

DRAFT



WEARE ZONING BOARD OF ADJUSTMENT MEETING MINUTES August 2, 2022

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; MARC MORETTE, MEMBER; MALCOLM WRIGHT, MEMBER; NAOMI BOLTON, INTERIM LAND USE COORDINATOR; TONY SAWYER, ZONING ADMINISTRATOR.

Absent: Bobbi-Jo Plamondon, Member

GUESTS: Craig Francisco; Jim Dow; Tom Carr; Neil & Barbara McQuaid

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment August 2, 2022 meeting to order at 7:31 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

The Chair stated tonight there are two requests for variances. Chairman Dearborn explained that there are only four members present tonight and in order for a variance to pass you need three yes's. Chairman Dearborn asked members present to introduce themselves. 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.

II. PUBLIC HEARINGS:

Case #13-2022: Craig A. Francisco, LLS (Applicant); James E. Dow Rev. Trust & Susan J. Dow Rev. Trust (Owners); 236 Colby Road, Tax Map 412-166; Rural Agricultural Zone; Variance – Article 28.9. Applicant is seeking a variance for permission to reconstruct a driveway within the 25-foot wetland buffer.

The Board reviewed all documentation submitted with the application for completeness. **Vice Chairman Meyer moved, Malcolm Wright seconded to accept Case #13-2022 as complete. Vote: 4-0-0**

Craig Francisco, licensed surveyor for Bedford Design are doing a lot line adjustment and two lot subdivision through the Planning Board. During the plan review it was decided upon that a variance would be needed to put a driveway through the wetlands buffer. Mr. Dow purchased the lot in 1990 with a log road existing to the back of the property which was prior to the wetlands buffer zone being adopted. The logging road is 17' wide which meets the driveway standards, but it is encroaching on the buffer setback so the Planning Board is requiring a variance to continue with the subdivision.

Without any further questions, Mr. Francisco then proceeded through the five points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The variance is necessary to maintain and possibly upgrade an existing woods road that is to be used as a driveway to access a 13+ acre lot. My clients purchased the property in 1990 and the woods road was existing at that time. The woods road is passable now, but the Planning Board decided that a variance is necessary to maintain and to ensure that the driveway is suitable for emergency vehicles. We are proposing a 2-lot subdivision and this woods road may need to be upgraded to meet the town's driveway requirement.*

2. Please describe how the spirit of the ordinance is observed: *The wetland buffer was created to help protect the wetlands, but not to prevent access to buildable areas. The ordinance, see Article 28.9.1, provides for exceptions to allow for the construction of a proposed Class V Road and maintenance of a Class V Road. This driveway will not affect any wetlands, the only construction/maintenance will be in the buffer. This driveway will be used to access a buildable area that is well over an acre.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *The existing woods road was constructed prior to this ordinance being passed. The road is over 16 feet wide currently, which meets NFPA requirements. The only reason for the variance is to maintain and possibly enhance the structural integrity for emergency vehicles to meet the current town driveway regulations.*

4. Please describe how the values of surrounding properties are not diminished: *The driveway will be over 100 feet from the nearest property line and over 700 feet from the nearest building. The use of the existing woods road as a driveway will not diminish the value of the surrounding properties.*

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:

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: *The general public purpose of the ordinance is to protect the wetland by provided a wooded buffer and not allow ground disturbance. Filling next to a wetland does not harm the wetland as much as excavating. Excavating will destroy the soil profile and the water from the wetland could dissipate into the surrounding soil, thus diminishing the quality of the wetland. We will not have to cut any trees or remove any stumps to upgrade and maintain the existing woods road so it may be used as a driveway.*

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 residential, and the purpose of this variance is to allow an existing 16 foot wide woods road to be upgraded to a driveway to allow reasonable access to the buildable area.*

B. Please describe the special conditions of the property that distinguish it from other properties in the area: *The existing woods road that bisects the wetlands is the special condition. We are proposing to upgrade and maintain this road, while not disturbing the wetlands.*

Owing 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. *Strict conformity with the regulations would prohibit access to the buildable area that is well over 1 acre and more than adequate to construct a house, garage, leach field, well and other appurtenances.*

Without any further questions, Chairman Dearborn asked Mr. Francisco 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 7:52 PM and moved onto the board deliberation.

Board Deliberations:

Point 1: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point one of the five points of hardship for Case 13-2022. Discussion: Chairman Dearborn stated that it is a reasonable use. The zoning ordinance is to protect encroachment. The existing path is 17' wide with a culvert in place. Marc Morette agreed it is already there, so to grant relief of 17' through the wetland for a length of 125' appears reasonable. **Passed 4-0-0**

Point 2: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point two. Discussion: Vice Chairman Meyer state that the ordinance is there to protect wetlands, damage was done previously, and they are using an existing road. Malcolm Wright agreed it was a reasonable use. **Passed 4-0-0**

Point 3: Vice Chairman Meyer moved, Marc Morette seconded to accept point three. Discussion: Vice Chairman Meyer stated that the lot is isolated and it is the only way to the lot as there are wetlands completely across the lot. Marc Morette stated that the existing road already exists. Chairman Dearborn stated that substantial justice will be done to the owner of the lot, not at risk to the Town. **Passed 4-0-0**

Point 4: Vice Chairman Meyer moved, Marc Morette seconded to accept point four. Discussion: Marc Morette stated that the residential agricultural zone allows the use. **Passed 4-0-0**

Point 5: Vice Chairman Meyer moved, Marc Morette seconded to accept point five in its entirety. Discussion: The board agreed that it is a reasonable use and an unnecessary hardship. To access the property a wetlands buffer variance is required for access. **Passed 4-0-0**

The variance was approved as requested, no conditions.

Case #14-2022: Neil & Barbara McQuaid (Owner & Applicant); Tom Carr – (Agent); James A. Spring Rev. Trust, James A. Spring, Trustee (Owners); Woodfern Road, Tax Map 107-041-007; Residential Zone, Variance Article 28.6. Applicant is seeking a variance for permission for a temporary cut and fill wetland impact to cross a wetland at the narrowest point to install a septic force main. This request, if approved, will relocate a septic leach field from lakeside to a remote location several hundred feet from the resource.

Marc Morette moved, Vice Chairman Meyer seconded to accept Case #14-2022 as complete. Vote: 4-0-0.

Tom Carr was present with the McQuaid's. Mr. Carr stated that he questioned how to tailor the application. He did not list 28.9 specifically. It's a cut and fill with temporary impact. He asked if he could proceed with 28.9. Chairman Dearborn stated that the notice was for Article 28. Mr. Carr stated that he will be including 28.9 in his application. The Board agreed with a vote of 4-0-0 to allow the addition. Mr. Carr went onto further explain that his clients are looking for a temporary cut and fill wetland impact to cross a wetland at the narrowest point to

install a septic force main. He is looking at 200 SF temporary impact to wetland area and 553 SF temporary impact to the buffer area.

Malcolm Wright state that this sounds like a reasonable concern, bury it and forget it. Mr. Carr stated that it is 160 PSI force main joint, 100' double coupling should be fine. Properly installed should be no issue.

Without any further questions, Mr. Carr proceeded to address the 5 points of hardship as follows:

1. The Variance will not be contrary to the public interest: *The variance will not be contrary to the public interest because this is a temporary impact to the wetland area. No permanent impacts are proposed and there will not be any loss of wetland area, functions or values to the wetland complex. The lake water quality will be better protected which is a benefit to the resource, abutters and general public using the lake for recreation.*

2. Please describe how the spirit of the ordinance is observed: *The spirit of the ordinance is observed because this is a temporary impact that will provide better water quality of the lake. The spirit of the ordinance is to avoid wetland impacts and buffers and/or to minimize impacts when necessary. Long term, this is the best environmental option.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *Substantial justice is done as this is a benefit to all parties involved as well as the general public. The impacts are temporary and will not be noticeable to abutters or the general public that may use Woodfern Road when completed. The potential benefit to the lake is substantial. There can be no harm to the general public or direct abutters by a project that proposes temporary impacts to the wetland with no permanent visual effects.*

4. Please describe how the values of surrounding properties are not diminished: *The values to abutting properties will not be affected by this proposal. Following construction and surface restoration, there will be no permanent impacts or visual deficiencies to what currently exists. If anything, surrounding property values will benefit from this as an on-site leach field on Lot 107-50 would be a vented eyesore directly adjacent to Woodfern Road. The proposed leach field will be remote and not visible from any dwellings.*

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 lot was specifically created for the placement of remote leach fields. The intent of the subject lot, and other lots on the reference plan, was to get leach fields away from the lake and provide more usable space on the lakefront lots it (the back lot) was created for. The special circumstances of the lot is that it is bisected by a forested wetland that must be temporarily impacted for use of the lot in its intended purpose. This special circumstance requires a variance for a temporary cut and fill of the wetland for placement of the septic force main. To reiterate, this has already been done once for the other existing leach field on the lot. This is a special situation of two property owners working together to benefit the water quality of Lake Horace and provide a better usable area on the McQuaids property. Denial of the variance request would result in an unnecessary hardship to the Owner and Applicant as it would deny the use of the subject lot for what it was originally intended for.*

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 request for a variance proposes a temporary impact to the wetland and buffer that has an end result of environmental water quality for Lake Horace. The general purpose of the ordinance is to protect environmentally sensitive wetlands. Lake Horace is also a wetland and a water body. Although this is not a listed Permitted Use under section 28.6 of the Weare Zoning Ordinance, the end result certainly is consistent of*

the intent of the ordinance which is to protect wetlands. Therefore no fair and substantial relationship exists for strict enforcement of the ordinance that would be cause for denial of the application.

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 use is a reasonable one as the subject lot was specifically intended for remotely located leach fields. If the Zoning Ordinance is strictly enforced on this application, it would deny the owner and applicant use of the property for what it was intended for. The special conditions of the lot, bisected by a wetland, interferes with the reasonable and intended use of the property. And again, we will reiterate, this exact wetland area has already been crossed legally for the same proposed use for which this application proposes.*

B. Please describe the special conditions of the property that distinguish it from other properties in the area: *This particular lot was created for the specific purpose of relocating leach fields away from Lake Horace. The special condition of the lot is that it is bisected by a small wetland. Some of the other lots created for this purpose on HCRD Plan 31526 do not have this special circumstance. Although the wetland must be temporarily impacted, the overall good of relocating the leach field away from the lake is a net gain in environmental benefit.*

Owing 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. *The special conditions of the lot require the wetland be impacted as a leach field cannot be placed on the lake side of the wetland avoiding the proposed temporary impacts. If the variance is denied, the lot cannot be used for its intended purpose. The reference plan was reviewed, approved and signed by the Weare Planning Board to provide for remote leach fields.*

Without any further questions, Chairman Dearborn asked Mr. Carr 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 8:15 PM and moved onto the board deliberation.

Board Deliberations:

Point 1: Vice Chairman Meyer moved, Marc Morette seconded to accept point one of the five points of hardship for Case 14-2022. Discussion: Chairman Dearborn stated that it is not contrary to public interest. It would be an enhancement getting the septic away from the lake. Marc Morette agreed. Chairman Dearborn stated that he would like to see the survey plan dated July 7, 2022 added to the decision by reference. **Passed 4-0-0**

Point 2: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point two. Discussion: Chairman Dearborn stated that he looks at this as protecting the wetlands; occasionally a wetland has to be crossed for use of property but he has no issue with this request. Marc Morette agrees. **Passed 4-0-0**

Point 3: Vice Chairman Meyer moved, Marc Morette seconded to accept point three. Discussion: Chairman Dearborn stated that the substantial justice is not only for the applicant, but the abutters and all users of the lake. **Passed 4-0-0**

Point 4: Vice Chairman Meyer moved, Marc Morette seconded to accept point four. Discussion: Chairman Dearborn stated that the surrounding properties also benefit from this proposal. Vice Chairman Meyer agreed that not having the plastic near the lake/road would be a good thing. **Passed 4-0-0**

Point 5: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated he felt it was a reasonable use and that it would be an unnecessary hardship of this was not approved. Marc Morette stated that he felt part 2 was well described. **Passed 4-0-0**

The variance was approved as requested, no conditions.

III. OTHER BUSINESS:

Town Administrator Bolton asked the Board's opinion of moving the start time from 7:30 PM to 7 PM. The Board felt that it should be left at 7:30 PM, as it has been for many years.

IV. NEXT MEETING:

September 13, 2022

Being that there was no more business to come before the Board, Vice Chairman Meyer moved, Marc Morette seconded to adjourn the meeting at 8:22 pm., passed 4-0-0.

ADJOURNMENT

A True Record.

Naomi L. Bolton

Naomi L. Bolton

Town Administrator

Interim Land Use Coordinator