

FINAL



WEARE ZONING BOARD OF ADJUSTMENTS
MEETING MINUTES
October 10, 2023

PRESENT: Chairman Jack Dearborn; Vice Chairman Michael Meyer; Bobbi-Jo Plamondon, Member; Marc Morette, Member; Malcom Wright, Member.

Town Administrator: Naomi L. Bolton

GUESTS: David Nelson; Jacques Belanger, JE Belanger Land Surveying; Tim Matheson; David Nelson, Jr; Nancy Christian; Paul St. Onge; Henry Huntington; Daphne Paige; Eric Buck, Terrain Planning & Design; Stephen Chipp; Kathy Lorenz.

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

I. INTRODUCTION/ADMINISTRATIVE ITEMS: Chair Dearborn explained the process of how the meeting would be conducted. He asked all members present to introduce themselves.

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).

The applicants were not available tonight, so they submitted a request for continuance to November 7, 2023. **Vice Chairman Meyer moved; Bobbi-Jo Plamondon seconded to continue this case until November 7, 2023. Vote passed: 5-0-0**

Case #17-2023: DJ Nelson Family Trust (Owner & Applicant); JE Belanger Land Surveying, PLLC (representative); Emerson Turnpike (private way); Tax Map 412-115; Rural Agricultural Zone – Variance, Article 17, Section 17.1.1 AND Article 18, Section 18.2.1. The applicants are proposing the construction of a residential structure off Emerson Turnpike, a Private Road.

The Zoning Board reviewed all documentation submitted with the application for completeness. **Marc Morette moved; Vice Chairman Meyer seconded to accept Case #17-2023 as complete. The vote passed 5-0-0.**

Jacques Belanger gave the Board an overview of the property. They had previously applied for a variance with a much different driveway access. That application was withdrawn by the applicant. This new plan is for a variance for driveway access off Emerson Turnpike, which is off of River Road. This new access is located approximately 220' from River Road. Chairman Dearborn asked if there was to be any further subdivision of this lot. Mr. Belanger replied that it is an existing lot of record or approximately 25 acres and it will be for one house lot for Mr. Nelson's son.

Mr. Belanger then was asked to address the five points of hardship. The replies are as follows:

1. **The Variance will not be contrary to the public interest because:** The granting of this requested variance will not alter the essential character of the neighborhood. Being permitted to construct 1 single family residence on the vacant lot will be consistent with abutting homes and will fit in with the nature of other surrounding properties.
2. **Describe how the spirit of the ordinance is observed:** The spirit of the ordinance is being observed because the proposed use will not conflict with the general purpose of the ordinance. The subject parcel is a lot of record and will remain as one lot. No further development is proposed which will maintain the existing character of the neighborhood.
3. **Describe how substantial justice is done:** The granting of this variance request will allow the owners to fully enjoy their property and the benefit of having a single-family residence. The proposed residence will increase the value of the neighborhood.
4. **Describe how the values of the surrounding properties are not diminished:** Granting of this variance request will have little effect on the surrounding property values. It will actually be consistent with other abutting properties on Emerson Turnpike. The proposed single-family residence will be constructed that will not be intrusive or out of character with the surrounding homes.
5. **Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:**
 - a. **Describe the special conditions of the property that distinguish it from other properties in the area:** The property is an existing lot on a Private Road. The hardship is access only. All setbacks can be met and the use is typical to surrounding properties.
 - 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 Town of Weare has given building permits on Private Roads in the past. This variance is not an unusual request.
 - 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):** As mentioned in 5, this lot is lacking frontage on a Class V Road. The lot meets the requirements for a standard lot. In the past, the town has granted building permits on Private and Class VI Roads.

Being there were no further questions from the Board, Chairman Dearborn asked for any:

Approving Abutters: Nancy Christian stated she is not sure if she is approving or disapproving, she just wanted to know what type of house is being built. Chairman Dearborn stated that is not up to this board, tonight's only action is for access to the lot.

Tim Matheson stated that he likes the concept and would like to see them enjoy the use of the lot and he approves of it.

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Chairman Dearborn stated that for the record he will go back around a second time.

Rebuttal of Applicant: Mr. Belanger stated that they will be meeting all the setbacks required and he has a note on the plan regarding Article 36 for driveway standards.

Approving Abutters: None

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Being there were no further questions or comments, Chairman Dearborn closed the public hearing at 7:48 PM.

