



TOWN OF WAKEFIELD, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

MINUTES OF THE ZONING BOARD OF ADJUSTMENT SITE WALK AND MEETING
18 November 2019
APPROVED

11/18/19 Draft

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

The ZBA conducted a Site walk on Saturday, November 16, 2019 at 10:00am.

Others present: Clearview Community TV, Priscilla Colbath and John W. Boucher III.

Mr. Don Stewart opened the site visit at 10:03 at 715 Brackett Road. He asked Mr. Boucher to give the Board a summary of what he's like to do. Mr. Boucher said his septic was approved for four bedroom lot, two bedrooms in each house. He never put the bedrooms and bathroom in one of the homes (the one furthest from the water). It has been plumbed and he pointed out where the 1000 gallon tank is located on the property which has pipes running to both houses. He would like the bedrooms and bath for his caregiver or if the property is sold the new owners want the rooms for their son and family. Or perhaps three bedrooms in one home and one in the other home. A kitchen and living room area would also be added to the second floor of the home furthest from the water. A new well would be installed for that property as well. The heat source he would chose would be gas. He currently has a Purchase and Sales Agreement for this property. He also owns the house next door. Mr. Doug Stewart asked the age of the current septic and whether it would meet state standards. Mr. Vinagro believes the system is 1985. He said because it's an old system an archive search would have to be done through the state as he has no septic plan for this property except approvals for four bedrooms for the lot. If a system is in excess of 25 years old that would trigger a search if you were expanding. Mr. Boucher said what he's asking to get permission for is what he was approved for in 1985.

The Vice Chairman suspended the Site Visit at 10:00am and will meet again Monday at 7:00 at Town Hall.

PUBLIC HEARING

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

Others present for the ZBA meeting

John W. Boucher III, Jim Miller and Sean Sullivan with Clearview Community TV.

Pledge of Allegiance & Call the meeting to order

The meeting was called to order at 7:00.

Seat Alternates as necessary

Mr. Doug Stewart and Mr. Baxter were seated for Mr. Frothingham and Mr. Crowell. All those at the table introduced themselves.

Board Business

Approval of Minutes of September 16, 2019

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to table the minutes until the next meeting after Mr. Vinagro checks to see if the 25' setback should have been recorded in the conditions of approval.

Public Hearings

Variance Application: submitted by John W. Boucher III for property he owns at 714 Brackett Road, Tax Map 195-43. The applicant is seeking a variance from Wakefield Zoning Ordinances Article 23D-Accessory Dwelling Unit: section A & C to allow a detached Accessory Dwelling Unit above a detached garage. The applicant is also requesting relief from Article 23D-Accessory Dwelling Unit, section G. to construct An ADU 1188 sq. Ft. Currently the 2019 Wakefield Zoning Ordinances does not allow for a detached Accessory Dwelling Unit.

Mr. Vinagro said the application had been properly noticed, abutters have been notified and all fees have been paid. The application is complete. Mr. Boucher said he tore down a 2 ½ car garage back in the 80's, erected a building and got state approval for two bedrooms in the original cottage and two in the garage. He never did anything in the garage. He now would

like to have a second residence for a caregiver or the future value if he sells it. He's asking for permission for what he was approved for in 1985 to be able to complete the project. Vice Chairman Stewart asked if the current cottage is a two bedroom cottage. Mr. Boucher said it was bought as a five bedroom and the septic was only approved for a four bedroom. He said it's never been used for more than a three bedroom. He's either going to live in the cottage or the house on the property adjacent to it. He is currently living in the adjacent house. Vice Chairman Stewart said the tax map showed a Weymouth address, Mr. Boucher explained his wife lived in Weymouth for the health benefits. Mr. Don Stewart said, you indicated on Saturday that this property is under a Purchase and Sales Agreement and asked if the ADU is a condition of that? Mr. Boucher replied that it's not spelled out in there.

Mrs. Robbins said there is an easement on the tax map. Mr. Vinagro said he owns the lot across the street and that's where his leech field is located. Mr. Boucher said the Town has an easement because he allowed the Town to put two retention ponds on that property to slow the water going into the lake. Mr. Don Stewart said the statute says anything permit twenty years old may require a review. Mr. Vinagro said on the Application for a Variance a Property Site Assessment Form was done. Mr. Vinagro said he would be looking at this as a Shoreland officer and would be looking at the septic as Code Enforcement too. Mrs. Robbins said the living area in the upstairs of the garage is 1188 sq. ft. and said Mr. Boucher said he would not be needing all that space.

Mr. Doug Stewart said he had a problem because the cottage is presently being assessed for five bedrooms. He feels that if the Board approves this there would have to be some condition that would say something about the number of bedrooms and the septic design. According the way the assessing is right now you would need the septic to be able to take care of seven bedrooms if you add two to the garage. Part of the ADU zoning is around the person that owns the building and has some requirements like the owner has to live either in the ADU or the main unit. They're not meant to be a vacation home and a guest cottage. It's more for affordable housing like having a caregiver. And those are some of the things I'm struggling with. Mrs. Robbins said there is a provision in the zoning that does allow for caregivers and can't be used as an ADU or be rented out. That may be a consideration for this applicant. The fact that no one lives in the house right now is an issue.

Vice Chairman Stewart said in our zoning, it suggests that an ADU is for the Owner not for the property. So theoretically the next person that buys it would have to come back to the board in order to use it. If the ADU goes with the land the ADU continues forever. Vice Chairman Stewart said we may contact Town Council to see how we should proceed with Mr. Boucher's request which would mean tabling this for now. In the alternative we could move forward and either approve or deny the application. This Board could likely have to deal with this in the future. Are we, as a Board, in a position to grant an ADU to a person who isn't living there? Will that set a precedent? The rest of the members feel this needs to be defined. Mr. Doug Stewart agreed. He said if he had to vote tonight he may have to vote against it just to be on the safe side and that's unfair to the applicant. Mr. Boucher asked if the Vice Chairman could also ask the attorney when the Town's zoning went into effect in regards to the State approval. If the Town had no zoning wouldn't it revert back to the state? The Vice Chairman said they weren't questioning what's there now. Mr. Doug Stewart said you have so much time

from when a permit is pulled to act on it or the permit expires. Mr. Vinagro said today it's two years but he's unsure what it was thirty five years ago. Mr. Boucher said the permit was for the building of the garage and storage area not an ADU. The permit can't be found but Mr. Doug Stewart said after thirty five years zoning has changed. ADU's are something the state mandates towns to add to their zoning within the last few years. Without that in the zoning you couldn't do what you're asking for at all. Mrs. Robbins said the permit from 1983 does not include any living space it only says garage and storage. But the septic approval says two bedrooms for the cottage and two bedrooms for the garage. The closing date for the sale of his property, if it goes through, would be Friday. Mrs. Robbins said if we don't have a legal opinion and the sale goes through then we may be spending money for naught. Chairman Stewart said if the sale does not go through than it's still an issue. He suggested calling the attorney tomorrow and ask his opinion on moving forward. He will also pose Mt. Boucher's question to the attorney.

Mrs. DesRoches made a motion, seconded by Mrs. Robbins, that we table this and consult with the Town Council on this issue. Mr. Don Stewart asked to modify the motion to continue the Public Hearing on our next hearing date of Monday, December 16th. (Vote 5-0)

The Vice Chair asked Mr. Bucher to let him know if the property did or did not sell on Friday. Mr. Boucher said all the i's have been dotted and t's crossed as far as the sale goes. His broker told him that this matter before the Board is not contingent on the sale. This matter was concluded at 7:41.

Board Business

None

Correspondence

There is an application from a potential alternate. The Vice Chairman asked Mr. Vinagro to ask the applicant to be at the next meeting.

Set Next Meeting Date

Monday December 16th. There may be another application at that time.

Adjournment

Mr. Stewart made a motion, seconded by Mr. Baxter, to adjourn the meeting at 7:45. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary