



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
SEPTEMBER 11, 2007
(Approved as amended 10/2/07)**

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

GUESTS: Thomas Scaramella; Stacy Scaramella; Mary Jo Campana; Frank Campana; Chris Rand; Karen McGinley; Bill Stafford; Ginger Esenwine; Ronald Elliott; Art Siciliano; Justin Fitzgerald; Ms. Rubin; Michael Colburn; Hugh Durack; Tom Fenner.

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.

II. ADMINISTRATIVE ITEMS:

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

III. PUBLIC HEARINGS:

Case #2007 Justin Fitzgerald (Continued Hearing)
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a deck within the rear setback.
Tax Map 409-146 Chuck Street

Justin Fitzgerald and Art Siciliano were present. Ian McSweeney stated that he has recused himself in the past due to work relations. He is no longer working in that capacity and asked Mr. Siciliano if he or his client would like him to step down for this hearing. Mr. Siciliano and Mr. Fitzgerald both agreed that Mr. McSweeney didn't need to step down. Mr. Siciliano explained that they are looking for a variance from the rear setback to allow an 8' x 12' deck to be constructed 7 feet from the property line where 15 feet is required. The house that is constructed on the lot is 26' wide. The reason the building is that wide is due to the building requirements in order to have stairs installed to get to the second

floor the house needs a minimum of that width. 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: 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, fumes, 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 house.
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 a normal use for many homes. Mr. Siciliano added that this lot was created prior to zoning and the setbacks for a non-conforming lot are 30 feet from the front setback and 15 feet from the side and rear.

Chairman Ruoff stated that the first application for this lot sought two variances, one for the front steps and one for the back deck. The front steps were granted and the deck was denied. The request for rehearing was filed and denied.

Forrest Esenwine stated that what is being presented tonight is no different except for the size. Mr. Esenwine continued and added that common sense would dictate that on a small lot that it would only support a small style house and have some extra amenities. The house looks like it was designed to sit on the setback. The four walls sit on the setbacks. Reasonable use of that property has already been

achieved and a deck on that lot is not needed to achieve reasonable use. The feeling he gets is, this was a calculated plan to build up to the setback and come in with this plan for a deck. Mr. Esenwine suggested that they raise the grade level and go in and out that way. What has changed about the findings before that would make this application different.

Approving Abutters: None

Disapproving Abutters: None

Other Boards: None

Public At Large: NONE

Chairman Ruoff closed the public hearing at 7:47 PM.

BOARD DISCUSSION: Ian McSweeney shared the sentiment as Mr. Esenwine. This application is essentially the same application just a smaller deck. Mr. Esenwine added that the sentiment that the hardship goes with the land is being misconstrued here. To have a small lot and put the house precisely on the setbacks, the applicant has created the hardship. A deck is not necessary to fulfill the full use of the property. Mr. Esenwine added that this is the same request that they came in with before except the deck is a little smaller. The answers are all the same, yet nothing has changed except for a few feet less into the setback. The original reasons for denial are still valid for the request as they were the first time around. There is no hardship to the land; whatever hardship they may claim is self-imposed. They knew they would have a problem by building a house right up to the setbacks. They knew there would not be access or egress from the rear without a deck or porch, but rather then build a house to fit the lot, and stay within the requirements, they chose to ignore it, and come in after the fact and claim hardship. This is their problem. They created it knowingly. It is totally improper for this board to grant relief for such actions and be a party to such blatant disregard for our ordinance. They created their own problem. We should not fix it. Malcom Wright stated that he tends to agree with Mr. Esenwine wholeheartedly. He feels this is an attempt of compromise that wasn't present and should have been in the beginning.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1; Ian McSweeney seconded the motion. Discussion: The response to point #1 is identical in the prior application in Case #0407 which was denied. Vote: 0 in favor and 5 opposed (Purinton, Dearborn, McSweeney, Ruoff and Esenwine). Point #2: June Purinton moved to accept point #2; Forrest Esenwine seconded the motion. Discussion: Again, this response is again the same in the prior application that was denied. Vote: 0 in favor and 5 opposed (Purinton, Dearborn, McSweeney, Ruoff and Esenwine). Point #3aa: June Purinton moved to accept point #3aa; Forrest Esenwine seconded the motion. Discussion: none. Vote: 0 in favor and 5 opposed (Purinton, Dearborn, McSweeney, Ruoff and Esenwine). Point #3bb: June Purinton moved to accept point #3bb; Ian McSweeney seconded the motion. Discussion: none. Vote: 0 in favor and 5 opposed (Purinton, Dearborn, McSweeney, Ruoff and Esenwine). Point #4:

June Purington moved to accept point #4; Forrest Esenwine seconded the motion. Discussion: none. Vote: 0 in favor and 5 opposed (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #5: Ian McSweeney moved to accept point #5; June Purington seconded the motion. Discussion: The answer was amended by the last sentence but other than that identical to the previous case #0407. Vote: 0 in favor and 5 opposed (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Forrest Esenwine moved that the variance for Case #2007 be granted; Ian McSweeney seconded the motion. Vote: 0 in favor and 5 opposed (Purington, Dearborn, McSweeney, Ruoff and Esenwine). The reason for the denial was that all five points of hardship were not met, as required by State law.

Case #2107 Granite State Telephone
Administrative Appeal, Article 34, Section 4.1
Applicant is appealing the order from the Code Enforcement Officer to have the sign removed.
Tax Map 411-106 South Stark Highway

Chris Rand and Bill Stafford from Granite State Telephone were present along with Attorney Karen McGinley from Devine, Millimet out of Manchester. Before the hearing got started, Forrest Esenwine asked if this application was for an administrative appeal AND a variance. Ms. McGinley responded that it was for both. Chairman Ruoff pointed out that the notice was only given for the administrative appeal, not both. Chairman Ruoff asked the clients if they wanted to proceed with one, the variance was not properly notice therefore will not be taken up this evening. Mr. Esenwine stated that our rules stated that our application states that only the original forms are to be used and the variance was retyped on a computer. Ms. McGinley talked with her clients and stated they would like to wait until the October meeting. Proper notice would be given and both the applications would be taken up at once.

Case #22007 Ronald Elliott (Owners: John Reade & Sherry McKenzie)
Variance, Article 4, Section 4.1
Applicant is requesting permission to access both lots with a common driveway via a described right of way.
Tax Map 201-113 & 201-113.1 Quaker St & Thorndike Rd

Ron Elliott was present on behalf of John Reade and Sherry McKenzie. They each have a lot with frontage off of Thorndike Road that was subdivided in 1994. They are looking to access both lots off one driveway off of Quaker Street. There is 10.64 feet of frontage on Quaker Street. They want to make the access a common driveway. Jack Dearborn asked if Mr. Elliott has been denied a driveway permit off of Thorndike. Mr. Elliott responded, no. He was trying to take one step at a time. Mr. Dearborn stated that is a bit of a challenge; the right of way is only 10.64 feet wide. The question is does that serve as permissible driveway access to two house lots. Mr. Elliott explained that the access from

Thorndike Road exceeds the approved grade established by the Planning Board for both lots.

Mr. Elliot 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 granting this variance because: The granting of this access shall not have any diminution of value to any surrounding properties as it will be only a driveway to both lots with limited travel, this is not a public access.
2. That the granting of the variance will not be contrary to the public interest because: you probably will not be able to see a house when built on these lots.

Before Mr. Elliott got to point #3, the board determined that the area section should have been filled out and not the use section that was filled out. Chairman Ruoff explained to Mr. Elliott that he has two choices, first was to proceed with the application as filled out and let the board make a ruling or the second was to ask for a continuance to next month to fill out the proper part and the board would hear it next month. Mr. Elliott stated that he would like to continue this hearing.

Forrest Esenwine stated that he has concerns with the right of way because the deeds don't describe any dimensions just allows a right of way.

Chairman Ruoff moved to continue this hearing to October 2nd, Forrest Esenwine seconded the motion, all in favor. Chairman Ruoff closed this hearing at 8:35 PM.

Case #2307 Michael Colburn (Owner: Dan & Chris Holme)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to construct a single family home.
Tax Map 103-016 Cottage Rd & Chester Drive (Private)

Chairman Ruoff stated that 12 years ago he went to law school with Mike's wife. He knows Mr. Colburn but doesn't feel that it would hinder any decision that has to be made. Mr. Colburn and the board agreed.

Michael Colburn stated that he has made an offer to purchase this lot with the condition that he gets permission to build. The camp would be built would be for personal use for he, his wife and their three children. The access he would like to use is Cottage Road and not Chester Drive. Lakeview Drive is the road that comes off of Reservoir Drive and it is also a private road. There are 17 year round homes on Lakeview Drive. It is maintained by Lake Shore Village Resort, which is run by a trust that takes care of the road maintenance. Cottage Road has 28 cabins on it, of which 19 belong to the family business. They don't do any maintenance on Chester Drive.

Jack Dearborn stated that he wanted to see how mature the subdivision was and he pointed out that there are only 2-3 lots that are not built on. This is a very mature subdivision that was created long before zoning.

Mr. Colburn stated that he had Carl Knapp, Public Works Director look at Cottage Road. Mr. Knapp wrote the following memo:

“I have looked at Cottage Road and the project for Art Siciliano. The area in question was found to need some improvements as follows: beyond parking area at the office, the road needs to be widened slightly for a width of twenty (20) feet, as road continues widening will need to continue as well as brush cutting. There will also need to be a turnaround incorporated into the driveway for the lot in question”.

Mr. Colburn 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, thereby increasing the value of the lots using the road for access, if necessary. The road is already upgraded for use of vacation homes (Lakeside Village Resort and private residences) to a point very near this property.
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 1967. The special conditions 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, and 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 can be upgraded to a standard that will allow better access for Town emergency vehicles, the neighbors and the public, if necessary.
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, if necessary, will be brought up to a standard of safe access and this is a lot in a approved subdivision prior to zoning and cannot be further subdivided.

Elwood Stagakis asked for further clarification to the response of number five, particularly the part that states “the spirit of the ordinance is to promote safety and to prevent growth and uncontrolled development”.

Approving Abutters: Tom Fenner, abutter stated that he doesn't have any issue with the proposal. It makes more sense to have the driveway off of Cottage Road given the lay of the land. There are concerns on his side off of Chester Drive. A lot of damage will be done and there is no one there to maintain it. The Colburn's have been maintaining Cottage Road for a long time.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Chairman Ruoff closed this hearing at 8:57 PM.

BOARD DISCUSSION: There was no further discussion needed.

CASE DECISION: Forrest Esenwine moved to accept point #1; June Purington seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed. Point #2: Ian McSweeney moved to accept point #2; Forrest Esenwine seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed. #3aa: June Purington moved to accept point #3aa; Forrest Esenwine seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). #3bb: Chairman Ruoff moved to accept point #3bb; June Purington seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed. Point #4: Ian McSweeney moved to accept point #4; June Purington seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed. Point #5: June Purington moved to accept point #5; Forrest Esenwine seconded the motion. Vote: 5 all in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed. Jack Dearborn moved to grant the variance for Case #2207 with the conditions:

1. The access to the lot (Cottage 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 Public Works Director to allow the safe passage of emergency vehicles from Reservoir Drive 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: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine) and 0 opposed.

IV: OTHER BUSINESS:

AUGUST 2, 2007 LETTER FROM BOS: The Board of Selectmen have appointed Terry Knowles to replace Paul Morin as the Town of Weare's representative to the Southern NH Planning Commission.

OFFICE OF ENERGY AND PLANNING CONFERENCE: The fall planning and zoning conference information was enclosed in the packages. If anyone is interest in attending, let Naomi know as soon as possible.

AUGUST 7, MINUTES: Forrest Esenwine moved to accept the August 7, 2007 minutes as amended, Chairman Ruoff seconded the motion, all in favor.

JOINT HEARING REQUESTS: Naomi informed the board that there have been three requests submitted for joint hearings with the Planning Board on September 27, 2007. The joint hearings are taken up at the beginning and then the Zoning Board members are free to leave after that. Chairman Ruoff moved to grant the requests for the joint meeting for Case #2407; Case #2507 & Case #2607; June Purington seconded the motion. Vote: 4 in favor (Purington, Dearborn, McSweeney and Ruoff) and 1 opposed (Esenwine). At this point, it appears there would be a quorum. The only member that stated he was unavailable was Mr. Dearborn as he will be away on business.

THANK YOU LETTER FROM PAT KARPEN: Naomi informed the board that she had received a "thank you" letter from Pat Karpen, who was one concerned abutter that attended the last meeting for Mr. Siciliano's proposal.

V. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn the meeting at 9:15 PM, Forrest Esenwine seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator