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**ZONING BOARD OF ADJUSTMENT**  
**MAY 1, 2018 FINAL MEETING MINUTES**

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**Present:** Chairman - Jack Dearborn; Vice Chairman ó Mike Meyer; Member ó Marc Morette; Member ó Malcolm Wright; Alternate ó Donald Rogers; Alternate ó Gary Shelto; Land Use Coordinator ó Chip Meany.

**Guests:** Tiffany Waitt; William Waitt, Jr.; Marc Bellemore, Jr.; Walter Gates; Robin Houle; John Brayshaw; Frank Sykes; Thomas Green; Gina Green; Adam Dickie; Chris Renauld; Adam Dallas; Erin Dallas.

### **I. CALL TO ORDER**

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

### **II. ADMINISTRATIVE ITEMS**

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 seven conditions needed for a special exception 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 # 0218 – SPECIAL EXCEPTION - Article 19.1.10 Accessory Dwelling Unit at 45 Renshaw Road, Map 411-108 in a Commercial Zone**

Chairman Dearborn seated Don Rogers as a voting member for this case. Those sitting at the table introduced themselves. Chairman Dearborn read the application out loud for those present and watching. Marc Morette moved, Mike Meyer seconded to accept the application. Passed 5-0-0 Tiffany Waitt was present to go over the special exception. The Board didn't have any questions of the applicant, so Ms. Waitt went over the seven points of the special exception as follows:

1. **The specific site is an appropriate location for such a use or uses in terms of overall community development:** The space already exists within the home. The space meets all the requirements for an accessory unit. The property was purchased with the unit. We are here to properly permit the allowed use for zoning compliance.
2. **The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area:** No new construction is necessary, the space is already established within the existing home.

3. **The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:** Adequate off street parking already exists. Vehicular traffic is consistent with all other homes in the neighborhood, as well as what the former owner had.
4. **The proposed use will not cause an undue burden on the Town through the provision of basic Town services:** The proposed accessory dwelling unit is a one bedroom, which will be occupied by an adult family member.
5. **Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:** adequate off street parking already exists and is sufficient for proposed use. No new parking is required.
6. **A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees:** No changes to the property are necessary. The area is already constructed. The property as it exists today will not change.
7. **The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:** We would be willing to comply with any requirements if necessary. We are simply legalizing or making the existing area compliant to zoning.

Vice Chairman Meyer went through all the necessary requirements under Article 19.1.10 to make sure all the stipulations are met. Marc Morette moved to approve case 0218, Vice Chairman Meyer seconded. Passed 5-0-0

**Case # 0318 – VARIANCE - Article 17.1.1 Building on a Class VI or Private Road by Robin House & Walter Gates, Tax Map 202-1, off Route 77 in an R/A Zone**

Chairman Dearborn excused Don Rogers and seated Gary Shelto as a voting member for this case.

Chairman Dearborn read the application out loud for those present and watching. Chairman Dearborn explained that with a variance all five points need to be met before the variance can be granted.

Marc Morette moved to accept application as completed; Vice Chairman Meyer seconded. Passed 5-0-0

Robin Houle addressed the five points of hardship for her application 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 issuance of a building permit for a single-family residence with access via a “private road” which area shall closely confirm with that of the existing deeded right of way.**

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:**  
Our house will be constructed within all Weare building codes and will be setback from the road on the lot.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:**  
The spirit of the ordinance is to allow for the building of residential houses within the residential zone. This is what we are proposing to do.

- 3.) **That through the granting of relief by variance substantial justice will be done because:**  
The lot was intended to be built upon; this is a residential area and there is already one existing home on the private road. Substantial justice would be done because granting the variance far outweigh the justice done by not granting the variance.
- 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 may 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 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 main special condition of this property distinguishes it from properties in the area it is on a private 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:** The purpose of the ordinance provisions appears to be 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 will be wide open with plenty of room for large vehicle turnaround. The road condition as is has been demonstrated to be reliably solid and not subject to unusual wear, and the applicant is 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 purpose 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 use of other lots in the general vicinity and all along Route 77. 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 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 subject property conforms with all requirements needed for construction of a single-family residence, except for: it's on a private road. On this private road, there is one existing home.

**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 (lot is on a private road), this property would be unable to be reasonably used for what it's intended and ordinary purpose.

Malcolm Wright asked the intent of this lot. Ms. Houle replied that the lot was intended to be built upon and they can't get anywhere until permission is granted by the Zoning Board to be able to build. Mike Myer asked where the other home located on that private road was located. Ms. Houle stated that it is right next to this lot. Mr. Wright specifically asked what the hardship was.

Chairman Dearborn asked for approving abutters.

Frank Sykes owner of the property stated that he would like to see Robin and Walter get into that property. They have been working hard at this for a year getting all the information together. It was a gift to Mr. Sykes from his father as an approved building lot in 1986, registered with the county deed, the survey and the subdivision plans. He stated that it would be nice if they could make this happen.

Chairman Dearborn asked for disapproving abutters.

