



TOWN OF WAKEFIELD, NEW HAMPSHIRE

Planning Board Minutes

December 17, 2020

Approved

Zoom Meeting #16

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 and Jacqueline Wall by Zoom, 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 7:00.

Seat Alternates as necessary

None present

Public Comment

None

Public Hearings

Continuance of a 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 sent an ariel view of the property and newer plan of what the building would look like when it is converted over to an ADU and storage. The names on the ariel view are not accurate but that doesn't change his point.

Mr. Dube asked Mr. DesRoches if he had anything to say. He said he didn't have anything new to add, He does not believe this is an appropriate use of the ADU language in the regulations. He believes it's simply a disguise, two houses on the same lot which zoning does not allow. He will be voting against approval. This is not what he voted for when he voted for the language that we

have in the regulations. He does not feel that it fits the zoning in the spirit or language. Nothing has changed his mind.

Mr. Stewart said nothing that he's seen has changed his mind. His position stands, we as a Planning Board do not have the right to waive a regulation and if the Board votes in favor, they'd be doing just that. This matter should be in front of the ZBA. Mr. Silcocks said at a previous meeting that this is a unique lot because a road goes through it. Our zoning says if an ADU is located in an accessory structure the appearance of that structure must remain as an accessory structure. Our zoning does not also include language that says if there's a road running in the middle of the lot then we can waive that. He believes the Board is overstepping their bounds and if the applicant went to the ZBA they may have a decent argument. That's how this process should be working.

Mr. Silcocks feels the lot is unique in its own way. He said the zoning says if it's an accessory structure it needs to remain as an accessory structure. This isn't starting out as an accessory structure. It's being degraded. He feels maybe they should look into their zoning to maybe address it a little better down the road. He believes this is a positive move for the lot.

Mr. Fifield said his opinion, with limited knowledge on this board is, they have made good movements to make it look like an ADU. They're going to reconstruct it. He does believe you can use judgement when it comes to a road dividing a lot because it looks like there's one lot on one side and one lot on the other side of the road. Unless you knew they were the same lot you wouldn't know it. He said he felt it was a common-sense thing. They did what we asked them to do. He said if there is nothing prohibiting it, we have an obligation, if people meet the guidelines to approve it. He believes it meets the criteria.

Mr. Dube said we are definitely not overstepping our bounds. It is clearly stated that the Accessory Dwelling has to be 700 sq. ft. or less. This is going to be an accessory to a house. Just like if there was a house there right now, a 600 ft. camp, that could be the ADU and they could build a house. It's no different except they have to do some modifications. He said it clearly, in my mind, meets the zoning.

Mr. Dube opened the Public Hearing at 7:13.

Mr. Glidden said he talked to the other abutters and they're upset because there are two other options the owner could take, tear it down or build the ADU on the lake. Mr. Dube responded that we can't tell people what to do on their own property as long as they meet the zoning. We have the Conditional Use Permit in this zone to protect the water.

Mr. DesRoches said, for the record, he is not voting against this because it's a Conditional Use Permit. I'm voting against this because it's the only way he feels we can correctly interpret the zoning. He believes the Town would be wrong under the current zoning to issue a building permit for this exact same thing anywhere else in the Town unless it was the road frontage and lot size to meet some other way of building a second home full size home on the same lot. He realizes if it were in another zone they wouldn't be coming before us but believes the Town would be wrong to issue a building permit for a second house by taking an existing full-size

house and making it into an ADU with storage not really knowing what happens inside that home.

Mrs. Williams asked if the ADU could be rented by a non-family member. Mr. Dube said yes. She asked if someone had to live in the main house for four months out of the year in order to use the ADU. Mr. Stewart explained that the owner has to live in either dwelling for four consecutive months or the ADU needs to go away. Mrs. Williams asked if all this has to be in writing. Mr. Dube said yes. Mrs. Wall asked if this goes through is there an appeal process. She was told that either party had thirty days to appeal the decision. She was told to go see Mr. Vinagro who will look into that. Mr. Dube said the owner, at his own risk, could start the building process. Mrs. Wall asked if this went to the ZBA. Mr. Silcocks said an appeal would have to have new arguments that weren't presented in the case. Mr. DesRoches says he believes it comes back to the Planning Board to vote on again and if the applicant seeks relief in the courts but you must have a rehearing with the Planning Board first. Mr. Silcocks said you can't go before the board without presenting something new. Mr. Stewart said the appeal may be that the Planning Board did not interpret the zoning correctly. Mr. Glidden said you can spin it anyway you want; this is a potential family compound. Mr. Dube responded that every lot in town that meet certain criteria can have another home on it, it's called an AUD. This is in our zoning and mandated by the state. It is for income for the people because zoning is so tough. Mr. Dube closed the public Hearing at 7:29.

Mr. Dube read the rules of appeal. An appeal of a Planning Board decision concerning a site plan or subdivision is taken to superior court and can be filed by any person aggrieved by the decision. One exception in this procedure is found in RSA 676:5 and would occur if the Planning Board makes any decision or determination found on an application based solely or in part on the terms of the Zoning Ordinance. In that case the decision is considered an administrative decision based on an interpretation of the Zoning Ordinance which is appealed first to the Zoning Board of Adjustment. It is possible that the Planning Boards decision on a subdivision or site plan application will be appealed both to Superior Court and the ZBA based on the reasons for the decision.

Mr. Dube said there is a whole section in our zoning you can read online that includes more information about an appeal. The Board did not previously vote on criteria number 4 on November 19th. Both Mr. Silcocks and Mr. Dube do not feel there will be any change. Mr. Stewart said this goes back to the fact that the Board is allowing two homes on one lot and believes this negatively affects the character.

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

Roll call: Mr. DesRoches no, Mr. Stewart no, Mr. Silcocks, aye, Mr. Fifield aye. Mr. Silcocks and Mr. Fifield all rescinded their votes aye. (Vote 3-2)

Mr. Stewart asked what the previous vote count was on the other seven criteria. 1. (Vote 3-2) 2. (Vote 4-1) 3. (Vote 3-2) 5. (Vote 5-0) 6. (Vote 5-0) 7. (Vote 3-2)

The Conditional Use Permit is approved. Mr. Dube said the conditions are what the applicant has brought to us, the plans for the house, the size of the house and what they're doing to the house which will go into the file. Mr. Stewart asked about seeing a conditional for approval, in writing

that occupancy for the new home will not be granted until the ADU is completed. Mr. Vinagro said both homes will have to be completed before any occupancy permit is issued for either. Mr. McConkey said that the owner would not have a problem changing the roll up door to barn doors. This statement will be in the notice of decision. Mrs. Colbath said there was originally a question from Mr. Stewart as to whether the home, when it becomes an ADU/storage facility, what would happen if the ADU no longer existed? Would it revert to a storage facility? Mr. Stewart said if the ADU is discontinued on this property it can't go back to it's original use which would be a single-family home. It would have to go back to all storage. Mr. Silcocks offered this wording, no occupancy permit will be given if the AUD is no longer in compliance. Mr. Stewart said it's not just the building that determines if an ADU can exist on a property but how the owner utilizes the property. If this owner or the next owner decides they don't want to reside in Wakefield for four consecutive months we have to think about what happens to the ADU. It can't just sit there it needs to be discontinued. Mr. Dube said this goes without saying for every ADU out there.

The notice of decision would have the following: 1. Storage area will have a barn style door rather than a commercial roll up door. 2. Make sure the changes are made to the existing house, and the ADU before an occupancy permit on the new dwelling is issued. The Board by unanimous consensus approved these two items.

Conceptual Review

None

Board Business

St. John's Bond Release. Inspection Report from Code Enforcement

Mr. Vinagro failed the inspection. Pictures are in the packets that show the silt for the retention pond is overflowing and there is erosion from the hydroseed. They failed to put anything over the hydroseed like hay. Now there is erosion going into the retention pond which is overfilling and going into the town drain. They also have puddling issues around the building. Mr. Dube took a look at it and said the silt in the retention pond could seal up the drainage part or make the volume of the pond smaller. The Board agrees with Mr. Vinagro not to release the bond until this gets established and the pond gets cleaned out. He suggested reviewing it in the spring.

Approval of Minutes

Mr. DesRoches made a motion, seconded by Mr. Silcocks, to approve the minutes of December 3, 2020. Roll call vote (4-0-1)

Set next meeting date

January 7, 2020

Public Comment

None

Adjournment

Mr. Stewart made a motion, seconded by Mr. Silcocks, to adjourn the meeting at 8:00. Roll call vote (5-0)

Respectfully submitted for approval at the next Planning Board meeting,

Priscilla Colbath
Planning Board Secretary