



**TOWN OF WINCHESTER
ZONING BOARD OF APPEALS
Town of Winchester Town Hall, 338 Main Street
P. Francis Hicks Room – 2nd Floor
May 24, 2016 – 7:00PM
Regular Meeting Minutes**

1. CALL TO ORDER:

Chairman David Villa called the meeting to order at 7:00PM.

2. ROLL CALL:

Mr. Villa reported that a quorum of the board was present: Mr. Michael DeClement, Mr. John Massicotte, Mr. Neil Hunt, Mr. John Pollack and Alternates Mr. Richard Nalette and Mr. Hal Wilkes.

Additionally, Mr. Villa noted that Alternate Mr. Philip Allen was absent excused.

3. EXPLANATION OF PROCEDURE:

Mr. Villa gave a brief overview of the procedure, explaining that approval of a variance requires four affirmative votes by the Board. He noted that the applicant will likely receive a disposition on the application this evening. Mr. Villa explained that the proceedings shall include the applicant's opportunity to provide information regarding the application, a chance for the Board to question the applicant, a chance for members of the public to question the applicant, as well as closing comments by the applicant. Mr. Villa also explained that either the Board or the applicant may request that the hearing remain open for four weeks until the next meeting should there be additional or supplemental documents to the application.

4. 7:00 PM PUBLIC HEARINGS – VARIANCE APPLICATIONS & DECISIONS

A. ZBA #16-5168 Request for Variance from Section 4.2 Frontyard Setback, Section 4a.2 Sideyard Setback, 4a.2 Rearyard Setbacks and 4a.2 Lot Coverage for the Property Located at 337 East Wakefield Boulevard for Russell Buchner.

Zoning Enforcement Officer Marc Melanson confirmed that the receipts indicating notice as having been sent to the neighbors has been returned. The applicant, Russell Buchner, appeared before the Board, noting the topography of the land and explained that the flat, gravel driveway is 41.7 feet from the street. He noted that he and his wife are seeking to construct a deck out over the driveway, which would function to extend the upstairs deck, as well as install two walkways on both sides of the property. Mr. Buchner reported that pictures of other homes in the neighborhood with similar decks have been provided. Mr. Buchner explained that there is a stone patio out back that is very slanted due to the topography of the parcel.

John DiCara, a Land Surveyor with DiCara Land Surveying Service at 294 Main Street within the Town of Winchester, noted that the proposed deck is entirely over the stone parking area which is already considered in the lot coverage calculation. He noted that the deck on the south side would cover an existing brick patio. Mr. DiCara reported that the only new additional coverage would be the walkways. Mr. Pollack questioned the existing and proposed calculations of coverage. Mr. DiCara noted that the lot itself is 7500 square feet but that the existing lot coverage is 26% and that the proposal would bring lot coverage to 31.4%. Mr. DiCara noted that the figure represented for proposed lot coverage includes the

brick patio which is not counted as coverage in the current coverage. He noted that the proposed deck would be no more impervious than what is already there. Mr. DiCara reported that there will be a net addition of 352 square feet for a new deck.

In response to a question regarding what hardship exists to justify a variance, Mr. Buchner explained that it would be the slope of the land. In response to a question regarding lot coverage, Mr. DiCara explained that the brick patio is not included in the calculation of existing lot coverage as the Zoning Regulations indicate that only the house and driveway are factored. He again reminded the Board that the amount of the increase in pervious surface is not as significant as the percentages would reflect because of this.

Mr. Villa invited public comment at 7:17PM. After calling for public comment two more additional times and hearing none, he invited the applicant to address the Board one last time. Concluding remarks made by Mr. Buchner noted that the proposed changes would result in his property becoming more useful and more equivalent to the properties of his neighbors. Mr. Buchner also opined that the granting of a variance would result in a fair use of his property.

Mr. Villa closed the public hearing at 7:18PM.

MOTION: Mr. Pollack, Mr. Wilkes second, to grant Variance Application #16-5168, from Section 4a.2 for a frontyard setback variance of 24.3 feet, a North sideyard setback variance of 18.1 feet, a South sideyard setback variance of 25 feet, a rearyard setback variance of 22 feet and from Section 4a2.2 for a lot coverage variance of 14.4%, for the purpose of building an 8' x 26' 8" deck, with stairs, on the North side of the house, a 20' x 10' deck on the front with a 10' x 8' upper deck on the front of the house and a 6' 2" x 18' 2" deck and a 12' x 28' deck, with stairs, on the South side of the house, as per the drawings submitted, for the property located at 337 East Wakefield Boulevard; Motion failed with Mr. Villa, Mr. Hunt, and Mr. Massicotte voting aye while Mr. Pollack and Mr. DeClement were opposed.

The reason provided for denial was indicated as lack of hardship.

B. ZBA #16-5169 Request for a DMV Motor Vehicle License Approval for the Property Located at 928 Main Street for Casey Reily.

Ms. Casey Reily along with Mr. Mark Colella appeared before the Board regarding this application. Mr. Colella explained that they are seeking approval for a Department of Motor Vehicle license. Mr. Villa questioned how long the applicants have been operating from the subject location. Mr. Colella explained that they have been there since January and that they are trying to clean up the location.

Mr. DeClement questioned whether the Board has, with similar applications, ever sought to ascertain the number of cars allowed on the site. Mr. Melanson explained that the Board is indeed allowed to condition its approval, such as restricting the number of vehicles and/or a requiring applicants to show on a site plan the location of vehicles.

MOTION: Mr. Villa, Mr. Neil second, to approve Application #16-5169 Request for a DMV Motor Vehicle License and have the chairman sign the site plan for the property located at 928 Main Street; unanimously approved.

C. ZBA #16-5170 Request for Variance from Section 4a.2 Frontyard Setback, Section 4a.2 Sideyard Setback, and 4a.2 Lot Coverage for the Property Located at 149 East Lake Street for Kayak LLC.

Mr. David Quisenberry of Acari Architects, LLC appeared before the Board on behalf of applicants Alison and Neil Keating. Mr. Melanson confirmed that the receipts indicating notice as having been sent to the neighbors has been returned. Mr. Quisenberry reported that he and his clients have explored various ways to make their lake house more useable. He noted that one goal was to get a little more space for the home. He explained that currently entry to the house is through a deck and that his clients are

seeking to create something more welcoming in terms of people entering the house being able to determine the location of the front door. Mr. Quisenberry explained that his clients were also seeking to generally improve the appearance of the house, by replacing the vinyl siding through the use of natural materials such as cedar siding. Mr. Quisenberry reported that in the design process, he and his clients had reviewed several different approaches and had looked at going up, rather than out, recognizing that lot coverage is a sensitive issue in Winchester. Mr. Quisenberry explained that at some point, the house was jacked up and concrete blocks were used to put in a foundation underneath the house. He noted that due to the very steep staircase at this spot, a code compliant one would be replaced.

Mr. Quisenberry explained that his clients deemed going out a better option and had consulted with their neighbors. He then presented copies of emails from an abutting neighbor to the south and one from an abutting neighbor to the north in support of the proposed project. Mr. Quisenberry explained that the abutting neighbor to the north actually wraps around the subject property to the east, too. He explained that the subject property actually has no frontage to East Lake Street and is accessed through a right of way. Mr. Villa questioned whether the applicant's right of way is a deeded one or whether it is leased. Mr. Quisenberry was unsure. Mr. Quisenberry noted that no frontyard exists in terms of one in public's way relative to a garage impacting the public's way. Mr. Villa indicated that he had pulled the Assessor's field card and that the property has two side yards and a front yard.

Mr. Villa noted that this is a pre-existing, non-conforming lot that predates the adoption of the first Zoning Regulations of 1955. Mr. Villa explained that the Board has seen the drawings, the 2014 A2 survey, and the application. He noted that this Board's focus is not with the architectural detail, but instead to determine what, if any, hardship exists. Mr. Quisenberry explained that the hardship is that this pre-existing, non-conforming structure and lot can have no improvement in any way, shape or form that would comply with the Zoning Regulations. He noted that this fact in and of itself is the hardship in the sense that Zoning is imposed on this property after the property exists. Mr. Villa noted that the subject parcel is a 12,262 square foot property which is relatively flat, noting current coverage is at 27.7%. Mr. Villa reminded Mr. Quisenberry that the Highland Lake District has a maximum allowable total ground coverage of 15%, that the parcel is currently at 27.7% and that what is being proposed would bring the coverage up to 34.3%. Mr. Quisenberry explained that given this property is an existing, non-conforming parcel, no alternative exists to comply with the regulations.

He explained that as designs were considered with his clients, they were sensitive to the neighborhood and to the intent of the Regulations to keep things in scale. Mr. Quisenberry noted that a denial by this Board would likely cause the applicants to modify to a more vertical plan, something less appealing to the abutting neighbors than the one put forth currently. He explained that this Board has the discretion to review whether the application is appropriate and in harmony with the neighborhood.

Mr. Villa reported that Winchester is in the process of revising and reviewing their Zoning Regulations, noting that the new ones will likely change the way that height is measured.

Mr. Villa canvassed the Board as to whether they might deem it necessary to have photographs of the property to make a decision at this meeting. Mr. Pollack questioned what the size of the dwelling is now as well as what the proposed size of the dwelling will be. Mr. Quisenberry noted that the size of the dwelling presently is 2000 square feet and the one proposed is 4000 square feet. Mr. Pollack questioned how heavy equipment would be moved to the location of the dwelling. Mr. Quisenberry noted that the question of the right of way had already been raised and that he believes his clients likely have the legal right to do so.

Ms. Leah Muller of 139 East Lake Street noted her displeasure that she received notice of this hearing only yesterday, and has great concern regarding her property value if the subject property is raised vertically.

Mr. Bill Obrien of 135 East Lake Street opined that the proposal would not adversely effect the harmony of the neighborhood.

The public comment portion of the hearing on this application was closed at 8:14PM.

Mr. Quisenberry reported that relative to the notifications, his office had repeatedly requested from the office of the Zoning Enforcement Officer for the notifications that are supposed to be mailed. He noted that once the letter was received, it was sent out the very same day. Mr. Quisenberry also noted that in his work involving lakes throughout the area and down by the shore, and with respect to the concerns expressed by the neighbor, Ms. Muller, vertical solutions are not desirable and may negatively impact neighbors. He noted that his clients considered this as they were figuring out a design solution for the subject property.

The public hearing was closed at 8:17PM.

MOTION: Mr. Villa, Mr. Hunt second, **to grant a Variance in Application #16-5170 from Section 4a.2 frontyard setback variance of 42.1 feet, a north side yard setback variance of 23.2 feet and a south side yard variance of 29.2 feet and a lot coverage variance of 19.3% for the purpose of building a 34' x 28' one story addition with a walk-out basement on the north side of the house and a 24' x 26' one story garage on the south side of the house, as per the drawings submitted for the property located at 149 East Lake Street; Motion failed with Mr. Villa, Mr. DeClement, Mr. Hunt and Mr. Pollack being opposed while Mr. Massicotte abstained.**

After the preceding motion was made and prior to the vote occurring, discussion ensued. Mr. DeClement opined that Mr. Quisenberry is on the right track with his comments regarding having an open mind and being open to options. Mr. DeClement opined that while it is likely true that no one wants their view obstructed by looking down at another person's roof, no one wants to stare at a two-foot alley neither. He noted that he would like to see the home as one story and turned. Mr. Pollack concurred with Mr. DeClement and expressed his concern with the driveway, noting that information related to it is still missing. Mr. Villa reported that through his recent work with revising the regulations, it was revealed that of the 321 properties that abut Highland Lake, only 19 of them conform to the Zoning Regulations. He noted that the size of the building being presented would prevent his supporting this variance.

5. APPROVAL OF MINUTES: April 26, 2016

The April 26, 2016 Minutes should be amended as follows:

On the first page, the fourth paragraph referencing the application number that reads, "ZBA #15-5166" should instead read, "ZBA #16-5166".

MOTION: Mr. Hunt, Mr. Pollack second, **to approve the April 26, 2016 Minutes as amended; Motion passed with Mr. Villa, Mr. DeClement, Mr. Massicotte, Mr. Hunt, Mr. Pollack and Mr. Wilkes voting aye while Mr. Nalette abstained.**

6. OLD BUSINESS:

None.

7. NEW BUSINESS:

Mr. Villa noted that the Board has been provided with a draft of the revised Zoning Regulations. He indicated that any comments or suggestions that members may have can be passed along to the Planning and Zoning Commission.

8. BILLS PRESENTED:

None.

9. CORRESPONDENCE:

None.

10. DISCUSSION WITH ZONING ENFORCEMENT OFFICER, IF ANY:

None.

11. ADJOURNMENT:

MOTION: Mr. Hunt, Mr. Pollack second, **to adjourn at 8:29PM; unanimously approved.**

Respectfully submitted,

**Pamela A. Colombie
Recording Clerk**