

ZONING BOARD OF ADJUSTMENT
DECEMBER 4, 2018 FINAL MEETING MINUTES

Present: Jack Dearborn, Chairman; Michael Meyer, Vice-Chairman; Stuart Richmond, Member; Malcolm Wright, Member; Gary Shelto, Alternate; Don Rogers, Alternate; Chip Meany, Land Use Coordinator.

Guests: Jack Meaney, Eileen P. Meaney, Gray Guevin, Susan Watson, Susan Menard, Sean Dinan, Nick Fox, Mike Setlaikas, Sharon Racicot, Mark Racicot, Shelley Duquette, Gil Duquette, Douglas Alwine, Don Carrara, Lynn Carrara, Travis Corcoran, Jennifer Corcoran.

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

I. ADMINISTRATIVE ITEMS: Chairman Dearborn read the agenda for the evening, asked all members present to introduce themselves and additionally, stated to everyone that all questions posed should be addressed to the Chair. He then reminded the audience that all cases will be taken separately and explained the course of action for the following hearings; first he will ask for a motion to accept the application to be heard, then review the synopsis of the front page of application, ask the Board if they have any questions concerning the application, then he will ask the applicant to come forward to state his name and speak to the seven conditions needed for a special exception that has been included in the application. The applicant will be asked to sit down. Next, the Chairman will ask for approving abutters, disapproving abutters, public at large and other boards. The applicant would then come back up and refute anything necessary. The process will be repeated, with the close the public hearing just after. Chairman Dearborn indicated that once the public hearing is closed, the Board will deliberate and come up with one of the following positions; approval with or without conditions, denied with conditions, continued with pending issues that require further information or should the Board want a legal opinion. All motions will be made in the affirmative.

II. CASE #1118 Administrative Appeal (CONTINUED): *George W. Merrill* is appealing a Planning Board Decision regarding a driveway approval at Tax Map 406, Lot 51.3, West side of River Road in a Residential Zone. Gary Shelto approached and took Malcolm Wright's place. The Chair spoke to say that a private conservation occurred that afternoon and he was charged to motion for a continuance on Case #1118 until the next ZBA meeting scheduled for January 8, 2019. Mr. Richmond seconded, and all approved. 4-0-0.

III. CASE #1218 Administrative Appeal: Travis Corcoran is appealing the Building Departments approval of an illegal building at 271 Quaker Street on a non-Conforming lot at 271 Quaker Street Tax Map 404, Lot 84 in a Residential Zone. Gary Shelto rose and sat down in the audience seating area. Next, Malcolm Wright and Don Rogers rose to join the rest of the Board at the table. Chairman Dearborn reviewed the application and the attached documentation with the audience. Mr. Wright moved to accept application, then Mr. Richmond seconded. The application was ratified 5-0-0. Travis Corcoran of 275 Quaker Street approached the Board to discuss his side of the matter. Debate then ensued about whether the setback determination by Town of Weare Building Department concerning Tax Map 404, Lot 84. The Chair asked Corcoran if he filed the appeal before the work was done. He states that specifically he is appealing the Building Department. Mr. Dearborn responded by affirming that when the Zoning Ordinance is not specific, it defaults to the Building Code Officer. Mr. Corcoran was seated.

Any questions from the Board? There were none.

Chairman Dearborn asked for approving abutters. There were none.

Chairman Dearborn asked for disapproving abutters. Gil Duquette of 271 Quaker Street, approached and explained to the Board that he has followed all steps that the Town has asked of him thru this whole process, and now everything is at a halt due to this situation brought forth by his neighbor. Jack Meaney approached and stated he understands all lots are mostly non-conforming and added Mr. Duquette doesn't have a lot of options, as septic and gas services get in the way. Don Carrara rose and spoke to state if anyone could possibly be upset at this neighbor, it should be he and his wife, as we are most affected abutters. He completely supports Mr. Duquette and wants him to move forward with the building as approved by the Code Enforcement Director, Chip Meany.

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

Chairman Dearborn asked for other boards. There were none.

Mr. Corcoran stated he had no other deliberations for the Board. The public hearing closed at 8:05. Mr. Richmond motioned to accept Case #1218. The Vice-Chair seconded the motion.

Discussion: The Vice-Chair reiterated to the audience the support of the Board lies with what the Ordinance states is true, and stands behind the Code Enforcements decision.

There were no Board members in support of the application and consequently, all were against it, voting 0-5. The Chairman reminded Mr. Corcoran that he has thirty days to appeal this case to the NH Superior Court.

IV. Case # 1318: Variance from Article 18.2.3 Sean & Kristen Dinan are requesting a relaxation of the 25' setback requirement in a Residential Zone at 179 Walker Hill Road, Tax Map 402, Lot 53. The Chairman stepped down and asked the Vice-Chair to run the session. Gary Shelto took a seat, as the Chair relinquished his seat. The Vice-Chair then introduced himself, asked all other Board Members to do the same. He reviewed the application in front of him and also confirmed each attached document for the audience. Included was the original application, location map, site plan of property at issue, abutters list, a variance application, and pertinent additional information. Mr. Wright motioned to accept and Mr. Richmond seconded, the motion passed without pause, 5-0. Mr. Meyers asked if there were questions from the Board; there were none. Sean Dinan approached the podium and read to the Board. **The undersigned hereby requests a variance to the terms of Article 18, Section 2.3 and asks that terms be waived to permit:** We are asking that the terms pertaining to the 25' set back on the North side of our house be waived to allow for a mudroom to be constructed on the driveway side of the house. You are required by law to demonstrate:

1.) That the granting of the variance will not be contrary to the public interest because: The granting of the variance will not be contrary to public interest because it will be a professionally constructed addition that will help to add property value to the area. There will be no hazards presented that would result in being contrary to public interest.

2.) The variance requested, will not be contrary to the spirit of the ordinance because: The variance will not be contrary to the spirit of the ordinance because it will use a small area of the set back. We understand that setbacks exist to prevent overcrowding with structures abutting too closely. We are only asking to use 8' of the 25' setback.

3.) That through the granting of relief by variance substantial justice will be done because: Justice will be done granting relief by variance because the builder of the property built the structure to the limit of the setback on the driveway side with no room for future growth. The Board would be helping us a great deal since we have no other options. We need more space for our growing family and don't want to move since we've made great friends in the neighborhood.

4.) That by granting the variance, the values of surrounding properties will not be diminished because: Granting this variance will not diminish the value of surrounding properties. In fact, it should do the opposite and help to raise the value of surrounding properties. We are adding close to 400 feet of quality living space to the structure.

5.) To qualify for a variance, you must demonstrate that denial of the variance would result in unnecessary hardship. Pursuant to applicable law, the test for "unnecessary hardship" is set forth in two alternate parts, (Parts A & B), as follows:

A. "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The proposed use is a reasonable one.

Accordingly, while having the foregoing standards in Part A in mind, please provide the following facts relative to your application:

A. Please describe the special conditions of your property that distinguish it from other properties in the area: Our house was built closely to the 25' set back where the driveway is located. Unfortunately, this is the side where an addition would be more likely to be added and the builders didn't plan for this.

Please indicate how, owing to the special conditions identified above,

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property because we are only encroaching slightly into our setback and it will not affect general public use.

ii. And how the proposed use is a reasonable one: The proposed use is reasonable because we are only asking for a small area of the setback to add some functionality to our home to better our standard of living.

‘... (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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.

Accordingly, while having the foregoing standards in Part B in mind, please provide the following facts relative to your application:

B. Please describe the special conditions of your property that distinguish it from other properties in the area: Our house was built closely to the 25' setback on the North side where the driveway is located. Unfortunately, this is the side where an addition would be most likely needed and the builders did not plan for it. the area inside the door of entry is also very crowded at the top of the basement stairs and presents a safety problem.

Please indicate how, owing to the special conditions identified above, your 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 property cannot be reasonably use because the house wasn't built well for long-term practical use. The very small 3 x 4 space at the entry door is also at the top of an open flight of stairs to the basement and is quite dangerous for people to use simultaneously.

Mr. Dinan wanted the Board to know that the existing deck already comes into the set-back, the the new Four Season porch will just come off the deck. The Chair pointed out if this was improved, this was only approved for what was in the application.

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 8:18 the public hearing closed. No discussion from was needed. The Board then granted the Variance by voting the following:

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

Point #2: Gary Shelto moved to approve point #2; Malcolm Wright seconded. Vote: 5-0

Point #3: Gary Shelto moved to approve point #3; Stewart Richmond seconded. Vote: 5-0

Point #4: Gary Shelto moved to approve point #4; Stewart Richmond seconded. Vote: 5-0

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

V. Case #1418 Variance: Article 17.1.1 Article 3.5.1 & Article 28.9. Nicholas & Denise Fox of 48 East Shore Drive, Tax Map 101, Lot 3 & 4. Request to allow building a single family home on a Class VI Road, relax set-back requirements and allow to impact a wetland buffer with a driveway. The Chairman resumed his position and Mr. Shelto sat down. The Chair then reviewed the application. He moved to accept, and Mr. Richmond seconded. Call to vote to - all were in favor at 5-0. Then the Chairman asked the designer to approach. Chairman stated the real issue is crossing a driveway over the land and not two separate parcels, using a different lot for the access, and also that they are very tiny lots. This is an issue, but not sure if it is a real problem yet. The Chairman stated that he took time to visit the site and documented this with a picture of the property. This is a Class 6 road with a maintenance agreement and the road agent oversees the authority of this. He asked if the maintained agreement had been produced as there is no agreement in the town records found anywhere at this point.

He also said the first problem here is that the town accepted this road. Parking in the road is an issue and Life and Safety access is extremely important here, and this Board is here to make sure this is protected. There are a bunch of challenges here and Class 6 roads require a Variance. The Chairman stated a prerequisite to even begin to evaluate this case is to have a current, accepted Articles of Agreement on the Road Maintenance to see what you are expected to do. The applicant responded "what if we can't find it?" The Chair answered a majority of the people signed it, so subsequently it should surface at some point. Mr. Richmond suggested to check with the Registrar of Deeds. The Chairman suggested to figure out Lots 1&2 and Lots 3&4 - and, of course get the agreement. This continuance is done for everyone's benefit... the Board, the Town and for your benefit. It is reasonable for a continuance. This shall be continued until January 8th so you can find the agreement, figure out what your lot will be and demonstrate you can comply with Art. 36. Mr. Richmond motioned for the continuance. Malcolm Wright seconded and all were in favor. 5-0.

VI. MINUTES

The Chair reviewed prior minutes and the Board made the following motions:

November 13, 2018: Mr. Richmond moved to approve, the Vice-Chair seconded. Minutes were agreed on unanimously.

VII. UPCOMING MEETINGS

*Tuesday, January 8, 2019

VIII. ADJOURNMENT

Adjournment was called at 8:59 PM

Respectfully submitted,

C. Provencher

Transcribed from notes