter from Tarbell & Broditch telling him that a case was pending, and that he was building at his own risk. **Mr. Duquette ignored this.**

On 4 September 2019, the court and the town gave notice to Mr. Duquette that a court case existed regarding his illegal structure, and invited him to join the case. **Mr. Duquette ignored this.**

On 19 October 2019, knowing that there was a pending case before the court, knowing that a Cease & Desist was in effect, and knowing that his Sonotube foundation had not been inspected and that thus construction was doubly illegal, **Mr. Duquette ignored this** and built the frame of his illegal structure in the setbacks.

On 15 December 2019, knowing that there was a pending case before the court and knowing that a Cease & Desist was in effect, **Mr. Duquette ignored this** and built the roof of his illegal structure.

On 15 February 2020, knowing that there was a pending case before the court and knowing that a Cease & Desist was in effect; **Mr. Duquette ignored this** and built the walls of his illegal structure in the setbacks.

I'd like to quote the town's legal counsel, Attorney Drescher, who said the following in court on 15 September 2020 regarding the Duquettes' case: 'I've often advised my clients that when an application is appealed to the Court and the property owners go ahead and start building in spite of that, the town should write them a letter and say you're doing this at your own risk. And if it turns out that you lose this case, you're going to rip it down, and we're going to be the ones that are going to make you do it.'

This is not my attorney. This is the town's second attorney. The town did exactly that, they told the Duquettes not to build, with the Cease & Desist, but **Mr. Duquetteignored this and built anyway.**

The Duquettes' choices, not any characteristic of the land at 271 Quaker Street, which is what a variance requires are why they are in this situation. The ZBA may feel bad for Mr. Duquette, but the ZBA handbook clearly says on page 2-10 'The board does not have the discretion to grant the variance because they like the applicant.'

Conclusion - Final two paragraphs. The ZBA manual says 'The applicant has the burden of persuasion on all five variance criteria' page 2-12. The Duquettes' application has not provided arguments for any of the five criteria. Even if I didn't say one word tonight, Mr. Duquette has failed to make his case for a variance on each of the five prongs. But, in fact, I have actively proven that this variance request fails on all five criteria, and cited New Hampshire Supreme Court precedent. Additionally, Mr. Duquette himself has said in court, on 15 September 2020, that there are locations where he could build his steel structure legally. He just chose not to. By his own testimony, Mr. Duquette has ruled out a variance. Voting in favor of this variance would not give Mr. Duquette relief, it would only drag out this process through several more years of court cases. The laws are clear, and they will be enforced before this process is done. The Town of Weare has already lost one court case on this matter. Granting a variance today would increase the cost to Weare taxpayers, but it will not change the eventual result. A variance cannot legally be granted. The town government has already spent $20,000 of taxpayer money trying to defend an indefensible violation of the zoning code. There is no reason for Weare taxpayers to incur the costs of continued litigation, when the result is dictated by binding Supreme Court precedent. The ZBA should deny the variance. Thank you."

Chairman Dearborn stated what is on file is not consistent with the total testimony. Travis replied, "I will send you a copy, right now, via email Jack." Chairman Dearborn stated that doesn't matter. It's not me, the Town of Weare has to receive it. You cannot bring something to a court of law by emailing it in. It has to come in through the proper process. Travis replied, "O.K. are Town of Weare email addresses proper process? They have been in the past." Chairman Dearborn told him to talk to the people in the Town of Weare. Travis relied, "The answer is yes. They are." Chairman Dearborn responded you are welcome to your opinion. Travis replied, "O.K." Chairman Dearborn stated the problem is we do not have it in front of us. Travis replied, "I don't know if it is in front of you or not, but I have the tracking code showing that it was received." Chairman Dearborn replied so noted, it does not help the fact we

don't have it. Travis replied, "O.K." Chairman Dearborn stated it is not necessarily Travis's fault, he was just making a point. Travis replied, "O.K." Chairman Dearborn stated the Board will rely on Travis's verbiage.

The Chair asked for other disapproving abutters to speak. There was none.

The Chair asked for public at large to speak. Lori Davis, 118 Buxton School Road, stated she has taken real estate classes and she is a property owner. Cease & Desist Orders cost taxpayers money. It cost more money when C & D orders are ignored. Rules are for everybody. Variances are not for when you don't want to spend the money. There is room in their backyard where vehicles are stored behind a fence; their leach field is not the problem. Protecting the value of your property, this site line is gone, diminishing his property. Ignoring rules, putting up a building, then getting a variance is wrong.

The Chair asked for other public at large. Michael O'Day, 52 Chase Hill Road, stated he is speaking in opposition to the variance. As it has already been noted, this is going to cost the town a lot of money to fight in court. He has no interest in spending taxpayer's money. The Town recently had an election were this was "soundly rejected." No reason to continue any further.

John Rauscher, 273 North Stark Highway, stated he agrees with Mike O'Day's statement. The Town's attempt at changing the planning regulations, for this instance, failed. It should not be a "back door variance" approval, failed significantly.

Doug Alwine, 297 Quaker Street, declared it is "one heck of an ugly building." It looks like it is big enough to take over the whole street. The Chair is wrong in stating it is a normal, residential garage. It is not as it is bigger than Mr. Alwine's house. An enormous building that has a blight on the neighborhood.

The Chair asked the applicants to rebut or expand anything. Gil Duquette stated all of Travis's numbers are based off of google earth. Meridian never received permission to take measurements or do a survey. This is about setbacks, not appearance. Not industrial, it is for his own use. Shelley Duquette stated there are much bigger garages in town on residential areas. Not about the building material, it is about the setbacks. There is no proof for Travis's numbers. Travis's driveway is higher than Mr. Duqette's garage. Travis Corcoran gets 7 to 10 deliveries from Amazon, UPS and Pinard Waste. Weare has muddy driveways. Mr. Duquette does not have to ask where to place his garage on his own property. They have asked the town, followed all the rules, and did not violate any Cease & Desist Order. They did not do anything against the town. They had the town's permission. The foundation Mr. Corcoran refer to is a fifty-year-old chicken coop. Mr. Corcoran has spread a lot of lies and accusations.

Chairman Dearborn reminded the Duquettes this is not a personal discussion. Challenges are information, not lies. An inappropriate comment.

Gil Duquette stated they followed all the rules. Travis Corcoran's information is incorrect.

Chairman Dearborn asked about the highlighting of other locations for the garage outback behind the septic area. You would still need to be 25 ft. back for the 60 ft. or 40 ft. width. What is the cost issue?

Gil Duquette answered the garage would have to be 60 ft. up a hill. Most people want their garage near their house to bring in their groceries. It would not be practical to put it down there. They would have to build another entrance and driveway. They put it where they were given permission to put it.

The Chair asked if the applicant had anything else.

Shelley Duquette stated the highlight is the drainage, how our garage runs off into his driveway. Water would need to be flowing up hill to reach his driveway. Setback is 18 ft. according to Meridian. There is a row of trees between their property line and his driveway. Making it beyond 18 ft. to his driveway.

Chairman Dearborn asked who owns the rock wall on the common boundary. The Duquettes responded the rock wall is on the boundary line. Travis Corcoran erected it.

Chairman Dearborn asked who owns the trees that have been mentioned. Shelley stated they belong to Travis Corcoran, but they had six more feet between their building and his driveway.

The Chair asked if they had anything else. Gil Duquette stated that is where we are at.

The Chair asked for approving abutters to speak for the second time.

The Chair gave Board member Malcolm Wright the opportunity to speak. Malcolm asked for clarification. Was this building built in violation of the Cease and Desist Order? What are the facts?

Chairman Dearborn responded we do not have the facts here.

Malcolm Wright asked why don't we have the facts. This is a matter of our Code Enforcement Officer either issued something or not. We should have the facts.

Chairman Dearborn answered unfortunately that person is not here to ask.

Malcolm Wright stated it is key. Having listened to a lot of stuff. This is very important, was there a Cease & Desist Order and was it violated.

Vice Chairman Meyer agrees it is a very interesting point. It may not have anything to do with tonight's variance decision. Variance meets the points of hardship.

Malcolm Wright responded it is very relevant to the hardship. He has seen many cases where the applicant has created their own hardship and then try and claim it as a hardship. This may be what is going on. He is not sure, that is why it is important to know if the Cease & Desist Order existed. And if so, was it violated. It would have come from our Code Enforcement Officer and has a very strong bearing on this case.

