

**ZONING BOARD OF ADJUSTMENT
NOVEMBER 3, 2015 FINAL MEETING MINUTES**

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

Guests: Rochelle Pitkaniemi, Lasse Pitkaeniemi, Richard Hoenig, Noreen Lull, Daniel Muller, John Henry, Michael Durgin, Diane Durgin, Art Siciliano, Maria Dolder, Ann Cummings, Kevin Cummings, Bob Kelley, Candace Sleeman, Marjorie Burke, Peter Proulx, Ray Dubois.

I. CALL TO ORDER

The meeting was called to order by Jack Dearborn at 7:30pm.

Jack explained how they were going to run the meeting tonight.

II. PUBLIC HEARING

Case#1315 – Lasse J. & Rochelle E. Pitkaeniemi; Requesting a variance to Article 24.6.1, building a 7.5’ x 12’ addition entirely in the setback at 366 Concord Stage Road, Map 202-48 in Commercial Zone

The Board seated for this case is Marc Morette, Stu Richmond, Jack Dearborn, Donald Rogers, Malcolm Wright.

Stu made the motion to accept the application, case #1315.. Marc seconded. Motion passed 5-0-0.

Art Siciliano said this is for a variance to construct an addition to an existing house. Mr. Siciliano showed the Board on the map where the addition was going to be added. Mr. Siciliano read the 5 points of hardship into record.

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

This is a private addition to an existing house. No public funds will be used for this project. This addition does not increase traffic or safety issues. This small addition will not affect the general public. Building the addition will not affect the functioning of state highway 77 as has been confirmed by Scott Looney from the New Hampshire Department of Transportation.
- 2) The variance requested, will not be contrary to the spirit of the ordinance because:**
 - 1) The structure was built in 1969, predating the ordinance by two decades. I do not believe that the purpose of the ordinance was to prohibit existing property owners from making minuet additions to the existing structures.
 - 2) Variances are allowed to accommodate situations like this
- 3) That through the granting of relief by variance substantial justice will be done because:**

Currently, large pieces of furniture cannot be moved into the house because the stairway is so close to the front door that the door cannot be opened without hitting the bottom step near the wall. The side entry cannot be used because the door is only 32" wide as opposed to the 36" wide front door. The side entry cannot be widened without tearing down the existing portico above the door and the window next to it, which will all need to be redone due to the way they were integrated in the load bearing wall of the structure.

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

This is a residential home with a proposed residential addition. The addition will increase the value of this house. The homes on both sides of the road are residences also. Residential use in a neighborhood that is also residential use will not reduce values.

5) To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for "unnecessary hardship" is set forth in two 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 special condition of this property is that the entire house and garage are in the building setback. The two houses on either side of this lot and the one across the rear set back from the front property line.

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

- 1) The structure was built in 1969, predating the ordinance by two decades. I do not believe that the purpose of the ordinance was to prohibit existing property owners from making minuet additions to the existing structure.
- 2) The structure in question already has steps that extend 5 feet from the front door. This variance would only increase this area further by 2 and ½ feet, which is a negligible amount, but would greatly improve the usability of the structure.

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

Without the variance, I cannot build a covered are in front of the house, meaning that I get rain and snowed on when I enter/exit the building. In the winter the current front steps often freeze, making the use of the front door dangerous. It has been difficult to keep the steps clear through the application of snowmelt and snow shovels because of the large dormers that currently cause massive snow accumulations on the front steps.

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 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:

The special condition of this property is that the entire house and garage are in the building setback. The two houses on either side of this lot and the one across the rear set back from the front property line.

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:

Strict conformance of the rule is a hardship on this property. The construction was done 20+/- years prior to zoning. A variance is necessary for the owner to enjoy a proper entry way into his house.

Jack asked if the front boundary was done by the State and Mr. Siciliano said yes. Jack said if we want to write the decision no closer than x feet, what is the number you need? Mr. Siciliano said 2/10ths of a foot.

Jack asked for approving abutters.

Marjorie Burke said she lives on Merrill Road and she is an abutter. Ms. Burke said she has no objection.

Jack asked for disapproving abutters. There were none.

Jack closed the public hearing.

Malcolm moved to accept point 1. Marc seconded. Motion passed. 5-0-0

Marc moved to accept point 2. Stu seconded. Motion passed. 5-0-0

Marc moved to accept point 3. Malcolm seconded. Motion passed. 5-0-0

Marc moved to accept point 4. Stu seconded. Motion passed. 5-0-0
Jack said the residence can build no closer than .2 feet from the State line.
Malcolm moved to accept 5 in entirety. Marc seconded. Motion passed. 5-0-0.

Case #0715 – Continued from July: Michael & Diane Durgin, are requesting a variance from article 14-3.1 on South Side of Colby Road at Map 412, lots 154.3 – 154. 18 in R/A zone.

The Board seated for the case is Marc Morette, Stu Richmond, Jack Dearborn, Don Rogers, Malcolm Wright. Jack said they have checklist, tax map, list of abutters, deed, map and application.

Marc moved to accept case #0715. Stu seconded. Motion passed. 5-0-0

Maria Dolder said she is representing the Durgins. Ms. Dolder said the Durgins have obtained an approval for a 17 lot cluster subdivision from the Planning Board which was approved in 2007. Ms. Dolder said the approval became final in 2008. Ms. Dolder said the property is on Colby Road and consists of approximately 54.99 acres located in the R/A district. Ms. Dolder said the subdivision allows for approximately 27.56 acres of open space and 1600øof road way to serve the subdivision. Ms. Dolder said lot 1 has been sold to a third party; lot 2 is being occupied by the owners. Ms. Dolder said subsequent to her clients obtaining approval they were sued in connection with this property and that lawsuit tied it up. Ms. Dolder said the lawsuit was not settled until February 2013. Ms. Dolder said once the lawsuit was settled, her clients actively develop pursuant to their subdivision approval. Ms. Dolder said they have worked on blasting, removing rock material and excavating the road for the subdivision. Mr. Dolder said her clients are here requesting a variance from the changes in the zoning regulations and proceed on the subdivision as original approved.

Ms. Dolder said the applicants are requesting they be allowed to continue in accordance with subdivision plans. Ms. Dolder said they are not asking for something new. Ms. Dolder said they went thru the application process, abutters were notified, it was fully engineered. Ms. Dolder said traffic was taken into consideration by the Planning Board at the time of the application and nothing has changed. Ms. Dolder said it will still comply with all the health and safety regulations. Ms. Dolder said it has been regularly inspected by the town engineer. Ms. Dolder said if they do continue to move forward, they will still continue to have to have inspections by the town engineer. Ms. Dolder said they only have 1500øof road they to complete. Ms. Dolder said they have complied with the rules, safety regulations.

Ms. Dolder read the 5 points of hardship into record.

- 1) That the granting of the variance will not be contrary to the public interest because:**
To be contrary to the public interest, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. To ascertain whether granting the variance would violate basic zoning objectives you must examine whether it would alter the essential characteristics of the neighborhood or would threaten the public health, safety or welfare of the public. The Applicant's requested variances do neither

Furthermore, no abutting properties will be impacted by the development of the property as intended. The Applicants are merely requesting they be allowed to develop the

property in accordance with the subdivision approval they previously obtained. The work performed thus far by the applicants has been inspected and approved by James Donison of Northeast Engineering, who has indicated in his reports that the work has been completed pursuant to the original subdivision approval and applicable regulations. Accordingly, the granting of the relief requested shall have no impact on public safety, health or general welfare of the public. As such, the variance relief requested will not be contrary to public interest.

Similarly, the Applicants have been actively developing the property in accordance with the original subdivision approval. As a result, a large portion of the property has been cleared and blasted. For this reason, it would be contrary to the public interest to prohibit the Applicants to move forward with the completion of the subdivision as approved. It is not beneficial to the Town, nor to the neighborhood to have the property remain in its current state. Instead, granting the variance relief will allow the property to be utilized in a manner consistent with what is intended.

