

Town of Winchester  
Zoning Board of Adjustment  
Minutes  
11-5-20

Meeting opened: 7:00pm.

Members present: Mike Doherty (alt), Lou Fox (Chair), Becky Roy and Bill McGrath. Jason Cardinale was absent. Margaret Sharra is the Land Use Administrator.

Public: Sandi Card & ?, Erika Paine, Barbara Patnode, Suzanne & William O'Donnell, Margaret Leake, Liz & Richard MacDonald, Reggie McGivern, and Eleni Chiotis.

First order of business: The board reviews the minutes of 9-10-20. **L. Fox moves to approve, M. Doherty seconds, the vote is 3 yes.**

Second order of business: The board has reviewed a variance application submitted by Margaret Leake for setbacks to erect a generator and propane tank. The property is located at 470 Forest Lake Road map 34, lot 50. The LUA confirms all notices were done and returned. Bill McGrath recuses himself since his family owns abutting land. **L. Fox moves to accept the application as complete and move into a hearing, M. Doherty seconds. The vote is 3 yes.** L. Fox informs the applicant that if they wish they can reschedule the hearing since there are only 3 of the 5 members present. They can opt to continue and are told any vote the board takes on the application must be unanimous, and if they were to appeal the decision it cannot be for the reason of only 3 members. Mrs. Leake agrees to continue with 3 members. Mrs. Leake presents her request. As stated in her written replies to the criteria the other locations on the property are more difficult because of the terrain, cost and location of the electric panel. The LUA reads a letter from abutter York, who is in support of the request. M. Doherty asks how far away from the neighbor's house will the generator be? He is concerned about fumes. He is aware from his generator manual how dangerous this can be. She replies the home is about 25 ft away and there is only one window on that side which is even further distance. The LUA informs the board that the Fire Chief inspects all generator hookups. A member asks about the noise. The closest neighbor is the Yorks and they are not concerned. This is not gasoline fired so it is quieter. There are no questions from the public. **L. Fox moves to close the hearing, B. Roy seconds. The vote is 3 yes. 7:15pm. L. Fox moves to approve, B. Roy seconds. The board re-reviews the five criteria, which is read aloud. The board feels this variance request meets the 5 criteria. The vote is 5 yes.**

Third order of business: The board reviews an application for a variance regarding setbacks. B. McGrath recuses himself as he is an abutter. The variance is to expand a deck/porch and replace a second story porch into the setback. The property is owned by William and Suzanne O'Donnell for property at 44 Headlands Road map 33, Lot 12-1. The LUA confirms all notices were done and returned. **L. Fox moves to accept the application as complete and move into a public hearing. M. Doherty seconds. The vote is 3 yes.** L. Fox informs the applicant of the same options regarding a 3 member board. The O'Donnell's decide to proceed with the hearing. As submitted in their written 5 criteria, they present their application. Mr. O'Donnell reads the responses to the 5 criteria. The applicant includes photos and dimensions from property lines. They ask to be permitted to expand their current 7x7 deck/porch to a 7x12 deck/porch. The present deck/porch of 7x7 was there when they bought the house in 2016 and is legal non-conforming. They ask to expand the length not the width. There are many improvements to the property. It was in disrepair. This improved their value and the value of surrounding properties. Their proposal creates no traffic concerns or any negative impact. There was a balcony on the front of the house that was about 3x10, it was rotted so they took it down. They propose to put up a 10x10 new

to put up a 10x10 new one, which was originally 3x10, on the side of the house instead of the front. These improvements help the neighborhood. They have taken a neglected building and improved it. The property will increase in value and improve others. The new deck/porch will have footings and be constructed properly with footings, not stone and blocks. The balcony actually will be set back further from the original. An abutter, Alban Lobdell, sent an email in support of this request. The LUA has some old photos that Mr. McGrath had taken in 2016 she shared with the board to get an idea of the look of the house when purchased. She feels by not being allowed to improve the property will make the home less valuable and with improvement there is no negative impact to the public.

Bill McGrath, abutter, asks what work the contractor has done. Reggie McGivern, contractor, replies he has replaced windows, did roof repairs and added a sliding door. He was working on the deck/porch. Mr. McGrath asks if there was a permit. Yes for the deck/porch. The LUA explains that she and the building inspector went there based on a complaint and the BI determined a permit was only needed for the slider and deck. The deck is not part of the existing permit because work was stopped until a decision is made on the size.

Mr. McGrath is opposed to the application. Mr. McGrath informs the board of a lawsuit he did in 2006 against the previous owner. Back then part of the building was built on his property. This still bothers him today. He did a boundary adjustment. He feels he was forced to give up land. He claims the Selectmen issued previous permits in error or the owners did not get one. This should not have happened. Mr. McGrath gives the board and applicant a written summary on the history of this property. There have been years of errors relating to work on this property.

He does not believe there is an unnecessary hardship.

The LUA had done some research at Mr. McGrath's request in town records about this property. She states whether there is or not a record of a permit doesn't mean there wasn't one. Records prior to 2000 are limited.

L. Fox will not penalize the owners because of the previous owner's actions.

At some points during the conversation the deck size was described as 8x12. The proposal is a porch at 7x12. There are no other questions.

**L. Fox moves to close the hearing, M. Doherty seconds. The vote is 3 yes. 7:55pm.**

Bill McGrath submits photos to the board. It was determined they needed to reopen the hearing to discuss the photos. No one had left.

**L. Fox moves to reopen the hearing, B. Roy seconds. The vote is 3 yes. 8:00pm.**

The board reviews the photos of the property. The board determines where the improvements will be.

**L. Fox moves to close the hearing, M. Doherty seconds. The vote is 3 yes.**

L. Fox has no problems with the application. It is unfortunate that Mr. McGrath had these problems in the past. The board deliberates. It is noted that the existing deck is supported by a large boulder. If the new deck expanded to 7ft 6inches it then would sit on the new footings put in. It would then meet building codes.

**L. Fox moves to approve the variance for a 7ft 6in x12 porch and the proposed balcony because it meets the criteria. He did hear the abutter concerns but says the improvements outweigh the sins of the past. M. Doherty seconds. The vote is 3 yes.**

Fourth order of business: The board reviews an application for a variance submitted by Berkshire Construction for property on Keene Road map 31, lot 5-1. The request is to do earth excavation on the property in the residential zone. B. McGrath is back on the board.

**B. McGrath moves to accept the application as complete and move into a public hearing, M. Doherty seconds. The vote is 4 yes.**

Erika Paine explains the history of the property from when her father purchased it 15 years ago. The property has limited uses. It can be a single family lot or subdivided for 2 residential lots. Her father

needs to recoup his expenses and find a better use. They are asking to use the property to for excavation, to be used only by her company SUR. The pit would service only local projects. Looking to remove 5000 yards per year. They do not expect a lot of truck traffic. When they are done they will reclaim. During the excavation they will clean up the demo material on the property. Eleni Chiotis, abutter at A1 Pizza, asks the Chairman what this is all about. What are they doing? The Chair explains what excavation is and why they need a Variance. L. Fox confirms 5000 yards is a small amount they are asking for. B. McGrath explains how this use is not permitted there. This application is different from the previous two applications tonight. Mr. MacDonald, abutter, asks how many trucks a day? 5 max, but not trucks every day.

They will be back 600ft for an excavation buffer. Liz MacDonald, abutter, is concerned about the impact on her property. They own a multifamily building that abuts this. They are concerned about noise and view. Will the tree line be cut? Erika will have to measure.

B. McGrath asks how many years will this pit operate? Don't know.

B. McGrath to B. Roy, due to your experience with excavation what is your take on this? She suggests a wider entrance, leave the tree buffer, maybe plan the final grade to the field. Sandi Card and another member of the New Beginnings Co-op, abutters, says their septic pump station is on this property and they are not sure where the pipes go. The gentleman says his mobile home actually is over the property line. They are concerned about the homes and trees. The MacDonald's have to leave and ask about this process. It is explained that if the applicant is granted a variance they then must go to the PB for approval.

The LUA asks to explain to the board about other possible uses. Erika Paine says it can be used for single family home sites. She suggests talking with the water/sewer department for hookups.

Erika and the Co-op discuss the pump station and lines. There are many unknowns.

Erika reads the criteria.

- 1) Excavation would only occur during work hours. Not an active pit. There will be limited use and it will be 600ft away from rt.10.
- 2) The change is temporary. This will be an agricultural use. B. Roy clarifies this proposal does not change the zoning of the property.
- 3) This is the best use with least impact to the town.
- 4) No diminished values because the property will be cleaned up.
- 5) There are extreme limited uses of this property.

**B. McGrath moves to close the hearing, M. Doherty seconds. The vote is 4 yes.**

B. McGrath reviews the criteria:

1. This does not violate.....
2. It does not alter the neighborhood.
3. Justice is served. No issue, it does not hurt the public.
4. This will not devalue surrounding properties.
5. Burden, no problem. There is a fair relationship. This is a reasonable use.

**B. McGrath moves to approve because it meets the conditions. L. Fox seconds. The vote is 4 yes.**

Fifth order of business: The board discusses the vacancy on the board. **L. Fox moves to ask the BOS to appoint Mike Doherty as a full member, B. McGrath seconds. The vote is 4 yes.** They will also think about alternates since there are none.

**B. McGrath moves to adjourn, L. Fox seconds. The vote is 4 yes. 9:00pm.**

Minutes respectfully submitted by:  
Margaret Sharra, LUA



Minutes approved by the board on: 1/7/21

Minutes signed by:

Lou Fox, Chairman

