

**Town of Wolfeboro
Zoning Board of Adjustment
November 6, 2023
DRAFT Minutes**

Members Present: Audrey Cline, Chair, Suzanne Ryan, Vice-Chair, Luke Freudenberg, BOS Representative, Sarah Silk, Clerk, Charles Sumner, Member, Nancy (Sabet) Stroman, Catherine McMahon (arrived at 7:04 pm), Alternates.

Staff Present: Tavis Austin, Director of Planning & Development, Sierra Pawnell, Recording Secretary.

I. Roll Call

Suzanne Ryan called the meeting to order at the Great Hall at 7:00 PM. A quorum was present.

Suzanne Ryan noted that the order of the agenda would be changing to the following, 1. Notice of Decision Review 2. Rehearing request for Robert Beckwith 3. Public Hearing for Roger Kent appeal.

II. Unfinished Business

NOD Review, Brown Case 07-AAD-23

Suzanne Ryan noted that the Notice of Decision is for the Board's reference and was signed and recorded on 10/10/2023. Notice of Decision was for the Brown Case 10/2/2023, see attached.

III. Request for Rehearing: Derrick L. Brown, Case #07-AAD-23, Appeal of Administrative Decision
Suzanne Ryan appointed Sabet Stroman, Alternate, to sit in for Audrey Cline, Member, as Audrey Cline has recused herself.

Suzanne Ryan reads that since this is solely a decision of the board, there will be no public testimony. Under NH RSA 677:2 and RSA 677:3-II the board is granted the ability to correct mistakes or actions that were unlawful or unreasonable.

Cate McMahon arrived at 7:04 pm.

Suzanne Ryan states that the motion for rehearing was received on 10/27/2023, in a timely manner, and reads from the motion the reasons why Mr. Beckwith has filed. See attached.

Suzanne Ryan notes that reasons 2 and 3 have no substance for a rehearing per legal. 175-55 states the petition must give specific reasons and grounds which claim the order was unreasonable, illegal or unjust. Suzanne Ryan asks did we apply unlawful or unreasonable decision when making the final actions. Suzanne Ryan presents three options, grant the rehearing, deny the rehearing or suspend order of decision of complaint of pending further consideration.

It is moved by Sabet Stroman to deny the Request for Rehearing, Derrick L. Brown, Case #07-AAD-23. Chuck Sumner seconded the motion. Roll call vote: Luke Freudenberg – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Suzanne Ryan – yes. The motion passed (5-0-0).

Suzanne Ryan appointed Cate McMahon, Alternate, in place of Sabet Stroman to sit in for Audrey Cline, Member, as voting member.

IV. Public Hearing

a. Roger Kent

16 Libby Street – Tax Map #217-13

Case # 08-AAD-23

Public Hearing for an Appeal of Administrative Decision, the issuance of building permit # 2023-468 for the creation of a duplex, based upon sections: 175-89 (2), 175-91 K, 175-128 C. (2), 175-129, 175-136, and 175-175 of the Wolfboro Planning & Zoning Ordinance. Formal Submission/Public Hearing

Suzanne Ryan asks Sarah Silk, clerk, for an overview of the September 11 site visit.

Sarah Silk notes that there are no meeting minutes from the previous meeting so the report that was given for that is not available at this time. She read her notes from the site visit. Noted that those present were Sabet Stroman, Suzanne Ryan, Cate McMahon, Luke Freudenberg, Brian Kent, Carolyn Chartier, Dennis Hart, Regina Brown, Derrick Brown, Randy Walker, Mr. Beckwith and Diane Bainton. She noted that the property is the third property down the hill. The Board looked at property lines, the Church Rectory, and garage at the rear. The Board observed Hart's drainage and retention wall and silt was present. She stated the Board received information about work that was done by the Town in the past.

Suzanne Ryan opened public hearing at 7:13 PM, continued from 10/2/2023.

Suzanne Ryan recognizes that Luke Freudenberg had questions about the timeliness of the application. Suzanne Ryan states that per case law, it's about when and if they know, and when did they know. It's 30 days in towns bylaws. Building permits do not get advertised, there are no public hearings held for them, there may be times where people just don't know one has been pulled. Are within the jurisdiction of holding this hearing.

Luke Freudenberg states he would like to vote on it. The reason for it is that applicants of building permits must wait 30 days to start building. The person filing to have another's building permit pulled should have to do it within the timeframe that the town has set forth in its rules.

Suzanne Ryan reads per legal the only exception to this is if the person appealing can make a good argument that they were not aware of the building permit in time to file within 30 days.

It is moved by Luke Freudenberg to not take jurisdiction of the Roger Kent Appeal of Administrative Decision, Case #08-AAD-23. Chuck Sumner seconded the motion.
Discussion of the motion:

Chuck Sumner asks if Mr. Kent has a reason as to why he did not submit the application within 30 days. Sabet Stroman asks if it was short by 3 days. Suzanne Ryan states it was short by 1-3 days.

Suzanne Ryan calls on the representative for Roger Kent to come forward and address the motion that is on the floor.

Audrey Cline for Roger Kent, on the timeliness of the appeal to the building permit. Audrey Cline states a few reasons why this case is timely. States that building permits do not get noticed, as understood by the board. The building permit was submitted on 6/26/2023 and was approved on 7/26/2023. Audrey Cline notes that she emailed the planning and development department and asked if there was a building permit on this property and was told they have no idea. Asks if the office doesn't know, how should she. States the office was notified on the 30th day that an appeal was forthcoming. Believes that on behalf of Mr. Kent everything a citizen could do to find out about a building permit being submitted was done.

Sabet Stroman asks to clarify if she spoke with an administrative person and that is who said they did not know. Audrey Cline states that she had emailed Tavis Austin and asked specifically about this property.

Sabet Stroman asks about the paper trail that is supposed to happen with permit applications. Audrey Cline notes that would have to be asked of the staff and depends on the department.

Audrey Cline states another question is why the request wasn't researched and found out. Suzanne Ryan states it's when Mr. Kent knew not when Audrey Cline knew.

Tavis Austin answers the question that typically building permits are turned into the administrative person, then the building official, but then it could circulate to any other department depending on what it is, then back to the building official who issues the permit. Sabet Stroman asks if there is a computer record to be able to look this is. Tavis Austin states at the time there was not one in the computer.

Audrey Cline states that there are a few other points, there was already activity going on at that lot. There was already a building permit for a garage, so there was no way to tell this was for a new permit. States caselaw *Dumais v. Somersworth*, from NH Practice Land Use Planning and Zoning Guide, section 21-10 appeals to the board, page 326, 4th edition. Somersworth had a rule that appeals had to happen within 10, but the appellant filed no written appeal within 10 days. However, the board found he had appealed to the building inspector, and he had not been informed to the date of permit or right to appeal. The Supreme court ruled in his favor. Not when he knew or should have known when the permit was issued. Third, does have calendar to track when emails had been sent to the office and when paperwork was turned in. An email was sent to Tavis Austin on the 30th day, which was a Friday, that an appeal was coming. That following Monday, the application was emailed, permission slip from Roger Kent to speak on his behalf, the argument, and that Wednesday payment for the application.

Luke Freudenberg states this does not change things, as we ask the applicant to not to work for 30 days. It's understood that the applicants representative Audrey Cline emailed Tavis Austin, but it hasn't been stated that there is a problem with the building permit if it is issued. The

caselaw states the petitioner was obviously against the building permit. There was no building permit at the time when asked.

Tavis Austin asks is there a substance of difference in hearing this appeal versus the last one they just acted upon.

Suzanne Ryan reads back what legal states about the exception, that if Mr. Kent can make an argument that he wasn't aware of the permit in time to file within 30 days. Permits do not require notice to abutters, so it is possible for a person to not know a building permit has been issued. So, the question is when Mr. Kent knew.

Sarah Silk states since there had been a building permit out there for a garage, to add in a change of what was going to happen, what was really happening would be invisible. So how could it be known that a building permit given for garage and storage is now totally different.

Sarah Silk asks to have the motion read back.

Tavis Austin reads Luke Freudenberg made a motion to not take jurisdiction of this case and was seconded by Chuck Sumner for discussion.

Suzanne Ryan calls for a roll call vote. Voting yes for not hearing this case, and no to hear this case.

Roll call vote: Suzanne Ryan – no, Luke Freudenberg – yes, Sarah Silk – no, Chuck Sumner – yes, Cate McMahon – no. The motion failed (3-0-2).

Luke Freudenberg recused himself.

Suzanne Ryan appoints Sabet Stroman, Alternate, to sit in for Luke Freudenberg, Member.

Suzanne Ryan notes that since there was an issue with Mr. Beckwith that she should have recused herself from his hearing, asks the board if they feel she should step down.

Sarah Silk asks what the legal opinion on the matter was.

Suzanne Ryan stated counsel stated it wasn't necessary.

It was moved by Sabet Stroman that Suzanne Ryan remains on the case. Sarah Silk seconded the motion. All members voted in favor. The motion passed (5-0-0).

Audrey Cline, representative for Mr. Kent, distributes packet for appeal. See attached.

Audrey Cline is asking the board to reaffirm their decision of the revocation for two of the three issues brought forth in the appeal. First, based on the size of the lot as it is too small to for the use of a duplex based on the decision the board has already made. Second, based on the application not meeting the definition of a duplex. Audrey Cline notes that the third issue is one she is requesting more discussion on as the board was not very specific in regard to the drainage. It was stated in the board's findings of fact, that Mr. Brown did have some impact

from water at the bottom of the hill, but this was not attached to any zoning code reference. Audrey Cline reads page 2 from the packet for appeal, see attached. Audrey Cline states that the Libby St lots have recently changed from residential, where they were allowed 30-40% coverage of impervious material and required setbacks of 10-20 ft, to the C1 district, which allows 100% coverage of impervious material and much smaller setbacks. Making the need for those lots to have accountability for their runoff. Audrey Cline continues to read code 175-90 from packet, see attached. Audrey Cline states that the C1 district has a lot of single-family homes, or duplex's that are on smaller lots than Mr. Beckwith's, and that there are a lot of parcels that this will impact. Audrey Cline notes she asks the board to reaffirm the revocation of the duplex building permit based on the first two sections the board has already spoken to. Asks that the board make a finding that this application review under code 175-128 C (2) applies to this building permit application and asks the board to make a finding that the zoning ordinance is to be read that review of plans to mitigate accelerated runoff of surface water from land covered by impervious materials applies to single-family and duplex parcels in the C1 Zoning District. (see attached for more information) Audrey Cline states that is all her argument, and to the extent that this impacts Mr. Kent's property, in the original hearing it there was no drainage plan, and what was built is completely different than what was submitted. Looking at what is proposed now and the drainage going towards the street, that could potentially impact town owned property and Mr. Kents garage.

Suzanne Ryan asks Audrey Cline to restate the end of her testimony to know what the anticipated conclusion will be. Audrey Cline reads page 3 from statement. See attached.

Mr. Beckwith argues that the applicant was late, therefore this case should not be heard.

Derrick Brown states that he has been following this from the planning board through to the zoning board, and that the application was submitted on 6/20/23. The next day an application was put in to change from an ADU to a duplex at the recommendation of Tavis Austin. States that he found out on 7/21/23 that the permit had been signed. Building was being done all summer long. Notes article 175-128 in his opinion based on photos and videos, Mr. Beckwith is housing a commercial business in his garage, which would be another reason for this to go from a C1 zone to a Commercial Zone which requires site review and formal stormwater runoff review.

Mr. Beckwith argues that Suzanne Ryan is initially the one who said he should go for a duplex at a planning board meeting. Approached Tavis Austin to see if this was possible, to which Tavis Austin replied that it was. Mr. Beckwith continues that on 10/4/22 he was granted a building permit for a garage with storage. On 6/5/23 ADU application submitted. On 6/6/23 Planning Board meeting was postponed due to misprint in newspaper. On 6/20/23 the Planning Board approved the application contingent on a door being put in. Mr. Beckwith notes that it was this meeting that Suzanne Ryan stated that he should be going for a duplex. On 6/21/23 Duplex application was submitted. On 6/22/23 certificate of occupancy for garage with storage above was granted. On 6/23/23 withdrew application for ADU. On 7/26/23 received a building permit for Duplex. On 8/20/23 Mr. Brown filed an appeal. On 9/11/23 site visit to the property, that Mr. Beckwith states he was not notified of. States ZBA held a meeting that night that he was unable to attend. On 9/25/23 ZBA meeting continued again to go to outside legal. On 10/2/23 ZBA denied building permit for Duplex. On 10/12/23 reapplied for ADU permit and will go in front of the Planning Board on 11/7/23. On 10/27/23 filed an appeal to the ZBA on decision to deny the

duplex. On 10/30/23 received notice to abutters for Planning Board meeting, so now meeting has been pushed back two weeks. Mr. Beckwith argues that having the ZBA Chair state they were unaware of the building permit, cannot possibly be true.

Sabet Stroman notes that communication or adherence to expectations when changing from an ADU to a duplex requires certain things to be done and they weren't done, which is the only things the ZBA can address.

Mr. Beckwith states that he did everything he was supposed to do. That the board should not be hearing this case, as the application for an appeal was late.

Sabet Stroman notes that the town needs to look into how it is tracking building permit applications from when they come in, are passed to other departments and then make their way to the planning and building departments. Tavis Austin gave Audrey Cline what he knew at the time that this all started.

Sarah Silk notes that the ZBA is not responsible for mistakes that staff makes.

Mr. Beckwith again states that this hearing should not be happening because the application was late. Argues that the board will not let Tavis Austin speak on the issue.

Sarah Silk states they are following advice from counsel. It is an administrative decision that Tavis Austin is involved with, therefore it would be a conflict of interest. He may address the board from the podium as any other member of public.

Suzanne Ryan states board was advised by counsel that because this error came from Tavis Austin's department, that he should not be testifying as the town planner.

Luke Freudenberg notes that in the ZBA last deliberation, with the third point that Audrey Cline is asking for, town counsel had urged them against adding drainage to their decision in the last case.

Derrick Brown states during the last meeting a proposed possible plan for drainage was presented by Mr. Walker but nothing has been implemented or any documentation for future plans of making the issue with drainage go away. Mr. Brown states he had received an email from Mr. Pineo, Town Manager, regarding the revocation of the building permit, and that it stated the finding of facts was used to support the decision. States that the first and second issues were very clear, but that there was an acknowledgement of drainage issues, but it was not formally stated.

Sarah Silk reads statement dated 9/20/2023 from Christine Johnson. In part Mr. Brown alleged in his appeal that article 175-128 requires stormwater management plan, and article 173-21 stormwater regulation, did and should apply to Mr. Beckwith's application for building permit.

Sabet Stroman notes that there doesn't need to be any more discussion on if they should or should not hear the case, the decision has already been made. Secondly Mr. Brown's appeal is different from Mr. Kents appeal.

Suzanne Ryan notes when they enter deliberations, they will only deliberate on what is in Mr. Kent's appeal, and no new items that have been brought up.

Sabet Stroman notes that the information received in this meeting about what's going on with the commercial business and garage is not relevant.

Mr. Brown notes his own observation that if drainage is not implemented it will affect Mr. Kents property.

Audrey Cline, for Roger Kent, states that a building permit application was submitted for a garage, then an application was put forward for ADU to the Planning Board. The Planning Board determined it did not meet the requirements. An application for a duplex came before the board and was rejected because that did not meet the requirements for a duplex.

Suzanne Ryan closes the public hearing at 8:11 PM.

Suzanne Ryan notes that the board will be going off the application dated 8/30/23 and anything that was read in the meeting tonight from Audrey Cline, for Roger Kent, will not be in consideration for deliberation. Code articles for deliberation will be 175-89 (2), 175-91K, 175-128 C (2), 175-129, 175-136, and 175-175. Not up for deliberation is 175-90 as it was not included in the original appeal application.

Deliberation:

Article 175-89 (2) - Reaffirm.

Sarah Silk states we have already determined this.

It is moved by Sabet Stroman to reaffirm their decision. Chuck Sumner seconded. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passed (5-0-0).

Article 175-91K - Determination

Sabet Stroman asks if the board is addressing if there was a change to the exterior or addressing parking.

Suzanne Ryan notes that a stairwell was added. The property originally had a platform, but the garage has had a stairwell added onto it.

Sabet Stroman notes that when they went for the site visit, they had to walk up some steps, onto a landing, and then enter the house.

Suzanne Ryan stated that there was a change to the exterior of the building, therefore additional parking requirements apply.

Sabet Stroman questions since the article states "or parking" does this mean it has to have 2 dedicated off street parking.

Sarah Silk notes that it is also questionable if this parking plan was given to the building inspector as part of the application process as well. It appears that it was not.

Suzanne Ryan stated that article 175-91k was overlooked by the building department as a requirement.

Chuck Sumner stated that we are saying the building inspector overlooked it but questions if there are two parking spaces there or not.

Sarah Silk stated its irrelevant, as it was not submitted with the application.

It was moved by Sabet Stroman that 175-91K conversion and exterior change requires parking and was not addressed by the building department. Sarah Silk seconded the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passed (5-0-0).

Article 175-128 C (2) – Determination

Suzanne Ryan notes at the last discussion there was reluctance to dive into water runoff issues. Believed it was aptly described by Attorney Walker. Notes that although Mr. Beckwith did remove contours and soil, the problem was exacerbated.

Chuck Sumner notes he reads this article as having to deal with driveways. However, regardless of that it is not in the ZBA expertise to determine where the water is coming from and where it is going.

Suzanne Ryan noted that there is no engineering plan that shows that Mr. Beckwith's property is the sole reason for flooding in that area.

Suzanne Ryan recommends that since there is nothing that supports Mr. Beckwith's property accelerates the runoff, the board does not address this as a deficiency.

Sabet Stroman noted that in the findings of fact from the last meeting the board said there is evidence that Mr. Brown's property is affected by water runoff and drainage that is in part caused by the development and activity on this subject property.

Suzanne Ryan agrees that is true, however, what she is stating is that it is exacerbated by Mr. Beckwith's property but that his property is not the problem, as there are no facts that support it being the problem.

Chuck Sumner moved to not rule on this due to lack of information. Sarah Silk seconded the motion. After a brief discussion of what Article 175-128 C (2) requires and the lack of reports received by the town with the building permit application, Sarah Silk rescinded her second, and Chuck Sumner withdrew his motion.

It was moved by Sabet Stroman to uphold this. Sarah Silk seconded the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – no, Cate McMahon – yes. Motion passed (4-0-1).

Article 175-129 – Reaffirm

Suzanne Ryan stated that the board addressed this and yes it should have been required.

It was moved by Chuck Sumner to reaffirm the board's decision. Sarah Silk seconded the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passes (5-0-0).

Article 175-136 – Determination

Sarah Silk stated that there was nothing present at the time the building official made their determination.

It was moved by Sarah Silk that the off-street parking requirements were not addressed when the permit was issued. Sabet Stroman seconded the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passes (5-0-0).

Article 175-175 – Reaffirm

It was moved by Chuck Sumner to reaffirm the board's decision. Sarah Silk seconds the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passes (5-0-0).

It was moved by Sabet Stroman to reverse and revoke the 7/26/2023 Building permit # 2023-000-468, Duplex Dwelling, owned by Mr. Beckwith Family Trust, as the construction interpretation and application of the terms of the zoning ordinance were in error. Sarah Silk seconded the motion. Roll call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Chuck Sumner – yes, Cate McMahon – yes. Motion passes (5-0-0).

Suzanne Ryan noted that there is enough information here for the attorneys to help with the findings of fact.

Suzanne Ryan stated there is an appeal process, 30 days to request for a rehearing.

Suzanne Ryan stated turning the meeting over to Audrey Cline, Chair, for remainder of meeting agenda, and excuses herself from meeting at 8:48 PM.

**V. New Business
Meeting Calendar**

The Board reviewed the proposed meeting schedule and agreed to the following;

- December meeting date: December 4 (as of this meeting there are no applications submitted therefore, the Board will use the 12/4 meeting as a work session – Tavis Austin will confirm)
- January meeting dates; January 8 and January 18
- 2024 meeting schedule; ZBA to meet the first Monday of each month (application review), Work Sessions scheduled for the third Thursday of each month, 6 PM, Great Hall or Town Hall Annex conference room.

Audrey Cline questioned the availability of members to attend a meeting on Thursday, November 16, 2023. Audrey Cline – yes, Sarah Silk – no, Chuck Sumner – yes, Cate McMahon – yes, Luke Freudenberg – yes, and Sabet Stroman – yes.

Tavis Austin noted Wolfeboro Community TV is not available to record meetings on Thursdays.

VI. Approval of Minutes
None.

VII. Communications and Miscellaneous

Chuck Sumner asks if there is going to be a meeting in December or if they will not meet on the third Thursday.

Tavis Austin states that there are no applications as of 11/06/2023, so could use 12/4/2023 meeting as work session.

Audrey Cline stated the board could decide at a later date.

VIII. Adjournment

It was moved by Chuck Sumner to adjourn the November 6, 2023 Zoning Board of Adjustment meeting. Sarah Silk seconded the motion. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting was adjourned at 9:07 pm.

Respectfully Submitted,
Sierra Pawnell
Sierra Pawnell