



## TOWN OF WAKEFIELD, NEW HAMPSHIRE

### Planning Board Minutes

November 19, 2020

Approved

Zoom Meeting #14

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

Others present: Mark McConkey, Bob Glidden, Teresa Williams, Orion Rogers, Ricky Davis, Jody Davis, Jim Miller and Ted Taylor from Clearview Community TV

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

Chairman Dube called the meeting to order at 7:03.

#### **Seat Alternates as necessary**

None present

The Williamson Public Hearing has been postponed indefinitely

#### **Public Comment**

None

#### **Public Hearings**

Conditional Use Permit Application submitted by Mark McConkey for property owned by Nancy Amico c/o Orin Rogers at 2812 Province Lake Road, Tax Map 77-41. The applicant is seeking approval of a Conditional Use Permit to convert an existing Dwelling into an ADU in the Residential II Shoreland District.

Mr. McConkey handed out full size copies of the map to the Board members. He is a septic designer and installer. The owners asked him about adding another home on their property and convert the existing home into an ADU. They held back the application until the voters approved a detached ADU. The existing house is 1,272 sq. ft. they wish to section part of the building for storage. The ADU would be 694 sq. ft. The stairs leading from the kitchen to the cellar would be

sealed off and that would become a pantry. There is a three-season room that they haven't counted in the calculation. The septic system that has a state approval from 2002. It's approved for 780 gallons a day and they can repurpose the flow so it can handle the one-bedroom ADU and the new house. They don't have septic approvals or shoreland approvals yet. The front home facing Balch Lake meets zoning, Mr. DesRoches asked how do we approve an ADU on the site when the primary home isn't even permitted yet. It seems premature. It's supposed to be an ADU to a main building and that building doesn't exist. Mr. Dube said it would meet the current zoning if this home on the lake becomes the primary dwelling and the other one becomes the ADU. Mr. DesRoches asked, don't we have to have a dwelling or at least a permitted dwelling before we can approve an ADU?

Mr. Silcocks said this is a unique property because a road runs through it and he sees the catch 22 because we can't approve one without the other. Mr. Dube said he has to do it this way because you can't have two structures on a lot. Mr. Stewart replied that's the problem he has. Other than changing a few walls, from the outside it's a house. He went on to say our zoning says: If an ADU is located in an accessory structure the appearance of that structure must remain as an accessory structure. Mr. Stewart said it doesn't meet zoning, period. He believes they should go to the Zoning Board to see if they could get a variance. It looks like they don't have plans to make this house look like a carriage house, shed or garage. Mr. Stewart said we don't have the authority to go above the zoning and it says it must look like an accessory structure.

Mr. Dube opened the Public Hearing at 7:21. Bob Glidden asked if they decide to sell after they get approval will that approval continue with the new owner? Mr. Dube replied yes. Mr. Glidden also feels a one-acre property holding two homes and a pole barn is crazy. He believes this will open up a can of worms for Wakefield. Teresa Williams was curious if this is permitted who in the future will make sure this stays an ADU unit? She agrees with Mr. Stewart people driving by will see two houses on one property. She also asked about notifying people of the hearing, what is considered an abutter? She also asked if an ADU is approved can you live in it while building a house on the property. Her biggest concern is the ADU looking like an ADU. Mr. Glidden asked if the Board ever had a request like this one come before them. Mr. Dube said this is the first. Ricky Davis asked if the pole barn had any affect on the ADU. Mr. Dube said not unless it's a dwelling. Mr. Dube closed the Public Hearing at 7:31.

Mr. Dube said they are asking for a Conditional Use Permit. An ADU is permitted in our zoning. It is a little unorthodox. He recommends they go through the Conditional Use Criteria and see if there's anything that would stop us from going forward. He sees no reason why it would have to go for a variance. What they're trying to do is pretty straight forward. He's not concerned how it would look as much as keeping it a storage area. Mr. Vinagro said he was told it was going to be heated storage. He told them it would have to be complete fire separation into the attic. Mr. Dube said he would probably try and get a variance to make the ADU bigger. Mr. Stewart does not think the Board should be hearing this case. It's a house and you can't have two houses on a lot. It doesn't look like an accessory structure; it looks like a house. They could go to the ZBA the ZBA has a right to say it's ok to go against the zoning. He does not believe the Board has that right to say it's ok to go against the zoning. Mr. Stewart read from the Zoning Ordinances, page

58, Article 23D Section C: “If an accessory dwelling unit is located in an accessory structure, the appearance of that structure must remain as an accessory structure.” Mr. Dube said if you look at A, the definition of an ADU, it clearly meets that. Mr. Stewart said, but part of the article is what it looks like. Mr. Dube read the following: “An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked. Access to the accessory dwelling unit may be directly from the exterior of the dwelling provided that said entrance is constructed in such a way that it is in keeping with the appearance of a single-family dwelling from the street. If an accessory dwelling unit is located in an accessory structure, the appearance of that structure must remain as an accessory structure. The space dedicated as the accessory dwelling unit should be designed in such a way that when its use is discontinued as an accessory dwelling unit, a minimum of time and expense shall be necessary to convert the space back to its previous use”.

Mr. DesRoches said the last line is what he is concerned about. It would have to be converted to a single-family home. This application is trying to put two houses on a lot that doesn't meet the family compound, which would be the other choice. We will still end up with two homes on one lot when we don't know what will happen when they attempt to get permitting for this new home. He also doesn't think it meets the zoning and so you can't go to the other Conditional Use requirements. The intent is not to take single family homes, cut them in half, call part of it storage and end up with two homes on one lot. Mr. Dube totally disagrees. He said this was the way for the State to have other places to live for family members and extra income to help pay for their property taxes. That was the reason for the ADU. He said it clearly meets the zoning for an ADU and it has been voted on twice by this town. Mr. Stewart doesn't think this would be any different if it weren't on shoreland. They wouldn't need a Conditional Use and it still would not meet the zoning.

Mr. Stewart read from The NH Guide for Municipalities for ADU's

Section 1.1: What is an ADU? An ADU is an additional dwelling unit that is secondary to the primary unit. It is not an equal or duplicate unit.

Mr. Silcocks said it's not easy to find buildable lots on waterfront. He said no one is going to think that the two houses are on the same lot. Mr. Stewart said, but it is and Mr. Silcocks agreed but he said it isn't over cluttering the neighborhood. Mr. Stewart suggested going through the criteria. Mr. Silcocks said Mr. Fifield would be here in two minutes. Mr. Stewart said he may have an objection to him voting on this as he hasn't been here to hear any of it. Mr. Dube and Mr. Silcocks said we can fill him in. Mr. Fifield entered the meeting at 7:49. Mr. De Roches said the applicant should go through his whole presentation again as Mr. Fifield hasn't heard any of it. Mr. McConkey repeated some of his presentation. He added there were many towns that allow part of the house to be used as an ADU and the rest as storage and it stays looking like a house. He continued a synopsis of his presentation. He suggested that what he wants to do is permitted. Mr. Fifield understood the situation.

Mr. DesRoches said this is an attempt to put a second house on a lot that, by law, doesn't allow a second home. We can't rely on it being storage forever. Our zoning does not allow this. It doesn't meet the criteria for a family compound. The intent for an ADU is a garage, a separate

building, part of your house you want to convert, that's an ADU. This is a second house on the same lot. Mr. Stewart told Mr. Fifield that one part of the zoning for an ADU states, if an accessory dwelling unit is located in an accessory structure, the appearance of that structure must remain as an accessory structure. He explained that they are not planning to change the outside of that house at all. It will look like two houses on one lot and that's not allowed. Mr. Silcocks said he thinks there could be a stipulation that it look more like an ADU. Mr. Dube said what Mr. Stewart and Mr. DesRoches are saying is the applicant shouldn't be before us because it doesn't meet the zoning and, in his mind, it clearly meets the zoning and it needs a Conditional Use Permit. Mr. Fifield asked what prevents the storage from going back to living space? Mr. McConkey said Mr. Vinagro will have to define that, like no heat or water. He said the applicant would be happy to alter the outside to look like an ADU. If they violate the conditions the ADU goes. Mr. Dube said it meets all the setbacks on the lake side.

Mr. Dube reopened the Public Hearing at 8:03.

Jody Davis said it is very clear to her that they are trying to put two houses on one lot. She said the definition of an ADU is that it's an additional dwelling unit to something that already exists. This house does not exist. Mrs. Williams said that she didn't know if the ADU was put in place for something like this. She believes it's backwards from what was proposed. Her biggest concern is how will you make sure it stays an ADU with storage? She feels in the future this will be turned into two houses on one lot. You're opening up the door for anyone to do this anywhere in town. She asked if the three-season room will still be used. Mr. McConkey said it's not livable space. Mrs. Williams disagrees. That room could be used to live in. Mr. McConkey said the applicant will chop it off.

Mr. Dube closed the Public Hearing at 8:13.

Mr. Fifield feels it's a little bit backwards, the house in front should be the ADU and the existing house should stay the existing house and not downsize an 1,8000 sq. ft. house there might be less objection to it. If the existing house didn't have the porch or deck and it was downsized it might be more palatable. Mr. McConkey said the applicant is more than willing to do whatever has to be done. Mr. Stewart said if the applicant was going to make changes to make the house look like an ADU he would like to see a plan and have a Public Hearing. He needs to see what that would look like. Without that he would vote no for a Conditional Use Permit. A conversation ensued between Mr. Dube and Mr. Stewart. Mr. Silcocks asked if the Board could approve a Conditional Use Permit with the condition, he would have to come back with a plan we'd have to approve? Mr. Stewart disliked that suggestion. Mr. Silcocks said he would say they couldn't get the occupancy permit for the house without meeting the ADU conditions. Mr. Stewart said that would put the horse before the cart. Mr. Fifield said everyone should be able to have a house and an ADU but not two houses on the same lot. Mr. DesRoches said the first sentence of the criteria says, it meets our zoning. Mr. DesRoches said it doesn't meet that condition because it is essentially allowing another home on the same lot.

1. The proposed use(s) shall be only those allowed in this Ordinance by Conditional Use Permit. Mr. Stewart said no it's not allowed. The building that they want us to classify as an ADU is a home and doesn't look like an ADU. It says must appear... Mr. DesRoches is voting that it doesn't meet our zoning for the same reasons that Mr. Stewart stated. Mr. Silcocks voted that it does. Mr. Fifield is more concerned with the outside look. If there were conditions to remove

outside items to make it look like a little cottage then he votes yes. Mr. Dube said why we're here for a Conditional Use Permit is clearly defined, that's why we're here.

**Roll call: Mr. DesRoches no, Mr. Stewart no, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 3-2)**

2. The proposed use(s) is/are consistent with the adopted Master Plan.

**Roll call: Mr. DesRoches yes, Mr. Stewart no, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 4-1)**

3. The specific site is in an appropriate location and of adequate size for the use.

**Roll call: Mr. DesRoches no, Mr. Stewart no, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 3-2)**

4. The use, as developed, will not adversely affect the character of the area in which the proposed use will be located.

Mr. Dube agreed with moving the porch and extending the Public Hearing and come back with a plan that makes that home look like an ADU. If you allow the Conditional Use Permit allowing the existing home to become the ADU within a storage unit and if it did ever have to go back would it go back as a storage unit? Mr. Stewart said we would have to make this a condition of use. Mr. DesRoches thinks it has to revert to its former use before it was designated as an ADU which would be a single-family home. A condition would be it stay as an ADU or all storage.

**Roll call: Mr. DesRoches no, Mr. Stewart no, Mr. Silcocks, yes, Mr. Fifield yes. Mr. DesRoches, Mr. Stewart, Mr. Silcocks and Mr. Fifield all rescinded their votes.**

The Public Hearing will be continued on number 4 of the criteria and the applicant will come back with a plan for the ADU.

5. There will be no nuisance or serious hazard to vehicles or pedestrians.

**Roll call: Mr. DesRoches yes, Mr. Stewart yes, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 5-0)**

6. The use will not place excessive or undue burden on Town services and facilities.

**Roll call: Mr. DesRoches yes, Mr. Stewart yes, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 5-0)**

7. There would be no significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood in which the use would be located.

**Roll call: Mr. DesRoches no, Mr. Stewart no, Mr. Silcocks, yes, Mr. Fifield yes, Mr. Dube yes. (Vote 3-2)**

Mr. McConkey wrote a request for continuation to December 3<sup>rd</sup>.

## **Conceptual Review**

None

**Board Business**Wakefield Master Plan

Nothing ready yet.

Zoning Ordinances

He received a response from Mr. Sager. They will be discussed at the next meeting

**Approval of Minutes**November 5, 2020

**Mr. DesRoches made a motion, seconded by Mr. Stewart, to approve the minutes of November 5, 2020. Roll call vote (5-0)**

**Set next meeting date**

December 3, 2020

**Public Comment**

None

**Adjournment**

**Mr. Silcocks made a motion, seconded by Mr. Fifield, to adjourn the meeting at 9:10. Roll call vote (5-0)**

Respectfully submitted for approval at the next Planning Board meeting,

Priscilla Colbath  
Planning Board Secretary