Chairman Dearborn responded he understands Malcolm's position. The due process is the Duquettes are asking for a variance. Hopefully, the Board will make a decision this evening.

The Chair asked if there are any approving abutters to speak a second time. There is none.

The Chair asked for disapproving abutters to speak. Travis Corcoran addressed Mr. Duquette's comment about a survey from Meridian, no one stepped foot on his land. Surveyors are allowed to set foot on your land without permission. However, in this case, Meridian used reflector-less survey technology. Worked off of monuments on the street and his property, precise coordinates. He asked, "Is my video coming through by the way? Great, here is a copy of the Cease and Desist dated 2 November 2019. I can read out the timeline again talking about when construction was done."

Chairman Dearborn stated it is an interesting point. Does it say it was ever lifted? Travis replied, "It was not lifted. There was no evidence that it was ever lifted because it wasn't." Chairman Dearborn responded we have no information on that either.

Travis continued, "I had a whole bunch of citizens lined up for last time, but then the attorney's father died so we had to cancel the meeting. Those people sent me statements.

I'm going to read from Walter Rosen, 290 Quaker Street, 'I'm new to the town, not looking to make waves, just my two cents. I'm looking to where I can build a garage on my property. Due to the setbacks, I can't just put it where I want. Should I just build it and ask for permission later?' This is Walter Rosen, 290 Quaker Street, disapproving of the variance.

Howard Kaloogian, 217 Colby Road, disapproving, 'I'm a citizen of Weare, living on Colby Road, and I'm against this proposed variance. It's a terrible precedent to violate a zoning code, disregard a court order and circumvent a town warrant article vote. How many times must elected officials be told NO until they get it? Favoritism and cronyism does not make for good government.'

Third disapproving, Tara Mann, 51 Worthley Rd, 'In regards to the variance request for 271 Quaker Street I would ask the town to emphatically and definitively deny the request. This matter has previously been fairly and impartially ejudicated at the expense of the taxpayers of Weare and found to be illegal. I implore the town not to waste taxpayer money to pursue a matter that benefits just one taxpayer at the expense of every taxpayer. I also ask the town to consider the appearance of a conflict of interest in granting this variance. To do so would undermine public confidence in our town representatives to conduct themselves with fairness, impartiality and integrity. Lastly, the granting of said variance would provide one taxpayer relief to the detriment of another. The voters of Weare made their will known in regards to building accessory structures within setbacks by their vote on warrant article four in the negative during our town voting in March. To grant this petition for variance would be to directly and blatantly defy the will of the voters as article four was decisively defeated thereby demonstrating the People's wish that this structure not be built within the stated setbacks. Granting this variance would substitute the will of the very few for the will of the People. For these reasons, I believe it is in the best interests of the Town of Weare to deny the request for variance.' "

"Great, will do," replied Travis when Chairman Dearborn requested these statements be sent to Town Administrator Naomi Bolton for the record.

The Chair asked for any other disapproving abutters to speak. There was none.
The Chair asked for public at large or other boards to speak. There was none.

The Chair asked Travis Corcoran if there are any conditions, he found reasonable, to be place on this variance if approved. Travis replied, "I believe there is nothing to be done with the structure in the situation where it is that would ameliorate either the physical destructive impact on my driveway, nor on the curb appeal and thus the value of my property. I worked through the math earlier and I'll make sure I send that along in the email. But, the amount of damage this does is on the order of a hundred thousand dollars, so no, I can't understand anything that could be done."

The Chair thanked Travis and closed the public hearing at 9:00pm.
The Chair asked Vice Chairman Meyer to move condition for acceptance of point one.

Vice chairman Meyer stated the ordinance failure in March with the town meeting was specifically to change the zoning ordinance to allow this type of setback. It was not to prevent the zoning board from granting variances, it still has the privilege of entertaining these types of variances. This variance looks at the setbacks, prior cases are not relevant.

Vice Chairman Meyer moved, to accept point one in the five points of hardship. Chairman Dearborn offered language of conditions as follows: the setback, the sideline be no closer than 15 ft. and the setback for the road no less than 30 ft. From a site issue, plantings be put on the Duquette property side, half way between the boundary and the building, evergreen in nature, eight feet apart. **Bobbi-Jo Plamondon seconded**. Malcolm Wright asked if the vote is to include the condition. **Vice Chairman Meyer moved to accept point one with the conditions of no closer than 15 feet from the sidelines, 30 feet from the front boundary and that there be additional evergreen plantings on the Duquette's side of the property**. **Bobbi-Jo Plamondon seconded**. **Passed 4-1-0 Malcom Wright voted no.**

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Passed 4-1-0 Malcom Wright voted no.
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Passed 4-1-0 Malcom Wright voted no.
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Passed 4-1-0 Malcom Wright voted no.
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Passed 3-2-0 Malcom Wright and Vice Chairman Meyer voted no.

This variance passed.

The Chair stated formal minutes should be done in 144 hours, six days. A written decision within 48 hours. Let the Select Board know if you have any issues with this meeting.

For the record, Travis Corcoran requests his following documents below entered into the minutes:

To: ZBA
CC: Board of Selectmen 10 March 2021

On 8 December 2020 the ZBA conducted a site visit to 271 Quaker St.

I sent registered letters to both the ZBA and the Bos within the hour stating:

> I have returned, 5 minutes ago, from the ZBA walk through of the property at 271 Quaker street, in advance of the 5 Jan 2021 ZBA meeting re Case #13-20 (a variance request for 271 Quaker street)...
>
> Jack Dearborn, not a licensed surveyor, to the best of my knowledge, measured the distance between the barn and the property line using a tape measure, and came up with measurements that disagreed with the actual survey done by Meridian Land Services on 21 Jan 2019. I corrected Jack three times, citing the actual distances from the survey, but Jack was disinterested, did not make eye contact or respond to me, and repeated his tape measure numbers to the other members of the ZBA.

Despite the town receiving the correct measurements four times now:

- On 11 Sep 2020 in the Petitioner's Memorandum, via an included survey
- On 8 December 2020, verbally from me, citing the survey
- On 8 December 2020, in writing, via certified mail
- 29 December 2020, in writing, via certified mail, responding to minutes containing the incorrect data that Jack generated

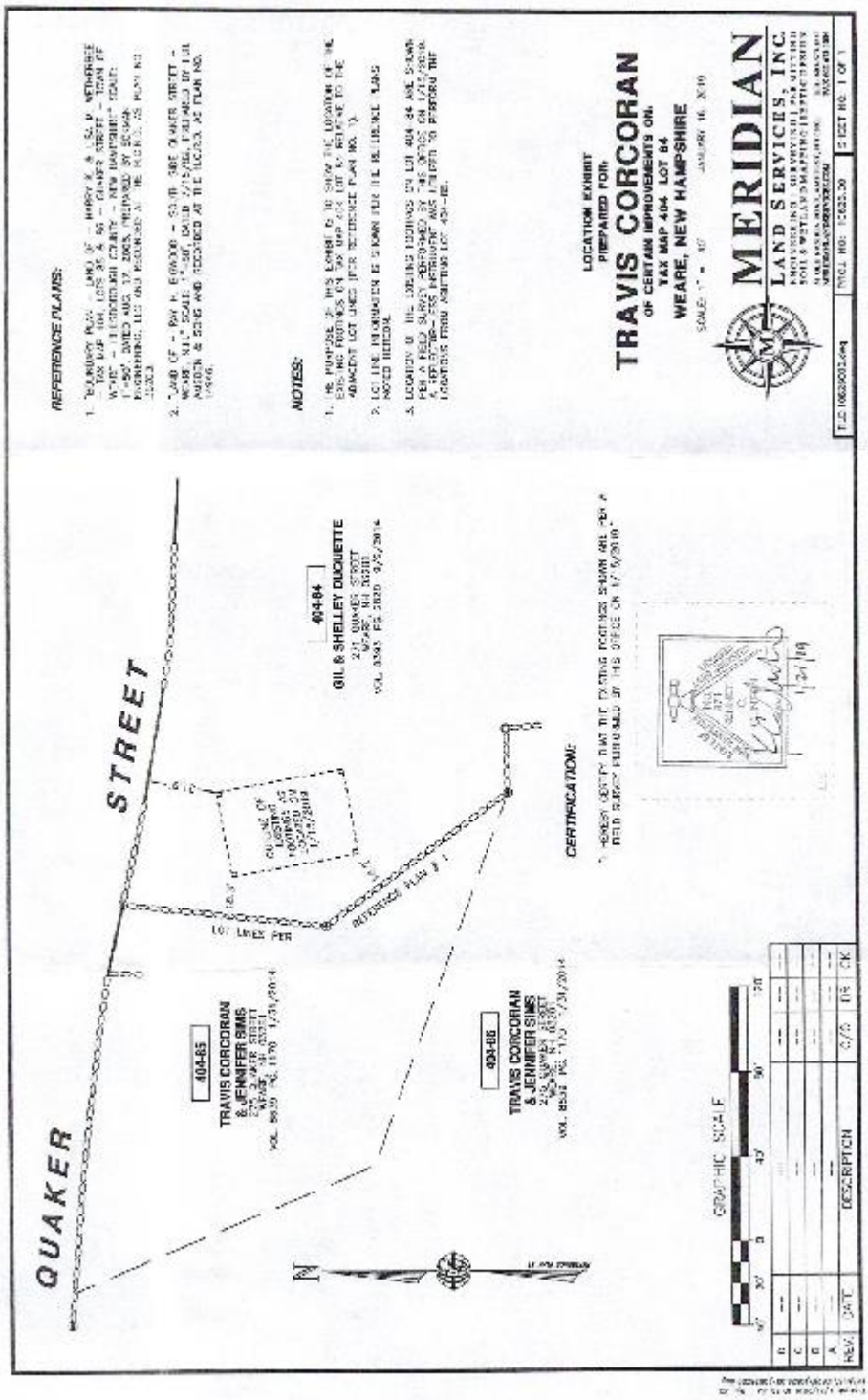
Today, a quarter of a year after I reminded the ZBA of the correct measurements, and 1.5 years after the town first received the correct measurements, the false figures remain in the ZBA draft minutes:

