



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 6, 2007
(Approved as written 3/6/07)**

PRESENT: Ian McSweeney, Vice Chairman; Forrest Esenwine; Jack Dearborn;
Elwood Stagakis, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Art Siciliano; Justin Fitzgerald; Ginger Esenwine; Dwight Sperry; Darrell
Ostertag; Joanna Lemire; Chris Pike; Michael Pelletier.

I. INTRODUCTION:

Vice Chairman Ian McSweeney called this meeting to order at 7:43 PM and asked the board members present to introduce themselves. Vice Chairman McSweeney explained to those present the way by which the board conducts business. Vice Chairman McSweeney appointed Elwood Stagakis to sit in place of June Purington for tonight.

II. ADMINISTRATIVE ITEMS:

There were no administrative items for this evening and the board went right to the hearings.

III. PUBLIC HEARINGS:

Case #0407 Justin Fitzgerald (Continued Hearing)
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a deck within the
building setback.
Tax Map 409-146 Chuck Street

Justin Fitzgerald and Art Siciliano were present. Mr. Fitzgerald asked the board to have Elwood Stagakis step down for this hearing as they have had dealings between them. Vice Chairman McSweeney stated that he was going to be stepping down as well because he has had real estate conversations with the applicant. Therefore, this leaves no quorum for this hearing. No motion can be made because there is not a quorum. Vice Chairman McSweeney stated that being there is no quorum, this case and will be automatically continued to March 6, 2007.

Case #0607 Arthur F. Siciliano, Jr. (Owner: John M. & Avril D. Hardy)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home.
Tax Map 202-030 Hejo Road (Private Road)

Art Siciliano explained that the owners would like to build a single family home on this lot. There are three vacant lots in this old subdivision, which was subdivided before zoning. Mr. Siciliano then went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: The proposed home will be compatible to those in the neighborhood. The owners have proposed to upgrade the road which will allow better access to this lot and other lots on the road, there by increasing the value of the lots using the road for access.
2. That the granting of the variance **will not** be contrary to the public interest because: There will be no public funds used for the upgrade or maintenance of the road. It is in the public interest to have safe access to a pre-existing lot of record and other homes that were previously built on this road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: This property is located on a private road and has been a lot of record since 1973. The special condition of the lot being a legal pre-existing building lot, but on a road not approved for building permits under subsequent law, renders it useless to the owners for the proposed use of the property.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The subject lot is a lot on a private road. There is nothing that the owners can do to change the status of the lot. They are willing to upgrade the road for better access; however, they cannot pick up the lot and move it to a better location. They cannot purchase adjacent land that would give them frontage on a Class V road. There is no other alternative for them to pursue.
4. That through the granting of relief by variance substantial justice will be done because: A variance with conditions will allow use of the property as it could have prior to zoning. The road will be upgraded to a standard that will allow better access for Town emergency vehicles, the neighbors and the public.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The area is zoned residential and building a single home on an accessible road is not contrary to the spirit of the ordinance. The spirit of the ordinance is to address safety concerns and

prevent uncontrolled development. Neither of those concerns is relevant to this variance. As the road will be brought up to a standard of safe access and this is a lot in an approved subdivision prior to zoning and cannot be further subdivided.

Forrest Esenwine asked what the current condition of the road is because the last time he was there it was like a tank trap. Mr. Siciliano stated that in the last year all six residents have put over \$7,000 into the road. There is a road agreement, which Mr. Siciliano handed to everyone. Mr. Siciliano gave the board a memo from the Public Works Director which indicates what standard he would be looking for to assure same access for emergency vehicles. Mr. Esenwine wanted to reiterate to Mr. Siciliano that your client is accepting the report from Carl Knapp for the work that needs to be done. Mr. Hardy was present and stated that he understands what is being recommended from Mr. Knapp.

Chris Pike, resident on the road asked if there was any stipulation with having more than 6 people on a private road. Jack Dearborn explained that they have a lot of record but they lack having 200 feet of frontage on a Class V road. The real question is that the applicant did talk to Carl Knapp, Public Works Director who offered a letter of his assessment, which would be appropriate remedy to make it emergency vehicle accessible.

Approving Abutters: Dwight Sperry owns lot 34, which is vacant now. He has been up the road many times and felt it was in exceptional condition. He actually went there tonight before the meeting and doesn't see it being a problem. The maintenance is better now than it has ever been.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Rebuttal: NONE

Vice Chairman McSweeney closed the public hearing at 8:13 PM.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1, Jack Dearborn seconded the motion. Discussion: none. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis). Point #2: Jack Dearborn moved to accept point #2, Forrest Esenwine seconded the motion. Discussion: Mr. Esenwine stated that public interest is the issue here and this doesn't have any effect one way or the other. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis). Point #3aa & #3bb: Jack Dearborn moved to accept both points 3aa and 3bb together, Forrest Esenwine seconded the motion. Discussion: none. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis). Point #4: Jack Dearborn moved to accept point #4, Forrest Esenwine seconded the motion. Discussion: none. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis). Point #5: Jack Dearborn moved to accept point #5; Vice Chairman McSweeney seconded

the motion. Discussion: none. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis).

Jack Dearborn moved to grant the variance on Case #0607 with the following conditions:

1. The access to the lot (Hejo Road) needs to be upgraded under the direction of the Public Works Director to a performance standard as presented to the ZBA that is acceptable to the Road Agent to allow for the safe passage of emergency vehicles from Bog Hill Road to the driveway of the subject property. All upgrade needs to be inspected prior to the issuance of a building permit AND prior to the issuance of an occupancy permit.
2. Town of Weare Liability Disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
3. Private Road sign to be posted at the entrance of the road.

Forrest Esenwine seconded the motion. Vote: 3 in favor (Dearborn, McSweeney and Esenwine) and 1 opposed (Stagakis).

Case #0707 Lisa Wilber & Virginia Whitten
Variance, Article 24, Section 24.6.5
Applicant is requesting permission to construct a leach field no closer than 50' from the wetland.
Tax Map 411-124 & 125 733 South Stark Highway

Art Siciliano and Mike Pelletier were present. Mr. Pelletier handed the board letters of permission from both Ms. Wilber and Ms. Whitten giving authorization for both of them to represent them. The property currently has a failed septic system. The town regulations stated 75 feet from wetlands and they are looking to reduce it to 50 feet from the wetlands, which is the State minimum. Jack Dearborn stated that after looking at this lot it is really a challenged lot.

Mr. Siciliano went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: This will allow the proposed use to occur on the property, thus enhancing the aesthetic and property value of the subject property, and also abutting properties. A new leach field is proposed in the location shown on the plan. This will replace the existing failed leach field. A leach field properly designed, constructed and in working order will not diminish the value of the neighborhood.
2. That the granting of the variance **will not** be contrary to the public interest because: The spirit of the ordinance was written to address a lot with more area. This lot being an older lot of record does not have the room to comply with these newer standards. The public interest can be met by allowing the leach field to be within 75' of the wetland, as this will

- comply with State requirements. Leach fields are allowed to be 50' from group 5 soils (wetland soils) as these are.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The wetland setbacks in the Town of Weare cannot be met on this lot. The existing lot area is not large enough. In turn not allowing enough room for the Town's required setback distance. This existing small lot has a dwelling, proposed addition, a well, an existing failed septic system and a wetland on the property. The special conditions and setbacks from these features make the need for a variance.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The setback requirements coupled with a smaller lot of record does not provide for enough room to comply with Town standards. Seasonal drainage from the culvert under Route 114 runs through the lot preventing the leach field placement on the west side of the lot.
 4. That through the granting of relief by variance substantial justice will be done because: This will allow the business owners to live on site together as a three generation family. It will also allow the elimination of a failed leach field. Justice will be done by allowing the leach field to comply with State standards, 50' minimum to poorly drained soils.
 5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The spirit of the ordinance considered larger lots when planning for setbacks. This being an older lot of record cannot comply with these standards. The spirit of the ordinance will be kept in that by meeting state standards for wetlands setbacks.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public at Large: NONE

Other Boards: NONE

Rebuttal: NONE

Vice Chairman McSweeney closed this public hearing at 8:43 PM.

Forrest Esenwine stated that this lot is really between a rock and a hard place. Jack Dearborn stated that an area variance was a relief valve for this type of situation. Forrest Esenwine stated approval of something like this is for the better of the Town as well because they need to have a usable septic system. Jack Dearborn added that by combining the lots the board is removing an existing lot of record from the Town records. He felt that someone someday would try to come forward and attempt to put a house on that small lot.

CASE DECISIONS: Point #1: Jack Dearborn moved to accept point #1, Forrest Esenwine seconded the motion. Discussion: none. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis). Point #2: Jack Dearborn moved to accept point #2, Forrest Esenwine seconded the motion. Discussion: none. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis). Point #3aa & #3bb: Jack Dearborn moved to accept point 3aa and 3bb together, Forrest Esenwine seconded the motion. Discussion: none. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis). Point #4: Forrest Esenwine moved to accept point #4, Jack Dearborn seconded the motion. Discussion: none. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis). Point #5: Jack Dearborn moved to accept point #5, Forrest Esenwine seconded the motion. Discussion: none. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis).

Jack Dearborn moved to grant the variance on Case #0707 with the following conditions:

1. Lots 124 and 125 must be combined together
2. the leach field area is to be no closer than 50' from the wetland

Forrest Esenwine seconded the motion. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis)

IV: OTHER BUSINESS:

JANUARY 2, 2007 MINUTES: Forrest Esenwine moved to accept the January 2, 2007 minutes as amended, Elwood Stagakis seconded the motion. Vote: 4 in favor (Dearborn, McSweeney, Esenwine and Stagakis).

LETTER FROM HOWARD KREIDER: Naomi informed the board that on January 30, 2007 a letter was received from Howard Kreider. The reason for bringing it to the board's attention was for clarification that this was not a request for rehearing. There was nothing on the letter indicating it was a request. The board read the letter and informed Naomi that we acknowledge receipt of the letter and with that possibly send him a copy of the minutes. The letter as far as the board was concerned was not a request for rehearing.

V. ADJOURNMENT:

As there was no further business to come before the board, Jack Dearborn moved to adjourn the meeting at 9:00 PM, Forrest Esenwine seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator