



TOWN OF WAKEFIELD, NEW HAMPSHIRE
LAND USE DEPARTMENT

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MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
21 March 2016

Approved 18 April 2016

MEMBERS		ALTERNATES		OTHERS	
John Napekoski, Chairman	X	George Frothingham	X	Nathan Fogg, Land Use Clerk & Code Enforcement Officer	X
Sharon Theiling, Vice Chairman		Doug Stewart	X		
Ceily Arnone		Steve Brown	X		
John Crowell	X	Judi DesRoches	X		
				S= Site Walk, H= Hearing	

Also present were: Terry Gray, Fred Gray, Annette Perry, Becky Keating, Danny Bouzianis, Angie Nichols, Leigh Nichols, Joseph Bateman, Stephanie Bateman, Paul Libby, Rhonda Libby, Brian Abbott, John Hildreth, Al Gray, Jeffrey Gilbert, Dino Scala, Carroll Nelson, Marc Laurion, Blaise Laurion, Connie Twombly, Steve Royle, Denny Miller, Priscilla Colbath, Jerry O'Connor, Dave Mankus, and Donna Martin (videographer).

CALL TO ORDER

- J Napekoski called the meeting to order at 7:00 pm following the pledge of allegiance. Alternates Judi DesRoches, George Frothingham, and Doug Stewart were seated for absent Board members Sharon Theiling, Ceily Arnone, and Steve Brown.

PUBLIC HEARINGS

- J Napekoski had the ZBA introduce themselves to attendees. He then reviewed the procedure to be followed for the hearing and asked for a motion to accept the **Special Exception Application by Oracle Management Group XII, LLC for Internally Illuminated Signage.**

MOTION: To accept the Special Exception Application submitted by Oracle Management Group XII, LLC on behalf of Delphi Realty Group XII, LLC (Dunkin Donuts) to permit internally illuminated signs as complete.
Made by: George Frothingham
Seconded by: Doug Stewart
Discussion: None.
Vote: 5-0 in favor of the motion.

3. Danny Bouzianis is invited to be seated at the table by Chairman Napekoski. Mr Bouzianis represents Dunkin Donuts located at 24 Main Street, Union, NH Tax Map 240, lot 8 who is requesting to have internally illuminated signage as allowed by Article 21(I)(5) of the Zoning ordinance within the Business/Commercial District. Internally illuminated signage allows for better visibility for customers.
4. J Napekoski asked if there was any public input. Carroll Nelson, abutter, spoke in favor of allowing the internally illuminated signage. Al Gray added his approval to allow the internally lit signs. J Napekoski closed the public input portion of the hearing.
5. J Napekoski asked if the ZBA preferred to consider all criteria together or separately.

MOTION: To consider all criteria together.
Made by: George Frothingham
Seconded by: John Crowell
Discussion: None.
Vote: 5-0 in favor of the motion.

6. D Stewart noted that other businesses in Town have internally illuminated signs and this is allowed by Special Exception.

MOTION: To approve the Special Exception to permit internally illuminated signs.
Made by: George Frothingham
Seconded by: John Crowell
Discussion: None.
Vote: 5-0 in favor of the motion.

7. J Napekoski noted to Mr. Bouzianis that any aggrieved party has 30 days to appeal the decision.

8. Mr Danny Bouzianis spoke to the Board for the allowance of a **drive-thru at the existing Dunkin Donuts**. The current Zoning ordinance does not allow a "Restaurant, drive-thru". Many guests have commented on the attractive building and want to know why there isn't a drive-thru. Mr Bouzianis believes Dunkin Donuts is a bakery/convenience store. There is no equipment that supports a restaurant. He believes his team serves the same items as a convenience store does minus the gas. In the current Zoning ordinance there is no mention of a bakery/convenience store drive-thru. He cited several beneficial reasons for the Board to approve the drive-thru.

MOTION: To hear the Variance Application submitted by Oracle Management Group XII, LLC on property owned by Delphi Realty Group XII, LLC for a drive-thru at the existing Dunkin Donuts.
Made by: George Frothingham
Seconded by: Doug Stewart
Discussion: None.
Vote: 5-0 in favor of the motion.