https://www.weare.nh.gov/s_ites/g/files/yyhlif5161/f/minutes/zba_draft_site_walk_12.8.20.pdf

Perhaps the fifth time is the charm.
I am including another copy of the Meridian Land Services survey showing the actual measurements.

Please add this letter and this copy of the survey to the record for the variance application of 10 Nov2020 for 271 Quaker St.

Travis Corcoran


REFERENCE PLANS:
NOTES:
LOCATION EXHIBIT
PREPARED FOR:
TRAVIS CORCORAN
OF CERTAIN IMPROVEMENTS ON:
TAX MAP 404 LOT 84
WEARE, NEW HAMPSHIRE
MERIDIAN
LAND SERVICES, INC.
QUAKER
STREET
404-84
GIL & SHELLEY DUQUETTE
404-85
TRAVIS CORCORAN
& JENNIFER SIMS
404-86
TRAVIS CORCORAN
& JENNIFER SIMS
LOT LINES PER
REFERENCE PLAN #1
CERTIFICATION:
GRAPHIC SCALE
REV.
DATE
DESCRIPTION
DR.
CK.

Footnote: Incorrect Application
I raise the following points to preserve them for appeal.

Item six on the required document checklist states "Applications must identify the type of variance being applied for, use or area. Applications that do not contain this SHALL NOT be reviewed by the Board". The Duquettes' application does not specify the type of variance. The application must be rejected.

Item four on the required document checklist states "Improperly completed applications shall be rejected ... if you are seeking relaxations from setbacks...a professional stamped plan shall be mandatory." The Duquettes' application does not include a professional stamped plan. It must be rejected. Even if the application was not for a relaxation from setbacks, the required plan must be "well drawn" and "in scale", and the pencil sketch in the application is neither. The application must be rejected.

The ZBA received this exact objection in writing, both in person and via certified mail on 8 Dec 2020, and has not - in the intervening four months - responded to the objection, rejected the application nor required that it be revised, demonstrating a lack of adherence to its own policies and providing further evidence of bias.

Footnote: Improper Process: 2nd Variance Hearing
I raise the following points to preserve them for appeal.

This variance hearing is improper because the ZBA already held such a hearing, in form if not in title. On 4 December 2018, despite the question before the board being merely one of definitions, the board treated what should have been an appeal of an administrative decision as a variance request in three ways:

First, Jack Dearborn (chair of the ZBA) visited the site - something that's not relevant for an appeal that was about the definition of one term, "single family residence", but which is appropriate for a variance.

Second, Mr. Dearborn argued in the meeting in favor of construction because of unique details of the property. Unique details of the property are a core attribute of the variance process, but are entirely irrelevant to an appeal of an administrative decision. Mr. Dearborn's arguments about the details of the property included quotes like "if he pushes it to the left, he's gonna be into his driveway" and "because he has no access down over to the back" and - explicitly using the language of a variance proceeding - "it basically was a hardship fitting stuff onto the lot."

Third, Mr. Dearborn ran the meeting as a variance meeting. Gil Duquette, Jack Meanie, and Don Carrera spoke, and not one of them addressed the zoning code - the ostensible point of the meeting - but instead addressed the public interest, the spirit of the ordinance, justice, value to the community, and hardship - the five prongs of the variance criteria.

Mr. Dearborn was paying attention to testimony and policing it to make sure it was restricted to topics that he wanted addressed - we know this because he terminated my testimony when I addressed section 3.5.1 of the zoning code - you can see this at 29:00 in the transcript. So Mr. Dearborn was very clear about what testimony was allowed and what was not, and he disallowed testimony that was relevant to an appeal of an administrative decision, but allowed three times, without interruption, testimony that was irrelevant to an appeal of an administrative decision, but was absolutely relevant to a variance process.

For these three reasons, I suggest that the ZBA has already solicited and considered arguments on at all five prongs of the variance test, and it is improper to allow the Duquettes to have a second bite at the apple.

Footnote: Violation of RSA 91-A
I raise the following points to preserve them for appeal.

On 22 January 2021 the ZBA received an RSA 91-A request for emails relating to the lawsuit re the improperly granted building permit. Public records that could explain the motivation of the ZBA, the discussions around the now-defeated warrant article 4, the sham site visit of 8 December 2020, and how the Duquettes but not the Corcorans were informed of the proposed warrant article, and more, should have been provided within five days. The ZBA did not provide the records, and instead asserted - via the town administrator - that using the "search" function in an email client would take as long as two months.

This violation of both RSA 91-A and the permanent injunction of Wearepowerful vs the Town of Weare has hampered my ability to know all of the facts and thus to prepare an adequate rebuttal of this variance application.

Footnote: Failure to Recuse
I raise the following points to preserve them for appeal.

RSA 673:14 says any ZBA member who has a conflict of interest must recuse himself. RSA 500-A:12 explains the tests to determine this.

ZBA chair Jack Dearborn fails tests RSA 500-A:12 I c, d, and f, and yet did not recuse himself from the variance hearing, thus violating RSA 673:14.

Mr. Dearborn is clearly biased in favor of the variance applicant Mr. Duquette and against abutter Travis Corcoran, as demonstrated by Mr. Dearborn's following actions:

- 4 Dec 2018: violating RSA 643:1 by running the Appeal of Administrative Decision meeting as a variance meeting and allowing irrelevant testimony from the applicant Mr. Duquette and from Selectman and Planning Board member Jack Meany, among others.
- 4 Dec 2018: violating RSA 643:1 by disallowing relevant testimony from abutter Travis Corcoran on the text of zoning article 3.5.1 and 3.5.4, falsely claiming that it was not present in his written filing, even though it was
- 1 Dec 2020: violating RSA 643:1 by delaying the variance hearing by scheduling a sham site visit on 8 Dec 2020, which was, on information and belief, not intended to gather any information but was instead intended to buy time for Selectman and Planning Board member, and long-time friend of Mr. Duquette, Jack Meany to illegally propose a warrant article before the planning board, and vote on it, in violation of the NH Planning Board Manual, RSA 673:14, and New Hampshire supreme court case Totty v. Grantham Planning Board.
- 8 Dec 2020: violating RSA 643:1 by subverting the intent of a site visit by refusing to inspect 95% of the site (relevant for the "other reasonably feasible methods" subtest of the hardship prong) and justifying this as "If we were talking about putting the barn back there, we would, but we're talking about putting it here." The "we", from context, was Mr. Dearborn and variance applicant Mr. Duquette.
- 14 Dec 2020: falsifying public records (a violation of RSA 641:7) by putting incorrect measurements in the minutes of the site visit which favored Mr. Duquette, despite having access to a stamped survey with the correct measurements

