



TOWN OF WINCHESTER ZONING BOARD OF APPEALS
Town of Winchester Town Hall, 338 Main Street
P. Francis Hicks Room – 2nd Floor
June 22, 2021 – 7:00PM
Regular Meeting Minutes

Chairman Phillip Allen called the meeting to order at 7:07PM.

1. ROLL CALL:

Mr. Allen noted that the following individuals were present in addition to himself: Aubrey English, John Pollack, and Paul Marino. Hal Wilkes, and Alternate Ron Dew.

Mr. Wilkes and Mr. Carter were absent excused. Mr. Dew was seated for Mr. Wilkes.

2. EXPLANATION OF PROCEDURE:

Mr. Allen explained that an approval from this Board requires four affirmative votes. Accordingly, Mr. Allen also explained that the applicants were entitled to a vote before five seated members. He noted that applicants usually receive a disposition on the application the same evening of the meeting. Mr. Allen explained that the proceedings include the applicant's opportunity to provide information regarding the application, a chance for the Board to question the applicant and/or representative as well as closing comments by the applicant. He noted that members of the public will also have the opportunity to ask questions and to provide comments either in support or in opposition of the application.

3. PUBLIC HEARINGS – VARIANCE APPLICATIONS & DECISIONS; APPEALS:

A. ZBA#21-5261 - Variance Location: 504 East Wakefield Boulevard Applicant/Owner: Shawn Stanziale Variances Requested: Side yard setback, Rear yard setback, Impervious coverage, and to allow a deck to be closer to property line than the principal building. Proposal: Variance for Addition to Cottage, Covered Porch, and Deck.

Shawn and Brooke Stanziale appeared before the Board regarding this application.

Mr. Pollack recused himself from this application. As Mr. Dew had only recently been appointed to the Board, the Board lacked a quorum for this application.

MOTION: Mr. Allen, Mr. English second, to continue Application ZBA#21-5261 for a proposed variance at 504 East Wakefield Boulevard to the July 27, 2021 regular meeting; unanimously approved.

Mr. Pollack rejoined the meeting.

B. ZBA#21-5263 – Variance Location: 304 East Wakefield Boulevard Applicant/Owner: Harris Daigle Variances Requested: Side yard setback, Rear yard setback, Impervious coverage. Proposal: Variance for Addition to Cottage, Covered Porch, and Deck.

Professional Engineer Mike Sherman, accompanied by his client Harris Daigle, appeared before the Board regarding this application. Mr. Sherman noted the updates that were made to the

Zoning Table, explaining that his client intended to remove the roof overhang and to square off the home. He explained that the roof will be installed over the deck under his client's proposal. Mr. Sherman noted that the ledge at this property was not counted in the pervious calculations. He noted that the shed and walkways would be removed and replace one walkway with pervious pavers. He explained the house would be increased by 2' and the deck would be covered under this proposal. Mr. Sherman noted that the proposal includes a rain garden to capture the water volume for this site. He indicated the roof leaders would be tied into the rain garden. Because the site is all ledge, an underdrain to a riprap bank are included in the design, according to Mr. Sherman.

Mr. Sherman noted that photographs of the site had been submitted. Mr. Pollack questioned the adjacent parcel and whether Mr. Leach had ownership in that piece with the neighbor on the other side of it. Mr. Daigle confirmed. In response to another inquiry, Mr. Sherman explained the 2' expansion is proposed on the northerly side of the dwelling.

Mr. Pollack shared some questions regarding the structures (docks/boatlifts) in the water. Mr. Sherman indicated that there was slightly more than 59' of lakefront from point to point. Mr. Pollack questioned the height of the existing house. Mr. Sherman noted that it was 15.23'. Mr. Pollack then questioned the height of the proposed dwelling. Mr. Sherman noted that there will be an extra floor added to it and that the home will be 29.2'. He noted that no variance was being sought for building height. Mr. Pollack noted that it already seems light a high structure. Mr. Daigle indicated that he has consulted with the neighbors and had submitted letters supporting his proposal. He indicated that when he sits on his deck now, his view is rooftops and indicated that he will not be blocking anyone's view. Mr. Pollack shared his concerns with setting precedents.

The hearing was open to the public. No comment was received.

Mr. Allen read aloud three letters of support from Jennifer Leach of 348 East Wakefield Boulevard, John and Christine Sliney of 308 East Wakefield Boulevard, and Dr. Michael Mosur of 306 East Wakefield Boulevard.

Mr. Daigle explained that his hardship relates to the property being a granite quarry years ago and the broken glass he continues to find to this day at the property. He cited having stepchildren and step-grandchildren and the difficulties he faces in trying to keep the young kids on the deck/dock. Mr. Daigle shared a container of broken glass that he relayed he had picked up in just the past week.

The hearing was closed.

