



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
AUGUST 7, 2007
(Approved as amended 9/11/07)**

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

GUESTS: Erik Hagstrom; Art Siciliano; John Hardy; Jeffrey Wright; Dell Rice; Wendy Rice; Sharon Destefano; Jan Snyder; Pat Karpen; John Hazelton; Jill Flanders; John Flanders; Robert Destefano; Ginger Esenwine; Dwight Sperry; Sylvia T. Pope; David H. Bell; Angela MacConkey; Steven Ciarla; Judy Donnelly; Killian Donnelly; Thomas Donnelly; Sherry Burdick; Danielle Bond-Ishak; Christine Nase; Karen Roy; Dennis McComish; Ed Naile

I. INTRODUCTION:

Vice Chairman Ian McSweeney called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Acting Chairman McSweeney explained to those present the way by which the board conducts business. Acting Chairman McSweeney appointed Malcolm Wright and Elwood Stagakis as voting members 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 #1707 Arthur F. Siciliano
Variance, Article 17, Section 17.2.4
Applicant is requesting permission to have a home business –
vehicle wholesale dealer.
Tax Map 202-010.001 47 Pine Hill Road

Art Siciliano was present. Mr. Siciliano explained that he is here for a variance for a vehicle wholesale business. The reason for being here is that the Code Enforcement Officer indicated that this is not permitted in the Residential Zone. He has submitted a plan. His house is about 1,000 feet from Pine Hill Road. Mr. Siciliano stated that this business will be very low key. The office will occupy the

same space as my existing land surveying business (22' x 22'); the wholesale business will consist of purchasing autos at auction and delivering the vehicle directly to auto dealers or reselling vehicles from my site. My intentions are to only purchase 5 vehicles per year and no more than one unregistered vehicle will be at my site at a time. At no time will the vehicle be parked on Pine Hill Road. The vehicle will be parked at my house site 1,000 feet from Pine Hill Road and out of site from the public. The hours of operation will be from 8 AM to 6 PM, Monday thru Saturday. 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 is a home based business, very low key. There will be no physical changes along Pine Hill Road. The way in which the business will be run will be less offensive than if an individual property owner was selling a vehicle in front of their property, as some people do.
2. That the granting of the variance **will not** be contrary to the public interest because: This home based business will be 1,000 feet away from Pine Hill Road where the public travels. It will not be visible to the public and will not be a source of nuisance to neighbors by reason of noise, dust, glare, traffic, vibration and/or other disruptive influence.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: I have an existing home based business. This additional business is very low key (as described in the opening introduction). The business setting is far from Pine Hill Road and not visible to the public.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: I believe this home business is allowed in the ordinance, but is not listed. This business will be run with less impact than others listed, beauty parlor, realty, and lawyer.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: This is a very low key business far off of Pine Hill Road. This is out of site of the public and will not injure the rights of others.
4. That through the granting of relief by variance substantial justice **will be** done because: (no answer was given).
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The way this home based business will be run is very low key and less traffic impact than home based businesses that listed in the ordinance, beauty shop, realtor, and lawyer.

Forrest Esenwine stated that the granting of the variance is to the land and not the property owner. The next owner could possibly try to expand. Mr. Esenwine asked Mr. Siciliano if this board deems it proper to grant the variance would you be willing to accept conditions on what has been discussed. Mr. Siciliano responded, yes. Mr. Siciliano stated that he felt the zoning ordinance was open for interpretation and he disagrees but he also felt that the Code Enforcement Officer probably made the right decision.

Ian McSweeney asked him to explain the business a little more in detail. Will there be any repairs or maintenance done to the vehicles? Mr. Siciliano responded, no it is purchase and re-sell only and he would be limited to 5 per year.

Forrest Esenwine asked, if you bring in one of these vehicles, how long it would be on the premises. Mr. Siciliano responded he is not sure but hoped not longer than a month.

Ian McSweeney asked if the vehicles would be outside the house or are there any future plans to build another building. Mr. Siciliano responded no.

Elwood Stagakis stated that he didn't know how you could conduct this business entirely within the home. He also stated that he didn't see how you can have 5 vehicles with 1 unregistered. Mr. Siciliano stated that he wouldn't have 5 at one time. He would have a limitation of 5 to sell in one year.

Approving Abutters: None

Disapproving Abutters: Danielle Bond-Ishak, 203 Concord Stage Road, stated that her concern is the expansion piece. She understands about the hair salon, but with that type of business she doesn't have to worry about an expansion. Ms. Bond-Ishak added that historically Mr. Siciliano hasn't done as he said he would. For instance when he built his home they were told it was for one home and now there is an 8 lot subdivision approved. She is not trusting of the scope that is being explained.

Christine Nase, 195 Concord Stage Road, stated that she has similar concerns. If the variance is granted there should be some limitations to what happens to the future and she is also is concerned if it comes bigger.

Judy Donnelly, 55 Pine Hill Road, stated that Mr. Siciliano's address is Pine Hill Road, not Concord Stage Road and she is concerned with the amount of traffic with his surveying business and this business. She is concerned with the type of clientele that might come in and out. Her concern is the future. Everyone on Pine Hill Road signed covenants which stated that not more than one unregistered car could be on the property for more than 6 months. This is a conservation area and

they moved to Weare for the quietness. She didn't feel this type of business should be allowed in the residential area.

Pat Karpen, 199 Concord Stage Road, she has come to ask the board not to grant the variance. She didn't really want to go against the wishes for a neighbor and she stated that the wholesale car dealer shouldn't be allowed no matter how modest it might. She also expressed a concern why such a modest business should be run 6 days a week. She believes that if this is granted it could be the setting of an ugly business. It could be expanded to grow after his ownership. She felt there is a difference between a hair salon and a wholesale car business.

Del Rice, Pine Hill Road, stated that he has employed Mr. Siciliano as a surveyor and had no problems. He has concerns with the wholesale car business. The change down the road would have a great down fall. The concern is that Mr. Siciliano is here but the next owner is his biggest concern of expansion. It would have to be very defined and the enforcement is an issue. Traffic is an issue as well. He would need some strong guarantees to go along with it and is worried about the precedence it might set.

Tom Donnelly, 55 Pine Hill Road, is concerned with the current driveway as it runs so close to his property and his children play in the yard. He is concerned currently with the traffic and feels it is a safety issue. He also is concerned with the protective covenants they were all asked to sign.

Karen Roy, 190 Pine Hill Road, she enjoys the quiet neighborhood and is concerned with bringing in more traffic and she also shares her concerns of the neighbors.

Other Boards: None

Public At Large: NONE

Rebuttal of Applicant: Mr. Siciliano responded that the abutters have mentioned that the variance runs with the land. He would like to have it condition upon only him and not the land. Mr. Esenwine responded that the variance goes with the land and not the owner. Mr. Esenwine stated that he supposed they could grant the variance with a time limit and it might be valid unless someone challenges it in court.

Acting Chairman McSweeney closed the public at 8:20 PM.

BOARD DISCUSSION: Elwood Stagakis sated that the zoning ordinance is clear and you can't have anything outside. Malcolm Wright stated that he is new to this there are a lot of people here with a problem and that is his concern. He is a little vague on the ordinance but he is trying to pay attention. Limiting the variance is something he didn't think we could do. Mr. Esenwine stated that he has a couple

of problems, Article 17.2.4 gives examples of permitted uses and it obviously doesn't say anything about auto sales or anything against auto sales. However, under the commercial zone it specifically says this is allowed. Historically auto sales and business have not been allowed in residential unless it was preexisting. The fact it is only going to be 1 at a time or 5 in a year, doesn't change the fact it is an auto business. Likewise, with restrictions and conditions, it is good on paper but enforcement is another thing. That is Mr. Siciliano's intent, but the fact is the variance goes with the land and who knows what would try to come from that even though there might be conditions, that are the foot in the door. The fact is it is a residential area, this request is a vehicle business and it has never been allowed to be established unless it was a pre-existing business and he doesn't want it to be the first. He didn't think it was in keeping with the intent of the ordinance or spirit of the ordinance.

Vice Chairman McSweeney agreed it is spelled out in the commercial district and not in the residential so it is not allowed, this business plan might be palatable but it does come down to being a commercial business in a residential area. The Town just appropriated a large portion of conservation area in this area, which really has no bearing on this property.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that in the answer to the question, if it in fact was this way, no, it would probably not diminish the values, but that is his opinion. Vice Chairman McSweeney agreed with Mr. Esenwine with the physical changes, but at the same time the business plan says six days a week, that the traffic may have impact on value because of that. Mr. Stagakis stated that the response is Mr. Siciliano's opinion not fact. From the testimony there are people who find it offensive. Vote: 1 in favor (Esenwine) and 3 opposed (Wright, McSweeney and Stagakis). Point #2: Forrest Esenwine moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that one thing to remember is that contrary to the public interest is not just the immediate area it is the Town in general. Mr. Stagakis stated again that it is opinion and not fact. Vote: 0 in favor and 4 opposed (Wright; McSweeney; Esenwine and Stagakis). Point #3a: Forrest Esenwine moved to accept point #3aa; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the response given is probably accurate as it sits and has been described. Mr. Stagakis stated again it is personal opinion and not fact. Vote: 2 in favor (McSweeney and Esenwine) and 2 opposed (Wright and Stagakis). Point #3b: Elwood Stagakis moved to accept point #3bb; Forrest Esenwine seconded the motion. Discussion: Mr. Stagakis stated that the ordinance states a home business must be entirely within the residence. Vote: 0 in favor and 4 opposed (Wright, McSweeney, Esenwine and Stagakis). Point #3c: Elwood Stagakis moved to accept point #3c; Malcolm Wright seconded the motion. Discussion: Mr. Esenwine stated that in all honesty he doesn't see how it would injure the public or private rights of others, rights being rights. Mr. Stagakis stated again it is personal opinion not fact. Vote: 2 in favor

(McSweeney and Esenwine) and 2 opposed (Wright and Stagakis). Point #4: Forrest Esenwine moved to accept point #4; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the fact there is no answer the board can't vote on it. Vote: 0 in favor and 4 opposed (Wright, McSweeney, Esenwine and Stagakis). Point #5: Forrest Esenwine moved to accept point #5; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that he can't help but feel the variance is contrary to the spirit of the ordinance, because home based businesses are to be entirely within the house. Also the fact it is a residential area and it doesn't specifically allow it in this zone. Mr. Stagakis agreed it is contrary and it is specific and again personal opinion, not fact. Vice Chairman McSweeney agreed. Vote: 0 in favor and 4 opposed (Wright, McSweeney, Esenwine and Stagakis). Forrest Esenwine moved to grant the variance on Case #1707 as requested; Elwood Stagakis seconded the motion. Vote: 0 in favor and 4 opposed (Wright, McSweeney, Esenwine and Stagakis).

Vice Chairman McSweeney closed this hearing at 8:45 PM.

Case #1807 Arthur F. Siciliano (Owner: Erik Hagstrom Revocable Trust)
Special Exception, Article 22, Section 22.6.2 and
Special Exception, Article 30-B, Section C.1
Applicant is requesting two special exceptions. The first is to allow the building setback be reduced from 20' to 16.5'. The second is to allow a new dwelling unit to be constructed on the Clinton Grove Village.

Elwood Stagakis stated that he wanted to go on record that he feels the application is improperly filled out. Forrest Esenwine stated that there are two applications and not one.

Malcolm Wright stated that he wants to inform everyone present that he sits on the Historical Society as a director. He felt he could sit on this case and be unbiased but needed to make it known to the applicant. Vice Chairman McSweeney asked if the Historical Society has a position on this. Mr. Wright responded that the Historical Society has taken a position on this issue. Erik Hagstrom stated that he felt Mr. Wright should step down. Vice Chairman McSweeney explained that he would need to have all three remaining voting members voting in the affirmative to be granted the request.

