



**TOWN OF WAKEFIELD, NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT**  
Monday, July 20, 2020

**July 20, 2020 ZBA MINUTES FOR SITE WALK**

**Approved**

Members present at site walk: George Frothingham, Don Stewart, Annie Robbins, John Crowell, Natalie Kelley, Alternate Doug Stewart, Victor Vinagro Land Use Clerk/ Building Inspector.

Others present: Dick DesRoches Jim Rines.

THE SITE WALK STARTED AT 6:30PM. Jim Rines from White Mountain Survey & engineering representing the Gafney library went over the boundary pins and pointed out the areas that needed relief from the building set back. Jim Rines also pointed out where the current drainage system runs under the existing home and the intent to replace and improve. Doug Stewart asked Jim Rines to point out the area where the building will be the closest to the boundary line. The addition to the library will be further away from the neighboring home than the existing home there now resulting in a greater separation between buildings. The site walk ended at 6:43pm.

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### ZONING BOARD OF ADJUSTMENT

Monday, July 20, 2020

DRAFT

George Frothingham, Chairman	X	Doug Stewart (present)	X	Victor Vinagro, Land Use Clerk & Code Enforcement Officer	X
Don Stewart Vice Chairman -Recused	X	Robert Baxter	X	Rick Sager, Town Counsel	
John Crowell	X	Natalie Kelley	X	Site Walk	X
Judi DesRoches -Recused	X			Public Hearing	X
Annie Robbins	X				

### **Others present for the ZBA meeting**

Jim Rines, Jim White, Dick DesRoches and Jim Miller with Clearview Community TV.

### **Pledge of Allegiance & Call the meeting to order**

The meeting was called to order at 7:00.

Mr. Don Stewart asked to be recused as he is the attorney for the library and Mrs. DesRoches asked to be recused because of her husband's involvement with the library.

### **Seat Alternates as necessary**

Alternates Robert Baxter sat in for Mr. Don Stewart and Natalie Kelley sat in for Judy DesRoches.

### **Public Hearings**

**Variance Application:** submitted by James F. Rines, White Mountain Survey and Engineering, Inc. for property owned Gafney Library, Tax Map 179 Lot 11, 12; 14 & 20 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 sideline setback in order to construct an addition to the Gafney Library. The chairman opened the meeting at 7:00. Members were introduced.

Mr. Vinagro stated that the fees have been paid, the notice has run and the abutters have been notified.

**Mr. Baxter made a motion, seconded by Mrs. Kelley to proceed with the hearing. Roll call vote (5-0)**

Mr. Rines said there are two properties that total .31 acres with 135.6 feet of road frontage. If the variance is approved the lots will be merged. One building will be torn down and an addition to the library will be built. The existing setback for the existing structure to the boundary line is 3.6 feet and the building setback from this structure to the abutting structure is 12.6 feet. When the construction is complete the building setback would be increased from 12.6 to 18.2 feet. From the overhang. But because of the dogleg the overhang would be about 3/10s of a foot away from the boundary line even though there is more than a 50% increase in building to building setback. The easterly corner has jurisdictional wetland. Space has to be left for construction equipment to work. Mrs. Robbins said she was for the project. She wondered why they did not use the Planning Board Conditional Use Permit Application. The Planning Board cannot reduce them by less than ten feet. Mr. Vinagro said setbacks are in the zoning ordinances therefore requires a variance from the ZBA.

Explanations of the five Criteria were presented by Mr. Rines. The submitted text will become part of the record.

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

The proposed addition to the library will require the removal of the existing building that needs work, and which is closer to the northerly abutter's building than the proposed addition to the library. However, because the Gafney Library boundary line has a "dog-leg" that trends southerly, the proposed addition will be closer to the boundary line than the existing building even though it will be further from the abutter's building.

Since setbacks are designed to maintain space between buildings on abutting lots and the proposal increases the setback between the proposed building and the existing building on the abutting lot, we believe that this is an improvement in the existing condition and will result in no diminution to the surrounding property values and will likely increase 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 November 2019 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 building in need of repair. By replacing this existing building in need of repair with an addition to the existing library will result in the

elimination of one building and use completely and add onto an existing use that benefits the community. Since the requested addition will result in greater building to building setbacks, eliminate one use completely, and expand an existing permitted use, the 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 November 2019 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 it was not permitted to expand the library in a manner commensurate with its needs, while increasing the building to building setbacks, would result in a loss to the land owner that is not outweighed by any gain to the general public. In fact, denying the library the ability to expand to the degree necessary to meet present needs could be viewed as a loss to the general public. For these reasons, 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 November 2019 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 paragraph 2, above, nor will the granting of the variance threaten the public health, safety or

welfare. In fact, an argument could be made that the general welfare of the public will be enhanced by the increase in building to building setbacks and expansion of a library that benefits the public.

**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 November 2019 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 is a non-conforming lot which is further restricted by the southerly trending "dog-leg" and a wetland to the east, both of which restrictions are unique to this section of town. The other hardship is that the library, which is generally viewed as a public benefit, is an integral part of the center of this, or any community, and cannot be relocated to another location easily. Such is not the case for independent commercial or residential uses.

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 November 2019 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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The Board has received three letters in support of this project and that strongly urge the variance be approved. Mr. Doug Stewart and Mr. Don Stewart also support the project. Mr. Jim White owns the property next to the barber shop and is also in favor of the project but is concerned about drainage. Mr. Rines said this is something the Planning Board will address. The Planning Board has requirements that must be adhered to. They will be going to the Planning Board for site plan review and the abutters will be notified once again and will be able to speak to any concerns they may have. No one in the public wished to speak against the variance

**Criteria 1** The proposed use would not diminish surrounding property values

**Mrs. Robbins made a motion, seconded by Mrs. Kelley, that the criteria has been met. Roll call vote (5-0)**

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

**Mrs. Robbins made a motion, seconded by Mr. Baxter, that the criteria has been met. Roll call vote (5-0)**

**Criteria 3** Granting the variance would do substantial justice

**Mrs. Robbins made a motion, seconded by Mr. Baxter, that the criteria has been met. Roll call vote (5-0)**

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

**Mrs. Robbins made a motion, seconded by Mr. Baxter, that the criteria has been met. Roll call vote (5-0)**

**Criteria 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 the criteria has been met. Roll call vote (5-0)**

**Mrs. Robbins made a motion, seconded by Mr. Baxter, to approve the variance as submitted. Roll call vote (5-0)**

### **Board Business**

**Approval of Minutes of May 18, 2020**

**Mrs. Robbins made a motion, seconded by Mr. Baxter, to approve the minutes of May 18th. Roll call vote (Vote 5-0)**

**Set Next Meeting Date**

None as of yet.

**Adjournment**

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

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath,  
ZBA Secretary