



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
17 July 2017

Draft 7/24/17

MEMBERS		ALTERNATES		OTHERS	
John Napekoski, Chairman		George Frothingham	S H	Nathan Fogg, Land Use Clerk & Code Enforcement Officer	S H
Sharon Theiling, Vice Chairman		Doug Stewart	S H	Rick Sager, Town Counsel	
Ceily Arnone	S H	Judi DesRoches	S H	Bridget Passariello	
John Crowell		Don Stewart	S H	S- Site Walk H- Public Hearing	
Steve Brown					

Also present were: Site Walk: Bryan Berlind; Public Hearing: Donna Martin (videographer), Bryan Berlind, Terry Martell, Irene Martell, Tammy Duffy, & Joe Arnone.

CALL TO ORDER

1. Acting Chair Doug Stewart called the meeting to order at 7:00 pm following the pledge of allegiance.
2. Alternates George Frothingham and Don Stewart were seated for members John Crowell & Steve Brown.

BOARD BUSINESS

3. N Fogg noted that the first order of business was to accept Donna Martin's resignation. There are two members serving on both the ZBA and Conservation Commission and Donna has offered to resign from the ZBA. She will remain on the Conservation Commission. She was very generous to offer to be a member of several boards since she was attending the meetings anyway to videotape the meetings. NH RSA limits the number of common members between land use boards.

Motion: To accept Donna Martin's resignation from the ZBA with regret.
Made by: Don Stewart
Seconded by: George Frothingham
Discussion: None
Vote: 5-0 in favor of the motion.

PUBLIC HEARING

4. **Variance Application** submitted by Land Tech for property owned by The Martell Revocable Trust, located at 419 Brackett Road, Wakefield, NH (Tax Maps 186-1 & 11). The applicants are requesting a variance from Zoning Ordinance, Article 3, Table 3, requiring a minimum lot size of 1 acre in the Residential-II Zoning District. The applicants would like to adjust a portion of the property to Tax Map 185-9 and this will cause 419 Brackett Road to become more non-conforming.
5. Doug Stewart reviewed the steps the board will take during the variance application public hearing.
6. Don Stewart asked if the application was complete to hear. He did not see signatures from trustees of both trusts that own the property on the application. N Fogg noted that she is in attendance at the meeting and could sign for her trust. Irene Martell came forward and signed the application on behalf of her trust.

Motion: To accept the Martell Variance Application as complete.
Made by: Ceily Arnone
Seconded by: Judy DesRoche
Discussion: None
Vote: 5-0

7. Bryan Berlind of Land Tech came forward to explain the variance application and the reason for the application. The Martells had sold a parcel to the Duffys (TM 186-01), however, after consulting with town counsel it was determined that the parcel sold to the Duffys actually included the area under Brackett Road and waterfront on Lovell Lake (TM 186-11). The Martells did not intent to include the portion on the lake side of Brackett Road with the sale. Brackett Road did not divide the property and is only an easement over the property.
8. Berlind noted that the two tax parcels, even when considered together, are a non-conforming parcel. They do not have the required area of 1 acre, nor do they have the required shore frontage of 150 feet. The parcel does have conforming road frontage because of the Lovell Heights Road running beside the parcel.
9. If the Martells are successful with the ZBA variance, they will adjust the lakeside portion of the parcel (TM 186-11), through a boundary line adjustment, to be included with the parcel where their house is located (TM 185-09.)
10. Approving the variance would make the parcel non-conforming in land area, however, it would become conforming in shoreline frontage because it would have none and not be a waterfront parcel. TM 186-01 is not damaged by the loss of area, there is ample buildable area and there is a septic easement on the lot across Lovell Heights Road.

11. TM 185-09 will become more conforming after the boundary line adjustment is complete.
12. Doug Stewart asked what the benefit to TM 185-09 would be, because obviously TM 186-01 would be worth less without waterfront attached. Terry Martell answered that the waterfront area in question is right in the area where his campers swim. He will not allow a dock to be placed along the frontage because of congestion and safety issues with regard to the swimming area for his campers. He mistakenly assumed that because the parcel received two separate tax bills, that it was considered two separate lots.
13. Berlind noted that in 2004, the Martells owned TM 186-06 which had portions of the parcel on both sides of Lovell Heights Road. They received a boundary line adjustment to adjust the area on the west side of Lovell Heights Road to become part of TM 186-01. They also created the septic easement on TM 186-06 at this time to benefit TM 186-01. In 2004 the Martells made TM 186-01 less-non-conforming by adding area and road frontage.
14. Berlind noted that he had a revised response sheet to the five criteria that he submitted and would like to go over. Criteria #1 surrounding property values. No change in usage is proposed for the either 186-01, which is residential, or 186-11, which is undeveloped. No change in property usage equals no change in property values. Criteria #2 contrary to public interest. In practicality, 186-01 and 186-11 are already severed by Brackett Road. They are practically and visually already separated. The property is currently 2 separate tax map parcels. Two non-conformities will become one non-conformity with the proposed adjustment. Criteria #3 granting the variance would do substantial justice. Adjusting 186-11 to become part of 185-09 would reduce the congestion on the lake because no dock or beach will be placed upon the 186-11 frontage once it is joined with 185-09. This technically reduces the impact on the lake. Criteria #4 the use is not contrary to the spirit of the ordinance. One parcel becomes more non-conforming, another become less non-conforming, and a non-conformity is eliminated. Criteria #5 literal enforcement of the ordinance would result in an unnecessary hardship on the owner. These three parcels (186-01, 186-11, 185-09) were created prior to the zoning ordinance even being conceived. The ordinance was created with a different mindset than these lots were created. Brackett Road literally, physically, and visually divides the parcel making 186-11 separate from 186-01. The variance allows the owners to proceed to the planning board to adjust the line between the parcels making them more usable for the owners. 186-11 only adds value to the house on 186-01. This is value that the Martells are willing to give up.
15. Doug Stewart asked if there was any way to know that the intended buyer of 186-01 knows that the waterfront portion is being removed from the remainder. Tammy Duffy confirmed that their intend was not to purchase the waterfront from the Martells.

16. Berlind noted that this is an unusual application, however feels that the application stands on its own merits and lessens lake congestion.
17. Doug Stewart asked what the plans for the area now known as 186-11 would be once attached to 185-09. Martell said that he plans to keep it the same way it has been since 1982 when he purchased the property. He wants to keep it from being developed to protect his beach area. He is fine with making no dock where 186-11 is located a condition of approval.
18. Doug Stewart opened the hearing to the public. Tammy Duffy noted that she is in favor of the variance. The public input portion of the hearing.
19. Don Stewart noted that he had a general question for the board. Does the ZBA have the authority to approve this application as presented? N Fogg noted that the ZBA does not have the power to subdivide or adjust land, however, in this case the ZBA has the power to grant a variance that would make the boundary line adjustment possible for the planning board to grant.
20. The variance makes the possibility of a boundary line adjustment possible. It does not create another separate parcel of land. The variance would have a condition that if the boundary line adjustment does not go through, the variance is rescinded.
21. G Frothingham noted that Sager has recommended that the five criteria be considered separately.

22. Criteria #1

Motion:	Criteria #1 has been met.
Made by:	George Frothingham
Seconded by:	Ceily Arnone
Discussion:	None
Vote:	5-0

23. Criteria #2

Motion:	The conditions for Criteria #2 has been met.
Made by:	George Frothingham
Seconded by:	Ceily Arnone
Discussion:	None
Vote:	5-0

24. Criteria #3

Motion: The conditions for Criteria #3 has been met.
Made by: George Frothingham
Seconded by: Judi DesRoches
Discussion: None
Vote: 5-0

25. Criteria #4

Motion: The conditions for Criteria #4 has been met.
Made by: George Frothingham
Seconded by: Ceily Arnone
Discussion: None
Vote: 5-0

26. Criteria #5

Motion: The conditions for Criteria #5 has been met.
Made by: George Frothingham
Seconded by: Ceily Arnone
Discussion: None
Vote: 5-0

27. Approval of the variance.

Motion: The variance is granted with the conditions that no docks would be placed on the 69 feet of frontage being transferred and that the variance is only valid to approve to allow a boundary line adjustment to take place between 186-01 & 11 and 185-09.
Made by: Ceily Arnone
Seconded by: George Frothingham
Discussion: None
Vote: 5-0

28. Doug Stewart noted that there is a 30-day appeal period.

APPROVAL OF MINUTES

29. None.

SET MEETING DATE

30. Expecting three applications for an August hearing date.

ADJOURNMENT

MOTION:	To adjourn the meeting at 7:47 pm.
Made by:	Ceily Arnone
Seconded by:	Judi DesRoches
Discussion:	None
Vote:	5-0

Respectfully submitted,
Nathan Fogg
Land Use Clerk