

**ZONING BOARD OF ADJUSTMENT  
OCTOBER 6, 2015 FINAL MEETING MINUTES**

**Present:** Chairman - Jack Dearborn, Member - Stu Richmond, Member - Malcolm Wright, Member - Marc Morette, Land Use Coordinator ó Chip Meany, Minute Taker ó Tina Ripley

**Guests:** Rachel Audet, Russell Crevoiserat, Michelle Crevoiserat, Eric Purington, Daniel Muller, Howard Daniels, Jr, Kevin Cummings, Ann Cummings, Bob Kelley, Candance Sleeman, Donna James, Hal Maloof, Art Siciliano, Michael Durgin, Diane Durgin, Rich Hoenig, Noreen Lull, Ray Dubois, Steve Hart, Peter Proulx, Wiliam Wiss, Christopher Stagakis, Chris Gorski, Marc Pinard, Porter Spooner.

**I. CALL TO ORDER**

The meeting was called to order by Jack Dearborn at 7:30pm. Jack said there are five cases tonight and four members here. Jack said he will seat the four members for all the cases.

**II. PUBLIC HEARING**

**Case #0715 – Continued from July; Michael & Diane Durgin, are requesting a variance from Article 14-3.1 on the South Side of Colby Road at Map 412, Lots 154.3 & 154.18 in R/A zone.**

Jack said case #0715 will be continued. Stu motioned to continue case #0715 to November 3rd. Marc seconded. Motion passed. 4-0-0.

The Board introduced themselves.

**Case #0815 – GM Investment Properties**

Jack said this was withdrawn.

**Case #1015 – R. Crevoiserat: Request for a variance to Article 24.10 at 731 Concord Stage Road, Map 403, Lot 16.1 – building a residence in a Commercial Zone.**

Jack said case #1015 R. Crevoiserat: request for variance at 731 Concord Stage Road. Marc moved to accept case #1015. Stu seconded. Jack said there is a technicality problem and said you need to answer the questions we ask. Jack explained to Mr. Crevoiserat what needs to happen when he reads the application.

Jack explained how they are going to hear the case.

Mr. Crevoiserat read the five points of hardship into record.

**1) That the granting of the variance will not be contrary to the public interest because:**

The commercial property at issue is surrounded by residential zoned properties.

Since the property was listed for sale in September 2011, there have been two possible potential sales for which the potential buyers required commercial zoning.

Both possible sales failed. Conversely, there has been a steady stream of interested parties to reside on the premises and operate an in-home business. The in-home businesses are the kind consistent with permitted uses with residential zoning.

**2) The variance requested, will not be contrary to the spirit of the ordinance because:**

As mentioned previously, the abutter properties are all owner occupied residences. The building in question is an open-concept cape design with an additions on the west and north sides. With the exception of the sign posts and paved driveway and parking areas, the property would appear as any other residence in the area. The 2.35 acre lot consists of two chain link fenced playgrounds and has over 140 Christmas trees throughout and a row of Poplar trees along the east property line.

**3) That through the granting of relief by variance substantial justice will be done because:**

The owner of the property relocated to Arkansas in September 2012 and relies on his daughter and real estate broker to monitor the property on occasion. In December 2013, Fred Fuller did not provide oil as part of its auto-fill program. The plumbing and forced hot water heating system required substantial repairs. About June 2014, someone shot out the glass for the slider doors facing Concord Stage Road, as well as the exterior lights facing Lufkin Road. A police report was filed. I traveled to Weare to make the repairs in August 2014, but during a visit in April 2015, one of the new replacement exterior lamp fixtures was stolen. As a result, I return to Weare once a year to perform upkeep that could have been avoided if the property were occupied.

Additionally, I am retired. I draw fixed income and I have a part time job. However, a substantial and disproportionate amount of my income is expended on real estate taxes, insurance and repairs for this property. By providing the variance, the opportunity for a sale or tenant would be enhance significantly and ownership of the property would be financially viable.

**4) That by granting the variance, the values of surrounding properties will not be diminished because:**

The property has been vacant for the last four years and, unless a significant improvement in commercial property demand occurs, the property will remain vacant for years to come. A vacant commercial property will only detract from the neighborhood and, should the commercial property sell at a distress price, market prices for surrounding properties could reasonably be expected to decline. Conversely, if the requested variance is approved, the property will likely have a residential tenant or be sold, thereby retaining the character of the neighborhood and serve to sustain real estate valuations.

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

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

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

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

**A: Please describe the special conditions of your property that distinguish it from other properties in the area:**

The only feature which distinguishes the property at issues from other properties in the area is the fact that it is zoned for commercial use and it is vacant.

