

## FINAL



### WEARE ZONING BOARD OF ADJUSTMENT MEETING MINUTES April 5, 2022

**PRESENT:** JACK DEARBORN, CHAIRMAN; BOBBI-JO PLAMONDON, MEMBER; MARC MORETTE, MEMBER; MALCOLM WRIGHT, MEMBER; GARY SHELTO, ALTERNATE; NAOMI BOLTON, INTERIM LAND USE COORDINATOR

**GUESTS:** Daniel & Charlotte Farrelly; Wendy Conant; Anthony Conant; Deanna Goodwin; Charlie Goodwin; Cindy Rooney; Kirk Tepper; Matthew Lear; Mike Camacho; David Giovagnoli; Heather Olson; Christopher Olson; Stephen Najjar; Neal Kurk; Lisa Kazakis.

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment April 5, 2022 meeting to order at 7:30 pm.

#### **I. INTRODUCTION/ADMINISTRATIVE ITEMS:**

The Chair stated there are four cases and a rehearing before the Board this evening. Due to the amount of guests Chairman Dearborn stated that he is going to change the order tonight and take the case with the largest guests first, that being Case #07-2022. Chairman Dearborn explained all questions come through the Chair. He will ask for a motion to accept the application making sure there is adequate information to proceed. Clarification will be made on any missing information and he will ask the Board if they have any questions. The applicant will then come forward and read the five points of hardship or seven points for a special exception with answers. The Chair will again ask the Board if they have any questions. He will then ask for approving/disapproving abutters, public at large or other boards to speak. The applicant can rebut and then a second round of abutters, public at large and other boards. The Chair will then close the hearing and the Board will deliberate and vote. He then asked the Board to introduce themselves and appointed Gary Shelto as a voting member for tonight.

#### **II. PUBLIC HEARING**

**A. Case #07-2022:** Cindy Rooney (Owner and Applicant), 67 Pondview Road, Tax Map 108-041, Residential Zone, Variance – Article 18, Section 18.2.2. Applicant is seeking to relax the front setback to 25' for a single family home to be built.

The Board reviewed all documentation submitted with the application for completeness. **Marc Morette moved, Bobbi-Jo Plamondon seconded accept Case #07-2022 as complete. Vote: 5-0-0**

Cindy Rooney stated that she owns 67 Pondview Road and she is here tonight asking for a relaxation of the front setback from 50' to 25' per 18.2.2.

As the Board did not have any questions for the applicant, Chairman Dearborn asked the applicant, Ms. Rooney to proceed with the five points of hardship as follows:

**1. The Variance will not be contrary to the public interest:** *The road is cut approximately 25' from the front property line. If request to relax setback from 50' to 25' is granted the home would still be approximately 50' setback from the edge of the road.*

**2. Please describe how the spirit of the ordinance is observed:** *Since the road is cut approximately 25' from the front of the property line, relaxing the setback to 25' would still observe the ordinance by having the home approximately 50' away from the edge of the road. Therefore, this request does not alter the essential character of the neighborhood, threaten public health, safety or welfare of others.*

**3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public:** *The property gets very steep and rocky after the first 25' making it very difficult to abide by the 50' setback requirement. Relaxing the 50' setback requirement to 25' will reduce the complex site work and disturbances to the neighborhood during construction. If my request is denied, it will cause hardship. See attachment 2 for site elevation and requested location for building site.*

**4. Please describe how the values of surrounding properties are not diminished:** *Building a new 3 bedroom, single family home will not diminish the values of the surrounding properties. The road in front of my property is one of the widest parts of the road.*

**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:** *The property gets very steep and rocky after the first 25' making it very difficult to abide by the 50' setback requirement without extensive, complicated site work, causing hardship when it comes to building a home. See attachment #2 for site elevation and slope.*

**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:** *Approval of relaxing the setback to 25' will still result in the home being approximately 50' from the edge of the road because there is approximately 25' between the edge of the road to the front of the property line.*

**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:** *I believe this request is reasonable because the house will still be approximately 50' from the road, therefore safety is not an issue. The lot is wooded so it will not diminish the look of the neighborhood. This request also reduces the major site work and disturbances for the neighbors during construction.*

Chairman Dearborn asked if anyone present for this hearing would like to come to the table and view the map that was attached to the application. Ms. Rooney explained to those at the table the layout of her property (aka attachment #2).

After Ms. Rooney finished her presentation. Chairman Dearborn asked her to take a seat and he asked for:

Approving Abutters: none

Disapproving Abutters: Wendy Conant, 21 Pondside Road stated that as much as we know the property because we drive past it, one of the biggest concerns that they will have is the impending damage to the private road based on the trucks carrying the fill in and out. We've seen it with other construction that goes, it's a private road. They have come to this committee more than once and we are sucking up the bill for it. So they are looking for some

kind of confirmation that the road will be fully restored to the way that it was prior to the construction beginning. That is significant to them because they are absorbing, as a community all the costs associated with keeping in that state. The other thing that she would like to have confirmation somewhere in this is that they will be in compliance with the original deed for the road, which was a pre-existing one that was talking about the nature of the house that can be built in there and that this home will be legally in compliance with it. It says single, but they have seen stranger things happen and we had a slip through with the property that is being built on the bottom that is going to be a multi-tenant facility that is not in compliance and they want to ensure that this will be compliant. She is not just looking at the single family home requirement she is looking that it is all compliant with all the stipulations noted in the deed restrictions. The last thing is that based on the elevation and how high it would sit she would like to know what type of fuel might be burning inside the house. If you were burning wood and you have smoke coming out and the house is set down inside the property and not at the natural elevation, that smoke is going to start running across the road in that area. If you are at proper elevation everything flows up above it, again they are just dealing with different things on that road, visibility during certain times of year (fog, etc.), so they just wanted to make certain it would have no impact. Member Malcolm Wright indicated that he felt that is not what the Board has control over, it's a civil issue. Ms. Conant stated that it is her right to go have it put on the record, especially when someone is asking for a variance that might change the elevation of where their house would be on that lot and it could go on and influence neighbors and how everything is moving. She felt it was concern that her point be included in there.

Lisa Kazakis, 75 Pondview Road, she is the property right next to this. Ms. Kazakis stated that she doesn't understand all the variances and all the laws that the town have in place all the time. She does know some of the things that she has tried to research on her own and finding out through other people that are more knowledgeable and on the road, there is a lot of discrepancies in the file for that property. For one, it is not a Class VI road it is a private road and when she got the approval originally, it was denied first back in 2007 and then all of a sudden it was passed when forward that it was a Class VI and it's not. The other discrepancy is the property line. The 25' that belongs to the road technically it's the road it is a private road. They have been trying to have the Town take it over for a long time because it is a burden on all the owners to have to bring in gravel and grade it with their own equipment, there's no reimbursement for that. That being said they have been trying to upgrade the road gradually, if they can ever get it to a Class VI or have the town take over part of the road. If she is allowed to get that variance they are no longer going to have that 50' right of way for the road. Chairman Dearborn stated that a Class V is an unlimited easement, to get to that there is something called a betterment assessment, where you would petition the Selectmen and if passed it would get done appropriately. Ms. Kazakis stated that if they were going to try to do that and go before the other board, they wouldn't have that portion of the road to do it. Chairman Dearborn has Ms. Kazakis approach the table to try to explain that the road width is not changing with the application. The property line stays exactly the same. Ms. Kazakis stated the other discrepancy is that there is no road association, most of those people that signed the document which is very old, some people aren't alive anymore and some people don't live there anymore. There is no road association, which she refers to when she tried to get her variance to be able to build initially. The other concern is if there is a stipulation for the driveway that says it has to be 15 feet from all property lines, where would her driveway be going? Chairman Dearborn showed on the map where it is indicated on the plan, which is not against the neighbor's line. Ms. Kazakis stated that in her last application she indicated that she will go around and try to collect money to try to help with the road, which is why she didn't think it was going to be a burden on anybody and it is. They are the ones paying for all the gravel that comes in and the plowing and she has talked to Mr. Sawyer to see if there is anything the town can do to help because permits keep getting granted for people to build but they are not getting any assistance in trying to upkeep the private road, so she feels it is a burden and the more wear and tear they have on the road the more costly it gets. It has been a safety issue in the past where trucks have not been able to get up the road, the neighbors have pictures of UPS and other trucks off the road. The energy trucks will not come up in bad weather because it is a private road nobody can get out to sand and plow it so it a hardship. She has concerns because of the amount of discrepancies in that file. She doesn't feel it has been accurately looked at.

Public At Large: Steve Najjar, 138 Pondview Road stated that he is against it because he is not convinced that the options have been exhausted to be compliant with the zoning ordinance. The zoning ordinance is about

protecting consistency and protecting value. Most of the houses in the neighborhood really do set back. Pondview Road goes from about 50' wide in that area and tapers down to almost driveways as it nears the end, so that should really be a consideration. The zoning ordinance is there for a reason. The property was purchased when that current zoning ordinance was in place. Pondview Road is absolutely a private road. DPW Director Benji Knapp has verified that and his brother Carl before him verified that, so any reference to Class VI is inaccurate. If you look at the survey that was submitted, it is not stamped and it is not complete. It doesn't show the other monument and really it doesn't really depict what is there as far as Mt. William's land which includes the road itself. There is a survey from Bob Todd from 1978 before it was subdivided that shows all the monuments. The road is convex right there and there is a radius. One of his concerns is that the entire radius will get slicked right off if that is not all marked out as the plan doesn't show all the monuments. There should be some stipulation that the entire radius is marked according to ownership to figure out where the setback really is. It is a lot more difficult on a curve than on a straight line. His concern is what happens to that patch of woods between the traveled way, the 20 or so feet of traveled way and where everything actually gets built. Accidents happen and things get cited in the wrong place and he doesn't want to see that happen here. There was a good discussion of the betterment assessment part of his concern is making sure that land is not infringed on so in the future, at least the 50' width is there. A stipulation of approval could be to make sure that it's marked out then it can't be infringed on. In the past there was a bunch of misinformation and conditions in order to be able to build, about upgrading the road, that he is unsure how they would be attached to this variance and who's going to enforce that stuff. The plan that was submitted also doesn't show where the well and septic are going. Mr. Najjar felt it was a bit premature to ask to pull the house closer to the road when the whole picture isn't there. Other than saving a few dollars on site work he feels the board doesn't have all the information and whole picture.

Other Boards: None

Rebuttal of Applicant: Ms. Rooney wanted to address a few of the concerns. Yes there was another variance approved back in 2007 and at that time there was a road association. At first the variance was not approved because it was a private road and they were concerned because of the emergency vehicles. She worked with the Fire Department, Police Department and Road Agent and resubmitted and then got her variance approved. The comment about the association no longer being active, she currently does not live there she only owns a piece of land since 2007. Her plan was to build a home when she retires and now she is just trying to get everything lined up to retire in 2-3 years. She never paid for anything on the association. She thought because she didn't live there she didn't use it, she has no idea how the association works. The road looks better now than it did back in 2007 when she bought the property, but a great job is being done. There are some stipulations on her variance that before she can move in there are conditions. One is that the road is repaired to a condition that it was before she started which is still in place. Not enough detail on the map, she is planning to build in the next 2-3 years, yes the land is for sale but she is still trying to figure out what she is going to do. As far as multi-family she feels that is a zoning decision and has nothing to do with what she wants to do. The house next door, owned by Ms. Kazakis was recently approved for an in-law apartment that would appear to be the same thing. She is looking for single family. Malcolm Wright stated that a professional stamped plan is where he is stuck, where is it? Ms. Rooney stated that is on the checklist and she went to Mr. Higginson who indicated that he does these all the time.

Approving Abutters: none

Disapproving Abutters: Wendy Conant the only thing she would like to see is that on the drawing they all have a clear line of where that driveway will be once this all settles out. They have blind corners right now on the road and they have had some near misses with people and children on the road and pets, there is no sidewalk. She just wants to make certain that it doesn't end up being on a where someone could get hurt.

Lisa Kazakis wanted to respond. Ms. Rooney was at the meeting where Ms. Kazakis got approval to build the in-law apartment. She had a foundation on her property, as she has been there for 30 years and the foundation for the garage was already there and when she got the permit for the garage she built an in-law apartment above it. She got all the permits and followed all the laws, she didn't ask for any exceptions or variances and it doesn't affect the road. She has had 2 people living in her house for the past 5 years. When she did the in-law apartment



her son moved there with his kids, so it hasn't been more of a burden on the road at all. To say that my situation is a similarity is not, she didn't change any laws or ask for any changes, is untrue she did not.

Public At Large: none

Other Boards: none

Chairman Dearborn then closed the public hearing at 8:24 PM and moved onto the board deliberation.

Board Deliberations:

**Point 1: Marc Morette moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case 07-2022.** Discussion: Chairman Dearborn stated that he would like to offer some conditions: 1) prior to construction the applicant must have the curve flagged on the front road boundary of the property so that they can see the actual boundary line of the property; and 2) require that prior to the issuance of a building permit to deliver a stamped survey map. **Passed 5-0-0**

**Point 2: Marc Morette moved, Malcolm Wright seconded to accept point two.** Discussion: Marc Morette stated that the road is a civil issue that is out of this Board's hands. Chairman Dearborn stated that it would be substantial justice to the applicant in order to enjoy the property for a compliant single family dwelling. Without this it would incur significant challenges to number one fill it in appropriately and what damage to the soil and the wildlife and whatever is behind that will be buried up. So he would speak to the substantial justice to the applicant and not at the expense of the general public. **Passed 5-0-0**

**Point 3: Marc Morette moved, Malcolm Wright seconded to accept point three.** Discussion: Chairman Dearborn stated they are requesting a compliant use and the land itself is the issue. Back when these lots were subdivided, they weren't required to follow a lot of the existing subdivision regulations. It is an existing lot with all its challenges and substantial justice will be done for the applicant. **Passed 5-0-0**

**Point 4: Marc Morette moved, Malcolm Wright seconded to accept point four.** Discussion: Chairman Dearborn stated that this is a compliant use for a single family 3 bedroom home. It is allowed in the zone. All the other setbacks are met especially to the abutters, with exception of across the street, on the other side of the road. Marc Morette stated that if this lot were built on prior to zoning it would probably be in the exact same lot. Chairman Dearborn added that he doesn't believe the reduction of the 25' will affect any surrounding properties or diminishing them. **Passed 5-0-0**

**Point 5: Marc Morette moved, Malcolm Wright seconded to accept point five in its entirety.** Discussion: Chairman Dearborn stated this gets down to the crux of the variance. All the others are important but this is the central issue. Literal enforcement in his view would be an unnecessary hardship for the applicant. Basically they would not be able to cite on this lot a single family home without a significant amount of investment and possible disturbance of the back property. Along with that is special conditions he didn't see any connection between the general public and the special conditions. He believes this is a reasonable use for the property because it is compliant. He believes #5 is satisfied. Marc Morette asked for clarification before the vote. The conditions that were added before with signage, etc. have anything to do with this. Chairman Dearborn stated that was taken care of with the first variance and has nothing to do with this variance. **Passed 5-0-0**

The variance was approved with the above conditions in point #1.

**B. Case #05-2022:** Matthew J. Lear (Applicant); David Porter (Owner), 127 Collins Landing Road, Tax Map 103-043, Rural Agricultural Zone, Variance – Article 18, Section 18.2.3. Applicant is seeking a variance to allow the building of proposed addition and deck within the setbacks.

The Board reviewed all documentation submitted with the application for completeness. **Marc Morette moved, Bobbi-Jo Plamondon seconded accept Case #05-2022 as complete. Vote: 5-0-0**

Matt Lear explained to the Board that he is asking for the relaxation of 7.5' to the northeast corner of the property. Mr. Lear pointed out that he added the deck. The Board agreed that the deck would be considered the rear of the property which has a setback of 25' meaning he doesn't need a variance for the deck. The deck has approval from the NHDES Shoreland Protection division.

1. **The Variance will not be contrary to the public interest:** *The side bathroom addition will not conflict or alter the characteristics of the neighborhood, by no means will it threaten health or safety of the public. Furthermore we have approval with the current abutting neighbor.*
  2. **Please describe how the spirit of the ordinance is observed:** *The current side yard setback is 25' and after several renderings of bathroom design, the new addition will go beyond by a few feet. The design in the bathroom is for future ADA type compliance. Because this is a future retirement home and we included a roll in shower.*
  3. **Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public:** *The small amount of footage that the new addition goes over the current side yard does no harm to public. The property is an existing condition and adding this addition for 1<sup>st</sup> floor access to a bathroom that can future for ADA type alteration.*
  4. **Please describe how the values of surrounding properties are not diminished:** *Additions in and around the area along the lake have many existing conditions that are closer to side yard setbacks.*
  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:** *This addition will be in compliance with standard siding practices using cedar shake shingles, and the addition will help to create a type of retaining wall on the steep slope and this has been approved thru DES for wetlands compliance.*
    - 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:** *This current side of house is steep and the addition will help retaining soil and make grade less aggressive. Also it allows for the only first floor full bathroom and ability for an ADA type bathroom.*
    - 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 side yard setback of 25' is within the bathroom addition. Adding this addition helps on the exterior with grade and drainage, as well as help the homeowners create a larger master bathroom with ADA type alterations.*
    - B. **The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction of use, a dimensional or other limitation on a permitted use, or any other requirement of this ordinance, please describe the special conditions of the property that distinguish it from other properties in the area:** *The special conditions are existing conditions steep slope and ability to add a large ADA type bathroom for future use as this property will be used as a retirement home. This bathroom addition is necessary on the first floor and on the side of the house where sewer drain is accessible for this alteration.*
- Owing to the special conditions identified above, please indicate how 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:** *This gives the homeowners the ability to create an ADA style bathroom to the first floor as it is the only bathroom at grade for the first floor.*

After Mr. Lear finished going through the 5 points of hardship. Chairman Dearborn asked him to take a seat and he asked for:

Approving Abutters: none

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Being none, for the record Chairman Dearborn asked for a second go around.

Rebuttal of Applicant: none

Approving Abutters: none

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Chairman Dearborn then closed the public hearing at 8:49 PM and moved onto the board deliberation.

Board Deliberations:

**Point 1: Marc Morette moved, Gary Shelto seconded to accept point one of the five points of hardship for Case 05-2022.** Discussion: Chairman Dearborn stated that the only condition that he would like to put on this is 1) that the building shall be no closer than 17.5 feet. Chairman Dearborn stated that he didn't see how having an ADA bathroom on the first floor where there is a master bedroom could ever be contrary to public interest. Marc Morette stated that with the upgrades to the house it is only going to improve. **Passed 5-0-0**

**Point 2: Marc Morette moved, Gary Shelto seconded to accept point two.** Discussion: Chairman Dearborn stated that again the spirit of the ordinance is that single family dwelling is compliant on the lot and for the convenience of the applicant for today and the future they're requesting an encroachment into the setback of 25' by 7.5'. **Passed 5-0-0**

**Point 3: Bobbi-Jo Plamondon moved, Marc Morette seconded to accept point three.** Discussion: Chairman Dearborn stated that again a single family home and having it brought up to some standards which probably was in place when this home was originally built and the addition of a bathroom is not unreasonable and substantial justice will be done. **Passed 5-0-0**

**Point 4: Marc Morette moved, Malcolm Wright seconded to accept point four.** Discussion: Chairman Dearborn stated that he can't see any impact of the surrounding value and the property is not diminished by this encroachment of the setback. Marc Morette agreed especially when it is so minor. It was also mentioned that the neighbor was in agreement, although we did not receive anything in writing. **Passed 5-0-0**

**Point 5: Malcolm Wright moved, Gary Shelto seconded to accept point five in its entirety.** Discussion: Chairman Dearborn stated this gets down to the essence of a hardship but the principle is that the lawful enforcement of the provision of this ordinance would result in an unnecessary hardship. Weighing the encroachment of a setback against improving the life within the dwelling. **Passed 5-0-0**

The variance was approved with the above condition in point #1.

**C. Case #06-2022:** Kirk Tepper (Owner and Applicant), 36 Sap House Road, Tax Map 405-062-009, Rural Agricultural Zone, Special Exception – Article 19, Section 19.1.10. Applicant is seeking a special exception to convert a portion of the existing basement into an ADU.

The Board reviewed all documentation submitted with the application for completeness. **Marc Morette moved, Malcolm Wright seconded accept Case #06-2022 as complete. Vote: 5-0-0**

Kirk Tepper was present. Mr. Tepper explained that he is here to build an ADU in a portion of his basement compliant with the zoning requirements listed in Article 19. The total square footage of the ADU proposed is 654 square feet.

Mr. Tepper went through the seven conditions needed for the granting 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 site meets the requirements as described in Article 19, Section 10, units 1-8, where ADU's are allowed.*

2. **The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area:** *The proposed use will not affect the neighborhood. There will be only two more people living in the neighborhood and two cars parked off street.*
3. **The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:** *There will only be two additional vehicles in the neighborhood.*
4. **The proposed use will not cause an undue burden on the Town through the provision of basic Town services:** *Only two additional elderly people will be residing at the property. There will be no changes to the outside of the property.*
5. **Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:** *There is currently adequate space to park the two cars in the driveway.*
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:** *No buffers should be needed. The changes to the property will be inside the existing house.*
7. **The Zoning Board of Adjustment, in granting any special condition, may include such restrictions or conditions to insure compliance with this section:** *The proposed changes conform to Article 19 of the zoning ADU laws.*

After Mr. Tepper finished going through the 7 conditions for the special exception. Chairman Dearborn asked him to take a seat and he asked for:

Approving Abutters: none

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Being none, for the record Chairman Dearborn asked for a second go around.

Rebuttal of Applicant: none

Approving Abutters: none

Disapproving Abutters: none

Public At Large: none

Other Boards: none

Chairman Dearborn then closed the public hearing at 9:03 PM and moved onto the board deliberation.

Board Deliberations: Chairman Dearborn stated that is one single vote up or down. Malcolm Wright and Bobbi-Jo Plamondon both agreed that that is compliant and a reasonable use. Chairman Dearborn stated that you really get it by right if the use is reasonable. **Marc Morette moved, Bobbi-Jo Plamondon seconded the motion to grant the special exception for Case #06-2022.** Chairman Dearborn stated that he doesn't see any additional requirements needed. **Passed 5-0-0**

**D. Case #08-2022:** David Giovagnoli (Owner and Applicant), 86 Reservoir Drive, Tax Map 201-007, Village Zone, Variance – Article 22, Section 22.6.4.5. Applicant is seeking a variance to construct a 2 family home on a lot in the village zone.

The Board reviewed all documentation submitted with the application for completeness. **Marc Morette moved, Gary Shelto seconded to accept Case #08-2022 as complete. Vote: 5-0-0**

Bobbi-Jo Plamondon asked for clarification before we started. The only thing we are looking at there is not enough road frontage, so he is looking for relaxation on the frontage. Chairman Dearborn asked, are duplexes allowed in that zone. The applicant stated that according to article 22.4.1 they are allowed. Chairman Dearborn stated that if this is an existing lot prior to zoning, then the road frontage doesn't apply. There was discussion if the applicant had to be here. The reason he was sent here is that pursuant to zoning a village lot has to have 150' of frontage, even more so if the change is being made from a single family home to a two-family home. Chairman



Dearborn stated that the frontage requirement would come into play upon a new subdivision. After some discussion, the Board felt that the only way to settle this is to have Town counsel weigh in on this before we proceed. Town Administrator Bolton will send over the application and let Town counsel decide. If Town counsel was to determine the variance is not needed, the applicant would be free to continue onto get a building permit. The worst case is that he would be back here in May to continue. **Marc Morette moved, Bobbi-Jo Plamondon seconded to continue Case #08-2022 to May 3, 2022. Passed 5-0-0**

#### **REQUEST FOR REHEARING: Case #02-2022 – Dollar General Sign Variance**

Chairman Dearborn stated that Town received a timely (within 30 days) a request for rehearing submitted March 1, 2022 from Attorney Richard J. Lehmann on behalf of Neal Kurk. The Board granted the original variance on February 1, 2022. The letter has 8 points articulated in support of the rehearing request. Chairman Dearborn stated that we are not rehearing the case tonight. The only action of this Board tonight is whether to grant the rehearing as requested. Chairman Dearborn stated that he read it. The first issue of concern is that the applicant, meaning Mr. Kurk, lacks standing. For instance, if he was an abutter he would have standing to rehear the case; then he has to afford a compelling argument why the case should be reheard. Mr. Kurk certainly lives in south Weare, about 3-5 miles away depending on which way you go from the location of the store. So, Chairman Dearborn recommends that the Board deny the rehearing request. Malcolm Wright has a concern that that decision. He has a question floating kind of outside of that. First, how are we with the meeting minutes on that? They are still in draft form, but we're okay with that. The Board consensus was yes. The other thing that Mr. Wright stated is that he thought about the standing issue tonight on his way to the meeting. He doesn't quite get it because the standing would be different in a residential zone, but in a commercial business zone that might be any member of the community. Chairman Dearborn stated that anyone can request a rehearing, whether they have standing to grant it and have a compelling argument are the requirements. He is having issue with the standing issue, as he is not an abutter. Mr. Wright agreed with part of what Chairman Dearborn was saying but he doesn't understand how that is applied in a commercial or business zone. As an abutter in a residential zone it is a clear standing issue, but in a business or commercial zone that may include public at large, any member of the community. He is not making statements, just asking questions, which is a concern of his. Marc Morette stated that he understands what Mr. Wright is saying, but he feels that he heard the evidence in the case. Chairman Dearborn stated that again he's recommending in denial on the issue of standing not on the credibility of the evidence. Bobbi-Jo Plamondon questioned if she is allowed to vote, as she was not here for the original case. Chairman Dearborn informed Ms. Plamondon if she wanted to recuse herself that would be appropriate. Chairman Dearborn asked alternate Gary Shelto is he was on the original case. Mr. Shelto stated that he was. So it will only be a vote of four on this request for rehearing if Ms. Plamondon recuses herself. Ms. Plamondon stated that she will be recusing herself as she did not hear the original case. Mr. Wright stated that he is not going to push anything here but he wants to make sure that it's on record that he does believe he has standing. Mr. Wright also believes that he was the only one that voted against the variance originally. With no further discussion Chairman Dearborn asked for a motion. The motion should be phrased so that yes means yes, what he meant by that is if you vote yes, that means we will grant the hearing and a no means we will not grant the hearing. He just wants everyone to be clear on that. Everyone agreed to clarity. **Marc Morette moved to accept rehearing request for Case #02-2022, Gary Shelto seconded. Vote: 3 – no (Morette, Dearborn and Shelto) and 1 – yes (Wright).** Therefore the rehearing request is denied.

#### **IV. MINUTES:**

February 1, 2022 Minutes: **Marc Morette moved, Gary Shelto seconded to accept the minutes of February 1, 2022.** Discussion: Malcolm Wright stated that he has a couple of clarifications. First, page 3, 4<sup>th</sup> paragraph from the bottom, wanted to add "because there is no hardship" to the end of the sentence. Second, page 4, 1<sup>st</sup> paragraph, last sentence, wanted to change the words "he would" to "we could" vote differently. **Marc Morette moved, Gary Shelto seconded to accept the minutes of February 1, 2022 as amended. Passed 4-0-1 (Bobbi-Jo as she was not present).**

March 1, 2022 Minutes: **Marc Morette moved, Malcolm Wright seconded to accept the minutes of March 1, 2022.** Discussion: Chairman Dearborn stated he has a request for clarification. Page 3, second paragraph from

the bottom, he would like to strike “after hearing the issues” and replace it with “when rehearing the rehearing request”. He thought it had to do with the rehearing, so he wanted to make the change to make that clear, which was what he intended to mean. **Marc Morette moved, Malcolm Wright seconded to accept the minutes of March 1, 2022 as amended. Passed 5-0-0**

**V. NEXT MEETING:**

May 3, 2022

**Being that there was no more business to come before the Board, Marc Morette moved, Malcolm Wright seconded to adjourn the meeting at 9:34 pm., passed 5-0-0.**

**ADJOURNMENT**

A True Record.

*Naomi L. Bolton*

Naomi L. Bolton

Recording Secretary