



# TOWN OF WAKEFIELD, NEW HAMPSHIRE

## Planning Board Minutes December 5, 2019

### APPROVED

MEMBERS		ALTERNATES		OTHERS	
Tom Dube, Chair	X	Donna Martin		Victor Vinagro, Building Inspector/Co-Code Enforcement Officer	X
Dick DesRoches, Vice Chair	X	John Blackwood			
Charlie Edwards, Selectmen's Representative	X			Mike Garrepy, Planning Consultant	
David Silcocks, Member	X			Richard Sager, Town Counsel	
Doug Stewart	X				

**Others present:** Sean Sullivan with ClearView TV and Jim Miller

### **Pledge of Allegiance & Call the meeting to order**

The Chairman called the meeting to order at 7:08

### **Seat Alternates as necessary**

None present

### **Public Comment**

None

### **Public Hearings**

None

### **Conceptual Review**

None

### **Board Business**

#### Wakefield Zoning Ordinances

Amendment #1 Are you in favor of adoption of Amendment 1 as proposed by the Planning Board for the Town's zoning ordinance as follows:

Amend Article 3, Table 2, to increase the minimum shoreline setback for standard lots in the Residential II zone from 30 feet to 50 feet to match the state standards and to delete footnote 7, which explains that state setbacks currently supersedes the local setback requirements.

Accessory Dwelling Unit: Changing the definition to; As used in this article, “Accessory Dwelling Unit” means a residential dwelling unit that is located within or attached to a single-family dwelling or located in an existing or proposed accessory detached structure to a single family dwelling and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

### Bunkhouse Regulations

There was some discussion whether to table this regulation or proceed to work on it for the ballot this year. Bunkhouse-An accessory building to a single family dwelling providing extra sleeping quarters for guests staying in the principal building. A bunkhouse would be sleeping quarters. An ADU could be rented out, a bunkhouse cannot be. An ADU requires a kitchen and a bunkhouse does not allow a kitchen or cooking facilities. Also that it shall not exceed 260 sq. ft. in floor area or bunkhouse area if included within the accessory structure. Bunkhouses will be allowed in Zones R1, R2, R3, and Village/Residential and Agricultural, not including Business, Commercial and Light Industrial. The bunkhouse definition will go under definitions and bunkhouse regulations will go under Article 23G in zoning. This will also have to be added to permitted use and will be listed after ADU’s. The Board feels these three articles are for the betterment of the town and its lakes.

Bunkhouse will be article 1. Accessory Dwelling Unit article 2 and the Shoreland setback change will be article 3. A bedroom determines the septic requirements not the bathroom.

The Board will have a Public Hearing at their next meeting on these articles.

### **Approval of previous meeting minutes**

**Mr. Stewart made a motion, seconded by Mr. Silcocks, to approve the minutes of November 21, 2019 as written. (Vote 5-0)**

### **Correspondence**

#### Letter from Resident about Heritage Commission.

Mr. Dube read a letter from Jim Miller about the Heritage Commission dated December 2<sup>nd</sup> and a letter from Rick Sager dated October 15th about how much control the Heritage Commission has. During the reading of the first letter Mr. Miller called for a Point of Order stating there was something about a town employee in the letter and questioned if it was appropriate to be read. Mr. Stewart, reading the rest of the letter, stated it would be difficult not to say the name or the position of the town employee. He proceeded to read the letter without names or positions. Mr. Dube then read the letter from Mr. Sager. Mr. Dube then read a final letter from the Heritage Commission chairman that was sent to him. (Letters attached)

Mr. Dube said the Heritage Commission does fall under the Planning Board. He said there appears to be a situation with the Garvin Building. He said the Heritage Commission has state rules they have to follow although the Garvin Building isn’t in the Historical District. They’ve done a wonderful job of preserving buildings. They have put certain restrictions on the Garvin building that weren’t outlined so where does the authority come from and how can we help the Heritage Commission and the owner of the building. Mr. asked if there is a dispute should it come to the Planning Board? Mr. Dube asked, do we have that process legally? Mr. Stewart said we may not have the deciding vote but he feels it might

