

ZONING BOARD OF ADJUSTMENT
JUNE 5, 2018 FINAL MEETING MINUTES

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

Guests: Lisa Grolljahn; JaNeen Lentsch; Matthew Grolljahn; Patricia Turner; Philip Tetro; Jessi-Lynn Tetro; Trudy Tetro; Burt Tetro (Wayne); Robin Renaud; Chris Renaud; Stacey Shannon; Charles Cleary; Adam Dallas; Erin Dallas; Brent Alvey; Penny Savage; Lisa Doucette; Rick Doucette; Ashlyn Doucette; Lauren Doucette; Rob Berry; Cynthia Low-Sirois.

I. CALL TO ORDER

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

II. ADMINISTRATIVE ITEMS

Chairman Dearborn stated that there are three cases before the Board this evening. Chairman Dearborn then explained 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.

Chairman Dearborn asked Malcolm Wright to step down so that he could seat Gary Shelto for the first case. Mr. Wright asked why. Chairman Dearborn stated that they have been rotating members for different cases to allow alternates to be part of cases. Mr. Wright asked Chairman Dearborn is he has the authority to unseat him. Chairman Dearborn replied that he was only asking for this case and then he could sit on the other two cases for the evening. Mr. Wright stated that the Chairman cannot unseat a sitting member for alternates. That is done only when there is a space for them. He didn't feel the Board needed to make space for the alternates. Mr. Wright stated that he felt the Chairman was making a mistake and that he was going to stay and sit on the case. Stu Richmond volunteered to sit out for this case. Chairman Dearborn stated that he would be consulting with Town Counsel on this matter. Mr. Wright stated that for the record, the only time an alternate is seated for a case is when there is a vacancy. Chairman Dearborn asked Gary Shelto to sit in place of Stu Richmond for the first case.

III. PUBLIC HEARINGS

Case # 0118 – VARIANCE - Article 17.1.1 Building on a Class VI Road or Private Road by Adam & Erin N. Dallas at 26 Sawyer Road, Map 407-176 in a Residential Zone

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. Gary Shelto moved to accept application as completed; Marc Morette seconded. Passed 5-0-0

Attorney Charles Cleary was present on behalf of Adam and Erin Dallas for a rehearing of this application. Attorney Cleary wanted to point out two general things to keep in the back of the Board members minds. One, New Hampshire is experiencing a housing shortage right now which is going on throughout southern New Hampshire. Secondly there's been a need in New Hampshire to bring back the younger generations, which has been a push by the state legislature and the governor as both of those things sort of play into this application in terms of public benefit and public good.

Attorney Cleary addressed the five points of hardship of this 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 construction of a single family residence on Tax Map 407 Lot 176, also known as 26 Sawyer Road.

The land in this area was initially subdivided in 1971 into multiple lots and the subject lot was subdivided in 1986 to create a 2.82 acre building lot on Sawyer Road. To date, seven houses have been built on Sawyer Road, all apparently receiving a variance from the Weare Zoning Ordinance.

The restriction on the issuance of building permits for new homes on any Class VI road is not explained in the Zoning Ordinance but is likely for purposes of insuring that emergency services can access the houses on a Class VI road. Sawyer Road is an accessible road.

You are required by law to demonstrate:

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

- a) The property exists within the residential zone where single family houses are permitted by right,
- b) There is a need for additional housing in Weare and in New Hampshire generally, as well as a need to bring in or retain young families who can contribute to the Town
- c) The addition of a single family home on Sawyer Road, on which there are seven other single family homes, will not alter the essential character of the neighborhood nor threaten the public health, safety, or welfare, and
- d) In granting variances for other houses existing on Sawyer Road, the Zoning Board of Adjustment has determined that Sawyer Road can support residential dwellings with no detriment to the public interest.

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

While the ordinance prohibits building permits being issued on Class VI roads as general rule, the Town of Weare has allowed building permits for residential dwellings on Class VI roads in Weare and specifically seven building permits on Sawyer Road. The underlying spirit of the zoning ordinance is to allow residential lots to be used for residential purposes and this specific subdivided lot presents no concerns similar to the other Class VI road lots which have received building permits. Unless there is a specific identified risk, the spirit of the ordinance allows dwellings to be built on passable Class VI roads.

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

in light of the single family residential purpose to be served and the existence of the other single family residences along Sawyer Road. This particular area is becoming a small neighborhood of single family homes.