Marc Morette made a motion to accept point one; seconded by Malcolm Wright. Discussion:

Vice Chairman Meyer stated that he has been up there and the real concerns were beyond this point and he felt the applicant did a great job with the new location Chair Dearborn said the following conditions are minimum conditions and requirements for a variance approval of a Class VI Road. The conditions read as follows:

- 1.) The applicant shall be required to post the necessary sign(s) at the transition from a Class VI road in accordance with the Town of Weare sign policy and be consistent with NH RSA 674:41,1,(d) – Private Road.
- 2.) The applicant shall be required to complete a Town of Weare Liability disclaimer and file the disclaimer with the Hillsborough County Registry of deeds, and be consistent with NH RSA 674:41,1(d) – Private Road.
- 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 the Town of Weare Zoning Ordinance, Article 36. The Town of Weare's Public Works Director shall be the authority to interpret the practical implementation of this condition.
- 4.) The applicant shall be required to take the necessary actions to comply with E911 signage requirements for proper residence location identification to support emergency vehicles for life and safety responses.

Chair Dearborn said there is no public interest in the property. **Motion passed 5-0-0.**

Vice Chairman Meyer made a motion to accept point two; seconded by Wright. Discussion:

Vice Chairman Meyer stated that it is a rural agricultural lot and putting a home on the lot is a reasonable use. Chairman Dearborn added that the lot size is well beyond 5 acres. **Motion passed 5-0-0.**

Malcolm Wright made a motion to accept point three; seconded by Bobbi-Jo Plamondon.

Discussion: Chairman Dearborn stated that substantial justice is done for the applicant, but a reasonable use is for granting this for a home. Marc Morette stated that a lot of effort was put into this plan to make the driveway in a better location. **Motion passed 5-0-0.**

Marc Morette made a motion to accept print four; seconded by Bobbi-Jo Plamondon. Discussion:

Chairman Dearborn stated that this is being compliant in the residential zone. It has no negative impact to surrounding properties. **Motion passed 5-0-0.**

Malcolm Wright made a motion to accept point five in its entirety with the above conditions stated in point one by Chairman Dearborn; seconded by Vice Chairman Meyer. Discussion: Chairman Dearborn stated that the unnecessary hardship is the issue, if this improves access for life and safety. It would be an unnecessary hardship to the applicant if not able to build a home. **Motion passed 5-0-0.**

Case #18-2023: Henry L. Huntington & Daphne D. Paige (Owner & Applicant); Terrain Planning & Design, LLC (representative); 52 Branch Road; Tax Map 106-050; Residential Zone – Variance, Article

18, Section 18.2.3. The applicants are requesting a variance for the expansion of an existing non-conforming structure within the existing side yard setback.

The Zoning Board reviewed all documentation submitted with the application for completeness. **Vice Chairman Meyer moved; Malcolm Wright seconded to accept Case #18-2023 as complete. The vote passed 5-0-0.**

Eric Buck from Terrain Planning & Designing stated that they are here for a proposed 16' wide addition to the existing cottage to the land side, not water side. The existing cottage lies within the 25' northern side setback. This addition will be located 9' 2" from the northern property line, where 25' is required. Mr. Buck then was asked to go through the five points of hardship, which are as follows:

- 1. The Variance will not be contrary to the public interest because:** A variance request is contrary to the public interest when it violates the ordinance's basic objectives. In order to determine whether a variance would violate the basic zoning objectives, it's beneficial to examine whether granting the variance would alter the essential character of the area and/or threaten the general public's health, safety, and/or welfare. The Applicant respectfully submits that granting the requested variance will not change the essential character of the area and will not be contrary to the public interest. The public interest is to prevent crowding of abutting properties and to preserve the quality of the lake. The proposed addition will be constructed on the landward side of the existing house and thus further from Lake Horace. The construction and the proposed site improvements have been carefully planned in such a way as to minimize any impacts on the environment that would adversely affect the public interest. There is no reason to expect that locating the proposed house addition as shown on the enclosed plans will negatively impact the public and/or adversely alter the character of the neighborhood.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The Applicant respectfully submits that if the variance is granted, the spirit of the ordinance would be observed. The performance standards of the ordinance state that "*Any use of land shall not be unreasonably obnoxious, or excessively offensive, to an extent that be injurious to the public health and safety or the reasonable expectation of comfort, peace and quiet enjoyment of the community or neighborhood...*". The proposed addition would be on an existing non-conforming structure and will be located on the landward side of the house from the reference line of Lake Horace. It will not change the use of the property or negatively affect the public health and safety. Other structures in the area are constructed within the building setbacks so it will be consistent with the aesthetic of the surrounding area. The project also proposes patios using permeable methods which will increase stormwater infiltration. These improvements will increase stormwater infiltration and reduce runoff directly into the lake. The construction process will follow appropriate guidelines and best practices and there is no reason to believe that the proposed addition will negatively impact the quality of the lake, nor do we believe that it will result in any changes to the property that will impact the water quality, wildlife, water flow, or the existing natural beauty.
- 3. Granting the variance would do substantial justice because:** Injustice occurs when any loss to the individual is not outweighed by a gain to the general public. The public has little, if anything, to gain by a denial of this request, whereas the loss to the Applicant would be great. The proposed project will improve, instead of harm the property. The Applicant proposes to install a 16' wide addition to their existing non-conforming house. Denial of the requested variance will prevent the Applicant from making the most effective use of their property. Constructing a more efficient and comfortable addition to an existing house along with the improved stormwater measures will allow the Applicant to get the most use and enjoyment out of their property while benefiting the surrounding character of the neighborhood and quality of

