

TOWN OF WAKEFIELD, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

2 HIGH STREET
SANBORNVILLE, NEW HAMPSHIRE 03872
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PUBLIC HEARING
October 15, 2007
Young - Main

THESE MINUTES WERE APPROVED AT THE NOVEMBER 19, 2007 MEETING.

APPROVED

Chairman George Frothingham called the meeting to order at Town Hall at 7:00 p.m. Attendees included:

MEMBERS		ALTERNATES		OTHERS	
George Frothingham, Chair	x	Scott Bramer	x	Kathy Menici, Planning Director	x
Doug Stewart, Vice Chair	x	Judy Sjostrom	x	John Ciardi, Deputy Code Officer	
Cecille Arnone	x	Sandy Lebel	x	Arthur Capello	x
Paul Winckler	x			Paul Morrill	
John Crowell				Lynn Shaffer, Secretary	x

Other Attendees as signed in:

Bruce Rich
John Napekoski
Ralph Young
P. Young

Todd Main
Two others who did not sign in

ROLL CALL – DESIGNATION OF ALTERNATES –

Following the Pledge of Allegiance, Chairman Frothingham asked members of the Board to introduce themselves. Sandy Lebel has joined the Board as an Alternate. John Crowell was unable to attend, so Chairman Frothingham asked Alternate Sjostrom to sit in, which she did.

PUBLIC HEARING

Case # 2007-6 - Wakefield Tax Map #18, Lot 7 – Ralph Young, for property located at 311 Pick Pocket Road, East Wakefield NH. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3, Table 3 – Maximum Building Height, and Article 34 – Uses and Structures not Permitted are Prohibited, to allow the construction of a tower not to exceed 60 feet in height, where a maximum height of 35 feet is permitted. The purpose of the proposed tower is to support a wind turbine.

Chairman Frothingham reviewed the checklist and determined that all requirements have been met.

MOTION: The application is complete enough to proceed.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

Chairman Frothingham asked Mr. Young to come forward, which he did. Mr. Young provided numerous documents relating to the wind turbine he is proposing to build. These included graphs showing why it is advantageous to have a higher tower, pictures showing how the tower would look in proportion to the house, specs on the tower, the base and the blades including lengths, weights and dimensions. He advised that the noise would be no more than a household dishwasher.

Chairman Frothingham then asked the Board for questions and comments. Discussion followed concerning whether there would be enough wind in the area to make this practical, who would be installing it, what the electrical benefit is, would it have an impact on property values in the neighborhood. Mr. Young advised that there would be enough wind, a company in Belfast ME would be building it, the power generated would be sold back to the electric company, and he did not believe that it would have a negative impact on property values since he is simply trying to harness renewable energy.

Chairman Frothingham then shared his thoughts. He stated that he has researched Town of Wakefield regulations as well as responsibilities of the ZBA. While he is personally not against windmills, he is concerned that the ZBA can or should grant the variance. The reason for the application is Article 34 of the Wakefield Zoning Ordinance that states that anything that is not allowed is prohibited, and in order to grant the variance the Board would need to find hardship for Mr. Young rather than others.

Chairman Frothingham then referred to The Board of Adjustment Handbook for Local Officials, which states, "However, when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality. **The board cannot change the ordinance.**" He also referred to another section that states, "Requests for use variances are often the most difficult cases that zoning boards have to consider. Boards should not be swayed by opposition of neighbors or the fact that no abutters appear at the hearing. The board must review each variance criterion and grant the variance only if they are all met. The board does not have the discretion to grant the variance because they like the applicant or because they believe the project is a good idea."

Discussion followed as to what avenue Mr. Young should follow. Suggestions included going back to the Planning Board and getting the issue of windmills on the ballot so that legislation could be changed to allow them in some parts of town, circulating a petition to get it on as a Warrant article for the next Town Meeting. Planner Menici will check to see the number of signatures required. Chairman Frothingham affirmed that the Board does not have the authority to change zoning ordinances, and that it must enforce the law as it is written.

Planner Menici pointed out that the board has two issues– the use and area variance. Mr. Young did not address the area variance in his application- not a significant issue since use variance is more difficult issue. She reiterated the Chairman's words concerning the variance affecting his property more than anyone else's. Chairman Frothingham advised that anyone can apply, and that the board would need to vote on the criteria. Mr. Young was advised that if he were denied, it would be an impediment if he chose to return to the ZBA later.

Chairman Frothingham then opened the meeting to the public. Bruce Rich from East Wakefield expressed concern with the visibility of the windmill, specifically from Belleau Lake. He asked about the height of the windmill – 58.6 feet, and the height of surrounding trees – Mr. Young was not sure. Mr. Rich also cited the Zoning Ordinance that states that since it is not permitted, then it is prohibited. Discussion followed concerning Wakefield's Zoning Ordinance being permissive rather than prohibitive, whether the board can follow the criteria in order to determine if the variance should be granted, and again letting Mr. Young know his rights and what he can do. Mr. Young again stated that his objective is renewable energy, that he thought the only impediment tonight was the height of the structure, and that he pursued this since he saw on the state website that wind power is allowed in Wakefield.

Chairman Frothingham summed up the discussion by stating that he believes that renewable energy is a good thing, but that the issue being dealt with here is that windmills are not permitted in the Zoning Ordinance. As Chair of the Zoning Board he sees that Zoning regulations do not allow it, and would have to find that the prohibition affects Mr. Young in a way that it doesn't affect others. He reminded everyone that there are five members of the Board voting this evening. He advised Mr. Young that he could withdraw without prejudice at this time, and then he would be in the position of not having been denied. If he is denied, he would not be able to bring this issue back to the ZBA. The Chairman asked Mr. Young if he wished the Board to go forward, and he replied, "Sure, take a vote." Chairman Frothingham closed the meeting to the public, and the Board began deliberations.

Criteria 1: The proposed use would not diminish surrounding property values:

MOTION: to accept that the requirements of Criteria 1 have been met.
Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Criteria 2: Granting the Variance would not be contrary to the public interest:

MOTION: to accept that the requirements of Criteria 2 have been met.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

Criteria 3: Granting the variance would do substantial justice:

MOTION: to accept that the requirements of Criteria 3 have been met.
Made by: Paul Winckler
Seconded by: Judy Sjostrom
Discussion: None
Vote: Unanimous

Criteria 4: The use is not contrary to the spirit of the ordinance:

MOTION: to accept that the requirements of Criteria 4 have NOT been met.
Made by: Doug Stewart
Seconded by: Cecille Arnone
Discussion: Discussion concerning this is where the problem comes up. Member Stewart mentioned that this use IS contrary to the spirit of the ordinance.
Vote: Unanimous

USE VARIANCE

Criteria 5.A: Denial of the variance would result in unnecessary hardship to the owner:

- a. *The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:*

MOTION: to accept that the requirements of Criteria 5.A.a. have NOT been met.
Made by: George Frothingham
Seconded by: Paul Winckler
Discussion: Chairman Frothingham noted that the situation is not unique and the restriction applies to everyone.
Vote: Unanimous

- b. *No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:*

MOTION: to accept that the requirements of Criteria 5.A.b. have NOT been met.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

- c. *The variance would not injure the public or private rights of others because:*

MOTION: to accept that the requirements of Criteria 5.A.c. have been met.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

Chairman Frothingham reiterated that in order for a variance to be granted, the applicant must pass all criteria.

MOTION: to **DENY** a Use Variance to – Ralph Young, for property located at 311 Pick Pocket Road, East Wakefield NH. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3, Table 3 – Maximum Building Height, and Article 34 – Uses and Structures not Permitted are Prohibited, to allow the construction of a tower not to exceed 60 feet in height, where a maximum height of 35 feet is permitted. The purpose of the proposed tower is to support a wind turbine.

Made by: George Frothingham
Seconded by: Paul Winckler
Discussion: None
Vote: Unanimous

It was noted that the issue of the area variance is now moot since the use variance was denied. . While the denial of the use variance is an impediment, it can be overcome. Mr. Young withdrew the request for an area variance and was urged to contact the Planning Board

Case # 2007-8 – Wakefield Tax Map #48, Lot 40 – Todd Main, for property located at 56 Fisher Road, East Wakefield NH. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance

Article 3, Table 2 – Minimum setback from the street in a Residential II Zone, in order to construct a garage.

Chairman Frothingham reviewed that Mr. Main is requesting an area variance to build on an existing garage foundation, which encroaches on the front setback. He reviewed that the submitted papers include those for an individual trust. The land is on an overlay zone with one parcel subject to floodplain. The portion of concern is subject to the aquifer protection overlay district in which the biggest concern is lot coverage, which is not an issue here.

Chairman Frothingham reviewed the checklist and determined that all requirements have been met.

MOTION: The application is complete enough to proceed.
Made by: Doug Stewart
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Mr. Main came forward and explained that one corner of the garage is 17 ½ feet back from the road where a 20 foot setback is required. He is asking for a variance to allow building if the road was done according to plan, which it was not. Discussion followed concerning the fact that many roads in that area are not where they are supposed to be according the plans, and that it is common for the roads to be different. The board noted that they saw during the site walk that the garage is a long way from the road. Mr. Main pointed out that there are at least three garages in this situation already on Fisher Road. The board ended discussion, and there being no questions from the public, Chairman Frothingham closed the meeting to the public, and the Board began deliberations.

Criteria 1: The proposed use would not diminish surrounding property values:

MOTION: to accept that the requirements of Criteria 1 have been met.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

Criteria 2: Granting the Variance would not be contrary to the public interest:

MOTION: to accept that the requirements of Criteria 2 have been met.
Made by: Doug Stewart
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Criteria 3: Granting the variance would do substantial justice:

MOTION: to accept that the requirements of Criteria 3 have been met.
Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Criteria 4: The use is not contrary to the spirit of the ordinance:

MOTION: to accept that the requirements of Criteria 4 have been met.
Made by: Doug Stewart
Seconded by: Paul Winckler
Discussion: None
Vote: Unanimous

Area Variance:

Criteria 5.B. Denial of the variance would result in unnecessary hardship to the owner because:

- a. The following special conditions of the property make an area variance necessary in order to allow the development as designed:***

MOTION: to accept that the requirements of Criteria 5.B.a. have been met.
Made by: Cecille Arnone
Seconded by: Judy Sjostrom
Discussion: None
Vote: Unanimous

- b. The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:***

MOTION: to accept that the requirements of Criteria 5.B.b. have been met.
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

MOTION: to **GRANT** an Area Variance to – Todd Main, for property located at 56 Fisher Road, East Wakefield NH. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3, Table 2 – Minimum setback from the street in a Residential II Zone, in order to construct a garage.

Made by: Cecille Arnone
Seconded by: Judy Sjostrom
Discussion: None
Vote: Unanimous

Discussion followed concerning clarification that variance was granted so that applicant could build a garage, and that the footprint of the building would not change, and that the garage and foundation would be within the setback. Mr. Main provided drawings of the proposed garage, and said that he would comply by not having a proposed overhang.

Mr. Main was advised that the area variance has been granted, and that he will receive a Notice of Decision, but that any interested person can appeal this decision within 30 days.

APPROVAL OF MINUTES

MOTION: to accept the minutes of the September 17, 2007 as corrected
Made by: Paul Winckler
Seconded by: Doug Stewart
Discussion: None
Vote: Unanimous

OLD BUSINESS

Sandy Lebel was approved by the Selectmen and sworn in. Sharon Theiling will be meeting with the Board of Selectmen. John Napekoski has submitted a letter of interest and was in attendance at this meeting. He was advised that he will be contacted by the Board of Selectmen.

Discussion concerning scheduling of meetings. Meetings scheduled in January and February of 2008 fall on holidays. The Board discussed alternate meeting dates, either the next night or the next week.

MOTION: To schedule meetings on the Tuesdays following the holidays in January and February 2008.

Made by: Paul Winckler
Seconded: Doug Stewart
Discussion: None
Vote: All in favor

Four members of the Board are interested in attending the Law Lecture Series in Portsmouth on October 24. Lynn will call to register them.

MOTION: to adjourn the meeting at 9:30PM
Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Respectfully submitted,

Lynn Shaffer, ZBA Secretary