



**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

**PLANNING BOARD  
MINUTES  
AUGUST 9, 2007  
(Approved as amended 8/30/07)**

**PRESENT:** Paul Morin, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Tom Clow, Exofficio; Craig Francisco; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Harry Hadley; Harlen Hadley; Roxanne Hadley Quirk

**I. CALL TO ORDER:**

Chairman Paul Morin called this meeting to order at 7:00 PM at the Town Office Building.

**II. CONTINUED PUBLIC HEARING:**

**DAVID & SUZANNE AVARD – CONTINUED DISCUSSION TO CONSIDER SITE PLAN REVOCATION, 5 CONCORD STAGE ROAD, TAX MAP 201-024:**

Chairman Morin opened this continued hearing at 7:02 PM. This is an inquiry. This site plan is approximately 10 years old. Chairman Morin explained that we were approached by the Hadley's a few months ago. If the site plan were to be revisited, the access by the Avard's and his clients cross the Hadley's line. We found enough reason to look into the matter, gather facts and found enough information to revisit. When the board concluded the last meeting we gave both parties 60-days to gather more information for the board. The Hadley's were present. Mr. Avard was not. Harry Hadley stated that what brings this up at this point in time is the sale of Mr. Avard's property. Sixty days ago Mr. Avard made a statement that his home had not been changed in 100 years. Mr. Hadley handed the board a very old picture looking from his fathers. He also handed the board a real estate listing showing the changes to the property in a real estate listing when compared to the old picture. Mr. Avard claimed he had a right of way on the easterly side of property. There had been more room prior to the altering of the property. Mr. Hadley stated that by their own construction the Avard's have created this problem. The major work was done in 1978 to alter the dwelling. The Taggart's did some more work in 1997, prior to the Avard's owning the property. Frank Bolton asked what was relayed from the Taggart's to the Avard's. Tom Clow asked if there was any response to the cease and desist in 2004. Mr. Hadley stated that there were several unanswered cease and desist orders issued. There was a lawsuit threatened by Mr. Avard so the Hadley's dropped it. George Malette asked what you would hope to see as an outcome of

this. Mr. Hadley stated that at the time of the sale of the property, the encroachment issue would cease on his parents property upon new ownership. Frank Bolton stated he was reading the packet today, but what struck him was in 1997 at the planning board dealing with the same issue the planning board waived every item. The second thing that struck him was if there was any opposition of input the record doesn't show it. Mr. Hadley stated that no one was there to represent the Hadley family. George Malette was wondering if there was a misrepresentation on the 1997 site plan. Tom Clow asked if there is a driveway there or a space for one as it shows on the drawing that goes around the house. Mr. Bolton stated that he has to just wonder and if nothing else this is a wake up call. Craig Francisco stated that he looked at the RSA's and felt that he couldn't find a case that revoked a site plan after 10 years. Chairman Morin stated that he spent a lot of time on this as well. Chairman Morin stated that he visited Mr. Dahlberg who produced a physical plan. He also talked to a couple of other surveyors, who when it boils down they are all pretty close to the plan Mr. Dahlberg produced. He is not compelled that the Hadley house was moved as Mr. Avard had indicated. He was also shown that there is a pathway around the house. He felt it was reasonable to think that there has been a pathway around the house. Chairman Morin stated that the Planning Board must not and do not get involved with the boundary disputes. It seems to Chairman Morin that whoever owns the Hadley property knows there is traffic prior to the site plan and knows that there is traffic to a business. Absent any court order Chairman Morin stated the he would be reluctant that there was misrepresentation on the any person's part. Mr. Bolton stated the only thing that strikes him when it was presented to the Planning Board there is no indication there was an encroachment. The only thing that makes him wonder was the letter that the Taggart's gave was the driveway was used by permission. Mr. Malette stated that he felt the board acted appropriately at that time and considering the time that has passed; he felt it was a civil issue. Mr. Clow accepted that there was some sort of knowledge of the dispute because they didn't pave the entire driveway only part. He has an issue with the drawing that was presented. It would give you the indication there is room enough to use the other side. He felt there was some misrepresentation presenting the drawing that he presented. Mr. Francisco asked about the plan that Mr. Dahlberg did that says Duval survey line. Chairman Morin stated that Mr. Dahlberg sketched that in. Chairman Morin stated that he has not seen the Duval plan. Mr. Francisco stated that his assumption is that this 8 x 11 plan was done not by a surveyor or engineer as there is no stamp. He also agreed the boundary dispute is not our jurisdiction, at the same time he did recall the access is by agreement. It would also appear that Mr. Avard had some indication there was some sort of issue. Mr. Francisco stated that he didn't think we could revoke a 10 year old site plan when the professional stamp was waived because the circular driveway was not constructed. George Malette would like to see a friendly lot line adjustment to swap equal portions to solve this versus court. Frank Bolton stated whether it is 10 years old or 10 days old it was certainly a misrepresentation. He thinks the planning board screwed up. Chairman Morin stated that his position is that there is a lack of circumstances to revoke the site

