

**Wolfeboro Zoning Board of Adjustment
Regular Meeting
September 20, 2010
Minutes**

Members Present: Alan Harding, Chairman, Suzanne Ryan, Vice Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, David Booth, Member, Mike Hodder, Alternate, Geordy Hutchinson, Alternate and Charlene Seibel Alternate

Members Absent: David Senecal, Alternate

Staff Present: Rob Houseman, Director of Planning & Zoning and Robin Kingston, Secretary

Alan Harding called this meeting to order at 7:00 PM in the Wolfeboro Public Library Meeting Room. A quorum was present. The procedures for the hearings were reviewed.

TM # 241-8 & 9

Case # 7-V-2010

Applicant: Thomas R. & Stacy B. Miller & Janice Boyce

Variance

Agent: Jim Rines, White Mountain Survey Co., Inc.

David Booth stepped down from this application as he is one house removed from this property and his immediate neighbor is a user of the building. Charlene Seibel was seated.

Steve McGuire read the public and abutter notification for the record. A site visit was conducted this evening at approximately 6:30 PM.

Variance form Article VIII, Section 175-55, C(3) and Article IX, Section 175-64 A(2) (b) to permit the landowners to reconfigure their existing non-conforming lots which would continue to a sideline setback of less than 10' as permitted by Section 175-55, C (3) and less than 15' as required by Section

175-64 A(2) (b) to allow for the placement of a utility building in proximity to the existing homes.

The application was triggered by an enforcement action related to the construction of a structure, a tractor shed, without a permit. Subsequently it was discovered an unpermitted structure was built over the property line. The Boyce's and Miler's have agreed to a Boundary Line Adjustment to allow for the retention of the structure. The proposed Boundary Line Adjustment does not bring the property into full compliance with the setback standards set forth in the Planning & Zoning Ordinance. The lots are considered lawfully existing nonconforming lots of record due to the lot size.

Jim Rines addressed the Board and reviewed the plan depicting the boundary line adjustment. The building which is over the property line is used by all of the parties for storage of a snow blowers and other related equipment.

Alan Harding asked for clarification on the amount of setback.

Jim Rines explained the proposed plan shows it at 7.5' at its closest point which causes it to be deficient by 2.5'. The application, plan and five criteria required for the variance were reviewed. Under criteria #4 it is noted in the applicant states they request to retain/construct the building.

Alan Harding asked why the applicant "noted retain / construct".

Jim Rines explained the building exists and the Zoning Board has to look at this as though there is no building presently. It is noted "construct" as if it is not there but it is also noted "retain" because of the obvious fact it is there.

Charlene Seibel asked as the existence of the building triggered enforcement how can the building that is constructed not be considered?

Jim Rines explained because of the proximity of the buildings, this will need to be attached to the main building so there is some new construction, although this will take place further from the relief they are seeking.

A letter was submitted for the record from Bruce & Harriet Terkelson and John Howard in support of the application.

Kathy Barnard noted under substantial Justice that the building had been constructed in an area that had been historically altered and asked Mr. Rines to elaborate on this.

Jim Rines noted the area where the shed is located was altered ground. This was not lawn or treed, it was gravel, making it an altered area. The altered space term is used in reference to the Shoreland Protection Act.

Steve McGuire asked for the history of the building.

Jim Rines explained he became involved in late 2008 when it was discovered the building was built. He does not know how long it had been in existence prior to that.

Rob Houseman explained the larger structure had received a building permit for renovation. Upon inspection for occupancy for the larger structure, this structure was discovered in 2008.

Steve McGuire asked about the note in the application stating that if this is not approved the building will need to be moved and placed in an unaltered area.

Jim Rines explained the area in front closer to the road is treed but the structure could be built there. Ms Boyce is legally blind and this would be a convenient location for her to access.

Bruce Terkelson, 344 Sewall Road who abuts the properties addressed the Board and noted he speaks strongly in favor of this application. Two driveways are shared between 5 homes and there is no way to plow as the area is very confining. The driveways need to be snow blowed and kept clear. Five homes benefit from two driveways they need to access the snow blower and this structure needs to be kept in its current location.

No person spoke in opposition to this application.

The public input portion of the hearing was closed.

The Board discussed the five criteria.

1. Granting the variance will/will not be contrary to the public interest. The Board agreed it would not be contrary.
2. The spirit of the ordinance is/is not observed according to Steve McGuire because this was built without a building permit. If a permit was sought it would have triggered other issues. Kathy Barnard noted there is another location but with more disruption to the property. It seems its current location is compatible with the Shorefront Requirements. Charlene Seibel stated she struggles with the fact that it was constructed without a building permit. There are other impervious surfaces where equipment could be stored that would place the buildings in compliance. She feels # 2 is not met and also # 3 not met. Suzanne Ryan agrees with Charlene Seibel. Alan Harding stated it is what it is and this building is there and the spirit is observed.
3. Granting the Variance would/would not do substantial justice. Kathy Barnard noted again the area has been altered. If the Board says no to this structure another part of the property could be disturbed. Alan Harding agrees. Suzanne Ryan agrees. Charlene Seibel noted this structure should be located on a small portion of the asphalt area. Steve McGuire noted there is a lot of area there and questioned if this building should exist at all. There are garages the snow blowers and equipment could be stored in. He is not sure they have met the bar of substantial justice.
4. Granting the Variance will/will not diminish the surrounding property values. The Board agrees this criteria has been met.
5. Do Special conditions of the property exist that distinguish it from other properties in the area? Steve McGuire stated there are unique lots along Sewall Road and he does not know if the property is special. Both Suzanne Ryan and Charlene Seibel agree. Kathy Barnard noted this lot is unusual in shape and situation. Alan Harding agreed with Kathy Barnard.

Suzanne Ryan asked a condition be placed on the approval the building should be only used for storage. Kathy Barnard added that only additional construction would be that allowed the connection of the two buildings for the storage shed.

It was moved by Kathy Barnard to grant the requested variances for the storage shed to remain in its existing configuration except for the additional construction required to attach it to the adjacent building and the criteria have been met. Alan Harding seconded the motion.

Suzanne Ryan made an amendment that the building shall be only used for the storage of snow removal equipment and other related yard maintenance equipment. Kathy Barnard seconded the amendment. Alan Harding, Kathy Barnard, Suzanne Ryan and Charlene Seibel voted in favor of the amendment. Steve McGuire abstained.

Steve McGuire urged the Board to deny the motion because doing things after the fact and then asking for forgiveness is not correct. If it was not constructed it may not be in that location. There could be a better location where it could be constructed.

Alan Harding and Kathy Barnard voted in favor of the amended motion. Suzanne Ryan, Steve McGuire and Charlene Seibel voted in opposition of the motion. The motion failed.

It was moved by Steve McGuire to deny application # 07-V-2010 as the applicant has not met the variance criteria in particular # 3 Substantial Justice is not done and #5 - Special Conditions were not met. Charlene Seibel, Suzanne Ryan and Steve McGuire voted in favor of the motion. Alan Harding and Kathy Barnard voted in opposition. The motion passed.

TM# 243-43

Case # 09-V-2010

Russell J. & Melissa L. Merka

Variance

Agent: Jim Rines, White Mountain Survey Co., Inc.

David Booth rejoined the Board.

Steve McGuire read the public and abutter notification for the record. A site visit was conducted this evening at approximately 6:40PM.

Variance from Article X, Section 175-71 & 72 to permit the operation of a certified community residence for up to three (3) disabled adult individuals recovering from brain injuries and other neurological deficits and disorders. The home will be staffed 24 hours per day by one (1) but no more than two (2) residential rehabilitation therapist(s).

The applicant is seeking a variance for a use the applicant defines as a "certified community residence for up to three disabled adult individuals recovering from brain injuries and other neurological deficits and disorders. The home will be staffed 24 hours per day by one but not more than two rehabilitation therapists". The use was reviewed by Town Counsel and she found the proposed use, a care facility, is not a use permitted in the district by right or by exception.

Jim Rines addressed the Board. Russell Merka the property owner and Attorney Edwinna Vanderzanden were also present. Appointment of agent forms were submitted to the Board allowing White Mountain Survey and Attorney Vanderzanden to represent the applicant. David Armstrong from Lakeview Neuro Rehabilitation and the interested parties in purchasing the property were also present.

Jim Rines reviewed the submitted application and plans with the Board.

Alan Harding asked what a certified community residence is.

David Armstrong, Administrator, Lakeview Neuro Rehabilitation Center explained the Department of Human Services sets standards for residential care in homes and they are set forth in HEM 1001 - (Copy Submitted) This identifies all of the standards and regulatory aspects.

David Booth noted a great deal of State and Federal Rules the Board has not had a chance to review. He feels totally unprepared to review this application at this time but feels the points for the application should be heard and he would be looking to continue this hearing. The Board agreed.

Attorney Vanderzanden, Counsel for Lakeview addressed the Board. There is a very strong policy through the State of NH and the Federal Government

favoring the return of disabled persons to the community and under the regulations there is important language - HE-M1001.03 which defines a community residence. It states a community residence shall be located in an area where other family housing is located. In this application it would be limited to no more than three adult residents. This is certified rather than licensed by the NH Department of Health and Human services, subject to very strict requirements. The intent is that person will be living in a community in a very homelike situation. These are persons that would ordinarily live with a family member but in their cases family members are deceased or unable to care for them. The certification will be applied for once the facility is identified. RSA 126-A:19-20; RSA 171-A:3; and RSA 171-A:18 I are the statutory authority. Copies will be submitted to the Board.

David Booth asked about regulations favoring or requiring community residences.

Attorney Vanderzanden responded the regulations both favor and require. There is a general statement in the Fair Housing Act 42 US Code Section 3604 - (Copy to be submitted) and the next would be the Americans with Disabilities Act 42 USC 12131 -12134992 required housing - this can be found in Travato vs. City of Manchester where the court found the city was required to give a variance for disabled residents. In this case the requirement was imposed upon the city to make a reasonable accommodation.

David Booth clarified this was within the city as opposed to a specific location or a specific zone.

Attorney Vanderzanden responded the court held the city was required to give a variance because the Travato's were disabled persons asking for permission to construct a parking lot in front of their home. The City of Manchester's zoning required the parking lot to be located to the side or rear of home. The Court found, "The reasonable accommodation requirement of the FHAA clearly can apply to zoning ordinances. "Courts interpreting the reasonable accommodation provision of the [FHAA] have ruled that municipalities must change, waive, or make exceptions in their zoning rules to afford people with disabilities". Case citation for the

Travato Case is 992 F. Supp. 493 - First Circuit Court of Appeal - US NH - Upheld on appeal. Copies will be forwarded to the Board.

Alan Harding asked relative to the law cited, does it require a municipality to make available through the zoning ordinances the type of business the applicant wants to run.

Attorney Vanderzanden stated that would be correct because it is the intent of the State and Federal Government that persons with disabilities be accommodated in these family homelike settings. These residents will probably be there until they die. This is not a business such as a nursing home or like the dormitories you see as you approach this subdivision. This will be as much a family as couples who are not married but are living with their kids of their first marriages. This will be a permanent residence for these individuals. They are all adult residents. There are specific requirements in the certification that there can be no history of felonies and no type of behaviors that you may be concerned about. These are people that just cannot live alone. They will probably be quieter and less disruptive than most residents.

Steve McGuire asked if they are required to obtain a Certificate of Need?

Attorney Vanderzanden responded they would not be as it is not that type of facility. The need for this type of facility is uncontested. This is certified by the state. A licensed facility has more staff and more individuals. This is a very limited facility and will have staff working in either eight or twelve hour shifts.