Art Siciliano asked the board if he could have a 2-3 minute recess to allow him to talk to Mr. Hagstrom. Vice Chairman McSweeney stated the board will be recessing for 2-3 minutes.

Mr. Siciliano stated that after discussing this with his client. They would like to continue and to allow Mr. Wright to be a voting member. Mr. Siciliano stated that they would like to withdraw the second application at this time.

Mr. Siciliano stated that he will be only addressing the special exception request for Article 22, Section 22.6.2 at this point. Mr. Siciliano explained that Mr. Hagstrom would like to subdivide this property. The new lots require 200' of frontage. When they create 200' of frontage for lot 69 the proposed property line is 16.5 feet away from the existing garage. The request is for a 3.5 foot relaxation. The requirement is 20 feet, otherwise reduced by special exception. Mr. Siciliano then proceeded through the seven conditions for 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: Buildings in a village setting are typically close together. This existing garage is on a slab and not easy to relocate.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed use is to reduce the setback line from twenty feet to 16.5 feet. There is not physical effect to the neighborhood by reducing this setback so there is no adverse affect.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: This is a building setback issue and will not cause a nuisance or hazard.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: A setback use will not cause a burden on Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: There is adequate off street parking on the lot.
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: If the board feels a buffer is needed it can be added, we feel a buffer is not necessary.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: We can comply with additional restrictions or conditions within reason.

Forrest Esenwine asked about the existing septic system location. Mr. Siciliano approached the board and pointed to it on the map.

Approving Abutters: None

Disapproving Abutters: Jon Flanders, 429 Flanders Memorial Road, first thanked the board for their time and effort. Mr. Flanders stated that this is the Clinton Grove Area. He showed the view of the area from 1957. In addition to the farm, Mr. Flanders showed the Quaker Meeting House and the horse sheds, as a point of reference for the board that might be unfamiliar with the area. Mr. Flanders stated that his family has lived in the area for 100 years. This is a very special part of

Town. Mr. Flanders felt that this is more than a mere lot line adjustment. He felt that it was peculiar they withdrew the second application. He felt it would not be in the interest of the community to allow this proposed reduction. He would ask the board to deny the special exception. He feels it lacks the intent of what the Town is doing. If granted it could have a detriment to the village district. The sudden withdrawal of the second application has him doubting to the real intent.

Bob DeStefano, 2 Thorndike Road, he was going to talk about the historical issues that Mr. Flanders did. He is concerned with granting the special exception. The proposed house is about 150 feet from his house. The Town just recently raised the road and it is flooding in the spring time. This was surveyed in the fall and it is typically the driest time of year.

Jill Flanders, 429 Flanders Memorial Road, stated she was a little confused. She felt that what the use of the proposed lot is going to be used for, she is concerned particularly of getting a driveway into the lot, and there is no room. The septic location she questions as to what she was told.

Jeff Wright, 281 Thorndike Road, stated that there are endangered species (turtles) on both of the properties. He has had Fish and Game out there. By allowing this would take the chance of endangering welfare of the turtle species that exist there. He is not in favor of this.

Angela McConkey, 415 Flanders Memorial Road, she had several things that she wanted to say and is not sure why she is up here. She wanted to emphasize the fact that the board here is really the stewards of this historic district. She felt that the historic value would be destroyed by allowing this.

John Hazelton, 42 Thorndike, he and his wife have lived there for 25 years and he would hate to see this historic property carved up for some other devious plan. He thinks the zoning board needs to take a look at the property. There would be no buffers between the wetlands and the proposed building.

Jan Snyder, 10 Thorndike Road, stated that article 6.1.3 talks about the proposed use. They don't know what the proposed use is. All of the seven conditions refer to the proposed use and the board doesn't know what the intent of the proposed line is.

