



WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
March 1, 2022

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; BOBBI-JO PLAMONDON, MEMBER; MALCOLM WRIGHT, MEMBER; MARC MORETTE, MEMBER; NAOMI BOLTON, INTERIM LAND USE COORDINATOR

Absent: GARY SHELTO, ALTERNATE

GUESTS: Dave Nault, Kevin Cahill, Jill Colburn-Cahill, Janet Sauer, Dr. Marshall Harris

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment March 1, 2022 meeting to order at 7:30 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

The Chair stated there is one case before the Board, Case #03-2022. He then read the agenda explaining how the meeting will run. He stated there are five members this evening and then asked the Board to introduce themselves, all being seated for the hearing.

II. PUBLIC HEARING

A. Case #03-2022 CONTINUED HEARING: Highland Farms & Forest Acquisitions (Owner); David Nault (Applicant) – Tax Map 102, Lots 31 & 32, Lakeview Drive, Residential Zone – Variance – Article 3, Section 3.5 and Article 17, Section 17.1.1 Applicant is seeking a variance for each lot for the construction of one single family home per lot.

The Chair asked for a motion to accept. **Vice Chairman Meyer moved, Marc Morette seconded to accept ZBA Case #03-2022 application as complete.** Discussion: Vice Chairman Meyer stated they are identical except lot numbers and suggested they be taken together. **Vice Chairman Meyer amended his motion; Malcolm Wright seconded, to take the case as a whole, both lots together for this hearing. Passed 5-0-0.**

Dave Nault presented the variance case on Lakeview Drive, stating lot 31 is .7 acres & lot 32 is .99 acres.

Chairman Dearborn asked if the Board had any questions. He stated he visited the area and found the private road wide, ditches clear, with good drainage.

Dave Nault then began to read the following five points of hardship with answers seeking a variance for construction of single-family homes on lot 31 & 32 on Lakeview Drive:

1. The Variance will not be contrary to the public interest: *There are 17 house lots with homes on Lakeview Drive. 90% of these lots are one-acre lots. Lot 31 & 32 have not been developed. This is a residential neighborhood that has existed for over 50 years since its creation by Chester W. Colburn. Therefore, adding a home to lot 31 or 32 will not conflict with the character of the neighborhood, threaten the public health, safety, or welfare or otherwise injure any public rights.*

2. Please describe how the spirit of the ordinance is observed: *Development of single-family residences on these lots are contemplated with the spirit of the ordinance. Designed to allow development under proper situations for non-conforming preexisting lots. A home on lot 31 & 32 would be built on non-conforming residential lots, but would not negatively impact the comfort, peace, quiet or enjoyment of the neighborhood, or cause significant disturbance or unreasonable annoyance to anyone in the area. It will not reduce property values. It is likely to enhance them. The development will be consistent with abutting lots.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *These lots are non-conforming because they were created prior to 1988 when the zoning setbacks were created. The lots have been there since the 60's and have not been developed. Lot 31 & 32 meet the setback requirements for non-conforming lots and will have a State approved septic design. There will be no harm to the general public as described herein. To not allow development on these lots would otherwise create substantial injustice to the property owner by virtue of prohibiting development consistent with the neighborhood.*

4. Please describe how the values of surrounding properties are not diminished: *This is a very nice residential neighborhood where all homes are of average or above average value. Building homes consistent with those that already exist will not diminish the surrounding properties. With that in mind, these lots were purchased to assure that appropriate construction would occur. The private road which serves these lots is owned by Michael Colburn who has a vested interest in making sure there is no diminution to the neighborhood.*

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

A. Please describe the special conditions of the property that distinguish it from other properties in the area, explain any details of the property, structure, that are different from surrounding properties such as slopes and wetlands: *These preexisting lots do not meet the minimum lot area requirements set forth in Table 1.1. However, most lots on this private road are also non-conforming and they are less than 2 acres. Inability to develop for that reason would be a hardship.*

i. Owing the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property: *Article 3.5 contemplates building on non-conforming lots. The creation of this residential area predated the current minimum lot size requirements. The slopes and soils of these lots will not require accommodation as State approvals for septic and well will be sought and are expected to be granted. The resulting construction of single-family residences on these lots are consistent with the purpose of the ordinance and residential living in a rural residential area on a private road. The conditions listed in 3.5.1, 3.5.2 and 3.5.3 will be met.*

ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property): *The proposed use is consistent with the original design of the neighborhood as well as its development over the last 50 years. Single-family residences on 1-acre lots are in the general makeup of the entire development, thereby, making the proposed building on these lots reasonable.*

The Chair asked the Board if they had any questions of the applicant. Malcolm Wright asked if merging the two lots was ever considered. Dave Nault replied they are pre-zoned lots, common for the area. The owners other similar lots have been approved previously by the Board. Combining the lots would reduce their value.

The Chair asked for approving abutters to speak. There was none

The Chair asked for disapproving abutters to speak. Kevin Cahill, 697 Reservoir Drive, an abutter, stated both lots are affected by the wetlands as noted on the plan. His concern is the northbound wetland is not indicated on the plan. Both of these wetlands drain onto his and his wife, Jill Colburn's property. Natural grading of the area pitches towards their property. Lot 32 wetlands were disturbed with logging, resulting in a direct discharge of water creating a huge impact. No erosion control or remediation has been done. Further site work will only create

even more impact with direct discharge. Current plan shows contours without explanation of where that water will go in the end.

Chairman Dearborn replied the Board is only considering the variance based on a private road.

Kevin Cahill asked if prior to the variance the Board could ask the developer for drainage schematics.

Chairman Dearborn responded no because the variance pertains to building on a private road, period.

Kevin Cahill asked where should he take his concerns.

Chairman Dearborn replied he does not give legal advice. Only here for a private road issue. He cannot answer the question.

Kevin Cahill asked for clarification, would these lots be approved for a building permit.

Chairman Dearborn stated the Board is “relaxing Article 17.1.1” as a variance. Responsibility beyond that is not relevant. Adding, the Planning Board makes sure the lots of a subdivision are compliant.

Kevin Cahill reiterates how the development of these two lots have a negative impact on his property. Currently, all the water from these two lots run through his property a half a mile before flowing into Lake Horace. Existing culverts will be affected, increasing the wetlands, making his property unusable.

Malcolm Wright stated the case is applying for a variance for a non-conforming lot. Where does it state 17.1.1 private road on the application?

Town Administrator Bolton asked Chairman Dearborn where would one go because the State law does not allow you to divert water onto another person’s property.

Chairman Dearborn responded that would be for the Board of Selectmen. The owners could take it to court.

Kevin Cahill stated he understands this could be considered a civil case, however, the State does not allow the discharge from one property to another. Before making a decision, either zoning, planning or select boards, granting compliance for the building on non-conforming lots, the developer should be made to come up with a plan to keep their water on their lots.

Chairman Dearborn restated the Board’s consideration is only for building on a private road.

Kevin Cahill responded he understands, but foundations built in wetlands, with drainage, will send water to his land. Why was he asked to attend the hearing? There is nothing he can do. What is the point?

Chairman Dearborn answered the Board will consider his input, but the Board complies with the zoning. They do not write the zoning ordinances. That is the Planning Board. Their only concern is the private road.

Chairman Dearborn explained to Kevin Cahill he has the right to a re-hearing request after the Board’s decision.

That would be pointless replied Kevin Cahill. Unless in the rehearing his concerns could be addressed. He reiterated he needs to know where the water will end up.

Chairman Dearborn stated the Board votes independently when rehearing the rehearing request.

Kevin Cahill stated he hopes the developer will consider his concerns. If approval were granted, it would be nice if approved with conditions.

The Chair asked additional abutters to speak. Dr. Marshall Harris, 13 Lakeview Drive, asked if the Board would consider pausing tonight's decision so questions could be asked to avoid creating problems if things were done differently. The advertisement for the property states, "Buyers perform their own due diligence to verify information contained herein is true and correct."

Chairman Dearborn stated, if the lot of record is prior to zoning they still have to comply with zoning regulations. He has no memory of variances being granted for a subdivision. NHDES has already approved both lots for septic design by Art Siciliano.

The Chair asked for public at large to speak. There was none.

The Chair asked for other boards to speak. There was none.

The Chair asked for additional abutters, other boards and public at large to speak. Being none, he closed the public hearing at 8:07 pm.

Case #03-2022

Board Deliberation

Point 1: Marc Morette moved, Bobbi-Jo Plamondon seconded to accept point one of the five points of hardship for Case 03-2022, combined lots 31 & 32. Discussion: Vice Chairman commented on conditions. Chairman Dearborn stated the following are minimum conditions and requirements for a variance approval of a residence on a private 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 of a private road, in accordance with the Town of Weare Sign Policy and be consistent with NH RSA 674:41, I, D for private roads.

Required Sign Wording Policy:

This road has not been accepted by the Town of Weare or it consists of a private road or Class VI 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 Deeds, and be consistent with NH RSA 674:41,1, C for private roads.

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.

Vice Chairman Meyer moved, Marc Morette and Bobbi-Jo Plamondon accepted both lots with conditions. Discussion: being none **passed 5-0-0.**

Point 2: Malcolm Wright moved, Bobbi-Jo Plamondon seconded to accept point two. Discussion: Chairman Dearborn stated the spirit of the ordinance is observed because residential zones and residential lots usually have residential homes on them. Quality of the road is the issue, to conform going forward. Marc Morette agreed, intended for residential lots. **Passed 5-0-0**

Point 3: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point three. Discussion: Vice Chairman Meyer stated substantial justice would be done, a residential lot on a road with similar lots. **Passed 5-0-0**

Point 4: Vice Chairman Meyer moved, Bobbi-Jo Plamondon seconded to accept point four. Discussion: Chairman Dearborn stated these homes would not diminish the value of other homes, no evidence presented. **Passed 5-0-0**

Point 5: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated it would be an unnecessary hardship for this variance not to pass. It is a reasonable use. **Passed 5-0-0**

The variance was approved.

IV. MINUTES:

February 1, 2022 Minutes: tabled

V. NEXT MEETING:

April 5, 2022

Being that there was no more business to come before the Board, Chairman Dearborn moved, Vice Chairman Meyer seconded to adjourn the meeting at 8:19 pm., passed 5-0-0.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from

You Tube recording & TA Bolton notes