- 2) **The variance requested, will not be contrary to the spirit of the ordinance because:** Article 27 of the Town of Weare Zoning Ordinance states that cluster developments may be permitted or required in the R/A District. Accordingly, the underlying use of the property itself is in accordance with this general purpose. The design of the cluster development, even with the variance relief requested, maintains the preservation of a large amount of "open space", which promotes and conserves the natural resources and features of the land. The variance relief would simply maintain an already approved cluster subdivision that provides for the diversity of housing opportunities to the public that is expressed in the Zoning Ordinance. Given that the proposed use itself complies with the zoning Ordinance and the variance relief requested will not alter the essential characteristics of the neighborhood, nor alter the character of the property as it exists today, it is clear that the relief requested does not sacrifice the spirit or purpose of the Ordinance.
- 3) **That through the granting of relief by variance substantial justice will be done because:** One of the guiding rules in evaluating substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under this standard, the Applicants clearly satisfy this requirement. Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allows a property to be used reasonably. As stated above, even with the requested relief, the difference between that required under the Ordinance and that provided shall not create any adverse affect on the adjoining neighborhood. On the other hand, the Applicants will not be able to complete the development of the property as proposed without the variance relief requested, therefore, granting the variances would result in substantial justice.
- 4) **That by granting the variance, the values of surrounding properties will not be diminished because:** The Applicants are proposing to develop the subdivision pursuant to the approved subdivision plan and in compliance with applicable public health regulations. The development will not be out of the norm for the neighborhood, and is a use clearly

permitted under the Zoning Ordinance. At the time of obtaining the subdivision approval, there was no indication that these future homes would diminish surrounding property values and there is no evidence to suggest that this has changed. Accordingly, the use will have no adverse impact on neighboring properties. Given that the development shall continue to be inspected and shall be required to be constructed in a manner consistent with the existing regulations, there is no evidence that the variance relief requested will diminish surrounding property values, but instead the values of the future homes are intended to add value to the general neighborhood. As a result, the Applicants variance request will not diminish the value of surrounding properties. Furthermore, the property directly abuts a 29 lot cluster subdivision-will all those lots being less than 5 acres in size. Clearly, allowing the Applicants to develop their original subdivision is consistent with this abutting use.

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:

This property is unique in several ways, including the fact the Applicants obtained approval for a cluster subdivision from the Town of Weare Planning Board. But for the change in the lot size requirements, this cluster subdivision still complies with all other requirements of the Zoning Ordinance and remains in compliance with public health regulations. Unlike other approved subdivisions, such as the subdivision of SHB Properties, the Applicants have not just incurred the costs related to permitting the project, in this case, the Applicants too active steps toward developing this subdivision in connection with the obtained approval. In fact, the Applicants have blasted approximately 650ø of the 800ø required for the development of the subdivision. All of the work performed by the Applicants has been inspected and approved by James Donison of Northeast Engineering. According to Mr. Donisonø reports, the work has been completed pursuant to the original subdivision approval and applicable regulations. Although not the determining factor, the property is also unique in the fact that the Town of Weare shows each individual lot in the subdivision as a separate Tax Map and Lot # on the applicable tax map. Finally, the relief being requested by the Applicants is the minimum relief required in order to allow the subdivision to be completed.

(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 actual use proposed for this property, a residential cluster development, is expressly permitted under the Zoning Ordinance in the R/A District. But for the change in the minimum lot size requirement, the Applicants would be able to complete the development of the subdivision without any relief. In fact, had the Applicants not been subject to the lawsuit which tied up the property and the subsequent issues with the subcontractor hired to perform blasting on the property, the subdivision could have been fully completed in accordance with the original plan. Given that the proposed use will not alter the essential characteristics of the neighborhood or the property, but instead will allow the property to be used for and in the same spirit as when it was originally approved, there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property.

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

The underlying use of the property itself is permitted in the Zoning Ordinance. The design of the cluster development, even with the variance relief requested, maintains the preservation of a large amount of open space, which promotes and conserves the natural resources and features of the land. The variance relief would simply maintain an already approved cluster subdivision that will be constructed in a manner consistent with the existing regulations. In addition, the property directly abuts a 29 lot cluster subdivision-with all of those lots being less than 5 acres in size. This is a clear indications that the use being proposed is reasonable and consistent with the area.

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 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:

This property is unique in several ways, including the fact that the Applicants obtained approval for a cluster subdivision from the Town of Weare Planning Board. But for the change in the lot size requirements, this cluster subdivision still complies with all other requirements of the Zoning Ordinance and remains in compliance with public health regulations. Unlike other approved subdivisions, such as the subdivision of SHB Properties, the Applicants have not just incurred the costs related to permitting the project, in this case, the Applicants took active steps toward developing this subdivision in connection with the obtained approval. In fact, the Applicants have blasted

approximately 650ø of the 800ø required for the development of the subdivision. All of the work performed by the Applicants has been inspected and approved by James Donison of Northeast Engineering. According to Mr. Donison's reports, the work has been completed pursuant to the original subdivision approval and applicable regulations. Given the substantial work and costs associated with the same, the Applicants will not be able to complete the development of the property as proposed without the variance relief requested. Although not the determining factor, the property is also unique in the fact that the Town of Weare shows each individual lot in the subdivision as a separate Tax Map and Lot # on the applicable tax map. Finally, the relief being requested by the Applicants is the minimum relief required in order to allow the subdivision to be completed.

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:

Upon settlement of the lawsuit that tied up the property, the Applicants proceeded to actively develop the property pursuant to the subdivision approval. In fact, the Applicants have blasted approximately 650ø of the 800ø required for the development of the subdivision. It is clear that the underlying use of the property is permitted and the Applicants have moved forward in good faith with the development of this property pursuant to the approved subdivision plan. Given the substantial work and costs associated with the same, the Applicants will not be able to complete the development of the property without the variance relief requested and therefore, the property cannot be reasonably used in strict conformance with the ordinance.

Jack asked for approving abutters. There were none.

Jack asked for disapproving abutters.

Daniel Muller said he is here on behalf of Candance Sleeman and Robert Kelley, who are abutters. Mr. Muller said vesting is controlled by statute (statute 674.39). Mr. Muller said what they don't address is they have looked at the vesting before. Mr. Muller said in September 2012 the Durgin's filed an application with the Planning Board specifically asking for an extension of the vesting period for this subdivision. Mr. Muller said the Planning Board on September 27, 2012 denied the application and on the advice of counsel, the Board ruled they lacked the authority to grant the extension. Mr. Muller said the Board ruled that active and substantial development necessary for vesting meant the completion and approval of the entire proposed road. Mr. Muller said from the presentation here, that has not occurred and were advised that it needed to be done by April 2014. Mr. Muller said the Durgin's have no vesting rights since they disappeared in April 2014. Mr. Muller said if they continued to work for purposes of law, they were not acting in good faith, they were acting at their own risk. Jack said to make sure he understands it correctly, they requested to the Planning Board but the Planning Board doesn't have the authority to grant it. Mr. Muller said counsel advised them on that.

Mr. Muller said he didn't think the Zoning Board of Adjustment could grant it either since it is a subdivision. Jack said the Durgins are here for a variance on the 2008 change in zoning ordinance from 2.5 acres to 5 acres.

Mr. Muller said the variance request unduly conflicts with the purpose of the zoning ordinance. Mr. Muller said there was a focus on a cluster subdivision is an inappropriate focus. Mr. Muller said the focus is on the lot size requirement. Mr. Muller said in 2007 the Town changed from minimum size based solely on soil types and slopes to one of 5 acres. Mr. Muller said the 2007 zoning amendment was to make it more rural. Jack said it was a warrant article in 2007 and didn't get approval until 2008. Mr. Muller mentioned the costs the Durgins incurred and said they should have known what the cutoff date was back in 2012. Mr. Muller said he doesn't believe they can take advantage of the work done after the fact and get benefit of what the law considers not to be in good faith.

Mr. Muller said in terms of substantial justices, he disagrees there is no public interest. Mr. Muller said the ordinance was specifically changed to make lot size larger in this district and make the character more rural. Mr. Muller said the Durgin's subdivision approved under the old design doesn't do that and it is much denser than what is currently allowed. Mr. Muller said when people bought into this area after the 2008 amendment, they were anticipating larger lots with a rural character and this is what his clients were interested in when they moved in. Mr. Muller said in terms of the characteristics, they are more characteristics of the owner. Mr. Muller said the fact that they had a subdivision approval in 2007, but the law states if you want to take advantage of that, you have to do certain things within a certain period of time and they didn't do that. Jack said the way he understands it the original subdivision was 17 lots and they have acted on 2 lots. Jack said they are not going to do anything here tonight to disturb those 2 lots and said they are talking about the un-built on 15 proposed lots that have yet to be approved by the Town for acceptance. Mr. Muller said in context of a cluster subdivision is a yield plan, which is how many lots you can get overall. Mr. Muller said they should be allowed to get what is allowed under the current zoning ordinance instead of going back to the old design.

Mr. Muller said they want to maximize their profit and maximize their return. Mr. Muller said the variance law doesn't allow you to maximize your profit but does allow for a modest return.

Ann Cummings said her relatives used to own that property and it was sold. Ms. Cummings said the reason it was sold was because they were told it couldn't be developed due to not enough road frontage. Ms. Cummings said her house and her in-laws all had to have 2 acres at the time they got their property. Ms. Cummings said if she is looking at it correctly there is now 16 little lots - 1 that is over 2 acres, 8 that are a little over 1 acre and 7 that are under 1 acre. Ms. Cummings said you are probably going to have 2 cars per lot coming out onto the road that already has problems. Ms. Cummings said they have gotten notice from the school that the school bus is so crowded, they some days they may have to say to her son that we will have to come back for you we don't have room. Ms. Cummings said she is concerned about the number of kids being added to the school district with number of houses being added.

Rich Hoenig (341 Colby Rd.) said he bought his property at certain acreage and pays taxes on that acreage and said he doesn't understand why we should allow going against the rule to pay less taxes on smaller acreage. Mr. Hoenig said he is concerned about traffic. Mr. Hoenig said there is a one lane bridge that gets a lot of use and doesn't see why they didn't put a road to Route 114 directly.

Ms. Dolder said she didn't represent the Durgins during the Planning Board meeting. Ms. Dolder said some of the confusion was due to the date on the letter they received which was 5 months after the meeting. Ms. Dolder said most of the work was done prior to the deadline in 2014. Ms. Dolder said they were working in good faith. Ms. Dolder said in terms of the 2008 zoning amendment and the fact that is what people should aspect, this particular subdivision was on record at that time. Jack said when

the Planning Board posts a sample warrant it is law and goes into effect the day it is posted. Ms. Dolder said in reference to the Durginø trying to maximize their profits, there are just trying to make what is a reasonable return. Ms. Dolder said this was to be their retirement and they have been doing this themselves. Ms. Dolder said their lawsuit was settled. Ms. Dolder said regarding traffic, the Planning Board accessed that at the time of the subdivision and approved it.

Mr. Muller said the Planning Board accessed it in 2007, now it is 2015. Mr. Muller said regarding vesting, they should have known the deadline was coming. Mr. Muller said for the good faith, he doesn't think it stands.

Jack closed the public hearing at 8:45pm.

Jack said he would like to recommend to the Board continuing the case and bring the letter from Mr. Muller and other material to the Town Council. Stu made the motion to continue case #0715 to December 1, 2015 and take items to Town Council. Marc seconded. 4-1-0.

Case #1215: Judith Chimenti; Request for a variance to Article 17.1.1 to build two new homes on a Class VI Road on Map 409, 169 & 170 on Horse Spring Road in a Residential Zone

The Board seated for this case are Marc Morette, Stu Richmond, Jack Dearborn, Michael Meyer, Malcolm Wright.

Jack said they have an application, 5 points of hardship, authorization for Art Siciliano, subdivision highlighted, excerpt of deed dated September 8, 1978, and abutters list.

Michael moved to accept the application. Marc seconded. Motion passed. 5-0-0

Art Siciliano said they need a variance to get a building permit and to have something to take to the fire department. Mr. Siciliano said he has a preliminary design from an engineer. Mr. Siciliano said the grade is 15% and that is the best the engineer can do. Mr. Siciliano said there is some drainage on Barnard Hill Road that comes across Horse Spring Road. Mr. Siciliano said they have 3 lots and they are doing away with one lot.

Mr. Siciliano read the 5 points of hardship into record.

- 1) **That the granting of the variance will not be contrary to the public interest because:**
This will be an access for two lots. No public funds will be used to construct the access. The designed travelway will provide access for visitors, fire and emergency vehicles.
- 2) **The variance requested, will not be contrary to the spirit of the ordinance because:**
The area is zoned residential and building single family homes on an accessible is not contrary to the spirit of the ordinance. The spirit of the ordinance is to 1) address safety concerns associated with roads or accesses that are not maintained by the Town, 2) prevent uncontrolled development, neither of those concerns are relevant to this petition

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

These lots were created in 1971, along with six other lots. The six lots have houses on them. The owner purchased the 3 lots in 1978 and has been paying taxes since then. The proposal is to combine two of the lots, so there will be two lots sharing the common access. A variance with conditions will allow use of the properties as they could have prior to zoning. The access can be designed and constructed to allow access to the two houses.

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

Residential homes will be built on the lots. The same as the surrounding properties. Residential use in a residential neighborhood will not reduce values.

5) To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for “unnecessary hardship” is set forth in two 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:

Other properties in the area are on Class V roads maintained by the Town. These lots are on a Class VI road not maintained by the Town.

- (i) No fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application of that provision to the property:**
Construction of a reasonably safe access to these lots is key to the use of these lots and solves the issue that the ordinance is concerned with.
- (ii) And how the proposed use is a reasonable one:**
The proposed use is for residential homes in a residential zone. By creating a safe access to the homes, the spirit of the ordinances will be met like other homes in the neighborhood.

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 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:

As noted, there were 9 lots created in 1971. These 3 lots are vacant and on a Class VI road and in need of a safe access. The other 6 lots have homes on the Class V road and have safe access. There are other homes in the area on the Class V road.

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:

Article 17.1.1 prohibition places a blanket restriction on all development on private and Class VI roads because of the conditions of the roads. A variance is needed for access to and use of the property. Construction of any access way, as designed, will allow reasonable use of the property.

Jack asked for approving abutters. There were none.

Jack asked for disapproving abutters.

Ray Dubois said he lives on Barnard Hill Road. Mr. Dubois said that he glad that Mr. Siciliano said the map is incomplete as far as drainage. Mr. Dubois said the culvert and the historic site have not been addressed. Jack asked what historic site and Mr. Dubois said the Eaton Farm. Mr. Dubois said his primary concern is public safety and said there are lot of safety issues that should be addressed. Mr. Dubois said it would restrict his access and that he has the same rights to the Class VI road and to maintain his property. Jack said the Town owns the road and choose not to maintain it. Mr. Dubois said it has never been clearly posted. Jack asked if there was ever a yellow 4x4 sign with wording stating you are leaving a Town Class V road and Mr. Dubois said no.

Peter Proulx said he lives on River Road. Mr. Proulx said he doesn't really see any hardships. Mr. Proulx said he is not sure how they are not going to spill over into abutters property trying to make the road safe. Mr. Proulx said he is concerned about safety.

Mr. Siciliano said the hardship is huge since she can't get to her property.

Jack closed the public hearing at 9:28 p.m.

Jack said he go the Town of Weare, Article 8.7 in summary which describes in great detail what the Board of Firewards would consider for access from a Class V road, in this case a Class VI road into the lot. Jack said the grade is 10% and their requirement for this is the radius is more than 45% then the turn needs to be 20' wide. Jack said there is no accommodations for the water and there drainage information on the plan. Jack said he doesn't feel the plan represents a reasonable limitation.

Marc moved to accept point 1. Malcolm seconded. Jack said he doesn't think the application meets the need, the access, and the drainage. 0-5-0

Marc move to accept point 2. Michael seconded. 0-5-0

Stu moved to accept point 3. Marc seconded. 0-5-0

Stu moved to accept point 4. Marc seconded. 0-5-0

Stu moved to accept point 5 in entirety. Marc seconded. 0-5-0

III. ADJOURNMENT

Marc motion to adjourn. Malcolm seconded. Motion passed. 5-0-0

Tina Ripley