David Bell, 415 Flanders Memorial Road, most of his comments had to go with the second application. He did question the setback from the septic system to the side line. Mr. Siciliano responded that the setback for a septic system to a lot line is 10 feet.

Jeff Wright, stated that the proposed septic system for the new house would run through the wetlands, which is illegal from the State law.

Other Boards: NONE

Public At Large: Sherry Burdick, for the Historical Society didn't feel she should speak because what she was going to speak to was the historic overlay on the second application, which has been withdrawn. She questioned the frontage requirement in the village district. In Article 22 of the village zone, there is no frontage requirement listed. Ms. Burdick stated she was told 250' and 200' but has had no one give her a firm answer.

Public AT Large: NONE

Rebuttal: Mr. Siciliano reminded the board that the special exception allows them to go to the next step. The proposed use of the garage is to stay as a garage. With regard to the frontage, the planning board has always reverted to the residential zone, which is 200'.

Vice Chairman McSweeney asked what the distance was from the garage to the road. Mr. Siciliano responded, approximately 4 feet. Vice Chairman McSweeney asked about the property on the other side which is owned by Mr. Hagstrom's wife, and he wondered how much frontage was with that property on Flanders Memorial Road. Mr. Siciliano responded that there is approximately 205' feet of frontage on Flanders Memorial Road and approximately 5 acres.

Malcolm Wright asked that if the building is on a slab, why isn't that easy to relocate. Mr. Siciliano responded it costs money to relocate. Forrest Esenwine then asked why we are hearing this as a special exception. The property line doesn't exist, so the board can't rule on something that is proposed. Mr. Esenwine stated that it could probably be heard as a joint hearing with the Planning Board. Mr. Siciliano then asked about tabling this until he went to the Planning Board. After some discussion, Mr. Siciliano stated that he would like to withdraw this application and reapply as a whole package for a joint meeting with the Planning Board. He asked to have the hearing fees waived and he would pay for the abutter notification.

Elwood Stagakis moved to accept the withdrawal and to allow the hearing fees to be waived when it is re-filed; Forrest Esenwine seconded the motion. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis)

Vice Chairman McSweeney closed this hearing at 9:55 PM.

Case # 1907 Arthur F. Siciliano (Owner: Dwight Sperry)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to construct a single family home.
Tax Map 202-034 Hejo Road (Private)

Art Siciliano was present. Dwight Sperry, owner was also present. Mr. Siciliano handed the board a copy of the original Hejo Road Maintenance and Use Agreement for the road as well as a letter from Carl Knapp with regard to the current condition of Hejo Road. The intent of the owner is to be allowed to build a single family home. Forrest Esenwine asked how many more empty lots are on this road. Mr. Siciliano responded that the board a couple of months ago granted approval for the neighbor across, that left Mr. Sperry's lot and one more. 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, thereby 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 can not pick up the lot and move it to a better location, and they can not 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 family home on an accessible road is not contrary to the spirit of the ordinance is to address safety concerns and prevent uncontrolled development. Neither of those concerns are 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 can not be further subdivided.

Elwood Stagakis asked about the four year exemption and if it applied to this lot. Forrest Esenwine stated that it didn't apply to this lot.

Approving Abutters: John Hardy, abutter, stated that he just was recently approved on lot 30 and he was conditioned to upgrade and he wanted to make sure the same condition was given in hopes of sharing the expense.

Disapproving Abutter: None

Other Boards: None

Public At Large: Dwight Sperry, owner, stated that he bought this in hopes of building on the lot. He is going to sell it. He does all his work in Manchester and the commute would be too far. He needs to move on with his life, especially now since his Dad recently passed away.

Vice Chairman McSweeney closed the public portion of this meeting.

BOARD DISCUSSION: There was no discussion.

