

TOWN OF WOLFEBORO
ZONING BOARD OF ADJUSTMENT [ZBA]
September 11, 2023
DRAFT-1 MEETING MINUTES

- I. **Call to Order:** Chair Audrey Cline called the meeting to order in the Great Hall, 9 Union Street, at 7:03 p.m.

Members Present: Audrey Cline (Chair), Suzanne Ryan (Vice-Chair), Sarah Silk (Clerk), Luke Freudenberg, Charles Sumner

Alternates Present: Cate McMahon (designated to vote after Audrey Cline recused herself)

Excused Absence: Sabet Stroman

Staff: Tavis Austin

L. Freudenberg: Requested a moment of silence in remembrance of all those who died on September 11th 2001.

- II. **Public Hearings:**

Chair A. Cline: Clerk Sarah Silk, please read the Notice into the record.

Clerk S. Silk:

- a) **Todd J. Palmer & Lynne M. Palmer - 57 Crooked Pond Lane -Tax Map # 204-103 - Case # 06-SE-23 - Public Hearing for a Special Exception to allow new construction on a lot with no street frontage,** per Chapter 175, Section 55.1 B of the Wolfeboro Planning and Zoning Ordinance - Formal Submission/Public Hearing.

Chair A. Cline: Please report on the Site Visit we made today.

Clerk S. Silk: There was a Site Visit at 6:15 p.m. this evening, fortunately after the worst of the rainfall. Present from this Board were: Suzanne Ryan, myself Sarah Silk, and Audrey Cline. Those absent were: Luke Freudenberg, Sabet Stroman, Cate McMahon, and Charles Sumner. The Applicants, Todd and Lynne Palmer, and the Applicants' Representative, Randy Walker Esq, were also present on-site. Randy Walker laid out stakes in the ground to show the location of the four corners of the proposed detached 2-story garage. Also, there was a clarification about a portion of the subject site which is located across Crooked Pond Lane, where cars are parked, and which is part of this Applicant's property.

Randy Walker Esq for Applicants Tod and Lynne Palmer read the Applicants' responses to the Approval Criteria for a Special Exception for the proposed detached 2-story garage. Also submitted were six letters from neighbors of the Applicants stating there were no objections to the proposal.

Chair A. Cline said the Site Plan does not show existing trees which are densely planted on the subject lot. She asked the following: 1) Has NH State approved this Application according to the Shorefront Regulations? 2) Are the sideline setbacks met?

Vice-Chair S. Ryan asked about the width of the existing driveway.

Clerk S. Silk asked if the existing house, built in 2005, is considered a Non-Conforming structure?

Chair A. Cline said her opinion is that the existing house is a Conforming structure.

T. Austin noted the Subject Lot is considered Non-Conforming as of 1983 because it does not have frontage along a street. The Planning Board decided that this Application looks okay, with the exception of the Shorefront Regulations.

Vice-Chair S. Ryan cited the date of the land division plat: 1964. Therefore, Subsection C is applicable for this Application.

Randy Walker Esq for Applicants concurs with Vice-Chair S. Ryan: the 1964 Plat was not reviewed by the Planning Board; therefore, Subsection C applies to this Application. He explained that the Staff Planner asked the Applicants to address Subsection B. Furthermore, there are two precedents set by the Zoning Board of Adjustment on the Subject Lot.

Vice-Chair S. Ryan cited 1996 as the date the Subdivision Regulations were first adopted by the Town of Wolfeboro.

Chair A. Cline suggests the following wording for an approval of this proposal: "With the proposed construction of a new detached two-story garage, and to bring the Subject Site towards greater conformance with the current Wolfeboro Planning and Zoning Ordinance, the Zoning Board of Adjustment can Approve this Application with Conditions.

Randy Walker Esq for Applicants said he disagrees.

Vice-Chair S. Ryan asked why the Applicants would argue against bringing their proposal closer to conformance?

Chair A. Cline pointed out that two forms are still needed from Applicant.

Chair A. Cline asked to add a Condition that there be no Second Dwelling Unit permitted on the Subject Lot, because of the access issue by the Town Fire and Rescue service.

Chair A. Cline asked to include the six letters from abutting property owners in the record. All abutters stated they have no objections to the Proposal: **1)** Natasha Pollini at 65 Crooked Pond Lane, **2)** Barry Bessette at 63 Crooked Pond Lane, **3)** St. Brendan's Shore LLC at 61 Crooked Pond Lane, **4)** Tom and Sharon Sachs at 45 Heron Hollow, **5)** Vaune Dugan at 55 Center Street, **6)** Hearthstone Homes of Wolfeboro at 67 Center Street.

There were no public comments for this Proposal. Vice-Chair Suzanne Ryan made a motion to close the Public Hearing. Seconded by Chuck Sumner. Approved by a unanimous vote (5-0-0).

Vice-Chair Suzanne Ryan made a motion to Approve with Conditions a Special Exception to construct a new, 2-story garage on an existing lot without street frontage, per Section 175-55.1.c. The garage footprint is 24' by 28', the second floor is for storage space only. The property address is 57 Crooked Pond Lane, Tax Map 204-103. The motion was seconded by .

Roll Call Vote: Luke Freudenberq (Yes), Sarah Silk (Yes), Suzanne Ryan (Yes), Chuck Sumner (Yes), Cate McMahon (Yes). Motion approved by a unanimous vote (5-0-0).

