



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING

19 August 2019

Approved

Approved 8/19/2019

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

The ZBA conducted a Site walk on Monday, August 19th at 6:00.

Present for the site walk: Norm Lavertue, Heather L. Wilcauskas, Heather S Wilcauskas, Brian MacArthur, Margot MacArthur, Doug Stewart and Jim Miller with Clearview Community TV,

Mr. Frothingham opened the site walk at 6:00 at the MacArthur's garage, 294 Veazey Point Rd. Mr. MacArthur said the project was begun to get extra storage for boats and water equipment. Mr. Bookholz suggested that discussion be saved for the Public Hearing. The group entered the garage and proceeded up the stairs to view the living space which included one bedroom, one bathroom, a living room and a small kitchen which shows on the plan, a sink, dishwasher, stove and refrigerator. This was all open space with only walls, outlets and water pipe. The lot connects to the main house lot by a 5-10 foot section in the back. Mr. MacArthur said this was meant to be a boat house and an overflow for sleeping for guests. Because this isn't easily accessible to the house they felt it would be nice for guests to have a kitchen area. The group then walked down to the home at 417 Veazey Point Rd. The site walk ended at 6:20.

Present for the ZBA meeting

Heather L. Wilcauskas, Brian MacArthur, Margot MacArthur, Norman Lavertue, Doug Stewart. Robert Baxter and Jim Miller with Clearview Community TV,

Pledge of Allegiance & Call the meeting to order

The meeting was called to order at 7:00. All those at the table introduced themselves.

Seat Alternates as necessary

Public Hearings

Variance Application submitted by Norm Lavertue for property owned by Brian & Margot MacAuthur located at 294 Veazey Point Road, Tax Map 141-13. The applicant is seeking a Variance from Wakefield Zoning Ordinance Article 23C Family Compound, Section B. Standards #5: requiring 150 feet of water frontage per dwelling. The current parcel has 211 feet of water frontage with an existing dwelling and also allow a kitchen upstairs in the boat storage garage.

Mr. Vinagro said that this application is complete, the fees have been paid, the Public Notice has been run and the abutters notified.

Mr. Stewart made a motion, seconded by Mrs. DesRoches, to hear this case this evening. (Vote 5-0)

Mr. Bookholz was asked what the variance was to correct. He said upon one of his inspections in July he noticed the plumbing was all roughed in for a kitchen. He reviewed the paperwork with the builder, Mr. Lavertue, and told him the kitchen was not permitted. Mr. Lavertue came into the office and it was determined this was too large for an ADU and talked about the possibility of a Family Compound but he was short on lake frontage. Each structure on a Family Compound requires 150' of shore frontage. This property is around 211' feet not the required 300'. Mr. Lavertue modified the permit application and it was denied. Mr. Bookholz said the kitchen wouldn't need a variance and it would become a Family Compound. Mr. Vinagro said the only thing that would be in contention would be the water frontage. The 150' of water frontage is not a state requirement for each dwelling this is a local ordinance. Mr. Stewart asked when the Building Permit was initially applied for. Mr. Bookholz said it was issued May 4, 2018. He went on to say that the Building Permit reads, has permission to construct a new 30' x 46' garage with living area above consisting of two bedrooms, one bath, no kitchen as per plans, second floor deck 38x4. Both the owner and the builder received this permit. Mr. Bookholz, answering Mr. Frothingham's question, said if a variance for the kitchen wasn't granted they would have to remove the plumbing and electrical for the kitchen and it would be in compliance with the Building Permit. As a Family Compound neither properties could ever be rental properties they would have to stay direct family members and occasional guests per our zoning. He said they have received several letters of concern. He said if the variance is granted he suggests that the Board make some deed restrictions to it to not be subdivided.

Mrs. Robbins asked if anyone researched the Conditions of Approval on this subdivision made by the Planning Board in 1998? The answer was no. She went on to say that a Shore Land Application was made and submitted to the members. The Planning Board designated the steep slope area as non buildable and it was only for utility easements, septic and wells. Mr. Vinagro believes there have been boundary lot adjustments to create those lots. Mrs. Robbins said on the Boundary Lot Plan it says they are subject to the deed restriction. Mr. Vinagro asked where the non buildable area is. Mrs. Robbins showed them the maps and deed which

said, subject further to the restrictions that no buildings shall occur on the above described premises, which is that additional lot that gets added to all of the landowners so they can use it for their septic and wells. She also had the Plan that says, per original condition of approval on the June 1998 plan, building is prohibited in the original easement area. This condition will remain. She said it could have an effect on the abutter's wells and septic tanks. Mr. Bookholz asked if she had a map of the original easement area because without that a determination can't be made. It talks about the building being prohibited in the original easement area. Mrs. Robbins pointed out on the map where the original easement area was where the Planning Board said no building shall occur. It is recorded in the deed. Mr. Stewart said this raises a burden for the applicant. Mr. Stewart recommends putting this to council and ask for his determination as to whether they can proceed without prejudice to the applicant.

Mr. MacArthur said he got involved with the land in 1999. The land became four lots from around 100 lots. Five years ago they began doing lot line adjustment so people could construct garages. He believes when they refer to original easement he believes it's the cliff where his septic is. He showed the Board a little piece of land that shows it's contiguous. He said he was talked into compound status by someone in town when they got the building permit. He went on to say maybe he doesn't have to put in a kitchen. That way he can sell it in the future and it wouldn't have to be sold with the house. Putting a deed restriction takes away his flexibility later on if he wanted to sell the places separately. He said he'd do whatever the Town wants him to do, just have a little bar area and no kitchen. Mr. Frothingham asked Mr. MacArthur if he'd be comfortable with the Board denying the variance and removing the kitchen. He could withdraw his request or the Board could vote it down. Mr. Vinagro asked if they would have to see if a garage could even be built there? Mr. MacArthur said there are plenty of precedents because other garages have been built. He said when he purchased the property he was told there was an easement that he would share with the other four properties. Then it was drawn up that each person owned their respective portion of the land and road. The original easement area was pointed out to the Board on the map. He said he could put a bar sink in and an under counter refrigerator and no stove. He asked if the Family Compound status restricts him? Is he better off not doing a Family Compound and could sell the property separately? He questioned if this is one lot or two separate lots. Mrs. Robbins said the deed that was submitted to DES and the Wetlands for their septic and Shoreland permit says subject to easements, restrictions, reservations and specifically say that no building shall occur. She feels clarification might be in order. Mr. Frothingham said it seems very significant to him that the State Shoreland people have approved this building. Mrs. Robbins said they approve it subject to local regulations. The deed restriction might be a moot point because there is a structure there. Clarification might impact the decision making process. Mr. Vinagro asked if the deeds were rewritten when lot line adjustments were made. Mr. MacArthur doesn't believe so. Mr. Frothingham asked Mr. Bookholz if this was a deal stopper and if they should proceed. Mr. Bookholz replied, he was concerned about the deed restrictions and the fact that the deed that was submitted with the building permit is not the correct deed. The Planning Board's Conditions of Approval were not with the file but we aren't going to go in and say take down your building. He was issued a permit and the structure is permanent. Mrs.

Robbins said one of the criteria could be affected by the Conditions of Approval not being followed.

Mr. Stewart made a motion, seconded by Mrs. DesRoches, that based upon the questions raised by Mrs. Robbins, we as a Board suspend the Hearing and propose to tell council a review of the applicability of any prior Planning Board conditions that might have been attached or any subsequent conditions that might have been attached that might affect either positively or negatively our Hearing and further to report that back to us before a date certain our next meeting in September. (Vote 5-0)

Mr. Frothingham stated that this Hearing will continue on September 16th. Town attorney Rick Sager may have a conflict in this case as he was the one who did the plans, easement and affected the transfer of this property. The ZBA may have to secure outside council. Heather L. Wilcauskas of 263 Veazey Point, one of the abutters, asked if they would all be notified again about the continuance of the meeting. Mr. Frothingham said it is assumed that they would be present so they would know. Mrs. Wilcauskas will let them know that.

Board Business

Approval of Minutes of June 17th, 2019

Mr. Stewart made a motion that the minutes be approved as provided in the draft. Mrs. DesRoches said she was noted as a person who was present and she was not there. Mr. Stewart revised his motion to include that Mrs. DesRoches was not present. Mr. Frothingham said another correction would be that Mr. Baxter was there.

Mrs. Robbins seconded the motion as amended stating that Mr. Stewart made a motion, seconded by Mrs. Robbins, to approve the minutes with Mrs. DesRoches being noted as not being present and Mr. Baxter being noted as being present. (Vote 4-0-1)

Board Business

Mr. Bookholz left prior to presenting the budget so this will be on the agenda for the next ZBA meeting.

Correspondence

None

Set Next Meeting Date

September 16, 2019 at 7:00. There will be another Public Hearing on that date with a site walk the same day at 6:20. More information will be sent Tuesday.

Adjournment

Mr. Stewart made a motion, seconded by Mrs. DesRoches, to adjourn the meeting at 7:30

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath
Zoning Board of Adjustment Secretary