CASE DECISION: Point #1: Forrest Esenwine moved to accept point #1; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that one more house is not going to diminish the surrounding property values in his opinion. Elwood Stagakis stated that it is a real issue to confiscate land and this is to build out the subdivision. Vice Chairman McSweeney stated that the proposed home would be compatible with others. There are currently only two un-built on and one after this. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Point #2: Forrest Esenwine moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the point could be argued one way or another and he didn't feel it would be contrary. Mr. Stagakis stated that we usually put conditions on the property. Vice Chairman McSweeney stated that conditions put on would help the public interest. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Point #3aa & #3bb: Forrest Esenwine moved to combine Points #3aa & 3bb together; Elwood Stagakis seconded the motion. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Discussion: Forrest Esenwine stated that he felt we have gone over both of these issues through the course of the hearing. There are only two lots and this is one, then the subdivision would be built out. Mr. Esenwine moved to accept point's #3aa and #3bb; Malcolm Wright seconded the motion. Discussion: Elwood Stagakis stated that he felt the intent of the zoning ordinance was to disallow an old subdivision to be built out. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Point #4: Forrest Esenwine moved to accept point #4; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the explanation seemed pretty straight forward. Certainly

justice will not be done if this was denied with only 2 remaining lots. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Point #5: Forrest Esenwine moved to accept point #5; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that this is one of those situations that is contrary to the ordinance but there is not much we can do about it. Mr. Stagakis agreed with Mr. Esenwine. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Forrest Esenwine moved to grant the variance for Case #1907 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.

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

Case #2007 Justin Fitzgerald
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a deck within the rear setback.
Tax Map 409-046 Chuck Street

The board received a letter from the applicant requesting a continuance to September due to the fact that the applicant's representative was suddenly unable to attend this evening. Forrest Esenwine moved to continue Case #2007 to September 11, 2007; Malcolm Wright seconded the motion, all in favor.

IV: OTHER BUSINESS:

JULY 3, 2007 MINUTES: Forrest Esenwine moved to approve the July 3, 2007 minutes as amended; Elwood Stagakis seconded the motion. Vote: 3 in favor (McSweeney, Esenwine and Stagakis) and 1 abstention (Wright).

Malcolm Wright stated that he will be stepping down from the board for the discussion on the next item.

REQUEST FOR REHEARING – Case #1207: The board received a request for rehearing from the abutter, Malcolm Wright. Forrest Esenwine stated that he has got to agree with a lot of the statements in the request. He understands and can empathize with Mr. Wright, but he can't get passed the fact that this piece of property is a pre-existing lot of record. It is in the residential area and there is a

structure on in no matter to the conditions. Those issues are obvious, but he can't get passed that we can say that a home is discontinued. The housing market today is going downhill and if they have a home sitting up on the hill for a ½ million and is dropped to \$350,000 and it still vacant is that considered discontinued. Vice Chairman McSweeney agreed that he has run across the same that a house has been vacant and on the market for over two years. Elwood Stagakis stated that if he continued to pay the taxes how can it be deemed discontinued. Forrest Esenwine agreed that is the part he can't get passed even though he understands the issues. The building is a structure. It is so small and he doesn't know how those people lived in it. Now they are going to put back in shape, what do you have, a camp in his opinion. It can only be brought back into compliance in the same footprint, all upgrades have to be done up to today's code. The septic system still worried Mr. Esenwine but he is not the one who rules on that. The space that is going to occupy is so small, how do you put a leach field in that space. It is awfully close to the road right of way. The motion for rehearing is too the procedure for the rehearing. He is challenging whether we should have had the rehearing or not. If the board did it illegally there is a court remedy. Vice Chairman McSweeney agreed with Mr. Stagakis. The board acted upon it the best way they knew how. Forrest Esenwine moved that the request for rehearing be granted for Case #1207, Elwood Stagakis seconded the motion. Vote: 0 in favor and 3 opposed (McSweeney, Esenwine and Stagakis).

PROCEDURE: Elwood Stagakis stated that he has an issue with the applications that have been coming across the board. He would like to have work sessions on this. He felt we should have a procedure and they should be reviewed and turned away by Naomi. Mr. Stagakis also mentioned that he would like to be sent the Zoning Board's By-laws.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 11:00 PM, Elwood Stagakis seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator