

**ZONING BOARD OF ADJUSTMENT**  
**MARCH 5, 2019 DRAFT MEETING MINUTES**

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**Present:** Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Stuart Richmond, Member; Malcolm Wright, Member; Marc Morette, Member; Gary Shelto, Alternate; Bobbi Jo Plamondon, Alternate; Donald Rogers, Alternate; Chip Meany, Land Use Coordinator.

**Guests:** Susan Menard, Bruce Marshall, Jeremy Fennell (Eversource), Matthew Flanders (Eversource), Leonard Lord (Tighe & Bond), O. Soga, Gary Shelto, Travis Corcoran, Terence Murch.

Chairman Jack Dearborn called the meeting to order at 7:30 PM.

**I. INTRODUCTION/ADMINISTRATIVE ITEMS:** Chairman Dearborn asked all members present to introduce themselves. Continuing, he read through the agenda and then explained how the meeting will be run. He will read the outline of the case at hand, then ask the Board for a motion to accept the application, making sure the application is complete. Upon getting a motion and a second, and after discussion, a vote will be made. Only then will the Board hear the case. If at any point during the hearing there is a discrepancy with the application, the Chair will stop the meeting and ask for clarification, and if need be, the hearing will be continued, so the applicant has a chance to return with the additional requested information. Once the Board has accepted the application and the Chair has read the case in more detail, the applicant will be asked to come forward to read the five points of hardship out loud, both the question and the answer. This is necessary as only the Board has the application in front of them to refer to. The applicant must read to the group because it benefits not only the listening audience, but provides the opportunity to read the letter into the record. After the applicant has had the opportunity to speak, the Chair will ask the applicant to sit down and request that approving abutters, disapproving abutters, public at large and other boards come forward to speak. The applicant would then come back up and refute anything necessary. The process will be repeated, with the close the public hearing just after. The Chair then will ask for a motion to accept (he stated that the reason is yes means yes, and no means no). From that perspective, all five points of hardship of the variance, each individually, shall progress with a motion, a second, a discussion, and then a vote. After the fifth point is read, in order for the variance to carry, the applicant will need to have all five points pass with at least 3 positive affirmations. For example, if you get four points to pass, and one point gets only two or one positive votes, the whole variance fails. In this case, the only action for the applicant would be a re-hearing before the Board, taken on advisement, resulting in a vote on whether the Board wants to hear the case again or not.

## **II. PUBLIC HEARINGS**

Don Rogers was seated at the table for the first case.

**a. Case #1118 Administrative Appeal: Continuation** George W. Merrill Tax Map 406, Lot 51.3 West side of River Road in a Residential Zone regarding a driveway approval. Bruce Marshall approached to request a “stay” of appeal for 6 months due to the fact it is winter and a survey still needs to be completed. The Chair requests, at the Town Councils guidance, to dismiss this case without prejudice. In doing so, this path offers a cleaner approach, and the applicant will be able to return at any time to approach the Board in the future when the client is ready to begin again. The Chair then motion in the

affirmative to accept the motion to dismiss the case #1118 without prejudice. Mr. Richmond moved, and Mr. Meyer seconded, approved by all 5-0.

**b. Case #1218 Request for reconsideration** Mr. Travis Corcoran is appealing the Building Departments approval of an illegal building on a non-conforming lot at 271 Quaker Street Tax Map 404, Lot 84 in a Residential Zone. Continued until March 5, 2019. Mr. Wright joined the audience as Mr. Morette sat for the hearing. Mr. Meyers then read a letter that Travis Corcoran, of 275 Quaker, submitted to the Board the previous December.

It stated the following:

To: *Building Official's Office*  
*15 Flanders Memorial Road*  
*Weare, NH 03281*

*December 14, 2018*

*Dear Sirs,*

*This is an appeal for a re-hearing of the Weare ZBA decision of 4 Dec 2018 to reject my appeal of the administrative decision to approve a building permit a structure at 271 Quaker Street.*

*The decision made on 4 Dec 2018 was unjust and unreasonable for several reasons, including:*

- The ZBA alleged incorrectly that I had not raised an objection before construction started (I had, in person).*
- The ZBA alleged incorrectly that I had not raised an objection in writing before construction started ( I had, and have delivery confirmation that the letter was received).*
- The ZBA alleged incorrectly that I had not filed the application for an appeal of an administrative decision in a timely manner. (I had, and have delivery confirmation that the letter was received).*
- Even if the ZBA was correct that Gil started construction before I contracted the building department (both in person and in writing), such a counterfactual would have no impact on the legitimacy of the incorrectly issued building permit. The series of false assertion, even if true!, had no place in the administrative appeal, and were prejudicial and incorrect.*
- The ZBA rejected my assertion that setbacks are defined in 18.2 and 18.3, declared that those were overridden by 3.5, and then - when I tried to show by the text of the zoning arguments about 3.5 were illegitimate because my application did not note the number "3.5" on the first page (even though the three page attached explanation did explicitly call out "3.5" several times).*
- The ZBA did not engage with the substance of my argument that the zoning code itself defines the term "a single family residence" in a way that makes it clear that a barn does not qualify as one (and thus 18.2 and 18.3 apply, not 3.5). Instead, with fingers figuratively in ears, it repeated "all buildings are residences".*
- The ZBA did not engage with the substance of my argument that the building department regulations also defines the term "a single family residence" in a way that makes it clear that a barn does not qualify as one (and thus 18.2 and 18.3 apply, not 3.5).*

- *The ZBA asserted both that a barn is part of the residence (with no textual support in the zoning code), and introduced into the discussion the argument that clause 3.5.4 say that no new construction can cause a residence to extend further into the front setback that it already does. I pointed out that these two points, taken together, mean that a newly constructed barn cannot extend further into the front setback (by approximately 20 ft) than the collective residence already does, and thus the proposed location is still illegal. The ZBA refused to engage with this argument that they themselves initiated.*
- *The ZBA asserted twice that the zoning code was written as it was merely in order to get the law passed, and seemed to suggest that it should not be taken literally. This is an invalid argument and a dereliction of duty.*
- *The ZBA did not engage with my argument that section 3.5 does not specify that setbacks are 30 feet from the front and 15 feet from the side (as the building department has argued on town letterhead) but that they are “as nearly as possible” 50 feet and 30 feet (as the ZBA’s own zoning code makes clear). The ZBA instead re-asserted the false point made by the building department that 3.5 makes the setbacks exactly 30 feet and 15 feet.*
- *The ZBA argued that setbacks even one foot further back or sideways than the proposed location would be impossible, because they would inconvenience Gil by, perhaps, requiring that his driveway move. Nothing in the zoning code allows the “as nearly as possible” clause in 3.5 to be overridden because of inconvenience. The word the ZBA chose when it wrote its regulations was “possible”, not “convenient”. Gil can cut down a few trees and move a shed 12 feet and then fit both his barn and his driveway. Gil can orient his barn so that the garage door faces in another direction. There are dozens of ways that Gil can comply with the law. Clause 3.5 says “as nearly as possible”, and I can and did demonstrate multiple ways that the barn can obey the setbacks much more closely than in the current proposed location. The Zoning board ignored this argument and acted as advocated for Gil’s preferred (and illegal) location of the barn.*
- *The ZBA dismissed arguments over the law by asserting that they personally had inspected the property, and concluded that the illegal location was the best location. The inspection was bizarre and inappropriate, as the only question before the ZBA is what the legally required setbacks are. This perhaps – and only perhaps – a valid argument for a variance hearing, but is an invalid argument for an appeal of an administrative decision.*
- *The ZBA acted at all times to contradict, dispute, and police my statements and arguments, almost always using false assertions of fact, proposing alternate (and outlandish) theories, and generally acting not as a neutral body, but as an ally of one side.*
- *The ZBA took testimony from Gil and from two abutters, and did not once interrupt, contradict, dispute or police anything they said.*
- *The ZBA interrupted one of my statements before I could mention that the building department is likewise acting in the role of an ally for the property owner at 271 Quaker, performing (unlicensed) surveys, and giving assurances (on town letterhead and via registered mail) that said the survey was accurate.*

*In the above ways, and in others, the ZBA demonstrated that it was, from the very first, fishing for any shred of a rationalization to allow it to rubber stamp its foregone conclusion that the illegal building permit was (somehow) legal.*

*As a citizen, and as an abutter, I have a right to a building department that is capable of reading the law, is willing to enforce them as written, and which does not conspire with the one property owner to the detriment of another.*

*As a citizen, and as an abutter, I also have the right to a fair hearing from the ZBA when the building department refuses to read the law or apply it correctly.*

*The hearing of 4 December was not fair – the ZBA acted in the role of ally for the property owner at 271 Quaker, and not as an objective board tasked with reading and fairly applying the law that it itself wrote.*

*For these reasons, among others, I apply for a rehearing.*

*Travis J I Corcoran  
275 Quaker St  
Weare,*

*NH*

The Chair determined that a motion for reconsideration was necessary. Mr. Meyers moved to reconsider case #1218. Mr. Morette seconded. Discussion: The Chair stated to the group that ‘if you vote yes (the applicant will come back) and if you vote no (the applicant will not come back)’. Those in favor (1), those not in favor (4). 1-4-0. Case is turned down for re-consideration.

**c. Case #0319 Application for Variance** Article 28.9. Terence & Sandra Murch of 94 Norris Road, Tax Map 412, Lot 220. Impact a wetland buffer in order to maintain Eversource utility pole. The Chair changed the Board seating arrangement asking Mr. Rogers to step down, and Mr. Wright and Ms. Plamondon to join the hearing with other Board members. The Chair reviewed all information included in the application, and then asked for a motion to accept. Mr. Wright moved to accept, seconded by Mr. Morette; 5-0. Mr. Lord, of Tighe & Bond, then rose, explained the application in a brief summary and read through the five prongs of hardship.

**The undersigned hereby requests a variance to the terms of Section 28. Wetland Zone Land Planning Ordinance Zoning Ordinance – Paragraph(s) 28.6 and 28.9 of the Zoning Ordinance of the Town of Weare and asks that terms be waived to permit:** The replacement of wooden utility pole due to aging, including delamination and peeling.

**To qualify for a variance from the terms of the zoning ordinance, you must demonstrate that:**

- 1.) **The Variance will not be contrary to the public interest;** Replacement of the pole is in the public interest because it will ensure public health, safety, and welfare by helping to ensure uninterrupted electrical service.
- 2.) **Please describe how the spirit of the ordinance is observed;** the spirit of the ordinance is observed by avoiding and minimizing impact to the fullest extent practicable. Impacts to wetlands and buffers will be temporary. Only one wetland will be directly impacted and will be crossed using wooden mats. Proper erosion controls will be utilized and temporary impacts will be stabilized following construction. Access will be across an existing off-ROW access route rather than trying to access from South Stark Highway (Route 114), which would involve crossing a more valuable and sensitive wetland. Erection of the structure will be within an existing maintained easement. The replacement pole will be installed 10+/- feet to the east of

existing Pole 58 to assure all work stays out of the nearest wetland vegetated buffer, which lies to the west.

- 3.) **Please describe how substantial justice is done;** Substantial justice is done because replacement of the pole will help assure uninterrupted electrical service to the public while complying with the spirit of the ordinance as much as possible.
- 4.) **Please describe how the values of surrounding properties are not diminished;** all impacts will be temporary and installation of the structure will be to replace an existing structure within an existing utility corridor. There will be no substantial long-term change to the landscape associated with the construction.
- 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:** Literal enforcement of the ordinance would prevent replacement of an existing structure needed to ensure reliable energy for the public. Work involves access to, and work within an existing utility easement.
    - i. **Owing to 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 proposed project will not result in a negative impact to the general public. It will improve the well-being of the general public by providing more reliable electrical service while also minimizing impacts to wetlands and their buffers.
    - ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** Maintenance of an existing electrical power structure within a utility easement while minimizing wetland impacts to access that work is reasonable. Strict application of the zoning restriction would prevent reasonable use and maintenance of the electrical power infrastructure within an existing easement provided for that purpose.

**Or**

**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 on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.**

**B. Please describe the special conditions of the property that distinguish it for other properties in the area; Criteria 5Ai and 5Aii are met. 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 there ore necessary to enable a reasonable use of it; Criteria 5Ai and 5Aii are met.**

**Description of proposed use:** Wetlands and wetland buffers must be crossed to access an existing utility pole (Pole 58) for replacement of an aging pole. All impacts are temporary and have been minimized.

The Chairman then asked the applicant to have a seat.

Chairman Dearborn asked for approving abutters; there were none.

Chairman Dearborn asked for disapproving abutters; there were none.

Chairman Dearborn asked for other boards; there were none.

Chairman Dearborn asked for public-at-large; there were none.

At 8:06 PM the public hearing closed.

The Board then granted the variance by voting the following:

Point #1: Mr. Wright moved to approve point #1; Mr. Morette seconded. Vote: 5-0

Point #2: Mr. Meyer moved to approve point #2; Mr. Mr. Morette seconded. Vote: 5-0

Point #3: Mr. Wright moved to approve point #3; Mr. Morette seconded. Vote: 5-0

Point #4: Ms. Plamondon moved to approve point #4; Mr. Morette seconded. Vote: 5-0

Point #5: Mr. Wright moved to approve point #5 in its entirety; Mr. Morette seconded. Vote: 5-0

### **III. MINUTES**

\*February 5, 2019 Draft minutes; Mr. Meyer moved to approve; Ms. Plamondon seconded; all were in favor, 5-0.

### **IV. UPCOMING MEETINGS**

\*Tuesday, May 7, 2019

Adjournment was called at 8:41 PM.

*Respectfully submitted,*

*C. Provencher*

*Transcribed from recording*