

ZONING BOARD OF ADJUSTMENT
APRIL 3, 2018 FINAL MEETING MINUTES

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

Guests: Adam Dallas; Erin Dallas; Fred Doucette; Lauren Doucette; Ashlyn Doucette; Anita Kuniegel; Lewis Kuniegel; Ron Gamache; Matthew Grolljahn; Lisa J. Grolljahn

I. CALL TO ORDER

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

II. ADMINISTRATIVE ITEMS

Election of Officers: Chairman Dearborn stated that the first order of business before the Board gets started is to elect the officers for the upcoming year. Stu Richmond made a motion to nominate Jack Dearborn for the Chairman and Mike Meyer as Vice Chairman; Marc Morette seconded the motion. Passed 5-0-0

III. PUBLIC HEARINGS

Case # 0118 – VARIANCE: Article 17.1.1, to build on a Class VI/Private Road by Adam and Erin Dallas, 26 Sawyer Road, Map 407-176 in the Residential Zone.

Chairman Dearborn explained zoning allows for buildings on a Class V town maintained road. There are other types of roads in Weare like Class VI that are town owned but not maintained. Then there are private roads that are any other classification, could be from a cow path to a very well-groomed road that is owned by the people on the road or an individual. In order to get a building permit on this lot a variance needs to be granted because it is Class VI. Chairman Dearborn stated that he will read the application before the Board so that everyone in the audience and watching on the television an idea of what and why we are here. After that Chairman Dearborn will ask the Board if they have any questions, if there are no questions a motion will be made to accept the application. The reason for the motion is to determine if the application is properly filled out for the Board to hear the case. Chairman Dearborn proceeded and read the application. Being there were no questions from the Board, Marc Morette moved, Stu Richmond seconded to accept the application. Passed 5-0-0

Adam Dallas was present on go through the 5 points of hardship, as follows:

The undersigned hereby requests a variance to the terms of Article 17, Section 17.1.1 and asks that terms be waived to permit the building of a small single family home.

You are required by law to demonstrate:

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

The structure we are intending to build shall be within the Building Code for the Town of Weare with appropriate frontage, set back, and side lines. Additionally, it shall not put undue burden on the surrounding environment or already established community, with as minimal alterations to

the landscape as possible. This proposed building will not lessen the potential value of the property, and will increase the tax base for the Town as we will be new residents.

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

The ordinance exists as a set of regulations to guide the construction and development of buildings within the Town of Weare, which is exactly what we intend to follow through our proposition.

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

This lot has been vacant with the last efforts to develop it over 30 years ago. This is exemplified by the previous plot plan, perc test, and septic design. Substantial justice will be done by granting a variance, because this picturesque plot of land was intended to be built upon. Additionally, substantial justice will be done as this will increase the development of the Town of Weare by bringing in new residence and tax income to the town.

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

The surrounding properties will not be diminished, as there are already numerous year-round homes on this Class VI Road and we will be adding to the existing community. In the construction of our home, we will adhere to our lot boundaries, not encroaching on other properties. We also believe that the development of this property will, if anything, raise the value of the surrounding area rather than having a vacant lot. Furthermore, we will be participating in the process of maintaining the Class VI Road.

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 alternate 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 surrounding properties in the direct area are similar and our construction will be situated on a Class VI Road.

Please indicate how, owing to the special conditions identified above,

- 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:** Sawyer Road has had properties on it for a number of years; therefore, no substantial relationship between the ordinance provision and this property has existed for some time.
- ii. **And how the proposed use is a reasonable one:**
The proposed use is reasonable as it is in keeping with the fact that Sawyer Road already has homes. We are aiming to build another home within this Class VI Road which will contribute to the community, and also increase the resident and tax base for the Town of Weare. Developing a domicile upon this property would be considered reasonable use, and a denial of this would cause undue hardship.

‘... (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 special conditions of this property are that it is on a Class VI Road, which limits the granting of a building permit.

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 section 17.1.1 states that “No building permit shall be issued on any Class VI or Private Road.” Being that the Sawyer Road community has existed for years within this Class VI Road; a home could not be built while being in conformance with the Ordinance. Therefore, it is paramount that a variance be granted in order to develop on this lot as a denial of the variance would result in an undue hardship, as development of this land could not occur within its reasonable use.

Chairman Dearborn then indicated the rest of the items that were included in the application. Chairman Dearborn asked if the Board any questions of Mr. Dallas before it was opened up to the public hearing.

Malcolm Wright stated that he was following along and asked Mr. Dallas what is the actual hardship here. Mr. Dallas stated that because the property is located on a Class VI Road they would not be able to obtain a building permit without the variance, because zoning doesn’t allow it.

Stu Richmond asked if there was some kind of association out there that maintains the road. Mr. Dallas stated that they did speak with Roger Boisvert, who lives on the road and told him that there is no official maintenance agreement. He informed them that there was a gentleman that lives at the end of the road and he snowplows the road, typically when he is leaving he plows the road. The owners that live on that road are responsible for their own driveways. From what they were informed there is no official maintenance agreement.

Chairman Dearborn stated that in the immediate area there looks to be 7 out of 10 houses already constructed, so the majority of the lots are built on.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters. Lisa Grolljahn was present. She stated that they have concerns as a neighborhood. The road is very, very narrow as it is. Two cars can't go by each other at the same time. There are times when it is too icy for any cars to make it up the road. There have been times when they have had to park at the bottom and walk up. There is no one person that is in charge of the plowing. Her understanding is that there have been several people looking at the properties on their road and they have been misled and told that someone takes care of the plowing. There is no one person. As it is some of the residents contribute to the road maintenance and some don't contribute. Everyone that lives on the road has either a four wheel drive or an all-wheel drive car and still at times they can't make it up. She lives at 33 Sawyer Road (lot 180), which is further up and diagonal to this subject lot. Ms. Grolljahn stated that for an example this winter some of the residents on the road couldn't get to work because there was a tow truck on the road trying to get a car out that was stuck sideways. The neighbor has a really large pickup truck and has slide all the way down backwards because of the ice. She has been crossways in the road herself with her SUV. The neighbor had a tow strap and was able to get her out. She stated that is a culvert because of a stream. She stated that she has video of the road in the snow and video of the stream in their back yard. The stream that is usually just a trickle in the spring melt sometimes turns into a raging river. So there have been times when that river is going across the culvert, they realized that it has been rising and have parked their cars on the other side, but there is not really enough parking for emergencies like that for the existing homes let alone for more people. There is also not enough parking at the end of the road when there is ice. There was one time she had to use her snowmobile to get to her car. The last time a house went in on the road the Road Agent has the builder upgrade the road, they were supposed to maintain ditch lines and they didn't. They actually filled in the ditch lines to widen the road resulting in more damage and wash outs when spring came. They were not compensated for the careless work done by the person who did the work and they had to fix it. They are still without proper drainage. The builder was also told to build a retaining wall. That wall fell down within the first year and nothing was done to correct that and while the builder was widening the road he dropped a boulder in the path of the existing culvert and just left it there. So if road improvements are required to be done prior to any house is to be built, which she feels they certainly need to be, she hopes the Town will make sure that they hire capable, insured construction companies to do the work. She also asked that thorough inspections are done along the way by qualified town employee. She again offered pictures and videos. Chairman Dearborn stated that he felt that she covered the conditions. Ms. Grolljahn added that there are two neighbors that are doing the plowing but they are not in charge of plowing by any means. One of them is moving and the other one works odd hours.

Chairman Dearborn asked for other boards. There were none.

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

Rebuttal of applicant: Mr. Dallas stated that they are aware that there is no formal agreement as far as maintaining the road goes. They are willing to change that and come up with some sort of formal agreement, contribute in any way they can. They are aware of the potential risks of it being on a Class 6 road and it's not maintained by the Town.

Rebuttal of disapproving abutter: none

Chairman Dearborn closed the public hearing on this case at 7:56 PM.

Chairman Dearborn stated that we are going to vote on the points and asked that the motion be made in the positive. Each point needs to have three yeses to pass but doesn't have to be the same combination of people. If any of the points don't pass then the variance can't pass.

Point #1: Marc Morette moved to approve point #1; Malcolm Wright seconded. Vote: 2 yes (Dearborn, Morette); 2 no (Wright, Richmond) and 1 abstention (Rogers). Chairman Dearborn inquired why an abstention. Mr. Rogers stated that he has thoughts either way. He is right in the middle so he's going to abstain.

Point #2: Marc Morette moved to approve point #2; Stu Richmond seconded. Vote: 2 yes (Dearborn, Morette); 1 no (Wright) and 2 abstentions (Richmond, Rogers).

Point #3: Marc Morette moved to approve point #3; Malcom Wright seconded. Vote: 2 yes (Dearborn, Morette); 1 no (Wright) and 2 abstentions (Richmond, Rogers).

Point #4: Marc Morette moved to approve point #4; Malcom Wright seconded. Vote: 3 yes (Dearborn, Richmond, Morette); 1 no (Wright); and 1 abstention (Rogers)

Point #5: Marc Morette moved to approve point #5 in its entirety; Malcolm Wright second. Vote: 2 yes (Dearborn, Morette); 1 no (Wright) and 2 abstentions (Richmond, Rogers).

Chairman Dearborn stated so the variance does not pass. He explained to the applicants that they have 30 days to come back for a rehearing with any material differences from what was presented today. If the case is reheard a new rehearing date would be posted. If the applicant's choose not to be reheard their next avenue is superior court.

IV. EXTENSION OF CASE:

Case #1012: Variance Extension Request for SHB Properties, Map 411, Lot 152-1 to 15. Stu Richmond moved to grant Case #1012 for SHB Properties, Map 411, Lot 152 a one year extension; Marc Morette seconded the motion. Vote: 5-0-0

V. MINUTES

Stu Richmond moved to approve the October 3, 2017 minutes as amended, Marc Morette seconded the motion. Motion passed 5-0-0.

VI. ADJOURNMENT

Malcolm Wright moved to adjourn at 8:06 pm. Marc Morette seconded. Motion passed 5-0-0.

Naomi L. Bolton

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Transcribed from recording