



TOWN OF WAKEFIELD, NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

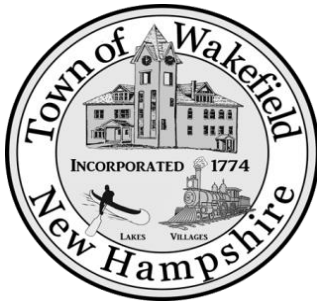
Monday, April 20, 2020

APRIL 20, 2020 ZBA MINUTES FOR SITE WALK

APPROVED

The ZBA site walk began at 6:40pm. Present at the site walk Board members George Frothingham, Don Stewart, Annie Robbins, Doug Stewart and Robert Baxter. Representing the Garvin Mercantile LLC, Christopher P. Mulligan, ESQ. and Victor Vinagro Land Use Clerk/ Building Inspector. George Frothingham opened up the meeting asking Christopher Mulligan to explain the variance they are seeking. Christopher Mulligan pointed out the where the ramp would be placed inside of the set back. Don Stewart asked what kind of materials where to used for the construction of the ADA-compliant ramp. Christopher Mulligan said they would be using pressure treated lumber for the structural frame of the deck and he believed the decking was to be Trex decking or something similar. Building Inspector Victor Vinagro said that the MacArthur's owners of the Garvin Mercantile building are working with the Heritage committee to come up with an agreeable product. The site walk adjourned at 6:50pm.

Vmv



TOWN OF WAKEFIELD, NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

Monday, April 20, 2020

APPROVED

George Frothingham, Chairman	X	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	X
Judi DesRoches				Public Hearing	X
Annie Robbins	X				

Others present for the ZBA meeting

Christopher P. Mulligan and 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 was seated for absent member Judi DesRoches and Robert Baxter was seated for John Crowell. Board introductions were then made.

Public Hearings

Variance Application: submitted by Christopher P. Mulligan for property owned by Brian & Margot MacArthur, Tax Map 180-107; 3 High Street. The applicant is seeking an approval of a Variance Application from the Town of Wakefield Zoning Ordinances Article 3, Table 2 Minimum Setbacks. The Applicant is seeking relief of a Side line setback in order to install an ADA-compliant handicap accessible ramp.

This request involves construction over a property line and Mr. Frothingham wanted to make it clear that the ZBA has no authority to grant a request for construction over another's property line. The ZBA can only grant a variance up to the property line and other arrangements with the Town would then be necessary. Mr. Vinagro stated that the fees have been paid, the abutters have been notified and the public notice has run.

Mrs. Robbins made a motion, seconded by Mr. Baxter, to accept the application. (Vote 5-0)

The Chair stated that Mr. Mulligan's written presentation will be part of the public record. Mr. Mulligan said the project is to replace what you, see with a modern ADA compliant ramp which will require construction up to and slightly over the lot line. He has discussed an easement arrangement with Rick Sager, Town Council. A decision hasn't been made but he's confident that will be worked out. Any relief the ZBA gives will be contingent on those arrangements. They need a variance for a zero setback.

Mr. Mulligan went through the five Criteria: (see attached)

Criteria 1 The proposed use would not diminish surrounding property values

Mr. Don Stewart asked where the end of the proposed ramp comes on to Town property. He asked, does it come on to asphalt? Mr. Mulligan believes it will abut the asphalt. Mr. Robbins asked if there was any setback from the railroad property. Mr. Mulligan said that would also be at a zero setback.

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

Mr. Mulligan added that the ramp would be built to modern building codes.

Criteria 3 Granting the variance would do substantial justice

No questions from the Board.

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

No questions from the Board.

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

No questions from the Board.

Mr. Frothingham opened and closed the Public Hearing at 7:16 as there were no public in attendance.

Mr. Doug Stewart said he didn't feel that there was much to discuss as they have never had a case that was this simple and straightforward. His personal opinion is that they should grant the variance with the condition that their Town Attorney has suggested. Mr. Baxter said he feels it is an improvement on safety. Mrs. Robbins is in favor of the application and likes the elevation.

Mr. Don Stewart made a motion, seconded by Mr. Baxter, to approve the variance conditioned upon the suitable easement and or license being accepted by the Town.

Mrs. Robbins said she would like to make a motion that would alleviate the applicant from coming to the Zoning Board should the easement not work with the community. She asked if there was any way they could have a condition be of any configuration of the ramp that is approved by the state like changing the elevations would be fine. Mr. Frothingham said the ZBA would have conditions that it would be built properly according to the ADA standards and have approval of the Town and assuming that is done there would be no reason for them to come back to us.

Mr. Vinagro said that they have come to the Planning Board and had a thorough discussion. All this Would be is to relieve them from the setbacks. The rest would be between Rick Sager and Mr. Mulligan to work out the fine details. The Town is good with it. Mrs. Robbins said she would like the motion to say that any configuration with the ramp would be acceptable. Mr. Doug Stewart said everything he has heard the Town has no problem with this. They just needed to come to us for the setback variance. Mr. Vinagro said they are looking for a zero setback for relief. The five-foot easement will be a decision made with the town. Mr. Frothingham said a condition could say, with a suitable arrangement with the town. Mr. Don Stewart called for a Point of Order.

He had made a motion that was seconded and asked that the vote be taken. The Chairman called the vote. **(Vote 5-0)**

Mr. Frothingham announce that the variance has been approved with a condition. He pointed out that any interested party could appeal the decision within 30 days.

Board Business

Approval of Minutes of March 23, 2020

Mr. Don Stewart made a motion, seconded by Mr. Doug Stewart, to approve the minutes of March 23rd with corrections. (Vote 3-0-2)

Correspondence

Mr. Vinagro just received a variance application from Mr. Kerry Fox, a minor subdivision on Leightons Corner. This will be set up for the May 18th meeting.

Board Business

Mrs. Robbins asked the Chairman if he would consider doing remote meetings. Mr. Vinagro said the Selectmen and Planning Board were doing remote meetings now. A discussion ensued. A live site walk and a Zoom meeting might be an option for the ZBA. No action was taken.

Set Next Meeting Date

Monday May 18th.

Adjournment

Mr. Don Stewart made a motion, seconded by Mrs. Robbins, to adjourn the meeting at 7:38. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath, ZBA Secretary

BOSEN & ASSOCIATES, P.L.L.C.
ATTORNEYS AT LAW

March 26, 2020

Vincent Vinagro, CEO/Land Use Clerk
Town of Wakefield
2 High Street
Sanbornville, NH 03872

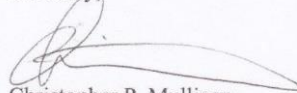
**RE: Garvin Mercantile Building, 3 High Street, Sanbornville
Tax Map 180, Lot 107**

Dear Mr. Vinagro:

On behalf of Garvin Mercantile, LLC, owner of the above referenced property, enclosed please find the original and three (3) copies of the variance application and supporting materials. Please be advised that the applicants are sending the filing fee of \$294.00 directly under separate cover.

Thank you for your attention. Please contact me if you have any questions.

Sincerely,



Christopher P. Mulligan

CPM/

Enclosures

cc: Brian and Margot MacArthur (w/ enclosures)

John K. Bosen
Admitted in NH & MA

Christopher P. Mulligan
Admitted in NH & ME

Molly C. Ferrara
Admitted in NH & ME

Bernard W. Pelech
Admitted in NH & ME

APPLICATION OF GARVIN MERCANTILE, LLC
3 High Street, Map 180, Lot 107, Sanbornville, New Hampshire

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, Garvin Mercantile, LLC (wholly owned by the MacArthur Family, longtime seasonal residents of Wakefield) acquired the historic Garvin building located at the corner of High and Meadow Streets and adjacent to the railroad tracks in June, 2019. The building dates back to 1871 and is in need of substantial renovation and rehabilitation. It houses nine commercial units, six of which are vacant as a result of the present dilapidated condition. The MacArthur's intend to restore this important property in a manner that is befitting of a major building in the center of Sanbornville, across the street from Town Hall. Toward that end, they have embarked upon a major upgrading of this important and highly visible historic structure, including substantial exterior renovations. As part of this major renovation project, the applicants intend to erect and install an ADA compliant handicap accessible ramp on the northeast side of the building.

The property is within the Village Residential Zone. As a pre-existing non-conforming structure, the setbacks otherwise required would be 10 feet. See Article #, Table 2 and denial letter dated March 18, 2020. Because the proposed ramp will actually extend beyond the applicant's property line onto adjacent property owned by the Town of Wakefield, the applicant needs variance relief from this provision of the ordinance. A draft proposed easement agreement with the Town is submitted for review. The applicant understands that approval of the variance will be made contingent upon the finalization of the easement to be approved by the Town's Board of Selectmen.

The lot which is the subject of this application is a nonconforming lot within the meaning of the ordinance. It has only a small amount of frontage on the corner of High and Meadow Streets, and the historic structure takes up a substantial portion of the lot, and in fact itself encroaches upon the required setbacks. The parking lot adjacent to it was apparently retained by the Town in 1999 when it subdivided that portion of the larger, unified property.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variance.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the

ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A modern, code-compliant and safe handicap accessible ramp is a natural and necessary evolution for this structure and will only enhance the public health, safety and welfare. Any other placement of the ramp would also violate the required setbacks. The property's use will remain unchanged, thus the essential character of the neighborhood would remain unchanged.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. The proposal here is to facilitate safe and appropriate access to this important and historic property for persons with disabilities.

The purpose of the Village/Residential district is set forth in the Ordinance as follows:

VILLAGE/RESIDENTIAL. This district is created to allow commercial and residential growth to occur while retaining the heritage and unique qualities of Wakefield. In order to do so, this Ordinance guides development of Village centers to ensure: (1) a mix and variety of uses; (2) that development occurs in a manner which maintains the visual character and architectural scale of existing development in the district; (3) that each Village remains a pedestrian-oriented environment.

The applicant's proposal is entirely consistent with these goals. Relief is required in order to update a dilapidated but important structure in the heart of Sanbornville, across from Town Hall. The MacArthurs intend to hire local tradesmen and contractors to perform the work. In this case, there is no benefit to the public in denying the variance that is not outweighed by the hardship upon the owner.

The values of surrounding properties will not be diminished by granting the variance. The proposed uses of the property are permitted in this zone. The only truly affected property is the Town parking lot, which will not realize any loss of value as a result of the relief here requested.

The values of the surrounding properties will not be negatively affected in any way by the relief requested.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property in question has special characteristics that differentiate it from others in the area. It is the home to an important, historic structure and it is located in the heart of Sanbornville. It was created as a stand-alone lot by a subdivision which created the adjacent Town-owned parking lot, and which created the limited setbacks that burden the current structure. It is a corner lot with minimal frontage at the intersection of High and Meadow Streets. It is a very old building in need of modern, ADA-compliant access.

The use is a reasonable use. The proposed commercial use is permitted in this zone, is identical in character and consistent with the existing use. A proper handicap accessible ramp is a natural and necessary evolution of the existing use.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of setback requirements is to assure adequate light, air and emergency access between structures and to prevent unhealthy overcrowding and density. None of these concerns are implicated with the proposed handicap accessible ramp.

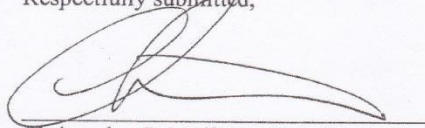
III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variance as requested and advertised.

Respectfully submitted,

Dated: 3/26/2020

By:


Christopher P. Mulligan, Esquire