the lake. Further, the location of the existing house and the small, non-conforming lot limits the property such that encroachment into the building setbacks cannot be successfully avoided. Once the required setbacks under the Residential District are applied to the existing small lot, it prevents any reasonable building improvements on the property within the confines of the Ordinance. By granting the variance, substantial justice will be done and the Applicant will be able to improve the function of their property in a manner that is consistent with the Ordinance and that minimizes impact to the setbacks.

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** The Applicant respectfully submits that the value of surrounding properties will not be negatively impacted by the proposed improvements to the property. Granting this variance will allow the property to be utilized in a manner supported by the Residential District without disturbing the neighborhood. The existing house is non-conforming, and any reasonable expansion would have to be done within the existing setback. The small, proposed house addition will be within an existing cleared area. Minimal vegetation between the proposed house addition and road will be removed, thus preserving the natural buffer and visual screen from the road. The proposed house addition and associated landscaping could potentially be a benefit to surrounding property values. There is no reason to believe that permitting the Applicant to build the house addition as proposed will have any negative impact upon surrounding property values.

5. **Unnecessary Hardship:**

a. **Owing to special conditions of the property that distinguishes it from other properties in the area:** The existing lot is long and narrow and non-conforming with current regulations. The existing structure is within the side yard setback and is in close proximity to Lake Horace, limiting the options for expansion.

Denial of a variance would result in unnecessary hardship because:

i. **No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:** The general purpose of the ordinance is to protect the public health, safety, and general welfare of the residents of the Town of Weare. No fair and substantial relationship exists between the general purpose of the proposed project and a denial of the applicant's plan. Denial of the requested variance will do nothing to contribute to the public's health or safety. The proposed project would improve the property with an improved structure frontage that is consistent with the general character and aesthetic of the surrounding area. The plan was designed in such a way as to make the most efficient use of the property while protecting the environment, abiding by the Ordinance, and minimizing impact to Lake Horace. The Applicant's plans will install patios and walkways with a permeable surface. The Applicant also intends to install new, native plant species. By taking these steps, the Applicant respectfully submits that the general purposes of the Ordinance will actually be served by the granting of the variance. By granting the requested variance, the Applicant will be able to use the lot efficiently and economically, while minimizing negative impacts to the surrounding area.

ii. **The proposed use is a reasonable one because:** The proposed use is a reasonable one. The lot is zoned Residential (R), as are the surrounding lots. The use will remain single family residential. The overall improvements to the site will make the structure more aesthetically pleasing and functional. The location of the existing house and the small, non-conforming lot limits the property such that encroachment into the building setbacks cannot be successfully avoided. Once the required setbacks under the Residential District are applied to the existing small lot, it prevents any reasonable

building improvements on the property within the confines of the Ordinance. The proposed design and location of the house addition is the best location option to abide by the Ordinance and ensure maximum setbacks from the reference line while minimizing encroachments into the property line building setbacks. The proposed plan will allow for an appropriate use of the property without significant adverse impact upon the environment, and, in some areas, improvements to the environment by the improved stormwater management and the addition of native vegetation resulting in an efficient use of the property consistent with the surrounding area.

Being there were no further questions from the Board, Chairman Dearborn asked for any:

Approving Abutters: Paul St. Onge stated that he endorses the application.

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Chairman Dearborn stated that for the record he will go back around a second time.

Rebuttal of Applicant: None

Approving Abutters: None

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Being there were no further questions or comments, Chairman Dearborn closed the public hearing at 8:08 PM.

