
ZONING BOARD OF ADJUSTMENT
JULY 10, 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: Adam Dallas; Erin Dallas; Bill Boisvert; William Boisvert; John Arnold.

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 two 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.

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 - CONTINUED

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; Mike Meyer seconded. Passed 5-0-0

Adam and Erin Dallas hereby request a variance from Section 17.1.1 of the Weare Zoning Ordinance to permit 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.

Adam Dallas 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 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. The Subject Lot has remained vacant, with no efforts to develop it in the past thirty years, and both the Town and the Sawyer Road community will benefit from the proposed single family residence. The benefits to the Town in terms of increased tax base and arrival of new citizens who can further the Town's purposes as well as the lack of any concern presented by this particular Class VI road all support that substantial justice will be achieved by granting the variance. There is no specific feature to this particular residential building lot that would suggest the ZBA should deviate from its passed practice of granting variance for residential building permits on Sawyer Road. The risk of emergency vehicles lacking access is very small while the gains to the Town of Weare and to Adam and Erin Dallas are significant.

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

By granting the variance, the values of surrounding properties will not be diminished because the Applicants' proposal is to build a single family residence similar to those existing in the immediate area. The area surrounding the intersection of Jewett Road, Oliver Road, Moulton Road and Sawyer Road, according to the Tax Map for the Town of Weare, contains 20+ building lots which either already contain a single family dwelling or can support a single family dwelling. As more New Hampshire residents seek rural area to build a home, the demand for the lots will grow. All of the lots were subdivided specifically for the building of residential dwellings, and this should improve the value of the properties in the immediate area, not

diminish them. The Applicants' intention to participate in the process of maintaining Sawyer Road will further contribute to increased property values.

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:

Unnecessary hardship would result from the denial of the variance. The special condition of the property that distinguishes it from other properties is that other lots existing on Sawyer Road have received variances for house construction, but not the Subject Lot.

- 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: No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the Subject Property.

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 Subject Property was subdivided into a residential building lot by the Planning Board, with frontage on Sawyer Road, for purposes of home construction and occupancy.
- ii. And how the proposed use is a reasonable one:**
The ZBA has authorized the issuance of building permits on Sawyer Road, finding it a suitable road for home construction and occupancy. Neither the Fire Department nor Police Department have objected to this Variance Application, and;

'... (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:

Please describe the special conditions of your property that distinguish it from other properties in the area: The proposed use is a reasonable one because, as a residential building lot, such use is otherwise permitted by right under the Ordinance and has been exercised by, at present, seven other homeowners on Sawyer Road.

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: In the alternative, unnecessary hardship exists as this subdivided building lot, situated on an accessible Class VI road, cannot be used for any reasonable purpose other than a residential building lot and a variance is necessary to enable use of it.

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.

Rebuttal of applicant: none

Rebuttal of approving abutter: none

Rebuttal of disapproving abutter: none

Rebuttal of public at large: none

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.

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: Marc Morette moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 5-0

Point #2: Marc Morette moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 5-0

Point #3: Marc Morette moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 5-0

Point #4: Marc Morette moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 5-0

Point #5: Marc Morette moved to approve point #1 with the above 4 conditions; Vice Chairman Meyer seconded. Vote: 5-0

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.

Case # 0618 – VARIANCE - Article 25.5.1 & 25.5.2 – William Boisvert, East Side of Route 114, Map 109-11 in an Industrial Zone

Chairman Dearborn read the application out loud for those present and watching. Chairman Dearborn seated all the regular members for this application. Stu Richmond moved to accept the application; Mike Meyer seconded the motion. Passed 5-0-0

John Arnold was present with Bill Boisvert and William Boisvert. Mr. Arnold stated that Mr. Boisvert would like to build a garage on this lot. Chairman Dearborn stated that he had a lot of questions regarding this lot. He suggested that the Board continue this to allow the Board input from Town Counsel. Mr. Arnold asked for a recess to confer with his client. The Board decided to take a recess from 8:20 PM to 8:22 PM. Mr. Arnold stated that he agreed to a continuance to next month. Stu Richmond moved to continue this application to August 7, 2018 to allow the Board to get guidance and input from Town Counsel; Marc Morette seconded. Passed 5-0-0

IV. MINUTES:

Marc Morette moved to approve the June 5, 2018 minutes as amended, Stu Richmond seconded the motion. Motion passed 5-0-0.

V. NONPUBLIC SESSION:

Marc Morette moved to enter into nonpublic session at 8:27 PM pursuant to RSA 91-A:3 II (L) for the purpose of receiving legal advice; Vice Chairman Meyer seconded the motion. A roll call vote was taken: Marc Morette – yes; Stu Richmond – yes; Chairman Dearborn – yes; Vice Chairman Meyer – yes; Malcolm Wright – yes. Passed 5-0-0

Marc Morette moved to exit the nonpublic session at 8:55 PM; Vice Chairman Meyer seconded the motion. A roll call vote was taken: Marc Morette – yes; Stu Richmond – yes; Chairman Dearborn – yes; Vice Chairman Meyer – yes; Malcolm Wright – yes. Passed 5-0-0

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

VI. ADJOURNMENT

Malcolm Wright moved to adjourn at 8:46 pm. Marc Morette seconded. Motion passed 5-0-0.

Naomi L. Bolton

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Transcribed from recording