Gina Green stated they live in the grandfathered home that was built in about 1989. They have been there since 1998, about 20 years now and they have been maintaining that road. They grade it every couple of years, plow it and the road really doesn't hold up well. The Town helped them grade it last year when they did all that logging. They had just graded it and the logging vehicles in and out ruined everything they did. Ms. Green's concern is the widening of the road. Someone had surveyed and there were all little orange flags. Chairman Dearborn asked if she was saying that the road was flagged out. Ms. Green replied, the road that leads to the house. Her concern was if the road has to be widened it would go into her property. Chairman Dearborn stated that there may need to have an area maybe 50 feet long and out to like 20 feet. They are going to put a requirement as a minimum to meet the Town of Weare standards for a driveway permit. It appears that the Fire Chief is going to decide if it needs to be widened slightly. If he is satisfied with the gravel grade that is there then there may not be any

requirements. That is up to the Planning Board as it could be a safety issue but only after the Fire Chief gives his recommendation. Ms. Green then asked if there needs to be some improvements who pays for those. Chairman Dearborn stated that if the two residents on the road would be willing to share that it is up to them. It is not this Board's concern. The burden of getting the variance approved is up to the applicant. Ms. Green stated that having no road frontage is not an issue. Chairman Dearborn stated that this Board can put requirements and the building permit cannot be issued until the requirements are met. Her concern is the access to their home, where they pull in. This lot is going to go past the Greens' driveway and the concern is with the thought of it possibly being widened does that affect her property. Chairman Dearborn stated that the Board will put a requirement down for any improvements to be paid for by the applicant. Malcolm Wright asked if the abutters concern is encroachment. The reply was "yes". Chairman Dearborn stated that they can't go onto your land.

Thomas Green, 137 Concord Stage Road, stated that his concern is also encroachment and 12 foot in the summer and fall is fine, but in the winter there can be 4 foot snow banks that cause a problem. His concern is the ability to meet other cars and to be able to pass each other safely. Chairman Dearborn stated that we are going to make sure there is a requirement for access for the matter of life and safety.

Chairman Dearborn asked for other boards. There were none.

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

Rebuttal of applicant: none

Rebuttal of disapproving abutter: none

Chairman Dearborn asked Code Enforcement Meany if there was truly a 50 foot right of way. Mr. Meany stated that he is unsure as someone would have to provide the language of the easement. There is nothing on the map. Mr. Gates had a survey of the property and approached the Board with it. Chairman Dearborn stated that this map only shows the area in front of the lot and some of the Greens'. One of the conditions that may be attached is to have someone show on a plat the 50' right of way from Route 77 to wherever the access is needed to this subject property. Then the Town of Weare is now the owner in the form of a conservation easement, so this gets a little more complicated than normal, but that is the business of the Select board and Conservation if they have any business.

Chairman Dearborn stated that before the Board takes up the points he wanted to note the conditions:

1. The Town of Weare Class V and Private Road sign posting requirement
2. Life safety issues with regards to Town of Weare driveway specifications, which is part of the subdivision regulations. Code Enforcement Meany stated that the driveway application tells the applicant the specifics which tell you what you are supposed to do and the last one say you have to go to the Board of Firewards. They review everything under NFPA 1 which is where you come to them with the detailed standards of width, etc.
3. The Town of Weare Liability disclaimer (hold harmless agreement) and recorded at the Registry of Deeds.
4. Consideration of any requirements for 9-1-1 posting done with the E9-1-1 coordinator (Wendy Rice)
5. A right of way identified and laid out on a plat from Route 77 to the back of the Sykes property
6. Approval by Board of Selectman and Conservation Commission pursuant to RSA 674:41.

Chairman Dearborn explained that if the Board grants this variance that the first part. The second part is going to the Select Board for approval per RSA 674:4. Marc Morette had a question about the Conservation issue. Chairman Dearborn replied that there is a Conservation Easement on the property

owned by the Town that was purchased from Frank Ferrante, which basically gave the Town an easement on the property which means that you can't build on it in perpetuity. The Town owns it with a conservation easement.

Chairman Dearborn closed the public hearing on this case at 8:15 PM.

Point #1: Marc Morette moved to approve point #1; Vice Chairman Meyer seconded. Vote: 4 ó 1 (Wright)

Point #2: Marc Morette moved to approve point #2; Vice Chairman Meyer seconded. Vote: 4 ó 1 (Wright)

Point #3: Marc Morette moved to approve point #3; Vice Chairman Meyer seconded. Vote: 4 ó 1 (Wright)

Point #4: Marc Morette moved to approve point #4; Vice Chairman Meyer seconded. Vote: 4 ó 1 (Wright)

Point #5: Marc Morette moved to approve point #5 in its entirety; Vice Chairman Meyer second. Vote: 4 ó 1 (Wright)

Chairman Dearborn stated that the variance is granted subject to the six (6) conditions that were discussed earlier.

#### **IV. MINUTES:**

Marc Morette moved to approve the April 3, 2018 minutes as amended, Malcolm Wright seconded the motion. Motion passed 5-0-0.

#### **V. NONPUBLIC SESSION:**

Marc Morette moved to enter into nonpublic session at 8:30 PM pursuant to RSA 91-A:3 II (L) for the purpose of receiving legal advice; Mike Myers seconded the motion. A roll call vote was taken: Marc Morette ó yes; Gary Shelto ó yes; Chairman Dearborn ó yes; Mike Myers ó yes; Malcolm Wright ó yes. Passed 5-0-0

Marc Morette moved to exit the nonpublic session at 8:55 PM; Mike Myers seconded the motion. A roll call vote was taken: Marc Morette ó yes; Gary Shelto ó yes; Chairman Dearborn ó yes; Mike Myers ó yes; Malcolm Wright ó yes. Passed 5-0-0

Malcolm Wright moved, Marc Morette seconded to seal and restrict these minutes of the nonpublic session. Passed 5-0-0

#### **VI. APPEAL DECISION OF ADMINISTRATIVE APPEAL**

Mike Myers moved, Marc Morette seconded to accept the application for appeal on Case #0118. There was no discussion amongst the Board. Vote: Passed 5-0-0

#### **VII. ADJOURNMENT**

Marc Morette moved to adjourn at 9:06 pm. Malcolm Wright seconded. Motion passed 5-0-0.

*Naomi L. Bolton*

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*Transcribed from recording*