

RECEIVED AND RECORDED

April 14, 20 14 M

Wolfeboro Zoning Board of Adjustment  
Regular Meeting  
April 7, 2014  
Minutes

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_  
Richard W. Waterhouse  
WOLFEBORO, N.H. TOWN CLERK

**Members Present:** Alan Harding, Chairman, Suzanne Ryan, Vice-Chairman, Mike Hodder, Member, Fred Tedeschi, Alternate and David Senecal, Alternate

**Members Absent:** Hank Why, Alternate (excused)

**Staff Present:** Rob Houseman, Director of Planning & Zoning and Robin Kingston, Administrative Assistant

Alan Harding called this meeting to order at 7:00 PM in the Wolfeboro Town Hall Meeting Room. A quorum was present.

Alan Harding informed the public the Board of Selectmen will be meeting to review appointments to the Board. Mike Hodder has been elected to the Planning Board and as only one member of the Planning Board is allowed on the ZBA, Kathy Barnard, Planning Board Chairman resigned from the ZBA.

Fred Tedeschi and David Senecal were both seated for the hearings.

The Rules and the Procedures for the Public Hearing were reviewed.

**Appointments**

**TM# 217-25**

**Case # 07-V-14**

**Applicant: Calvary Wolfeboro**

**Variance**

Public Hearing for a Variance from Article 175, Section 92 of the Wolfeboro Planning and Zoning Ordinance to allow for a change of use to a Christian Bible Church with no existing modifications to the exterior of the building. This property is located at 43 Mill Street.

Mike Hodder read the Abutter and Public Notification for the record. A site visit was held at approximately 6:00 pm prior to the hearing.

The applicant is seeking a variance to allow for the conversion of the Hampshire Pewter Building on Mill Street to a church.

Justin Marbury, Pastor, addressed the Board and gave background on the church.

Jerry Levesque addressed the Board and reviewed the application and plans as submitted. Churches are not allowed in the zoning district. Many other uses are permitted which are gathering places:

E. Commercial establishments (stores and shops for the conduct of retail business or personal service).

(1) Offices.

(2) Restaurants.

(3) Banks.

(4) Indoor theater.

(5) Similar community services.<sup>1</sup>

F. Signs, no more than two per business, including add-on signs.

G. Nursing or convalescent homes, and the like.<sup>1</sup>

H. Multifamily dwellings.<sup>1</sup>

I. One accessory dwelling unit per principal commercial building. (No density requirements shall apply.)<sup>1</sup>

J. Conversion of structure to a bed-and-breakfast.<sup>1</sup>

K. Conversion of a permitted use to another permitted use and no changes to the exterior of the building or parking is required.<sup>2</sup>

**NOTES:**

<sup>1</sup> Requires Planning Board approval under the provisions of RSA 676:4.

<sup>2</sup> The use shall require a change of use permit and compliance with all applicable building and life safety codes.

PPS 10 Special exception uses.

[Amended 3-9-2010 ATM by Am. 3]

Uses which may be permitted by special exception shall be as follows:

A. Dispensing of marine fuels.<sup>1</sup>

B. Nonprofit educational institutions.<sup>1</sup>

C. Public parks and playgrounds.<sup>1</sup>

D. Hospitals for the treatment of human beings.<sup>1</sup>

E. Libraries, museums and the like.<sup>1</sup>

F. Uses necessary to the above.<sup>1</sup>

G. Affordable nonprofit housing for the elderly and affordable nonprofit workforce housings.<sup>1</sup>

<sup>1</sup> NOTE: Requires Planning Board approval under the provisions of RSA 676:4

Additionally manufacturing took place on the property and was not listed as a permitted use.

No person spoke in favor or against the application. Alan Harding closed the public hearing.

Suzanne Ryan asked about the primary use on Sundays, special functions, the lease length and the number of parishioners and special meetings.

Jerry Levesque responded the lease is for 3 years with a renewal option. They are hoping for 150 parishioners and this could be broken into 2 services. There could be bible studies, counseling and youth group services. They would also like to use the grounds for weddings. The parking lot will be continued to be used by the public during the week.

Mike Hodder asked if this is a not for profit organization.

Jerry Levesque responded that it is but the church is paying the property tax as they lease the building.

Mike Hodder asked if the applicant is a leasee.

Rob Houseman reviewed the lease and verified the applicant has standing. Effective date of Jan 22, 2014, clauses that allows to the lease to terminate under certain circumstances and or seek and an additional 36 months.

Mike Hodder noted permitted uses E – K are more interested in inviting commercial activity. Churches seem to be permitted by Special Exception and the zoning ordinance seems to permit them in certain areas of town.

Alan Harding asked how far First Christian Church is from the subject property and also noted the Congregational Church is very close by.

David Senecal noted the Beckwith Builders building was the grange hall for years so that type of use has been there close by.

Fred Tedeschi commented the purpose would be to bring many people to the area and bring people to the business district on a daily basis.

Mike Hodder noted his main concern was removal from the tax rolls; however the tax is not going to be lost.

Suzanne Ryan asked how the applicant proposes to return it to a commercial use.

Jerry Levesque responded it would be returned from industrial manufacturing.

David Senecal noted the building has been vacant for some time, this will also bring people in on weekends and the parking will not be lost during the week.

Chris Francine gave background about the churches and Planning Board decided to have them on a numbered highway. The Wolfeboro Inn is also allowed to have a limited number of outdoor events per year.

No person spoke in favor or opposition to the application. Alan Harding closed the public hearing.

*It was moved by David Senecal and seconded by Alan Harding to grant the variance for Case 07-V-14 for a variance change of use to a Christian Bible Church.*

Suzanne Ryan stated the building could be put to better use and read Article 14. This use does not bolster or facilitate the purpose of the commercial district. It does not meet public interest and spirit of the ordinance.

Alan Harding noted each of the criteria has been met.

The Board agreed Mike Hodder could ask a question of Rob Houseman.

Mike Hodder asked if the lessee purchased the property from the owner would it be removed from the tax rolls.

Rob Houseman explained there would be a step to go through before that happened. There are properties held by non-profits that pay taxes or pay a payment in lieu of taxes; for instance the Taylor Community. There are uses that could be classified as non-profit permitted within this zone.

Mike Hodder clarified that if the property was purchased it could leave the tax rolls.

Suzanne Ryan stated there are five churches in town that do not pay taxes.

David Senecal responded that is not a strong point. This variance is before the Board and it needs to be acted on. This is a gathering place and at least 40 parking spaces will be preserved. Other uses could bring more environmental problems as to what is proposed. It is on town water and sewer and is a low impact use.

*It was moved by Alan Harding to amended the motion to include; 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining; 2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application; 3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant*

shall pay recording fees; 4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause. Fred Tedeschi seconded the amendment.

Staff reread the motion:

It was moved to grant the Variance for Case # 07-V-14, Calvary Wolfeboro for a change of use to a Christian Bible Church.

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining.
2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application.
3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.
4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.

Alan Harding, David Senecal and Fred Tedeschi voted in favor of the amendment and the motion. Suzanne Ryan and Mike Hodder voted in opposition. The motion and amendment passed.

**TM# 176-20**

**Case # 08-V-14**

**Applicant: Jeanne Harriman**

**Variance**

**Agent: Rob West**

Public Hearing for a Use Variance from Article 176, Section 86 of the Wolfeboro Planning & Zoning Ordinance to allow for the operation of an Auto Body Repair Facility. This property is located at 55 Pine Hill Road.

Mike Hodder read the abutter and public notification of the record. A site visit was held at approximately 6:15 pm.

The applicant is seeking a variance to allow for the conversion of a Contractor's Yard/Shop, approved by variance in 1964 to an Auto-Body Repair Facility. Until 2010 the property was zoned C2 Commercial. The zoning changed to Residential and this type of commercial used is now prohibited.

David Senecal explained he and Brad Harriman are Selectmen as well as personal friends. He spoke with Rob Houseman regarding sitting on this application and feels he can sit impartially and asked if any members of the Board had an issue.

Board members had no objection.

Brad Harriman addressed the Board and gave a background and history on the property. The business is still an active business on the books even though the business was closed down in 2006. Commercial establishments operate around this property.

Suzanne Ryan asked if the previous variance will be dissolved or continued.

Brad Harriman responded they would like to continue the use as they are still selling things. If Rob West purchase's the building in the future, the first variance would be dissolved. The building has been continually used for equipment and repair.

The Board and Rob Houseman discussed at length the issue of having two variances and the use as a contractor's yard versus a garage and the effective of the variance standing.

David Senecal suggested the Board seek legal advice and the ZBA should continue this hearing.

*It was moved by David Senecal and seconded by Suzanne Ryan to continue to meeting in order for the Board to seek resolution of whether this is a contractors yard or garage and the issue of two variances on the property.*

The Board discussed the motion.

Brad Harriman explained that he does not want to jeopardize Rob West receiving a variance for the operation of the garage so if approved and one variance was dissolved it would be the existing one and the new variance would take over.

Rob Houseman explained from his experience if this variance were approved tonight, once exercised the first variance would be dissolved. He would need to confirm that with Town Counsel.

The Board decided to have the applicant proceed with the application. This would allow for any other questions that may arise to be addressed.

Rob Houseman stated he has reached a conclusion that two variances are not allowed and the applicant would need to decide which variance would be exercised.

*David Senecal withdraw the motion and Suzanne Ryan withdrew her second.*

Brad Harriman stated they would extinguish the first variance on the property.

Rob West addressed the Board and reviewed the application and plan as submitted with the Board for an auto body repair shop. This would be a one man operation and operated Monday through Saturday, to 6 pm and closed on Sunday's. There is a plan for a sign on the side of the building. Most work will be done inside the garage and disabled vehicles would be placed to the rear of the property with the exception of customer's vehicles being dropped off or picked up. The site will be improved and debris will be removed.

Suzanne Ryan asked if there will be any selling of vehicles.

Rob West responded there will be no sales of vehicles. Additionally there will be no junk cars.

Alan Harding asked if he would ever have a car he has purchased and worked on for sale there.

Rob West responded it would be possible but is not what he is looking to do.

Fred Tedeschi asked if his car were towed there, it would be stored to the back of the building.

Rob West responded it would be in back adjacent to the Town's property.

David Senecal noted air quality control and safety clean controlled by the State Air Resources Division. They are strict and any emissions into the air are very strict tightly regulated.

Suzanne Ryan asked if this would be vehicle inspection facility.

Rob West responded it would not be.

Public Comments:

No person spoke in favor or against the application and the public hearing was closed.

Suzanne Ryan moved to continue the public hearing.

The Board noted the property owner's representative has agreed to extinguish the first variance if this variance is approved.

Suzanne Ryan withdrew her motion.

It was moved by Suzanne Ryan to grant the Variance for TM#176-20, Case 08-V-14. The criteria 1 -5 have been satisfied and it is in keeping with the area and zone. The first variance will be extinguished with the approval of this variance. Additional conditions to include; 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining; 2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application; 3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees; 4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause. Mike Hodder seconded the motion.

Staff reread the motion.

All members voted in favor of the motion. The motion passed.

**TM# 172-39**

**Case # 09-V-14**

**Applicant: Wildcat Family Trust**

**Variance**

**Agent: Roger Murray, Esq.**

Public Hearing for a Variance from Article XII, Section 175-80, A (1) of the Wolfeboro Planning & Zoning Ordinance to construct a 7' x 18' addition along the front of the existing dwelling with less than the required setback from North Main Street. This property is located at 518 North Main Street.

Mike Hodder read the abutter and public notification for the record. A site visit was conducted at approximately 5:47 pm.

The applicant submitted a tax map rendering of the property since no survey exists. The applicant scaled the building setback and notes that the house is approximately 27.5' to 28' from the property line. The applicant desires to construct a 7' x 18' addition onto the front of the house. This action would create a new encroachment into the front setback and triggers the need for a variance.

Attorney Murray addressed the Board and reviewed the application and plan as submitted. The applicant also requests no "as-built" survey be required. The location of the addition is known and is plotted on the land and will be anchored in. It does not meet the front setback and a survey will not shed additional light onto the location of the



addition. This would be a large expense as the right of way would need to be researched as well as various boundaries.

The house was built in 1948. They do not know the width of the States right of way (North Main Street).

Rob Houseman stated that prior to 1961 zoning did not have setbacks except for limited commercial uses. There is a clear indication the houses constructed in the area are of similar setbacks.

Suzanne Ryan asked why they do not want an as-built.

Roger Murray explained they know on three points where the addition will be located.

Fred Tedeschi asked if any other encroachments exist into the setback.

Attorney Murray explained he is not aware of any.

There will be steps extending from the front of the addition however Rob Houseman explained steps are exempt.

Public Comments:

No persons spoke in favor or opposition and the public hearing was closed.

It was moved by Mike Hodder to grant the Variance for Case # 09-V-14, TM# 172-39, Wildcat Family Trust as the application has satisfied all five of the criteria required for the granting of a variance and subject to the following conditions: 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining; 2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application; 3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees; 4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause. David Senecal seconded the motion.

Staff read the motion.

All members voted in favor of the motion. The motion passed.

**TM# 190-26**

**Case # 10-SE-14**

**Applicant: Goodhue Hawkins Navy Yard, LLC**

**Special Exception**

**Agent: Jim Rines, White Mountain Survey & Engineering, Inc.**

Public Hearing for a Special Exception from Article (Not Yet Codified), Section 175-XXX to allow for the construction of a "Boatyard" in the Pine Hill Road Development District. This property is located at Landbank Lane and Filter Bed Road.

Mike Hodder read the abutter and public notification for the record. No site visit was held due to the site being inaccessible and current ground conditions. The site was reviewed by aerial photography

The applicant is seeking Special Exception to allow for a boatyard as provided for in the Pine Hill Road Development District.

Suzanne Ryan stated she has business dealings with Mr. Rines and she can sit impartially.

Jim Rines clarified the dealings are with White Mountain Survey and Engineering.

The Board had no issue with this.

Jim Rines addressed the Board and reviewed the application and plans as submitted. The layout is conceptual subject to finalization during site plan review process. The best area for such a large building has been selected and there is not much flexibility however it is possible it could grow slightly toward Filter Bed Road. There is a 150' buffer around the entire property but that is required for residential uses. The only residential use is the Taylor Community.

The eight points required for Special Exception were reviewed as submitted.

There will be approximately 300 boats stored however this depends on boat size and final configuration of the building. Boats will be trailered by pickup and boat trailer by Goodhue Hawkins.

Mike Hodder asked the plans for Filter Bed Road.

Jim Rines responded the plans would be to upgrade on the applicants property. As for Filter Bed Road there would be 300 trips in and 300 trips out in the fall and spring. The weight load would be less than log loads that went to Kimball's Lumber. There will be upgrades from the turnoff of the sewage treatment plant to their site. This will fall under Site Plan Review.

Mike Hodder asked where the boats will be put in.

Jim Rines responded they would be put in at the Goodhue Hawkins site in Sewall Road.

Mike Hodder asked if they will be driving up Friend Street and wondered why they do not go through Route 109A.

Jim Rines responded they will take public roads. They would need to build a better road at a longer distance if accessed by Route 109A and they would be traveling further on main roads than going out Filter Bed Road to Varney Roads.

Mike Hodder responded he is concerned with the traffic patterns in moving 300 boats in the spring and fall.

Jim Rines responded they are being moved now because they cannot be stored at the site on Sewall Road. They are currently going away from the marina.

Rob Houseman responded the boats are being stored currently at a rental site next to Land Bank Lane. Their access route is Mill Street to Bay Street to Route 109. There are currently approximately 180-200 boats being stored off site and this will increase by 100-120 additional boats. There will be no valet boat service.

Public Comments:

Jennifer Haskell, Wolfeboro Area Recreation Association (WARA) President who is the current owner of the property spoke in favor of the application. She noted Steve Hale, Past WARA President is present and is also in favor of the application.

No persons spoke in opposition. Chairman Harding closed the Public Hearing.

Suzanne Ryan noted she spoke to a resident of Sewall Road relative to the application and their reply was "it goes with the territory".

*It was moved by David Senecal and seconded by Mike Hodder to approve the Special Exception for Case # 10-SE-14, TM# 190-26 for a Special Exception for the use of a boatyard in the Pine Hill Road Development District as all of the required criteria have been met. Additionally the following conditions shall apply: 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining; 2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application; 3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording*

fees; 4. This Special Exception shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.

Staff reread the motion.

All members voted in favor of the motion. The motion passed.

**TM# 190-26**

**Case # 11-V-14**

**Applicant: Goodhue Hawkins Navy Yard, LLC**

**Variance**

**Agent: Jim Rines, White Mountain Survey & Engineering, Inc.**

Public Hearing for a Variance from Article (Not Yet Codified), Section 175-XXX seeking relief from the height restriction imposed in the district. This property is located at Landbank Lane and Filter Bed Road.

Mike Hodder read the abutter and public notification for the record. A site visit was held by aerial photography given the remoteness of the site and the ground conditions present.

The applicant is seeking a variance to allow for a 40' tall building where a 30' height is permitted.

Jim Rines addressed the Board to review the application. A balloon test was performed on Wednesday, April 2<sup>nd</sup>. The test location was depicted on the plan. The height was 250'. There was also a 6' x 6' blaze orange piece of plywood at the peak elevation of the structure facing Taylor Homes. When the balloon was brought down to 100' over elevation 660 (where the proposed project elevation is 606) the balloon could not be seen from anywhere except for Pollini's Pit and when down to 80' could not be seen from anywhere. The request for a 40' height of the building and the balloon test made it clear at the requested level this will not be able to be seen. The applicant is requesting the relief because it is a very large building and there is a flat slope of 1 / 12, the height goes up significantly and is almost 10' from the wall height to the peak.

Jim Rines noted he spoke with Rob Berry, Director of Facilities at the Taylor Home and he had met with the Board of Directors who had no opposition. A letter will be forthcoming but Mr. Berry informed Jim Rines that he could represent there was no objection for either the variance or the Special Exception.

Jim Rines also noted there is a special circumstance to this application inherent in the land. Of the 32 parcels of land zoned in the Pine Hill Residential District that would allow

this use, 30 of them are much smaller than this parcel and according to the Town's database, 18 of the 32 are less than 2 acres and 12 are less than 9.3 but greater than 2 acres. When you take the 150' buffer required, this parcel and only one other in this zone could be allowed this permitted use.

Public Comments:

Jennifer Haskell, Wolfeboro Area Recreation Association (WARA) President who is the current owner of the property spoke in favor of the application. She noted Steve Hale, Past WARA President is present and also in favor of the application.

No person spoke in opposition and the Public Hearing was closed.

*It was moved by Suzanne Ryan to move the question for discussion. Mike Hodder seconded the motion.*

For the record Mike Hodder congratulated Jim Rines for a model application. This is the first application he remembers seeing where the questions were answered correctly and the answers made sense.

*It was moved by Suzanne Ryan to grant the Variance for Goodhue Hawkins Navy Yard, LLC, for a height variance for TM # 190-26, Case # 11-V-14. The variance will not be contrary to the public interest because a balloon test was done and it was shown the height of the building will not interfere with any of the property around it. The spirit of the ordinance was observed because it will not alter the essential character of locality and the use is more specifically permitted in the district. Substantial justice is done because there is nothing to be outweighed or gained by denying this for the general public. The value of surrounding properties will not be diminished because there are similar properties around this doing the similar type of function. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship given this lot is one of the largest lots around, there is a special condition. This is one of only two of the 32 lots in the area that such a project could be built. Additionally the following conditions shall apply: 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the approval unless otherwise 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 be determining; 2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application; 3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees; 4. This Variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause. Mike Hodder seconded the motion.*

Staff reread the motion.

Suzanne Ryan stated that as much negative comments made about the Historic District Commission on their site visits they kept a record of and recorded through the secretary one way or the other. They knew because of violating the Right to Know Law.

David Senecal noted he cannot make site visits on Monday afternoons but does make it a point to view the sites independently prior to the hearing.

There being no further business, this meeting was adjourned at 9:32 pm.

Respectfully Submitted,



Robin Kingston  
Administrative Assistant

attachments:

1. Review of 1/6/2014 Meeting Recording
2. Land Use Board Training

**Wolfeboro Zoning Board of Adjustment  
Review of 1/6/2014 Recording of Meeting  
11 minutes left.  
Reviewed by Robin Kingston**

Discussion during deliberation after the Public Hearing was closed.

Suzanne Ryan stated we did not get the complete engineering document that was used this evening and we were given this and would like to date it as the ZBA's copy and enter into the record file. \*\*\* If we go in the direction I think we are going to go would be a motion that includes all said documents.

Mike Hodder responded he agrees in substance but suggested another way of accomplishing the same thing. As a condition make it Conditioned upon site plan approval by the Planning Board. Those documents are part of the site plan approval process. For the applicant to get site plan approval, those have to be accepted.

Suzanne Ryan stated that does not cover her concerns so let's just get to a motion first of all.

The Board agreed on the following.

1. The site is suitable. There is adequate access, usable space and they have addressed any environmental constraints.
2. The neighborhood impact will be minimal or less than what it was.
3. There will be no undue nuisance or serious hazard to pedestrians.
4. There are appropriate public services existing on site.
5. This is a reuse of a building. It will be improved and have a positive impact.
6. It is fortunate that a concerned, national company such as Bartlett is taking over this building.
7. There will be no negativity as for property values. There will most likely be a positive impact.
8. This application is consistent with the Spirit of the Ordinance and the intent of the Master Plan.

The Board agreed the applicant has done a very good job with the application, addressing the storm water issues and improving the gateway to town.

**3 minutes, 11 seconds remaining.**

It was moved by Steve McGuire and seconded by Kathy Barnard to approve Case # 02-SE-14 SE, TM# 132-11(2) having met all of the suitable criteria, 1-8. Additionally the following conditions shall apply:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, or 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 be determining.
2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for the Site Plan Review application.

It was moved by Mike Hodder and seconded by Kathy Barnard to amend the motion to include:

3. The approval is contingent upon site plan approval by the Planning Board on January 7, 2014.

All members voted in favor of the motion. The motion passed.

Suzanne Ryan added that the most recent document is "this" and this be submitted in the file.

\*\*\*Staff received a copy of the plan, made appropriate filing notes and submitted the plan into the file

Tape Reviewed 2/7/14 & 4/3/2014



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## LAND USE BOARD TRAINING

### I. Participation in a Hearing

#### *A. When should a member recuse him or herself?*

RSA 673:14 provides that a member should recuse him or herself from sitting on an application if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.

These reasons are:

- (1) Expects to gain or lose upon the disposition of the case;
- (2) Is related to either party;
- (3) Has advised or assisted either party;
- (4) Has directly or indirectly given his opinion or has formed an opinion;
- (5) Is employed by or employs any party in the case;
- (6) Is prejudiced to any degree regarding the case; or
- (7) Employs any of the counsel appearing in the case in any action then pending in the court.

RSA 500-A:12. It is not a reason to disqualify oneself if s/he has knowledge of the facts involved gained in the performance of the member's official duties.

It is important to remember that land use boards act in quasi-judicial capacities. Therefore, participation in a hearing by a member of the board who is disqualified will **void** any action taken by the board during that process because it is not possible to determine the influence that one member may have had on the others.

### ***B. Alternates—when and How Can They Participate?***

Each board has alternates who serve when one or more regular members are absent or have recused themselves. If the board's rules of procedure so allow, alternates not appointed to sit on a given application may fully participate in a hearing as a non-voting member; i.e. they may sit at the table, ask questions and offer opinions. Although it is not clear from the statute, our recommendation is that once a hearing has been closed to the public, alternate members should thereafter refrain from participating in deliberations.

### ***C. Participation by Members Who Miss One or More Hearings***

Members who miss one or more of numerous hearings on an application **may** participate in other hearing and in the final vote. In such a situation, the member should ensure that s/he reads the minutes of and reviews the materials submitted at the meetings s/he has missed and should state so on the record of the next hearing.

## **II. Conduct of a Hearing**

### ***A. Authority***

Land use boards have on the authority that has been delegated to them by the state. For the zoning board, this is limited to hearing variances, special exceptions, equitable waivers, and appeals of administrative decision *involving the zoning ordinance*. For planning boards, the authority is limited to hearing subdivision applications, site plan applications, and conditional use permit applications. The planning board also has other administrative functions, such as proposing zoning amendments and working on the master plan.

## ***B. Communicating with Applicants***

Board members should refrain from communicating with applicants about matters before (or which may be before) the board. Should such communications occur, the board member should report the substance of the conversation at the next hearing so that all board members have the benefit of the communication. All official communications should go through the land use planning office.

Land use boards have a constitutional obligation to assist applicants. Therefore, at hearings, board members should be polite and helpful, but should not feel obligated to do the applicant's work for him/her. It is appropriate to ask for additional information; it is not usually appropriate to go out and collect that information on your own.

## ***C. Communicating with Each Other***

### ***1. Land Use Boards Act in a Quasi-Judicial Capacity***

Land use boards act in a quasi-judicial capacity. This means that board members should not discuss the merits of a particular application outside a meeting, even if there is not a quorum of the board present. Doing so jeopardizes the unbiased review that applicants deserve, and deprives the public of access to all of the thought that goes into a decision.

### ***2. RSA 91-A and E-mail***

While it is appropriate to use e-mail for procedural matters (i.e. Can everyone meet Thursday night?), it is not appropriate to use e-mail for any substantive discussion of a matter. Generally, we advise against using the "reply to all" feature on e-mails, as what begins as harmless communications about scheduling a meeting can easily and inadvertently descend into a conversation about the merits of a particular application.

#### ***D. Chairperson's Authority***

Chairpersons have certain statutory responsibilities such as presiding over the meetings, appointing alternates to sit in the event of a vacancy, calling meetings, and compelling witness attendance at hearings. Obviously, they also have many varied non-statutory responsibilities as well. Some boards choose to spell these responsibilities out in the rules of procedure; others operate based on past practice. Either manner is legal, though spelling them out in the rules of procedure may be helpful both to the chairmen and the other members of the board, particularly when there is a change in the position. Though many boards operate under the assumption that the chairperson does not vote, this is not true—the chairperson can and should vote on applications.

#### ***E. Interpreting the Ordinance/Regulations***

##### ***1. Statutory Interpretation***

The construction of the terms of a zoning ordinance is a question of law. Where the ordinance defines the term in issue, that definition will govern.

Where no definition is provided in the ordinance itself, boards must look to the ordinance as a whole and attempt to discern the meaning intended. That intention must be discerned from the statute as written and not what it might have said or by adding language. The board should ascribe the plain and ordinary meanings (i.e. the dictionary definitions) to the words used, and give effect to all words in the ordinance, presuming that there are no superfluous or redundant words. Finally, the board should interpret a statute in the context of the overall statutory scheme and not in isolation."

Unlike the board's factual findings, the administrative construction of the

ordinance by the zoning authorities is neither conclusive nor binding, but is entitled to consideration.

## 2. Do Not "Punt" to Another Board

If there is a criteria that one board is supposed to consider, it must consider that criteria, even if the other board is going to consider it as well. For example, in Wolfeboro's special exception criteria, the ZBA must consider whether a proposed use is injurious to the neighborhood, and one of the impacts it must consider is whether the use will generate excessive trips. While traffic impact is generally something the planning board addresses, the ZBA must nonetheless make a finding as to whether, in its opinion, the use will result in excessive trip generation. It cannot simply "punt" to the planning board on the issue. The ZBA's finding will not be binding on the planning board, which looks at traffic from a different perspective.

### ***F. The Master Plan--what Is it and What Isn't it***

The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire, and to guide the board in the performance of its other duties in a manner that achieves the principles of smart growth, sound planning, and wise resource protection.

RSA 674:2, I.

A master plan is merely a general guide to aid planning boards in making zoning decisions, it is not something which can be directly applied to an application.

### ***G. Conditions of Approval***

Both the zoning board of adjustment and the planning board have the authority to place conditions on approval. Those conditions must be reasonably related to the

approval sought and the impact of the proposal on the town. Conditions of approval must relate to the use of the land and not to the person exercising such use.

Some examples of what a board cannot do:

- City planning board could not legally require landowner, as a condition to approval of a site plan, to grant city an easement ten feet wide on the edge of his property for highway purposes so that city could use it to widen the road in the future; any taking of such land would require just compensation.
- Cannot condition approval on the applicant building something for the town which is unrelated to the project (for example, a new highway garage or a new fire station).
- Cannot condition approval on developer upgrading at its own expense and to standards established by the town Class V highways leading to but located outside the proposed subdivision.

### **III. Minutes**

#### **A. *Basics***

RSA 676:3 requires that land use boards issue written decisions on applications, and that those decisions, as well as the minutes from the meeting at which the decision is made, be placed on file at the board's office within 144 hours (6 days) of the vote.

The statute also requires that the written decision provide written reasons for the board's decision, but only if the application is disapproved. There is no consequence for not having the minutes and notice of decision on file within 144 hours; however, RSA 677:2, RSA 677:4, and RSA 677:15, I all allow appellants to amend timely filed

motions for rehearing or appeals to superior court if the minutes and decision were not on file within 144 hours.

***B. Amendments/Approvals***

There is actually no statutory requirement that minutes be approved, although it is certainly standard and good practice for a board to do so. A board is free to amend minutes, to the point of changing the original draft, as long as the change is: 1) accurate as to what actually occurred; and 2) agreed to by a majority of the board. In practice, the way this usually occurs is that the board reviews, at a public meeting, the minutes of the prior meeting; the board members discuss their proposed changes; and then there is a vote to approve the minutes "as amended." Those approved minutes become the final, official minutes of the board.