9. J Napekoski asked for public comments in favor of the drive-thru. The property is located at 24 Main Street, Union NH Tax Map 240, Lot 8. Donna Libby, Manager of Wakefield Crossing Dunkin

Donuts, spoke of the necessity/convenience of the drive-thru for the disabled, mothers with babies, etc. Carroll Nelson, neighbor, has no issues and spoke to the convenience of a drive-thru. David Mankus favors giving drivers that cup of morning coffee while they are commuting long distances to work (even though he doesn't drink it). Terry Gray, neighbor, commented that she is a customer and asks that the Board vote in favor of the drive-thru. Dino Scala spoke to the argument against the drive-thru, "if we let one in, we have to let everybody do it". Dunkin Donuts is located in the Business/Commercial Zone. A majority of the properties along Route 16 are NOT zoned Business/Commercial as this one is. He asked the Board to approach this as a case-by-case basis when considering a drive-thru. Mr. Scala supports the Dunkin Donuts drive-thru. Annette Perry, who is disabled, also supports the drive-thru. Jeff Gilbert is a very busy man and would like to save a few seconds here and there! Please consider approving the drive-thru. Connie Twombly spoke in favor of the Board's approval for the drive-thru. Paul Libby, disabled veteran, spoke in favor of the drive-thru, especially for early morning (3:45-4am) and weather conditions at that time of the day.

10. J Napekoski asked for negative public comment. Marc Laurion, an abutter, asked for the Board to look at verbiage (restaurant) in the ordinance for clearer definition to bring before the voters. Leigh Nichols (on behalf of his parents – Union residents) spoke to the hazards of traffic and allowing a drive-thru with the same entrance/exit. Becky Keating complimented Mr. Bouzianis on the building and stated that he knew that a drive-thru was not allowed when the building was built. She went on to say that the voters of Wakefield spoke loudly and clearly years ago when Article 3, Table 1 of the Zoning ordinance was voted on and does not allow a "Restaurant, drive thru". The people want to maintain the rural character of Wakefield. One can drive a short distance and find a drive-thru Dunkin Donuts. Ms Keating is against allowing the approval of the Variance for the Dunkin Donuts drive-thru. Connie Twombly reiterated that the Board should allow the drive-thru. Denny Miller stated the people of Wakefield voted not to have a drive-thru. If there should be a drive-thru anywhere in Town, it should go before the voters in a Warrant Article. Stephanie Bateman asked for the drive-thru location and clarification. She believes that it should not be allowed.
11. Priscilla Colbath asked the Board why this isn't a Warrant Article. J Napekoski stated the Board will be addressing this. Jerry O'Connor commented that in granting the Variance, "there needs to be a hardship. What is the hardship for this property"? Leigh Nichols reiterated his earlier comments concerning traffic and the drive-thru put in when the building was built. Becky Keating asked, "how much of your decision is based on public input? How much is based on our own ordinances? Our own ordinances say, 'no drive-thru'." J Napekoski stated, "our ordinances take precedent". To clarify, "Our job here, our mission, is not to litigate. Our mission is strictly to relieve unnecessary hardship. Or, in some cases, provide the full utilization of the property so the owner can realize the full benefits of their property. We're not here to make the rules or overstep the rules". Public opinion carries significant weight with the Board. Jerry O'Connor again asked what the hardship is. The Applicant states it is limiting their potential for growth and a hardship on their customers. Dave Mankus added his familiarity with the Planning Board – how it functions – and when an ordinance is written and voted on, it seems like a good idea. But it is the ZBA who catches/ addresses the problems, flaws. A written Warrant article might follow a ZBA Decision and typically is rendered if the Board has seen the same problem/ flaw several times. It then becomes part of the Zoning ordinance after the Warrant article has been voted on by registered voters of Wakefield. Jerry O'Connor wanted to know if the Master Plan would be changed (and all the work that goes with it) to accommodate one company.

