

**Town of Wolfeboro
Zoning Board of Adjustment
February 22, 2024
DRAFT Minutes**

Members Present: Suzanne Ryan, Vice-Chair, Sarah Silk, Clerk, Charles Sumner, Member, Catherine McMahon, Alternate, Sabet Stroman, Alternate.

Staff Present: Tavis Austin, Director of Planning & Development.

I. Roll Call

Suzanne Ryan called the meeting to order at the Great Hall at 6:03 PM. A quorum was present. Sabet Stroman, Alternate and Cate McMahon, Alternate are still appointed to sit in for Luke Freudenberg and Audrey Cline as this is a continued hearing from 2/5/2024.

II. Public Hearings

Roger Kent – 16 Libby Street – Tax Map #217-13 -Case # 02-AAD-24 - Public Hearing for a Appeal of Administrative Decision under

- Chapter 175, Article XXII § 175-128 C (2) Off-Street Parking and Loading Requirements per Chapter 175, Article XIV §175.92.1 B.
- Chapter 175, Article VII § 57.1 E (4) “the minimum of one dedicated off-street parking space shall be provided for the ADU”.
- Chapter 175, Article XXII § 175.129. Issuance of Permits
- Chapter 175, Article XXII § 175-134 A. Availability of spaces

CONTINUED FROM 2/5/2024.

Suzanne Ryan stated all information given at the 2/5/2024 hearing and received from the Planning Board to date, has been given to the Zoning Board attorney. The Zoning Board is in receipt of a detailed statement from Mr. Hart, Tax Map 217-14, for this case, as well as a filing to the State Housing Board of Appeals. A letter dated 2/21/2024 from Varney Engineering regarding drainage. An email dated 2/21/2024, from Audrey Cline, with a statement of authority. All of which is available in this case master file.

Public Comment:

Dennis Hart, 20 Libby St – Stated in the last meeting there was a lot of commentary regarding an engineer drawing for drainage. Hired Varney Engineering to prove water going onto the Hart property, affecting the patio and driveway, was in fact coming from changes to the slope and impervious surfaces from Mr. Beckwith’s construction. Varney Engineering agreed and stated the increase in slope requires more significant assessments, and what the Planning Board directed to be done would not be effective. Regarding the letter from the landscaper, it was specifically attributed to his ability for mowing the lawn. It was construed in the previous meeting that the Hart’s had hired the landscaper in conjunction with Mr. Beckwith to address drainage issue, however Mr. Hart stated that is not the case. The Hart’s hired the landscaper independently of Mr. Beckwith.

Tom Varney, Varney Engineering – Stated the garage being built would have impervious area added whether for parking area or not. This would increase run off with the slope that is there. Stated it is possible to calculate and compare pre-development and post-development runoff by running computer models with both. Then with the difference a stormwater system to mitigate runoff would be created. The garage on Mr. Beckwith's property is 20ft from Hart's garage and is up higher. When water runs off that building, it is very possible it will end up in the Hart's yard and do damage.

Chuck Sumner questioned if Varney Engineering had run the numbers to get what the difference is in flow rates before and after construction.

Mr. Varney responded no.

Chuck Sumner asked if he knew what size drain is required if the numbers had not been run.

Mr. Varney answered no; however, he has done enough of these and it's very typical. If this was a house on the lake, would install a drip edge under the eaves, which would be a trench the length of the building. This would catch and mitigate most of the water, but if there is a patio there it would take a lot of water, a safety factor to get water into that is built up with crushed stone underneath and that is where the water goes.

Chuck Sumner stated Mr. Beckwith has built some type of a trench along the edge of his property. Asked Mr. Varney in his professional opinion if that is sufficient.

Mr. Varney answered no. If it was designed by an engineer, it would be sufficient to but does not believe it was.

Mr. Hart stated there is a lot of focus on water in the back of the property, and a trench was put in to address that issue. However, the issue for the Hart's is towards the uphill portion that is going onto their patio and driveway, not in their back yard.

Sarah Silk stated the need for clarification of the area Mr. Hart is speaking of. Stated the Zoning Board went for several viewings at the property. Noted that on Mr. Hart property in front of a little building there was a lot of siltation there. Asked Mr. Hart if this is the area he is referring to.

Mr. Hart responded yes. In the commentary sent to the Zoning Board, on page 17 there is an overview that identifies where Hart's wall is and where the issues are.

Jim Steiner, representing Mr. Beckwith – Stated there are two procedural issues, and a substantive issue would like to discuss. The first procedural issue being during the last meeting the Zoning Board indicated they would seek advice from town attorney regarding the Planning Board attorney's assertion that there is no proper appeal to the Zoning Board, regardless if the authorization is valid or not.

Suzanne Ryan stated that was done. Giving courtesy to all sides to speak one last time.

Mr. Steiner stated the second procedural issue is the appeal, if properly taken, is by Mr. Kent. The Hart's have a separate action but did not appeal to the Zoning Board. While they can appear and give supporting testimony to Mr. Kent's appeal, make a motion to the board to strike submissions by Mr. Hart and Varney Engineering because they have no standing to make any arguments regarding their own property. That will be heard by the Housing Board of Appeals. Procedurally they do not have an issue to present. Substantiative Mr. Beckwith would state that the engineer came out when the trench was covered in snow, meaning he wouldn't have been able to see or evaluate it. Mr. Varney concluded it is ineffective, however it would require more evidence than that when you're not able to inspect it. Should not even be considered since there is no appeal by the Hart's to the Zoning Board.

Suzanne Ryan stated that regarding testimony, it is public information handed in, so therefore it is part of the record.

Mr. Steiner would like to introduce photos taken 2/22/2024 by the Beckwith's. Stated it will show the previous photos received by the Zoning Board regarding the issue of silt has not changed.

Mr. Beckwith stated Mr. Hart has given a packet of photos, all dated to the Zoning Board. Would like to point out that since the dating started, 4 months ago until now, there has been 16.12 inches of rain. Will see in the photos introduced today that the silt has not changed since September.

Public Input Closed.

Suzanne Ryan stated there is certainly an interpretation of the Zoning Ordinance involved with this case and would normally be with the Zoning Board. However, in the Zoning Provisions involved, in an Innovative Land Use Control, under RSA 674:21, which is administered by the Planning Board, appeals do not go to the Zoning Board, but to the court of the Housing Board of Appeals. This is explained in RSA 676:5-III. Since this is not a building permit being appealed, the provisions regarding the building permit are not relevant to this appeal from the Planning Board decision. The biggest point being that the ADU conditional use permit provisions are Innovative Land Use Controls under RSA 674:21. When the Planning Board is making an application, interpretation, or construction of the terms of the Zoning Ordinance that would normally be Zoning Board jurisdiction, it is different when Innovative Land Use is involved. In cases of those, law states appeal must go directly to the Superior Court of the Housing Board of Appeals, applicants' choice, and cannot be heard before the Zoning Board. RSA 676:5-III Part of appeal related to building permit and certificate of occupancy rather than conditional use permit, does not appear to be relevant because this appeal does not involve a building permit of certificate of occupancy. In summary there is no issue in this appeal that the Zoning Board can hear.

Sarah Silk stated agree with the advice that has been given, although believes the Planning Board erred in their decision. Not the right avenue to bring before the Zoning Board.

It is moved by Suzanne Ryan per the provisions of Innovative Land Use Control under RSA 674:21 administered by the Planning Board as explained in RSA 676:5-III, to dismiss case 02-AAD-24 from Mr. Kent received 12/28/2023 of an administrative appeal of the Planning Board decision of 12/5/2023. Chuck Sumner seconded the motion for discussion.

Sarah Silk stated believes things were overlooked. Agrees that there is a drainage problem, but not the Zoning Board's place to decide.

Roll call vote: Chuck Sumner – yes, Cate McMahon – yes, Sarah Silk – yes, Suzanne Ryan – yes, Sabet Stroman – yes. Motion passed (5-0-0).

Continued hearing closed.

Sabet Stroman stated she is very disappointed in advice and support given to Mr. Beckwith by the Town Planner every step of the way of the process.

Sarah Silk stated it might be a point well taken, however not the appropriate place to discuss.

Chuck Sumner stated it is out of line and just one person's opinion.

Suzanne Ryan asked Tavis Austin if he can explain to the board how this process goes forward with the State Housing Board.

Tavis Austin responded the state recently created the Housing Board of Appeals which has its own statutory provisions. The first step is receipt of appeal, which the town received from Mr. Hart. It was then all forwarded to the Planning Board attorney. Planning Board attorney taking direction from there. Once the Housing Board can convene, they will hear the case believe it to be 90 days once they have all the submission timelines completed. Then the town will have an answer.

Suzanne Ryan asked although not relevant to the Zoning Board as part of the case, will the Town Planner keep the board informed of what is going on.

Tavis Austin replied it will all be public once finalized.

It is moved by Suzanne Ryan for a roll call vote that the legal advice Zoning Board of Adjustment received will not be made public. Seconded by Sarah Silk. Roll call: Suzanne Ryan – yes, Sarah Silk – yes, Cate McMahon – yes, Chuck Sumner – yes, Sabet Stroman did not vote. Motion Passed (4-0-0).

Sabet Stroman stated she has been apart of numerous boards and worked with leadership from the top to the bottom. The one thing they do after a complicated issue is what they call a postmortem. Suggestion to do this as it's a great opportunity for the town, Planning Board and Zoning Board, after the hearing to step back and look at it from a "postmortem" perspective to see what could have been done or handled differently.

III. Unfinished Business

None

IV. New Business

None

- V. **Minutes of Previous Meetings:** 01/08/2024, 02/05/2024
02/05/2024 Minutes – Suzanne Ryan notes a correction to be made to members present, as Sabet Stroman is not listed.

It was moved by Chuck Sumner to accept 02/05/2024 minutes as corrected. Cate McMahon seconded. All in favor. Motion passed (5-0-0).

It was moved by Cate McMahon to accept 01/08/2024 minutes as written. Chuck Sumner seconded. All in favor. Motion passed (5-0-0).

- VI. **Communications and Miscellaneous**
None

- VII. **Adjournment**

It was moved by Sarah Silk to adjourn the February 22, 2024, Zoning Board of Adjustment meeting. Chuck Sumner seconded. All in favor. Motion passed (5-0-0).

There being no further business before the Board, the meeting was adjourned at 6:46 pm.

Respectfully Submitted,
Sierra Pawnell
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