

ZONING BOARD OF ADJUSTMENT
February 4, 2020 DRAFT MEETING MINUTES

Present: Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Marc Morette, Member; Gary Shelto, and Kelly Dearborn-Luce. Land-Use Coordinator.

Guests: Heidi L Boddy, Michael J Boddy, Devon K Therrien, Ron Therrien, Frank Bolton, Elaine Banacos, John Banacos, Rob Timpson, Amanda DeCek, Raymundo Melendez.

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

Continuation of Case #01-20 Application for a variance from Weare Zoning Ordinance; Article 17.1.1. The applicant, Mr. Frank Bolton, requests to construct an access to the property on the Private Road part of the frontage. The property lot is on Carding Mill Road [203/98.2] in the Rural Agricultural (RA) Zone.

Mr. Morette, seconded by Mr. Myer, moved to accept the application. Mr. Bolton then rose and read the following: **The undersigned hereby requests a variance to the terms of *Section 17.1.1. Paragraph (see pg. 22 – attached) of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit:*** A driveway off a private road.

With the foregoing standards in mind, please provide the following facts relative to your application:

1. The Variance will not be contrary to the public interest: because: The requested variance will have no impact on the public interest.

2. Please describe how the spirit of the ordinance is observed: because: The requested variance is not in conflict with public rights.

3. Please describe how substantial justice is done; because: The requested variance causes no harm to the general public.

4. Please describe how the values of surrounding properties are not diminished: The requested variance has no impact on surround 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 (explain any details of the property/structure that are different than the surrounding properties such as slopes, wetlands, size etc.)

Lot 203/98.2

- has 200 ft. of frontage on Carding Mill Road
- has 318 ft. of frontage on the private section of Carding Mill Road.
- was subdivided from Lot 203/98 30 years ago and has access from the private section of Carding Mill Road to the best location for a house

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; There is no relationship between the general public and the requested variance.

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) Weare's existing driveway regs will require a very long driveway cut into a hillside. Numerous large trees will have to be cut down and a turnaround will be required.

B. Please describe the special conditions of the property that distinguish it from other properties in the area: The topography of the lot dictates that the best location for the house and driveway is as requested.

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: Difficult terrain, large trees, numerous large boulders and long length to reach the best location for a house are determining factors.

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 public at large. There were none.
Chairman Dearborn asked for other boards. There were none.

At 7:52 PM the public hearing closed. The Board then granted the Variance by voting the following:

Point #1: The Chair read the conditions aloud:

Condition #1 – *The applicant shall be required to post the necessary sign(s) at the transition from Class V to Private Road in accordance with the Town of Weare sign policy and be consistent with NH RSA 674:41, I, (d) – Private Road.*

Required sign wording policy: *This road has not been accepted by the Town of Weare or it consists of a Class VI or Private 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 Deed and be consistent with NH RSA 674:41, I (d) – Private Road.*

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.*

Mr. Morette moved to approve point #1 with conditions read by the Chair; Mr. Meyer seconded.

Vote: 4-0

Point #2: Mr. Meyer moved to approve point #2; Mr. Shelto seconded. Vote: 4-0

Point #3: Mr. Shelto moved to approve point #3; Mr. Morette seconded. Vote: 4-0

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

Point #5: Mr. Meyer moved to approve point #5 in its entirety; Mr. Shelto seconded. Vote: 4-0

The Chairman told the applicant the waiver passed without issue and Ms. Dearborn will mail a notice of the approved variance.

Case #02-20 Application for a variance for Devon Therrien from Article section 4.1 “Driveway, Common”. The property is on South Stark Highway [412/194] in the Rural Agricultural Zone.

Mr. Meyer moved, seconded by Mr. Morette, to accept the application as complete; 4-0. The chair then stated has concern for needs clarification from the town attorney as the legal aspects if this was granted, and the applicant needed another variance, then they will have to come back; it concerns an issue of a State RSA regarding building on a Class VI or private road; need to clarify the legality of what is considered the town road in this case. The Chair moved, pending legal and Town Council review, until Tuesday, March 3rd.

Case# 03-20 Application for a variance for Robert Timpson from Article 18, Section 18.2.3 for side setback requirements. The property is on 1133 Concord Stage Road [403/134] in the Residential Zone. Mr. Morette, seconded by Mr. Myer, moved to accept the application. All were in favor, 4-0. Mr. Timpson then rose and read the following:

The undersigned hereby requests a variance to the terms of *Section 17.1.1. Paragraph* (see pg. 22 – attached) of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit: Construction of a 20'x40' garage.

With the foregoing standards in mind, please provide the following facts relative to your application:

- 1. The Variance will not be contrary to the public interest, because:** The proposed construction will be on private property. There will be no increased traffic flow. No increase in public services, no detriment to public safety, health or welfare. Assessed property value will increase.
- 2. Please describe how the spirit of the ordinance is observed:** This lot#34 was part of land divided up and donated to a family forced to re-locate from East Weare Village. When East Ware was intentionally flooded to create the Everett Flood Control Project, The Lot#134 is incredibly small. The ordinance does not take into account non-conforming lots this small. If I wish to build a garage of suitable size, I have no choice but to seek a variance.
- 3. Please describe how substantial justice is done:** There is no public benefit or detriment resting on the Boards decision. However, the Boards decision weighs heavily on the applicant. To deny would do injustice to him with no public gain. Allowing the applicant to go forward with construction would allow him to keep his equipment and materials in neat, accessible, secure and heated space behind the house.
- 4. Please describe how the values of surrounding properties are not diminished:** The proposed construction is incidental to the existing residential use permitted by the Zoning Ordinance. Similar residential use prevails in the neighborhood already.
- 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:** Given to small size of lot, its natural features and the position of the primary residence it would be nearly impossible to build a garage of suitable size anywhere else but on the proposed site.
 - 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:** There simply is not enough space on the property to build anywhere on site and still adhere to the setbacks in the ordinance. The south side of the lot is occupied by the leach field. The east side is the front of the house. The west side has natural features that would require extensive excavation and grading.
 - ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** The only reasonable spot to build a garage of suitable size is the northwest corner. The only other spot it would fit is the northeast corner, in which case I would need to seek a variance from the easterly setbacks. My truck and trailer is 38' long. A 40' garage is just large enough to fit the length of my work vehicle.

Discussion involved clarification of lot size, which the applicant responded it was one of the smallest in Town. The Chairman then asked the applicant to have a seat. Public meeting opened at 8:27 PM.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters. Mr. Boddy asked about the issues of the shared driveway, the turnaround and the right of way. The Chair responded by stating the applicant has a deeded right of way of 15 feet and is clearly defined. Uses of this home-based business is allowed in the Zoning Ordinance, and until that point deeded requirements are violated, nothing can be done. If Mr. Boddy should want to, he can choose to go after the right of way via civil suit.

Chairman Dearborn asked for public at large. There were none.

Chairman Dearborn asked for other boards. There were none.

Mr. Boddy had no rebuttal and the public meeting closed at 8:44 PM.

Mr. Myer moved to approve Point #1; Mr. Shelto seconded.

Vote: 4-0

Point #2: Mr. Morette moved to approve point #2; Mr. Meyer seconded. Vote: 4-0

Point #3: Mr. Morette moved to approve point #3; Mr. Shelto seconded. Vote: 4-0

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

Point #5: Mr. Morette moved to approve point #5 in its entirety; Mr. Shelto seconded. Vote: 4-0

The Chairman told the applicant the waiver passed without issue and a notice of the approved variance will be received.

III. MINUTES

*December 3, 2019 Draft minutes; Mr. Meyer moved to approve with amendments; Mr. Morette seconded, and all were in favor of approval, 4-0.

IV. UPCOMING MEETINGS

- Tuesday March 3rd, 2020
- Tuesday April 7th, 2020

Adjournment was declared at 8:33 PM by the chair.

Respectfully submitted,

C. Provencher

Minute Taker, Transcribed from notes