plan. He is sure the Hadley's are right, but he is not certain there may also be an adverse possession issue. If the court decides it for them, that would change the Town's standpoint. This board has no authority to solve a lot line dispute. Mr. Bolton stated that he still felt it boils down to a misrepresentation.

Harry Hadley stated that the final outcome that seems to come to, he can sell that property which would give him the opportunity to trespass even more than he is now. Chairman Morin respectfully disagreed. Chairman Morin stated that this board simply grants permission to a property for the use presented. This board has no authority to resolve a lot line dispute. Chairman Morin stated his opinion would be to let this go until such time we get indication differently.

### **III. WORK SESSION:**

CLUSTER ORDINANCE AMENDMENTS: *Discuss overall approach to cluster development and possible changes to the current ordinance to achieve better results. Specifically, consider allowing the applicant to choose cluster or conventional layout, consider requirements such as a stewardship fee, consider standards for walking trails and other public access concerns and consider visual and aesthetic setbacks.* Neal Kurk was not present but sent comments via email to be discussed. Mr. Kurk stated that he felt the board should retain the requirement under 27.3.1 that the Planning Board, not the applicant determines whether cluster is appropriate. His reasoning was that the Planning Board rather than the applicant is in the best position to determine if clustering in a particular instance furthers the Master Plan's open space and rural character objectives. Chairman Morin stated that he would ask the board to reconsider that. Frank Bolton stated that he felt it should be the Planning Board's choice and not the developer. The consensus of the board was to leave 27.3.1 up to the board.

The board then discussed the stewardship portion that encourages a fee. Chairman Morin felt this was a land mine. No one has taken us up on this. George Malette felt we should leave it in there because the PWA and SNHPF have a requirement when they take on the property. It is making people aware of this. The consensus of the board was to remove it from the zoning ordinance and add it to the subdivision regulations. Craig Francisco brought up the subject of it possibly being a covenant, not an easement or ownership. He has seen it work that way in other Towns. Mr. Francisco will bring forth some wording from Bedford regarding the covenant wording. Frank Bolton stated that the AC committee is also looking at the cluster ordinance. He shared an email with the thoughts but the board will get into that discussed further at another work session. Chairman Morin then wanted to discuss walking trails. If plans indicate walking trails it should be discussed and addressed with the applicant the time frame for completeness.

UNDERGROUND UTILITIES IN NEW SUBDIVISIONS: *Consider amending current subdivision regulations to require underground utilities in all new subdivisions and site plans. Discuss circumstances where waivers may be*

*granted. Explore safety and cost implications.* Neal Kurk sent along comments regarding the underground utilities. Mr. Kurk has proposed the following wording change to section 8.10 of the Subdivision Regulations.

“Prior to any new road construction, subdivision approval or approval of new houses greater than three hundred (300) feet from the public roads, written preliminary approval must be included from utility services (telephone, electricity and cable TV). Any plot plan, subdivision plan or Town road construction plans must include underground ~~or aerial~~ **utility** services systems. **Any** utility poles should be kept close to the right-of-way line, in no case in the ditch line and always well back of the curb. Water and sewer mains should be constructed outside the [road?] surface area and preferably outside the ditch line. **The Planning Board may, at the request of the developer, waive the requirement of underground utility services systems where the developer demonstrates to the satisfaction of the Board that (a) the average cost of the systems for each lot in the subdivision exceeds 10% of the most recently available, town-wide average assessed value of lots of that class (residential, commercial or industrial), of (b) aerial utility services systems would not adversely affect the open space, natural beauty, country atmosphere and small town character of the community, as set forth in the Master Plan.**

The board discussed this and the consensus was to keep it simple and remove all the wording starting at “~~or aerial utility.....~~” and just adding the words “unless waived by the board.”

RURAL CONSERVATION AND RURAL AGRICULTURAL MINIMUM LOT SIZES – *discuss the differences in the zoning ordinances.* Chairman Morin explained that this discussion came up at a conceptual hearing a couple of weeks ago and the board needs to come to some uniformed agreement as to the intent of the wording. As it is worded now, in order to come up with a yield plan in the Conservation Commission Overlay you must double table 1-1 and not the minimum of 5 acres. Chairman Morin stated that when this comes before the board again he will asking for a consensus of the board present at the time and that an administrative appeal would be done through the ZBA if there was a difference of opinion. There was no consensus of the board on this discussion.

RSA 674:39 AND PROCEDURES ON PLAT APPROVALS – *discuss the issues involved with recent changes to the law.* Neal Kurk had asked Chairman Morin to bring it up for a discussion. The board discussed this. This subject was brought up a couple of times before and on both occasions the board felt that there doesn’t seem to be a one size fits all, particularly with the market conditions and the inventory, the costs involved in engineering and surveying, it would be hard to determine so that we would be treating all subdivisions fairly. Chairman Morin stated that it will be brought back up again next month to allow Mr. Kurk to comment.

**IV. MINUTES:**

JULY 12, 2007 MINUTES: Frank Bolton moved to approve the July 12, 2007 minutes as amended; Craig Francisco seconded the motion. Vote: 5 in favor (Clow, Malette, Bolton, Francisco and Morin).

JULY 26, 2007 MINUTES: Craig Francisco moved to approve the July 26, 2007 minutes as amended; George Malette seconded the motion. Vote: 4 in favor (Clow, Malette, Francisco and Morin) and 1 abstention (Bolton).

**V. OTHER BUSINESS:**

MEMBERSHIP OF A CERTAIN NUMBER OF BOARD MEMBERS TO A COUPLE OF SUBCOMMITTEES: Chairman Morin stated that he received a phone call from a resident that had a concern with the number of planning board members on various subcommittees. The first subcommittee that was questioned was the AC (Agriculture Committee). Chairman Morin informed the resident that there are only two planning board members (Frank Bolton and George Malette) on this subcommittee, so that inquiry died. The second inquiry was about the Weare Center Advisory committee, which on this subcommittee there are three planning board members (Tom Clow, Neal Kurk and George Malette). Chairman Morin stated at all the subcommittee meetings need to be posted and minutes must be taken and should be shared with the Planning Board. Chairman Morin informed the board that he sent a written advisory opinion request to the Ethics Committee for their input on this. He will inform the board of their decision.

SEMINARS FOR BOARD MEMBERS: Chairman Morin shared with the board a very interesting work shop/seminar that would be worth attending but the cost is the issue. Chairman Morin stated that this board should consider budgeting money for this type of very valuable work shops in the Land Use Budget for 2008. This would be over the amount of the small law lecture meetings.

**VI. ADJOURNMENT:**

As there was no further business to come before, Frank Bolton moved to adjourn at 10:20 PM, George Malette seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator