# 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**
**AUGUST 4, 2009**
**(Approved as written 9-1-09)**

**PRESENT:** Jack Dearborn, Vice Chairman; Forrest Esenwine; Neal Kurk, Alternate; Malcolm Wright, Alternate; Naomi L. Bolton, Land Use Coordinator.

**GUESTS**: Donald Fanny; Linda Fanny; Scott Lanier; Mark Lanier; Ginger Esenwine; Doug Hatch; Joan Hatch; Linda Chatfield; Art Siciliano

## I. INTRODUCTION:

Vice Chairman Dearborn called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Vice Chairman Dearborn explained to those present the way by which the board conducts business.

## II. ADMINISTRATIVE ITEMS:

There were no administrative items to take up at this time. Vice Chairman Dearborn appointed Neal Kurk and Malcolm Wright as voting members for tonight.

## III. PUBLIC HEARINGS:

Case #0709 Donald & Linda Fanny
Variance, Article 19, Article 19.1.10
The applicant is requesting permission to construct an in-law apartment larger than 650 SF.
Special Exception, Article 19, Section 19.1.10
The applicant is requesting permission to construct an in-law apartment.
Tax Map 402-024 161 Pine Hill Road

Vice Chairman Dearborn asked if the board had any questions before the applicants proceeded. Being none, Vice Chairman Dearborn asked the applicant's to proceed with their application. Donald & Linda Fanny were present. Mr. Fanny explained that the reason for doing this is that they are forced to sell their 1900 SF home in Pembroke. He is disabled and his wife recently got laid off. They have sold the house in Pembroke and have until October to see where they end up. The foundation is going to remain the same looking from the outside with either footprint. Mr. Fanny then proceeded through the variance portion of the application 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 addition will blend in nicely with the

existing house and also the woods surrounding woods will act as a buffer from neighboring homes.

2. That the granting of the variance will not be contrary to the public interest because: it will not effect real estate values. There will be plenty of off street parking our daughter will live in the main house and my wife and I will live in the apartment. Our plans are to spend the rest of our lives there and we have no intentions of renting this to others.
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: we want to live as two separate families and have our own space and we also feel that 650 SF is really not enough space to function.
   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: I've been disabled for almost three years now and my wife has been recently laid off and we can no longer afford and maintain the home we live in now.
4. That through the granting of relief by variance substantial justice will be done because: as two families we will be able to better support each other in short and long term.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: we are building this apartment for our use only and have no intentions of renting it to anyone else.

Vice Chairman Dearborn asked if Mr. Fanny could approach the table so he could explain the layout of the floor plans. Forrest Esenwine stated that on both sets of plans, in the apartment layout it shows two doorways, one going outside to the back of the property and the other going into a common area (breezeway). Mr. Esenwine stated that our ordinance states that an accessory apartment shall be clearly incidental to the property, which means that the interconnecting door must go directly from one dwelling unit into the other. Mr. Esenwine stated that what we have here is a structure going up that is larger than the existing house. In the larger size plan that is being requested, the supposed in-law apartment has a larger foot print space than the existing house. To him he thinks that, clearly, that is not incidental to the main house, it is larger.

Neal Kurk pointed out that in the 962 SF plan there shows an office which could be construed as a second bedroom for smaller children. Mrs. Fanny stated that is where they would like to have their computer, etc. There are also two staircases in the larger foot print and there is only one staircase in the 650 SF plan. Mr. Fanny stated that he can take out the second staircase if that is an issue.

Vice Chairman Dearborn stated that he would like to hear the special exception case now so that we have both applications in front of us. Mr. Fanny addressed the seven points of the special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: We want to build an in-law apartment for our use. Our daughter lives in the house. As a family we will be better situated to support each other in the short and long term future.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: I do not see any way that this in-law apartment will adversely affect the neighborhood or the real estate values.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: We will park in the current driveway with no changes to the entrance to the street. Most travel will be locally.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: I don't see how the proposal will cause any undue burden on the Town through basic Town services. We don't have any dependents that will be living with us that would be entering the school system.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: For this purpose there should not be a need or any reasons for on-street parking. I do believe there is adequate off-street parking in the driveway.
6. A buffer may be required to screen neighboring uses from the propose use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: I believe the existing trees and woods will be a sufficient buffer and the design of the in-law apartment will blend perfectly with the current structure.
7. The Zoning Board of Adjustment, in granting any special condition, may include such restrictions or conditions to insure compliance with this section: This is a long term plan for which my family to live in. The purpose of this proposal is not for us to rent this space to non-family members.

Mr. Kurk stated that when he looks at the 650 SF plan he sees a laundry room outside of the 650 SF. He asked if that is an extension of the existing house or a second laundry room. He also asked if the storage room would be an extension of the existing house or for their additional storage.

Vice Chairman Dearborn then asked for:
Approving Abutters: NONE
Disapproving Abutters: NONE
Public at Large: NONE
Other boards: NONE

DISCUSSION: Vice Chairman Dearborn stated that in looking at the 650 SF drawing, one problem is that there is no interconnecting door as required per article 19.l.10.3, so that is going to be an issue. The board then discussed both layouts.

CASE DECISION: Forrest Esenwine moved to grant the special exception for Case #0709 with the condition that all subsections of article 19.1.0 are strictly adhered to,

particularly the 650 SF and the interconnecting door; Malcolm Wright seconded the motion. Discussion: Neal Kurk stated that he thought there was going to be individual conditions placed on it. He would like to add: provided, however, that the applicants proposed 650 SF layout is not sufficient to meet the requirements of the special exception. We are not approving the layout presented because it does not meet the requirements of 19.1.10 and leave the motion as stated. The entrance way is not compliant 19.1.10.3; it also appears that the washer dryer hookup is for the benefit of the in-law apartment but not included; he will not make the same statement for the storage area. Vote on the motion: 4 in favor (Kurk; Dearborn; Esenwine and Wright).

Mr. Fanny stated that they would like to withdraw the variance request for the variance for the 962 SF at this time.

Vice Chairman Dearborn closed this hearing at 8:44 PM.

Elwood Stagakis arrived at the meeting and joined the board at 8:45 PM.

Case #0909 Mark & Joyce Lanier
Variance, Article 28, Section 28.9
The applicant is requesting permission to construct a shared driveway through the 25' wetland buffer.
Tax Map 403-159 Concord Stage Rd (Rt. 77)

Art Siciliano was present. Mark Lanier was present. Mr. Siciliano explained that the proposal is to subdivide the existing lot into three lots. There is an existing house on the lot today and he is looking to create two new lots. There is about 2700 SF of wetlands impacted in a crossing for a proposed shared driveway. 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 land is zoned residential as are the surrounding properties. The proposal is to construct a driveway through the wetland and 25' wetland buffer from residential homes. Similar uses in the same neighborhood will not diminish value.
2. That the granting of the variance will not be contrary to the public interest because: This is a disturbance of the 25' wetland buffer for a private driveway. The disturbance will take place greater than 850' from the main public highway. The public will not be using the private driveway.
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 wetlands and wetland buffer bisect the property east to west. In order to get to the dry buildable land in the rear of the lot that special condition must be crossed.
   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: These are the conditions of this lot and there is no other way around the wetland and 25' wetland buffer to access the dry buildable areas of this lot.

4. That through the granting of relief by variance substantial justice will be done because: The owner will be able to gain access to the buildable dry area of their land zoned for residential use.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The ordinance allows wetland crossings for driveways, so the spirit of the ordinance would and should allow for disturbance of the 25' wetland buffer for a driveway.

Approving Abutters: None

Disapproving Abutters: Doug Hatch, abutter stated that this proposed plan has once again changed for the third time. Their whole issue is water. Mr. Hatch explained that where the wetland crossing is shown is right behind his house. He has a plan for his lot and the wet area is labeled on his map as jurisdictional and not seasonal. His concern is that right now the crossing is aimed at his back yard which will run the water to his back yard, then along his back yard and the abutter's back yard to a culvert that goes across Reynwood Lane towards the Federal flood control land. His concern is taking a large area of water narrowing it down through a culvert towards his property. What he is looking for is some kind of assurance that he is not going to be having anymore water shed onto their property than what goes there now. The bottom line is they are looking for assurance that they are not going to have any further flooding. They only have a small amount of their yard that is usable because the rest is wet.

Neal Kurk asked Mr. Hatch, what kind of assurance? Mr. Hatch responded that the town has an engineer correct? Mr. Kurk responded, yes, but the Town engineer will only review an engineered plan to make sure that it is engineered properly. It wouldn't be any type of guarantee. Mrs. Hatch stated that all the residents of Reynwood Lane will be attending the next Conservation Commission meeting to go over their concerns with them.

Linda Chatfield, abutter stated that she is also concerned about the water. She has a dug well and she is concerned with water flow that could possibly contaminate her well.

Public At Large: Scott Lanier asked if there are fairly new houses back there, what about any wetlands crossings that were done there?

Other Boards: None

Rebuttal: Mr. Siciliano stated that he has to submit a wetlands permit to the State and in order to be able to submit to the State the Conservation Commission has to sign off and they won't sign off until a variance is obtained for the buffer disturbance.

Mr. Esenwine stated that before he agrees to a wetlands crossing he would like to see some factual engineers information to indicate that there will not be any impact to the abutters. He also felt that a hydrologist should be hired.

Elwood Stagakis felt this is probably not a good lot to build a house with all the wetlands.

Vice Chairman Dearborn stated the question really is: one would argue it is a sensitive area, and is the applicant taking prudent steps to minimize that? He finds it hard to believe that the Planning Board will not require having a HHS map or engineer review done.

The board would like to continue this to next month to see an engineers report.

Mr. Siciliano requested a continuance to the September meeting. Forrest Esenwine moved to continue this case to September 1, 2009; Malcolm Wright seconded the motion. Vote: 4 in favor (Kurk; Dearborn; Esenwine and Wright) and 1 opposed (Stagakis).
Vice Chairman Dearborn closed this hearing at 9:42 PM.

**IV: OTHER BUSINESS:**

CASE #0705 - THOMAS WILSON – REQUEST FOR EXTENSION OF PREVIOUSLY GRANTED VARIANCE: Forrest Esenwine moved to grant the extension for the variance as requested; Malcolm Wright seconded the motion. Discussion: Elwood Stagakis stated that he would like to discuss this. He doesn't understand how the board can just grant a continuance without any information provided to the board. Vice Chairman Dearborn stated that the article is written in such that the only requirement for granting the extension is that it must be applied for prior to the expiration. If the applicant meets that criteria then the board grants the extension. Vote: 4 in favor (Kurk; Dearborn; Esenwine and Wright) and 1 opposed (Stagakis).

RULES & PROCEDURES: Elwood Stagakis would like to obtain a copy of the board's rules and procedures.

JULY 7, 2009 MINUTES: Forrest Esenwine moved that the July 7, 2009 minutes be taken up at the September meeting; Malcolm Wright seconded the motion. Vote: all in favor.

WORK SESSIONS: Elwood Stagakis stated that he has asked for this on several occasions but it has never happened. He would like to meet to go over our procedures and proposed zoning changes because he feels that we are not doing things the way he learned at a zoning conference. He also thinks that the zoning ordinance has some things that are not very well written and he would like to discuss it. Naomi explained that if there is an issue with the zoning ordinance and the board would like to see anything changed it needs to get to the Planning Board as they are the ones that propose zoning changes. The Planning Board keeps a "list" of things that might come up during the year and then in October to November when the zoning amendment time frame starts they get

discussed and this board could do the same and forward the list to the Planning Board. The board felt that the 25' driveway crossing – buffer disturbance should be looked at for next year.

**V. ADJOURNMENT:**

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 10:00 PM; Malcolm Wright seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator