



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

2 HIGH STREET
SANBORNVILLE, NEW HAMPSHIRE 03872
TELEPHONE 603.522.6205 x 308 FAX 603.522.2295

MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
21 August 2017

Approved: 09/18/17

MEMBERS		ALTERNATES		OTHERS	
John Napekoski, Chairman	S H	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	H
Ceily Arnone	S H	Judi DesRoches	S H		
John Crowell	H	Don Stewart	S H	Site Walk Public Hearing	S H
Steve Brown	S H				

Also present were: Site Walk: Gregory & Sarah Chase, Susan Gaudet, Patrick Gaudet, Dan Dansereau, Tyler Matthews, Nardone, Randy Walker, Brian Differ, Carol Clark, Gordon Clark, Dan Nicholson, Bill Nardone, and Donna Martin videographer; Public Hearing: Don Dansereau.

CALL TO ORDER

- Chair J Napekoski called the meeting to order at 7:00 pm following the pledge of allegiance. Doug Stewart was seated for Sharon Theiling. The members introduced themselves.
- J Napekoski asked for a recess to have a consultation with counsel at 7:01pm. The ZBA agreed by consensus. The ZBA returned and the meeting resumed at 7:13pm.

PUBLIC HEARING

- Variance Application** submitted by Walker & Varney PC for property owned by William & Dana Nardone, located at 756 Lovell Lake Road (Tax Map 202-59). The applicants are requesting to have a 35-foot water access easement permitted across 747 Lovell Lake Road (Tax Map 202-01), owned by Samuel & Coreen Brooks. Article 19 of the Wakefield Zoning Ordinance requires a minimum of 150 feet of frontage be granted for a deeded waterfront access.

4. J Napekoski confirmed that the hearing was properly noticed in the newspaper and directly to the abutters. N Fogg confirmed that both had taken place.

Motion: To accept the Nardone Variance Application as complete.
Made by: Ceily Arnone
Seconded by: Doug Stewart
Discussion: None
Vote: 5-0

5. Attorney Randy Walker presented the application to the ZBA, explained that the zoning ordinance was slightly different back in 2003 when the Nardones purchased their property. The Brooks purchased the waterfront parcel in 2009 and were fully aware of the easement for the Nardones to access the waterfront. He also described how the Nardones met each of the five criteria for the variance.
6. Doug Stewart asked if there were any physical requirements of the waterfront parcel required to grant an easement. N Fogg knew of no physical requirements.
7. N Fogg asked when the problem with the easement was discovered. R Sager noted that Cindy Bickford had made him aware of the problem approximately 2 years ago. R Sager noted that since that time, the Town has brought a lawsuit against the Nardones and Brooks to dissolve the easement. Atty Walker noted that if the variance is granted, the lawsuit goes away.
8. J Napekoski opened the public hearing for public input.
9. George Frothingham, speaking as a citizen, noted that the easement may be illegal today and may have been illegal when the Nardones purchased the property. That is not the point. The point is that the ZBA is in place to grant relief from the ordinance, when people are taken advantage of, or other situations. He believes that a situation like this, discovered over a decade after the fact is an issue that the ZBA has the power to give relief to, and he believes that the ZBA should grant relief to the Nardones.
10. Dan Nicholson noted that they did not know the whole story, however after hearing the facts, he is in favor of granting relief to the Nardones.
11. J Napekoski read the letter from Coreen & Samuel Brooks. They noted that they were aware of the easement and that the easement also gave the Brooks parcel the right to place a septic across the street and park a car across the street. They do not feel that they will ever utilize the septic or parking area easement. After learning all the facts, the Brooks are against granting relief to the Nardones.
12. Atty Walker noted that the Brooks noted that they were aware of the easement, but want to enjoy and protect the lake. The Nardones want the same thing.

13.J Napekoski closed the public input portion of the hearing.

14.Criteria #1- The proposed use would not diminish surrounding property values.

15.Doug Stewart noted that the easement is not valid and as such, granting the easement would take away from the value of the Brooks' property. Based upon that fact, he cannot vote that they meet criteria #1. He feels that the Nardones' problem was the fault of the title company and/or Wakefield Builders LLC. Charlie McLaughlin should take a great deal of the blame and this is not the first variance before the ZBA as a result of similar action by Charlie McLaughlin. The previous ZBA decision was taken very high up in the legal system and the ZBA decision was upheld.

Motion: Criteria #1 has not been met.
Made by: Doug Stewart
Seconded by: Steve Brown
Discussion: None
Vote: 4-1

16.Criteria #2- Granting the variance would not be contrary to the public interest.

17.Doug Stewart noted that this was difficult, however, overcrowding and funnel development on lakes is not in the public interest and that is precisely why this section of the ordinance was put in place, to protect the public interest. One additional family will make a very small percentage of difference of crowding on the lake, but nevertheless, it is the reason the wording is in the ordinance.

Motion: The conditions for Criteria #2 has been met.
Made by: Ceily Arnone
Seconded by: John Crowell
Discussion: None
Vote: 2-3

18.Criteria #3- Granting the variance would do substantial justice.

19.C Arnone noted that she believed that the Nardones were completely unaware of the problem with the easement in their deed and granting criteria #3 would do substantial justice.

Motion: The conditions for Criteria #3 have been met.
Made by: Ceily Arnone
Seconded by: John Crowell
Discussion: None
Vote: 3-2

20. Criteria #4- The use is not contrary to the spirit of the ordinance.

21. Doug Stewart noted that this goes against the spirit of the ordinance as he mentioned before in criteria #2 and does not protect against funnel development or overcrowding of the lake.

Motion: The conditions for Criteria #4 has not been met.
Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None
Vote: 4-1

22. Criteria #5- Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

23. Doug Stewart noted that there are many similar pieces of property in town and someone could argue that they should be granted a similar easement if this easement is granted.

Motion: The conditions for Criteria #5 has not been met.
Made by: Doug Stewart
Seconded by: Steve Brown
Discussion: None
Vote: 4-1

24. Decision on the variance.

Motion: To deny the variance based upon the lack of all five criteria being met for the reasons noted with each of the criteria.
Made by: John Napekoski
Seconded by: Doug Stewart
Discussion: None
Vote: 4-1

25. J Napekoski noted that there is a 30-day appeal period.

26. Equitable Waiver Equitable Waiver of Dimensional Requirement Application submitted by Gregory & Sarah Chase for their property at 305 Ballards Ridge Road (Tax Map 48-01). The applicants are installing a garage and their neighbor's surveyor has found the garage to be closer than 10 feet to the property line. Per Article 3, Table 2, of the Wakefield Zoning ordinance, the required setback is 10-feet for a non-conforming parcel.

27. Gregory and Sarah Chase introduced themselves. They have lived at 305 Ballards Ridge Road for four years. When they first moved there, they built a shed. N Fogg came over after receiving a complaint and that the shed may have been too close to the property line. Mr Chase moved the shed with his 4-wheeler. The Chases also noted that two years ago the Gaudets had apparently hired a surveyor to replace the front corner property corner and flag the line all the way to the back corner. Ms Chase noted that during the time of the shed being constructed, Mr Chase had gone over and walked the line with Mr Gaudet. The line they walked appeared to be the same line that was staked out by the Gaudets surveyor (Kerry Fox) and they also noted that the property line runs through the middle of a former cemetery near the rear of the line.
28. Mr Chase noted that he has two antique cars that he wanted to store in a garage, so he obtained a building permit for a garage. Mr Chase placed a grade stake on the property line near the proposed garage and instructed his excavator (Elliot Edwards) that the garage needed to be at least 10 feet off the property line. Mr Chase marked off 14 feet from the property line as the place to build the garage. N Fogg went to the site prior to the frost wall being poured. Elliot Edwards pointed out the grade stake, which was 12 feet from the concrete form, and verified based upon the flagged property line that the stake was in the correct location.
29. Mr Chase had his builders begin building the garage and shortly after placing the roof trusses N Fogg came to the property and placed a Cease and Desist order on the building. N Fogg told the Chases that the garage was only 6-1/2 feet off the property line. Mr Fox had told N Fogg the rear property pin was not in the correct location. Mr Chase noted that he had gone by the flagging previously set by the Gaudets' surveyor and walked with Mr Gaudet. It was the best information that he had at the time.
30. Mr Chase passed around the photos of the grade stakes and the flagging placed by the Gaudets' surveyor. He noted that he was told that the front corner was 3'-4" off in the front and about 5 feet at the rear corner of the garage. Mr Chase noted that the line had changed from where he understood the line to be.
31. Doug Stewart asked for the Chases to review the timeline again. The Chases noted that at the time of the shed being placed, Mr Chase walked the property line with Mr Gaudet. A couple of years later, the Chases noticed that the front corner had been set and the line flagged. In Mr Chase's opinion, the corner and flagging appeared to match the line he had walked with Mr Gaudet. When he started his garage project, that was the information and the line the Mr Chase used to stake out his garage.
32. J Napekoski opened the hearing for public input.
33. Dan Dansereau noted the he owned the property behind the Chases and the Gaudets. He believes that the Gaudets' surveyor made an error in his work and has taken 10 feet of land from Mr Dansereau.

34. G Frothingham spoke in favor of the application. He felt that the Chases had made a good faith effort to comply with the law, N Fogg had ok's the garage location, and also based upon their investment in the project, they should be granted the equitable waiver.
35. Attorney Randy Walker noted that he was representing the Gaudets this evening. The Gaudets are against the equitable waiver being granted. The property was surveyed and the lots created in 1986. The Chases' deed noted iron pins were placed at the property corners and the Chases should have been aware of their property line. He noted that the property line in question was the same line in question when the shed was built 2 years ago. He also noted that had Mr Chase made a visit to the Gaudets' house, we would not be here this evening. The Gaudets contacted the town as soon as they felt there was a problem. The cost of the surveyor for the Gaudets was minimal and the Chases should have hired their own surveyor if they wanted to build that close to the property line.
36. Doug Stewart asked if there was anything that could be done to mitigate the problem in the eyes of the Gaudets (i.e. vegetation, lot line adjustment, etc.) R Walker said they were not willing to discuss that until they knew the outcome of the application.
37. N Fogg recapped what had happened in the eyes of the town. The Gaudets had contacted the town, based upon that information, He went to the site to verify the location of the forms. Based upon the monumentation and flagging found at the site, N Fogg believed the foundation to be 12 feet from the property line. As site walk with the Gaudets and Kerry Fox took place where Kerry Fox noted that the rear pin did not seem to be in the correct location. Both Mr Gaudet and Mr Fox noted that they had believed that the rear pin was correct until further research and surveying was done. The correct rear corner was repinned by Kerry Fox and found to be approximately 12 feet from the pin previously used as the rear corner.
38. G Frothingham noted that he had indeed walked to the rear corner with N Fogg and saw the pipe and noted that it looked like a survey corner that had been in place a long time. Using that pipe as the property corner was a reasonable assumption in his opinion.
39. Ms Gaudet noted that the other pipes used in the subdivision were rebar, not iron pipes. The pipes in question she believes were taken out of the former cemetery. Mr Gaudet noted that Mr Fox after replacing the front corner pin noted that the line looked closer to the building than previously determined.
40. Ms Chase noted that they believed that the survey flagging represented the line that Mr Gaudet and Mr Chase had walked several years earlier.

41. Doug Stewart asked to run through the timeline of events again with the Chases and Gaudets. He noted that hind sight is 20-20. He does not believe the Chases placed the garage too close to the lot line on purpose.

42. J Napekoski closed the public input portion of the hearing.

43. J Napekoski confirmed that the hearing was properly noticed in the newspaper and directly to the abutters. N Fogg confirmed that both had taken place.

Motion: To accept the Nardone Variance Application as complete.
Made by: Doug Stewart
Seconded by: Ceily Arnone
Discussion: None
Vote: 5-0

44. Criteria #1a - The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.

45. S Brown asked if owner meant the property owner or could it mean an abutter. Doug Stewart was reading that to mean the property owner. R Sager concurred with his answer. Doug Stewart noted that he felt the Chases knew there might be a problem, but then relied upon code enforcement approving the location.

Motion: Criteria #1a has been met.
Made by: Doug Stewart
Seconded by: Ceily Arnone
Discussion: None
Vote: 4-1

46. Criteria #1b- The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

47. Doug Stewart again noted that hind sight is 20-20 and that he does not believe that the Chases acted intentionally, nor did they want their building too close to the property line. J Napekoski added that a municipal official had made a determination that the Chases relied upon.

Motion: The conditions for Criteria #1b has been met.

Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None
Vote: 5-0

48. Criteria #4- The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

49. Doug Stewart said that he would like to see roof runoff and screening addressed in a condition of approval. S Brown asked whether the building being too close to the line is a public nuisance to the Gaudets. J Napekoski felt that was a private nuisance.

Motion: The conditions for Criteria #4 have been met.
Made by: Doug Stewart
Seconded by: Ceily Arnone
Discussion: None
Vote: 5-0

50. Criteria #5- That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

51. J Napekoski announced that the criteria had been met and that the Equitable Waiver has been granted.

52. Doug Stewart noted that he felt that screening would be appropriate and that it should be agreed upon by both parties. Also stormwater runoff should be addressed to make sure that it does not affect the Gaudets' property.

53. Two conditions were discussed. 1. Screening agreeable to both parties be placed along the sideline by the garage; and 2. Runoff be directed via a swale to run down the Chases' driveway and not onto the Gaudets' property.

54. R Sager noted that the code enforcement officer cannot remove the cease and desist order until the decision becomes final after the appeal period has run its course.

55. **Variance Application** submitted by Lake Living Consultants for property owned by Dwight & Lori Henderson, located on Great East Lake at 133 Doc Morrison Road (Tax Map 143-20). The applicants are requesting a reduction to the street setback to allow a new more conforming structure to be placed upon the property. Article 3, Table 2 requires a 20-foot setback to the right of way of travel way.

56.J Napekoski confirmed that the hearing was properly noticed in the newspaper and directly to the abutters. N Fogg confirmed that both had taken place.

Motion: To accept the Henderson Variance Application as complete.
Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None
Vote: 5-0

57. Tyler Matthews from Lake Living Consultants presented the application. He explained that he needed relief from the street setback. He noted that currently there is 387 square feet of setback encroachment and that after the construction there would only be 125 square feet of setback encroachment. He also noted that the street setback is currently about 1 foot and that after the construction it would be increased to 5 feet. He also noted that the building would be setback further from the lake.

58. Dripline trenches will be installed as per our zoning ordinance.

59. Doug Stewart clarified that all the ZBA was approving is the additional 25 square feet of setback encroachment near the road.

60. J Napekoski opened the public hearing for public input and hearing no public input he closed the public input portion of the hearing. Both alternates sitting in the audience had no issue with the application.

61. The ZBA decided to consider all five criteria together.

Motion: The five criteria have been met.
Made by: Ceily Arnone
Seconded by: John Napekoski
Discussion: None
Vote: 5-0

62. J Napekoski noted that the application had been approved.

63. J Napekoski noted that there is a 30-day appeal period.

APPROVAL OF MINUTES

64. Approval of May 15th were considered. Don Stewart, Doug Stewart, G Frothingham were seated on the board.

MOTION: To approve the minutes of the May 15th meeting.
Made by: Doug Stewart

Seconded by: George Frothingham
Discussion: None
Vote: 4-0-1 with C Arnone abstaining

65. Approval of July 17th were considered.

MOTION: To approve the minutes of the May 15th meeting.
Made by: Ceily Arnone
Seconded by: Doug Stewart
Discussion: None
Vote: 4-0-1 with J Napekoski abstaining

BOARD BUSINESS

66. Steve Brown was re-seated on the board. Don Stewart was removed.

67. N Fogg read a letter of resignation from Sharon Theiling.

MOTION: To accept the resignation of Sharon Theiling with regret and thank her for her service.
Made by: Steve Brown
Seconded by: Doug Stewart
Discussion: None
Vote: 5-0

68. Ceily Arnone will be resigning after the September meeting. She will be moving to South Carolina.

69. Don Stewart would like to be considered to become a regular member of the ZBA to fill out S Theiling's term.

MOTION: To recommend Don Stewart to the Board of Selectmen as a ZBA member to fill out Sharon Theiling's term.
Made by: John Napekoski
Seconded by: Steve Brown
Discussion: None
Vote: 4-0-1, with Doug Stewart abstaining

70. N Fogg brought up that a house burned on Pine Island and the family is having difficulty agreeing on how to proceed. They are concerned that the 2-year grandfathering window will close on them. N Fogg was mentioning it to the ZBA about granting a variance for a time extension if they should end up with a lengthy litigation process. N Fogg will check with the town attorney.

SET MEETING DATE

71. September 18th will be the next meeting date if an application is received.

ADJOURNMENT

MOTION:	To adjourn the meeting at 8:58 pm.
Made by:	Steve Brown
Seconded by:	Ceily Arnone
Discussion:	None
Vote:	5-0

Respectfully submitted,
Nathan Fogg
Land Use Clerk