



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

2 HIGH STREET
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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
19 November 2018

Approved : 11/26/2018

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

Also present were: Donna Martin, Janet Gray and William Gray

SITE WALK #1 for 190 Lord Road, William and Janet Gray @3:00PM

Present at the site walk were: Don Stewart, Victor Vinagro, Russ Bookholz, Annie Robbins, George Frothingham, Donna Martin, Patty Philbrook, Janet Gray and William Gray

The Board conducted the site walk of 190 Lord Road. Janet Gray spoke to why she is looking for the variance. The owners are looking to house a horse on their property, in a zone that does not allow hooved animals. She spoke to the poor health of her horse, and the hardships of traveling to Freedom multiple times a day to care for the horse. She also spoke about cleaning the manure. She will be bagging the manure and not keeping it on site. Janet then showed the board the proposed fenced in area. William Gray spoke about the run off and that he does not believe there is any concern for water contamination. D Stewart closed the site walk, and they will reconvene at 7:00PM for the hearing

SITE WALK #2 for 133 Doc Morrison Road, Dwight and Lori Henderson @3:30PM

Present at the site walk were: Don Stewart, Victor Vinagro, Russ Bookholz, Annie Robbins, George Frothingham, Judi DesRoches, Donna Martin and Tyler Matthews

The Board conducted the site walk of 133 Doc Morrison Road. Tyler Matthews of Lake Living Consultants spoke on behalf of the owners. They are looking for approval of propane tanks and a generator to be installed within 20 feet of the setback. The distance from the tanks to the generator will be ten feet. The owners are requesting 2 feet from the generator to the

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building. Russ Bookholz spoke about the propane tanks and generator and stated that the tanks need to be positioned five feet from any penetration in the building, and due to that, that is why the tanks are currently freestanding in between the buildings. He suggested lining the four propane tanks in a single line between the buildings, and moving the generator back further, so that the tanks meet the five-foot requirement. The propane tanks are 120-gallon tanks. The distance from the generator to the building is either 18 inches, or 5 feet, depending on the make and model of generator. The board asked about the option to place the generator elsewhere, and Tyler stated it could be placed elsewhere without the need for a variance, but it would be closer to neighbors' homes, towards the lake, and further away from where the hookups are in the house currently. D Stewart closed the site walk, and they will reconvene at 8:00PM for the hearing.

A. CALL TO ORDER

Don Stewart called the meeting to order following the Pledge of Allegiance at 7:00PM.

B. SEAT ALTERNATES

Robert Baxter sat for John Crowell

C. BOARD BUSINESS

None

D. PUBLIC HEARINGS

Case #1 @ 7:00pm

●**Variance Application:** Submitted by William & Janet Gray on property located at 190 Lord Road, Tax Map 52-022. The applicants are requesting a variance from the Wakefield Zoning Ordinances, Article 3, Table 1 – Permitted Uses, under Residential II-Shorefront, Agricultural-Personal: Footnote #17. No hooved animals or fowl allowed. The applicants seek the above variance in order to have a horse within the 500' Residential II Shorefront district.

Janet Gray approached the board and spoke about her request for the variance. She is looking to house the horse on her property so that she can provide medical treatment to the horse and live the rest of his life on her property. The horse is 22 years old. She spoke about the manure and upkeep of the horse. She will be bagging the manure and removing it from the site. She also spoke about the portion of the land that grades downhill and stated she would be willing to build the land up to contain any runoff. Janet also provided paperwork from the EPA from Massachusetts. She stated she will not have another horse on the property after her horse passes away.

The abutters have been notified, notices have been published, fees have been paid.

D Stewart asked if Janet would be able to move the horse onto the property if the board approved a variance, with the current snow and cold temperatures. Janet stated she would need to wait now, as she would be unable to dig holes for the fence, etc. If the variance is approved, the horse would not move onto the property until the spring.

G Frothingham asked about the manure removal, he asked how often the manure would be removed. Janet stated once a day, sometimes twice a day. She would be bringing the manure to the transfer station.

D Stewart thanked Janet and opened the public portion of the hearing. D Stewart asked if anyone would like to speak in favor of the application, with no public comment. V Vinagro provided a letter in support of the variance, which D Stewart read aloud.

D Stewart asked Russ Bookholz to speak on the application. Russ spoke to the fact that the application was originally denied due to the zoning, which states no hooved animals. Russ also had concerns about removing manure, as well as the fact that the horse is subject to infections, which Janet spoke about at the previous meeting. Russ added that his biggest concern is that if you allow the horse on the property, then you start to allow other animals that are not allowed per zoning. Water contamination becomes a concern if they are allowing those types of animals in the shorefront zoning. Russ also added the barn structure is much closer than what was proposed on the setback affidavit by the Gray's, and it is less than the 500 feet allowed. With his calculations, it is around 400 feet from the lake, not the allowed 500 feet. A Robbins asked if the structure is in the Aquifer district. Russ stated they would have to look at the map's downstairs.

D Stewart asked if there was any public comment for opposition of the application. John Stump of 140 Lord Road spoke in opposition of the application, stating his concerns are the runoff. The topsoil on his parcel, which is an abutting lot, is fine sand and clay and does not absorb water well. There were two letters the board received in opposition of the application, which D Stewart read aloud. The first was from Wendy and Frederick Krussman and the second was from Pine River Pond Association.

Russ Bookholz advised the board that he checked the downstairs maps, and the lot in question is in the aquifer district.

The horse is 22, life expectancy is 25-26. A Robbins asked about the Youngs brook water testing situation that was stated in the letter from Pine River Pond. A member from the audience stated the issue was in 2008 and the water is still being monitored.

Janet spoke again, mentioning the EPA letter from Massachusetts she received. She also stated her intent is not to harm anyone's property.

D Stewart closed the public portion of the hearing.

The Board deliberated the application for the variance. R Baxter spoke about his experience with horses, and that they usually defecate in the same spot, which makes cleaning easier, but his concerns are where the manure would be stored when Janet cannot make it to the transfer station.

A Robbins spoke about concerns with the variance and reminded the owner that the requirements for a variance have to do with the land, not the plight of the land owner.

J DesRoches spoke about the water quality, and that it is the responsibility of the board to protect the lakes. If the variance is granted, it sets a precedent. If approved, the water quality will be negatively impacted.

A Robbins spoke about the criteria that speaks about the property having a unique hardship. She does not see the unique hardship for the property. She also referenced the Krussman letter and said that the RSA's mentioned applies to the State waiver. She added that she can personally attest to the fact that horses attract flies and critters, and she feels that a horse would change the neighborhood. She also has concerns about the down grading of the land off to the side.

G Frothingham spoke about the application, he wanted to speak in favor of the application. He read aloud Page 405 of Zoning, unnecessary hardships, and then he spoke about contamination of the lake. G Frothingham asked V Vinagro if the Gray's would be allowed to have a septic and leach field on the property if they wanted. V Vinagro stated it would depend on the setbacks and the perc test, he personally does not believe it would fit on the lot. G Frothingham spoke that smaller lots on the lake have septic systems with leach fields, that sit closer to the lake than the horse would be. V Vinagro stated that comparison between a septic system and a horse was very different. He also added that Janet will pick up manure every day and will be keeping the manure out of the weather on the days that she cannot make it to the transfer station. He ended by adding that variances can be granted with many conditions, expirations, rules etc. that the board can impose. He would not be in favor of the variance unless there were conditions imposed on this specific application.

The board addressed the five criteria for the application:

That the values of surrounding properties are not diminished

Motion: To deny the above stated criteria

Made by: Annie Robbins

Seconded by: Judi DesRoches

Discussion: A Robbins added that it's in the aquifer district, so drinking water would be affected. Horses attract flies and rodents, and lake contamination is a

large concern.

Vote: 4-0-1

That the variance will not be contrary to the public interest

Motion: To deny the above stated criteria

Made by: Annie Robbins

Seconded by: Judi DesRoches

Discussion: A Robbins added that the public interest is in preserving the water and maintaining the property value.

Vote: 3-0-2

That substantial justice is done by granting the variance

Motion: To approve the above stated criteria

Made by: G Frothingham

Seconded by: Robert Baxter

Discussion: G Frothingham believes it would do justice for Mrs. Gray to grant the variance. A Robbins added that she is against the motion, if the variance is granted, justice would weigh in Mrs. Gray's favor, if she were to put a horse on the property. J DesRoches also stated she would be against the motion. R Baxter stated it is a hard decision to make over the 30 feet, considering the bond between Mrs. Gray and her horse. He added that runoff from a horse is minimal. D Stewart stated he struggles with this criteria as well, but he will be voting against the motion.

Vote: 3-2-0

That the spirit of the ordinance is observed even in granting the variance

Motion: That the use is contrary to the ordinance

Made by: Annie Robbins

Seconded by: Judi DesRoches

Discussion: A Robbins stated that no hooved animals are allowed in that zone. G Frothingham added that he believes it is not in spirit of the ordinance.

Vote: 5-0-0

#5 That literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

Motion: That literal enforcement of the provisions of the ordinance would result in unnecessary hardship

Made by: George Frothingham

Seconded by: Robert Baxter

Discussion: A Robbins stated that hardship is towards the land, not the personal plight of the applicant. A Robbins believes that the applicants answer to this criteria is not correct and does not believe there is any hardship to the land, only to the owner. J DesRoches asked if there was an alternative situation for the owners,

possibly moving the horse to board that is closer to where the owner resides. Janet answered that there is no place in Wakefield up to her standards for the horse.

Vote: 2-0-3

Motion: the board in totality denies the application for a variance

Made by: Don Stewart

Seconded by: Annie Robbins

Discussion: None

Vote: 5-0-0

Case #2 @ 8:00pm

•Variance Application: Submitted by Tyler Matthews for property owned by Dwight & Lori Henderson located at 133 Doc Morrison, Tax Map 143-020. The applicants are requesting a variance from Wakefield Zoning Ordinances, Article 3, Table 2 – Minimum Setbacks. The applicants are seeking relief from a sideline setback in order to install a generator and propane tanks.

Tyler Matthews approached the board and spoke about the application. A sideline variance for a generator and propane tanks for the owners. Ten-foot side setbacks, looking to put it two feet off the property line. D Stewart asked if there was anything unique about the proposed application. Tyler stated not that he is aware of. The generator, if approved will be completed as soon as possible. The board advised Tyler there is a 30-day appeal period if the variance is approved. Tyler described the layout to Robert Baxter, who was not present at the site walk. R Baxter asked if Tyler had thought of taking a window out of the garage, in order to place the generator closer to the garage. Tyler stated he would look for a variance to put the generator on the lake side of the home before he took a window out. The board members discussed the placement of the generator and the map that was distributed to the members. The propane tanks need to be five feet from any penetration surface. It was reiterated that Russ Bookholz suggested placing the tanks in a single line down the middle of the two structures and not leave them in a cluster, as they were at the site walk today. The Left structure is the neighbor's garage with no points of penetration. The right structure is the owner's garage, with multiple points of penetration, windows, AC unit, etc. The placement of the generator, and a variance is requested because the only other places to install the generator would require extra propane and electrical work installation, and it would make it, so the generator would be in the middle of the yard. R Baxter asked about the distance between the underground electrical to the house and the propane tanks. Tyler stated it would be 5 feet. R Baxter asked if it would affect the neighbor if they would like to put a window in. Tyler stated it should not affect them, if they line the tanks up. D Stewart read an email from the neighbors, the Chapman's. They stated they had no problems with the propane tanks if they are able to put a window back in the garage and that the tanks are not over the property line. The question raised was if

the neighbors wanted to install a window, where would they want to do so, and would it be within five feet of the propane tanks. Tyler asked if a condition could be put in place if the variance was approved, to allow the neighbors to install the window. D Stewart stated they couldn't define a condition if they don't know where the window would be placed. Tyler stated that he spoke with the neighbors today and they told Tyler that there was a window opening in the garage, but he has not been able to put a window in yet. D Stewart suggested tabling the hearing until a definite answer is received from the neighbors as to where the window opening is. The board agreed that tabling the hearing and application until they can receive an answer. G Frothingham stated that at the site walk the code enforcement officer indicated that he would be checking the requirements on clearances after the generator is installed. He suggested relying on the code enforcement officer to double check the requirements, and the board take the information on the variance and either approve or deny the variance. Then the code enforcement officer can handle where the window would go. There was discussion between board members about how to go forward with the application.

Motion: To table the matter to a date certain, pending input from the neighbors on the matter of placement of the window.

Made by: Don Stewart

Seconded by: Judi DesRoches

Discussion: none

Vote: 5-0-0

Motion: for the board to meet on November 26 at 7:00PM to continue the variance application

Made by: Don Stewart

Seconded by: Judi DesRoches

Discussion: none

Vote: 4-0-1

Tyler asked what would be required from him at next weeks' meeting. The board asked for specifics of where the neighbor is looking to install the window, and how does it relate to the generator and tanks. A drawing would also be helpful. V Vinagro will be speaking to the Building Inspector about the matter.

E. BOARD BUSINESS

None

F. APPROVAL OF MINUTES

October 15, 2018 meeting minutes

Motion: To approve the minutes from October 15, 2018
Made by: Annie Robbins
Seconded by: Don Stewart
Discussion: none
Vote: 4-0-1

D Stewart wanted to discuss site visits. He stated that a past site walk was held in the dark, and that was in error. Today's site walks were scheduled in the afternoon to accommodate the code enforcement/building inspector, but he would like to go back to Saturday morning site walks, at least for the winter months. Evening site walks can be done in the spring and summer months.

G. CORRESPONDENCE

None

H. SET NEXT MEETING DATE

December 17, 2018

I. ADJOURNMENT

Motion: To adjourn
Made by: Annie Robbins
Seconded by: Judi DesRoches
Discussion: none
Vote: 5-0-0

Respectfully submitted, *Jeanne Paul*