

ZONING BOARD OF ADJUSTMENT
AUGUST 7, 2018 FINAL MEETING MINUTES

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

Excused: Alternate – Donald Rogers

Guests: David Hibbard, Barbara Hibbard, Dennis McKenney LLS691, Craig Francisco, Kimberly Johnson, James Allatt, Garrett Prouix.

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 # 0618 - VARIANCE - Article 25.5.1 & 25.5.2 Continued: William Boisvert, East side of Route 114, Tax Map 109, Lot 11; "Industrial Zone". A letter was received from John L. Arnold to request a continuance of a ZBA hearing until September 4, 2018. Chairman Dearborn identified an incorrect continuance date within the letter received from Mr. Arnold. The correct meeting date is September 11, 2018. Stu Richmond moved to approve continuance of application Case #0618 until Sept 11, 2018, Malcolm Wright seconded. Passed 5-0-0.

Case # 0718 - VARIANCE - Article 24.10: David & Barbara Hibbard, Map 109, Lot 1 & 2, 14 Gould Road; "Residential Home in a Commercial Zone". Chairman Dearborn read 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.

Dennis McKenney presented the board with an updated, color-coded map of the site.

Stuart Richmond moved to accept application as completed; *Marc Morette* seconded. Passed 5-0-0

David Hibbard presented the five points of hardship of this application as follows:

The undersigned hereby requests a variance to the terms of Article 24.10 and asks that terms be waived to permit: The erection of a home on a 2-acre lot with 200+ ft of frontage on Gould Road in a field owned by the applicant and to meet the requirements of the town. The home will be positioned such that all buffer zone requirements are met and displacement between septic & water systems are achieved.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** We are downsizing. It will be an attractive structure and compliment all neighbors. The neighborhood is residential on the Gould Road side of the property. The property is staying in the family. We intend to maintain the residential area. It will be next door to another manufactured home. If either one of us dies, we cannot afford the farm anymore.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The homes in this area have existed long before being zoned commercial. "Use Variance". The use variance is the problem.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** It will allow my wife & I to erect a manufactured home on the property. It will allow the farm and associated property to remain in the family. It will maintain the overall residential status of the neighborhood. It will be in the upper pasture with trees on three sides, and you won't notice it unless you fly above it.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** It will maintain the residential status of the immediate area.
- 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:** It is a well-maintained farmland. It provides a sanctuary for wild birds and animals, as well as for domestic animals. On the highway, Route 114, there's a small Ice Cream Shop that also provides fresh fruit and vegetables (seasonally).

This structure has been there since 1981 and we have lived there since 1976. Conversely, there is a small mall next door and across 114, a storage facility. W/L.

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:** Chip Meany stated it's a law and denied us permission to erect any type of structure on the property. Reference Article 24.10: no stick, modular or manufactured homes.
- ii. And how the proposed use is a reasonable one:** My wife & I are both 87 yr. old. We are downsizing. The farm will remain in the family (we have lived here 42 years). The community will remain a residential neighborhood in a commercial zone.

'... (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:** It's a 20-acre farm on a residential street (Gould Rd.) with residential neighbors along the street. To the North, beyond the stone wall, is a shopping mall. To the east across Rt. 114 is a storage facility and Bill Boisvert property. We are not hurting any of this property if we put this structure up.

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: It's zoned "Commercial" See Article 24.10.

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. Hibbard if he would like to add anything more. Mr. Hibbard did not contribute more, but Dennis McKenney contributed his thoughts to the five points which included: 1. The deed on record that involves the TOW in recognition of the fact that there is a residential use of the property in existence. 2. There is a provision in the town zoning ordinance that encourages/allows building on the property if you expand a non-conforming lot to meet certain criteria. 3. A lot of commercial use in the area. 5. The request is apparent. Speaks to mixed use of the area, and is not unique to the area.

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.

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 7:26 PM.

Chairman Dearborn moved to accept a motion for Article 24.10.

Point #1: Vice Chairman Meyer moved to accept point #1; Marc Morette seconded. Vote: 5-0
Point #2: Marc Morette moved to approve point #2; Vice Chairman Meyer seconded. Vote: 5-0
Point #3: Marc Morette moved to approve point #3; Vice Chairman Meyer seconded. Vote: 5-0
Point #4: Malcolm Wright moved to approve point #4; Stu Richmond seconded. Vote: 5-0
Point #5: Vice Chairman Meyer moved to approve point #5 in its entirety; Stu Richmond seconded. Vote: 5-0

Chip Meany reminded the board that the subdivision has to be approved by the planning board.

Case # 0818 - VARIANCE - Article 17.1.1: Judith Chimenti, Map 409, Lots 168, 169 & 170, Horse Spring Hill Road; "Building on a Class VI Road in a Residential Zone"

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; Stu Richmond seconded. Passed 5-0-0.

Craig Francisco explained to the board that Judith Chimenti is no longer the owner, and he is there to represent the new owners, Kim Johnson and James Allatt.

Chairman Dearborn asked if the board had any questions before they began the five points of hardship. None were posed. Craig Francisco presented 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 single family residential structures on Tax Map 409 Lots 168, 169 & 170. These lots front on Horse Spring Hill Road. The existing Class VI Road will be used to access these lots from River 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 is within the residential zone, where single family houses are permitted. B/ The house will be front setback from Horse Spring Hill Road and will meet all building codes. C/ The driveway from River Road, along Horse Spring Hill Road to access these lots will be constructed to meet the driveway regulations, therefore emergency vehicles will be capable to access the sites.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The ordinance prohibits the issuance of building permits on Class VI roads as a general rule. The town has allowed building permits for residential dwellings on Class VI roads in the past. These parcels are zoned Residential, so the underlying spirit of the ordinance would be to allow residential lots to be used for residential purposes.

- 3.) **That through the granting of relief by variance substantial justice will be done because:** These lots were created in 1971 and are zoned Residential. These lots meet all the existing zoning requirements for the Residential Zone, except frontage and that is because it is a Class VI Road. Substantial justice will be done because the residentially zoned lots were created in 1971 for this exact purpose.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The area is somewhat rural, while zoned residential. The proposed houses will be adequately buffered by existing natural vegetation. The building of a new, single family home on a vacant lot may increase the value of surrounding properties by providing a new home to measure comparable sales in future. Potential alternative uses could have a significant negative impact, which a 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:**
- iii. **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**
 - iv. **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 properties distinguishing characteristic is that the only frontage is on a Class VI Road. The owner has explored other options such as accessing from Barnard Hill Road, but a driveway would be extremely difficult to build in that location. River Road provides a better, still not ideal access to these lots. The view from River Road would be just another driveway.

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

- iii. **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 driveway would be constructed to the town's specifications. These specifications require 12' wide travel way with 2' shoulders. There are many other specifications including 10% minimum slopes. All of these specifications will be met, when accessing from River Road. Also a turnaround will be constructed within 50' of the dwelling.
- iv. **And how the proposed use is a reasonable one:** The proposed use is a single family home on each lot. This use is consistent with the use of other residentially zoned lots.

‘... (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 access is what distinguishes these lots from other lots. The access has to be off of Horse Spring Hill Road, which is Class VI.

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: These lots were created in 1971 to be used as residential lots. The Town of Weare adopted Zoning Ordinances in 1988 and these properties were and have been zoned Residential. The granting of this variance would allow the use of these lots as intended by the 1971 subdivision and the adoption of the Zoning Ordinances.

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.

Chairman Dearborn presented a set of conditions:

Condition 1: There will be a Class VI road sign posted at the transition of River Road and Horse Spring Road, where ever the town agent deems appropriate.

Condition 2: Require a disclaimer placed in the Hillsborough County Registry of Deeds which shows the property is not on a Class V road.

Condition 3: In addition to placement of sign, the TOW Public Works Director must approve the design and shape. New access to River Road.

Condition 4: To ensure there is proper life safely signage for the access to Horse Spring Hill Road for life safety emergency reasons.

Condition 5. This new driveway off River Road up to dwelling shall be built to the town standard and approved by the Board of Selectman i.e. Article 36 of TOW zoning ordinance

6. Ensure there are no more two lots are accessed from this application.

Chairman Dearborn moved to accept conditions, Stu Richmond seconded the conditions, No discussion. All voted in favor.

Prong #1: Marc Morette moved to accept point #1; Stu Richmond seconded. Vote: 4-1 (Wright)

Point #2: Marc Morette moved to accept point #2; Stu Richmond seconded. Vote: 4-1 (Wright)

Point #3: Marc Morette moved to accept point #3; Stu Richmond seconded. Vote: 4-1 (Wright)

Point #4: Marc Morette moved to accept point #4; Stu Richmond seconded. Vote: 4-1 (Wright)

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

Malcom Wright interjected that a zoning ordinance is not a hardship in itself. The planning board should take ownership here. Chairman Dearborn responded that this is a reasonable use of a lot. No violation here.

Other item:

Chip Meany and Beth Rouse has provided an ZBA application for public use with available space for public to type in to deter handwritten handwritten or cut/paste applications. Chairman Dearborn stated that we will still allow handwritten applications.

IV. MINUTES:

Chairman Dearborn suggests to wait on reviewing minutes until next meeting.

V. ADJOURNMENT

Stu Richmond moved to adjourn at 9:07 pm. Marc Morette seconded. Motion passed 5-0-0.

C. Provencher

Transcribed from meeting and recording