

ZONING BOARD OF ADJUSTMENT
SEPTEMBER 12, 2017 FINAL MEETING MINUTES

Present: Chairman - Jack Dearborn; Vice Chairman ó Michael Meyer; Member ó Stu Richmond; Member - Malcolm Wright; Member ó Marc Morette; Alternate ó Don Rogers; Land Use Coordinator ó Chip Meany.

Guests: Dan Higginson; Gary Shelto

I. CALL TO ORDER

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

II. ADMINISTRATIVE ITEMS

Chairman Dearborn read the agenda for the evening. But since this is the first real meeting since Town meeting the first order of business would be to seat the Chairman and Vice Chairman. Stu Richmond moved to elect Jack Dearborn as Chairman and Mike Meyer as Vice Chairman, Marc Morette seconded the motion. Vote: Passed 5-0-0. Chairman Dearborn said the way the meeting will be run, is all questions come to the Chair. He first will ask for a motion to accept the application to be heard, then he will ask the applicant to come forth and he will read the synopsis of the front page, he will then ask the Board if they have any questions of the application, then he will ask the applicant to come forward to state his name and speak to the five points of hardship that has been included in the application, then the applicant will be asked to sit down. Chairman Dearborn will then ask for approving abutters, disapproving abutters, public at large, other boards and then will ask the applicant to come back up and rebut anything if he wants, then he will go through the process again then he will close the public hearing. Chairman Dearborn stated that once the public hearing is closed the Board will deliberate and come up with position - approve with or without conditions, denied with conditions or continued pending issues that come up for more information should the applicant which that or if the Board needs to get a legal opinion. All motions will be made in the affirmative.

III. PUBLIC HEARINGS

Case # 0617 – Higginson Land Services on behalf of GM Investment Partners, LLP is requesting a variance from Article 28.9, to impact the 25’ wetland buffer at Map 110-70, Twin Bridge Road.

Chairman Dearborn read the application for the record for Case #0617. Marc Morette moved to accept the application. Malcolm Wright seconded. Motion passed, 5-0-0.

Dan Higginson from Higginson Land Services stated that this is a relatively small lot on Twin Bridge Road. The reason they are here is because there is a brook that parallels Twin Bridge Road which prevents access to the lot. They have been to NH DES to get approval for a septic design as well as permission to bury a 48ö culvert in the ground to allow all the natural woodland critters to be able to pass through it. It has been designed to impact the wetlands as least as possible and he has gotten those approvals. This is an existing lot of record. Without any further questions, Mr. Higginson proceeded to address the points of hardship for the record.

VARIANCE

The undersigned hereby requests a variance to the terms of Article 28, Section 28.9 and asks that said term to be waived to permit: access to the usable portion of the lot.

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

We are seeking adequate access to the site, the lot fronts on Twin Bridge Road from which access is sought. For this access the wetland buffer will have to be impacted as it runs the entire frontage of the lot. Providing access to a lot is consistent with other lots in the area and not contrary to public interest.

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

The intent of the ordinance is to protect jurisdictional wetlands not to prevent land from being developed. Denial of this variance would prevent access to the lot. The proposed access was located at the point of least impact to the wetlands buffer. The crossing has been designed in compliance with the NH Fish & Game Department and the Natural Heritage Bureau recommendations.

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

Substantial justice is done when the benefit to the land owner far outweighs the burden to the general public. In this instance that is the case. Denying this variance would prevent development of the lot. Approval of the variance would allow a use of the lot that complies with the Town regulations.

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

The variance only pertains to the access to the site. All developed lots in Town have site access. Proposed is construction of a single family residence similar in nature to surrounding properties.

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 conditions of this property that distinguish it from other properties in the area are that a wetland buffer exists along the entire frontage of the property preventing the developable portion of the lot from being accessed.

(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 purpose of the ordinance is to protect wetlands. Our proposal has the least impact to wetlands possible and was designed in accordance with NH Fish & Game Dept. and Natural Heritage Bureau requirements.

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

The proposed use is reasonable because it is consistent with every developed lot in the zone. The issue is access to the lot. We have situated the access to the site in the location that will have the least impact to the wetland bugger.

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 specific condition of this property that distinguishes it from other properties in the area is that a wetland buffer exists along the entire frontage of the property preventing access to the developable portion of the lot.

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 with the ordinance would prevent access to the buildable portion of the site.

Chairman Dearborn asked if there were any questions from the Board before he opened it up to the public. There were none.

Chairman Dearborn asked for approving abutters. There were none.
Chairman Dearborn asked for disapproving abutters. There were none.
Chairman Dearborn asked for public at large. There were none
Chairman Dearborn asked for other boards. There were none
Being none, Chairman Dearborn asked Mr. Higginson if he would like to add anything more. Mr. Higginson stated not at this time.

Chairman Dearborn closed the public hearing on this case.

Chairman Dearborn stated the Board will deliberate on each point individually:
Stu Richmond moved to accept point #1; Marc Morette seconded. Motion passed. 4-1-0
Mike Meyer moved to accept point #2; Marc Morette seconded. Motion passed. 5-0-0
Marc Morette moved to accept point #3; Stu Richmond seconded. Motion passed. 5-0-0
Marc Morette moved to accept point #4; Mike Meyer seconded. Motion passed. 5-0-0
Marc Morette moved to accept #5 in entirety; Stu Richmond seconded. Motion passed. 5-0-0

Chairman Dearborn stated with the votes cast the variance passes.

Case # 0717 – Gary Shelto is requesting a variance from Article 18.2.3, to impact setback requirements at 447 Dustin Tavern Road at Map 411-43, in the Rural Agricultural Zone to build a deck. 110-70, Twin Bridge Road.

Chairman Dearborn read the application for the record for Case #0717. Chairman Dearborn seated Alternate Don Rogers in place of Mike Meyers for this case. Stu Richmond moved to accept the application. Marc Morette seconded. Motion passed, 5-0-0.

Gary Shelto explained to the Board that this is an 11 acre parcel. The existing house is setting way to the back corner because of the amount of wetlands on the property. There was an existing ingress and egress at the back of the house. It was a small 4 foot platform that has deteriorated to the point of not being safe. He removed the platform for safety reasons and he would like to build a 10ø x 16ø deck, which will encroach on the back boundary. He is looking to build it no closer than 15ø He provided photos to the Board of the property.

The undersigned hereby requests a variance to the terms of Article 28, Section 2 and asks that said term to be waived to permit: building a deck in the back of the existing house.

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

The deck won't be visible from the road or the abutters. The deck will be located in the rear of the existing house.

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

The house location is toward the back of the lot, situated on the highest point due to surrounding wetland.

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

It will provide a safer ingress and egress to the rear of the house.

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

The surrounding properties would not be able to see the deck; it will have no impact on the abutting properties. Decks are allowed in the Rural Agricultural districts.

- 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**
- (iii.) **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 the property that distinguishes it from other properties is the house site being located off the back of the lot due to surrounding wetlands, therefore not meeting the setback requirements for building a deck, thus requiring relaxation of the setback requirement.

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

Due to the siting of the house of the lot which is 25øfrom the backline we request this variance to implement a deck for adequate second floor exit.

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

To implement a safe exit from the second story of the dwelling.

- (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:

Excessive wetlands, forcing the dwelling to the back of the lot.

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 25ø setback would significantly limit a safe evacuation from the second story of the home.

Chairman Dearborn asked if the board had any questions before opening it up to the public. Marc Morette asked what year the original deck/platform was built. Mr. Shelto was unsure of the year. Don Rogers asked if there was a reason why they are not duplicating what was there. Mr. Shelto said it was steep and the new design was to come off the front and lessen the pitch away from the house.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters. There were none.

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

Chairman Dearborn asked for other boards. There were none.

Being none, Chairman Dearborn asked Mr. Shelto if he would like to add anything more. Mr. Shelto stated not at this time.

Chairman Dearborn closed the public hearing on this case.

Chairman Dearborn stated now the Board will deliberate on Case #0717:

Stu Richmond moved to accept point #1; Marc Morette seconded. Motion passed. 5-0-0

Malcolm Wright moved to accept point #2; Marc Morette seconded. Motion passed. 5-0-0

Stu Richmond moved to accept point #3; Marc Morette seconded. Motion passed. 5-0-0

Marc Morette moved to accept point #4; Malcolm Wright seconded. Motion passed. 5-0-0

Stu Richmond moved to accept #5 in entirety; Marc Morette seconded. Motion passed. 5-0-0

Chairman Dearborn stated with the votes cast the variance passes.

Carl Landon, LZL Inc. requests to extend a variance (#4002) concerning Article 17, Section 17.1.1 for Tax Map's 103-018, 103-033, & 103-035 on Russell Drive. Stu Richmond moved to grant the extension as requested; Marc Morette seconded the motion. Motion passed 5-0-0

Cindy Rooney (Kaczmariski) requests to extend a variance (#2707) concerning Article 17, Section 17.1.1 for Tax Map 108-041 on 67 Pond View Road. Stu Richmond moved to grant the extension as requested; Marc Morette seconded the motion. Motion passed 5-0-0.

Robert & Linda Bailey requests to extend a variance (#2504) concerning Article 17, Section 17.1.1 for Tax Map 407-153.001 on Sawyer Road. Stu Richmond moved to grant the extension as requested; Marc Morette seconded the motion. Motion passed 5-0-0.

IV. MINUTES

Marc Morette moved to approve the April 4, 2017 minutes as written, Stu Richmond seconded the motion. Motion passed 5-0-0.

V. ADJOURNMENT

Marc Morette moved to adjourn at 8:07 pm. Malcolm Wright seconded. Motion passed 5-0-0.

Naomi L. Bolton

Naomi L. Bolton

Transcribed from recording