make sense to talk to both parties if both parties are willing to come to a meeting and talk this over. We know the Heritage Commission's purpose and goal and the landowners interests and we can try to make it fit so they can all get their needs met. This is concerning the type of materials that would be used for the deck, windows etc. They want to upgrade their building and make it look nice and be energy efficient. Mr. Stewart said whether or not we have any authority we may be able to talk to them and come up with a reasonable solution. At one time the Heritage Commission owned the Garvin Building and when they sold it they put restrictions on the deed but left them very loosely written. Mr. Dube said they renovated the building with all their own funds and did a great job. They saved that building. He asked, do we have the authority to bring the parties together to try and help. We need to know what kind of authority we have going into that. The Board concurred. Mr. Dube will contact Mr. Sager. Mr. Dube said perhaps we should get their meeting minutes and he recommend that the Board members watch the Heritage Commission meeting where they voted on this. The Board wants to help the owners who want to make the building beautiful and efficient for all in town and they want to work with the Heritage Commission also. Mr. Vinagro will call Strafford Regional Planning Commission to get their advice also.

### **Public comment**

Mr. Miller said he expressed his concerns to his public officials and singled out the chairman of the Commission because in his opinion he felt the chairman was leading the Commission in ways that were not in the best interest of the town. It was never his intent to make this a public spectacle. He tried to outline some examples of recent decisions the Heritage Commission has been making that are not in the best interest of the town. He named some of the decisions he questions. He suggested the Board members watch the videos to see for themselves. The Heritage Commission was established in 1993 by a warrant article which states that the commission shall have advisory and review authority. They are not elected officials with power. He said this does not diminish all the wonderful things that the Commission has accomplished. These are recent decisions that he feels are getting away from what he considers to be their real purpose. He's sorry if he offended anyone. His question is, Just how much power does the Heritage Commission have? Mr. Stewart said we will look into this and see what we might be able to do. Mr. Silcocks said based on how the warrant article is worded he's wondering if the Planning Board should have been reviewing the Commissions decisions right along. Mr. Dube said to be clear, you have a warrant article and next thing you know you have a new state ordinance that mandates something different. He said that Zoning Article 26 is about the Heritage Commission.

**ARTICLE 26 – WAKEFIELD HERITAGE COMMISSION.** The following Article establishes a Heritage Commission whose primary purpose is to administer the provisions of the Historic District. **A. PURPOSE.** New Hampshire State law declares that its towns and cities are filled with a rich blend of natural and cultural resources that define their special character. Man-made resources, recognized for their historic, cultural, artistic and community significance, frequently suffer from neglect or unsympathetic action. There is a necessity for identifying and protecting the cultural "cornerstones" of our town. The Wakefield Heritage Commission functions as an advisory board for the entire community. The Wakefield Heritage Commission is established in accordance with RSA Ch. 673 for the proper recognition, use, and protection of resources, tangible or intangible, primarily man-made, that are valued for their historic, cultural, aesthetic, or community significance within their natural, built, or cultural context. **B. POWERS.** The Wakefield Heritage Commission shall have advisory and review authority, specifically, as follows: 1. Survey and inventory all cultural resources; 2. Conduct research and publish findings, including reports to establish the legal basis for a district and preparation of heritage district ordinances within the Town prior to its adoption or amendment as provided in RSA 675:6;

3. Assist the Planning Board, as requested, in the development and review of those sections of the Master Plan that address cultural and historic resources;
4. Advise, upon request, local agencies and other local boards in their review of requests on matters affecting or potentially affecting cultural and historic resources;
5. Coordinate activities with appropriate service organizations and non-profit groups;
6. Publicize its activities;
7. Hire consultants and contractors as needed; and
8. Receive gifts of money and property, both real and personal, in the name of the Town, subject to the approval of the Board of Selectmen, such gifts to be managed and controlled by the Commission for its proper purposes. 2019Wakefield Zoning Ordinance Page 73 The Commission may acquire, in the name of the Town, by gift, purchase, grant, bequest, devise, lease, or otherwise a fee or lesser interest, development rights, covenant, or other contractual right, including conveyances with conditions, limitation or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly use the cultural resources of the city or town, and shall manage and control the same; provided, however, that the Town, or Commission shall not have the right to condemn property for these purposes.

C. ADMINISTRATION OF HISTORIC DISTRICT REGULATIONS. In addition to the powers conferred elsewhere in this Ordinance, the Wakefield Heritage Commission shall exercise duties, which include:

1. All the powers and duties assigned the Historic District Commission by RSA 674:46-a, as amended;
2. Administrative authority of the Wakefield Historic District, as identified in this Ordinance.

D. APPROPRIATIONS AND EXPENDITURES. The Town may appropriate money as deemed necessary to fulfill the purposes of the Wakefield Heritage Commission. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 674:44-b shall be placed in a Heritage Fund and allowed to accumulate from year to year. The Heritage Commission may expend money from such fund for its purposes without further approval of the town meeting. The Town Treasurer, pursuant to RSA 41:29, shall have custody of all monies in the Heritage Fund and shall pay out the same only upon order of the Heritage Commission. The disbursement of Heritage Funds shall be authorized by a majority of the Heritage Commission. Prior to the use of such funds for the purchase of any interest in real property, the Heritage Commission shall hold a public hearing with notice in accordance with RSA 675:7.

E. MEMBERSHIP. The Selectmen shall appoint a Wakefield Heritage Commission comprised of seven (7) members and five (5) alternate members. Membership on the Commission shall be as follows:

1. One member shall be a member of the Board of Selectmen;
2. One member may be a member of the Planning Board;
3. No less than two of the members shall be residents of historic districts; all terms shall be for three years. A vacancy for an unexpired term shall be filled in the same manner as original appointment. The members shall elect a chairperson for a one year term.

F. SCHEDULING OF MEETINGS. Meetings of the Wakefield Heritage Commission shall be held at the call of the chairperson and at such other times as the Commission may determine.

G. DISQUALIFICATION OF MEMBER. No member of the Wakefield Heritage Commission shall participate in deciding or shall sit upon the hearing of any question which the Commission is 2019Wakefield Zoning Ordinance Page 74 to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror in a trial of the same matter in any action of law or knowledge of the facts involved gained in the performance of the member's official duties.

Mr. Stewart asked if ARTICLE 10 – HISTORIC OVERLAY ZONING DISTRICT applied. Mr. Vinagro said Pam Wiggin dropped off Standards for Rehabilitation, which he will send to the members. They also have The Wakefield Heritage Commission District Guidelines. There is some concern about changes being made in the district without having a meeting with the residents of that district first. Mr. Silcocks said they are an advisory board but are the governing body of the district and if changes are made they should be doing a public hearing prior to the changes. The Board discussed questions they need answers to from the town attorney.

**Set next meeting date: December 19<sup>th</sup>, 2019**

**Adjournment**

**Mr. Silcocks made a motion, seconded by Mr. Stewart, to adjourn the meeting at 8:40. (Vote 5-9)**

Respectfully submitted for approval at the next Planning board meeting,

Priscilla Colbath  
Planning Board Secretary

December 2, 2019

To: Planning Board Chair Tom Dube

I recently sent an e-mail to elected officials including you, describing my concerns about recent Heritage Commission decisions that I feel are not in the Town's best interest. I specifically mentioned Pam Wiggin as the responsible party because the truth is that we all know is that Pam Wiggin IS the Heritage Commission. Watching any meeting video will provide ample evidence of that.

It's a shame that those who have already taken sides have focused more on how I said it than the real issue at hand. Pam's letter of rebuttal was predictable. It was an attempt to divert, deflect and distract the conversation away from the real issues..... strange decisions recently made by the Heritage Commission at her instruction.

The one common thread that connects everyone who is part of local government is that personal agendas must be put aside when you serve the people. I am concerned that the Heritage Commission has become a tool for Pam Wiggin to advance her private agendas. Here are several recent examples. As you review them, I ask you to consider whether each decision was in the best interest of the Town.

1: The water barrel at the Union train station. Was it really a good idea to spend in excess of \$50,000 to move a water barrel from another town to Union when the building next door, Wakefield Resource Center, a Town owned building that IS on the National Historic Register, needs a roof and renovations?

2: The B&M freight house. Pam is focused on moving it onto the Turntable park property, even though no one has ever been asked if we want that. The \$18,500 grant being spent to x-ray the dirt is step one of this process. The whole plan is laid out in the grant document. Also in the grant document is a statement (page 5 of the application) that *"Should the aforementioned lease not be executed, the grant request must be withdrawn."*

We don't own the property. There is no lease. It is still uncertain whether there will be one soon. I brought this to the Town Administrator's attention before the grant money was accepted. Yet the money was accepted and the work has begun. The excuse I was given is that it wasn't part of the grant contract. So it's on this form, but not that one, so we ignore the answer we don't like and pick the answer we like?

3: The church speed signs. Was it appropriate for the Heritage Commission to vote, at Chairman Wiggin's insistence, to refuse the signs and ultimately disregard public safety? At the following Selectmen's meeting regarding the signs Pam insisted that the Heritage Commission had no knowledge of the purchase, yet several audience members refuted her claims. The Selectmen had the good sense to override the Heritage Commission on this issue.

4: The latest issue is the Garvin building. It's true that the Heritage Commission does have some measure of deeded control over the building's appearance but recently, again at Pam Wiggin's insistence, the Heritage Commission voted to apply guidelines normally associated with buildings that



are on the National Historic Register. The issue is that the Garvin building is NOT on the national historic register. At the moment, Pam is insisting that no vinyl products or composite decking can be used in the renovations. Watch the video and read Attorney Sager's letter.

This vote was still taken despite the cautioning of Select Chair Mark Duffy and a letter from Town attorney Rick Sager. It's pretty hard to lose a vote when your husband is on the commission and your two friends, the Twombles, practically guarantee four "yes" votes on any proposal, no matter how bizarre. You don't need to take my word for it. It's all there on the Heritage Commission videos.

As the person responsible for recording Town government meetings I have a unique perspective. I get to see all the madness in real time. I have previously sent an opinion email to my elected officials calling out what I feel is a misuse of a position. Despite the fact that the Heritage Commission has had many great accomplishments, recent actions indicate that it is not currently operating with the best interest of the Town as a whole. It is my opinion and I have provided verifiable examples to back up my concerns.

I come to you because there is no other remedy to correct this at the ballot box. It's unfortunate that there are those, including our town Administrator, who have focused on a couple of lines in my e-mail, taken sides, and lost sight of the rest of the content. The fact that our Town administrator is very friendly with Connie Twombly, a HC member who is very friendly with Pam Wiggin, makes me wonder if she has lost her objectivity in this situation. The Town Administrator told me that she had shown my e-mail to Pam Wiggin and it had upset her. This was followed by an approximately 15 minute verbal beat down, given to me by the Town Administrator, about how inappropriate the content of my e-mail was. I stand by what I said. I knew there would be consequences but I will not be a punching bag. My mistake was being in that office and listening to it. I will correct that.

From my perspective, I have communicated a concern to my elected officials. I have done this outside of public view. I have no control over what happens next. I'm hoping that my questions will be asked, and answers given regarding recent decisions of the Heritage Commission. Most notably: Just how much power to control does the Heritage Commission actually have, especially outside the heritage district? Since the Heritage Commission was originally started by warrant article as an "advisory" board to the Planning Board, it might be reasonable to review all documents and have more Planning Board involvement and oversight in the future. At this point, given the examples above, I wonder if all proposals by the Heritage Commission should come before the Planning Board for its guidance.

And before you damn me and dismiss me for bringing all of this up please consider that I have no other way to address this concern other than contacting my elected officials. I have not made a public spectacle of it. However, as a citizen I can't vote Pam Wiggin out of her position or I would try.

Jim Miller

**Kelley A. Collins**

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**From:** Richard Sager <rick@sagersmith.com>  
**Sent:** Tuesday, October 15, 2019 5:00 PM  
**To:** Pam Wiggin  
**Cc:** Kelley A. Collins; Mark Duffy  
**Subject:** RE: Garvin Building

Hi Pam,

Yes, I heard the Garvin Building was sold. And I understand the concerns surrounding the new owner and the interplay with the Town and its Heritage Commission.

Kelley Collins indicated you would be contacting me, and authorized me to respond to your question(s).

I looked back through my files from 2004 when the Town sold the property initially, and I don't have very much information. I drafted the deed, and as you will certainly recall, Beth MacRury (God rest her soul) ran the Commission with an iron fist. If I remember correctly, the Heritage Commission spent considerable funds buying and refurbishing the building to save it from ruin, and when it was sold, wanted to ensure it remained an historic building.

Under RSA 674:44-b, the Commission has the authority to hold a "lesser interest" in property "as may be necessary to ... protect ... or otherwise conserve" the property. It therefore has the legal authority to enforce the covenants that are included in the 2004 deed. The fact the Garvin Building is not located in the Town's historic district does not limit its authority because a heritage commission, unlike an historic district commission, has town-wide authority, subject to only its rules of procedure, zoning, etc. By contract, an historic district commission (and a heritage commission when acting as an historic district commission) is limited to exercising its jurisdiction within an historic district.

As an aside, I note the 2019 deed to the current owner contains no reference to the covenants imposed in 2004. Regardless, the covenants are indeed still valid, and will continue to "run with the land" until such time as the Town, if ever, votes to repeal them.

The authority of the Commission under the 2004 covenants is not without limitation. Looking at the language of the covenants themselves, it would appear the role of the Commission and/or the Town is to ensure the Garvin Building is maintained in "a neat and orderly condition." Also, in the case of partial/total destruction of the building, or material or structural changes to it, the Commission has the authority to approve the change. To my way of thinking, this brings up a key issue, namely: When is a change to the building "material" or "structural"? Because these terms are not defined in the 2004 deed, they are open to a certain amount of interpretation. This built-in "wiggle room" may have been accidental, or perhaps purposeful. It can be difficult



to define with specificity each instance where a change is either material or structural. In such instances, and in summary, the courts will employ something akin to a "reasonable person" standard in an attempt to try to glean the intent of the parties when the title passed from the Town in 2004.

I gather from your email the Commission had no such standards or guidelines in place in 2004 that could offer some insight into what is, and isn't, material or structural. Frankly, I would be surprised if it did, as such would be somewhat unusual. Thus, we need to focus on what the reasonable expectations of the parties were in 2004 as to the scope of the Commission's oversight authority. Unless there is some other source of information as to what the covenants meant in 2004, I suggest the goal was to ensure the "neat and orderly" condition and appearance of the building, and to ensure the appearance remains substantially as it was in 2004.

Given the considerable "wiggle room" in the covenants, I suggest working with whoever the current owner may be at any particular time, as I would be concerned that a dispute over the extent of the Commission's authority to dictate what an owner can do will be viewed narrowly by a court.

But I digress.

The Commission does not have specific statutory authority to adopt guidelines, but there's a good argument to be made that it has such authority by implication. Given the Commission is primarily an advisory board, having some guidelines to assist it in offering advice is reasonable.

As to the adoption of the Secretary of the Interior's Standards For Rehabilitation, a copy of which you supplied, I don't have a particular problem with them. They seem broad enough to cover an array of instances without being too lost in the minutia.

However, the Standards, if adopted, cannot be used retroactively against any owner of property, specifically the owner of the Garvin Building, at least to the extent the Standards are more restrictive than the understanding and intent of the parties were in 2004. This is because in a fight between governmental authority and a private party's property rights, the property owner will almost always win absent prior notice of the imposed restrictions.

However, for all Town-owned properties for which the Commission has oversight authority, the Standards seem to me to be acceptable, and likely a welcome addition to fill the void where I assume no such standards exist.

I apologize for the length of this response, but apparently I was in the mood to type.

I am available for any follow-up questions you have.

Rick



Wakefield Heritage Commission 2 High  
Street, Sanbornville, NH 03872 603-  
387-3698  
info@historicwakefieldnh.com  
[www.historicwakefieldnh.com](http://www.historicwakefieldnh.com)

To begin with, I am aware of the email circulating regarding me and the Wakefield Heritage Commission. The obviously uninformed writer of this email has made ludicrous and slanderous accusations toward me and the Heritage Commission. Before one criticizes the Commission and its duties, it would make sense that one would read the enabling legislation which is readily available on the State of NH website. In addition, also the decisions voted on by the Commission and by the Board of Selectmen over the last 26 years must be reviewed. These are the directives that have guided the work of the Heritage Commission. We are recognized by the NH Division of Historical Resources as well as other preservation minded organizations for what they consider outstanding accomplishments for a NH town, large or small. I could list our many accomplishments but that is not necessary as I am sure you are well aware of our stewardship, management and protection of Wakefield's historic and cultural resources. Wakefield is a shining star and we should all be proud of the Heritage Commission's many accomplishments and not fall prey to an individual's personal opinion on a subject which obviously he has shown to have very little knowledge. Furthermore, it would be expected that anyone with limited knowledge would ask questions rather than make absurd statements that have no factual bearing. My reputation is supported by 26 years of experience and training oriented toward the recognition, preservation and management of our historical assets. I am a lifelong resident and volunteer who loves this Town and has always strived to do my best for the job to which I was appointed.

Pam Wiggin, Chair

Wakefield Heritage Commission