All Conditions of Approval Must be Met Prior to the Issuance of a Building Permit:

- 1. All federal, state, and local permits to be received including, but not limited to, an approved Building Permit in the Town of Wolfeboro.**
- 2. All documents submitted in the application package of 8/16/2023 and any requirements imposed by other agencies are part of this approval; unless otherwise stated, updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this Notice herein shall generally determine.**
- 3. The application, as submitted to the Zoning Board of Adjustment [ZBA], does not satisfy the submittal requirements for a Building Permit in the Town of Wolfeboro.**
- 4. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall be responsible for payment of all recording fees.**
- 5. SR**
- 6. SR**

7. ***This Special Exception is valid for two years from the date of final approval, per NH RSA 674-33 IV (b), or as further extended by the local ordinance or by the Zoning Board of Adjustment, for good cause.***
8. ***No additional dwelling unit(s) are allowed on the subject lot which has no street frontage, has limited access by the Town Fire and Rescue Department, and has an existing residence previously approved in 2005.***
9. **AC**

Findings of Facts:

- 1) ***There is existing residential development on the subject lot, which was previously approved by the Town.***
- 2) ***The construction of a new, detached 2-story garage on the subject lot will not have detrimental impacts beyond that which already exists on the subject lot.***
- 3) ***The Applicants' Site Plan, received on 8/16/2023, indicates that the Proposal complies to the Town Planning and Zoning regulations.***

b) Derrick L. Brown - 16 Libby Street, Unit B - Tax Map # Lot # 217-013 - Case # 07-AAD-23 - Public Hearing for an Appeal of an Administrative Decision that granted Building Permit # 2023-468 per Chapter 175, Section 89 of the Planning and Zoning Ordinance for Dimensional Controls - Formal Submission/Public Hearing

Board and Staff Discussion about Notification and Appeal Procedures for this Case:

Chair A. Cline: I believe this Board needs to review some paperwork. There's no public hearing. I'm not opening the next case yet, because we have some administrative things to discuss.

Vice-Chair S. Ryan I don't know if we want to open it.

Chair A. Cline Let's discuss some administration things without opening the case.

Tavis Austin So I can attest that the project that you're thinking about was duly noticed in the paper and all other notices were mailed, certified.

Chair A. Cline So does that include all Abutters, property owners, etc.? Was that mailed certified?

Tavis Austin I don't have it right here. But I know for a fact they were all mailed certified.

Chair A. Cline Nowadays, do the certified letters require a signature when they're picked up? No. Just so I know that was a fairly recent change to what's acceptable by the state law? Do you know where that section is that we can review the language?

Tavis Austin Off the top of my head? No.

Chair A. Cline Okay, but you're required to notice Abutters by certified mail not certified return receipt?

Tavis Austin Correct. And then so does the certified mail have those little slips?

Vice-Chair S. Ryan I've got it here. I got your file folder

Tavis Austin You have to understand that the middle of this season, and this is a horrible excuse, but that's what it is. This is what comes back.

Chair A. Cline So every time that somebody took it down to the post office and gave it to the postmaster and it was mailed, yes.

Tavis Austin Well, they don't have this little group for the case you're referring to. You don't have the packet. I don't have this little packet, but we had a couple of people out with various ailments, etc. It could be sitting in the front office, because all the mail comes back to one person.

Clerk S. Silk Madam Chair, can I just ask for clarification or something? So essentially, those are the receipts verify that they were mailed, but it's not a returned receipt. So, we cannot verify whether something was received by the person to whom it was mailed.

Tavis Austin The statute doesn't require proof of service that requires proof of mailing.

C. McMahon Does the Notification include the Property Owner in this Case, because it's an Appeal?

Tavis Austin I can read off the list of everyone that received the Abutter's Notice.

Chair A. Cline Is this Board comfortable that the person who received the Building Permit that's now under Appeal has received Notification for this Hearing tonight? Another question for you, Tavis: When is it Notified that the Appeal had been submitted? In a letter or some other way?

Tavis Austin It could be sitting in the front office, because all the mail comes back to one person.

Clerk S. Silk Madam Chair, can I just ask for clarification on something? So essentially, those are the receipts which verify that they were mailed, but it's not return receipt. So, we cannot verify whether something was received by the person to whom it was mailed.

Tavis Austin The statute doesn't require proof of service, it requires proof of mailing.

C. McMahon Okay. Does the Notification include the Property Owner in this Case because it's an Appeal?

Tavis Austin Absolutely. I can read off the list of everyone that received: the Abutters list, if you'd like.

Chair A. Cline Is this Board comfortable that the person who received the Building Permit that's under Appeal has received Notification for this Hearing tonight? Another question for you, I guess to have this when the Appeal was submitted. Was the person notified that the Appeal had been submitted in a letter or it only comes to the Abutters Notification?

Tavis Austin There is no process to say, "Hey, we the Town just received an Appeal of something affecting your property." Here's the receiving Abutters Notification.

Chair A. Cline So what was the date? The Appeal was received and when were the Notifications sent out?

Tavis Austin August 23rd 2023 is when the Application was stamped in. It started being received on August 20th 2023, but August 23rd 2023 is when it was finally completed. I mean, the Application form was originally signed on the 20th but it was missing some information until the 23rd.

Chair A. Cline Was the Appeal accepted at the office?

Tavis Austin Correct. And all of the letters were mailed on or before September 1st to stay within the five day time frame.

Chair A. Cline So to stay within the Notification of the Hearing time frame, is there a time frame that Notification has to be sent after the Appeal was accepted?

Tavis Austin No, the Hearing is what's getting Noticed, that's the purpose of the Abutter Notification. So, the appropriate Notice for the Hearing has to be in the newspaper(s) at least five days prior to the Hearing and the Abutters. That does not include the day of posting in the paper or the day of the meeting. With the case of the paper and we send out everything early enough.

Chair A. Cline When was the date that the Building Permit was approved and sent to the person that had applied for it?

Tavis Austin I would have to look in the file in front of Suzanne to see when the Building Permit was approved. To answer the question, the expiration date was the 21st of the 30-Day Appeal Period.

Chair A. Cline 21st of what?

Tavis Austin So, the Building Permit was approved - let me rephrase - the Appeal was received within 30 days of the Building Permit being...

Chair A. Cline Okay: July 26th 2023 and the Appeal was turned in and accepted on August 23rd 2023. And then the Notices were mailed before September 1st 2023, you said.

Tavis Austin So 30 days from July 26th 2023 was August 25th 2023. So, the Appeal was received prior to the expiration of the appeal period.

Chair A. Cline This Board needs to have a discussion about whether this Case was properly Noticed. And if so, whether we hear the Case with the Applicant here, but without the person who received the Building Permit or whether we do something else, which I don't actually know what that would be, but we could we could potentially open it and continue it. We could choose to re-Notice it with Return Receipts required. I think that would be going way out of our way.

Tavis Austin I think for a staff opinion unless someone could stand up and demonstrate the Abutters Notices weren't noticed. I think the Board can accept that they were duly sent, that's what the law says with regard to the owner of the property ie building permit issue we hear that's irrelevant because it's between Mr. Brown and this Board at this point. A staff opinion.

Chair A. Cline Well, it is we [the Zoning Board of Adjustment] that did not get to have the site visit that we would have liked but we can talk about that when we deliberate.

Tavis Austin Was this Board unable to see the site?

Vice-Chair S. Ryan We didn't get a good site visit we didn't have an opportunity to see the garage, first floor, to enter the building. We were not greeted as usual. When an Application involves a property, they [Applicant] usually points out different aspects to us. And then we were told that the person involved didn't receive Notice. So, I don't feel we can hold the Public Hearing because we didn't see what is physically going on, other than the perimeter of the site. And what's involved in this application is literally what is the use going on in there and we don't know.

Tavis Austin I think the Appeal is a Lot Size question not a Use question. I'm not surprised that you weren't allowed in the buildings. And I'll just remind this Board: the ordinance doesn't require a site visit for an Appeal of Administrative Decision. That's something this Board has taken on its own.

Clerk S. Silk I would just like to insert the fact that as Clerk for the Zoning Board of Adjustment, I took notes at the at the site viewing and the person who claimed that he did not get Noticed, gave his post office box exactly as it is listed on the Abutter list.

Vice-Chair S. Ryan Well, I don't think we should continue this discussion any further. I am uncomfortable having this discussion.

Chair A. Cline I'm sorry, I must recuse myself.

Vice-Chair S. Ryan Well, I didn't have a problem with you asking for procedural steps.

Chair A. Cline I'm going to sit in the audience. If you decide to open the hearing, I'll get some stuff.

Chair Audrey Cline recused herself.

Clerk S. Silk May I ask you a question Suzanne, you don't feel comfortable because a key player was not Notified? Do you think we can ensure that that person is Notified if we were to hear a Continuance?

Vice-Chair S. Ryan It isn't just about Notification. It's about the fact that we couldn't do a proper Site Visit. We could only visit around the property and the area and the bounds. But beyond that, we don't know. We don't know how to make a determination about what's going on within the building.

Tavis Austin I don't know if that's part of the Appeal.

L. Freudenberg He's saying that he doesn't know if that's part of the Appeal. He's saying he doesn't know if that is actually part of the Appeal process. Do we need to know what's going on inside the building?

Vice-Chair S. Ryan Of course, because they're asking for a duplex on the property. How do we know what's been proposed within the property to make it a duplex? A permit was issued for a duplex and somebody appealed, saying they didn't have the appropriate lot size.

Tavis, with all due respect, you're going to argue this to your benefit because the Building Permits were issued on this property [at 16 Libby Street] and the party [owner Robert Beckwith] was allowed to continue [work] on it without the proper approvals. So, my suggestion is not to open the public hearing. We contact our Counsel on this. This is a very unusual situation. Where a potential violation is against a person that doesn't want to cooperate. I'm not being disrespectful, but you're not a lawyer. And I think a lawyer needs to address this. I've never come upon something like this, where somebody hasn't wanted to cooperate.

Tavis Austin The reason I bring it up is the ordinance doesn't say you have to have a Site Visit to do this. So that's why I'm suggesting to ask your Counsel, if that's what you feel is appropriate, but a Site Visit is not a requisite in the ordinance to act on an Appeal.

Vice-Chair S. Ryan I feel that this Board, if we could get that part straightened out, we have jurisdiction over this. It's an Appeal of an Administrative Decision: not unusual, but the way this came about is unusual.

Tavis Austin So, one of the options I would offer is that you could instruct staff to re-Notice the ZBA hearing for the October meeting and give this Board time to address Counsel in the interim.

Vice-Chair S. Ryan I just said I don't want to open it. I don't want to get into it.

L. Freudenberg So, in that period of time between now and then - hypothetically, if this Board decides to not open this Case tonight and not go through it - things will continue on the project.

Tavis Austin It's not continuing that I'm suggesting, as this Board could send Notice for the October hearing. What I suggest is to get a hold of ZBA's Counsel as soon as possible to find out what happens if you extend that.

Vice-Chair S. Ryan "That" should be a Stop Order on that project.

L. Freudenberg That's what I'm asking. If we say we're not holding the meeting tonight, the owner of that property has a Building Permit that's been issued, with a tangible product, in full effect.

Vice-Chair S. Ryan Now, when somebody places an Appeal, that freezes that. They can't do anything else. They're frozen. Once this Appeal has been placed, work stops. They can't do anything when they're stopped.

L. Freudenberg Regardless of whether someone's doing something or not doing something: it puts the case off for another month.

Clerk S. Silk We have a meeting, scheduled for the 25th of September. It's supposed to be a Work Session. But we could certainly do that [address this Case]. But I understand. I'm not sure if I'm on the same side as what you're saying. But I understand what you're saying is that it puts off construction for two more weeks and I understand what you're saying.

Vice-Chair S. Ryan Well, I thought it puts a stay. While the Appeal is pending, it puts a stay and they can't move forward. This has not been opened as a public hearing, so I can't speak more, I'm sorry.

Appellant: The construction work at 16-16B Libby Street has been ongoing at a breakneck pace, ever since this Appeal was filed. That's why this hearing is happening tonight.

Vice-Chair S. Ryan We've got a procedural mess to figure out here first. We understand. We've gotten your paperwork, we've all read it. We understand the situation, but we've got a legal question that we have to do correctly; otherwise, we'll all be in trouble. We [as the Zoning Board of Adjustment] don't get to do that: the "stay" is issued by the Planning Department. Your beef is with the Planning Department and the Town Manager: not us. Do you want to not open this and hope to hold a meeting in two weeks?

L. Freudenberg I'm gonna ask the question because if that person had been Noticed, and if they were to say they'd been Noticed today, with that change, if that one person had received that Notice, would you be okay with opening the hearing tonight?

Vice-Chair S. Ryan I got testimony from the fellow with the site plan [of 16-16B Libby Street] that he had not received Notice and that he checks his mail every day and he never got any Notice. He knew nothing about this meeting. And I said to him, "Well, I'll have to take your word for it." And he said, "What do you think, I'm lying?" I said, "No, I'm just taking your word for it." So, to me, he said he didn't get it. I must take his word for it. We have nothing here tonight to prove whether he did or he didn't receive the Notice.

L. Freudenberg There may be someone else out there who did not get the Notice, who didn't happen to see you at the Site Visit and he's not here, either. That's the course of events that leads to all these hearings. There are all these Notices sent out to all these Abutters and they may or may not check their mail or it may have inadvertently gotten lost. Obviously, there are citizens here who are on both sides of this issue. I'm looking at opening this hearing because I don't see anything changing. I'm fine between the two weeks. If there were more to it than a Notice in the paper, or something else, then I'd be more okay with it. But I'm not going to go against this Board's decision about opening the hearing.

Vice-Chair S. Ryan Okay, there's more than the one issue about the Notice. The second part is we didn't get a proper Site Visit by the party that owns the property [at 16 Libby Street] which has the complaint against it. So, there are two issues here.

Clerk S. Silk I'm not sure I agree with that part. Because one of the things we're supposed to address is a lot size requirement, and that's pretty cut and dried.

Vice-Chair S. Ryan We're not going to talk about any particulars on this Application for Appeal.

Clerk S. Silk Let me finish speaking because I have the floor. We have some information here that makes it very cut and dried as to whether it does or does not qualify. Please do not talk about the specifics of the Application for Appeal when I'm only asking questions about whether to hear the case tonight or not. Sorry, it's unfortunate about the Notice, but I think we have enough information here that we could move forward to the two items that were specifically listed on this Application for Appeal.

Vice-Chair S. Ryan: I'm going to make a motion that we do not hold the hearing tonight and that we do not open the hearing tonight. Do I have a second?

C. Sumner: Second. Did you need to appoint an Alternate [because Audrey Cline recused herself]?

Vice-Chair S. Ryan: Thank you, Chuck.

Vice-Chair S. Ryan: Cate McMahon, would you weigh in on this Case with your vote and sit as a voting member tonight?

C. McMahon: I would and I'm still thinking about how I feel about the meeting, I haven't decided.

Vice-Chair Ryan Make up your mind. Has everyone else voted? No?

L. Freudenberg: The motion was seconded. I'm in favor of having the meeting tonight.

Clerk S. Silk: I am in favor of hearing the meeting tonight.

Vice-Chair S. Ryan: I am not in favor of hearing the meeting tonight.

C. Sumner: I'm not in favor of a hearing it tonight, because it looks as if there are people on both sides of the issue. In reality, I think everybody here is on one side of the issue and that's why I'm uncomfortable hearing it tonight: there's only one side represented here.

Tavis Austin So Cate, you're the deciding vote to hear tonight or not to hear tonight.

Cate McMahon: I'm in favor of holding the meeting.

The motion to not open the Appeal Hearing tonight did not pass (2-3-0) because two Board members voted to wait two weeks to hear this Appeal [Ryan, Sumner] and three Board members voted to open this Appeal Hearing tonight [Freudenberg, Silk, McMahon].

Tavis Austin Okay, so now having said that, you could Continue with it to be Noticed, if you want to.

L. Freudenberg So, I have a question that may allow you to do that. But a question to Tavis and to the Petitioner here: would you be willing to wait two weeks - or not be upset about waiting two weeks - if you were sure that in that two-week timeframe the [construction] work will actually stop? That's what I'm asking about. What is the procedure when an Appeal comes through?

Tavis Austin That's a discussion we'll have with the Town attorney.

L. Freudenberg What do you say, does the Zoning Board of Adjustment have the ability to stop work?

Tavis Austin Let me carry it further. The fact that the permit's already been issued, regardless of the Zoning Board of Adjustment's decision, may impact what the Town does or does not do.

Vice-Chair S. Ryan I couldn't understand the last part of that.

T. Austin: Whether the Zoning Board of Adjustment upholds the Appeal or not, will not be determined in and of itself on what the Town does with regard to the Building Permit.

Vice-Chair S. Ryan I thought when an Appeal was pending, that is a stay.

Tavis Austin That's the normal course of action. Yes.

Vice-Chair S. Ryan So, by opening this meeting [tonight] and Continuing [to a future date such as September 25th 2023], this Appeal is still standing and there's to be no work done on that property.

Tavis Austin Depends on what work you're speaking to.

Vice-Chair S. Ryan Regarding making it a duplex. We have a motion to open the meeting. So, what we could do is open it and Continue it in two weeks from today.

L. Freudenberg I think what that would do is that would allow the people that are here who have come here and sat here - I know I'm sympathetic - to allow them to present their Case before us. And then if there will be a public hearing open, hypothetically, that would also allow the people that have not received the Notice to come in two weeks and present their information as well.

Vice-Chair S. Ryan I agree. Okay. Everybody understand that the work for the duplex would stop while this Appeal is pending? And my thought is: I'm going to open it and Continue, which will keep this Appeal pending and stop the duplex work until we return in two weeks and make a decision either that they [16-16B Libby Street owner] can continue, or not. That makes sense.

L. Freudenberg Let's get legal Counsel to weigh in on that, too.

Vice-Chair S. Ryan: Okay, we can consult Counsel. Madam Clerk, please read the Site Visit into the record.

Clerk S. Silk: Filing date August 23, 2023 by Applicant: Derrick Brown, 30 Libby Street, Wolfeboro NH.

We had a site viewing of 16-16B Libby Street, owned by Robert Beckwith/Beckwith Family Trust, at 6:30 p.m. tonight. Those present were: Suzanne Ryan, myself Sarah Silk, Chuck Sumner. Also present were: Richard Frazier of First Christian Church Wolfeboro, Marge Hart of 20 Libby Street, Derrick & Regina Brown of 30 Libby Street.

- Explained by **Richard Frazier, First Christian Church Wolfeboro**, that there is a right-of-way through the Church parking lot which appears to be adjacent to the edge of the Church building. There is no parking spot for 16-16B Libby Street on the Church property, but there is a right-of-way through the Church parking lot to get access to 16-16B Libby Street, where new construction is taking place.
- **Marge Hart, 20 Libby Street** displayed the retaining wall and explained about drainage in the driveway adjacent to this lot and cobblestones by the street to further aid drainage [for stormwater runoff]. We walked to the back of the house, you could see where the ground is very spongy with water. I myself walked through there and sunk down into the grassy area. I was told it started getting wet in 1985.
- The next unit up hill, Number 24, I believe it's getting wet. That was the testimony we received.
- We went around to the front of the building and **the owner of 16-16B Libby Street, Robert Beckwith/Beckwith Family Trust**, said he had not received Notice, he hadn't signed for anything, he doesn't get the newspapers, he hadn't seen anything in the paper when the Vice Chair asked if he had seen any Notifications. He verified that his Post Office Box No. 2042 is as listed on the Notification mailing list [100-foot Abutters List Report for 16 Libby Street].
- We also viewed Number 30, which is the abode of the person filing this Appeal, Derrick & Regina Brown, to get a feel for where that particular house is located.

Vice-Chair S. Ryan Okay, thank you, Sarah. All right now I'll open the Public Hearing for testimony and I don't expect that we, the Zoning Board of Adjustment, will get into our deliberation portion of this tonight. We'll just take your input, and then we'll take that under advisement. And decide where to go from there. So, Mr. Derrick Brown? Would you care to testify first?

Public Comments:

Derrick and Regina Brown, Apellants and Abutting Residents, 30 Libby St: My name is Derrick Brown. My wife Regina and I live at 30 Libby Street. Thank you to this Board for being patient with us.

Reason for this Appeal:

- The sole reason for this Appeal has to do with outside the four walls of the building at 16-16B Libby Street which received Building Permit(s). We have watched the water problems become big problems for our lot, being at the lowest elevation in this area. It never used to be that way. But due to poor building practices and poor execution by Town officials, that has evolved to become a problem for us. And this problem has been coming on and it has been talked about and documented for almost two decades.
- My discussions have been heard for several months by the Town Planning Department and the Planning Board about my concerns for water runoff and what can be done.

We have Abutters present tonight. In our opinion, our concerns have not been fully addressed:

- The Harts live next door to the subject lot, as an abutting property.
- Mr. Richard Frazier represents the First Christian Church of Wolfeboro, as an abutting property.

Role of Planning Department:

- In this case, speaking as a licensed contractor in the state of Massachusetts, this has been handled poorly. According to the Town website, the Planning Director oversees enforcement of the Town Zoning Ordinances and Building Codes.
- The Town Ordinances and procedures are for Property Owners to be made aware when they take on a project [for alterations to their property]. The Planning Department is to assist them in doing so. I encourage you to review what I submitted [re: the Case history] for 16-16B Libby Street.
- There seems to be a problem, especially for owners of a second home in Wolfeboro. Our primary residence where we work is in Billerica, MA. I'm 100 miles from here and I'm up here at the blink of an eye. I'm making a lot of trips to support this review process.
- Since early June, I have submitted to the Town my concerns [about stormwater runoff] over the past two decades of changes. Two weeks prior to the Planning Board meeting on 6/20/2023, I documented my concerns in writing and with photographs and submitted them to the Planning Department. I also brought copies to hand out at the hearing. There seemed to be recognition that there could be a water problem, so it was agreed that evening, and it's in the Minutes.
- One of the Planning Board members [Roger Murray] spoke up specifically to request a Site Visit on July 11th 2023, he asked staff to Notify the Abutters in writing. That Notification did not happen. I was excited about the July 11th Site Visit, "We're finally going to get people to show up and see this problem." Apparently, the Site Visit was canceled on July 10th. I found out the morning of July 11th because I was ready to leave work for the afternoon, drive up to Wolfeboro, and prepare for the hearing. No reason as to why it was canceled.
- I assumed this matter was bumped to a Planning Board meeting two weeks later. I would be back in front of everybody on the Planning Board to find out what's happening. Two weeks later I call: is it on the agenda? I don't see it on the Town website. I was told it's no longer necessary. Why not? The Building Permit was changed from an ADU to a Duplex, so it's a Zoning Board issue.
- I was upset because we put a lot of energy into trying to understand how this process works. We need help to correct the damage on our property and to prevent water damage from going further.
- I went to the Planning Department to request the Case file of the plans. The owner of 16-16B Libby Street was asked for a drainage plan and a parking plan, they have not been presented. When I had a look at the whole file, which should be available to the public, there was nothing there. There was a building permit. And there was a line drawing of the building, "This is all we have."
- How do I file an Appeal? The day after the June 20th Planning Board meeting, the permit was changed to a Duplex from an ADU. Tavis was at the June 20th hearing and described the Planning Board's discussion with the owner. Tavis made the suggestion about doing a duplex. So apparently the owner took that advice. No one was Notified, as it became a Zoning Board issue.
- I'm here to say, "No more," because what I'm seeing is no enforcing of the Town ordinances or perceived procedures that are in place already.
- Mr. Robert Beckwith is a seasoned, experienced contractor. His brother lives below me, at the next lot down. They know the Building Code. There's no reason they should not know what a required drainage plan should be.
- From the Town Ordinance, Article 175-89: a duplex requires .5 acres. The actual lot size of 16-16B Libby Road is .2 acres.
- I'm not concerned about the inside of the building. But I do care about what the Planning Board and Planning Department discussed a few months ago, in June.
- You can see the picture on top is from June and the site is substantially different since then: all of the grass and soil are gone. It is all gravel in the entire backyard. So, you have the displacement of rainwater from the new roof area of the addition and the ground around it has been removed. Now the proposal is for a duplex, I can't help but think that could eventually be paved entirely.
- At the 6/20/2023 Planning Board meeting, Mr. Robert Beckwith stated, "No, we're never going to pave that." Yet, the next day he changed his Application from an ADU to a Duplex.

- Regarding Article 175-128 Stormwater Plans: the duplex proposal is for a .2 acre lot with the addition of impervious surface and no place to send that water, except downhill.
- And to those who remember walking behind the Church parking lot: any culvert to that gully on Church property will have water running down to my property. That's not acceptable.

Applicable Town Regulations and State Statutes:

- When the proposal changes from an ADU to a Duplex, you don't get to pick and choose which parts of the zoning regulations apply and ignore the rest.
- Site Plan Review doesn't apply.
- Section 175-21 are Stormwater Regulations. Other articles have to do with Parking. So far, there is no documentation to address Stormwater Regulations and Parking.
- I have a copy of the drawing of the original patio at the back and a sketch of where a building addition would be.
- This Appeal has to do with the lot size required for a Duplex.
- State Statute 676:6 Appeal, "An appeal of the issuance of any permit or certificate shall be deemed to suspend such permit or certificate and no construction or alteration or changes of use shall continue until approved."
- In the last week [site] work has been done at breakneck pace. The owner has been out there till 10 and 11 o'clock at night.
- Landowners and Abutters are here tonight. There are oversights by the Planning Department, with little regard for the neighborhood and the property owners abutting 16-16B Libby Street. The Planning Department is misleading the landowners.
- The process that's in place for suggesting a Duplex at 16-16B Libby Street makes it easier to put new requirements in place that were not in place for the ADU [previously proposed]. Some of those requirements involve drainage and parking requirements. I think this falls on the Planning Department in addition to the landowners.

Permit History and Previous Discussion by Planning Board about 16-16B Libby Street:

- A permit application was originally submitted as a garage with upstairs storage. No Notification to anybody about the garage being amended to an ADU.
- I'm looking at the spirit of Notification requirement, as this situation left the neighbors in the dark. No one here is outside existing ordinances on paper, no notifications to abutters.
- Based on former public testimony at the 6/20/2023 Planning Board hearing, Mr. John Thurston stated, "We don't have the tools to define whether or not there's a water problem here."
- A site visit was brought up by Planning Board member Mr. Roger Murray, "This is required by Statute. It is required," see the Minutes.
- How did we end up with a proposed Duplex without being Notified about it? To make sure I had the most current information, I went to the Planning Department this morning, to see all files for development on the subject lot.

Status of Complete or Incomplete Permit Application(s):

- The original permit from October of last year [2022] is for a garage with extra storage. There was no amendment for an ADU on the permit form: maybe there doesn't have to be, but there wasn't.
- I also looked for the plans that were submitted, there was a line drawing of a building. In your packet here, you have the site plan: it's a sketch of what was the existing patio and nothing else. I found no elevations.
- There are no drawings [or deeds] showing where access from the Church property is located, for access to the back of the lot at 16-16B Libby Street.
- During the Site Visit this evening, walking around the outside, a comment was made about the garage door, "How are you going to get a car in there?" I don't know the answer.
- I'm wondering what are you going to do with all the water [runoff] that's created there?

- There are one or two properties between me and 16-16B Libby Street; it [stormwater runoff] is ultimately going to move down towards our property.
- While gathering information this afternoon, I visited the Building Department to get updated plans. There are no drainage plans, no parking plans, no driveway easements which the Planning Board had discussed in two hearings.
- I said, "There must be something because Mr. Beckwith said he has them, he's done them." I was told if they're somewhere, I don't know if they were misplaced. I asked, since there is an open appeal, why is the work continuing? I was told, "We've been speaking to our attorney and we really can't stop what's already underway."
- I've been wrestling with trying to get public information. It's already been done, so what do you expect us to do? Turn around and undo it? Well, I do now, because the opportunity was presented to stop it, to correct or to redirect it, and it's been ignored. So yes, I do expect it to be undone.
- Lastly, I asked why wasn't a duplex proposed first? Why the garage, then an ADU? The response I got was: we all knew the endgame was to get a duplex.

Spirit of Cooperation and Support for 'Good Neighbor Practices' with Part-Time Residents of Wolfeboro:

- I'm self-employed. I've spent many hours coming up here instead of working. I've been told that I am a conspiracy theorist. How has someone in the building business stumbled along through this process? Maybe the strategy worked: if you stumble along and you get cooperation where maybe you shouldn't, well, it's already done.
- It was done by a previous builder many years ago who created a plateau that destroyed my mother's lower driveway for her beauty shop. A letter from Dave Ford acknowledges these problems existed. They were ignored, they were not fixed.
- There are ordinances in place to protect the abutting property owners, I've got it written here. An entire community is in unnecessary turmoil because the Planning Department refuses to take ownership and enforce the existing ordinances and processes that are already in place, which are here for everybody, and should be enforced and supported universally for everybody, not the few.

Thank you for your time. I'm available by phone, email, in person, whatever you need for information.

Vice-Chair S. Ryan Thank you. Yes, go ahead. State your name for the record, please.

Richard Frazier, I'm on the council of the First Christian Church. Over the years Mr. Robert Beckwith has used a right-of-way through the Church property to drive down and park a car on his land, behind the Church building. And that was okay, we dealt with that.

- I haven't done any research and I don't know what's out there with the right-of-way, as it was given long before our time. It was designed for a horse and buggy, that's how old it is.
- And it was never designed for a vehicle, especially a driveway to an apartment.
- It can be a hassle for us sometimes because if we have a funeral or a wedding from out-of-state, those attending are not aware of all that. And I've had many calls, "Somebody's parked in my right-of-way," and I'd have to remove them.
- But it's a battle to maintain that right-of-way and to maintain it as a working driveway 24 hours per day, that was not what it was designed for.
- So that's it in a nutshell. I don't know what's in the books or what's out there in specifications or anything. It's just right beside the Church.
- I've always considered it [easement] to be one parking space wide - perhaps a bit wider - I'm not sure.

Vice-Chair S. Ryan Thank you. Anybody else?

Hi, my name is Marge Hart, I live at 20 Libby Street, I have some pictures.

Clerk S. Silk Please give them to the secretary.

Marge Hart The date of the first picture is September 1st. I started taking pictures of our side yard. I work at home and face the property and I started noticing a lot of the work being done.

- Seeing what was a major disruption of the ground at 16-16B Libby Street, I began documenting and thinking, “If we have drainage problems, I want to make sure that I've got this activity documented because we need to protect ourselves.”
- We have been dealing with drainage issues because we have water in our basement. It's an old house. And we also had some serious drainage problems for our driveway last year. We invested in gutters for our house and have those pipes drain directly into the sewer system on 20 Libby Street.
- We also invested in a retaining wall. We put \$20,000 into the retaining wall that was just recently completed two weeks ago. It was professionally done by [contractor] and I can't remember the last name of the lumber company, Husqvarna Lumber & Landscaping. He installed a massive amount of rocks underneath a large drain pipe, piped it out from underneath.
- This is the abutting land: there was no retaining wall there before so we needed to do something to protect our driveway. So, we put drainage in and they ran it underneath the driveway because last year we had drainage issues. There was also a problem with icing on Libby Street due to drainage problems and various water issues.
- We had spoken with our neighbor about providing screening and we offered to plant mature arborvitae trees. We've been seeing this construction and observing the construction materials at the side of their yard for a long time.
- We purchased 20 \$2,500 worth of mature arborvitae trees and offered to install them, to help with drainage and also to provide a visual barrier. The night before they were supposed to be installed, we were told by our neighbor that he did not want those arborvitae installed. The only way we could do it was against the fence or against the retaining wall. This would have killed the trees, so we just stopped that and we're now looking at purchasing fences. Again, we've been looking at a construction site for a long time and we would like to have some beauty in our yard.
- We received the certified letter on September 5th, it was stamped and I saw on it that it was an Appeal. I did research and found that an appeal means that you're supposed to cease and desist the work. You can see on the second picture that the work continued. Excuse me, the second picture is showing that there was no drainage installed underneath. There were about nine dump truck loads of fill brought in and not compacted. I've got that all documented visually. Because when I saw the cease and desist, I'm wondering, “What's going on here? And then I actually listened to the Planning Board meetings of June 6th and June 20th, 2023.

Clerk S. Silk Excuse me, could you tell me what the date is? We're on this page. It says Tuesday.

Marge Hart That's September 5th, 2023.

Clerk S. Silk Okay, thank you so much.

Marge Hart So, I began listening to the Planning Board meetings to understand what's going on and I heard that the work at 16-16B Libby Street went from a garage with storage, to an ADU [Accessory Dwelling Unit]. This process seemed to be moving fast and changing; therefore, I'm here to understand what is going on next door because, right now, I am really not clear about what is going on.

- I will say that I do agree with Derrick Brown: that as soon as I received the Appeal letter, I did notice work going on much faster. The work was happening day and night and because I work at home, I see all the gear, the trucks backing up, I hear the beeping going and everything. It's all right there.
- I don't know if you can answer today, but I have a question: we came before the Zoning Board in June 2020 because we had a shed that we wanted to put at the end of our driveway. We got approval for a one-foot setback instead of a five-foot setback, which was great. We had the shed put in and that was wonderful.
- If you'll notice in the pictures, there are some large two by two by four cement blocks that were put in for the retaining wall. I don't know if that is also needing to be five feet, from a setback perspective? I don't know if that only applies to buildings or structures such as a patio, etc. But that's a question and I just wanted to bring it to your attention. Thank you.

Vice-Chair S. Ryan: Thank you. Anybody else?

Audrey Cline, Representative for Abutter Kent Roger Trust of 2019, 61 North Main Street: Audrey Cline, North Main Street. I'm here representing Kent Roger who is a Trustee of the Kent Roger Trust of 2019 which abuts this property. I don't believe Kent Roger has any issues with an ADU [Accessory Dwelling Unit] or a Duplex, as I think we all recognize that Wolfboro needs more housing and downtown is a good location.

- The issue here is the review and permit process: getting ADU's and Duplexes and Additional Living Spaces should follow the regulations! Otherwise, the process is not equitable, and it's not sustainable. And we cannot provide the needed housing if we don't have a process that is followed by everyone.
- I have here the existing sections of the Zoning Ordinance in an order that will make sense of the regulations that have already been identified and I have a few additional sections.
- The Single-Family Duplex: a Single-Family Duplex needs a .5-acre lot, the subject property is only .2 acres.
- The proposed Duplex is a change to the number of dwelling units on a Pre-Existing, Non-Conforming Lot and the Unit Allowance is being changed. So, I think that is an issue. Secondly, Section 175-129 Issuance of Permits:

Tavis Austin This is the same as the Appeal you've already submitted on the same point.

Audrey Cline, Representing Kent Roger: It is, but I'm here in support of the [Brown] Appeal. And the reason I'm going to move forward with the [Cline] Appeal that I've previously submitted - regardless of what happens with this Brown Appeal - is due to the possibility that the person holding the Building Permit [Robert Beckwith / Beckwith Family Trust] will appeal the upcoming decision of the Zoning Board of Adjustment.

- I would like this testimony to be in the record, to have standing for a future, possible {Beckwith} Appeal. I feel that, regardless, I will be moving forward with my previous Cline Appeal.
- Meanwhile, I want you all to have more information tonight. The current Brown Appeal, because I am in support of it, I cite Article 175-129 Issuance of Permits, which speaks to:
 - 1) The Garage Permit when it was issued,
 - 2) The ADU Permit that was brought for consideration to the Planning Board
 - 3) and, most certainly to this Duplex Permit.
- "No Permit or Certificate of Occupancy shall be issued for the erection of a new building, the garage, the enlargement or increase of the floor area of an existing building," which would be the garage.
- "The development of a Use not located in a building," which would be the parking area and the patio,
- "or the change from one type of Use to another," which would be the change from a Single-Family Dwelling to the proposed Duplex, "unless off-street parking spaces or loading bays are provided in accordance with this Article."
- And "with this Article," mean in accordance with Zoning; that's what is meant by "with this Article."
- As the permit was moving towards development, the parking area should have been identified and reviewed, with drainage and impervious coverage also being reviewed. It [the permit and review process] would look at all those things [proposed changes] and address them together. That was not done for any of these building permits.
- One big change is from the Single-Family to a Duplex, because a Duplex requires two parking spaces per unit, not the one parking space that the ADU requires. You can put an ADU parking space with your other parking because it's part of the Single-Family Dwelling; however, a Duplex must have its own two parking spaces. So now, with a Duplex, we've got a 200% increase in parking. The issuance of the Building Permit should have recognized that there was an increase in parking and should have addressed storm drainage and access: it didn't, none of them did.
- This part of Libby Street used to be in the RA Zone until a few years ago, then it was put into the Central Business District. And in doing that, there are Commercial Uses that are now permitted on that street that were not permitted before. The biggest change is that construction can cover the entire lot; therefore, 100% of that lot can be impervious, whereas the previous RA Zoning allowed up to 40% of the lot

to be impervious. So, there wasn't as much of a need to review parking and drainage under the previous RA Zoning because you could only cover 40% of the area of the lot.

- Now, in the Central Business District [CBD], you can cover the entire lot. If your property is going to have the benefit of being in the CBD with the Uses that are allowed, you [the property owner] have the responsibility to meet all Zoning Regulations: you cannot meet one regulation and not the others.
- Section 175.91(k) "Conversion of a Permitted Use to Another Permitted Use," and no change to the exterior of the building and parking are required. Parking is required because the proposal is for a Single-Family Dwelling to be converted to a Single-Family Duplex. That Duplex requires two additional parking spaces. During the previous Planning Board hearings [6/6/2023 and/or 6/20/2023], there were comments made about "just adding an ADU [Accessory Dwelling Unit] to an existing building"; however, the existing building was never completed, the barn never got a Certificate of Occupancy. It was never reviewed for the site issues either. It's not an "existing building" until it's done [work is completed] and it has a Final or a Certificate of Occupancy: this situation seems to have dribbled along from one building permit to the other, without ever being completed. So, any references to "an existing building" is, in my opinion, not correct.
- In any case, the current proposal to change from Single-Family to a Duplex requires additional parking.
- Section 175.128.C.2: One provision under this Article is for new development on a lot in the CBD [Central Business District] because you're allowed to cover 100% of the lot area. Due to the additional Parking Requirement for a Duplex, the impervious area increases by at least 200% and there will be Accelerated Runoff of Surface Water from covering more of the lot area with impervious materials: the property owner must deal with the Runoff of Surface Water.
- Another zoning issue speaks to the definition of a Duplex dwelling [as is currently proposed]: "A building that is principally used, designed, or adapted to have two dwelling units of similar proportions." If you recall the previously proposed ADU [Accessory Dwelling Unit]: it can be no bigger than 750 square feet.
- This Application previously went before the Planning Board, on 6/4/2023 and 6/20/2023, proposing an ADU that was 748 square feet. The property owner had to limit the proposed ADU to 750 square feet or less. As far as I can tell by the Tax Card, the other living area on this lot is approximately 2400 square feet, three times the size of the ADU. As submitted, the current Application cannot be approved as a Duplex because it does not meet the definition of Duplex.
- In reviewing this Application for the Building Permit for a Duplex, the applicable Zoning requirements could have been brought up, told to the Applicant, Adjusted, etc. This is something that needed to be addressed before we all got here today.
- For all the reasons above, I believe the Zoning Board of Adjustment should uphold the appeal, and rescind and revoke the previous approval and issuance of the Building Permit for 16-16B Libby Street. Thank you.

Tavis Austin Do you want a motion for a Continuance and also in Contacting? Second, continuing to Sept 25th or to the October meeting?

Clerk S. Silk We have September 25 already scheduled on Monday, September 25 already scheduled for a work session.

Luke Freudenberg made a motion to Continue this Public Hearing for the Appeal of an Administrative Decision for Case # 07-AAD-23. Seconded by Sarah Silk.

Roll call vote: Luke Freudenberg (Yes), Sarah Silk (Yes), Suzanne Ryan (Yes), Cate McMahon (Yes), Chuck Sumner (Yes). Motion approved by a unanimous vote (5-0-0).

Tavis Austin verified the following: This Continuance is scheduled for September 25, 2023. A new Notice is not necessary for a Continuance.

Tavis Austin In the meantime, for the work to cease [at 16-16B Libby Street] is not up to the Zoning Board of Adjustment.

Vice-Chair S. Ryan: I couldn't understand what Tavis said.

Tavis Austin The answer to the question: that's not the purview of the Zoning Board of Adjustment and I agreed to meet with Mr. Derrick Brown after this meeting, or at his leisure, to discuss that.

Clerk S. Silk Madam Vice-Chair, are we able to submit questions to you to go to the Town attorney?

Tavis Austin I would suggest you try and get all comments to Suzanne by Friday so she can get them out and have an answer by the 25th.

Vice-Chair S. Ryan Okay, so this hearing has been continued to Monday, September 25. And we don't have to advertise it because we have verbalized the date, time, and place. And at this juncture, I would turn the meeting over to the Chair, Audrey Cline.

Chair Audrey Cline returned to vote on this Board for the rest of this Hearing.

Chair Audrey Cline Thank you. Okay, Unfinished Business.

III. Unfinished Business

Tavis Austin The only question I have on Unfinished Business: does the Board want to go into Rules of Procedure after this Case on September 25th?

Clerk S. Silk I think that this Case is rather complicated. I think that we need to discuss the Rules of Procedure at another, future meeting.

Tavis Austin I just didn't want to not get it in front of you if you weren't planning on doing that.

IV. New Business

V. Minutes of Previous Meetings:

Vice-Chair Suzanne Ryan made a motion to table review/approval of Draft Meeting Minutes listed in the 9/11/2023 Agenda. Seconded by Luke Freudenberg. Approved by a unanimous vote (6-0-0).

VI. Communications and Miscellaneous:

Upcoming ZBA Meeting at the Great Hall, 9 Union Street: Monday, September 25th 2023 at Town Hall.

Tavis Austin I have an Application Packet that was submitted for an October hearing.

VII. Motion to Adjourn

At 9:18 p.m. Suzanne Ryan made a motion to adjourn. Seconded by Sarah Silk. The motion passed unanimously (6-0-0).

Meeting Minutes respectfully submitted by,

Livia M. Nicolescu