



TOWN OF WAKEFIELD NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
SITE WALK APRIL 16, 2022
MEETING APRIL 18, 2022
HELD IN PERSON AND ON ZOOM
Approved

Site Walk

George Frothingham, Chairman	✓ Robert Baxter Alternate	✓ Victor Vinagro, Land Use Clerk & Code Enforcement Officer	
Don Stewart Vice Chairman (via Zoom)	Graham Baker Alternate	✓ Rick Sager, Town Counsel	
John Crowell	Jen Czysz, SRPC	Site Walk	✓
Judi DesRoches	✓	Public Hearing	
Annie Robbins (Present for the 2 nd site walk)	✓		

Others present: Christopher Boldt and the property owners the Wilcauskas

Two site walks were held on Saturday April 16th starting at 10:00 am, one at 263 Veazey Point Road where we were shown the existing conditions and plans of the proposed changes. The second site walk took place at 92 Allagash Road starting at 10:45 am. We were met by the applicant Art Guadano and the property owners Willard and Colleen Tucker. We were shown the existing conditions and the plans for reconstruction.

Information from George Farrington

Public Hearing

George Frothingham, Chairman	✓ Robert Baxter Alternate	✓ Victor Vinagro, Land Use Clerk & Code Enforcement Officer	
Don Stewart Vice Chairman (via Zoom)	✓ Graham Baker Alternate	✓ Rick Sager, Town Counsel	
John Crowell	Jen Czysz, SRPC	✓ Site Walk	
Judi DesRoches	✓	Public Hearing	✓
Annie Robbins	✓		

Others present: Art Guadano, Tristan Plummer, Sherri Wilcauskas, Heather Wilcauskas, Richard Tucker, Heather and Rick Wilcauskas, James Keating, Shamus Keating, Nicole Roseberry, Coleen Tucker, Christopher Boldt

Pledge of Allegiance and call the meeting to order

Chairman Frothingham called the meeting to order at 7:00 and led those present in the flag salute and introductions were made.

Seat Alternates as necessary

Robert Baxter was seated for John Crowell. Graham Baker was seated for Don Stewart.

Mr. Frothingham announced that the agenda has been amended and they will be starting with the case on Allagash Road. The fees have been paid, abutters notified, notice has run and is administratively correct.

Mrs. Robbins made a motion, seconded by Mrs. DesRoches that the application is complete enough to proceed. Roll call, Robbins aye, DesRoches aye, Baker aye, Baxter aye, Frothingham aye. (Vote 5-0)

Variance Application

submitted by Art Guadano, AG Architects, PC, Dover, NH, for property owned by WBT III 2011 Family Trust, Tax Map 178-006, at 92 Allagash Road. The applicant is seeking an approval of a Variance Application from the Town of Wakefield Zoning Ordinance Article 3-Table 2-Minimum 22 setbacks where the Residential II Shoreland Zone shoreline setback is 50'. The applicant seeks to remove the existing house, currently 11'10" from the shoreline, and construct a new house further back from the Lovell Lake shoreline reference line, at 12'10" from the shoreline, still partially within the 50' shoreline setback.

Mr. Guadano explained the site plan to the Board. There are two existing garages on the property. The goal for the request for variance is to have less than a 50' setback. The house is 11'10" inches from the water right now. The width now is similar to what they are proposing. There is a dry well and a septic in the fifty foot area. They propose to put in a septic system at least 100' from the water. The plan for the new house and septic has been approved by the state. The new foundation would be 22' 3" from the water but there is a protrusion on the overhang. There would be a new deck and porch which would make that 12'10" from the water and that's because it's measured from the boat deck. If it were measured from the water it would be over 22' from the water.

The existing house has 849 sq. ft. The new house is 1048 sq. ft. within the 50' setback plus the deck. The deck is low and has gaps between the boards to filter the rain. They do believe they are following the intent of the ordinance which is to preserve and protect the high water quality. It is in greater conformity. He does not believe it diminishes surrounding property values. They will set the septic further back and install a drip line trench. It will not be contrary to the public interest because it will be more conforming and will have a better septic system. The house will be in the same location, placed further back. If they put the house elsewhere on the property they lose mature growth. He said substantial justice would be served because they are doing a number of things for water protection. If they met the 50' setback there would be a greater environmental impact. They will have a silt fence during construction.

As far as unnecessary hardship, he concludes that the water quality is already disrupted and moving the house will make it less so. Mr. Tucker said rules and regulations to protect the lake is a good thing. He said the value of the lake, hemlocks and surrounding area has been taken into account and they project will have a positive impact on energy conservation and avoid destruction of the hemlock forest. Mr. Guadagno described the outside look and configuration of

the new house which will fit with the character of the land. Mr. Baker asked how close the trees were from the back of the proposed house and if it could be moved back. Mr. Guadano answered only a few feet. The new house would be shorter and wider. The new house will have a frost wall and crawl space. Mrs. DesRoches asked what the distance is between the new house and garage. Mr. Guadano answered about 25'. The silt fence could be hay bales or the circular silt fencing. There is a green silt barrier, plastic shell with absorbent material inside on the property now that was part of the garage project and they plan to use for it the house project.

Mrs. Robbins asked if there will be a pipe underneath the drip line filtration. Mr. Guadano said the water goes into the ground. Mrs. Robbins asked if they would consider agreeing to not adding any other structures to that area as a condition of approval? There are no plans to add any other structures and it's already restricted by the state permit. She asked what would make your property unique to justify the need for a variance? Mr. Guadano said the distance setbacks versus other environmental protections. Mrs. Robbins asked if they planned to use the accessory structures as bunkhouses. They said absolutely not. Mr. Frothingham opened up public comment at 7:38. Mr. Frothingham closed the public comment at 7:39.

Next the Board took up the five Criteria.

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

Mrs. Robbins made a motion, seconded by Mr. Baxter, that it will not diminish surrounding property values. Roll call: Baker aye, Baxter aye, DesRoches aye, Robbins aye, Frothingham aye (Vote 5-0)

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

Mrs. Robbins made a motion, seconded by Mr. Baxter, that it will not be contrary to the public interest. Roll call: Baker aye, Baxter aye, DesRoches aye, Robbins aye, Frothingham aye (Vote 5-0)

3. Granting the variance would do substantial justice

Mrs. Robbins made a motion, seconded by Mr. Baker, that the variance will do substantial justice. Roll call: Baker aye, Baxter aye, DesRoches nay, Robbins aye, Frothingham aye (Vote 4-1)

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

Mrs. Robbins made a motion, seconded by Mr. Baxter, that granting the variance is not contrary to the spirit of the ordinance. Roll call: Baker aye, Baxter aye, DesRoches aye, Robbins aye, Frothingham aye (Vote 5-0)

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

Mrs. Robbins made a motion, seconded by Mr. Baxter, that enforcement would not result in an unnecessary hardship. Roll call: Baker aye, Baxter aye, DesRoches aye, Robbins aye, Frothingham aye (Vote 5-0)

Mrs. Robbins said she believes the uniqueness of this property is the woodlands.

Mrs. Robbins added the following conditions for approval; remove the drywell, remove the old septic, healthy hemlock trees will not be removed from behind the house, shorefront plantings will not be disturbed, low bush blueberries will be planted, woodland will be maintained, remove the open air shed, no bunkhouses in the accessory structures,

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to grant the variance with the conditions as stated. Roll call: Baker aye, Baxter aye, DesRoches aye, Robbins aye, Frothingham aye (Vote 5-0)

Public Hearing

Variance Application: submitted by Christopher L. Boldt, Esq., of Donahue, Tucker & Ciandella, PLLC, for property owned by Tyrie-Wilcauskas Family Trust, Tax Map 141-1, at 263 Veazey Point Road. The applicant is seeking an approval of a Variance Application from the Town of Wakefield Zoning Ordinance Article 3- Table 2-Minimum setbacks where the Residential II Shoreland Zone shoreline setback is 50.' The applicant requests to remove the existing non-conforming 1956 4-bedroom house and attached deck located within the Great East Pond Setback and the new construction of a new 4-bedroom house and attached deck in a slightly different location and connected to a newly approved septic system. The proposed site plan shows the new home/deck setback from the shoreline at 16'6" with an increased total encroachment from 980 sq. ft. to 1,381 sq. ft.

Mrs. Robbins recused herself from the following hearing, although she is not a direct abutter, she lives two houses down and does not feel she can make an impartial decision. Mr. Stewart was seated for Mrs. Robbins.

Mr. Frothingham announced that the application is administratively correct, the fees have been paid, abutters notified and the notice has run.

Mrs. DesRoches made a motion, seconded by Mr. Baxter that the application is complete. Roll call, Stewart aye, DesRoches aye, Baker aye, Baxter aye, Frothingham aye. (Vote 5-0)

Mr. Boldt said there is an existing 1959 cottage on the property which is non-conforming. It has a conforming garage with a poured foundation for an addition. There is a driveway that comes in off of Veazey Point and also one that goes down to the water that they are proposing to remove and revegetate that area. The shoreland permit has been issued. The leach field age is unknown and being replaced. They have state approval for the septic and the leach field.

The house is angled, not flat to the water. The deck is 5' wide and a three season porch are both toward the lake on the north westerly side. There is 20.3% pervious coverage. The deck is about 32' from the lake and if you consider the stairs from the deck it's about 26'. The increase of the proposed house is mainly inland and will be conforming. He said we are holding at the 31' line. The foundation will not be getting closer to the water. What is getting closer is the deck going from 5' wide to 12' wide which is a new 7' of decking. The DES allows up to a 12' deck and they have the approval from DES.

There will be more than enough tree count for DES and town regulations. That would make the closest part of the deck 20.5' from the water. He was asked at the site walk if the stairs could come out from the side of the deck. He found out that they could and that could be a condition of approval. Because they are in the existing footprint in front they feel that according to the towns ordinance that is something they can maintain. There will be a frost wall foundation so some of the trees will be removed. Only the trees that are necessary will be removed. They will grind rather than rip out. This will give neighbors more visibility.

(See Application letter dated March 29, 2022)

Criteria 1. They are substantially going in the same location and trying not to change the view from the road or abutters. They have letters of support from the neighbors. He said variances stand on their own, There is no presidential setting.

Criteria 2. The implied purpose of the 50' setback is to protect the lake. By getting the DES approval it meets the standard. They are deleting an area of impervious coverage that goes to the lake and keeping the house foundation basically in the same location and it will have drip line trenching. This will not be a change in the neighborhood. There will be no threat to safety, health nor welfare.

Criteria 3. Because we are meeting DES regulations, we are meeting the public benefit of protecting the water.

Criteria 4. Same reasons as above.

Criteria 5. Looking at the special conditions of the property and does it make an unnecessary hardship to strictly enforce the provisions of the ordinance? The special conditions of this property is that it is a double lot with a unique driveway to the water, a non-conforming existing house and the foundation will be no closer to the water. It has 226' frontage on the lake.

Mr. Baxter asked about rerouting the deck steps to the side. Mr. Boldt said if that's a condition of approval they will do that. Mr. Baker questioned the decrease in distance to the water. Mr. Boldt said that includes the screened in porch which he does not consider living space. DES counts decks with slats as impervious so we are counting that as an increase. Mr. Baker asked what the hardship would be by locating the house 50' from the boundary? Mr. Boldt answered that the hose would end up in the trees and incredibly close to the road and it's where the septic is approved to go. He said necessity is no longer a criteria.

Mr. Frothingham asked about moving the building back so it meets the boundary or at least moving it back enough so that it doesn't increase the encroachment. Making substantial improvements to the property is good but you still violate the 50'. You have increased the encroachment. What's involved in moving the building back so that it doesn't increase the encroachment? Mr. Boldt said the house could be built on the existing footprint. What we're seeking relief from is 7' of deck. We meet the DES regulations but not the towns. Most waterfront properties have a deck but it's unusual to have one 5' wide. Mr. Baker said he would like to know under RSA 483b which says when a structure is being replaced it should be made more nearly conforming, how is this more nearly conforming?

Nicole Roseberry of Ames Associates read a form DES that indicate what is nearly conforming for these projects. DES looks at the current amount of living space within the 50' setback and the proposed amount of living space. In this case the living space will actually be reduced by 25 sq. ft. The state looks at this as more conforming and doesn't count the deck and porch as living space. The remaining trees are part of the packet to DES. Mr. Stewart asked if the house could be moved back 10'. Mr. Boldt said they would rather not because that's where the house has been and they are allowed to do that according to the ordinance. We're only talking about 7' of deck area.

Mr. Frothingham opened the Public Hearing at 8:39. Mr. Frothingham closed the Public Hearing at 8:39.

Next the Board took up the five Criteria.

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

Mrs. DesRoches made a motion, seconded by Mr. Baxter, the criteria has been met. Roll call: Baker aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

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

Mrs. Stewart made a motion, seconded by Mr. DesRoches, that it will not be contrary to the public interest. Roll call: Baker aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

3. Granting the variance would do substantial justice

Mrs. DesRoches made a motion, seconded by Mr. Baker, that Board accept this criteria. Roll call: Baker aye, Baxter aye, DesRoches nay, Stewart aye, Frothingham aye (Vote 4-1)

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

Mrs. DesRoches made a motion, seconded by Mr. Baxter, that granting the variance is not contrary to the spirit of the ordinance. Roll call: Baker aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

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

Mrs. DesRoches made a motion, seconded by Mr. Baxter, that enforcement would not result in an unnecessary hardship. Roll call: Baker abstain, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 4-0-1)

Mr. Baxter made a motion, seconded by Mr. Baker, added the following condition for approval: the stares are to be swung to the side of the deck. Roll call: Baker aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

Mr. Baker made a motion, seconded by Mrs. DesRoches, to grant the variance with the condition that the stairs are moved. Roll call: Baker aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

Approval of Minutes

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to approve the minutes of February 14, 2022. Roll call: Baxter abstain, DesRoches aye, Stewart aye, Frothingham aye (Vote 4-0-1)

Mrs. Robbins rejoined the Board at 8:50 and Mr. Baker stepped down.

Application for consideration as alternate from Tristan Plummer

Mr. Plummer gave a brief description of himself and the reason he wants to become an alternate.

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to submit Tristen Plummer's application to the Selectmen. Roll call: Robbins aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

Board Business

Election of Officers & Member/Alternate Renewals

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to nominate Mr. Stewart for Chair and Mr. Frothingham for Vice Chair. Roll call: Robbins aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

Mission Statement

Workshop: ZBA Rules of Procedure – Review & Update E. Correspondence/Info

Mr. Stewart made a motion, seconded by Mr. Frothingham, to table the Mission Statement and the Rules of Procedure. (no vote was taken)

Mrs. Robbins asked that a date and time be set

Mr. Stewart made a motion, seconded by Mr. Frothingham, to meet at 5:00 on May 16, 2022 to discuss both the Mission Statement and the Rules of Procedure and the various modifications to the Rules of Procedure. Roll call: Robbins aye, Baxter aye, DesRoches aye, Stewart aye, Frothingham aye (Vote 5-0)

Mr. Frothingham thanked Ms. Czysz for all her and her staffs hard work. Mr. Baxter said the presentations tonight were well done. Mr. Frothingham felt the same way. Ms. Czysz said the Office of Planning and Development has an upcoming free online training that she recommends that the Board members attend. This will be two half days

Mr. Frothingham met with Mr. Dino Scala and got permission to and will seek the assistance of the new town attorney to put in a process to register documents at the Registry of Deeds. After some discussion Ms. Czysz said you are required to state why you are denying an application in the Notice of Decision. If denying you must also state the reason for denial in the motion made at the meeting and that must be included in the Notice of Decision. The Wakefield ZBA list of criteria is not in the same order as the statute.

Mrs. Robbins thanked Mr. Frothingham for the great job he has done as chair for the past year.

Set Next Meeting Date

May 16, 2022 5:00 pm

Adjournment

Mrs. Robbins made a motion, seconded by Mrs. DesRoches, to adjourn the meeting at 9:20. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary