



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
20 January 2014

Approved
17 March 2014

MEMBERS		ALTERNATES		OTHERS	
Doug Stewart, Chairman	X	Sharon Theiling	X	Nathan Fogg, Land Use Clerk & Code Enforcement Officer	X
George Frothingham, Vice Chairman	X	John Napekoski	X	Richard Sager, Town Counsel	X
Cecille Arnone		Steve Brown	X		
Judy Sjostrom	X				
John Crowell					

Also present were: Jim Miller (videographer), George Promise, Dennis Tyler, John Nolan (reporter), Barbara Singelais, Debra O'Halloran, Donna Baker, Rodney Baker, Peter Brown, Thomas Stevens, Don Joy, Gayle Joy, Jeanne Desjardins, Arthur McEvoy, Thomas Mix, Gary Stevens, Roberta Stevens, Nancy Spencer-Smith, Tom Dube, Chris Desjardins, John Meader, Sharon Meader, & Peter Malia (Meader Attorney)

Chairman Stewart called the meeting to order at 7:00 pm following the pledge of allegiance.

The board members introduced themselves. Sharon Theiling and John Napekoski were seated for members C Arnone and J Crowell

The board recessed to consult with town counsel to discuss the procedure for the hearing.

PUBLIC HEARING

1. Chairman Stewart explained the procedure that would be followed. The application would be checked for completeness and then voted on to accept the application. The public would then be given time to discuss the application, first those supporting the application and then those opposing the application, then the public hearing will be closed, the board will deliberate, and render their decision.
2. Discussion regarding the application took place. The application is complete, the public notice was in the paper, and the abutter's were properly notified.

MOTION: To accept the application as complete to move forward.
 Made by: George Frothingham
 Seconded by: Judy Sjostrom
 Discussion: None
 Vote: 5-0 in favor of the motion

3. Chairman Stewart invited the applicant to speak to their motion. Gary Stevens thanked the board and all in attendance for coming out to support them at the meeting and then introduced his wife Roberta Stevens.
4. Roberta Stevens reviewed the ZBA application and the two PB approvals received by the Meaders on November 7th, including a Conditional use permit for a boat storage facility and the conditional site plan approval for a boat and marine craft dealer on Route 16. She explained that the area is zoned Residential 3 and that she is an aggrieved abutter to the project. She read a prepared statement that was attached to the ZBA application. She summarized the uses discussed as part of the PB approval and that this went beyond the allowed use within the R-3 zone. Marine craft repair is not an allowed use in the R-3 zone. She explained that the R-3 district is generally a residential district of 3 acre parcels and acted as a buffer between the R-1 and Agricultural districts.
5. Gary Stevens reviewed the PB's ongoing discussion of making Route 16 a business and commercial district, however have never had a proposal approved by the public. He mentioned that the PB approval was spot zoning, read some definitions from the zoning ordinance that he felt went against the PB approval. He read Article 2 of the Zoning Ordinance pertaining to retaining the 'natural beauty and character of Wakefield' and 'consistent with the rural character of the town'. In Article 6, the R-3 zone is 'primarily residential development'. Business and commercial definition is a much better fit for this type of business. He read the permitted uses in the R-3 zone: office not permitted, retail sales not permitted, boat and marine craft permitted, and boat storage permitted with a conditional use permit. Boat and marine craft dealer is not described in our ordinance, nor in other zoning ordinances in nearby towns.
6. G Stevens passed out a handout to the ZBA that emphasized the rural setting of Wakefield.
7. Article 14, performance standards. To protect surrounding areas of a development. 7 standards, all must be met. G Stevens does not feel that this business meets the following criteria: Noise, odor, Pollution, traffic. He read a letter written by the Land Use Department to NHDOT describing specific concerns over traffic flow in the area of the Meaders' proposed business. Mr Stevens felt that this letter showed that the town had concerns about the flow of traffic in the area and that proved that the town had traffic concerns for this project.
8. Article 29, Conditional use permit, 8 criteria. Specific site appropriate size and location. This use affects the area. Public health and welfare are not supported by this business. No specific review of the conditional use criteria. Public comment at the PB meeting described how this might change the neighborhood. The PB erred in approving the conditional use application because they did not consider or discuss the criteria after hearing testimony from the public to the contrary. Site Plan approval was unreasonable or unlawful for the PB to approve because the criteria were not satisfied. He read Article 2 rural character again. Article 14 and 29 not sufficiently met to grant the approvals.
9. Wished the Meaders success in their business, just not in this location. The ZBA has no option but to overturn the decision of the PB in granting the site plan approval.

10. Chairman Stewart asked if anyone had questions for the applicant. There were none.
11. Jeanne Desjardins spoke that she and her ex-husband bought the property just north of the Meaders' parcel 22 years ago. They operated a home-based modular home business from the location, but were denied the opportunity to place a model home on the property because the zoning was and still is not business and commercial. She is concerned as to how this will affect the value of their property. The project would be great if this was a commercial zone, but it is not a commercial zone and therefore she feels that this will adversely affect her property.
12. Debra O'Halloran, an abutter, owns a small farm in the area. She doesn't believe that there should be a business in the area. She asked if the conditions of approval had been met. (N Fogg replied that they did not need to meet the conditions until they started construction.) She is opposed to the business being located at this location.
13. Chris Desjardins reiterated his ex-wife's concerns. If that parcel is going to be commercial, the whole area should be commercial. He is concerned that his property value will go down because nobody will want a residence next to a commercial business.
14. Gary Stevens pointed out that there are areas in town that are zoned for commercial business. This is not the proper area.
15. Dennis Tyler has no hard feelings towards the Meaders. They both run a similar type of business and there is plenty of business for both. The location bothers him. He started out as an in-home business. He outgrew his home business location and had to find a location where he could expand. He found a business and commercial location and expanded. He is very concerned about the equity of the property values because his 2 parcels (totaling 2.22 acres) are valued much higher than the Meaders' parcel (4.4 acres.) The assessments are not even close to being fair and put a greater taxation burden on his business. Businesses should be located in business and commercial locations, not residential areas. Also the traffic concerns that are an accident waiting to happen.
16. Peter Brown spoke as vice-chair of the Heritage Commission. The heritage commission wants to see development centered within the village areas in Wakefield. They are strongly opposed to this business in this location. Mr Brown also spoke for himself. He spent approximately 3 years on the Route 16 corridor study. He read that Wakefield had implemented nodal commercial zoning around major intersections in town both on and off the Route 16 corridor. Other development between nodes is not preferred.
17. Don Joy lives in Union. He lives next to the post office. The post office recently changed policy and keeps the lobby open 24 hours a day. Lights, car noise, squealing tires, etc. These are unintended consequence of this change. Businesses should be kept in business locations. He also knows how dangerous that area of Route 16 can be.
18. Thomas Stevens is concerned because there is no primary residence associated with this proposal. He is also concerned with the safety on Route 16. Fire safety is another issue. There are many areas of forested land behind the site and he has concerns about a fire spreading from this location to the forest.

19. Chairman Stewart asked if anyone else wanted to speak in favor of the application. Hearing none, he asked for anyone who wanted to speak against the application.
20. Peter Malia, attorney for the Meaders introduced himself and asked John Meader to briefly review his site plan.
21. John Meader, owns Great East Docks across from Town Hall. Has sold docks and boat lifts for about 15 years and has been located across from Town Hall for about 8 years. This spring they discovered that the zoning had changed that would allow them to expand to a lot they had previously purchased on Route 16. Had 2 preliminary meetings with the planning board, they hired a surveyor to prepare a site plan to meet planning board requirements. While surveying, the surveyor met the Stevens who were concerned with the buffer between the two properties. The Meaders increased the buffer along the south end of the property. They presented the site plan at the November 7, 2013 planning board meeting. The Desjardins were concerned with how the trees at the north end of the lot had been cleared to the property line. The Meaders agreed to plant an evergreen tree buffer along their side of the stone wall where trees had been removed. They have received conditional approval.
22. Peter Malia reiterated that this is an appeal of administrative decision. Appeals generally go straight to Superior Court unless there is a specific interpretation of the Zoning Ordinance that the planning board made, which can be appealed at the ZBA level per RSA 674:33-I (a). The Stevens' appeal alleged that Article 3, Table 1 Permitted Uses was improperly interpreted. The appeal alleges that the planning board erred in interpreting the meaning of "Boat and Marine Craft Dealer". More specifically do a limited amount of boat repair and dock sales fall within a reasonable definition of Boat and Marine Craft Dealer?
23. Attorney Malia feels that this should be a quick decision for the ZBA for a couple of reasons. Some boat repair and the sale of docks easily fall within a reasonable interpretation of the definition of Boat and Marine Craft Dealer. The companies that sell boats to Mr Meader require him to make repairs and perform routine maintenance of these boats. He cannot sell these boats unless he is able to perform some maintenance. Also docks are reasonably associated with boats. It is difficult to access your boat without a dock. The planning board acted logically and in a well thought out manner. Boat repair and dock sales also qualify as accessory uses within the definition of accessory use in Article 33. These activities are customarily associated with the approved use.
24. Most of the arguments made at this public hearing relate to the planning board decision which will be heard in Superior Court. The decision for the appeal is limited to the interpretation of "Boat and Marine Craft Dealer". The appeal is not about spot zoning, noise, pollution, traffic, the NHDOT driveway permit, Article 29- Conditional Use criteria, or whether this is an appropriate location. Those are planning board issues. Those issues are for the Stevens to argue in front of Superior Court.
25. Attorney Malia asked that the ZBA deny the appeal. The Stevens can then move forward with their appeal of the planning board decision at the Superior Court level.
26. Chairman Stewart asked if anyone had questions for those who had spoken. Hearing none he closed the public input portion of the public hearing.

27. Chairman Stewart mentioned that this appeared to be a simple question and yet it is quite complicated.
28. Vice-Chair Frothingham has been on the board for many years and this is perhaps the most difficult decision he has faced. He sympathizes with most all of the concerns raised at the hearing this evening. Unfortunately, the ZBA is not meeting this evening to determine these issues. The question before the board this evening is whether or not the uses described reasonable fall within the accessory use definition as it relates to Boat and Marine Craft Dealer. He feels that they are reasonably an accessory use. He does not understand how the Zoning Ordinance allows this type of use. The Meaders did their homework. When a zoning change allowed them to move forward with their plans for the Route 16 property, they followed the rules in place and moved forward as allowed by the Zoning Ordinance and Planning Board Regulations. These accessory uses are a reasonable interpretation.
29. John Napkoski stated that no one made an argument against this being a reasonable accessory use associated with the proposed business as allowed in the Zoning Ordinance.
30. Chairman Stewart noted that he feels for both sides of the argument. What is the definition? He feels that retail sales are not allowed and this is not clear in the ordinance. The planning board erred in their interpretation of what was allowed with regard to retail sales. He is in favor of the appeal.
31. Vice-Chair Frothingham disagreed with Chairman Stewart. The retail sales are allowed as they relate to Boat and Marine Craft Dealer. Other boat dealers in the area sell accessories typically as part of their business.
32. Chairman Stewart did not agree that all sold accessories, but agreed that some do.
33. Judy Sjostrom felt that selling accessories with boats is a reasonable accessory use related to the primary use. Feels that we should relook at the allowed uses in the zones and refine them more clearly.
34. Sharon Theiling feels that the Planning Board should have done more homework and looked into this further before issuing the permit and should have placed more conditions on the approval.
35. Vice-Chair Frothingham feels that the planning board should relook at the permitted uses to make them clearer and possibly better define the uses that are allowed.
36. Chairman Stewart asked Town Counsel if alternate Brown could speak at this point in the deliberation. Attorney Sager felt that unseated alternates should not be part of deliberation. Chairman Stewart apologized to Mr Brown for not giving him an opportunity to speak.
37. Chairman Stewart asked if there was any further discussion. Hearing none, he asked if someone would make a motion.

MOTION: To deny the Application for Appeal of Administrative Decision.

Made by: George Frothingham
Seconded by: John Napekoski
Discussion: None
Vote: 3-2 in favor of the motion. D Stewart and S Theiling voting against.

38. Chairman Stewart confirmed that the motion was denied by a vote of 3 to 2 and confirmed that a Notice of Decision would be written summarizing the decision.
39. N Fogg distributed new Land Use RSA books to the members present.
40. N Fogg emailed the minutes but did not provide a copy of the previous minutes in the packet so they were tabled until the next meeting.

MOTION: To adjourn the meeting.
Made by: Judy Sjostrom
Seconded by: Sharon Theiling
Discussion: None
Vote: 5-0 in favor of the motion.

Respectfully submitted,
Nathan Fogg
Town of Wakefield NH
Land Use Clerk