

**Town of Wolfeboro
Zoning Board of Adjustment
September 25, 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, Alternates.

Member Absent: Chuck Sumner, Member.

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

I. Roll Call

Suzanne Ryan called the meeting to order at the Great Hall at 7:00 PM. A quorum was present. She noted Audrey Cline has recused herself.

Suzanne Ryan appointed Sabet Stroman, Alternate, to sit in for Audrey Cline, Member, and appointed Cate McMahon, Alternate, to sit in for Chuck Sumner, Member. She asked Cate McMahon if she has reviewed the recording of the previous meeting, studied the application, and reviewed the minutes of said meeting.

Cate McMahon replied yes.

II. Public Hearing

a. Derrick L. Brown

Tax Map #217-13

Case #07-AAD-23, Appeal of Administrative Decision

Public Hearing continued from 9/11/23

Suzanne Ryan read the application into the record and noted the public hearing was continued from September 11, 2023, administrative appeal for the construction of a conversion of space above the garage into a duplex per building permit dated 7-26-23 #2023-000468, Tax Map #217-13, Mr. Beckwith, Libby Street, C1 Central Business District under zoning authority 175-89 Size Requirement and the interpretation of 175-128, specifically 173-21 zoning regulations stormwater. She stated the Board takes jurisdiction under 676:5, II.(b) and has the authority to hear and decide appeals if it is alleged there is an error in the determination of an administrative official. She stated under 674-33, II. the ZBA has the authority to reverse or affirm in whole the request. She requested the Town Planner update the Board with regard to the notification of the application.

Suzanne Ryan opened the meeting to public comment and testimony.

Derrick Brown stated at the previous meeting articles and errors were discussed and noted the following outstanding issues; size of the lot, stormwater plan and implementation (173-21), and permitted use for parking. He stated he reviewed building permit files for the

project; noting the only drawings date back to September 2022 (garage with storage) and a rock wall as a hardscape not a driveway. He stated his primary concern relates to State statute 676:6, when an appeal happens and is accepted, work stops. He stated the work did not stop rather it was delayed one week. He stated the Board asked Mr. Austin to meet with the neighbors following the last meeting to discuss the plan of action regarding the work stoppage request. He noted Mr. Austin stated that he would be speaking with the attorney with regard to the official position of the Town on the matter. He requested the Board ask Tavis Austin whether he has videos that were presented to him and asked that the videos are played for the Board. He reviewed the content of the videos as they were played; noting there was no attempt to minimize damage to abutting properties due to runoff and erosion. He stated the entire specification changed when it went from an ADU to a duplex. He expressed upset regarding the lack of communication from the Town and the work stoppage request and asked for the enforcement of codes and regulations. He requested the Board deny the permit.

Suzanne Ryan asked Mr. Brown if he has a copy of his application of the appeal.

Derrick Brown replied no.

Suzanne Ryan provided Mr. Brown such and asked him to read the request noted in the application (page 5).

Derrick Brown read the following as noted on the application; "I request an appeal from an administrative decision by Tavis Austin and Jason Durrance in relation to Article 175-89, Section A.(2). The decision of the review is as follows; approval of Permit #2023-00468 to be redefined as a duplex with a tax map location of 217 lot 13. The applicant states that the decision of the appeal is incorrect for the following reasons; lot size 175-89 requires 0.5 acres and the lot is actually 0.2." He noted an error on his part in that he had written 0.17 acres however, according to the tax map it is 0.2. He continued to read the application as follows; "Erosion and drainage impact per public hearing scheduled for July 11 was cancelled and not rescheduled. His signature and date of August 20, 2023.

Sabet Stroman confirmed with Mr. Brown that at the end of the September 11, 2023 meeting that he and Tavis Austin would meet. She asked when he heard back from Mr. Austin.

Derrick Brown replied 7 days and noted he was told the same thing that he was told on September 11.

Sabet Stroman asked at what point had the work stopped.

Derrick Brown stated the work accelerated that week. He stated his point at the September 11 meeting was that the work pace had already accelerated and continued last week.

Sabet Stroman asked if the work has stopped now.

Derrick Brown stated he didn't see work this weekend however, he thinks there is information that shows it had not stopped this week. He noted he is only up on weekends,

however, takes pictures and sees that it is different than it was. He stated when there was discussion about an ADU at the Planning level it involved modification to the building in order for it to be approved. He stated there was clearly on the part of the homeowner significant resistance on the simple changes. He stated a suggestion was made to make it a duplex.

Sabet Stroman recalled Mr. Austin making said suggestion.

Derrick Brown stated such triggers different requirements in addition to the building such as parking.

Sabet Stroman stated she was trying to determine if the work had come to a halt and how long it took for such to occur.

Dennis Hart, 20 Libby Street, stated he supports Mr. Brown's appeal and is personally witnessing the effects of the change of runoff and erosion from what is happening.

Audrey Cline stated she is representing Roger Kent, noting Mr. Kent is a direct abutter. She stated Mr. Kent's concern with regard to the ADU is the parking situation whereas Mr. Beckwith has parked in front of Mr. Kent's garage doors for a long time; noting concern for the increased requirement for parking that will become a bigger problem for him. She stated his concern is that parking does not impact his situation with his garage doors and property. She stated she gave testimony at the last hearing on sections of the code that she believes doesn't allow a duplex with additional parking.

Randy Walker, Walker & Varney, representing Robert Beckwith and the Beckwith Family Trust. He stated at the last hearing Mr. Beckwith advised the Board that he did not get notice and on a 3-2 vote the Board decided to go forward; noting he questions the appropriateness of such and wants to reserve for the record rights if this case should get appealed to raise that in the future. He stated the chairman of the Board recused herself but he believes it was after she participated in some of the hearings and reserves any rights to claim that it was not appropriate the way the recusal occurred and that it didn't occur sooner particularly since Mr. Beckwith did tell the Board that he didn't receive notice and as a result this Board allowed a lot of testimony (90%) was totally irrelevant to this appeal. He noted Mr. Brown is talking about things that are not in the appeal. He stated Mr. Brown filed the appeal on August 21; noting there were issues with such and resubmitted it on August 23. He stated the question is what the status of the property on July 21 was since an appeal cannot be filed prior to thirty days. He stated Mr. Beckwith applied for and received a permit on October 4, 2022 to build the building that is present today for a garage, storage space, and a deck. He stated the building was constructed last year and received a Certificate of Occupancy on June 21, 2023. He stated the only change since June 21 is the interior to the building; could it go from storage to an ADU (which has since been withdrawn) and now from storage to a duplex. He stated the appeal complains primarily to the process; noting Mr. Brown has had issues and raised issues with the Town for the past twenty years, part of which has caused water issues on his lawn. He noted there has been a lot of construction that has exacerbated the issue over the years. He stated the appeal cites 175-89 (lot size); that there is not enough acreage for the proposal. He stated the appeal doesn't address stormwater, parking, change of use, no challenge of use or right-of-way

therefore, the only issues that can be addressed by the Board are those raised in the appeal. He stated the Board does not have jurisdiction to address issues not raised in the appeal. He stated the issue Mr. Brown raised in the appeal is 175-89 Minimum Lot Area; noting that section is in the Commercial Business District; noting the purpose of said District is to have a healthy mix of commercial and residential property. He stated there is a need for ADUs, duplexes, residential housing, and multi-family housing. He read 175-89; noting that Mr. Beckwith doesn't have the required acreage, however, it doesn't apply because he isn't creating a new lot, rather, the lot is an existing grandfathered lot. He distributed a map of the lot sizes of the properties on Libby Street; noting not a single lot complies with the lot size requirement. He stated of the thirteen lots Mr. Beckwith has the third largest lot.

Suzanne Ryan asked Mr. Walker if he would agree with the acreage noted on the map as 0.20 for Mr. Beckwith's property.

