



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
APRIL 3, 2007
(Approved as amended 5/1/07)**

PRESENT: David Ruoff, Chairman; Ian McSweeney, Vice Chairman; Forrest Esenwine; June Purington; Elwood Stagakis, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Scott Hogan, Attorney; Art Siciliano, LLS; Justin Fitzgerald; Ginger Esenwine; Roger & Lynn Boisvert; Christopher Lombardi & Beth Ann Jones; Paul Sullivan, Quadstar Properties, LLC

I. INTRODUCTION:

Chairman David Ruoff called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Ruoff explained to those present the way by which the board conducts business. Chairman Ruoff further explained that the board currently has five members present, but for the last two cases of the evening two members will be stepping down, leaving a board of three. Chairman Ruoff pointed out that would mean that to be successful on approval all three present must agree. Chairman Ruoff asked Attorney Hogan what his client what they would like to do. Attorney Hogan asked if he could have a few moments to discuss this with his client and will let the board know. Chairman Ruoff appointed Elwood Stagakis to sit as a voting member for this evening.

II. ADMINISTRATIVE ITEMS:

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

III. PUBLIC HEARINGS:

Case #0907 Roger & Lynn Boisvert
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to construct a single family home.
Tax Map 407-178 Sawyer Road (Class VI)

Roger and Lynn Boisvert were present. Mr. Boisvert explained that he and his wife are looking to build a home on Sawyer Road, which is a Class VI road for their own use. They currently live in Town and would like to build a new home

in Town on this lot. Mr. Boisvert went through the five points of hardship as follows:

1. There will not be a diminution of value of surrounding properties as a result of the granting of this variance because: construction of a new single family home will enhance values on existing properties in the neighborhood. It wouldn't diminish what is currently there.
2. The granting of a variance will not be contrary to the public interest because: construction of a new single family home will conform to existing homes located in the neighborhood.

At this point, Chairman Ruoff asked the applicant to make a choice of area or use, because both sections were filled out to err on the side of caution. Mrs. Boisvert stated that they would be seeking an area variance.

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 property is located on a private road and would need a variance granted in order to attain a building permit to build our home.
 - 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 residentially zoned property that we own exists on a private road which, alone, is beyond our capacity to change from being a private road to a public road.
4. That through the granting of relief by variance substantial justice will be done because: we would be granted a building permit to build our new home.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The home we plan to build is located on a lot in an existing residential neighborhood.

Approving Abutters: Chris Lombardi, 27 Sawyer Road, stated that he is in favor of their building a house. .

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Chairman Ruoff closed the public hearing at 8:06 PM

BOARD DISCUSSION: Forrest Esenwine stated that he believed the ordinance was instituted for a reason and if we are going to ignore the ordinance each time, the board is not acting properly. Elwood Stagakis stated that he feels it is directly in opposition of the ordinance. Chairman Ruoff stated that the board has seen a

lot of requests for this type of variance. The board has denied some requests but they also have approved some. He stated that when he makes his considerations he has to see if it is a public safety issue or not, is the road overtaxed, etc. June Purington stated that the original owner has hardship, but buying something that you know needed a variance is not a hardship.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1, Ian McSweeney seconded the motion. Vote: 3 in favor (Purington, Ruoff, and Esenwine) and 2 opposed (McSweeney, Stagakis). Point #2: Ian McSweeney moved to accept point #2, June Purington seconded the motion. Discussion: Forrest Esenwine stated that the public interest is for the people in the area and not the overall picture of the Town. Vote: 0 in favor and 5 opposed (Purington, McSweeney, Ruoff, Esenwine, and Stagakis). Point #3aa: Forrest Esenwine moved to accept point #3aa, June Purington seconded the motion. Discussion: Chairman Ruoff stated that he felt that he needs a better sense of Class VI versus private roads. Vote: 0 in favor and 5 opposed (Purington, McSweeney, Ruoff, Esenwine, and Stagakis). Point #3bb: June Purington moved to accept point #3bb, Forrest Esenwine seconded the motion. Vote: 0 in favor and 5 opposed (Purington, McSweeney, Ruoff, Esenwine, and Stagakis). Point #4: June Purington moved to accept point #4, Forrest Esenwine seconded the motion. Vote: 1 in favor (Ruoff) and 4 opposed (Purington, McSweeney, Esenwine, Stagakis). Point #5: June Purington moved to accept point #5, Ian McSweeney seconded the motion. Discussion: Forrest Esenwine stated that his comment is only what has been previously discussed about the spirit of the ordinance. Vote: 1 in favor (Ruoff) and 4 opposed (Purington, McSweeney, Esenwine, Stagakis).

Forrest Esenwine moved to grant the variance on Case #0907 as requested, Ian McSweeney seconded the motion. Vote: 0 in favor and 5 opposed (Purington, McSweeney, Ruoff, Esenwine, and Stagakis). All five points of hardship were not met, which is required by State Law in order for a variance to be granted.

