



WEARE ZONING BOARD OF ADJUSTMENTS
MEETING MINUTES
November 7, 2023

PRESENT: Chairman Jack Dearborn; Vice Chairman Michael Meyer; Marc Morette, Member; Malcolm Wright, Member

EXCUSED: Bobbi-Jo Plamondon, Member

Finance Administrator: Naomi Bolton

GUESTS: Janet Wilson, Bob Wilson, Steve Najjar, Rene Montplaisir, Barbara Fraser, Tony Tavares, Tony Tavares, Jr., Janice Mathews, Ellen Dokton, Anita Kuniegel, Michael Haskell

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

I. INTRODUCTION/ADMINISTRATIVE ITEMS: Chair Dearborn explained the process of the Variance and how the meeting would be conducted.

II. PUBLIC HEARINGS:

Case #16-2023: Robert & Janet Wilson (Owner & Applicant); 126 Pond View Road, Tax Map 108-065; Residential Zone- Special Exception, Article 19, Section 19.1.10. The applicants are requesting a special exception for an ADU (Accessory Dwelling Unit)

Morette motioned to accept the application as complete. Seconded by Wright.

Chair Dearborn said the applicant provided a survey map of lot 108-065, a deed, tax map, and pictures.

Motion passed 4-0-0.

19.01.10.01 An accessory dwelling unit shall be clearly incidental to the primary use of the property for a single dwelling, and such accessory living space shall not exceed seven hundred fifty feet, and not contain more than two bedrooms with maximum occupancy per bedroom of not more than two person per bedroom. The applicant responded by saying the ADU has 688 square feet not including the furnace area or electrical closet. It has one bedroom and one bathroom and a combined kitchen, dining and living area.

19.01.10.02 An accessory dwelling unit shall either be constructed within or attached to a single dwelling. The applicant responded by saying the ADU is within the single-dwelling home. It is a re-purposed basement.

46 **19.01.10.03 At least one interior connecting door or other access for persons to pass between.**
47 The applicant stated a stairway between the basement ADU and the upper floor is available.
48

49 **19.01.10.04 Septic system design/ capacity shall be approved by the NH Department of**
50 **Environmental Services.** The applicant responded by stating the septic system was already
51 approved when the home was originally built for two bedrooms. One bedroom is on the second
52 floor and the one in the basement ADU. The applicant attached the individual sewage or waste
53 disposal system construction from 1985 approved by DES. Chair Dearborn informed the applicant
54 that the Building Inspector may need an updated construction approval if they determine it does
55 not meet the code.
56

57 **19.01.10.05 No new entrance or exit to an accessory dwelling unit shall be constructed facing**
58 **the front of the single-family dwelling.** The applicant stated the ADU entrance is on the side of
59 the single-family dwelling. Chair Dearborn asked where the outside access was. The applicant
60 stated two sliders face the lake.
61

62 **19.01.10.06 Two parking spaces shall be provided for an accessory dwelling unit and no new**
63 **curb cut from the street shall be constructed.** The applicant stated two parking spaces are
64 available for the ADU in their driveway area. No parking is on Pond View Road.
65

66 **19.01.10.07 Exterior construction and material shall be uniform with the single dwelling.** The
67 applicant stated the ADU is within the single-dwelling home. It is a re-purposed existing basement
68 area.
69

70 **19.01.10.08 Either the accessory dwelling unit or the principal dwelling unit shall be the**
71 **principal residence and legal domicile of the owner of the property.** The applicant stated the
72 principal dwelling is the principal residence and legal domicile of the owner of the property.
73

74 Chair Dearborn opened the public hearing to approving abutters. No approving abutters were
75 present.
76

77 Chair Dearborn opened the public hearing to disapproving abutters.
78

79 Steve Najjar of 138 Pond View Road is a direct abutter to the Wilsons'. Mr. Najjar came to discuss
80 concerns with the septic loading as the septic is from 1985 for a two-bedroom home. The house is
81 zoned in the shoreland protection zone. Mr. Najjar said the RSA that deals with shoreland
82 protection and the zoning article 19.1.10.4 talks about having septic system design capacity
83 approved by NHDES, there has not been a shoreland application for expansion of use of the septic
84 system as required and the Board can see that in the attached memo from NHDES. Mr. Najjar
85 asked the ZBA to look at the shoreland issue. Chair Dearborn said that would be a decision of the
86 Building Inspector and that Mr. Najjar should bring it to the Building Inspector's attention. Mr.
87 Najjar asked that the ZBA consider a contingent approval because it is within zoning.
88

89 **Chair Dearborn read the following letter from a disapproving abutter:**

90 "I am writing this as my feedback on the issue of a potential "ADU" being constructed at 126
91 Pondview Road. When I received your certified letter, I had planned on attending the original
92 hearing, but since have returned to Georgia for the winter, I am asking that this response be read
93 into the record in my absence. I have several concerns about the proposed modification; they
94 mostly surround the issues of sanitary septic systems, increased traffic on an already overused
95 private road, and the fundamental concept of short-term rentals, but I am primarily concerned with
96 the issue of deed restrictions. As I pointed out in my earlier emails, every home on the eastern
97 shore of Mt. William Pond that was developed by Mt. William, Inc. is subject to a series of deed

98 restrictions. Among these is a covenant stating that no multiple dwelling units, nor more than one
99 dwelling unit, or commercial structures shall be constructed on the premises. I have enclosed here
100 that wording within the original deed to the subject property from Mt. William, Inc. to Dr. Snay in
101 1974. The Wilsons' deed (also enclosed) references these restrictions. I am not sure who is
102 responsible for enforcing these restrictions, but it seems sensible to me that any town board being
103 made aware of them should be interested in protecting the rights of abutters who have raised the
104 issue. I do not want to open old wounds, but these restrictions have been violated in the past, most
105 recently by the construction of a duplex home at the base of the private section of Pondview Road.
106 I hope that my question is not merely rhetorical when I ask if the town boards and committees
107 ignore these deed restrictions, exactly what good are they to the landowners who rely upon them
108 to preserve their investments? Thank you for your consideration, Naomi, and everything else that
109 you do in the interest of Weare's homeowners. Regards, Rich Howson 114 Pondview Road."

110
111 Chair Dearborn said that the requests made through deeds are civil matters and not between the
112 town of Weare and the individuals.

113
114 Rene Montplaisir of 116 Pondview Road stated that several people have been using the house as
115 an Airbnb this summer and there were a lot of people there with large groups and they were not
116 family. He said they have someone living there now renting the basement area and they have also
117 found out recently that they were given acceptance for a new business they already have which
118 should have been illegal, but the Selectmen never chose to go after them because it has been there
119 long enough. Mr. Montplaisir said he does not trust the Wilsons.'

120
121 Mrs. Wilson said that it is important to indicate that in goodwill they have been good residents in
122 the Town of Weare and a lot of what the board is hearing tonight is insulting. Mrs. Wilson said
123 the septic was approved in 1986 for a three-bedroom. The purpose right now is as they are aging
124 as they stated in the document to have caretaking and is not for an Airbnb or a VRBO. Mrs. Wilson
125 said that they were told that is not something that can be done in their existing unit and therefore
126 once they were informed by the town they stopped immediately. Mrs. Wilson said that she wants
127 the ZBA to be aware that they are having their integrity challenged.

128
129 **Chair Dearborn opened the public hearing to the public at large.**

130
131 Ellen Dokton of 9 Pondsides, said that she has gotten to know the Wilsons' and they are trying to
132 make their lives work well in our town. There is a lot of history that happened in the past that needs
133 to be resolved.

134
135 **Chair Dearborn closed the public hearing at 8:05 pm.**

136
137 **Morette motioned to accept case # 16-2023. Seconded by Wright.**

138
139 Chair Dearborn read zoning article 19.1.10.4 which states septic system design capacity shall be
140 approved by the NH Department of Environmental Services to qualify for special exception
141 proposed use. Per the NH DES regulation Env-Wq 1004.03 by RSA 485: B:9, V the owner shall
142 work with the permitting designer to determine if the system is sized to accommodate the proposed
143 use. Chair Dearborn would put a condition that the Town of Weare's Building Inspector makes
144 sure the septic system complies. Chair Dearborn said that based on everything they have received
145 they are compliant except for the septic system needing to be verified or corrected if needed to be
146 corrected.

147
148 **Motion passed 4-0-0.**

Case # 19-2023 (Continued) Katie & David Canney (Owner & Applicant); 1032 River Road, Tax Map 406-047-002; Residential Zone- Special Exception, Article 19, Section 19.1.10. The applicants are requesting a special exception for an ADU (Accessory Dwelling Unit)- This application was withdrawn.

Case #21-2023: Tony Tavares (Applicant & Owner); 98 Wildwood Road, Tax Map 404, Lots 24 & 25; Residential Zone- Administrative Appeal from Building Inspector decision. The applicant is claiming that an error has been made by the Building Inspector and that there is a misunderstanding about the use of the proposed cabins.

Vice Chair Meyer motioned to accept case #21-2023. Seconded by Wright.

Chair Dearborn said that TA Bolton provided two letters from Interim Building Inspector Jack Shepard. The first letter is dated 6/13/2023 and the second was dated 7/20/2023. The first letter stated that Interim Building Inspector Shepard inspected the cabins located at 97 and 99 Wildwood Road and determined the cabins do not meet the building code for inhabitable space at this time. The building inspector listed the following requirements to allow for the cabins to be habitable:

1. Each cabin must be a minimum of 400 square feet
2. Each cabin must have a second means of egress
3. Each cabin must have a water supply
4. Each cabin must have a septic approval from NH DES
5. Each cabin shall be on 12-inch sona tubes

Chair Dearborn read the letter from 7/20/23 into the record from Interim Building Inspector Shepard. The letter reads as follows; According to the application that was given to the ZBA for approval was a family cabin. The structure was built and set on sano tubes, as a should would be constructed. These two units are log sheds uninhabitable for living. They are just sheds and according to several shed builders that is all they are and cannot be used for habitable overnight sleeping or cooking. This confined space is a life safety hazard.

The building inspector cited Section R202 Definitions of habitable space and shed.

Motion passed 4-0-0.

Chair Dearborn asked Mr. Travares what his position was on the Administrative Appeal. Mr. Travares stated that the Building Inspector got to his property and asked what the cabins were and wanted to know things beyond his business. Chair Dearborn told Mr. Travares that they needed to know what they were going to be using the cabins for. Mr. Travares said that he is going to use the cabins for family gatherings. Chair Dearborn said that Mr. Travares came for a previous variance for building on a private road and the ZBA granted that request. The building inspector gave Mr. Travares the specifications on how to build the cabins in order to make them habitable. Mr. Travares asked where he was getting the codes from because the codes he provided him were for a residential house and these are camps. Chair Dearborn said that the building inspector is stating that whether it is a camp or not in order for the cabins to be habitable they shall meet the requirements he has stated. Mr. Travares said he called the Town and spoke with Chip about putting up a hunting cabin and he was told he could put one up because no one would see it and he wasn't told he needed a building permit. Chair Dearborn said there is nothing in writing from Chip on the subject. Mr. Travares is just asking to use the camp. Chair Dearborn said the building inspector gave Mr. Travares the requirements to make the cabin habitable. The reason for an administrative appeal is for the applicant to come in and explain why it is unreasonable. Mr. Travares said it is unreasonable because they are made in NH and there are others made in the state and used. Mr. Travares said that the building inspector was not being fair because he thought Mr. Travares was doing something. Chair Dearborn asked Mr. Travares had anything to submit as evidence in writing. Mr. Travares said no, but everything started with Chip

because he told him that because Mr. Travares lives on a dead-end road no one will see it, Mr. Travares said that he was Chip what if they do and he responded by saying tell them you do not know. Mr. Travares said he asking the town to work with him on this because the building inspector is asking him to turn a cabin into a home and that is not what he wants to do. Chair Dearborn said that the Zoning Board permitted him to get the building permit after the fact the cabin was built. Chair Dearborn stated that they are here tonight because the initial appeal from the building inspector is to the zoning board and if he does not get the justice, he deserves then he can go to superior court. Mr. Travares said that the building inspector should be more lenient because it is not like he is a contractor. Vice Chair Meyer said he is not going to second guess the building inspector because he is not qualified to do so, but if Mr. Travares can provide evidence that states the requirements given are not in line with the building code, then he would be more than happy to hear that. Mr. Travares said that he asked the building to show him where the requirements are and he has never shown him and that the building inspector just makes them up. Morette said that he agrees with Meyer that they need more evidence and what the use of the cabin is.

Chair Dearborn opened the public hearing.

Anthony Travares Jr, the son of Mr. Travares said that he does not understand how it needs to meet the 400 square foot requirement to be a dwelling. His definition of a dwelling is a permanent residence. It is a camp and it is not going to be lived in all the time. There are camps all over the state. Mr. Travares said there were two different building inspectors during this time and was confused about how they could disagree.

Mr. Travares said that this is the fourth building inspector and things are constantly changing.

TA Bolton clarified that at the Town Meeting, the Town adopted the residential building code and that is where the building inspector is getting the information from.

Mr. Travares Jr. asked if you need a CO to go to a camp. Chair Dearborn said he does not know he is not a building inspector. They are here tonight to hear a simple case on an administrative appeal.

Chair Dearborn closed the public hearing at 8:38 pm.

Vice Chair Meyer motioned to accept case #21-2023. Seconded by Morette.

Vice Chair Meyer said there is a lack of evidence from the applicants. Chair Dearborn said the case started backward without a building permit or a 1711 which allows for building on a private road. Vice Chair Meyer agreed there is a lack of evidence, they have a building inspector listing off requirements which he has to assume are correct because they are not in his scope of work, and at this point, he cannot. Morette stated that there was a building code adopted at the town meeting that TA Bolton pointed out. Wright said at this point the ZBA has not presented anything contrary to that.

Motion 0-4-0. Administrative Appeal is denied.

Case #22-2023: Anita Kuniegel (Owner & Applicant); 27 Sawyer Road, Tax Map 407-179; Residential Zone- Special Exception, Article 19, Section 19.01.10. The applicants are requesting a special exception for an ADU (Accessory Dwelling Unit)

Morette motioned to accept an application for case #22-2023. Seconded by Wright. Motion 4-0-0.

- 1. The specific site is an appropriate location for such use or uses in terms of overall community development:** The applicant responded on the application by saying yes it is.
- 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 applicant's response to the application was it will not.

- 254 **3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or residents:**
255 The applicant's response on the application was, will not.
256 **4. The proposed use will not cause an undue burden on the Town through the provision of**
257 **basic services:** The applicant's response on the application was, it will not.
258 **5. Adequate off-street parking will be provided if determined necessary by the Zoning**
259 **Board:** The applicant's response on the application was it has. Chair Dearborn asked how many
260 parking spots the applicant currently uses. She stated she uses two. Chair Dearborn asked how
261 many would be used for the ADU. She said one or two spots.
262 **6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may**
263 **be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring**
264 **shrubs and trees:** The applicant's response on the application was not needed.
265 **7. The Zoning Board of Adjustment, in granting any special exception, may include**
266 **restrictions or conditions to ensure compliance with this section:**

267
268 **Chair Dearborn opened the public hearing.**

269 **Chair Dearborn closed the public hearing at 8:49 pm due to no public comment.**
270

271 **Vice Chair Meyer moved to approve Case # 22-2023. Seconded by Wright.**
272

273 Vice Chair Meyer asked about the square footage of the ADU. The applicant said it will be 14x32 which
274 is under 750 sq. ft. It will be one bedroom. And there will be an interior connecting door and there is a
275 slider door as an exterior exit. Chair Dearborn said they will put a condition that the septic be compliant
276 with the NHDES septic requirements. Vice Chair Meyer asked how many bedrooms are currently in the
277 home. The applicant stated there are three. Vice Chair Meyer verified that the construction materials will
278 be uniform with the single-family dwelling. The applicant stated that was correct. Vice Chair Meyer
279 verified that the principal dwelling unit was the principal residence of the legal domicile of the property
280 owner. The applicant stated that was correct.
281

282 **Motion passed 4-0-0.**
283

284 **Minutes from 10-10-2023: Vice Chair Meyer motioned to approve the October 10th minutes as**
285 **amended. Seconded by Morette. Motion passed 4-0-0.**
286
287

288 **Motion to adjourn made by Morette at 8:58 p.m. was Seconded by Vice Chair Meyer. Vote passes 4-**
289 **0-0**
290

291 **ADJOURNMENT**

292 A True Record.

293 *Kearsten O'Brien*

294 Kearsten O'Brien, Minute Taker