- (i) No fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application of that provision to the property:**

As written, the commercial zone only prohibits residential applications of the property. The property is situated within residential zoned properties. Given the unique description of the property, it has limited application for commercial use, but it well suited for residential use. As a result, I respectfully conclude that there is no fair or substantial relationship between the ordinance and the instant application

- (ii) And how the proposed use is a reasonable one:**

The request is reasonable because it would allow the property to be occupied and not detract from the abutter properties. By allowing the variance, the best use of the property can be achieved as compared to the limitations imposed by commercial zoning in a depressed economy and depressed commercial real estate market. By approving the variance, the board has the opportunity to improve the vitality of the immediate area and help to sustain real estate valuations.

**B: If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exit if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

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

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

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

As mentioned previously, the general economic conditions are not conducive to the development of business and, specifically, the sale and leasing of commercial property in Weare is rare. The most recent agreed upon sale price for this property was the 1993 acquisition price plus the cost of the addition in 1995 ó a value that represents 40% of the assessed valuation for tax purposes. Despite the distressed selling price, the transaction failed due to a lack of commercial financing. Conversely, there exists demand for residential properties and interest in residential properties that could accommodate in-home businesses. As an example, my former home on Arthur Road was recently sold by my ex-wife for \$212,000. The sole feature which distinguishes this property from others in the area is the strict ban of residential occupancy. As a result, an unnecessary hardship exists due to the lack of a variance.

Jack asked for approving abutters, there being none. Jack asked for non-approving abutters, there being none. Jack asked for public at large, there being none. Jack asked for board comment, there being none. Jack closed the application and said they will deliberate the case.

Stu made the motion to accept the case #1015. Marc seconded. Motion passed. 4-0-0

Marc motion to accept point #1. Malcolm seconded. Motion passed. 4-0-0

Marc motion to accept point #2. Malcolm seconded. Motion passed. 4-0-0

Marc motion to accept point #3. Malcolm seconded. Motion passed. 4-0-0

Marc motion to accept point #4. Malcolm seconded. Motion passed. 4-0-0

Marc motion to accept point #5 in entirety. Stu seconded. Motion passed. 4-0-0

Jack said you received your variance.

**Case #1115 – Worthley, LLC; Request for a variance to Article 17.1.1 to build a single family home on a Class VI Road at Map 412, Lot 23 on Worthley Road in an R/A Zone.**

Jack said there is a letter, an application, the five points of hardship filled out, a color drawing of the property 412-23, site plan on 11x17 and full size. Malcolm moved to accept application #1115. Marc seconded. Motion passed. 4-0-0

Marc Pinard, representing Worthley LLC read the five points of hardship into record.

**1) That the granting of the variance will not be contrary to the public interest because:**

The issuance of a Building Permit on the Class VI Road will not negatively impact the public in any way. The issuance of Building Permits in the general vicinity is not unusual as there are homes nearby on Guyø Lane, Hillcrest Drive and on the Class V portion of Worthley road. A single family home Building Permit will be sought for this 36.9 acre lot as opposed to seeking to subdivide the lot for multiple home building. As such, the granting of the variance will not be contrary to the public interest.

- 2) **The variance requested, will not be contrary to the spirit of the ordinance because:**  
The purpose of the ordinance is to promote the public health, general growth, safety and general welfare and the issuance of a Building Permit for a new home on the Class VI Road will not adversely affect public health, general growth, safety or general welfare. The granting of the variance will be consistent with the purpose of the ordinance to promote general growth.

Mr. Pinard said it is important to note this is at the beginning of the Class VI road. Jack asked Mr. Pinard to show the Board where the road changes. Jack asked for those that were interested in this to come forward so they can see what they are talking about. Jack said a Class V means the Town maintains and owns the road. Jack said a Class VI the Town owns it but doesn't maintain it. Jack asked Mr. Pinard how many feet they are looking for and Mr. Pinard said if you look at the map you can see the switch, and it is 419 feet from the switch. Mr. Pinard said there is no site plan yet except to build a single family home there.

- 3) **That through the granting of relief by variance substantial justice will be done because:**

The granting of the variance will allow the lot of land to be utilized to build a single family home which will benefit the Landowner and will also benefit the Town by expanding the tax base. Accordingly, justice will be served if the variance is granted.

- 4) **That by granting the variance, the values of surrounding properties will not be diminished because:**

The lot of land at issue is currently vacant and the addition of a single family home to the lot will increase the value of the real estate property in the area by providing a new subject in connection with which comparable sales may be measured in the future. An additional single family home in the area will not diminish nearby home values as would potential alternate uses of the property.

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

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

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

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

**A: Please describe the special conditions of your property that distinguish it from other properties in the area:**

The property is not qualified to be built upon because of its location at the beginning of the Class VI portion of Worthley Road. The properties on the Class V portion of Worthley and nearby Guyø Lane and Hillcrest Drive are qualified to be built upon, many of which properties have been built upon. This special condition distinguishes the subject property from other nearby properties.

**(i) No fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application of that provision to the property:**

The general public purpose of the ordinance provision appears to be to ensure that building permits are not issued for properties in remote locations that cannot be properly and safely served by municipal and emergency services. The subject property, however, is at the beginning of the Class VI portion of Worthley Road, allowing for improvements to be made by the property owner to allow for all necessary access in a safe manner. As such, no fair and substantial relationship exists between the general public purpose of the provision and the specific application to the subject property.

**(ii) And how the proposed use is a reasonable one:**

The proposed use of the property to build a single family home is reasonable as such use is consistent with other uses in the general vicinity. This application seeks only to use the property as other properties in the area are used. Because the proposed use is consistent with nearby uses, the proposed use is reasonable.

**B: If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

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

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

The property is suitable for single family home construction and residential use, but for the special condition of being located at the beginning of a Class VI road. But for that special condition, the property is otherwise suitable for the building of a single family home and residential use, as are other properties in the area.

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

The ordinance provision prohibits the issuance of a Building Permit because the property is at the beginning of the Class VI portion of Worthley Road, rendering the property unusable for its intended and ordinary purposes. Absent the variance, the property cannot be reasonably used. Therefore, the granting of the variance is essential to enable reasonable use of the property.

Jack asked for any approving abutters and there were none. Jack asked for any disapproving abutters.

Christopher Stagakis said he doesn't understand, on one side, the reason given is the property is the same and used the same as the other properties and on the other, it is the exact same reason given as the hardship, that it is different due to the variance since it is on a dirt road. Jack asked if anyone has built out there before 1987 and Mr. Stagakis said he didn't know. Jack said they had zoning in 1987 and since that time they haven't allowed anyone to build on a Class VI Road unless they have a variance. Mr. Stagakis said the similar houses are all on paved roads. Mr. Stagakis said he is afraid it will devalue his property. Jack asked why he was afraid it would devalue his property. Mr. Stagakis said he moved there since it was a no end street, that was no traffic on either side, it was a great place to raise the kids and liked that there was no activity back there. Jack said if Brady-Sullivan chose to upgrade the 419 piece of Class VI Road to Class V, they wouldn't be sitting here tonight. Jack stated the only thing that will happen tonight is for a single family home.

Hal Maloof said he lives on Lot 25. Mr. Maloof said even though he is asking for a single family wouldn't he have to have approval for the road. Mr. Maloof said the application didn't cover the improvement of the road. Mr. Maloof said he is afraid there would be increased traffic past his house.

Porter Spooner said he lot is 22.1. Mr. Spooner said currently the Town plows the road and leaves a big snow bank at the end of the road. Mr. Spooner asked how the snow was going to get dealt with in the 419 ft of road. Jack said the Town wouldn't be maintaining that part. Mr. Spooner asked if the owner would have to plow it. Jack said assuming the owner would like to get to his property; yes he would have to maintain it. Mr. Spooner said he is also worried about the power lines and said currently they are underground. Mr. Spooner said there are no lines there and they don't have to worry about any tree limbs falling. Mr. Spooner said at the end of the road that is not Town maintained there are at least 6 cars there a day where people park so they can walk their dog, snowshoe. Mr. Spooner asked if that would be an issue with them blocking his road. Jack said he couldn't answer that and right now they are parking there on the good graces of the Town. Mr. Spooner said if there is going to be construction work on the property, there will have to be substantial increase on the quality of the road to get construction vehicles in there to put in a well and septic. Mr. Spooner said there is currently a swamp/pond at the bottom about where the 419 ft starts and said there is a stream that comes across there. Mr. Spooner said yes it would bring in income by taxes, but it could be net loss by having more than 1 student in the school system.

Steve Hart said he lives on other end of Worthley Road. Mr. Hart asked does this mean I can subdivide and go in 400' and put in a house by asking for a variance. Mr. Hart said we are talking about it increasing taxes, but there is a thing in the state called current use and said it eliminates 90% of the tax. Mr. Hart said if you are opening up Class V Roads, which should allow him the same discretion to put extra houses on his road.

Donna James said she the comments were interesting. Ms. James said she understands that they are asking to build one house on one really big lot. Ms. James said her concern is down the road, the person/family don't put many kids in school system, but in another 10 years they may want to subdivide the 36 acres.

William Wiss said his lot is 250. Mr. Wiss said the boundary lines are off. Mr. Pinard said the map was the town map and no survey has been done. Mr. Pinard said they don't plan to encroach on anyone's property. Jack said if there is a monument on the ground it trumps the map.

Mr. Pinard said it is for a single family home not for a subdivision. Mr. Pinard said there has to be a way to create value for the property that isn't there right now. Mr. Pinard said there is the option to improve Class VI road to Class V standards, but the cost of doing that would have to be recaptured in some way. Mr. Pinard said one way to do that would be to do a subdivision, on a 36 acre parcel they could put a good number of houses and recoup the money and put it into rebuilding the road. Mr. Pinard said they don't want to do that. Mr. Pinard said will a subdivision happen in 10 years from now and said he doesn't know. Mr. Pinard said Brady/Sullivan wants to get the best value out of the property by putting a single family home on it. Mr. Pinard said it is not an unreasonable request, it is not going to increase traffic flow, it will not create Town problems, it will not create plowing problems, and it will not create problems getting power in there. Malcolm said since it is in the RA district, have you thought agricultural use. Mr. Pinard said it is not the business that they are in, but they are in the real estate development.

Jack asked for any approving abutters and there were none. Jack asked for any disapproving abutters.

Howard Daniels said he is Lot 21. Mr. Daniels asked if they are planning on selling the house. Mr. Daniels said you are building a house since you own the property. Mr. Daniels asked does the house stay with someone in your organization or does it go on the market? Mr. Pinard said they are trying to get a variance so a house can be built there. Mr. Pinard said once the variance is granted he doesn't know what is going to happen. Mr. Pinard said there are going to get the variance approved so they can build something out there and said they could then sell it with that approval and someone else could build the single family house. Mr. Pinard said they are not putting a company person in it. Mr. Pinard said they are doing it so they can add value to the property and someone could build a single family home. Mr. Pinard said they are a couple of things that could happen, there could be a septic design & get it approved and then build, sell it with the variance in place and someone else can get a septic system approval or they could do variations on that.

Haleem Maloof asked about a permit to build a house. Jack said this is a variance to get a building permit. Jack said they are here tonight so they can qualify for a building permit. Mr. Maloof said wouldn't a building permit require a survey. Chip explained it. Mr. Maloof said he would recommend to the board that they would disapprove it since they have not fully told them what they are fully going to do.

Jack closed the public hearing.

Marc moved to accept point #1. Stu seconded. 1) When you leave a Class V road, sign needs to be posted as a Class VI Road, 2) Hillsborough Registry of Deeds, language from the Town of Weare that states this is not a town maintained road that this property is built on, 3) access road off the Class V to the building would be at the level of the Town of Weare driveway requirements. Motion passed. 3-1-0



Marc moved to accept point #2. Stu seconded. Motion passed. 3-1-0  
Marc moved to accept point #3. Stu seconded. Motion passed. 3-1-0  
Marc moved to accept point #4. Stu seconded. Motion passed. 3-1-0  
Marc moved to accept point #5 in entirety. Stu seconded. Malcolm said there was no hardship very well and said they had alternatives that they did not explore. Malcolm said he has a problem with people using the zoning ordinance as their hardship. Motion passed. 3-1-0.

Jack said you received your variance.

**Case #1215: Judith Chimenti; Request for a variance to Article 17.1.1 to build a single family home on a Class VI Road at Map 409, Lots 168, 169 and 170 on Horse Spring Hill Road in a Residential Zone.**

Jack said they have a check list, filled out application, letter of authorization, some maps, and warranty of deed. Malcolm moved to accept application #1215. Marc seconded. Motion passed 4-0-0. Art Siciliano said one of the things you asked for was how you are going to get into the lot and they had no luck with the abutters. Mr. Siciliano said he did some typography and said an engineer designed a driveway to get into the property. Mr. Siciliano said he went to the Board of Firewards but they can't give him an answer until he gets an approval from the Zoning Board. Mr. Siciliano said right now there are 3 lots existing on a Class VI Road. Jack said there is a notice for a single family home, but the application states for two homes. Jack is going to dismiss this application. Marc motioned to dismiss the application. Stu seconded. Motion passed. 4-0-0.

### **III. OTHER BUSINESS**

**Case #2504: Bailey request for extension on driveway variance on Map 407, Lot 153-1.**

Malcolm moved to grant the extension of case #2504, Map 407, Lot 153-1. Marc seconded. Motion passed. 4-0-0.

**Thomas A. Wilson request for extension on variance on Map 403, Lot 101, 57 Blake Road.**

Malcolm moved to extend the variance of Lot 101, Map 403, 57 Blake Road. Marc seconded. Motion passed 4-0-0

### **IV. MEETING MINUTES**

**August 4, 2015** ó Jack said on page 2 change "behave" to "behalf". Jack said change "321.1" to "3.12.1" on page 2. Malcolm said on page 2, first paragraph change "not" to "no" on last line. Jack asked that third paragraph be removed on page 2.

**September 1, 2015** ó There were no changes.

Marc moved to accept the August 4, 2015 minutes as amended and September 1, 2015. Stu seconded. Motion passed. 4-0-0

### **V. ADJOURNMENT**

Malcolm moved to adjourn. Marc seconded. Motion passed. 4-0-0

*Tina Ripley*