Steve McGuire asked if this was the lowest rung on the ladder.

Attorney Vanderzanden responded this is the lowest rung in terms of the complexity of the client's needs and intensity of use. This is as close as you can get to a family.

Steve McGuire asked if the individuals have already been identified?

Attorney Vanderzanden responded they have but under HIPPA they cannot be specifically identified. They have limited cognitive abilities and could live in the community but do not have family members to care for them.

Suzanne Ryan asked if there will be live in staff.

Attorney Vanderzanden responded they will be trained staff that will work a shift, just as if you had a day care worker come in to take care of an elderly parent. Three people will live in this home and there would be a maximum of two people that would come and go by shifts.

Suzanne Ryan asked if it will be owner occupied in anyway.

Attorney Vanderzanden explained the owner will be Lifecare Partners as an entity. The entity will be occupying and caring for clients there.

Suzanne Ryan asked for a better description of those individuals that have been identified to live there.

Attorney Vanderzanden explained there is a description of the types of clients that could be there. There cannot be any clients with a violent history or behaviors. They could have brain disorders, damage due to loss of oxygen to the brain through cardiac arrest, near drowning, bad strokes, brain tumors with the major characteristics being they have a real loss of cognitive function. Although they made be able to take care of themselves and conduct daily self care they need help with medication and such because they do not have the capacity to retain information. The regulations require any persons who would be qualified to live in a certified versus a licensed facility do not have any behaviors disruptive to a neighborhood or community.

Alan Harding asked how 15 Eagle Trace, Wolfeboro NH was decided upon as the location.

Attorney Vanderzanden responded she does not have the history although there was a willing buyer and seller. The house is well suited to the residents. They property is shielded somewhat from the neighbors with trees and vegetation.

Kathy Barnard asked if the name of the company is Lakeview Care Partners.

Attorney Vanderzanden stated it was.

Kathy Barnard asked about an ad in the paper - Lakeview Care Partners noting this group home was opening September 15th.

Attorney Vanderzanden responded she was not aware of this. This is not a group home but there may be another one opening under their auspices .

Kathy Barnard noted it identifies the property on Eagle Trace.

Russell Merka noted it was the marketing department ahead of them.

Steve McGuire asked if there is to be staffing by 2 people 24/7 and 365 days per year.

Russell Merka explained there will be at least one staff person on at all time 24/7 and 365 days per year but based on the need there may be two staff at one time. Staff members could be there for 8 or 12 hour shifts. There are different people to staff this.

Steve McGuire noted there could be up to 6 staff members going through the property every 24 hours.

Alan Harding asked based on comments for # 4 who the person is, the patient or the owner.

After discussion between Jim Rines and Attorney Vanderzanden it was determined this was the owner (entity in this case).

Alan Harding asked about the minor modifications also noted.

Russell Merka responded this was done upon inspection of the Fire Marshall and it was required a bulkhead be installed as the basement is finished and larger windows will need to be installed in the second floor bedrooms.

Jim Rines noted that these improvements are not specific to the use just recommendations from the Fire Department for any dwelling. These are safety related improvements not specific but beneficial to any sale.

Jim Rines stated that for the reasons given in the application they feel this application and use is permissible.

Kathy Barnard asked about reasonable accommodations needed to be made in the zoning ordinance and asked if they thought of amending the zoning ordinance.

Attorney Vanderzanden responded no. In the Fair Housing context these cases are typically resolved by a variance or a petition in Federal Court for an Injunction. This is a unique situation and you would probably not go around changing zoning ordinances for.

David Booth asked if every Fair Housing Injunction was granted.

Attorney Vanderzanden responded that not everyone is.

Alan Harding opened the public comment portion of this hearing.