Chairman Dearborn stopped Attorney Cleary to find out the “real question” to be addressed on the application. Chairman Dearborn stated to Attorney Clearly that although this is painful but what he is reading from is a different question than appears on the application. Attorney Cleary responded that “you need the question verbatim?” Chairman Dearborn responded yes. Chairman Dearborn stated that he is going to halt the meeting right here and ask that they return with a properly completed application. Chairman Dearborn stated that he would gladly continue the hearing to next month, so there is no need for re-notification. Attorney Cleary stated that this is the application that already came back once. Chairman Dearborn stated that it is not correct. We are hearing something different from what our Town counsel has advised us on.

Malcolm Wright asked for a point of procedure. He stated that the Board accepted the application earlier tonight. Chairman Dearborn disagreed and stated that this is a new application. Mr. Wright continued by stating that he wants this to be clear and he personally doesn’t have a problem with going forward with that the Board has in front of us.

Chairman Dearborn asked if there was a motion to continue this case and come back with a properly worded application with the proper language. Marc Morette moved to continue Case #0118 to the July meeting; Vice Chairman Mike Meyer seconded the motion. Passed 4-1-0 (Malcolm Wright opposed).

Case # 0418 – SPECIAL EXCEPTION - Article 19.1.10 ADU per Article 6.1.4, by Phillip & Jessy-Lynn Tetro in a Residential Zone, Map 409-191.2, 140 Barnard Hill Road

Chairman Dearborn read the application out loud for those present and watching. Chairman Dearborn excused himself from the Board, Stu Richmond returned to the Board and Vice Chairman Meyer took over as Chairman for this case. Those sitting at the table introduced themselves. Malcolm Wright moved, Marc Morette seconded to accept the application. Passed 5-0-0 Jessy-Lynn Tetro was present to go over the special exception. The Board didn’t have any questions of the applicant, so Ms. Tetro 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 will be erected on top of the existing garage with an additional 16’ added to the width, well within the property buffers.
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 impact will be created as the space will be used solely for residential living space.
3. **The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:** No nuisance or hazard will be created by this space as it does not impede traffic or pedestrian areas.
4. **The proposed use will not cause an undue burden on the Town through the provision of basic Town services:** No additional town services are needed

5. **Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:** adequate off street parking already exists and will remain upon completion.
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:** Current property is well screened with thick trees. Proposed space will be constructed to match existing house.
7. **The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:** We are prepared to comply with the board as asked.

Malcolm Wright asked the total amount of livable space. Ms. Tetro replied 744 SF. Vice Chairman Meyer informed Ms. Tetro that is granted by right as long as she complies with all the necessary requirements pursuant to Article 19.1.10 to make sure all the stipulations are met. Being there were no abutters or residents to speak regarding this case. Vice Chairman Meyer closed the public hearing on case #0418. Malcolm Wright moved to approve case 0418, Stu Richmond seconded. Passed 5-0-0

Case # 0518 – VARIANCE - Article 17.1.1 Building on a Class VI or Private Road by Chris & Robin Renaud at Tax Map 407-177, Sawyer Road in a Residential Zone

Chairman Dearborn returned to the Board; Marc Morette and Gary Shelto stepped down and Don Rogers was seated. Those sitting at the table introduced themselves, Don Rogers, Stu Richmond, Chairman Dearborn, Vice Chairman Meyer and Malcolm Wright. 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. Vice Chairman Meyer moved to accept application as completed; Malcolm Wright seconded. Passed 5-0-0

Robin Renaud was present and addressed the five points of hardship for their 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 building of a 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 that we are intending to build shall be within the Building Code for the Town of Weare, with appropriate frontage, setback and sidelines. Additionally it shall not put any undue 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.
- 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.

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. We believe that the development of this property will, if anything, raise the value of the surrounding area rather than a vacant lot.

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 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 the Class VI Road which will contribute to the community, and also increase the resident and tax base for the Town of Weare. Developing a house upon this property would be considered

‘... (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 Road 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 be 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.

Malcolm Wright asked the specific hardship is in this case and what distinguishes it from the other lots intent of this lot. What makes it different? Mr. Renaud stated that the hardship is that they worked hard to buy this piece of land with the intent to build as the fore fathers before the Town approved it as a subdivision for a building lot. They bought it with that intent and financially it would make it difficult to not be allowed to build. Being none, Chairman Dearborn asked the applicants to sit.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters.

