

ZONING BOARD OF ADJUSTMENT

March 3, 2020 DRAFT MEETING MINUTES

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

Guests: Frank Chen, Jeremy Lamothe, Holly Lamothe, Matthew Lamothe, Heather Lamothe, Ron Therrien, Devon Therrien, Liz Nolin, Esq., Carolynne Shinn, Dan Higginson.

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.⁵⁴

II. PUBLIC HEARINGS

- a. **CONTINUATION OF CASE #02-20** Application for a variance for requested by Devon Therrien and seeking relief from Article 4.1 “Driveway, Common” and 17.1.1 “No building permits for new homes shall be issued on any Class VI or Private Road”. The property is on So. Stark Highway [412/194] in a Rural Agricultural (RA) Zone.

The undersigned hereby requests a variance to the terms of Section(s) 4.1 and 17.1.1 Paragraph(s) Driveway, Common & No building permits for new homes shall be issued on any Class VI or Private Road of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit:

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:

Granting both variances to allow access to three lots as well issue a building permit on a private road will not be contrary to the public interest as the proposal will not alter the essential character of the neighborhood. The surrounding area already includes single-family homes with access via the common driveway. The proposed design of the lot will not alter the essential character of the neighborhood, but instead will improve the lot's function. Permitting the applicant to improve access, while reducing the area of undeveloped land to be affected is in the public interest. Furthermore, a shorter access to the property would allow for easier and safer access for emergency vehicles.

2. Please describe how the spirit of the ordinance is observed; because: Granting both variances will not be contrary to the spirit and intent of the Ordinance. The spirit and intent of the Zoning Ordinance is best expressed by the purpose of the Rural/Agricultural District stated in Article 13.1.2. That area that is a combination of residential, agricultural and undeveloped land where greater emphasis is focused on limited density and more diverse use than strictly residential is allowed. Granted the variance s will allow the applicant to build a single-family home job the lot without having to build a separate driveway and thus improve the site access and reduce the impact of undeveloped land, resulting in a more attractive and functional lot.

3. Please describe how substantial justice is done; because: Granting both variances will result in substantial justice. The surrounding area includes single-family homes with access via the common driveway. Permitting the applicant to build a home through a third lot off a common driveway will cause no harm to the general public. Firstly, the proposed design of the lot will improve the lot's function and thus help rather than harm the general public. Permitting the applicant to improve access, while reducing the area of undeveloped land to be affected, does not impact the general public. Furthermore, a shorter access to the property would allow for easier, safer, and faster access of emergency vehicles, which again does not present any harm to the public, but could one day save a life or property.

4. Please describe how the values of surrounding properties are not diminished: By permitting both variances the values of the surrounding properties will not be diminished. Adjoining property not only have similar residential uses, but area allows in favor of this application. Furthermore, building a brand-new home in the area off the private road may actually increase surrounding property values by adding another quality, comparable property to the road. As a result, granting the variance will not diminish the value of 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:

The subject lot is a 22.1-acre undeveloped lot in the Rural/Agricultural District. The applicant wishes to to construct a single-family home on the subject lot consistent with the current character of the neighborhood. The subject property has sufficient frontage on N.H. Route 114,

however, to access Route 114 would require at minimum a 1400 foot driveway with significant grading issues because of the steep terrain on the Route 114 entrance.

- 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:** Owing to the special conditions identified above, no fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restrictions on the property. The proposed third access to the common driveway will further the Rural/Agricultural District's goal to protect and safeguard natural resources, environment and wildlife by using the common driveway and not requiring the construction of at a minimum a 1400-foot driveway on undisturbed land. This will preserve significant undeveloped land.
- ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** Owing to special conditions identified above, the proposed use is reasonable because although the subject lot has sufficient front on Route 114, grading issues in the area of Route 114, and the proposed site of the home make adding a new driveway const prohibitive and destructive to natural resources, the environment and wildlife. Furthermore, applicant respectfully submits that it is safer to use the common driveway. It will not be necessary for the traffic flow on Route 114 to applicant's home. Further, there is no current turn around or pull off/staging area for emergency vehicles accessing the two lots currently served by the common driveway. Allowing access to the subject property via the common driveway would allow for a turn around and flat staging area. As a result, emergency vehicles would be able to gain access to all three lots in a quicker and safer manner. Which in turn one day could save a life or someone's property.

B. Please describe the special conditions of the property that distinguish it from other properties in the area: The subject lot is a 22.1-acre undeveloped lot in the Rural/Agricultural District. The applicant wishes to construct a single-family home on the subject lot consistent with the current character of the neighborhood. The subject property has sufficient frontage on N.H. Route 114, however, to access Route 114 would require at the very minimum at a minimum 1400-foot-long and winding driveway with significant grading issues.

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: Owing to special conditions of the property that distinguish it from other properties in the area, the zoning restriction as applied to the property interferes with the reasonable use of the property. The subject lot has sufficient frontage on Route 114, however, significant grading issues in the area of Route 114, and the proposed site of the home make adding a new driveway unreasonable if the terms of the ordinance were strictly followed. First, the cost required to strictly conform with the ordinance in terms of constructing the driveway and running utility lines would outweigh the property value. Second, strict conformity would require emergency vehicles additional time and risk to travel on a long and winding road to applicants k home, which could cost someone's life or property, and at the very least would interrupt traffic flow on Route 114. In contrast,

the subject property is uniquely and safely accessed by an existing, deeded common driveway which will reduce the need for a long, difficult and costly driveway to be constructed.

Description of proposed use: If approved, applicant intends to use the common driveway for access to the subject property and to run utilities from an existing line along the common driveway. As summarized below, the owners of the properties currently accessing the common driveway, Banacos and Ouellettes, most affected, are in support of the proposal. On October 25, 2019, the applicant entered into a driveway easement with Maurice and Jennifer Oullette of 60A Hoit Mill Road and John and Elaine Banacos of 60B Hoit Mill Road to use a currently-used and partially paved driveway (hereinafter the “common driveway”) accessed by the Banacos and Ouellettes, giving the subject property access to Class V highway, Hoit Mill Road. See easement attached. The October 25, 2019 easement expanded and clarified an existing easement granted in the deeds of Ouellette and Banacos stating that the “Common driveway applies to Lot 412-185-12 [Banacos] and Lot 412-194-1 [Ouellette] and 412-194 [Therrien],” Thus, it was anticipated that the three parcels would share a common driveway (subject to town approval) when the lots were originally subdivided and the current owners of all driveways are in support of applicant’s request.

No questions were poised to the applicant from the Board. The chair asked for a 10% grade and said minimum requirements of Article 35 of the Zoning Ordinance shall be met; life and safety are a primary concern for the Board.

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 8:02 PM the public hearing closed.

Point #1: The Chair read the conditions aloud:

You are hereby notified that on March 3, 2020 the board acted upon a request from Devon Therrien for property located at [412/194] off of Hoit Mill Road in the Rural Agricultural Zone, for a request for a variance to have three driveways on a common driveway and to construct a single family home on a private road. The following are minimum conditions and requirements for a Variance Approval of a residence on a Private Road; Town of Weare Zoning Ordinance 17.1.1.

The motion for the variance request was granted with the following conditions:

Condition #1 - The applicant shall be required to post the necessary signs (s) at the transition from a Private Road in accordance with the Town of Weare sign policy and be consistent with NH RSA 674:41, 1, (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 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 Hillsboro County Registry of Deed and be consistent NH RSA 674:41, I (d) – Private Road. \

Condition #3 – The applicant Shell take the necessary actions to be in practical compliance with the town of where planning board subdivision regulation for driveway permit requirements and town of where zoning ordinance, article 36. The town of where public works director Shelby’s 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.

The Variance Approval will expire on March 3, 2022. Mr. Meyer moved to approve the above mentioned with conditions read by the Chair; Mr. Wright seconded; Vote: 5-0

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

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

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

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

b. APPLICATION FOR A VARIANCE CASE #04-20 Jeremy Lamothe from Article 17.1.1 to construct a single-family home on a Class VI Road. The property lot is on Sawyer Road [407/181] in the Residential (R) Zone. Mr. Meyer moved, seconded by Mr. Wright, to accept the application as complete; all were in favor, 5-0.

Mr. Lamothe then read thru the 5 points. **The undersigned hereby requests a variance to the terms of Section 17-1.1 of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit:** construction of a new home on a Class VI 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:** the single-family home we are proposing to build Will be within all required setbacks from property lines and wetlands boundaries. The building Will conform to the restrictions as stated in the deed upon the initial subdivision for structure placement.
- 2.) **Please describe how the spirit of the ordinance is observed:** the intended building Will not affect public safety or diminish property values.
- 3.) **Please describe how substantial justice is done:** no harm to the public is intended nor is it possible with the construction of the intended single-family home. The Sawyer Road lots were subdivided as buildable lots which is evident by the existing homes and current construction.
- 4.) **Please describe how the values of surrounding properties are not diminished:** the proposed home will be similar in size, construction and finish. Surrounded property values will benefit.
- 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 lot is fairly level with minimal excavation and tree clearing. There are no specific details that make the proposal any different.
 - 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:** no special

conditions were noted until Ben Knapp spoke to conditions after the application was submitted.

- ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** lots were subdivided and sold as buildable. The only reasonable use of a 3 acre parcel would be to build on. Of the 10 parcels on Sawyer Road, 8 are developed or are being developed.

Description of proposed use: to construct a single-family home.

The Chairman then asked the applicant to have a seat.

Chairman Dearborn asked for approving abutters. Mr. Matt Lamothe spoke in favor of this project and told the board and explained that distribution in cost of the road maintenance as is welcome.

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 8:19 PM the public hearing closed. The Board then granted the variance by voting the following:

Point #1: Mr. Shelto moved to approve Point #1 with conditions read by the Chair:

You are hereby notified that on March 3, 2020 the Board acted upon a request from Jeremy Lamothe for property located on Map 407, Lot 181, on Sawyer Road in the Residential Zone, for a request for a variance to construct a single-family home on a Class VI road. **The Motion for the variance request was Granted with the following conditions:**

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

Condition #3 – The applicant Shell take the necessary actions to be in practical compliance with the town of where planning board subdivision regulation for driveway permit requirements and town of where zoning ordinance, article 36. The town of where public works director Shelby’s 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. Meyer seconded Point #1 with no discussion; 5-0

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

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

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

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

- c. **APPLICATION FOR A VARIANCE CASE #05-20** Representative, Ms. Elizabeth J. Nolin, Esq., spoke for Ms.Carolynne Shinn, to request an area variance, from Article 18, Section 2.3, to waive a side setback from 25' to 13.8'. The property is located at 13 Craig Road [107/8] in the Residential (R) District.

Discussion involved the adequacy of the application, as it seemed outside of what is normally accepted, with the numerous attachments included. The chair explained to Ms. Nolin, that so many attachments are unnecessary and to be considered, must be read aloud to be entered into the public record. The representative stated she would continue with a less lengthy version of the application at the Boards wishes. The application was then accepted as complete by Mr. Wright, which was seconded by Mr. Meyer; passing, 4-0-1.

Mr. Higginson, of Higginson Land Services, rose and spoke to the Board regarding various items, as well as noting, the project has the permit approvals from both the Piscataquog Land Conservancy and State of NH DES. Representative Nolin, then rose and spoke to the five points for the Board:

The undersigned hereby requests a variance to the terms of Section 18 Paragraph(s) 2.3 of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit: dimensional\Area variants requested to waive side set back from 25 feet to 13.8 feet (at the most severe area requested, as shown on the attached plans).

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:** the variance is not contrary to the public interest because it does not unduly and\or in a marked degree conflict with the ordinance such that it violates the ordinance's Basic zoning objectives. Please note there are no changes to water supply or septic system. The new room will be a first-floor bedroom due to ill-health, and the prior bedroom we'll be repurposed as an office/workspace.
- 2. Please describe how the spirit of the ordinance observed:** the spirit of the ordinance is observed through the granting of this variants because the proposed addition is consistent with other uses and structures in the subject property's residential zone, and is in keeping aesthetically and in terms of size with the essential character of the locality.
- 3. Please describe how substantial justice is done:** substantial justice is done through the granting of this variance because the general public will realize no appreciable gain through the denial of the construction of the proposed addition, while the applicant will suffer significant loss by not being able to fully utilize and enjoy the property both now and in the future.

