

**ZONING BOARD OF ADJUSTMENT**  
**October 1, 2019 DRAFT MEETING MINUTES**

---

**Present:** Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Malcolm Wright, Member; Marc Morette, Member; Gary Shelto, Alternate; Bobbi-Jo Plamondon, Alternate; Kelly Dearborn-Luce, Land Use Coordinator.

**Guests:** Frank Burl, Dan Higginson, Art Siciliano, Dennis Torrisi, Judy Torrisi, Chris Evans, Zac Thistle.

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 it 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. Additionally, in the case of a special exception, the applicant must meet seven (7) mandatory conditions in the positive, per Article 6, Section 6.1.4 of the Zoning Ordinance.

**II. PUBLIC HEARINGS**

Ms. Plamondon was seated at the table.

**a. Case #0919 Variance Appeal from Article 28 (section) 28.9** Application for a variance for TMS Diesel LLC for a Wetland Buffer of the Weare Zoning Ordinance. The applicant is requesting adequate access to the property site within the Wetland Buffer. The property lot is on Rockland Road & Route 77 [201/94.2] in the Commercial (C) Zone.

Mr. Higginson of Higginson Land Services, approached the Board for approval of an expired wetland impact variance, granted April 4, 2017. This variance will provide relief from the wetland buffer for installation of access to the lot. He then read through the five points.

***The undersigned hereby requests a variance to the terms of Section 28.9 and asks that terms be waived to permit: Access to the usable portion of the lot.***

***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:*** Because we are seeking adequate access to the site. The lot fronts on Route 77 from which access is not permitted by the state. To access the site from Rockland Road, the Wetland Buffer will have to be impacted as it runs the entire frontage of the lot. Providing access to a lot is no contrary to the public interest as every developed lot has access to a public road.
- 2.) ***Please describe how the spirit of the ordinance is observed:*** The intent of the ordinance is to protect jurisdictional wetlands not to prevent land from being developed. This proposal impacts a portion of the wetland buffer but leaves a portion of it intact; we are not looking to impact the entire buffer. Denial of this variance would prevent access to the lot. The proposed access was located at the point of least impact to the wetland buffer, currently there is a substandard access to the site that is also within the wetland buffer on site and comply with the spirit of the ordinance.
- 3.) ***Please describe how substantial justice is done:*** Substantial justice is done when the benefit to the land owner far outweighs the burden to the general public. In this instance that is the case. Denying this variance would render this lot not buildable and thereby cause substantial burden to the land owner and no benefit to the general public.
- 4.) ***Please describe how the values of surrounding properties are not diminished:*** The variance only pertains to the access to the site, construction of an access to property is consistent with every other property that has been developed and will have no impact on surrounding property values.
- 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:*** The special conditions of this property that distinguish it from other properties in the area is that a wetland buffer exists along the entire frontage of the property preventing the developable portion of the lot from being built upon.
    - 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 general purpose of the ordinance is to protect wetlands. Our proposal for access to the lot has the least impact to the wetland buffer and allows a previously impacted portion of the buffer to return to its natural state.
    - ii. ***Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:*** We are asking for relief to construct an entrance that will allow us to access the buildable portion of this lot. We have situated the entrance to the site in the location that will have the least impact to the wetland buffer and are proposing to let the natural vegetation grow back in an area that the wetland buffer was previously impacted.

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 7:46 PM, the public hearing was closed.

The Board then granted the variance, with the condition for the wetland buffer to be no closer than 17.7' on the northside, and 11.7' on the southside, by voting the following:

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

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

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

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

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

**b. Case #1019 Variance Appeal from 28 (section) 28.9** Application for a variance for Peacock Hill Road LLC. The applicant is requesting to construct a driveway for a new proposed lot crossing through the wetland buffer for property on Chuck Street [409/154-2] in the Rural Agricultural (RA) Zone. Mr. Shelto was seated at the table. Mr. Wright moved to accept, Mr. Shelto seconded, and all were in favor, 5-0. Mr. Siciliano then rose and spoke to the 5 points.

*The undersigned hereby requests a variance to the terms of Section 28.9 and asks that terms be waived to permit: A driveway to be constructed thru a 25' wetland buffer.*

*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:** This is a disturbance at the 25' wetland buffer for a private driveway. The wetland and wetland buffer is about 90' off the west side of Chuck Street. The majority of the public will not be using the driveway and a driveway with trees cleared is a normal view for a driver traveling on Chuck Street.*
- 2.) ***Please describe how the spirit of the ordinance is observed:** The ordinance allows wetland crossing for driveways, so the spirit of the ordinance would and should allow for disturbance of the 25' wetland buffer for a driveway.*
- 3.) ***Please describe how substantial justice is done:** The owner will be able to gain access to a buildable dry area on the proposed lot for residential use. The lot being created meets all of the subdivision regulations.*
- 4.) ***Please describe how the values of surrounding properties are not diminished:** This land is going to be used for residential use, as are the surrounding properties. The proposal is to construct a driveway through the wetland and the 25' buffer for a residential home. Similar uses in the same neighborhood will not diminish values.*
- 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:** The wetland and 25' wetland buffer bisect the proposed lot from north to south. In order to get to the dry buildable land to the west, that special condition must be crossed.*

- 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 purpose of the ordinance is to protect the wetland by applying a buffer along all wetlands in town. In order to create this building lot, which meets the subdivision regulations, we need to install a driveway and culvert to access the building site. Wetland crossing are allowed for such use. It stands to reason that the buffer must also be crossed and disturbed.
- ii. ***Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:*** There is quite a bit of wetlands on this lot with associated wetland buffer. We are crossing only a small percentage of the buffer. The use of this wetland buffer is reasonable to access the dry buildable area of the proposed lot.

***B. Please describe the special conditions of the property that distinguish it from other properties in the area:*** The wetland and 25' wetland buffer bisect the proposed lot from north to south. In order to get to the dry buildable land to the west, that special condition must be crossed.

***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:*** We cannot get to the buildable dry area of this proposed lot without crossing the wetland and the 25' buffer. A driveway needs to be constructed through the wetland to get the home site. Strict conformance to the ordinance doesn't allow reasonable use of the site, as variance to all the disturbance of that buffer, limited to the location a size of disturbance shown on plans submitted, will allow for the reasonable use of the land.

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 7:59 PM, the public hearing was closed.

The Board then granted the variance by voting the following:

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

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

Point #3: Ms. Meyer moved to approve point #3; Mr. Shelto seconded. Vote: 5-0.

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

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

### **III. MINUTES**

\*May 7, 2019 Draft minutes; Mr. Meyer moved to approve; Mr. Morette seconded, and all were in favor of approval, 5-0.

\*June 4, 2019 Draft minutes; Mr. Morette moved to approve; Mr. Meyer seconded, and all were in favor of approval, 5-0.

#### ***IV. WAIVER EXTENTIONS***

- a. Case #4002; Mr. Morette moved to extend, seconded by Mr. Meyer. All were in favor, 5-0.*
- b. Case #2707; Mr. Morette moved to extend, seconded by Mr. Meyer. All were in favor, 5-0.*
- c. Case #2504; Mr. Morette moved to extend, seconded by Mr. Shelto. All were in favor, 5-0.*

#### ***V. UPCOMING MEETINGS***

*\*November 5, 2019*

*\*December 3, 2019*

*Adjournment was declared at 8:08 PM by the chair.*

*Respectfully submitted,*

*C. Provencher*

*Transcribed from notes*