



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING

20 May 2019

Approved

Approved: 5/20/2019

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

Site Walk on Saturday May 18th, 2019 at 10:00am.

Present Were: Don Stewart, George Frothingham, Donna Martin, Doug Stewart, Victor Vinagro, James Keating, James Keating IV, Trisha Keating and Nate Fogg, Priscilla Colbath

The Board conducted a site walk of 41 Cemetery Road. Nate Fogg explained why Mr. Keating was asking for the variance. The owners would like to build a garage with an attached ADU on their property. There is no place by the residence to attach an ADU. The property markers were pointed out. Brock Mitchell, Director of Public Works saw no problem with tying in water. Their septic consists of gray water and the solids are pumped out. The dimensions would be 36x32. The building meets all the setbacks. The only question is the use. Chairman Stewart closed the site walk at 10:08, and the Board will reconvene at 7:00 on Monday May 20th for the Public Hearing.

Pledge of Allegiance

Chairman Stewart called the meeting to order at 7:00.

Others present: Doug Stewart, Robert Baxter, James Keating, James Keating IV and Nate Fogg

Seat Alternates as necessary

None

Board Business:

ZBA Officers Election

Chairman Stewart suggested starting a process of rotating the Chairmanship.

Chairman Stewart made a motion, seconded by Mrs. DesRoches, to elect a new Chairman. (Vote 5-0)

Chairman Stewart made a motion, seconded by Mrs. Robbins, to appoint Mr. Frothingham Chair of the ZBA effective this evening. (Vote 4-0-1)

Chairman Stewart made a motion, seconded by Mr. Frothingham, to appoint a new Vice Chairman. (Vote 5-0)

Mr. Frothingham made a motion, seconded by Mrs. Robbins, to appoint Mr. Donald Stewart Vice Chair of the ZBA effective this evening. (Vote 4-0-1)

Approval of minutes:

January 28, 2019

Chairman Stewart made a motion, seconded by Mr. Frothingham, to adopt the minutes of January 28th as amended. (Vote 4-0-1)

Public Hearings

Chairman Frothingham requested that Mr. Stewart continue as Chairman for the Public Hearing. The Board concurred.

Variance Application: submitted by Nathan Fogg for property owned by James F. Keating IV located at 41 Cemetery Road, Tax Map 179-126. The applicants are seeking a variance from Zoning Ordinance Article 23D-Accessory Dwelling Unit: section A & C to allow a detached Accessory Dwelling Unit above a detached garage. Currently the 2019 Wakefield Zoning Ordinances does not allow for a detached Accessory Dwelling Unit. The applicant is also requesting relief from 23D section G. requiring an ADU to be constructed at 750 Sq. Ft.

Mrs. Robbins recused herself from the application and stepped down. Chairman Stewart then sat Mr. Doug Stewart as an alternate member.

Mr. Fogg stated that the Keating's would like to add an ADU to their property for guests like Mr. Keating's father-in-law. They have submitted an application for a building permit for a garage and they originally wanted an ADU over the garage but has since reconsidered and decided side by side would be best. The application was denied because attached ADU's are not permitted even though ADU's are permitted in all zones where dwellings are permitted. Unique characteristics like proximity to Lovell Lake and the lot slope makes it impossible to have an attached ADU. It will meet all zoning and shoreline requirements except being a detached dwelling Unit and they would like to build a 400 sq. ft. not a 750 sq. ft. unit. The water and sewer will not be a problem. One of the items they are requesting is a variance on is the size of the ADU. The other request would be an ADU separate from the main house. Mr. Bookholz said according to our zoning an ADU must be attached to the main house and must be 750 sq. ft. and they are looking for a variance on size. They would like 400 sq. ft. Chairman Stewart noted that the floorplan had no kitchen and asked if they were seeking a variance from that requirement? Mr. Bookholz believes they would need relief from table three dimensional requirements as well as from the ADU requirement. Without a kitchen this might be a bunkhouse but there is nothing in the zoning to allow a bunkhouse. Mr. Stewart asked what the minimum would be to have cooking facilities in a residence. Mr. Bookholz said a microwave or a cooktop and a sink. Mr. Keating said they would be willing to include those items. Chairman Stewart recommended a dorm refrigerator. The Board looked at the sketch of the building footprint.

They all agreed the kitchen issue is resolved. The two issues before the Board tonight is the size of the ADU and the ADU proposed as being part of a separate structure. Mr. Bookholz wants to make sure the Board votes on Table 3 and article 23D. Mr. Stewart said if this were to be approved he would ask the Board to add to the deed that there could be no subdividing of the lot. Mr. Keating said he agrees to that 100 %.

Chairman Stewart asked if anyone present would like to speak for the application. Seeing none he asked if anyone present would like to speak in opposition to the application. Seeing none he closed the Public portion of the Hearing at 7:26.

Mr. Bookholz explained that Table 3, Page 13: Minimum Living Area Single Family Residence R2 says that there's an 800 sq. ft. minimum. So relief would be needed. ADU Page 5 Article 23D Section G says an ADU shall not exceed 750. Which doesn't any longer come into effect. Mr. Frothingham said that the local regulations are confusing and contradictory and that Mr. Bookholz is making this more complicated than it needs to be, He feels a variance can be granted by describing what they are allowing to be done like allowing a garage with a living space as described. Let's just describe what we are allowing and be done with it. Mr. Bookholz believes there is a procedure he must abide by.

Mr. Stewart said based on the uniqueness of the property he would be agreeable to grant a variance for a detached structure. This might not be so if someone came in who didn't have those restrictions. A variance would have to be giving for the 400 sq. ft. No one had an objection. 400 feet is acceptable to the Board. Prior to the meeting the Chairman spoke with Town Council about these issues and he said he is supportive of these items. He indicated that the Board had to deal with the building area requirements. It was decided to address the five criteria at this time.

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

The board addressed the five criteria for the application:

Criteria 1

Would the proposed use diminish surrounding property values or not?

Mr. Frothingham moves, seconded by Chairman Stewart, that that criteria has been met. (Vote 5-0)

Criteria 2

Granting the variance will not be contrary to the public interest because the Accessory Dwelling Unit will be attached to the garage that is proposed for this property and that exists on other properties in other areas of Wakefield. The Accessory Dwelling Unit will be attached to the garage with a separate entrance to keep the garage appearance of the Accessory structure.

Mr. Frothingham moves, seconded by Mr. Stewart, that that criteria has been met. (Vote 5-0)

Criteria 3

Granting a variance would do substantial justice because allowing property owners to enjoy their property in ways that are not in direct conflict with zoning as well as in ways that do not take away from the abutting properties is a reasonable use of the property. This proposed variance is consistent with the proposed use on this unique existing property.

Mr. Stewart made a motion, seconded by Mr. Frothingham, that that criteria 3 has been met. (Vote 5-0)

Criteria 4

The use is not contrary to the spirit of the ordinance because an ADU is permitted within all the zoning districts where single family dwellings are permitted.

Mr. Frothingham made a motion, seconded by Mrs. DesRoches, that that criteria 4 has been met. (Vote 5-0)

Criteria 5

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because an ADU is allowed on parcels with a single family dwelling unit, But unique restraints of this particular parcel do not allow for an attached ADU to be placed on this property due in part to the slope of this parcel, the shared driveway, and the size, shape and setback proximity to Lovell Lake.

Mr. Stewart made a motion, seconded by Mrs. DesRoches, that that criteria 5 has been met. (Vote 5-0)

1. Variance granted with the agreement of the applicant to have a kitchen in this ADU consisting of at least a microwave, sink and dorm refrigerator.
2. That the applicant agrees that they will draft and review with Code Enforcement a restrictive covenant of this property that it will not be subdivided and to be recorded at the Registry of Deeds.

Chairman Stewart made a motion, seconded by Mr. Frothingham that the Board grants the variances requested by the applicant to construct the Accessory Dwelling Unit on Cemetery Road as proposed. (Vote 5-0)

Adjournment

Mrs. DesRoches made a motion, seconded by Mr. Frothingham, to adjourn the meeting at 7:50. (Vote 5-0)

Respectfully submitted for approval at the next ZBA meeting,

Priscilla Colbath
ZBA Secretary