Vice Chairman Meyer made a motion to accept point one; seconded by Malcolm Wright. Discussion:

Chairman Dearborn stated that he doesn't see it as being contrary to public interest. This lot was created well before zoning. Chairman Dearborn stated that as a condition he would like to see that any portion of the building be no closer than 9' 2" to the north boundary. **Motion passed 5-0-0.**

Malcolm Wright made a motion to accept point two; seconded by Vice Chairman Meyer.

Discussion: Chairman Dearborn stated that the spirit of the ordinance is for orderly development making sure that there are adequate setbacks. This is a lot of record prior to zoning. Vice Chairman Meyer stated that the entire house is already in the setback. **Motion passed 5-0-0.**

Marc Morette made a motion to accept point three; seconded by Malcolm Wright. Discussion:

Chairman Dearborn stated that substantial justice will be done to the applicant and that there is no injustice to the Town. **Motion passed 5-0-0.**

Marc Morette made a motion to accept point four; seconded by Bobbi-Jo Plamondon. Discussion:

Vice Chairman Meyer stated that this will improve the property with all the drainage improvements being done with addition. **Motion passed 5-0-0.**

Marc Morette made a motion to accept point five in its entirety with the above conditions stated in point one by Chairman Dearborn; seconded by Malcolm Wright. Discussion: Chairman Dearborn stated that if this is not granted it will be a hardship to the applicant. This was an existing lot prior to zoning. **Motion passed 5-0-0.**

Case #19-2023: 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).

At this time in the meeting no one was here to present the case. The Board went onto the next case and will come back to this one.

Case #20-2023: Stephen T. Chipp (Applicant); Roberta J. Gullage & Stephen T. Chipp (Owners); 191 John Connor Road; Ta Map 201-014-002; Residential Zone – Special Exception, Article 19, Section 19.1.6. The applicant is requesting a special exception for the removal of earth products off site for the further development to add a detached garage to the property.

The Zoning Board reviewed all documentation submitted with the application for completeness. **Vice Chairman Meyer moved; Bobbi-Jo Plamondon seconded to accept Case #20-2023 as complete. The vote passed 5-0-0.**

Stephen Chipp was present. He started removing the material behind his house to be able to add a detached garage and was unaware that he needed a special exception until Zoning Administrator Tony Sawyer came to see him. He has already removed 1,876 cubic yards off the property, there is approximately 700 cubic yards to remove, to clear an area approximately 90' x 80'; making a total of 2,576 cubic yards total to be removed from the site.

Mr. Chipp was then asked to go through the seven conditions of a special exception, which he did as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: I'm building a garage for personal use on my property within the town required setbacks.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring areas: no
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: no
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: no
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: yes
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence, screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: well landscaped residence upon completion similar to my current property.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to ensure compliance with this section: yes

Being there were no further questions from the Board, Chairman Dearborn asked for any:

Approving Abutters: Kathy Lorenz stated that she approves this.

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Chairman Dearborn stated that for the record he will go back around a second time.

Rebuttal of Applicant: None

Approving Abutters: None

Disapproving Abutters: None

Public at Large: None

Other Boards: None

Being there were no further questions or comments, Chairman Dearborn closed the public hearing at 8:25 PM.

Vice Chairman Meyer asked the purpose of this special exception. Chairman Dearborn stated that it was written to prevent removal of earth products all over town. You can move all the material you want around

on your own land, but when you start hauling it off your property it requires a special exception and if it exceeds 5,000 cubic yards a gravel hearing is needed with the Board of Selectmen.

Malcolm Wright moved to grant the special exception for the removal of a total of 2,576 cubic yards; 1,876 having already left the site with 700 cubic yards more to leave to clear an area of 90' x 80'; Vice Chairman Meyer seconded the motion. Motion passed 5-0-0.

The Board sent back to see if the applicants for #19-2023 have arrived.

Case #19-2023: 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).

Marc Morette moved; Bobbi-Jo Plamondon seconded the motion to continue Case #19-2023 until November 7, 2023. Motion passed 5-0-0

MINUTES:

Marc Morette motioned to accept minutes from September 12, 2023, as written, and Bobbi-Jo Plamondon seconded the motion. All in favor 5-0-0.

Motion to adjourn made by Marc Morette at 8:35 p.m. Seconded by Malcolm Wright. Vote passed 5-0-0

ADJOURNMENT

A True Record.

Naomi L. Bolton

Naomi L. Bolton, Town Administrator