

**ZONING BOARD OF ADJUSTMENT  
MARCH 1, 2016 FINAL MEETING MINUTES**

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

**Guests:** Yvonne Walton, Danielle Eriksen, Michael Walton

**I. CALL TO ORDER**

The meeting was called to order by Jack Dearborn at 7:30pm. The Board introduced themselves: Marc Morette, Stu Richomd, Chairman Dearborn, Michael Meyers, Malcolm Wright. Chairman Dearborn said these are the members that will be seated for this hearing.

**II. PUBLIC HEARING**

**Michael & Yvonne Walton requesting a variance to Article 17.1.1, Build on a Private Road at Map 407-119.1 on North side of Maplewold Road in an R/A Zone, Case #0316 continued from 02/09/16**

Jack Dearborn said they have the following: tax map, map (easement), diagram (drainage) included with application.

Jack Dearborn said it looks like it is what they asked for last time. Jack Dearborn said last time they opened up, but decided to ask for additional information before we accept the application.

Marc Morette moved to accept application case #0316. Stu Richmond seconded. Motion passed. 5-0-0.

Jack Dearborn read the highlights of the application.

Yvonne Walton read the 5 points of hardship into record.

The undersigned hereby requests a variance to the terms of Article 17 Section 17.1.1 and asks that said terms be waived to permit:

The issuance of a building permit for a single family residence at 280 Maplewold Road, with access via a "private road" which area shall closely conform with that of the existing deeded right of way.

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

The properties on Maplewold Road are already residential or wooded. There would be no anticipated impact to abutters, wetlands, or neighbors. The property is set so far back and is so large (5+ acres) that neither the house nor its construction would be visible or disruptive, nor would there be property line encroachment. The proposed house plan was

privately architecturally designed to be a unique retirement home which would only enhance nearby property values as well as provide tax income for the town. The traffic to Maplewold Road generated by a single family home would be negligible or insignificant. Hence there would be no aspect of the variance that would be contrary to the public interest.

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

Issuance of the variance would be consistent with the intent of the ordinance i.e. to promote general growth and protect the public health, safety, and welfare. Also, there are conditions unique to this property that support issuance, such as the bona fide gift issue, the grandfather clause, and the existing deeded right of way - all diligently considered in this lot's provenance and only encumbered by relatively recent rulings by the town (which understandably could not take into consideration every single parcel of privately owned property). Indeed, issuing of this variance would be an excellent example of **complying with the spirit of the ordinance.**

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

The Town of Weare & the State of NH (NHWSPC) have already issued/approved/stamped a septic system which has been installed on the lot. The Town & PSNH have already allowed the owners to set up power lines and poles to reach the property, in compliance with state and federal requirements. See previous (#2) regarding compliance with the spirit of the ordinance. The town will benefit by expanding its tax base (the applicants have already been paying taxes on this buildable lot since 2007). The lots are part of a "subdivision" which was approved by the Town of Weare Planning Board prior to 1990, in spite of the fact that it had not frontage on any road. There was a bona fide gift provision for this lot historically (and noted on the deed) which would have allowed a "no frontage" lot. The deed for the lot conveyed in 1988 included in the conveying instrument "an easement for driveway purposes". Without the granting of the variance for this lot the applicants would not be able to build a home on it, and the lot would not serve its intended use. Therefore, justice would be served if the variance is granted.

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

The building of a new single family home on a vacant lot should increase the value of surrounding properties by providing a new subject property against which to measure comparable sales in the future. Potential alternative uses of a vacant lot could have significant negative impact on the surrounding properties which a new single family home would not.

**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 main special condition of this property that distinguishes it from other properties in the area is its lack of frontage on Maplewold Road, hence requiring access through a deeded right of way. The lot complies with all other building lot requirements set forth by the town and therefore the proposed use is a reasonable one.

- (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 purpose of the ordinance provisions appears to be to ensure the safety and welfare of persons living in less accessible lots (i.e through proper and safe accessibility of emergency and municipal services). Be it known that: the subject property itself is "wide open" with plenty of room for large vehicle turnaround, the house plans call for a circular driveway > 75 feet in diameter, the proposed "private road"/deeded easement has ample room for private or emergency vehicles to traverse or pass, the road conditions has is has been demonstrated to be reliably solid and not subject to unusual wear, and the applicants are willing to be responsible/share responsibility with other abutters for maintenance of said road. Therefore, no fair and substantial relationship exists between the general public purposes of the provisions and the specific application to the subject property.

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

The applicant seeks to use this property upon which to build a single family home; this is reasonable and consistent with used of other lots in the general vicinity and all along Maplewold Road. Therefore the proposed use is a reasonable one.

**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:**

The subject property conforms with all requirements needed for constructions of a single family residence, with the exception of the lack of frontage on Maplewold Road. It therefore has no other point of access or egress except the existing deeded right of way. This setback with limited means of access and lack of frontage (i.e "landlocked") is the main distinguishing difference between the subject property and other developed 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:**

Due to the special conditions indicated above (i.e this lot is otherwise "landlocked", without variance for the frontage requirement and access through an approved "private road", this privately owned lot would be unable to be reasonably used for its intended and ordinary purpose.

Jack Dearborn asked for approving abutters.

Danielle Erickson said she owns two of the abutting lot. Ms. Erickson said she is in favor of this and it would increase her property value. Ms. Erickson said the traffic impact to the town will be minimal and said she believes it will be a positive thing.

Jack Dearborn asked for disapproving abutters. There were no comments.

Jack Dearborn said there is a list of proposed improvements to private road/easement for 278/280 Maplewold Road and asked the Walton's if they are still good with it. Mrs. Walton said yes.

Jack Dearborn closed the public hearing at 7:45 pm.

Marc Morette moved to accept section 1. Stu Richmond seconded. Motion passed. 4-1-0

**Jack Dearborn read off a list of conditions that need to be completed for Town of Weare ZBA approval & building inspector's issuance of building permit:**

Signage - Compliant signage located at the transition of the Maplewold (Class V) Road and the (proposed Sparrow) private road; Town of Weare Liability Disclaimer recorded at the Hillsborough County Registry of Deeds; Certified engineered plan specifying Maplewold Road drainage and road easement; and approved by Town of Weare Public Works Director; Deeded road easement recorded at

the Hillsborough County Registry of Deeds; Private road and Driveway(s) - In general, Weare Fire Department access and water supplies shall comply with NFPA 1, Fire Code (National Fire Protection Association 2009). Specifically, fire department access and access road shall be provided and maintained in accordance with Chapter 18.2, Fire Department Access. Applicant shall obtain approval, for the private road and driveway, from Town of Weare Fire Chief/Board of Fire Wards.

### **Proposed improvements to private road/easement for 278/280 Maplewold Road**

The existing driveway at 278 Maplewold Road has deeded right of way/easement for access to the lot/s behind the residence at #278. Following are some improvements that Michael & Yvonne Walton propose, to ensure that this easement will be in substantial conformance with needs of the Weare Fire Department and/or other municipal or safety vehicles. As it currently exists, the right of way/easement can be described as follows: The 1300 foot long access/easement is currently in very good condition despite being unpaved; Minimum width equals or exceeds 25 feet in all places; Unimpeded vertical clearance height; One large gentle curve, with radius > 90 degrees; Grade is flat over move of the easement, with the exception of the first 100-200 feet where it joins Maplewold Road; Surface is suitable aggregate material over compacted sub-grade soil capable of supporting load imposed by fire apparatus in all weather; Several spots suitable for turnaround, including midpoint (at turn), near lot entry, at residence at #278 circular driveway, as well as various locations along the length of the deeded right of way/private road; There are not permanent gates or bridges; There is unimpeded view for drivers, as there is plenty of shoulder room and no impeding vegetation; The applicants will be responsible for road maintenance of the "private road"; A written condition of the permit shall be that the "municipality does not assume responsibility for the maintenance of said Private Road", such condition to be recorded with the HCRD; This condition shall be signed by all owners of any lots which shall utilize/about this easement.

### **Following are measures that are proposed for making improvements to the first 200 feet of this private road:**

Swales on each side of the driveway/entry will be appropriately graded/formed to encourage water runoff to the sides of the driveway, and not into Maplewold Road; The driveway crown will be raised enough to ensure minimal channeling of water down the center line and into the street; The culvert/pipe currently in existence will be replaced and either widened or lengthened as recommended to avoid siltation at either end; Every effort will be made to minimize the degree of the angle of the private road where it enters Maplewold; however, it must be noted that the existing driveway already has a slope that may exceed 10% in places, and Maplewold Road itself has an extreme slope at the point of entry. Hence, mitigation measures may need to be modified to avoid negative impact on the existing road; appropriate loaming and seeding of the swales shall ensure the growth of the moisture-retaining vegetation and minimize runoff and water erosion; If necessary, small earthen berms may be build to prevent runoff from eroding certain areas; Since Maplewold road is not a paved road, no asphalt apron shall extend into the street; Applicants shall consult/hire appropriate contractors to complete the work; All repairs to be inspected and approved by BOS before issuance of permit; Approved mailboxes will be installed for both #278 and #280, according to regulations; a street sign, indicating Private Road as well as proposed name shall be installed by the applicants. Street name shall be approved by BOS; Proposed name: "Sparrow Lane".

Marc Morette moved to accept section 2. Michael Meyers seconded. Motion passed. 4-1-0

Marc Morette moved to accept section 3. Stu Richmond seconded. Motion passed. 4-1-0

Marc Morette moved to accept section 4. Stu Richmond seconded. Motion passed. 5-0-0

Marc Morette moved to accept section 5 in entirety. Stu Richmond seconded. Motion passed. 4-1-0

### **III. MINUTES**

Marc Morette motioned to accept November 3, 2015 as amended. Malcolm Wright seconded. Motion passed. 5-0-0

Stu Richmond motioned to accept December 1, 2015. Malcolm Wright seconded. Motion passed. 5-0-0

Marc Morette motioned to accept February 9, 2016 as amended. Stu Richmond seconded. Motion passed. 5-0-0

### **IV. ADJOURNMENT**

Malcolm Wright moved to adjourn. Marc Morette seconded. Motion passed. 5-0-0

*Tina Ripley*