Lisa Grolljahn stated that she and her husband own lot 180. She stated that this is nothing personal about anyone building on our road. It has to do specifically with the condition of the road right now. There is no one person in charge or maintaining the road. There is no road agreement so the weight of maintaining the road comes down to the few of them that actually participate in the maintenance. There are currently 6 houses on the road that have year round access. There are a couple of camps on the road as well. So at this point with the houses that are there and the damage that's done just from the current residents going up and down the road, it's absolutely more than they can handle. The road washes out. It is too narrow. In the winter you can only have one car going up or down or you get stuck. In the spring it's muddy and it's a mess. It's really rough. One of the two neighbors that actually plow is moving this summer so he will no longer be there. He is taking with him the snow blower that is used to widen the road that she paid for. She is not in any position to go buy another one. That is unfortunately going with him as he has the tractor. The other neighbor works odd hours so he is not always home, so plowing doesn't happen. Ms. Grolljahn stated that it is her understanding that the realtors that are selling these properties are telling the potential buyers there is a plan and it is taken care of and that's not true. Several times even four wheel drive vehicles have gotten stuck on the road. Everyone on the road owns a four wheel drive vehicle because it is impossible to make it up the road in the winter. The hill ices in the winter and four wheel drive vehicles get crossways in the road. There is only one way in and one way in. There is no way an ambulance or fire truck can get up there in the winter. The road floods because the culverts need cleaning. If the building is allowed she hopes the Town would require that the improvements be up to class V standards, which the current Road Agent stated he would expect.

Matthew Grolljahn, Lisa's husband stated that one key point is that Sawyer Road is accessed via Jewett Road. The slope of the road is significant as he wife mentioned. There are ditches that haven't been maintained so the water runs across especially at the bottom section of Jewett Road where it starts to climb up. He would argue that it is a safety issue, especially if you had to get a large fire truck or ambulance up there. There is no formal road agreement on Sawyer Road.

Chairman Dearborn asked for public at large.

Robert Barry, 44 Sawyer Road is not an abutter he is here because he is part of the neighborhood who has interest in this as well. The Board reviewed the tax map and found Mr. Barry's lot to be lot 175. Mr. Barry stated that he won't repeat what Mr. & Mrs. Grolljahn have stated but he shares many of the same experiences that they have. In the winter occasionally it does ice over to the point that he has had the experience of sliding down backwards having to use the neighbor's driveway to turn around. The road is not easy to maintain and there are some real safety concerns about fire truck and ambulances. Mr. Barry stated that at times he fears that he won't be able to get an oil deliver so that he won't run out at the wrong time. He is not here with the applicants, but feels the road needs to be upgraded before more residents are added.

Patricia Turner, 731 Deering Center Road, lot 153 stated that as already mentioned the road has ditch issues and the residents have trouble with people getting stuck in the mud. She stated that they are all good Samaritans and help the victims of the road when they get into trouble. She shared one issue of a truck getting stuck and the residents having to wait until the tow truck could come and get them out. She stated that there are many more stories she could share as examples of people getting stuck. Ms. Turner stated that currently there are 2 large rocks sticking up out of the road and in time it will probably take out someone's muffler. The point has well been made that they are having issues maintaining the road and the reason why all the neighbors came is because they are concerned citizens. They are having trouble keeping up with the road and they are not sure what the answer is. It's not that they don't welcome new neighbors but there is a very, very strong concern about added burden and added traffic on what is already a burdensome problem. Ms. Turner and her husband have lived there for 16 years now. Her husband takes part in the plowing of Oliver Road and Jewett Road and they have seen it all. Ms. Turner felt that one of the reasons that these lots are attractive is because they are attractively priced.

Penny Savage, lot 149 stated that she access Oliver Road or Sawyer Road depending upon the season. Ms. Savage brought up the fact that they did have a family move into a spec house and after all the work was done on the road, Ms. Savage went to this house with a bill to let them know it is part of what is required for dirt and maintenance. The response she received was that they were wondering when they were going to get around to doing something because the road was atrocious. The family assumed it was the Town that was to maintain it. Ms. Savage explained to the family the Town was not part of it, "we" as neighbors are responsible for it. She felt that the real estate agents and the builders do a disservice to the Town, the community and the town to the buyer's expectations. Chairman Dearborn replied that there is a process called a betterment assessment if the community wanted to research that, which could solve the maintenance issue. So there is a means and remedies of trying to correct the issues.

Adam Dallas, asked to speak as public at large. Chairman Dearborn asked Mr. Dallas if he was a resident of Weare. Mr. Dallas stated that he was not at this time. Chairman Dearborn stated that he needed to be a resident. Mr. Dallas apologized. He misunderstood and asked if the Board would like him to take a seat. Chairman Dearborn answered yes.

Chairman Dearborn asked for other boards. There were none.

Rebuttal of applicant: Chris Renaud stated that the Board knew this was coming for a meeting tonight and normally the Board goes and looks at the property. He asked if any of the Board members went and looked at the road and the conditions of it. Mr. Renaud stated that he was out there today and the road was in great shape and yes there is a couple of boulders in the road. The other point is that a number of the residents have been here in town for quite some time and moved in knowing it was a Class VI road and in rough shape. The last 2 houses that were built on that road, one was maybe 7 years ago and the other one could have been 10 years ago. Those houses were required by the Board at that time before signing off with the Building Department that they met the Town's Road Agents specifications. He found it interesting that prior people did go and get permission. They did widen the road and took trees down. He understands what the neighbors are saying. It is a dirt road and dirt roads need maintenance and he feels that maybe that is the route to go and get the Town involved but that is something that can come later. He disagrees with the ability to pass. It is narrow but two cars can pass. He had a flatbed deliver his backhoe and the driver was able to turn around at the top of the hill. It was tight but he could do it.

Rebuttal of disapproving abutter: none

Rebuttal of public at large: Patricia Turner stated that she and her husband have studded tires on their vehicles in the winter and that's made the difference for them in the winter. They consider it a necessity to be able to get up the icy road. To the rebuttal of the applicant, Ms. Turner stated that she is not sure what the laws were when her house was built but she does know that there were fewer residents and therefore much less traffic and it took less work in terms of maintenance of the road. Adding more residences adds more traffic which adds to the burden that's the point she was trying to make.

Chairman Dearborn asked the Board if they had any further questions before he closes the public hearing. Being there were none Chairman Dearborn closed the public hearing at 8:44 PM.

Chairman Dearborn stated that he would like to pose some conditions for this application, should it be voted on in the affirmative. They are as follows:

1. The applicant shall be required to complete a Town of Weare Liability Disclaimer and file the Liability Disclaimer at the Hillsborough County Registry of Deeds, to alert future buyers to the that it is not a Town maintain road and to be consistent with NH RSA 674:41, I.
2. The applicant shall be required to post the necessary sign(s) on the transition from a Class V road or Private Road in accordance with the Town of Weare sign policy and be consistent with NH RSA 674:41, I.
3. The applicant shall take the necessary actions to be in compliance with the Town of Weare Planning Board Subdivision Regulation for driveway permit requirements for life safety issues.
4. The applicant shall be required to take the necessary actions to comply with the signage requirement (9-1-1) for proper residence location to support emergency vehicle life and safety responses.

Point #1: Stu Richmond moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 4 – 1 (Wright)

Point #2: Vice Chairman Meyer moved to approve point #2 with the above 4 conditions; Stu Richmond seconded. Vote: 4 – 1 (Wright)

Point #3: Stu Richmond moved to approve point #3 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 4 – 1 (Wright)

Point #4: Stu Richmond moved to approve point #4 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 4 – 1 (Wright)

Point #5: Vice Chairman Meyer moved to approve point #5 in its entirety with the above 4 conditions; Stu Richmond seconded. Vote: 4 – 1 (Wright)

Chairman Dearborn stated that the variance is granted subject to the four (4) conditions that were discussed earlier. He informed the applicants that they still need to go to the Board of Selectmen for approval in order to complete the final approval.

IV. MINUTES:

Gary Shelto moved to approve the May 1, 2018 minutes as amended, Vice Chairman Meyer seconded the motion. Motion passed 5-0-0.

Chairman Dearborn stated that he is going to be reaching out to Attorney Drescher specifically ask what the appropriate method is under the RSA for seating the members for a case. He will bring that information back to the Board next month.

V. ADJOURNMENT

Vice Chairman Meyer moved to adjourn at 9:07 pm. Stu Richmond seconded. Motion passed 5-0-0.

Naomi L. Bolton

Naomi L. Bolton

Transcribed from recording