Randy Walker stated he doesn't know. He reviewed the definition of a nonconforming lot; noting Mr. Beckwith's lot is nonconforming as defined in the ordinance. He distributed said definition to the Board. He noted that all the properties on the street are also nonconforming. He reviewed permitted uses within the District; noting such is a matter of right, not a privilege, and a duplex is noted as a permitted use. He reviewed the definition of a lot; Mr. Beckwith's property is a legally recorded property and one duplex is permitted. He distributed said definition to the Board. He stated it is their belief that when Mr. Beckwith applied for the permit for a duplex (applied in June, received approval in July) that the permit was properly issued by the Building Department and done in accordance with customary practice and the appeal should be denied. He stated a grandfathered lot cannot be discriminated. He distributed, reviewed, and read excerpts of two cases (Tessier v. Town of Hudson, Baddock case) that are applicable to this case. He stated the appeal makes a - reference to erosion and drainage impact per public hearing; noting there is nothing that relates to such under 175-89 which is the only basis for the appeal (175-89 is noted on pages 3 and 5 in the appeal). He stated only 175-89 is invoked in the appeal, more specifically 175-89 A.(2). He stated he believes the Board doesn't have jurisdiction to address the erosion and drainage issues and objects to the Board addressing such. He reviewed page 5 of the appeal in addition to a letter submitted by Mr. Brown, date submitted unknown. He noted the Mr. Brown's letter states that he compiled photographs, dates, and location of twenty years; Mr. Walker noted such are not issues Mr. Beckwith is causing rather, they are ongoing issues over twenty years and there is no indication that the water on Mr. Brown's property came from Mr. Beckwith's property. He read a letter from Dave Ford to Connie Brown in the file, noting a discrepancy in the date of the letter (12/27/2012 and 12/27/2015). He stated the letter shows proof that there were drainage and water issues on the Brown property in 2012/2015.

Cate McMahon asked if the work referenced in Mr. Ford's letter was completed.

Randy Walker stated he doesn't know. He distributed and reviewed permits issued to Mr. Beckwith.

Sabet Stroman asked which permit approves the ADU.

Randy Walker stated he didn't submit the ADU permit because he didn't feel such was relevant since the permit was withdrawn.

Sabet Stroman stated she believes it is relevant since the request for a duplex originated from the ADU permit.

Randy Walker stated he applied for an ADU, withdrew said permit, and reapplied for a duplex. He submitted a letter from the Goose Corner Landscape Co., dated 9/24/23; noting said company provides lawn care maintenance for Mr. Beckwith and Mr. Hart's properties. He read the letter as follows; *"I have taken care of the lawn maintenance for Caroline Chartier (Beckwith property) and her neighbor Dennis Hart for the 2022 and 2023 season. I have been asked to comment on the condition of the back lawn area with regards to my ability to mow due to possible water issues. I have not had an issue mowing Dennis Hart's backyard. This commentary does not take into consideration the excessive rainfall we have had this year."* He showed two pictures (drone shots) to the Board.

Sabet Stroman questioned the date of the pictures.

Randy Walker stated he does not know the dates however; the pictures are not new. He stated he would provide dates to the Board. He reviewed the photographs of the church property; noting a retaining wall and roof that dumps water onto Mr. Beckwith's property. He noted the next house (uphill from and abutting the Beckwith property) has three roofs that dump water onto Mr. Beckwith's property. He stated that those roofs in addition to Mr. Beckwith's roofs push water downhill; noting Mr. Beckwith has the same problem as those who are downhill. He stated the first picture was taken July 2020. He reviewed a plan that shows the boundary lines of the properties on Libby Street; noting wetlands have been delineated on the church property which runs from North Main Street to Mill Street.

Cate McMahon asked Mr. Walker if it is his position that 175-89 square footage requirement doesn't apply because the property is nonconforming and was grandfathered.

Randy Walker replied yes.

Sarah Silk asked Mr. Walker if he is suggesting that any pre-existing nonconforming lot would never need a variance because it would be grandfathered.

Randy Walker stated the only question is the lot size and yes, the lot size is grandfathered. He stated they still have to comply with setback requirements, life safety codes, etc.

Sabet Stroman stated Mr. Walker's earlier testimony when speaking to the change from an ADU to a duplex was "all he has to do is comply with the codes." She asked what codes were complied with when it became a duplex.

Randy Walker replied building codes.

Sabet Stroman asked what duplex codes it complied with.

Tavis Austin replied International Residential Code.

Sabet Stroman stated she doesn't think Mr. Austin should answer the question since he is included in the appeal.

Suzanne Ryan questioned the zoning codes that were complied with.

Randy Walker stated the appeal only addresses one issue, lot size, 175-89 A.(2).

Sabet Stroman stated she feels Mr. Brown was at a disadvantage because clearly in his application and presentation it was about drainage and feels that no one advised him of which code applies to his issues. She stated she believes it was his intent if he had had the advice from the Town Planner and feels there was a conflict of interest.

Randy Walker reviewed the appeal process.

Suzanne Ryan stated the Board will have to determine which sections of the ordinance the application applies to.

Sarah Silk asked Mr. Walker if he has the citation of the case law that states a person can't increase the amount of runoff to a neighbor's property.

Randy Walker replied no. He submitted photographs that show other properties within 150' of Mr. Beckwith's property that have built duplexes.

Sabet Stroman asked Mr. Walker if he had the dates of when the duplexes were built.

Randy Walker stated he doesn't know when the duplexes were built; noting he provided photographs of Full Belli Deli, Lone Wolfe, Mill Street, and the Kent property (across the street from Mr. Beckwith). He noted all the duplexes have been built and are grandfathered and Mr. Beckwith's request is not unusual. With regard to the issue of drainage of Mr. Brown's property, he stated the lot is the lowest lot in the area and the church and uphill properties drain downhill. He stated Mr. Beckwith has done what was required of him and noted that no one appealed the permits that were issued. He requested the Board deny the appeal as it has been submitted.

Suzanne Ryan questioned the square footage of the proposed duplex.

Randy Walker replied in the 700's.

Robert Beckwith stated he did not receive a letter regarding the September 11 meeting and site visit and wasn't aware of such until the Board arrived at the property. He stated prior to that he rented a machine to complete finish grading and noted the photograph of the finished patio doesn't show rip rap because he had just finished the grading and hadn't had time to put it up. He stated the rip rap would have maintained the banking however, it had poured during the time the rip rap wasn't installed. He stated the rip rap is now in place and there is no silt coming from his property.

Sabet Stroman asked if the intent was to plant grass.

Robert Beckwith stated he made the parking lot wider and shorter, placed 1.5" gravel and pitched it towards the church so that it funnels the runoff between the church and his property, down his driveway and down Libby Street into two catch basins. He stated the runoff from the back of the addition goes onto a bluestone patio and lawn; noting the patio is pitched away from the house and towards the church property. He stated he is currently parking on the lawn area.

Sarah Silk asked if silt curtains were used during construction.

Robert Beckwith stated he did not.

Suzanne Ryan requested an update from Mr. Austin regarding the notification issue and the Stay Order.

Tavis Austin stated the list in the file that lists the abutters includes Mr. Beckwith however, the Town does not have a copy of the certified receipt showing when it was mailed. He stated a copy of the notice was provided to Mr. Beckwith when he came into the office. He stated counsel was contacted regarding the stay order and asked what exactly has to stop; noting counsel was unavailable for two days and a response was provided about one week later. He stated counsel stated that all work related to the duplex permit was to be stopped and noted such was stated in a letter that Mr. Beckwith received yesterday or today.

Robert Beckwith stated he has not received the letter yet.

Suzanne Ryan asked Mr. Beckwith if he would be agreeable to a site visit.

Robert Beckwith replied yes and encouraged such.

Sarah Silk asked the date that Mr. Beckwith was provided a copy of the abutter notice.

Tavis Austin replied the day after the ZBA meeting; noting Mr. Beckwith had come to the office to request a Certificate of Occupancy inspection.

Sarah Silk confirmed the date as September 11. She stated according to RSA 676:6, she thought the Stay Order was supposed to do in place when an appeal is filed; noting the appeal was filed in August.

Tavis Austin stated the appeal came in on August 20; noting minor changes were made to such and submitted on August 23.

Sarah Silk confirmed that despite what is stated in the RSA the Stay Order went out a couple of days ago. She asked for the date of "a couple of days ago."

Tavis Austin stated the official letter was sent out.

Robert Beckwith stated a couple of days ago he went to the office and Mr. Austin told him that he spoke with Town attorney and stated that he is not allowed to do anything inside the apartment upstairs. He stated probably Thursday.

Sabet Stroman stated the apartment was listed on Zillow on August 23 and pulled on August 26; noting that Mr. Beckwith must have known an appeal was in the works.

Robert Beckwith stated he was notified of the appeal on September 11 when the ZBA appeared on his property.

Randy Walker asked Ms. Stroman how she knew about Zillow.

Sabet Stroman stated she is always on Zillow; noting she likes to look at property in Wolfeboro.

Randy Walker confirmed that Ms. Stroman was not on Zillow because of this case.

Bill Swaffield, property owner of 19 Libby Street, questioned the notification process for abutters; noting he just received a notification today for another hearing on October 2 for the same situation however, he did not receive notification for this meeting. He questioned the definition of an abutter and the validity of this meeting. He oriented the Board to the location of his property on Libby Street.

Suzanne Ryan stated it is the responsibility of the applicant to provide the abutters list.

Tavis Austin stated the statute requires an applicant to identify who the abutters are. He stated the Town has a history of looking to ensure the abutters are notified.

Suzanne Ryan reviewed what constitutes an abutter.

Audrey Cline, speaking for Roger Kent, stated that when she filed her appeal for Mr. Kent it was her thought that she should file a notice to everyone who would be impacted; noting that is why a notice was sent to Mr. Swaffield. Referencing minimum lot size requirements, she stated changing one use to another use doesn't necessarily mean that an owner is allowed the density that would have been allowed originally for the lot. She stated a person can't change a single family duplex to a multi-family without adhering to the regulations for multi-family. She stated the lot is grandfathered for the use that it has. She referenced 175-89 Dimensions and Controls and 175-91 Permitted Uses. She stated the application is a change of use from single family to duplex therefore, has to meet the density requirements. She questioned the number of duplex dwellings that the Town has granted and cautioned the Board regarding the information be provided to the Board.

Derrick Brown stated he attended the Planning Board meetings in spring and summer and addressed the Board regarding the drainage issues. He provided history regarding the Grange building that relates to Mr. Ford's letter. He stated building practice and the code states that a property owner takes care of the water on their property and does not make it someone else's problem. He spoke to the rainfall event last week and the impact to the properties on Libby Street. He reviewed Mr. Beckwith, Mr. Thurston, and Mr. Murray's

testimony from the spring and summer Planning Board meetings, the history of the Planning Board application, and timeline of such. He re-read page 5 of his appeal.

Luke Freudenberg recalled Mr. Brown's testimony at the prior ZBA meeting as "I really don't care what's going on inside the building. I care about the erosion issues that it's causing. He confirmed that if Mr. Beckwith hadn't converted the upstairs that Mr. Brown would still have erosion issues.

Derrick Brown replied correct. He stated if the Planning Board meeting minutes are reviewed the minutes would reflect testimony by Mr. Beckwith that the topsoil would remain, however, it has been removed. He stated there is an opportunity to correct the problem.

Luke Freudenberg stated to Mr. Brown that it is clear that his property has had water issues for a very long time.

Derrick Brown replied no, his lot used to be bone dry year round.

Luke Freudenberg stated hypothetically, if both Mr. Beckwith and the Town of Wolfboro committed to a drainage solution for Libby Street, would he (Mr. Brown) entertain such.

Derrick Brown stated he would certainly listen.

Cate McMahon referenced the minutes of the Planning Board, specifically the vote taken to approve the ADU; noting a 3-3-1 vote therefore, the ADU was not approved.

Tavis Austin confirmed such.

Sabet Stroman asked Mr. Brown if anyone reviewed the appeal when the appeal was filed or assisted him.

Derrick Brown replied yes, Terry (Tavares). He stated he reviewed the Building Department's file and noted there are no updated drawings and reviewed the timeline of the permit approval.

Dennis Hart noted objection to Mr. Beckwith's testimony regarding runoff and noted the rip rap was not constructed with fabric and doesn't believe the rip rap will address the runoff issues. He reviewed the design of the retaining wall he constructed on his property.

Audrey Cline, speaking for Roger Kent, stated the appeal before the ZBA is for the building permit; noting such includes everything related to the building permit.

Randy Walker stated the ADU was not approved nor denied; noting the application was withdrawn.

Sabet Stroman asked if the application was withdrawn after it was suggested to become a duplex.

Randy Walker stated he doesn't know when it was done; noting that anything that happened with the Planning Board is irrelevant to this Board and not part of the application. He addressed Ms. Cline's testimony regarding permitted use and noted that such is not raised in the appeal and not appropriate for this Board to consider. He stated a duplex is a permitted use; noting a variance isn't needed for a single family or a duplex. He stated 175-91 draws a distinction between structures and uses and read said regulation; noting Ms. Cline was quoting a conversion or permitted use and not a building but, a use. He stated a structure of a duplex is a permitted use. With regard to other people's lot changes, he stated there have been changes to both Mr. Brown (removal of a Willow tree) and Mr. Hart's properties (retaining wall) in addition to the church and Mr. Beckwith's properties. Regarding the comment that there is no topsoil on the Beckwith lot, he stated Mr. Beckwith hasn't completed the project and intends to put back the topsoil and grass the area.

Sarah Silk requested Mr. Walker identify the photographs that he previously submitted.

Randy Walker and Robert Beckwith identified such.

Suzanne Ryan stated 9 documents and two case laws have been provided to the Board this evening. She recommended continuation of the meeting.

Sarah Silk asked to meet with Town counsel.

Luke Freudenberg requested further research regarding the work done by the Town relative to Dave Ford's letter.

Derrick Brown stated there is no information available relative to Mr. Freudenberg's comment.

It was moved by Suzanne Ryan to continue the Derrick L. Brown Appeal of Administrative Decision application and public hearing, Case #07-AAD-23, to October 2, 2023, 7:00 PM at the Great Hall, Wolfboro Town Hall. Cate McMahon seconded the motion. Roll call vote: Luke Freudenberg – yes, Sabet Stroman – yes, Sarah Silk – yes, Suzanne Ryan – yes, Cate McMahon – yes. The motion passed (5-0-0).

III. Unfinished Business

None.

IV. New Business

None.

V. Approval of Minutes

September 11, 2023

Correction: Include start time of the September 25, 2023 meeting – 7:00 pm.

It was moved by Suzanne Ryan to approve the September 11, 2023 minutes as amended. Luke Freudenberg seconded the motion. Roll call vote: Luke Freudenberg – yes, Sabet Stroman – yes, Sarah Silk – yes, Suzanne Ryan – yes, Cate McMahon – yes. The motion passed (5-0-0).

VI. Communications and Miscellaneous

None.

VII. Adjournment

It was moved by Luke Freudenberg to adjourn the September 25, 2023 Zoning Board of Adjustment meeting. Cate McMahon seconded the motion. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting was adjourned at 9:29 pm.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson

***These minutes were based off the video recording of the September 25, 2023 Zoning Board of Adjustment meeting.*