- 14 Dec 2020: falsifying public records (a violation of RSA 641:7) by saying in the minutes that the reason for not performing a legitimate site visit was that the ground was covered in ice, even though it was not, and weather records prove that it was not.
- 22 Jan 2021: on information and belief, violating RSA 91-A and the permanent injunction in Weare Powerful vs Weare by refusing to release emails within 5 business days of a request, and instead delaying the release two months, until a politically convenient date **after** the illegally proposed warrant article 4 was voted on, and **after** the variance hearing

Capital Appraisal Associates, Inc. *Real Estate Appraisers and Consultants*
128 S. Fruit Street, Concord, New Hampshire 03301 Telephone
(603) 228-9040, Facsimile (603) 228-2072

April 2, 2021
Mr. Travis Corcoran 275 Quaker Street Weare,NH 03281

Re: 271 Quaker Street, Map 404, Lot 84, Weare, NH

Dear Mr. Corcoran:

You have requested that I complete a study to determine whether or not a material impact to property values would occur due to the view and encroachment into the setbacks of the newly constructed industrial garage on the property located at 271 Quaker Street adjacent to your properties located at 275 Quaker Street identified as Map 404, Lots 85, 86 and 87. As you discussed with me, the owners of Map 404, Lot 84, Gil & Shelley Duquette, constructed a 40 x 60 industrial garage on their property and within the side and front setbacks required by the zoning ordinance. According to the ordinance, the minimum front setback in the Residential Zone is 50 feet from the edge of the roadway and the side setback is 25 feet. As you pointed out and the town is aware, the 40 x 60 industrial style garage was constructed within both the front and side setbacks. Accordingly, there has been some litigation that has already taken place with respect to the construction and placement of the industrial garage that I will not reiterate. However, as a brief summary, you indicated that a building permit issued by the town was proven in court to have been issued illegally. Following that, the town of Weare issued a cease and desist order to the property owners which was not honored. The Duquettes still constructed the garage and placed it within the setbacks even though they were given the cease and desist order.

The specific issue you asked me to examine is whether or not there was a measurable impact to property values where a similar influence existed. I spent a considerable amount of time researching the market and surrounding communities in order to find an exact situation like the one you are facing. I was unable to find anything that was that specific. However, I have completed studies in the past where a low impact commercial use did have a measurable effect on surrounding property values. I will discuss this a little but further in this letter.

The neighborhood you reside in in is primarily single family homes with values ranging from around $200,000 to close to $750,000. There is a mix of modest style and size single family homes of varying ages. Several antique homes and farms are along Quaker Street. Many have barns that are of a typical design and character that would be found in rural parts of Weare and other similar communities. Your home is a 15 year old colonial style home on a total of 56.26 acres. According to the assessment records, your home has 4,232 square feet of finished living area above

grade, a full basement which is partially finished, an attached two car garage, and porches and decks. You have a 30 x 36 barn across the driveway from the house, several sheds and an additional temporary storage structure. The barn was constructed in a manner that more closely resembles residential or farm style buildings, consistent with the neighborhood characteristics.

I researched the Heritage Building that was erected and it is advertised as a commercial and industrial building. This, in my opinion, is not consistent with the uses and design of other outbuildings and barns found within your neighborhood. When I visited your property on February 18, 2021, the day was overcast with a mixture of rain and snow. I noticed the difficulty in accessing your property from the driveway which is along the property line between your property and the Duquette's. There were very deep ruts and there was a lot of mud. Even with a four wheel drive vehicle, it was a bit difficult, and I was sliding all around.

You indicated both verbally and in writing to me that due to the location of the building, there is significant runoff when it rains that now migrates to your property and impacts your driveway. This can create significant accessibility issues and increased maintenance costs for you and anyone that might be interested in purchasing your property. It does not appear that proper drainage systems were constructed around the building that would redirect runoff in a manner that would not impact anyone's property. In fact, as I viewed the neighborhood, your property is mostly level along the road. The Duquette property has a slight rise in the middle where the home is located but the lot is at the same grade along the road and then slopes downgradient in an easterly direction. The placement of the industrial building and its encroachment into the front and side setback have created an issue that would cost you additional maintenance fees for your driveway including additional grading, and perhaps having your own drainage system along the driveway to prevent any further issues. These are specific issues that create an impact on your property value.

The major difficulty is estimating what the amount of damages would be. There are two different issues here. One is the fact that you are now forced to look at an industrial building in a residential neighborhood. This is a visual impact that any potential buyer could easily recognize were you to market your property. This could easily turn some buyers away which is considered an impact to property value. The second issue is the legal issue which you have been addressing with the town relative to the placement and construction of the building after the cease and desist order was issued. The third issue is the physical component where the runoff from that building now drains directly to your property, a characteristic that did not exist prior to the building construction.

This last issue is identified as curable physical obsolescence in the appraisal community. I spoke with several contractors who indicated that to cure this issue on your property alone, the area along the sides of your driveway and perhaps the driveway, would have to be excavated in order to put in a drainage system that would include a sand and rock base, perforated piping on both side of the driveway to collect water, and perhaps even a culvert if considered necessary after site design and engineering were completed. It would also include regrading of the driveway and mixing the existing soil with other materials to make it drain better. The cost estimates for such an endeavor ranged anywhere from $20-$40,000 and could potentially be higher. Ideally when the industrial building was constructed, this drainage issue

should have been addressed. It is unknown whether or not there are any drainage pipes around the concrete foundation used to support this industrial building.

Based on this third issue, there appears to be a definite impact to your property and its value that would not have been present otherwise.

The most difficult issue is trying to determine whether the market would have any data that would refute or support a claim of property impact due to the view and presence of an industrial/commercial building in a neighborhood similar to yours. Unfortunately, try as I might, I was unable to locate any specific to rely on due to the very unique situation and location of the industrial/commercial building.

What I will be providing you is a copy of a report that I completed was based on an abutters choice to create a shooting range (commercial use) in a rural neighborhood. The applicant was constructing a "low impact" commercial entity on his property where it abutted other residential properties. The applicant called it a private shooting range for him and some friends. One of the lots had a direct view of the shooting platform from the height of land and other properties had the potential of noise and other related issues like increased traffic, loss of privacy, loss of quite enjoyment, etc. This is currently pending litigation, but my report was already submitted to the town and is considered a matter of public record. Some of these issues could be considered similar to yours. While I understand that the specific issue addressed in that other report is the impact due to the proximity and view of an operating shooting range, it can be considered to be the impact due to the proximity and view of a low impact commercial operation on an abutting property. I will not discuss the details of that report in this letter but will summarize my conclusions.

Based on the study that I completed, it was my opinion that a negative impact to property values did exist based on market evidence. Several sets of paired sales were provided to support that conclusion. Based on the data summarized, the range of differences indicated is from negative 0.97% to as high as positive 13.25%. Based on the four sets of sales analyzed that abut a shooting range (1-1 A, 4-4A, 5-5A, 6-6A), the difference indicated is from 3.15% to 13.25%. The median of all the sets analyzed is 4.69% and the average is 5.63%. The average of the four sets analyzed that abut a shooting range is 7.76% with a median of 7.31%. This data proves that properties that are located abutting or in direct view of a shooting range would have a market value that is lower than properties found without that neighborhood influence, thereby proving that a material negative impact would exist as a result of the presence of a shooting range.

I do believe, in the absence of an exact duplicate of your situation, then it is appropriate to rely on other market derived information. As I stated, I am providing you a copy of the report referenced in order for you to utilize along with this letter.

In conclusion, it is my opinion, based on my experience, education, research and market data, that there is a negative impact due to the presence of the industrial building which may be further aggravated by being within the front and side setback of the Duquette lot adjacent to your property line.

I hope that this document is suitable for your needs and should you need anything else, please do not hesitate to ask.

