

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

17 June 2019

Approved

6/17/2019

MEMBERS		ALTERNATES		OTHERS	
George Frothingham, Chairman	X	Doug Stewart	X	Victor Vinagro, Land Use Clerk & Code Enforcement Officer	X
Don Stewart	X	Robert Baxter		Rick Sager, Town Counsel	
John Crowell	X			Russ Bookholz, Code Enforcement Officer	X
Judi DesRoches				Site Walk Public Hearing	X X
Annie Robbins	X				

Site Walk conducted on Monday June 17th, 2019 at 6:20p.m.

Present Were: George Frothingham, Doug Stewart, Annie Robbins, Victor Vinagro, Russ Bookholz, James Rines, Jesse Thompson, Priscilla Colbath and Jim Miller of Clearview TV

The Chairman opened the site walk at 6:20 on property owned by Renee S. Wolff located at 249 Old Bulkhead Road. Jim Rines explained why Renee S. Wolff was asking for the variance. The owners would like to tear down the existing building and build a new one almost on the same footprint. There is a 6' deck that will be removed and it will be replaced with a 16' deck with a slight second story bay that will be within the 50' setback. Mr. Bookholz asked if that would increase living space and Mr. Rines replied that it would. Mr. Bookholz said you will need relief for that as well. On the other side of the building (on the left facing the water) there will be a bulkhead that will sit 6/10s of a foot within the 30' mark. The state granted them a shore land permit and a septic permit and a re-development waiver because they were reducing impervious, adding infiltration where none existed and adding a new sewage disposal system.

Mrs. Robbins asked how many trees would be taken down. Mr. Thompson said the goal was not to remove trees. They are hoping to have the electric underground from the existing pole on the property. Mr. Rines pointed out where the silt fence or silt socks will be placed. All the work will be done from the land side. Mr. Stewart asked what would stop you from moving the house back a couple of feet so you wouldn't need a variance, what is unique. That question will be brought up and answered at the meeting. Mr. Rines pointed out where the septic would be. The boundaries were pointed out. Mr. Frothingham closed the site walk at 6:32. The Board reconvened at 7:00 for the Public Hearing.

Pledge of Allegiance

Mr. Frothingham called the meeting to order at 7:00.

Others present: Robert Baxter, James Rines, Jesse Thompson and Jim Miller of Clearview TV

Seat Alternates as necessary

Mr. Doug Stewart was seated for Mrs. DesRoches as Mr. Baxter declined.

Mr. Frothingham asked all at the table to introduce themselves.

Public Hearings

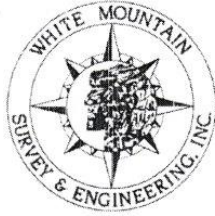
Variance Application: submitted by James F. Rines for property owned by Renee S. Wolff located at 249 Old Bulkhead Road, Tax Map 204-29. The applicant is seeking a Variance from Wakefield Zoning Ordinance Article 3 Permitted Uses, Table 2 Minimum Setbacks. The applicant is requesting relief from the 30' shore land setback for a pre-existing non-conforming structure to be placed 29.4 feet.

Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart that the application be acceptable as all criteria have been met. (Vote 5-0)

Mr. Bookholz was asked the reasons why a variance is needed. He answered that the bulkhead is within the 50' setback of the shore land which is the state requirement and there is an expansion to the house on the left side to where the deck use to be (on the plan) which is within the 30' setback. So they are seeking relief on these setbacks. This includes the new deck as well. They would not need a variance if they used the same footprint. If the left extension wasn't on in the building, the bulkhead relocated and the deck brought back 5' they wouldn't need a variance. Mr. Frothingham suggested they treat the whole thing as one application. Mr. Vinagro said there is no correspondence about this application.

Mr. Rines and Mr. Thompson, the designer of the home, will present for the applicant. Mr. Rines told the Board that the bulkhead will now be pulled back so this can be eliminated from the request for variance. It was confirmed that the Town is bound by the states 50' but will keep the 30' for accessory structures. On the west elevation of the footprint that was submitted with the application will overhang the foundation. It doesn't touch the ground. Mr. Stewart had inquired while on the site walk why the home couldn't be moved back. Mr. Rines said because of the substantial slope of the land and they wish to preserve the view that they are used to and the septic tank would have to be sunk further into the ground. They have received their NH Shore land permit and sewerage disposal system permit. Mrs. Robbins said she was disappointed that the 50' reference line was not on the map. Also, she asked for additional maps. She passed out copies of a map. Mr. Rines went over that map with the Board. She noted that the trees were on this map and woodlands defined. She questioned why this wasn't on the plan submitted to the town and Mr. Rines said the variance didn't have anything to do with the woodland buffer, it was a setback issue. Mr. Rines explained where the trees and vegetation were marked on the map. The trees that may, if necessary, have to be removed have been shown on the map. Mrs. Robbins wished they had been marked so they could have seen them on the walk. Mr. Stewart asked Mr. Bookholz to address his comments about the overhang. Mr. Bookholz said it still creates an impervious surface and an increase in living space. As far as setbacks go it doesn't matter if it's an overhang or a foundation. Mrs. Robbins asked how many feet the silt fence will be from the structure. Mr. Rines replied approximately ten feet from the foundation. They may also use wattles.

Mr. Rines read his answers to the five criteria:



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APPLICATION FOR A VARIANCE

The undersigned hereby requests a Variance from Article 3 Section Table 2 - Minimum Setbacks and asks that said terms of the Zoning Ordinance to be waived to permit the following:

To allow the land owner the ability to redevelop their lot by removing an existing non-conforming home which is as close as 16.9 feet from the shoreline when measured to the roof overhang and attached deck which is as close as 10.2 feet from the shoreline and replace them with a new home which will be no closer than 16.6 feet from the shoreline when measured to the overhang. Although the new footprint will be 0.3 feet closer to the shoreline, this tiny additional encroachment falls within the footprint of the existing deck which is 6.4 feet closer to the shoreline than the proposed replacement home.

There is also one other area of variance required which is the corner of a proposed bulkhead to the basement that is 29.4 feet from the shoreline versus the required 30 feet.

Facts to support this request:

1. The proposed use would not diminish surrounding property values because:

By making the proposed improvements to the property, the structure as a whole will be setback further from the shoreline making the request more conforming to the zoning requirements than the existing conditions. Additionally, by installing stormwater mitigation to infiltrate roof and driveway runoff where none presently exists and a new sewage disposal system, the surface and groundwater quality will be enhanced. While it is likely that a new home of higher value and improvements to the water quality will increase the surrounding property values, they will certainly not decrease the surrounding property values.

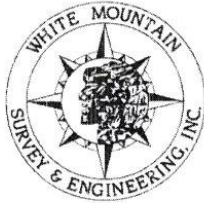
2. Granting the variance would not be contrary to the public interest because:

The Board of Adjustment In New Hampshire - A Handbook for Local Officials dated December 2018 states that:

"(f)or the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?"

By this test, the requested variance will not alter the essential character of the neighborhood. The existing lot has an existing non-conforming structure that is closer to the shoreline than the

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proposed structure. Additionally, the current use is residential, and the proposed use is residential which is both consistent with the neighborhood and consistent with the zoning ordinance. Since the requested improvements will be more conforming than the existing improvements, the essential character of the neighborhood will not be altered. Because of this fact, the cited handbook and case law states that granting the variance will not be contrary to the public interest.

3. Granting the variance would do substantial justice because:

Granting the requested variance will allow the landowner to redevelop property while making the structure more conforming with the zoning setbacks and making the property more conforming with the Shoreland Water Quality Protection Act.

The Board of Adjustment In New Hampshire - A Handbook for Local Officials dated December 2018 states that:

Any loss to the individual which is not outweighed by a gain to the general public is an injustice.

By this test, it is clear that the loss to the land owner, if they were not permitted to redevelop their property in a manner commensurate with their needs, while increasing the shoreline setback, enhancing the water quality through enhanced stormwater management and the installation of a state approved sewage disposal system, would be an injustice. For this reason, by granting the variance, substantial justice will be done.

4. The use is not contrary to the spirit of the ordinance because:

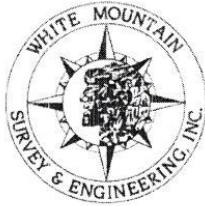
The Board of Adjustment In New Hampshire - A Handbook for Local Officials dated December 2018 states this regarding public interest and spirit of the ordinance:

"As held in *Farrar v. Keene*, 158 N.H. 68 [2009], the two elements are related. For a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, its grant must violate the ordinance's basic zoning objectives. There are two methods to answer this question:

- 1. Examine whether granting the variance would alter the essential character of the neighborhood; or**
- 2. Examine whether granting the variance would threaten the public health, safety or welfare.**

It is our opinion that, based on these two tests that the courts have used when making this determination, the essential character of the neighborhood will not be altered as expressed in

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paragraph 2, above, nor will the granting of the variance threaten the public health, safety or welfare. In fact, the health, safety and welfare of the public will be enhanced by increasing the shoreline setback, the implementation of stormwater infiltration systems that do not exist presently and the installation of a state approved individual sewage disposal system, making the site more compliant with the NH Shoreland Water Quality Protection Act.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:

This test is the one that is the greatest challenge for a landowner to demonstrate they have met. *The Board of Adjustment In New Hampshire - A Handbook for Local Officials* dated December 2018 has this to say about the hardship question:

"When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed."

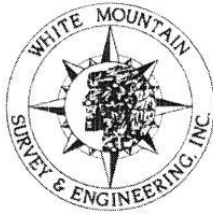
The hardship is that this lot was developed in a manner that is closer to the shoreline than any other home in the neighborhood when looking at the Wakefield on-line database. This home was constructed closer to the shoreline than the seven southerly abutting lots and the five northerly abutting lots in this neighborhood and closer than most developed lots depicted on the Wakefield database. It is this fact that creates a hardship that is unique to this parcel and not shared equally with all property owners.

Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area, no fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

The Board of Adjustment In New Hampshire - A Handbook for Local Officials dated December 2018 has this to say about this paragraph:

Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Is the full application of the ordinance to this particular property necessary to promote a valid public purpose? Once the purposes of the ordinance provision have been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to his property would not advance the purposes of the ordinance provision in any "fair and substantial" way.

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According to Article 2 - the following is the Purpose and Authority of the Wakefield Zoning Ordinance:

"The purpose of this Zoning Ordinance is to implement the adopted Town of Wakefield Master Plan, to lessen congestion in the streets; secure safety from fires, panic, and other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care; and assure proper use of natural resources and other public requirements.

This Ordinance shall also help to retain the natural beauty of Wakefield; encourage the most appropriate use of land; stabilize the value of land and buildings; and, facilitate the economical provision of future required utilities and facilities.

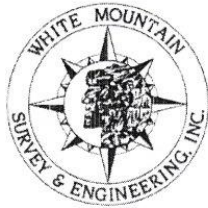
This Zoning Ordinance is also intended to promote economic and social prosperity in Wakefield, as well as to provide for harmonious and aesthetically pleasing development, which is consistent with the character and rural setting of the town.

This Ordinance is adopted pursuant to the authority granted to municipalities by RSA 674:16 and in accordance with all applicable state statutes. "

Based on our reading of the Zoning Ordinance Purpose and Authority, it is our position that granting the requested relief, which will result in an increase in the shoreline setback when compared to the existing condition; which will implement stormwater management systems that are not presently in place; and which will install a modern state approved sewage disposal system; will not jeopardize that purpose of the ordinance and that due to the "special circumstances" listed, adherence to the specific provisions of the zoning ordinance will not advance the purposes of the ordinance provisions in any fair and substantial way.

I state this because granting the requested relief will not result in an increase in congestion in the streets or create a greater risk of fires, panic or other dangers. It will also promote the health and general welfare by improvements in water quality resulting from stormwater management and installation of a new sewage disposal system. It will also help retain the beauty of Wakefield by removal of an older home in need of repair and replacement with new construction of a similar size and scale. It will not destabilize the value of land and buildings; in fact it will likely increase the surrounding values due to the proposed improvements in both aesthetics and by employing stormwater infiltration techniques that are not present with the existing non-conforming structure and by installing a new state approved sewage disposal system, we will be enhancing the natural resource which is the lake.

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Therefore, it is our position that we satisfy this criterion required for the granting of the requested relief. We also believe, as required by the enabling statute, that the proposed use is a reasonable one because the proposed use is residential, which is an allowed use in this zone.

Mr. Frothingham, speaking for himself, found Mr. Rines presentation very convincing. Mrs. Robbins felt the application was good. She thinks the project is acceptable. Her concerns are for the vegetation being disturbed. She was concerned that he did not reference the Best Management Practices and construction activities on page 42 in the zoning ordinances. She is also concerned that the vegetation in the front of the house isn't shown on the plan. She has no issue with the variance, her issue is with the vegetation and protecting the lake. The state setback supersedes the 30' then she feels the 50' matters. She also thinks that they are granting a variance for a non-conforming structure and if they did not she believes that the house would have to go back to the 50' foot mark because the ordinance says no expansion is allowed unless you meet the 50' reference line. But because you're doing a lot of give backs with the septic and storm water management she feels that the expansion is minimal. She wishes to see conditions added concerning the vegetation. She said that particular property is in the New Hampshire Wildlife Action Plan and it is in the highest ranked habitat area of the lake specific to this property. That vegetation is the only barrier for phosphorous. Mr. Vinagro said he believes that what they plan to do on this lot will help not hinder that problem. He said he will be making sure there is orange fencing to keep the workers out of that area.

The board voted on the five criteria for the application:

Criteria 1

Would the proposed use diminish surrounding property values or not?

Mrs. Robbins made a motion, seconded by Mr. Stewart, to approve and agree with Criteria 1 (Vote 5-0)

Criteria 2

Granting the variance will not be contrary to the public interest.

Mr. Don Stewart made a motion, seconded by Mrs. Robbins that granting the criteria would not be contrary to the public interest. (Vote 5-0)

A vote of the Board as to whether to attach conditions will take place after the five criteria are voted on.

Criteria 3

Granting a variance would do substantial justice.

Mr. Don Stewart made a motion, seconded by Mr. Crowell, that granting the variance would do substantial justice in this matter. (Vote 5-0)

Criteria 4

The use is not contrary to the spirit of the ordinance.

Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart, which the use is not contrary to the spirit of the ordinance. (Vote 5-0)

Criteria 5

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship **Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart, that literal enforcement of the provisions**

**of the ordinance would result in an unnecessary hardship to the land owner
(Vote 5-0)**

Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart, that the Board grant the variance subject to conditions. (Vote 5-0)

Mr. Rines told the Board that there was no cellar under the house and when the house is removed the silt fence or wattle will be placed. The machine will be sitting and excavating away from the lake. Anything running down to it will go into the excavation. Mr. Vinagro will be policing the area. They will be meting the conditions in the shore land permit regarding excavation and plantings. Article 15 page 42, Article 15D, which talks about the standards for that zone. Mrs. Robbins asked why they couldn't put siltation controls five feet back because you will disturb everything in front of it. Ten feet of that vegetation will be disturbed. Mr. Rines said the Board could place that condition.

Condition #1:

**Mr. Doug Stewart made a motion, seconded by Mr. Crowell that any disturbed soil within the 30' setback on the property will be brought back up to its original grade and that natural shoreline plantings maintained and enhanced, monitored by shoreline enforcement for two growing seasons.
(Vote 5-0)**

Condition #2:

Mrs. Robbins made a motion, seconded by Mr. Doug Stewart, that A-9.1 elevations do not represent the approved vegetative conditions. (Vote 5-0)

Mr. Frothingham announced a variance has been granted with conditions. He told them they will receive a letter within five days and any interested person could appeal this within thirty days. Mr. Frothingham closed the Public Hearing at 8:00p.m.

Approval of minutes:

Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart, to approve the minutes of May 20thth with one change. (Vote 4-0-1)

Mrs. Robbins talked about the meeting she recently attended that was hosted by the state. She will share the handout she brought back. When a builder, who is building a house, gets denied and wants to make an appeal he now has two options, he may choose to take it to the Superior Court or before a three member board. If they choose to take it to the board and is denied it will go to Supreme Court. If they choose the Superior Court there is a possibility it could be remanded back to the town. One element they stressed when voting on criteria. We should always follow the same practice. There should be a writing of the reasons why. Also when discussing applications all members should contribute. She feels the Board should have a meeting on process and how things are distributed to the members. She feels sometimes it's a little disjointed.

Mr. Doug Stewart asked if there was a deadline for a variance if a person received one for setback issues when they need to start building. Mr. Vinagro said two years. So after two years and a day it would expire.

If there are no applications the Board will not meet. The third Monday in July will be the meeting date if needed.

Adjournment

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, to adjourn the meeting at 8:10. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath
ZBA Secretary