12. George Frothingham asked for clarification from Danny Bouzianis if any member of the Planning Board advised him that a drive-thru was not allowed. Mr Bouzianis responded affirmatively. Annette Perry questioned the ZBA as to no allowance of a drive-thru in town – then Profile Bank should take theirs down. J Napekoski responded that this drive-thru was grandfathered. J DesRoches asked if Dunkin Donuts has been open for business during the summer. It has not. No one knows what the summer traffic impact will be. Marc Laurion stated that the building was designed to accommodate a drive-thru. Danny Bouzianis responded much work was necessary to prepare for the drive-thru. The building can accommodate a drive-thru bank, a pharmacy, or convenience store. Dave Mankus stated that it would be legal to have a drive-thru pharmacy and not need an Exception at all. N Fogg stated to the Board there were several options here. Deny the application as it does not meet the Zoning ordinance. Approve the Variance as a drive-thru restaurant. Disagree stating that it is a convenience store – not a restaurant. Priscilla Colbath inquired if there are tables and chairs located inside the Dunkin Donuts. Mr Bouzianis responded in the affirmative. J Napekoski closed the public comment portion of the hearing.
13. Danny Bouzianis commented that Dunkin Donuts is more of a convenience store like Irving’s Circle K or Cumberland Farms – not like McDonald’s. He believes that he is not circumventing the Town’s Zoning ordinance. The ordinance prohibits drive-thru restaurants. He reiterated Dunkin Donuts is a bakery/convenience store – not a restaurant with all types of equipment to prepare and service meals, burgers, etc. and should be allowed.
14. J Napekoski opened deliberations to the Board. D Stewart stated that Dunkin Donuts is a restaurant and gave supporting information. He believes the applicant has not proven that Dunkin Donuts is unique to Wakefield which would support the approval of the Variance. The applicant, Danny Bouzianis, was aware that drive-thru restaurants are not allowed in Wakefield and D Stewart also understands why Mr. Bouzianis constructed the building with drive-thru capability. D Stewart believes that the ZBA should NOT be deciding to allow a drive-thru. It should go to Town vote. The PB would need to place an article on the Ballot, or, a Petition Warrant Article, signed by 25 registered voters of Wakefield to allow the “Restaurant, drive-thru”, and placed on the Ballot. J DesRoches stated that this has been voted on by the Town and was denied. G Frothingham agreed with D Stewart that Danny Bouzianis knew from the beginning that a drive-thru was not allowed in Wakefield. If Danny Bouzianis had not been made aware by the Planning Board that a drive-thru was not allowed, then G Frothingham would have been inclined to approve the Variance.
15. J Napekoski asked if the ZBA preferred to consider all criteria together or separately.

MOTION: To consider all criteria together.
Made by: George Frothingham
Seconded by: Judi DesRoches
Discussion: None.
Vote: 5-0 in favor of the motion.

16. J Napekoski thinks this is a case of “beg for forgiveness rather than ask for permission” type of Variance request. He does not believe that this should be decided by the Board – the voters of Wakefield should make the decision. Coming to the ZBA is the first step to approve the

Variance. N Fogg agreed and stated that Mr Bouzianis would have to revise his Site Plan on file with the Planning Board.

MOTION: To deny the Variance Application based on the fact the Board believes Dunkin Donuts is defined as a restaurant and would not be "unique" when compared to other restaurants in Wakefield.
Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None.
Vote: 5-0 in favor of the motion.

17. The Board made suggestions to Danny Bouzianis on how to proceed.

18. J Napekoski asked for a motion to accept the next application.

MOTION: To accept the Variance Application submitted by Edward Brown on property owned by **Edward Brown & Kevin Brown requesting that the minimum area of living space for these one-bedroom units to be 672 square feet**, which is less than the minimum 800 square feet required by Article 3, Table 3 of the Zoning ordinance.
Made by: John Crowell
Seconded by: George Frothingham
Discussion: None.
Vote: 5-0.

19. J Napekoski invited Ed Brown to the table. N Fogg stated that Ed & Kevin Brown had received PB approval in January 2016 for the property located at 2008 Wakefield Road, Tax Map 184, Lot 2. The 4 apartments are being refurbished in the building which is located across the street from the Public Safety Building. The PB approved up to 4 more apartments located in the barn. The applicant is seeking relief from the 800 square foot minimum. The barn is originally a post and beam structure. His plan is to incorporate the smaller size 4 units by utilizing the structural features of the barn. He wants to use the barn "as is" in keeping with the character of the town. There are plans to add an open deck on the front of the barn. J Napekoski asked specific questions of Mr Brown. Structurally speaking, Mr Brown will have to change the foundation and build out in order to achieve the 800 square foot minimum required by the Zoning ordinance. Again, Ed Brown stated that he wants to keep the structure in character with the town.

20. J Napekoski asked for public comment in favor of the applicant. Dave Mankus asked how Ed Brown calculated the 672 square feet. 14' x 24' times 2 was the response. The units are 2-levels of living space. Dino Scala spoke in favor of the Variance. Marc Laurion spoke to the need for apartments and in favor of the Variance. Dave Mankus questioned the square footage from another section of the Zoning ordinance. N Fogg stated that all sections of the Zoning ordinance currently require an 800 square foot minimum of living space. He went on to explain that the Planning Board has discussed eliminating a minimum square footage for living space. Dave Mankus then spoke to the need for affordable housing.

21. J Napekoski asked for public input against the applicant. There was none.
22. J Napekoski closed the public comment portion of the Hearing. N Fogg cited that the Board accommodated Mr Howland on Cosmar Drive with a reduction in size which kept the original footprint without changing the character of the neighborhood and was a reason to allow the reduction.
23. J Napekoski asked if the Board preferred to consider the criteria together or separately.

MOTION: To consider all criteria as a unit.
Made by: John Crowell
Seconded by: Judi DesRoches
Discussion: None.
Vote: 5-0.

24. G Frothingham spoke to his concerns about the artificial restriction of the ordinance in designating a certain square footage minimum for homes and apartments. D Stewart stated that the uniqueness of this site allows 4-units to fit into the structure. Whereas the 800 square foot minimum requirement will allow for 3-units; 1-unit approximately 1000 square feet and 2-units 800 square feet. The uniqueness is taken away. J Napekoski inquired about parking. Ed Brown stated he has doubled the existing parking lot and has the potential for up to 20 parked cars. Mr Brown added that his cliental are typically older folks who have lost their partner and are looking to downsize. A one-bedroom apartment seems to be the trend. J Napekoski asked for any further discussion. J DesRoches spoke of the apartment "crisis" throughout the state. J Napekoski feels that his 500 square foot cottage in another state has more than enough room and questions the necessity of designating any amount of living space. G Frothingham agreed with D Stewart about the uniqueness of utilizing the barn to create four 1-bedroom units without changing the footprint or character of the structure.

MOTION: To approve the Variance Application requesting the 672 square feet minimum of living space.
Made by: George Frothingham
Seconded by: John Napekoski
Discussion: None.
Vote: 5-0.

25. J Napekoski noted to Ed Brown that any aggrieved party has 30 days to appeal the decision and that any action he takes would be done so at his own risk.
26. The Board discussed placing a Warrant Article on the Ballot for next year. The Board believes the voters should say if they want a drive-thru restaurant or not. Dollar General was also briefly discussed. Currently, our Town Counsel and their lawyers are having discussions. N Fogg stated that DG needed a Notice of Decision for Tabling Indefinitely so they can appeal the Zoning criteria laid out.

APPROVAL OF MINUTES

27. Minutes from May 18th 2015 were reviewed.

MOTION: To approve the minutes from May 18th 2015 as printed.
Made by: John Napekoski
Seconded by: Judi DesRoches
Discussion: None.
Vote: 5-0 in favor of the motion.

BOARD BUSINESS

28. Re-nomination of Board members as necessary. Two Board members are not present who need to be re-nominated. G Frothingham, Alternate is present and needs to be re-nominated. J Napekoski asked if a short meeting should be called for next month. G Frothingham would not be able to sit on the Board if he is not re-nominated and sworn in.

MOTION: To nominate George Frothingham as an Alternate member of the ZBA for a three year term to the Board of Selectmen.
Made by: Doug Stewart
Seconded by: John Napekoski
Discussion: None.
Vote: 5-0.

29. The Board members will be nominated, officers will also be nominated, and a meeting will be scheduled for April 2016.

30. N Fogg stated that Dollar General will apply in the near future seeking relief from the ZBA because of the 70 foot width along the street requirement stated in the Zoning ordinance. The Rines still own the property. DG has a contract to purchase the property.

ADJOURNMENT

MOTION: To adjourn the meeting at 8:23pm.
Made by: Judi DesRoches
Seconded by: Doug Stewart
Discussion: None
Vote: 5-0 in favor of the motion.

Respectfully submitted,
Nathan Fogg/cl
Town of Wakefield NH
Code Enforcement Officer
Land Use Clerk