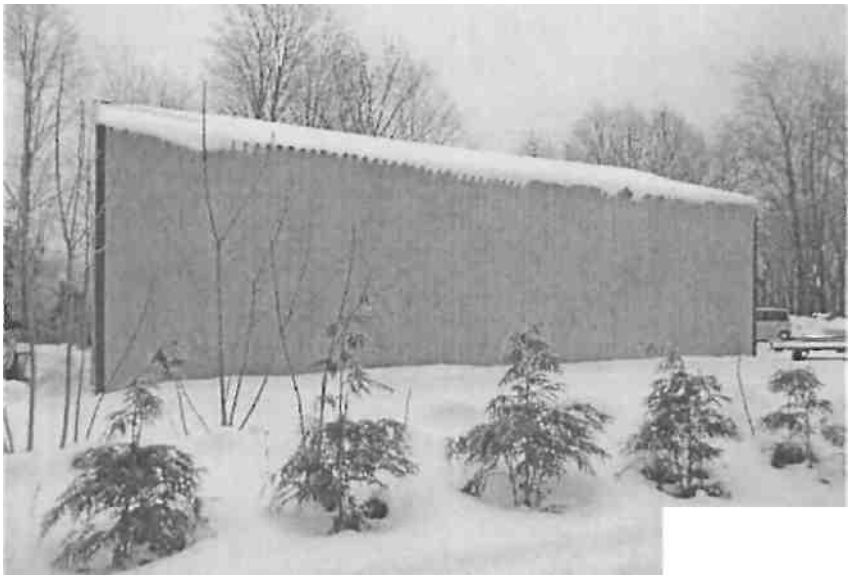
Sincerely,

Louis C. Manias
NH Certified General Appraiser #5

PHOTOGRAPHS Rear of Industrial Building

Front of Industrial Building

From Corcoran driveway



Side of Industrial building

Corcoran property

East side of Duquette Property

Quaker Street westerly view

Quaker Street easterly view

APPRAISAL QUALIFICATIONS
of
LOUIS C. MANIAS
New Hampshire Certified General Appraiser
License No. 5

Education

Appraisal University

2012 - Site Analysis and Valuation

2012 - Appraising Historic Property

New Hampshire Real Estate Appraiser Board

2005 - Supervisor/Apprentice Training Seminar

LeMav School of Real Estate

2019 - National USPAP Update - 2020-21

2019 - Supervisor/Trainee Appraiser Workshop-NH

2018-Ad-Hoc Workshop

2018 - HP-12C Bootcamp & Appraisal Math Review

2017 - National USPAP Update 2018-19

2015 - National USPAP Update

2015 - Darker Shades of Gray

2014 - The Strange Case on Agile Mountain

2013 - National USPAP Update

2012 - Beyond Paired Sales

2010 - 2010-2011 National Uniform Standards of Appraisal Practice Update Seminar

2009 - National Uniform Standards of Appraisal Practice Update Course

2006- Federal Land Acquisition Appraising

2005 - Statistics & Modeling

Brooks Real Estate Services

2012 - National Uniform Standards of Appraisal Practice Update Course

2003 - National Uniform Standards of Appraisal Practice Update Course

Society of Real Estate Appraisers Seminar

CAPITAL APPRAISAL ASSOCIATES, INC.

Guide to Small Residential Income Property Form

Marshall & Swift

2004 - Calculator Method Workshop

JMB Real Estate Academy

2011 - Statistics, Modeling & Finance

1996 - Uniform Standards of Appraisal Practice Update Course

1995 - Appraising Income Properties

Institute of Real Estate Technologies

1993 - Let's Get Real About the Cost Approach

American Institute of Real Estate Appraisers

2007 - Appraising Contaminated Properties Seminar

1999 - Board of Tax & Land Appeal Preparedness Seminar

1998 - Litigation Skills for the Real Estate Appraiser Standards of Professional Practice

1987 - Capitalization Techniques, Parts A & B

1986 - Basic Valuation Procedures

Principles of Real Estate Appraisal

McKissock Data Systems

2020 - Appraisal of Owner Occupied Commercial Properties

2018 - Basics of Expert Witness for Commercial Appraisal

2018 - Appraisal of Land Subject to Ground Leases

2016 - Residential Appraisal Review

2016 - Even Odder - More Oddball Appraisals

2014 - Appraising Self Storage Facilities

2011 - Introduction to Expert Witness Testimony

2008 - Private Appraisal Assignments
The Cost Approach
Mortgage Fraud - Protect Yourself

CAPITAL APPRAISAL ASSOCIATES, INC.

2005 - National Uniform Standards of Appraisal Practice Update Course Fannie Mae Revisions and the Appraiser Appraising High Value Residential Properties Appraisal Review

1999 - FHA Exam Prep and Residential Appraisal Guidelines

Trans-American Institute of Professional Studies. Inc.

2007 - National Uniform Standards of Appraisal Practice Update Course

Lee Institute of Real Estate

1986 - Course for Real Estate Salesman's License

University of New Hampshire

1975 - 1977 - Liberal Arts Course

Professional Experience

1989 - Present: .....Capital Appraisal Associates
.....128 So. Fruit Street, Concord, New Hampshire 03301

1985 -1989:.....Manias Appraisal Associates
..... 101 Centre Street, Concord, New Hampshire 03301

1981 - 1985:.....Co-owner Fife and Drum Restaurant
84 North Main Street, Concord, NH 03301

Professional Affiliations

2002 - President Elect - Association of Appraiser Regulatory Officials
2001 - Vice President - Association of Appraiser Regulatory Officials
1999 - 2000 - Director at Large - Association of Appraiser Regulatory Officials
2001 - 2003 - Chairman of the New Hampshire Real Estate Appraiser Board
1996 - 2003 - Member of the New Hampshire Real Estate Appraisal Board
Certified Compliance Inspector - U. S. Department of H.U.D.
Certified Appraiser - U. S. Department of H.U.D.

Court Experience

Qualified Expert - Belknap County
Qualified Expert - Carroll County
Qualified Expert - Cheshire County
Qualified Expert - Coos County
Qualified Expert - Grafton County
Qualified Expert - Hillsborough County
Qualified Expert - Merrimack County
Qualified Expert - Rockingham County
Qualified Expert - Strafford County
Qualified Expert - Sullivan County
Qualified Expert - NH Board of Tax & Land Appeals
Qualified Expert - US Bankruptcy Court - NH Division

Qualified as an expert in real estate appraisal in many local district courts.

State of New Hampshire

REAL ESTATE APPRAISER BOARD
APPROVED TO PRACTICE AS A CERTIFIED GENERAL APPRAISER
ISSUED To: LOUIS C MANIAS

Certificate No: NHCG-5 EXPIRATION- DATE 04/30/2022

State of Nov Hampshire
REAL ESTATE APPRAISER BOARD
APPROVED TO PRACTICE AS A
Certified Genera] Appraiser
ISSUED TO: LOUIS C MANIAS

B. <u>Case #06-2021</u> (Continued from 4-6-2021) Special Exception application from William and Gina Stevens on 34 Dudley Brook Road, Map 107, Lot 3, in the Rural Agricultural District. The applicant would like to construct an accessory dwelling use (ADU) and per Weare Zoning a Special Exception is required from Section 19.1.10.

Chairman Dearborn read though the application of Jeff and Gina Stevens, 14832 N. Calle Del Prado, Fountain Hills, Arizona, property address of 34 Dudley Brook Rd., Map 107, Lot 3, 20 feet on Dudley Brook Road, 402.72 ft. frontage, 718.59 ft. and 824.25 ft. sidelines, 405.02 ft. in rear. Apartment over garage, personal use.

All conditions met per Interim Land Use Coordinator Bolton, if ADU approved, building permit will be granted. If conditions are met you get it by right, article 19 provides guidance. Having looked at the plans, Chairman Dearborn stated the doors are compliant; ADU door and main entrance are not on the same side.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept the application for Case#06-2021. Passed 5-0-0

The Chair asked the Vice Chair if the applicant is compliant for the 750 sq. ft. for the ADU.

Vice Chairman Meyer read through article 19.1.10.1: *An accessory dwelling unit shall be clearly incidental to the primary use of the property for single dwelling, and such accessory living space shall not exceed seven hundred fifty feet, and not contain more than two bedrooms with maximum occupancy per bedroom of not more than two person per bedroom.* The plan indicated one bedroom with an occupancy less than two people. Gina Stevens confirms, it is a one bedroom apartment.

19.1.10.2: *An accessory dwelling unit shall either be constructed within or attached to a single dwelling*. It appears from the plan it is.

19.1.10.3 *At least one interior connecting door or other access for persons to pass between.* The plan design has a breezeway back to the regular house.

19.1.10.4 *Septic system design/capacity shall be approved by the NH Department of Environmental Services.* This is a new building part of a complete building plan.

19.1.10.*5 No new entrance or exit to an accessory dwelling unit shall be constructed facing the front of the single-family dwelling.* Chairman Dearborn confirmed.

19.1.10.6 *Two parking spaces shall be provided for an accessory dwelling unit and no new curb cut from the street shall be constructed.* Gina Stevens states there is 700 ft. of driveway for parking. The ADU is above the three-car garage space. There is a fire truck circle 58 ft. in diameter with space on either side of the driveway.

19.1.10.7 *Exterior construction and material shall be uniform with the single dwelling*. Gina Stevens stated all the same style.

19.1.10.8 *Either the accessory dwelling unit or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property*. Jeff & Gina Stevens stated they are originally New Englanders looking forward to getting back east again.

The Chair asked the applicant to read the following seven (7) conditions of the Zoning Ordinance which must be met in the positive to warrant the granting of a special exception;

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: *Seven-acre site with room for a house with an attached garage in the middle of the large wooded lot hidden from the road and neighbors with a 700 foot driveway.*

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: *None of the neighbors will see or can see the garage from their property. The terrain and trees screen everything.*

3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: *The proposed garage apartment is 500 feet from the street.*

4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: *None.*

5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: *We have 48 sq. ft. of parking along the driveway.*

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: *It is already buffered because we're building in the middle of a wooded site.*

7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to ensure compliance with this section: (left blank)

The Chair asked if the applicant would like to speak to the abutters. They declined.
The Chair asked for approving/disapproving abutters to speak. There were none.
The Chair asked for public at large or other boards to speak. There was none.
The Chair asked the applicants if they wish to speak. Jeff stated they are trying to build an attractive structure with a garage for their use. It will have his office, he draws. A guest room for visitors, they have five children.

The Chair asked for a second round of speakers.

Gerry Mirando, 214 Abijah Bridge Road, an approving abutter, stated he agrees with the Stevens. There is plenty of foliage and he welcomes them as neighbors.

The Chair again asked for any speakers. There was none.
The Chair closed the public hearing at 9:24 pm.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept the special exception for Case#06-2021. Passed 5-0-0

The Special Exception passed.

C. <u>Case #08-2021</u> (Continued from 4-6-2021) Variance application from AG Paintball for the existing business at 158 Deering Center Road, Map 411, Lot 21 in the Rural District. The applicant has a sign for the business which is larger than allowed in accordance to the Weare Sign Ordinance section 34.10.1

The Chair read through the application. The applicant is an owner of this 28.5 acre rural agricultural zone property. Chairman Dearborn asked if a representative from Meridian Land Services would like to speak. Aric Lantiegne, owner of AG Paintball stated the sign is 12.5 ft. from the centerline of the road.

Interim Land Use Coordinator Bolton reminds Chairman Dearborn he stated in the last meeting she was to decide about the size of the sign and the applicant is not in violation. Chairman Dearborn stated typically the Code Enforcement Officer drafts a letter of noncompliance, that never happened. Usually, a variance corrects this. Interim Land Use Coordinator Bolton stated 16 sq. ft. is allowed, Aric Lantiegne's sign is 9.25 ft. She explains she was given the decision, he is compliant. This business has been here since 1988.

Chairman Dearborn asked if tonight's variance pertains to height. Interim Land Use Coordinator Bolton responded yes. The height measured from the centerline, Route 149, at 12.5 ft., compliant is 6 ft.

Vice Chairman Meyer reiterated *signs will not exceed six feet from the centerline elevation of the road to the top of the sign.*

Chairman Dearborn stated he does not understand the merit of six ft, snowbanks in the winter could cover it.

The Chair asked if the Board had any questions. There was none.
The Chair asked the applicant to proceed with the five points of hardship as follows:

1. **The Variance will not be contrary to the public interest**: *The variance requested will not be in contrary to public interest because this existing sign height provides a safer means of sight access as a lower sign would be obstructed with the roadway and site itself upon approach. The public benefit from clear identification and directions into the site.*

2. **Please describe how the spirit of the ordinance is observed**: *The purpose of the Town of Weare sign ordinance is to support the general provisions of the Weare Master Plan which seeks to enhance traffic, safety and preserve the visual rural character of Weare in accordance with the Weare Master Plan. The spirit of the ordinance is observed through providing a safer means to access site while maintaining the essential character of the neighborhood which AG has been a part of for thirty years.*

3. **Please describe how substantial justice is done**: *There is no public gain from denying AG Paintball signage that is required due to obstruction associated with the roadway and the site itself for safe site access.*

4. **Please describe how the values of surrounding properties are not diminished:** *AG Paintball has remained in the same location for years. The existing sign provides a visual aesthetic that fits the property in the property itself has a landscape buffer that abuts parcels. So the sign will not be visible.*

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;** *The entrance of the property is located on a sharp turn in the road with a significant elevation change. As typical, the exiting sign is located at the entrance to the property. As stated earlier, a lower sign would be obstructed associated with the roadway and cite itself upon approach. A higher sign allows for safer means to access the*

site allowing customers to have proper stopping time prior to entering the site. We want our customers in general traffic to be able to enter and exit and pass the entrance safely.

A. Please describe the 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 no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property.** *If the sign is shortened to the six ft. requirement height, the sign will no longer be visible from one direction of the road.*

ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** *By allowing the sign to be slightly higher than required, it will allow for proper timing for customers to enter the site without altering the barn antique loading dock and to maintain the existing rural look of the property.*

B. **Please describe the 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:** (left blank)

The Chair asked for the Board to speak. There was none.
The Chair asked for approving/disapproving abutters to speak. There was none.
The Chair asked for public or other boards. There was none.
The Chair asked the applicant to speak. Aric Lantiegne answered he is good.
The Chair asked for a second round of abutters, public or boards. There was none

The Chair asked for a motion to accept point one. Vice Chairman Meyer asked about a height restriction, no larger than 12.5 ft.
The Chair closed the hearing at 9:36 pm.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to point one with the stipulation that the sign be no taller than 12.5 feet from the Route 149 centerline. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point 2. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point 3. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point 4. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point 5 in its entirety. Passed 5-0-0

The variance passed.

D. <u>Case #10A-2021</u> (Continued from 4-6-2021) Variance application from Jordan Estrada for property owned by Louis Page on Bart Clough Road, Map 409, Lot 20 in the Rural District. The applicant would like to build a new home on an existing private road in accordance to Weare Zoning section 17.1.1.

The Chair began reading through 17.1.1 (Case#10A-2021) first, 24.4 acre rural conservation for Jordan Estrada and property owner Louis Page. Original variance from 2002 and a substantive change in 2010 to the five points of hardship, but according to our Town Counsel there is another opportunity.

The Chair asked for a motion to accept Case#10A-2021.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept Case#10A-2021. Passed 5-0-0

The Chair asked if the Board had any questions. There was none.
The Chair asked the applicant to proceed with the five points of hardship as follows:

1. **The Variance will not be contrary to the public interest**: *The primary purpose of current use lands in the Rural Conservation zone is to conserve and manage important habitats 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." Living on-site would enable us to cultivate and improve the character of the conserved land by practicing on-site stewardship and good forestry practices. The subject lot is 24.4 acres. We would only utilize 2-4 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. Granting us the ability to live on-site would ensure that the property was well cared for, and free of hazards to visitors or wildlife. The private drive in question is wide and well maintained with an excellent grade, easily allowing multiple emergency vehicle access.*

Chairman Dearborn stated, after visiting the site, it is better than some Class V maintained roads, very wide with a well-drained gravel surface.

2. **Please describe how the spirit of the ordinance is observed**: *Our goal is to build a modest, discreet, single family home ensuring minimal impact on the surrounding nature and neighborhood. This proposed use will not conflict with the general purpose of the ordinance and will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare or otherwise injure the public's rights. Much of the lot will remain as it is today with nearly the entirety remaining in current use.*

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 this variance application where the benefit of granting such request will not be outweighed by the neighbors or general public. Granting this variance will provide benefits to the general public, including that, if the variance is granted, the road maintenance would be shared with the new occupants of the dwelling, thereby benefiting other residents and visitors to abutting lots.*

Chairman Dearborn stated the town considers any road maintenance agreements a civil matter between parties. No involvement from the town. Jordan Estrada cites RSA 231-81, passed in 2019, people living on a private drive have the responsibility to contribute/maintain the road.

The concept of substantial justice raises issues of fairness for the community and neighbors and are peculiar to the property, whereas other similar lots on this private drive had the benefit of receiving building permits.

Chairman Dearborn stated Lot 21 has an active dwelling; Lot 18 almost has access to Bart Clough driveway, access to the same one 21 & 20 use. Lot 19 has a trailer. Jordan explained Lot 19 has a mobile home and a seasonal cabin.

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 modest single family 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 be aesthetically pleasing and would fit in with the existing homes. The dwelling would be a significant distance from either of the existing homes on this private drive, as the building envelope for 185 Bart Clough/Map 49 Lot 20 would be mostly invisible from other residences on this private drive due to the topography of the lot and the distances between lot building envelopes.*

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 fact that the ordinance in place would restrict building a dwelling on subject lot whereas others on the same private drive have been afforded the ability to reside and enjoy full use of their property without zoning restrictions is an undue hardship as the property does not have any substantial special conditions. Additionally, RSA 231:81-a requires all owners enjoying a common benefit from a private road to contribute equitably to the care and maintenance of that private drive. Since the owner of 185 Bart Clough is not permitted to reside there, the owner experiences significant hardship in fulfilling their communal obligations. As evidence, the current owner who resides in Florida has been unable to share in the care and maintenance of the road for many years. If permitted a variance to build on 185 Bart Clough, we would be able to fulfill the owner obligation to contribute to the care and maintenance of the private drive, and enjoy the benefits of land ownership that others on this drive are currently experiencing.*

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.** *As this property is on a private drive, it is currently excluded from being eligible for a building permit.*

ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** *The request to construct a modest, single family home on a 24 acre lot with good access via a private drive is reasonable. It would be unjust to deny the existing owner and prospective owners the opportunity to ever utilize their land, or to have such restrictions placed on them when others have been afforded the opportunity to perform construction, sales of property and such for similar properties as the applicant is requesting for the subject lot.*

B. **Please describe the special conditions of the property that distinguish it from other properties in the area:** *Other properties on this private drive have obtained building permits while no permit is available for the lot in question.*

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:** *Requiring the owner of 185 Bart Clough to convert the private drive into a Class V road would make construction prohibitive to the average middle class NH wage earner, as such a requirement would significantly drive up the already high costs of new home construction. Additionally, requiring that the private drive be converted to a Class V road would significantly burden the abutting neighbors as their address would no longer be off Bart Clough, and they would have to incur substantial*

aggravation and work to change and update their addresses in all the many places where such info is recorded. Changing the road to a Class V would also raise taxes for the neighboring lots, decrease the peaceful, pastoral character of the neighboring lots, and result in increased noise, inconvenience, and disruption during road construction. Such a requirement would invariably create significant tension and resentment between the current property owners and the new property owner required to convert the road, and significantly decrease the possibility for community and harmony. Without a variance, 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 been permitted on this private drive. The variance will not alter the essential character of the area. The variance is a minimum necessity. 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.

Chairman Dearborn pointed out because it is a private road, some services will not go on the road. For example, the post office, school bus, and delivery drivers. Jordan Estrada responded both he and his wife grew up on dirt roads. They are very familiar and look forward to it.

The Chair asked for approving abutters to speak. Thomas Page, 187AB Bart Clough Road, Lot 21, stated he is in the middle of approving and disapproving. He has built/paid for the road, the only person for 27 years, no help. In 2006, the first 200 feet of the road he had help with, for Lot 18. The next 414 feet to the circle for emergency vehicles is not good. Only 8 to 9 feet wide with gravel, one-way travel. To build on this road means it needs to be upgraded. Otherwise, building construction traffic will destroy the graveled edge that is in place now.

Chairman Dearborn stated there will be conditions written for the road to be upgraded to a certain status. Thomas Page asked if that would have to be completed before the building permit was issued and written into the building permit. Interim Land Use Coordinator Bolton stated conditions would have to be met before the certificate of occupancy permit is issued. During construction, there will be a lot of traffic. Thomas Page reiterated that is his issue, it needs to be opened to two-way traffic before the building starts.

The Chair asked if Thomas Page is a disapproving or approving abutter. Thomas Page stated he will be disapproving if there is not a road upgrade before the building permit.

Attorney Jeremy Eggleton, Orr & Reno, for Thomas Page, stated the ordinance is clear; you cannot build on a private road. The variance can be granted under certain conditions. There needs to be action with respect to the road. Thomas Page has put $100,000.00 of his money over the last 20 years into this road. If the ZBA decides tonight that someone else can use his road, constitutionally, it takes his client's investment away. Conditionally make the road passable for both directions, ensuring his client's investment.

Chairman Dearborn stated he understands Attorney Jeremy Eggleton's position and requests Attorney Jeremy Eggleton's excerpt from his letter dated April 6, 2021 be added to the minutes, see below:

(E) ***Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*** *There are no special conditions of Lot 20 that distinguish it from other properties in the area. It is a basic wooded lot with no distinguishing features from Lots 19,18, or 21. Further, a fair and substantial relationship exists between*

the purpose of the ordinance provision (which is to prevent construction of homes that are inaccessible to public roads, giving rise to private conflict and public expenditures), and the application of that provision to this property. In other words, preventing this scenario is exactly why the ordinance provision as enacted. To grant a variance on these facts is to simply waive the law for this Applicant. That is not permissible. The proposed use would be a reasonable one if the Applicant were to either (a) bring the private road up to Town specifications, presumably for dedication, or (b) contribute to Mr. Page a half share of the entire cost of construction, care and maintenance to date, and going forward. In sum, for these reasons, Mr. Page requests that the ZBA ***deny*** *the Applicant's request for a variance from ZO §17.1.1.*
Respectfully submitted, THOMAS PAGE By his Attorneys, ORR & RENO, P.A.

Attorney Eggleton continued, this lot is ordinary in that it has no strange slopes, no hardship soil condition. A basic buildable, wooded lot on a private road. The application is of itself not a hardship. Granting of the variance requires a special condition that the property is different from others, that is not the case. The variance cannot be granted. The owners of Lot 20, looking to build, should contribute to the development of the road.

Chairman Dearborn responded he has heard Attorney Eggleton's issue. Conditions for life and safety access, wide enough for heavy vehicles, fire trucks, ambulance and police cars, gravel appropriate.

The Chair asked if Attorney Eggleton had anything to add. Attorney Eggleton responded he will let his statements speak for themselves.

The Chair asked for more approving/disapproving abutters. Thomas Page stated Lot 18 owner, Eric Dupuis, was supposed to be on tonight. He has not appeared.

The Chair asked for public or other boards. There was none.

The Chair asked the applicant to speak. Jordan Estrada stated the private road, because of the work invested in it, was spoken as though it has become a private driveway. It is legally designated as a shared right of way, referenced by all deeds. Four lots currently share access via this road. Under RSA 231:81, he will contribute to the care/maintenance of the road. They are asking that they not be required to do extensive modification. Property owner, Louis Page, stated he built the road in 1997, significant capital. This rebuts Thomas Page's claim of being the sole person to build the road, though there is a father/son ongoing dispute. Jordan stated this is a civil matter. The special condition, when the property was subdivided in 1997, is all the other properties are being used as was intended.

The Chair asked for a second round of abutters. Thomas Page, disapproving abutter, communicated the deed states the owner of the property will do road construction for the private right of way. This is not a burden. You cannot build on a private road, conditional use means conditions. The applicant has no plans to upgrade the road.

The Chair asked Attorney Eggleton if he has anything more to add. Attorney Eggleton stated who paid for the road is immaterial. Hardships are not because it is more expensive. There needs to be a physical characteristic

of the land. Mr. Estrada's claim that the land is the same, except without access to the private road, is just the application of the variance. Not a hardship, there are terms, deed obligations.

The Chair asked for other abutters, public at large and other boards to speak. There were none.
The Chair closed the public hearing at 10:32 pm.
The Chair entertained a motion for point one.

Vice Chairman Meyer moved to accept point one pending conditions from Chairman Dearborn.
Chairman Dearborn read: Town of Weare Zoning Board of Adjustment Conditions for Case #10A-2021 Private Road Building Permit. The following are minimum conditions and requirements for a Variance Approval of a residence on a Private Road: Town of Weare 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/Private Road in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41,1, (d) - Private Road. Required Sign Wording Policy:

This road has not been accepted by the Town of Weare or it consists of a Class V 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 Deed, and be consistent with NH RSA 674:41,1, (d) - Private 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.

Chairman Dearborn stated this means if a driveway is over 400 feet long, it requires 12 foot all-weather surface, gravel grade, 12 feet wide and needs to be 2 feet on either side. Every 400 feet requires a pull off where two fire trucks can pass each other, 50 feet long, and 20 feet in width. The applicant has to upgrade the surface with consideration of the DPW Director's opinion.

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.

Chairman Dearborn suggested the other Lots comply as well.

Condition 5: In an appropriate location(s) on the Private Road, implement a widening of the Private Road for a minimum of 20 feet wide by 50 feet long, so two emergency (life and safety) vehicles can pass safely. Culverts may be located at appropriate location to permit seasonal runoff associated with

the Private Road. Appropriate gravel material shall be applied, as required, for an all-weather gravel surface, from Bart Clough Road to the Lot #20. The Town of Weare Public Works Director shall determine the "Practical" implementation of this condition.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point one with the conditions applied. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Passed 4-1-0 Malcolm Wright voted no

Variance for Jordan Estrada Case#10A-2021 passed.

D. <u>Case #10B-2021</u> (Continued from 4-6-2021) Variance application from Jordan Estrada for property owned by Louis Page on Bart Clough Road, Map 409, Lot 20 in the Rural District. The applicant would like to build a new home on an existing private road in accordance to Weare Zoning section 18.2.1.

Chairman Dearborn explained this pertains to not having the minimum frontage requirement on a Class V road. The Chair asked the Board if they have any questions. Vice Chairman Meyer asked if this lot was subdivided prior to zoning, would it be grandfathered. The Chair answered no, not subdividing, instead, allowing a build on a private road.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept the application Case#10B-2021, 18.2.1. Passed 5-0-0

Jordan Estrada began with a Point of Order, with the interest of saving time; his application is the same from Case#10A-2021. The Chair asked Jordan to read his application.

1. **The Variance will not be contrary to the public interest**: *The primary purpose of current use lands in the Rural Conservation zone is to conserve and manage important habitats 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." Living on-site would enable us to cultivate and improve the character of the conserved land by practicing on-site stewardship and good forestry practices. The subject lot is 24.4 acres. We would only utilize 2-4 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. Granting us the ability to live on-site would ensure that the property was well cared for, and free of hazards to visitors or wildlife. The private drive in question is wide and well maintained with an excellent grade, easily allowing multiple emergency vehicle access.*

2. **Please describe how the spirit of the ordinance is observed**: *Our goal is to build a modest, discreet, single family home ensuring minimal impact on the surrounding nature and neighborhood. This proposed use will not conflict with the general purpose of the ordinance and will not alter the essential character of the*

neighborhood nor threaten the public health, safety or welfare or otherwise injure the public's rights. Much of the lot will remain as it is today with nearly the entirety remaining in current use.

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 this variance application where the benefit of granting such request will not be outweighed by the neighbors or general public. Granting this variance will provide benefits to the general public, including that, if the variance is granted, the road maintenance would be shared with the new occupants of the dwelling, thereby benefiting other residents and visitors to abutting lots. The concept of substantial justice raises issues of fairness for the community and neighbors and are peculiar to the property, whereas other similar lots on this private drive had the benefit of receiving building permits.*

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 modest single family 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 be aesthetically pleasing and would fit in with the existing homes. The dwelling would be a significant distance from either of the existing homes on this private drive, as the building envelope for 185 Bart Clough/Map 49 Lot 20 would be mostly invisible from other residences on this private drive due to the topography of the lot and the distances between lot building envelopes.*

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 fact that the ordinance in place would restrict building a dwelling on subject lot whereas others on the same private drive have been afforded the ability to reside and enjoy full use of their property without zoning restrictions is an undue hardship as the property does not have any substantial special conditions. Additionally, RSA 231:81-a requires all owners enjoying a common benefit from a private road to contribute equitably to the care and maintenance of that private drive. Since the owner of 185 Bart Clough is not permitted to reside there, the owner experiences significant hardship in fulfilling their communal obligations. As evidence, the current owner who resides in Florida has been unable to share in the care and maintenance of the road for many years. If permitted a variance to build on 185 Bart Clough, we would be able to fulfill the owner obligation to contribute to the care and maintenance of the private drive, and enjoy the benefits of land ownership that others on this drive are currently experiencing.*

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.** *As this property is on a private drive, it is currently excluded from being eligible for a building permit.*

ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** *The request to construct a modest, single family home on a 24 acre lot with good access via a private drive is reasonable. It would be unjust to deny the existing owner and prospective owners the opportunity to ever utilize their land, or to have such restrictions placed on them when others have been afforded the opportunity to perform construction, sales of property and such for similar properties as the applicant is requesting for the subject lot.*

B. **Please describe the special conditions of the property that distinguish it from other properties in the area:** *Other properties on this private drive have obtained building permits while no permit is available for the lot in question.*

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:** *Requiring the owner of 185 Bart Clough to convert the private drive into a Class V road would make construction prohibitive to the average middle class NH wage earner, as such a requirement would significantly drive up the already high costs of new home construction. Additionally, requiring that the private drive be converted to a Class V road would significantly burden the abutting neighbors as their address would no longer be off Bart Clough, and they would have to incur substantial aggravation and work to change and update their addresses in all the many places where such info is recorded. Changing the road to a Class V would also raise taxes for the neighboring lots, decrease the peaceful, pastoral character of the neighboring lots, and result in increased noise, inconvenience, and disruption during road construction. Such a requirement would invariably create significant tension and resentment between the current property owners and the new property owner required to convert the road, and significantly decrease the possibility for community and harmony. Without a variance, 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 been permitted on this private drive. The variance will not alter the essential character of the area. The variance is a minimum necessity. 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 approving abutters to speak. There was none.

The Chair asked for disapproving abutters to speak. Attorney Jeremy Eggleton stated all other objections still apply. Variance conditions were not met, no frontage, no special conditions. Attorney Jeremy Eggleton requested his letter of opposition also be included in 18.2.1 as well. He stated the previous conditions should apply if this variance is approved.

Chairman Dearborn stated that was the intent. Voting will determine.

The Chair asked Thomas Page, disapproving abutter, if he had anything else to add. Thomas Page stated the gravel right of way conditions were too short at 12 ft. He prefers 16 ft., a better fit for two cars to pass, safety issue.

The Chair asked for public at large/other boards to speak. There was none.

The Chair asked the applicants to speak. Jordan Estrada stated it was clearly subdivided in 1977. No lots had frontage at the time and were approved. Currently, there is 16 ft. width of hardpack on the road, two cars can pass. Neighbors, should be able to handle it respectably.

The Chair asked for approving/disapproving abutters to speak. Attorney Jeremy Eggleton stated nonconforming use does not apply. The lot was created prior to this ordinance. But, it was “triggered by the issuance of a building permit.”

Thomas Page addressed Jordan's comment that approving of the lots was done when subdivided, the deed says "subdivision approval not required."

The Chair asked for public at large/other boards to speak. There was none.
The public hearing closed at 10:58 pm.

The Chair entertained a motion to approve point one.

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point one with conditions applied. Chairman Dearborn read: Town of Weare Zoning Board of Adjustment Conditions for Case #10B-2021, Private Road Building Permit. The following are minimum conditions and requirements for a Variance Approval of a residence on a Public Road: Town of Weare Zoning Ordinance 18.2.1

Condition 1: The applicant shall be required to post the necessary sign(s) at the transition from a Class V/Private Road in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41,1, (d) - Private 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 Deed, and be consistent with NH RSA 674:41,1, (d) - Private 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.

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.

Condition 5: In an appropriate location(s) on the Private Road, implement a widening of the Private Road for a minimum of 20 feet wide by 50 feet long, so two emergency (life and safety) vehicles can pass safely. Culverts may be located at appropriate location to permit seasonal runoff associated with the Private Road. Appropriate gravel material shall be applied, as required, for an all-weather gravel surface, from Bart Clough Road to the Lot #20. The Town of Weare Public Works Director shall determine the "Practical" implementation of this condition.
Passed 5-0-0

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point two. Passed 5-0-0

Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Passed 5-0-0
Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point five in its entirety. Passed 4-1-0 Malcolm Wright votes no

This variance passed.

III. MINUTES:
April 6, 2021 Minutes: **Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept the minutes of April 6th, as amended, passed 5-0-0**

III. OTHER BUSINESS:

- Deadline- 1st Monday after the first Tuesday
- Change first page of application to the article as the cover sheet

IV. NEXT MEETING: June 1, 2021

Being that there was no more business to come before the Board, Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to adjourn the meeting at 11:10 pm., passed 5-0-0.

ADJOURNMENT
A True Record.
Karen Nelson
Karen Nelson transcribed from
Zoom recording & TA Bolton notes