

ZONING BOARD OF ADJUSTMENT
OCTOBER 2, 2018 FINAL MEETING MINUTES

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

Guests: Art Siciliano, Kenneth O'Leary, Cheryl O'Leary, Richard Sperry, Ray Menard, Susan Menard, Donna James, Christine Wiss, George Merrill.

I. CALL TO ORDER

The meeting was called to order by Chairman Jack Dearborn at 7:31 pm.

II. ADMINISTRATIVE ITEMS

Chairman Dearborn explained the way the meeting will be run, is that all cases will be taken separately. 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. Procedure for a variance shall be voted at each individual point, and a special exception shall be voted on after all points have been read, realizing that there are 5 board members present and that a three to five vote would indicate an affirmative motion in each request. A granted variance must meet all five points of hardship, where a special exception is allowed by right if you meet the seven conditions listed in Town of Weare Zoning Ordinance. All motions will be made in the affirmative.

III. PUBLIC HEARINGS

Case #1118 MOTION TO CONTINUE Administrative Appeal: *George W Merrill* Appeal of a Planning Board Decision regarding a driveway approval at Tax Map 406, Lot 51.3, west side of River Road in a Residential Zone. Chairman Dearborn motions to accept the appeal. Mr. Meyer moved, Mr. Morette seconded, motion passed 5-0. A request has been made to continue the hearing till a later date, as the applicant and his counsel claim to not have receive proper notice of the meeting. Chairman Dearborn then asked the Board to affirm this allowance, which was indeed postponed until the next scheduled meeting on November 13th, as the Board approved the continuance.

Case #1218 Variance Article 28.9, Kenneth & Cheryl O'Leary, 30 Old Town Road, Tax Map 110, Lot 119 in a Residential Zone to impact a Wetland Buffer. Property description includes 101.5' frontage on lake, both side lines 100', plus or minus. Rear 100', plus or minus. Lakeside of property with no trees, no shrubs. Property has gradual slope to water front. The Chairman verified all submitted documents which included: Application for Zoning Hearing, Variance Application, Copy of Deed (Meridian), Copy of Tax Card, Location Map (Meridian), Site Plan, Abutters List, Meridian Packets, Shore Land

Impact Permit, Septic Location and Set backs, and the Affidavit from Property Owner. Proposed use is to raise house and install a concrete foundation. Chairman Dearborn asked if there are any questions on the application. There are none. Mr. Morette moved to approve the application, Mr. Shelto seconded. All were in favor, 5-0 with no discussion.

As there was no discussion, the Chairman invited the applicant, Mr. O'Leary, to speak on behalf of the variance by stating the Five Points of Hardship.

- 1.) **That the granting of the variance will not be contrary to the public interest because:** This variance is being requested to improve the safety, stability and physical appearance of the property and will enhance the property value and that of abutters and neighbors and is not contrary to public interest. It is of note, that other lake front properties, in the area, located within the 25' buffer zone, have been granted variances for home improvements. A DES Waiver has been obtained for the project.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The scope of work proposed will not affect the integrity of the shoreline and will not have an impervious impact. No trees or native vegetation exist in the 25' buffer area therefore, no vegetation will be disrupted or affected.
- 3.) **That through the granting of relief by variance substantial justice will be done because:** By allowing property improvements, as described, the structural stability of the home will be improved; the structural safety of the deck and retaining walls will be improved. The property value will be improved, the appearance of the property will be improved and further deterioration of the property will be avoided.
- 4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The property is in serious need of the structural repairs as described. The repairs will improve the appearance, structural safety and increase the value of the home. Historically, well-maintained properties have resulted in a positive impact on surrounding property values and properties in disrepair negatively impact abutters and neighbors.
- 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:** Because of the location of the property on the lake as documented, no fair and substantial relationship exists.
 - ii. **The proposed use is a reasonable one.** Intended continued use as a residential home; the proposed repairs and improvements are reasonable, based on the need to maintain and preserve the integrity of the property, allow for the enjoyment of the property, enhance safety for the occupants of the property and protecting the property as an investment.

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 property was built in 1975, prior to Article 28.9 Buffers, close to the water, which is now considered part of the 25 ft. buffer zone. Many other lake front home owners have had to make home improvements within the buffer zone. Allowing the repairs and improvements as indicated, would be affording us as home owners of 30 Old Town Road, the same opportunity.

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:** Because of the location of the property on the lake as documented, no fair and substantial relationship exists.
- ii. And how the proposed use is a reasonable one:** Intended continued use as a residential home; the proposed repairs and improvements are reasonable, based on the need to maintain and preserve the integrity of the property, allow for the enjoyment of the property, enhance safety for the occupants of the property and protect the property as an investment.

‘... (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 existing property was originally built in 1975, in closer proximity to shore lands (Daniels Lake) than today's standards will allow.

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 order to repair and maintain our property, we need to perform repair work within the 25' buffer area and this cannot be accomplished in strict compliance with the 25' Buffers ordinance. Our property is in serious need of structural repairs to provide foundation stability to the existing home and replace the deteriorated retaining walls and deck. Lack of maintenance by prior owners and the age of the home have contributed to the condition of the home. The work as described will support property safety, increase the stability of the structure, ensure the enjoyment of our home in the future and protect our investment. Any questions of the Board? None.

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.

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.

The Chairman then closed the hearing to the public to vote:

Point #1: Marc Morette moved to approve point #1; Vice-Chairman Meyer 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: Marc Morette moved to approve point #4; Mr. Richmond seconded. Vote: 5-0
Point #5: Marc Morette moved to approve point #5 in its entirety; Vice-Chairman Meyer seconded.
Vote: 5-0

Case #1318 Variance Article 17 1.1, William & Christine Wiss, Building on a Class VI Road, Tax Map 409, Lot 171 Worthley Road; in a R/A Zone. Mr. Morette moved to accept the application, Vice-Chairman seconded. Application accepted by the Board. Chairman then reviewed the application and property description listed in the application and attachments. Frontage falls on Worthley Road 129'+/- with a lot depth of 1450'+/- and Lot area of 41.79 +/- acres. The purpose of use is to construct a new home on the lot, but the lot fronts a Class 6 Road (Worthley). The Chairman motioned to accept the application for review. Vice-Chairman Meyers seconded, and all were in favor, 5-0. Art Siciliano approached the Board to speak. Chairman Dearborn wanted to clarify that the client has enough room for two fire trucks to pass each other. There is an issue here, as this application seems to be premature. A Class 6 driveway you are asking to build is on a non-town maintained road. Length of this town maintained road is a problem. The other driveway is close to other subdivided pieces and this is almost a quarter mile beyond that property by 1300' (.25 mile driveway) and is a concern. Do we consider granting this when in the past, it was found that there is no stand alone subdivision. Mr. Siciliano expressed that all they were asking for was one building permit and upgrading access and proceeded to read the Five Points of Hardship:

The undersigned hereby requests a variance to the terms of Article 17, Section 17.1.1 and asks that terms be waived to permit: A building permit for a new home on a Class 6 road.

You are required by law to demonstrate:

- 1.) **That the granting of the variance will not be contrary to the public interest because:** The construction of a single family home will be similar to abutting homes. No public funds will be used to construct or maintain the improved driveway to this home. The driveway will be maintained by the owners of the lot.
- 2.) **The variance requested, will not be contrary to the spirit of the ordinance because:** The spirit of the lot is brought up to Town driveway standards, so Town emergency vehicles can get to the new home.

3.) **That through the granting of relief by variance substantial justice will be done because:** Granting a variance for a building permit will allow use of the property as an abutting property owner has done, (Tax Lot 709/23). A driveway constructed to Town standards will justify this variance.

4.) **That by granting the variance, the values of surrounding properties will not be diminished because:** The new single family home will be of similar construction as other properties on Worthley Road. Residential use in a residential neighborhood will not diminish 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:**

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;**

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 special condition of this lot is that it fronts on a Class 6 Rd., which is not up to Town road or driveway standards.

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 ordinance provision says no building permits allowed on these roads because they are not brought up to standard where the lot can be accessed safely, the ordinance provision is not needed and a variance can be granted.

ii. **And how the proposed use is a reasonable one:** This is an existing lot of record and it is reasonable to use it to construct a new home, once the access is brought up to Town driveway standards.

‘... (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 condition of this lot is that it fronts on a Class 6 Rd., which is not up to Town road or driveway standards.

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: This ordinance article does not allow residential use of the property because the access is not up to a standard for Town emergency vehicles (ie. Fire, Police and Rescue) can service a new home. A variance granted with conditions will allow a new home to be built on this property. Such conditions can be getting permission from the Selectmen to do work necessary to construct the driveway on the Class 6 Roadway and require construct the driveway to meet Town driveway standards for those Town emergency vehicles.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters.

Donna James of 60 Guys Lane, Tax Map 409, Lot 122 rose to speak to the Board. She asked clarification on a driveway vs. a town maintained road. The Chairman explained a Class 5 road is a Town owned and maintained road. A Class 6 road is where the Town owns the road, but does not maintain the road. Then there is a private road, where the town does not own or maintain the road. Zoning didn't start until 1987. Ms. James asked if would the residents be able to use this driveway for recreation. Snowmobiling or snow shoeing potentially would not be able to be used for this type of Winter recreation, because the road would be plowed, as it would be a driveway. The Chairman expressed that the Select Board will determine how the road will be used. Residents could ask the Select Board for the road to be left or right justified.

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

Chairman Dearborn asked for other boards. Mr. Meany rose to speak for the Fire Chief, Fire Wards, Board of Selectman, and for himself, acting as the Land Use Coordinator for the Town. He has serious umbrage with the fact that a Town owned road is being considered for use as a driveway. Any standard that is to be done, has to be done by the Selectman, not this Board. He continued the maintain that the Zoning Board is out of its purview in setting requirements for this matter. This is a Town road and the driveway doesn't begin until there is approval at the end section of road.

A call for Public at large. No comment. Mr. Siciliano rebuts to state the term "driveway is unclear at this time". Public hearing closed.

The Chairman subsequently explained that should this Variance Approval be considered; the minimum conditions and requirements outlined from the following shall be fulfilled:

"Town of Weare Zoning Board of Adjustment conditions for Case #1318"

The following are minimum conditions and requirements for a Variance Approval of a residence on a Class VI Road; Town of Weare Zoning Ordinance 17.1.1.

Condition 1: The applicant shall be required to post the necessary sign(s) at the transition from a Class V road to a Class VI Road in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41, I, (c) – Class VI Road.

Required Sign Wording Policy:

This road has not been accepted by the Town of Weare or it consists of a Class VI or Private Road which the Town has no duty to maintain. The Town assumes no responsibility for maintenance including snow removal, nor any liability resulting from use of a street. RSA 674:41

Condition 2: The applicant shall be required to complete a Town of Weare Liability Disclaimer and file the Liability Disclaimer at the Hillsborough County Registry of Deed, and be consistent with NH RSA 674:41, I, (c) – Class VI Road.

Condition 3: The applicant shall take the necessary actions to be in practical compliance with the Town of Weare Planning Board Subdivision Regulation for driveway permit requirements and Town of Weare Zoning Ordinance, Article 36. The Town of Weare Public Works Director shall be the authority for interpreting the “Practical” implementation of this requirement/condition.

Condition 4: The applicant shall be required to take the necessary actions to comply with the E911 signage requirement for proper residence location identification to support emergency vehicle for life and safety responses.

Point #1:

Marc Morette moved to approve point #1 with these conditions; Mr. Richmond seconded. Vote: 5-0

Point #2: Marc Morette moved to approve point #2 with these conditions; Mr. Richmond seconded. Vote: 5-0

Point #3: Marc Morette moved to approve point #3 with these conditions; Mr. Richmond seconded. Vote: 5-0

Point #4: Marc Morette moved to approve point #4 with these conditions; Mr. Richmond seconded. Vote: 5-0

Point #5: Marc Morette moved to approve point #5 with these conditions in its entirety; Mr. Richmond seconded. Vote: 5-0

IV. MINUTES:

Chairman Dearborn reviewed prior minutes and the Board made the following motions:

June 5, 2018; Mr. Morette moved to approve, Mr. Meyers seconded. Approved 5-0.

July 10, 2018; Mr. Morette moved to approve, Mr. Richmond seconded. Approved 5-0.

August 7, 2018; Mr. Morette moved to approve, Mr. Richmond seconded. Approved 5-0.

September 11, 2018; Mr. Morette moved to approve, Mr. Meyers seconded. Approved 5-0.

V. ADJOURNMENT

Chairman Dearborn moved to adjourn at 8:43 PM. Mr. Richmond seconded. Motion passed without objection.

Respectfully submitted,

C. Provencher

Transcribed from meeting and recording.