MOTION: Mr. Marino, Mr. English second, to approve ZBA Application #21-5263 Section ii.g.b.ii. for a front yard setback variance of four feet, a rear yard setback variance of 20.5', a west side yard variance of 30', a east side yard variance of 6.4', and from Section ii.g.d.i. for a height variance of 3' for the purpose of a 22'x35' residence with a walkout basement and a 22'x with a 4' as per the drawings submitted for the property located at 304 East Wakefield Boulevard;

Motion passed with Mr. Allen, Mr. Dew, Mr. English, and Mr. Marino voting aye while Mr. Pollack was opposed.

C. ZBA#21-5266 – Variance Location: 534 Wheelers Point Applicant/Owner: Robert and Beth LaChance Variances Requested: Side yard setback and Impervious coverage.

Proposal: Variance for Adding a 2nd floor deck over an existing deck; and

D. ZBA#21-5267 – Special Permit Location: 534 Wheelers Point Applicant/Owner: Robert and Beth LaChance Proposal: Add a Dormer Over an Existing 1st Floor.

Beth LaChance appeared before the Commission regarding this application. She confirmed that she would prefer the Board discuss and consider the following application, ZBA#21-5267 for a Special Permit, simultaneously.

Ms. LaChance explained that as her lower deck needs replacement, she would like to enclose it and add a second-level deck on top of it. She noted that there would be a small door that would lead from her bedroom through a dormer that would lead to a second level deck.

The hearing was open to the public. No comment was received.

Ms. LaChance explained that the proposal will allow more useable space and will allow shade for her and her family.

The hearings were closed to the two applications.

MOTION: Mr. Marino, Mr. Allen second, to approve ZBA Application #2166 from Section ii.g.b.ii for a west side yard setback variance of 20' and from Section ii.g.b.ii for a maximum impervious surface coverage variance of 18% for the purposes of adding a screened-in porch over an existing deck with a deck on top of the screened room as per the drawings submitted for the property located at 534 Wheelers Point; unanimously approved.

MOTION: Mr. Marino, Mr. Allen second, to grant Special Exception for Application #2167 to put a dormer on the rear of the house per the drawings submitted for the property located at 534 Wheelers Point; unanimously approved.

E. ZBA#21-5268 – Special Permit Location: 542 East Wakefield Blvd Applicant/Owner: JoAnn Serkey Proposal: Install a Fence on the Property.

Randy Serkey appeared before the Board regarding this application. He explained that the proposal is to install a PVC fence that is 4' high and will extend 32'. Mr. Serkey noted that there would be a gate added to access the lower lake area. He explained that the fence affords a little bit of privacy to the lower area and helps to corral the dog and grandchildren, too.

The hearing was open to the public. No comment was received.

The hearing was closed.

MOTION: Mr. Marino, Mr. English second, to grant Special Permit #21-5268 to install four 4'Hx8'L sections of vinyl picket fence along the property line per the drawings submitted for the property located at 542 East Wakefield Boulevard; unanimously approved.

F. ZBA#21-5269 – Special Permit Location: 408 East Wakefield Blvd Applicant/Owner: Robert J. Birney and Patricia L. Birney, Trustees Proposal: Add Second Floor on Non-conforming Structure Utilizing Same Footprint.

Attorney Patrick Power, accompanied by his client Patricia Birney, Architect Michael Boe, Professional Engineer Dennis McMorro, and home improvement contractor Mark Beecher appeared before the Board regarding this application.

Attorney Power noted the application was submitted pursuant to subsection c and j of Section III of the Zoning Regulations. He reminded the Board that subsection c governed non-conforming uses while subsection j governed Special Permits/Special Exceptions. Attorney Power indicated that the first floor of the building on the Birney property was a legal non-conforming structure that existed prior to the adoption of the Zoning Regulations. He reported that permits were obtained to remove and rebuild the first floor of the structure and noted that the foundation has already been poured. Section C.4. of the zoning regulations relative to non-conforming structures permits a second floor to be added to a non-conforming structure, utilizing the same footprint, so long as it is within the height requirements and does not add another dwelling unit, as pointed out by Attorney Power. He noted that his clients were looking to add 276 square feet through a partial second floor which will include a bedroom and a bathroom. Attorney Power explained that the property has been owned by family of his clients for decades and that as Mr. Birney is 82 years old, they sought to have another bedroom so that an additional person can stay with them to tend to their needs.

Attorney Power reported that approval had already been received from the Inland Wetlands and Watercourses Commission. He provided Minutes from their November 20, 2020 and December 3, 2020 meetings.

Mr. Boe reviewed the elevation drawings for the project. He also reviewed the floor plans. Mr. Boe reminded the commission that the work proposed as part of this project are all over land and none of it is over water. He shared photographs of other two-story homes. Mr. Boe also shared photographs of the subject location from other perspectives.

The overhangs over the doors were reviewed. Mr. Boe noted that they were 3'x8'. Mr. Melanson noted that the only size overhang allowed in the setbacks is what is permitted through the Building Code, sized at 3'x3'. Citing the location of this property in the "narrows", Mr. Pollack shared his concerns with boaters peering over at this house.

Mr. Pollack also shared his concern with the second story blocking the view of a neighbor. Attorney Power noted the three volumes of Practice Series covering Land Use, considered to be widely accepted by lawyers and judges. He noted that Volume 9, Section 448 at Page 186 states that, "Connecticut property owners have no right to an unobstructed view from structures built on adjacent properties." Attorney Power indicated that the only exception to that is where there is an express statutory provision or a contract or restrictive covenant protecting the private rights to a view or vista.

Mr. Beecher noted that approvals had been gained prior to any of the work undertaken at this property. Mr. Beecher noted that his team has always tried to be mindful and respectful of the neighbors. He explained that the structure from the neighbor's perspective blocks the view of the trees and ledge.

Mrs. Birney then addressed the Board, explaining that her father-in-law had purchased the property in 1938. She noted that her husband has always cherished the lake and dreams of returning to the lake to enjoy it with his family.

Attorney Power reviewed the criteria for special permits as contained in the Zoning Regulations, discussing factors of the application as they applied to each.

Mr. Marino shared his reservations with the project, noting that the size of the parcel lends the opportunity to construct a dwelling, of an even larger size, where it would not require a second floor less than one foot over the neighbor's property.

Mr. Melanson questioned whether Mr. Boe was aware that windows and doors could not be included on the wall closest to the neighboring property as it would not comply with the Building Code. Mr. Boe confirmed.

Mr. Pollack questioned why the property owners wouldn't build something larger that would meet the setbacks. Attorney Power reminded the Board that his clients had the right to rebuild their nonconforming structure and that they could not be denied because it would be preferable to be somewhere else. Mr. Beecher disagreed that this parcel is located near the narrows.

The hearing was open to the public.

Karen Lee of 408A East Wakefield Boulevard shared her concerns including the close distance of her family's property line to the subject structure, noting it as only inches. Ms. Lee did not favor the design and opined the structure was too massive for the water's edge.

Mark Mandell of 410 East Wakefield Boulevard shared sentiments as described by the Board relative to building elsewhere on the lot where a structure could meet the setback requirements. He sought clarity that the structure would be constructed in the portion of dwelling on land and not over the water. Mr. Allen confirmed. Mr. Mandell shared his concern with the added development generally around the lake, especially that close to the lake, is not in the character and harmony that would be expected in the lake neighborhood unless it is an only option available. Mr. Mandell indicated that a second floor addition would indeed block his view.

Attorney Power reiterated the position that his clients had a legal right to the location of the dwelling and that even though it may not be the preferred location of some, the application cannot be denied because of it. He maintained that there was no factor or standard within the Zoning Regulations that could be used to deny the application.

The public hearing was closed.

MOTION: Mr. Marino, Mr. Dew second, to grant a Special Exception for Application #21-5269 for the existing one-story residence and to rebuild with a partial second story per the drawings submitted for the property located at 408 East Wakefield Boulevard, without the overhangs for the two exterior doors;

Motion approved with Mr. Allen, Mr. Dew, Mr. English, and Mr. Marino voting in favor while Mr. Pollack abstained.

Following the motion and preceding the vote, the Board discussed why they had previously denied the application previously. Mr. Marino noted that the abutting property owners objected and that the Board should consider whether the proposal is in harmony with the Highland Lake District. He also questioned whether this was setting precedent with adding on so close to the water. Mr. English pointed out that the Inland Wetlands and Watercourses Commission already approved this application. Mr. Allen and Mr. Dew both noted that the structure is located where it is and its nonconforming location is grandfathered.

G. ZBA#21-5270 – Special Permit Location: 404 East Wakefield Blvd Applicant/Owner: Greg and Annie Simard Proposal: Add Habitable Space to an Accessory Structure.

Mr. Allen explained that due to a noticing error, this application will be continued to the July 27, 2021 regular meeting.

4. OLD BUSINESS:

None.

5. APPROVAL OF MINUTES:

A. May 25, 2021 Regular Meeting

MOTION: Mr. English, Mr. Pollack second, to approve the May 25, 2021 regular meeting minutes;

Motion passed with Mr. Allen, Mr. English, and Mr. Pollack approving while Mr. Dew and Mr. Marino abstained.

6. BILLS PRESENTED:

None.

7. CORRESPONDENCE:

The Board was reminded that they should have received an email inviting them to a Freedom of Information training session for 5PM on Thursday, July 8 at Town Hall.

8. OTHER BUSINESS:

None.

9. DISCUSSION WITH ZONING ENFORCEMENT OFFICER:

No business discussed.

10. ADJOURNMENT:

MOTION: Mr. English, Mr. Marino second, to adjourn at 9:15PM; unanimously approved.

**Respectfully submitted,
Pamela A. Colombie
Recording Clerk**