At this point in the meeting, Chairman Ruoff asked Attorney Hogan what his decision was regarding the two hearings. Attorney Hogan stated that they would like to go ahead this evening.

Case #1007 Quadstar Properties, LLC
Equitable Waiver of Dimensional Requirement
Applicant is requesting relaxation from the foundation to the wetlands due to an error.
Tax Map 412-186.011 Rolling Hill Drive

Paul Sullivan, Quadstar Properties, LLC was present and explained that how the measurement was done when the foundation hole was being prepared. Their measurement at that time showed the distance from the wetlands at about 51 feet. The footings and foundation were poured, and not until the surveyor did the certified plot plan was the mistake realized. The wetlands flag that was used as a

marker to measure from was not exactly on the edge of the wetlands. The error is 1 foot 3 inches of only a corner of the garage foundation. Mr. Sullivan went through the requirements regarding the equitable waiver as follows:

1. Does the request involve a dimensional requirement, not a use restriction?
(X) yes () no
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the Town

OR

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser error was discovered during preparation of certified foundation plan and how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake during construction of the foundation, measurements were taken from wetland flags, but foundation was turned slightly causing error.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area the house is no closer to any other house in the subdivision and affect of error is negligible.
4. Explain how the cost of correction far outweighs any public benefit to be gained cost of correction would require reconstruction of back corner of foundation at a cost of \$3,000 to \$4,000.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Chairman Ruoff then closed the hearing at 8:35 PM.

BOARD DISCUSSION: Forrest Esenwine agreed that it was certainly an error. June Purington the asked if the board had to vote on each requirement individually or could it be voted on as a whole. Chairman Ruoff stated that it could be taken all together.

CASE DECISION: Forrest Esenwine moved that the equitable waiver of dimensional requirement be granted as requested, June Purington seconded the motion. Vote: 4 in favor (Purington, McSweeney, Ruoff, and Esenwine) and 1 opposed (Stagakis).

Ian McSweeney stated that he was going to be stepping down due to prior business dealings with the applicant. Mr. Fitzgerald stated that he would like for Elwood Stagakis to step down due to the fact it would be a matter of impropriety. Mr. Stagakis agreed that there was issues with Mr. Fitzgerald's father and stated they have been to court over it. Chairman Ruoff stated that he felt that was proof enough for Mr. Stagakis to step down. Mr. Stagakis stepped away from the table and took a seat in the audience.

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, Attorney Scott Hogan and Art Siciliano were present. Mr. Siciliano stated that this is quite a small lot with a house, garage attached, septic and well all on 0.17 acres. The certified plot plan that was provided shows the house 15.1 feet from the rear property line, 15 feet from the south side property line, 30 to 31.5 feet from the front property line and 26.3 feet from the north side property line. The septic is located in the north side, next to the garage. The request is to allow the applicant to put on a 12 x 12 foot deck off the rear of the house, being 3.1 feet from the property line. Mr. Siciliano went over 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 deck will be constructed on the back side of the house. A deck is a normal structure associated with many houses. On most decks you may see a gas grill and patio type furniture. Granting this variance to allow what is normal to the neighborhood will not diminish value to surrounding properties.
2. That the granting of the variance will not be contrary to the public interest because: The use is to construct a deck on the back side of a house which does not effect the public. There is no noise, fumed, odor or vibration associated with this deck that would bother the public.
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 special condition of this property is that the lot is small. The house was designed to fit just inside the building envelope and in order to add a deck a variance is needed.
 - 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: This is a small lot and there is no other place on the lot to construct a deck.

4. That through the granting of relief by variance substantial justice will be done because: A deck is an appropriate feature to add to any house. Justice will be done by allowing the owner a use associated with a normal home.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The ordinance states that a single family residence may be constructed as long as it meets the setbacks. We have designed and constructed the dwelling to fit within the setbacks. The profile of a deck is low to the ground and not contrary to the spirit of the ordinance because the deck is an accessory feature which is normal use for many homes.

Forrest Esenwine stated that he felt this was way out of line, particularly for the size of the lot, the size of the house, etc.

Chairman Ruoff asked if he could look at the building plans. The building plans that were submitted when the building permit was issued are not the same house that was constructed on the lot.

Attorney Scott Hogan stated that the only point he would like to raise is the five criteria for the variance are to be considered and the circumstances may have been a self created hardship, it is relevant for the board to consider but these are the safety valves for these situations.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Chairman Ruoff closed this hearing at 9:10 PM

BOARD DISCUSSION: Chairman Ruoff stated there are many components in his view that go against granting a variance. This is a self created hardship. The size of the house is large for this size lot. Every side is bordering the setback lines, making it as large as possible.

CASE DECISIONS: Point #1: Forrest Esenwine moved to accept point #1, Chairman Ruoff seconded the motion. Vote: 2 in favor (Purington, Esenwine) and 1 opposed (Ruoff). The motion doesn't carry because all three votes need to be in the affirmative. Point #2: June Purington moved to accept point #2, Chairman Ruoff seconded the motion. Vote: 0 in favor and 3 opposed (Purington, Ruoff, and Esenwine. Point #3aa: Forrest Esenwine moved to accept point #3aa, Chairman Ruoff seconded the motion. Vote: 0 in favor and 3 opposed (Purington, Ruoff, and Esenwine). Point #3bb: June Purington moved to accept point #3bb, Forrest Esenwine seconded the motion. Vote: 0 in favor and 3

opposed (Purington, Ruoff, and Esenwine). Point #4: June Purington moved to accept point #4, Chairman Ruoff seconded the motion. Vote: 0 in favor and 3 opposed (Purington, Ruoff, and Esenwine). Point #5: June Purington moved to accept point #5, Chairman Ruoff seconded the motion. Vote: 0 in favor and 3 opposed (Purington, Ruoff, and Esenwine).

Forrest Esenwine moved to grant the variance on Case #0407 as requested, June Purington seconded the motion. Vote: 0 in favor and 3 opposed (Purington, Ruoff, and Esenwine). Chairman Ruoff stated that the variance is denied due to the fact that all five points of hardship must be met in the affirmative as required by State Law.

Case #1107 Justin Fitzgerald
Variance, Article 3, Section 3.5.1
Equitable Waiver of Dimensional Requirement
Applicant is requesting to allow the front steps of the house to be 27.5 feet from the front setback.
Tax Map 409-146 Chuck Street

Justin Fitzgerald, Attorney Scott Hogan and Art Siciliano were present for this hearing. Mr. Siciliano stated that they applied for a variance as well as an equitable waiver of dimensional requirement to make sure that all the avenues were covered. Mr. Siciliano explained that the certified plot plan shows the front of the foundation 30.2 feet from the front property line and they didn't account for the front steps into the house. Chairman Ruoff asked Mr. Siciliano to pick which avenue he would like to pursue first and then if necessary the other option could be taken up. Mr. Siciliano chose to go through the requirements of the equitable waiver first. Mr. Siciliano responded as follows:

1. Does the request involve a dimensional requirement, not a use restriction?
(X) yes () no
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the Town

OR

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser: The foundation was staked, constructed and certified to be within the building setback. The house was completed and at the time of the inspection for the certificate of occupancy the building inspector said the stairs are in the front setback. and how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake the foundation was constructed and certified and at the time we had forgotten the stairway.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area: stairs are a normal site seen on almost every house. Things that are normal won't diminish values. Stairs cause no noise, fumes, odor or vibration, therefore no bother to the public.

4. Explain how the cost of correction far outweighs any public benefit to be gained: The cost to move the house back so the front stairs can be out of the setback is too expensive. The public would gain nothing as the house and stairs would look the same.

Attorney Scott Hogan stated that he wanted to add that this has been a problem back a few years ago and he would like to suggest that the Town implement a certified plot plan at the footings stage not after the foundation.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: Elwood Stagakis stated that this is not Mr. Fitzgerald's first house and he would classify the applicant as a habitual offender.

Other Boards: NONE

Chairman Ruoff closed this hearing at 9:30 PM

BOARD DISCUSSION: Chairman Ruoff stated that this is a very much needed part of the house, but he feels it is necessary for the egress and ingress, a safety measure. Forrest Esenwine stated that this goes back to his original statement, by trying to squeeze something this size on a small lot. He felt this encroachment doesn't go to the extreme as the previous application. He doesn't believe a mistake was made, but he agrees the encroachment is not that great and it probably would be justifiable.

CASE DECISION: Forrest Esenwine moved to grant the equitable waiver of dimensional requirement for Case #1107 regarding the front access steps, June Purington seconded the motion. Vote: 3 in favor (Purington, Ruoff, and Esenwine) and 0 opposed. Therefore the request is granted.

Mr. Siciliano stated that being the equitable waiver passed there is no need to proceed with the variance application and they would like to withdraw that.

Ian McSweeney and Elwood Stagakis returned to the table for the remainder of the evening.

IV: OTHER BUSINESS:

MARCH 6, 2007 MINUTES: Forrest Esenwine moved to accept the March 6, 2007 minutes as amended, Elwood Stagakis seconded the motion. Vote: 5 in favor (Purington, McSweeney, Ruoff, Esenwine, and Stagakis) and 0 opposed.

Elwood Stagakis stated that he realizes that each case is different, but a lot of contractors are here for several issues. There are a lot of contractors that are habitual offenders that keep coming back asking for relief.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 9:45 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator