

TOWN OF WAKEFIELD, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

2 HIGH STREET
 SANBORNVILLE, NEW HAMPSHIRE 03872
 TELEPHONE (603) 522-6205 FAX (603) 522-6794

PUBLIC HEARING
March 17, 2008
Mantell – Kennedy

THESE MINUTES WERE APPROVED AT THE APRIL 21, 2008 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 | | Kathy Menici, Planning Director | |
| Doug Stewart, Vice Chair | x | Judy Sjostrom | x | John Ciardi, Deputy Code Officer | x |
| Cecille Arnone | x | Sandy Lebel | x | Arthur Capello | |
| Paul Winckler | x | Sharon Theiling | x | | |
| John Crowell | x | John Napekoski | x | Lynn Shaffer, Secretary | x |

Other Attendees as signed in:

| | |
|----------------|--------------------|
| Jane Dunn | Art Mantell |
| Judy Bockman | Michael Mantell |
| Jonathan Berry | Edward H. Morrison |

ROLL CALL – DESIGNATION OF ALTERNATES –

Following the Pledge of Allegiance, Chairman Frothingham asked members of the Board to introduce themselves. Due to Paul Winckler not being in attendance, Chairman Frothingham asked Sharon Theiling to sit in, which she did. Motion that application complete enough to proceed made by Member Stewart, seconded by Member Arnone, all in favor. Following the review of the checklist, Member Winckler arrived from the site walk and was seated for the hearing.

PUBLIC HEARING

Case #2008 – 2 – Wakefield Tax Map #152, Lot 9 – Arthur Mantell, applicant, for Glennis Little and Michael Mantell, property owners, for property located at 238 Doc Morrison Road, Wakefield. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3 Table 1 – Permitted Uses in a Residential II Zone, and Article 16, Section A and B.1 - The applicant wishes to exceed the 30 day limit for a primary camper, and to allow for the seasonal use of a secondary camper, where only one is allowed.

Chairman Frothingham asked Arthur Mantell to come forward, which he did. His brother Mike Mantell was invited to come forward as well. Art Mantell explained that his grandparents bought the property in 1972, and that his understanding is that it was originally a marina. The marina structure was removed and trailers were put in, and that they have always had three trailers on the property. He said that due to his brother’s medical condition he has become involved. He said that he has recently become aware of the issue surrounding the amount of time the property is used. When the 30 day issue came up, it is not consistent with how the property has been used since 1972. Due to the family growing, they have also placed a pop-up camper off to the side. Again, he was not aware there was a problem with that. He was asked when the Pop-up Camper was placed there, and they advised it was around 1999/2000. The pop-up

camper is only connected to electrical, and they rent a Port-A-Potty, which is maintained weekly for the person using that camper. Mr. Mantell repeated that the issue of the 30 day usage is that the property has been used as a summer long facility from Memorial Day to Labor Day since the family bought it in 1972, which exceeds the 30 day usage requirement. The subsurface septic system is serviced yearly and has been approved by Mr. Ciardi.

Chairman Frothingham asked Deputy Code Officer John Ciardi for his input on the situation. Mr. Ciardi did not have the information as to the date the 30 day limitation went into effect. Mr. Ciardi advised that the first citation issued to the property owners was in November of 1991, and that concerned the number of trailers. In June of 2002, the Selectmen expressed concern to Code Enforcement about the addition of the pop-up, with correspondence going back and forth. In April of 2007, Code Enforcement contacted Glennis Little about the septic system. Code Enforcement has approved the septic system as well as the use of the site for up to 30 days, per Article 16 of the Zoning Ordinance. He advised that approval for the 3 original campers is grandfathered, although he cannot verify if the time allowed is also, and that there is no way to do so. Michael Mantell advised that his grandparents always stayed for the entire summer, and that has always been the nature of the property.

Chairman Frothingham asked Mr. Ciardi if it has always been this way and the campers are grandfathered, then wouldn't the amount of time they're allowed to use them also be grandfathered? Mr. Ciardi advised that he cannot answer that since the issue of time was never addressed previously, but the number of campers was, both in 1991 and 1992. Mr. Ciardi advised that the recently approved amendment allows for 75 days, rather than 30 days. He repeated that the question of time was never addressed; it was the number of campers. Member Winckler stated that the Board could assume that it is grandfathered. Michael Mantell requested allowing the pop-up for 120 days and that it would be removed at the end of the season.

Alternate Theiling asked how many people use the property. She was advised that the mother and stepfather are there all summer, and various family members come during the summer – where there could be 6-8 on a normal weekend, and up to 15 on a holiday weekend.

Chairman Frothingham opened the Public Hearing. Edward Morrison spoke against approval of the variance, although he does not feel negative toward the family. He advised that he owns property there; as a matter of fact the road is named after his father. He remembers when that area was water and was filled in. He expressed concern that if the laws of the town have a time limit for trailers and campers to be on a property, then they should be held up. His concerns are not about sewerage since they have the Port-A-Potty, but about increased traffic, and the fact that there are rules that need to be upheld.

Chairman Frothingham asked him to clarify his comments regarding objections to the time and the pop-up since it will turn out to be 2 issues. One issue is amount of time any trailer can be used, and whether a pop-up can be used. If there is a rule regarding the pop-up, he feels that the Board should follow it. As for time, he has no objection to them enjoying the entire season at the lake.

Chairman Frothingham then closed the public hearing.

Discussion followed between the Mantells and the Board concerning the abutters and the fact that they approve of the campers, noise concerns, the fact that Michael and his mother bought the property in 1973. Chairman Frothingham expressed his opinion that the use of three trailers and their use for the entire season are grandfathered and not in contention. Mr. Ciardi again advised the Board that there has been communication between the town and the Mantells between August 1991 and 2002, and that while the trailers are grandfathered, the time issue still has not been resolved. Chairman Frothingham again reviewed that the family has been using the trailers all season for years, and that he feels that is grandfathered also. Member Stewart agreed. Chairman Frothingham said what we're dealing with is variance to use the pop-up trailer at all. If the Board agrees to use of the pop-up, then for how long can they do so. Member Winckler agreed. The Chairman was advised that it seems that issue of time for the allowed campers is an issue, as referenced in the letter from Mr. Ciardi. Chairman Frothingham expressed that just because someone says that, it doesn't necessarily mean that it is an issue, and that he has just asked everyone here to weigh in. He expressed that his personal opinion is that since they've

been doing this since the 1970's, in his mind it truly is grandfathered. Member Winckler agreed. Chairman Frothingham went on to say that if they had just started doing it last year it would be a different situation. Chairman Frothingham asked if all were in agreement that the area that needs to be deliberated is the variance for the use of the pop-up trailer, and that there would be conditions, and asked if there was any objection to that point of view. There was none. The Board then 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: 4 in favor, 1 opposed

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

MOTION: to accept that the requirements of Criteria 1 have been met.
Made by: Paul Winckler
Seconded by: John Crowell
Discussion: Members expressed concern about increased road traffic and refuse to the Transfer Station. Member Winckler expressed that the Mantells own the land and the Board should give them relief.
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: Cecille Arnone
Seconded by: Paul Winckler
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: Cecille Arnone
Seconded by: Paul Winckler
Discussion: Member Stewart stated that he did not necessarily agree since the ordinance addresses the environment and overcrowding, not just environmental issues.
Vote: 4 in favor, 1 opposed.

USE VARIANCE

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

- 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 been met.
Made by: Paul Winckler
Seconded by: John Crowell
Discussion: None
Vote: 3 in favor, 2 opposed

- 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 been met.
Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: None
Vote: 4 in favor, 1 opposed

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: George Frothingham
Discussion: None
Vote: Unanimous

MOTION: to **GRANT, with conditions**, a USE Variance to Glennis Little and Michael Mantell, property owners, for property located at 238 Doc Morrison Road, The applicants are seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3 Table 1 – Permitted Uses in a Residential II Zone, and Article 16, Section A and B.1 - The applicant wishes to exceed the 30 day limit for a primary camper, and to allow for the seasonal use of a secondary camper, where only one is allowed.

Made by: Paul Winckler
Seconded by: John Crowell
Discussion: None
Vote: 4 in favor, 1 opposed

Granting of the variance is subject to the following conditions:

- 1.) The septic system will be pumped and inspected annually, and the applicant will be required to apply yearly for approval of the system.

Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

- 2.) The applicant must abide by current zoning regulations so that the use of the pop-up camper will be limited to 75 consecutive days.

Made by: Doug Stewart
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

- 3.) The additional camper will be a pop-up camper, not connected to the septic system, with a “Port-a-Potty” on site.

Made by: Doug Stewart
Seconded by: Cecille Arnone
Discussion: None
Vote: Unanimous

Granting of the Variance has been done with conditions. Chairman Frothingham informed the Mantells that they would be receiving a Notice of Decision, and that any interested person can appeal this decision within 30 days.

Case #2008 –5 – Wakefield Tax Map #67, Lot 58 – Jonathan Berry, agent for Thomas N. Kennedy Revocable Trust, property owners, for property located at 8 Joslin Point Road, Wakefield. The applicant is seeking a Variance from the Town of Wakefield Zoning Ordinance Article 3, Table 2 – Minimum Setbacks in a Residential II Zone. The applicant wishes to add a 13 by 20 foot addition to the house, which would encroach 14.8 feet into the 20-foot street setback.

Chairman Frothingham reviewed the checklist for the case. There has not been a denial of a building permit at this time, since they just submitted the application last Thursday and Code Enforcement has not had an opportunity to review the plans. Chairman Frothingham completed the checklist, and asked the Board if it was complete enough to proceed.

MOTION: The application is complete enough to proceed.

Made by: Doug Stewart

Seconded: Paul Winckler

Vote: Unanimous

Chairman Frothingham invited Jonathan Berry, the agent for the owners to come forward. Mr. Berry shared the plans, which show that the Kennedy's would like to put a 12 x 20 addition on their home in order to create a dining area next to the existing kitchen. This would intrude into the setback and bring the building within 5 feet of the road, which Mr. Berry pointed out is little more than a driveway to 2 houses on a point which cannot be further developed. He advised that there would still be 40 feet between buildings on Joslin Point Road.

Chairman Frothingham then opened the Public Hearing, and two abutters came forward. They identified themselves as Jane Dunn and Judy Bockman, and advised the Board that they own the properties that are accessed by Joslin Point Road. Ms. Dunn expressed her concern that this will bring the house entirely too close to this road, which is dirt and mud, and has a very steep hill that is already difficult for cars to negotiate. Members of the Board asked if the addition has to be in the spot proposed, and if it has to be as big as the applicants have requested. Chairman Frothingham advised that the Board could approve with conditions, such as having the property owners fix up the road. He also suggested that the hearing could be continued in order for Mr. Berry to consult with the property owners and revise plans that could be agreeable to the abutters. Discussion among the abutters and Mr. Berry about potential damage to the roadway being repaired, and that they would be happy if the owners kept the footprint of the house and built within that. Mr. Berry made a formal request to continue until next month so that he could confer with his client. He and the abutters were advised this is being continued to a date certain – April 21 -, so no further public or newspaper notices are necessary.

MOTION: To continue the hearing to a date certain, April 21, 2008.

Made by: Paul Winckler

Seconded: Doug Stewart

Discussion: None

Vote: Unanimous

APPROVAL OF MINUTES

Chairman Frothingham advised the Board that there has been a request for a rehearing of the February 17, 2008 meeting. He suggested that the Board not approve the minutes at this time in order for the Secretary to review them along with the tape for accuracy of information covered at that meeting. Some of these issues are whether the cost of the remedy was mentioned, the matter of "failure to inquire", and the neighbor's concerns. The Chair felt that it is difficult to remember all details, and minutes are not usually done verbatim.

MOTION: To have the Secretary review the tape and revise the minutes by adding more detail, and that the Board will review them at the next meeting.

Made by: George Frothingham

Seconded by: Paul Winckler

Discussion: None

Vote: Unanimous

The Board then took up the issue of whether to grant a rehearing of the Edwards/Cruz case on February 17, 2008. Discussion followed concerning the issue is whether or not the right application was filed and that by hearing the case the Board saved the applicant the trouble of additional hearing and paperwork, that the right decision was reached in the case, that the owners' rights are paramount and were respected

by the Board. Member Stewart and Member Winckler both expressed that they felt that the right decision was made, no matter what kind of application was submitted. Chairman Frothingham advised the Board of the possibilities: if the Board agreed to a rehearing, it would have to be noticed. If the Board denied a rehearing, the Town could accept that or go to Superior Court. If the Board voted to rehear the case, the applicant could come before the Board for a Variance, where failure to inquire is not an issue. If the Board were to deny the variance the house would have to be moved. The consensus of the Board is that the right decision was made, and the Board reached a unanimous decision in this case.

MOTION: To not rehear the case.
Made by: Paul Winckler
Seconded by: Doug Stewart
Vote: Unanimous – (Alternates Napekoski and Theiling, who heard the case, voted.)

Election of Officers

Chairman Frothingham reminded the Board that he would not be running as Chair again.

NOMINATION: Doug Stewart for Chair
Made by: George Frothingham
Seconded by: Cecille Arnone
Vote: Unanimous

NOMINATION: George Frothingham for Vice-Chair
Made by: Paul Winckler
Seconded by: Cecille Arnone
Discussion: Member/Chair Stewart asked if anyone else is interested in getting experience as Vice-Chair. Member Arnone expressed interest. Nomination withdrawn.

NOMINATION: Cecille Arnone for Vice-Chair
Made by: Paul Winckler
Seconded by: George Frothingham
Vote: Unanimous

The upcoming OEP Conference on April 26 was discussed. The following members expressed interest in attending: Judy Sjostrom, John Napekoski, Sandy Lebel, Cecille Arnone, Sharon Theiling, Doug Stewart and Paul Winckler.

MOTION: to adjourn the meeting at 10:05PM
Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None
Vote: Unanimous

Respectfully submitted,

Lynn Shaffer, ZBA Secretary