4. **Please describe how the values of surrounding properties are not diminished:** values of surrounding properties shall not be diminished because the proposed edition is consistent in terms of size and style with surrounding dwellings and shall be cohesive with the existing structure. Additional notes included that siding style would be duplicated, no additional noise traffic or environmental issues would occur and finally, Town tax revenue would go up.
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 subject's property is a non-conforming lot with significant topographical features, meaning that the proposed location is the only realistic location in which to construct a reasonable addition for the property owner.
 - 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 ordinance aims to provide for reasonable and appropriate development in each zone in Weare. The proposed addition is consistent with the general public purposes of the ordinance. Therefore, no fair and substantial relationship exist between the general public purposes of the ordinance and the specific application of the side– setback provision to the property.
 - ii. **Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one:** the proposed use is reasonable because it is a residential addition in a residential zone, that is in keeping with the size, style, and function of surrounding dwellings. Further, the proposed use will likely be used to create a first-floor bedroom for the property owner, who has physical and medical matters, and would allow her to utilize and enjoy property, which is certainly a goal of the ordinance.

Or (this is filled out if you cannot meet 5Ai and 5Aii)

B. Please describe the special conditions of the property that distinguish it from other properties in the area: the subject property is a nonconforming lot with significant topographical features, meaning that the proposed location is the only realistic location in which to construct a reasonable addition for property owner.

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 thereore necessary to enable a reasonable use of it: the subject property cannot reasonably be used by the property owner because she cannot have access to a first floor bedroom without the addition, which can only logistically be located at the proposed location

Description of proposed use: the proposed construction, as further described in the attached documentation, is proposed construction of an addition to the existing, single-family dwelling structure. This addition will not add to the total number of bedrooms and or bathrooms to the existing dwelling. However, accommodate the physical needs of the property owner. The

proposed addition is 16' x 22', for a total of 352 ft.². Please see the attached plans of proposed development, propose set back, and additional details regarding the proposed addition.

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.

The public hearing was then closed, and the Board granted the variance by voting the following:

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

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

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

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

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

- d. **APPLICATION FOR A SPECIAL EXCEPTION Case #06-20** Mr. Frank Chen - Article 19, Section 19.1.10 for Accessory Dwelling Unit. The property is located on 196 Colby Road [412/168-10] a Rural/Agricultural (RA) Zone. There were no questions from the applicant and the application was accepted as complete by Mr. Meyer, seconded by Ms. Plamondon; all were in favor, 5-0. Public comment opened at 9:08 PM.

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.

Mr. Chen rose and introduced himself to the Board. He stated he looks forward to becoming a part of this community and wants to retire here in Weare. Then Mr. Meyer read aloud the eight conditions that have to be met per Town of Weare Zoning Ordinance in Article 19. 1.10. Mr. Chen then read through the application; he read the following seven conditions per Article 6, Section 6.1.4 of the Zoning Ordinance must be met in the positive to warrant the granting of a special exception:

1. **The specific site is in appropriate location for such a use or uses in terms of overall community development:** this site is very isolated, facing the Huse Pond and back into Town's conservation land.
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 is still a residential single-family housing, not any commercial activities. The neighborhoods real estate values shouldn't be affected.
3. **The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrian:** there should be no difference in the noise and/or traffic pattern or pedestrian pattern.
4. **The proposed use will not cause an undue burden on the Town through the provision of basic Town services:** it will not require any more services and/or burden from Town.
5. **Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:** it is a 10 acre lot, with more spaces then anyone's need for parking. We will have three cars.
6. **A buffer may be required to screen neighboring uses from the proposed use. Buffers maybe fence screens, dental planting of suitable trees and shrubbery, or naturally occurring**

shrubs and trees: I have no objections to this, but I don't see a need from my prospect and/or neighbors' prospect.

7. **The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to ensure compliance with the section:** I am open to any discussion for any special needs.

Mr. Meyer moved to grant Case #06-20, seconded by Mr. Wright. No conditions needed, and passed, 5-0.

III. MINUTES

*February 4, 2020 minutes: Mr. Meyer moved, seconded by Mr. Wright, to approve the minutes, as amended; all were in favor, 5-0.

IV. UPCOMING MEETINGS

- Tuesday April 7th, 2020
- Tuesday, May 5th, 2020

The meeting adjourned at 9:18 PM.

Respectfully submitted,

C. Provencher

Minute Taker, Transcribed from notes