Persons in Opposition:

Attorney Jennifer Haskell, representing Fairway View Estates Association addressed the Board. A complete packet of information was submitted that she would review and note during her presentation. This is not an application for disabled individuals this is a commercial operation. This is an entity wishing to run a business in a residential neighborhood. In the Travato case they were individuals. There is presently a web site which advertises this neighborhood home available. There are also ads in the paper. This is a commercial use in a residential zone. She questions whether the Fair Housing Standards Act and the American for Disabilities Act apply. In the Travato Case they were disabled individuals. In case law in the Federal Courts, the cases are for disabled individuals. The variance standards have now changed due to disabled people. The members of the Association are terrified that their neighborhood is going to change in its very nature. Anton Merka is the President of Lakeview Neuro Rehab. The signatures on

the building permit application and related documents are from the management at Lakeview Neuro Rehab. Tom Zotti, Wolfeboro Fire Department refers to this application as the Lakeview Rehab application. Who is in control of the property? Who is going to retain residential the characteristics? The applicant is the seller of the property. The Merka's are not disabled individuals. The facility is for individuals recovering from brain injury but their application contradicts this. There is no one responsible for this site; parking, hours of operation, employees, visits, noise, and control of site. This is not in the public interest and is contrary to what Jim Rines previously stated. This application does not absorb the Spirit of the Ordinance. This is in the Village Residential District in which homes are limited to single family and multifamily properties. The Village Residential District is not the location for this type of home. There are other places it can be located which will be consistent with the Master Plan. The Maureen Bacon vs. Town of Enfield case was not where the Supreme Court gave the Zoning Board the opportunity to consider the cumulative effect of the applicant's request; i.e. What if everyone sold there homes to commercial entities and what if the neighborhood became commercial? Substantial Justice - The guiding rules is any loss to the individual that is not outweighed by a gain to the general public is an injustice. The gain to Mr. Merka vs. the loss to the Association. Mr. Merka can sell this property so there is o loss to the owners of the property. Diminution of property Values - Ken Perry, Jody Hughes, John Bridges and a broker from Coldwell Banker have all weighed in and believe property values will be diminished if there is a commercial use. She does not believe the applicant can convince the Board the property values will not be diminished. There is no Hardship - When hardship is shared equally by all property owners, no grounds for a variance exist. There is no quality about this property that is unique so there is no hardship.

Residents of Fairway View Estates

Richard Hamilton - 10 Eagle Trace - This is an Open Space Subdivision of single family residential homes approved by the town. Residents are good citizens and are part of the community; some volunteer and do a good job for Wolfeboro. Information that has been submitted to the Board has not been reviewed before tonight. The issue is commercial use in a residential neighborhood. This is not a gray area use; it is not a permitted use in this

area. Renovations have been occurring at the property. It does not matter if it is Lakeview or some other entity looking for a commercial use. The people that will live there are cash customers so this is a business. The ZBA application is strong on some points, weak on others and elusive. There are Site Plan issues that would also need to be addressed. This is an area of children, grandchildren and elderly. There are increased security concerns that go with a business operation. The application is strong on one issue, "Do what we want or the courts will decide for you and they will decide in our favor". This is threatening, intimidating and bullying. This case should not be allowed based on conjecture regarding court decisions. It should be decided on the issue at hand. Do you good folks approve of placing a commercial business in a residential neighborhood? This application is purely for the financial benefit of the Merka's.

Fred Tedeschi, 13 Eagle Trace - when relocating 7.5 years ago they looked at the Town and all the zoning and Mater Plan. The town has allowed for all the needs of its residents. The applicant is selling his home to a commercial business for profit. Lakeview Neuro Rehab is the 75th largest employer in the state of NH. This area is not zoned for commercial use. The Town has areas that allow this use. The Board was urged to deny the application.

Barbara Bridges, 25 Eagle Trace - stated she and her husband John oppose the application. A statement written by John Bridges was read opposing the application and submitted to the Board.

Tom Doherty, 6 Eagle Trace - agrees with the previous comments from the Association and stated this is strictly a residential neighborhood which is why they purchased there. They have already lost money on the home due to the economy and if approved this commercial operation will negatively effect property values further. The Board was urged to deny the application.

Bob Baston, 11 Eagle Trace - If the Board approves the request for the commercial operation it will open Pandora's Box for all condo and homeowner associations in Wolfeboro and the State of NH. The Board was urged to deny this request.

Walter Kasinchuck, 14 Eagle Trace - asked who the application is for. It states it's for Russell J. Merka tonight you hear about Lakeview Neuro Rehab.

Alan Harding responded that the Merka's are owners of property presently. If a Variance is granted it runs with the land.

Mike Hodder, Wolfeboro asked if Mr. Merka is not disabled what does ADA and FHA have to do with this at all.

Bob Shilo, 23 Eagle Trace - strongly agrees with neighbors and noted there is a difference between employees of a commercial venture and neighbors coming in and out of a neighborhood.

Tony Kendall, 16 Eagle Trace - they are in complete agreement with association. They bought in a residential community and not a commercial area. They never would have purchased there if they had known it could be turning into a commercial area.

Russell McCabe - 7 Fairway Drive - When locating in NH after he retired they looked for a residential neighborhood that offered safety, security and serenity. They enjoy their home and their neighborhood has a great reputation as a premium neighborhood in Wolfeboro. They worry about the current proposal and the future. Are the same non violent people there in the future? Many people are considering getting a security systems and locking doors at all times. Town Counsel casts doubt on this use. The Homeowners Association has strict covenants and although they do not apply to the Board's decision they feel they will not have control if it is a commercial use.

Alan Harding thanked the applicant and the opposition for attending the hearing.

In favor:

A letter of support was read into the record from the Brain Injury Association of New Hampshire and has been placed in the file.

Kathy Barnard asked Attorney Haskell about documentation from Real Estate agents she spoke about.

Attorney Haskell stated she would forward them to the Board.

Jodi Hughes, Spencer Hughes, addressed the Board and stated she has a long history of selling properties in Fairway View Estates and has been a property owner there herself. This is a flawless community. Her feeling is property values will diminish and the Board should give this strong consideration.

Jim Rines addressed the Board. For the past 25 years he has lived across the street from one of these facilities run by High Watch Neuro Rehab. He raised 3 children there and watched the neighborhood children raised there. There is less traffic because these people do not drive. They are not with families because they do not have families. If no application was made and this took place he would challenge anyone to know difference. The use would not increase traffic or effect parking. Residential properties with teenage drivers as he has generates at times as much traffic as Town Hall. They have never had any concerns with security. The character of neighborhood appears residential. They have ice cream socials once a year during Old Home Week. The Vic House across from him is much larger than this proposed use but in his experience this is nothing to be afraid of.

Rebuttal:

Attorney Haskell noted that case law is clear and that each town has its own zoning and unique characteristics. The neighborhood that Mr. Rines lives in is in Ossipee which has a completely different set of zoning, enforcement and issues. She is not sure that Mr. Rine's neighborhood has covenants and restrictions like this subdivision and therefore have deeded expectations. No one is afraid of anyone with brain injuries but do have a fear of commercial use in a residential zone. No one is suggesting the residents of the house would create security concerns but rather the commercial use in a residential zone raises issues and concerns for the residents there.

Attorney Vanderzanden addressed the Board and noted most of the commercial enterprise concerns brought by cooperate entities generally are

in the context of a group home. The Vic House in Ossipee is a group home on a much larger scale. The entire definition and character whether brought by a cooperation or individual is a maximum of 3 residents and 2 employees on site at all times. The employees will come and go just as mothers and father comes and go working different shifts as well as day care workers coming and going. To focus on the ownership being an entity leads the Board astray because the FHA and ADA apply to corporations that are denied the opportunity to run these facilities. Most group homes in NH are run by corporate entities whether for profit or not for profit. The notion this is a commercial enterprise is simply a mischaracterization. It is going to be a residential facility with a maximum of 3 residents. There will be compensation for the care provided but this is not a basis for the Board rendering their opinion. She will brief this for the Board. This is misleading and could lead to a costly error in this case.

The Board discussed information that will be submitted for review and suggested continuing the hearing.

Leslie Watson, 8 Eagle Trace - The case in Manchester was concerning a driveway. If this was for Russell Merka or anyone in his family needing assistance any of the neighbors would help. These neighbors are good people and they are afraid for their investments.

Alan Harding stated he is not prepared to discuss this until he reads all that is available for the benefit of the applicant, neighbors and the town.

Deadlines for information requested and noted during the hearing and a time allowance for attorney review and requests for information was discussed. The information discussed would be submitted tot the Town Planner. Board members should also submit questions they have to the Town Planner.

Rob Houseman reviewed information as follows and noted it would be appropriate for all info to be submitted 20 days prior to the 1 November 2010 meeting.

1. Are there any proposals to alter site beyond what is on the plan to address parking, lighting, security, fencing, or any issue related to site improvements?
2. Are there issues that have not been spoken about that would be addressed by outside staff? i.e. Drug delivery, drug dispensary, drug storage, alarm system to police and fire
3. How do the subdivision covenants affect this application?
4. Federal and State Fair Housing Act issues: Minutes and questions that identify the issues will be forwarded to ZBA Counsel - both sides will provide opine on their position.
5. Commercial use and entity being the applicant vs. Individual (disabled) - ZBA Counsel will be asked to opine on this matter.
6. Question to ZBA Counsel: If this application were to be approved is it subject to Site Plan Review and what conditions and restrictions can be imposed by the Board - What is the Scope and Limits of Conditions that can be placed on this application?
7. ZBA Counsel - Review of cited case law to specifically determine if this case law requires accommodations be provided for specifically "in" the community or can it use be located "anywhere" in the community?
8. Is it a resident of the community seeking approval or some other entity?
9. Certifications be provided by the applicant.

Jim Rines asked for a copy of the Planner Review.

Richard Hamilton asked if the continued public hearing would allow for additional public comment.

Attorney Haskell stated she heard in the previous application the Board is loath to permit an application that is submitted after the actual fact has occurred. She asked the Board to take this into consideration. The applicant has already advertised this is happening, made the changes to the building and has placed this on their website as being available as a community house. Because this Board does not like to support this after the fact approval, she asked the Board take this into consideration as well.

Russell Merka stated they did get building permits for their changes ahead of time and they put in a bulkhead doors changed windows. This is nothing more than anyone would do to ready a property for sale.

It was moved by Alan Harding and seconded by Kathy Barnard to continue the public hearing to November 1, 2010 at 7:00 PM in the Wolfeboro Public Library in order for the Board to review the issues of law with counsel allowing informed discussion leading to a decision on the merits as presented. All members voted in favor. The motion passed.

Jim Rines asked for a date certain when the material needs to be submitted.

The Board responded October 10th is the deadline.

TM# 178-2 7 3

Case # 10-V-2010

Applicant: The Mary C. Marden 2002 Trust

Variance

Agent: Randy Tetreault, Norway Plains Assoc.

Steve McGuire read the abutter and public notification for the record. A site visit was held this evening at approximately 6:15 PM.

Variance from Article VII, Section 175-55 to permit a reduction in the "shoreline" frontage when reconfiguring the lot lines as outlined in the remainder of the section language (per legal opinion from Town Counsel).

These properties are located at 56 & 60 Moose Point Road.

Steve McGuire read the abutter and public notification for the record. A site visit was held at approximately 6:15 PM.

The proposed plan, as submitted, is to seek approval for a boundary line adjustment for TM# 178-2 & 3. The purpose of the boundary line adjustment is intended to make both lots equal in the area and shore frontage. The result shall be:

1. TM # 178-2 will decrease in area from 0.3373 acres (14,694 sq. ft.) to .27 acres and its shore frontage shall decrease from 104+/- feet to 72.5+/- ft.

2. TM# 178-3 will increase in area from 0.2142 acres (9,334 sq. ft.) to 0.27 acres and its shore frontage shall increase from 41+/- ft. to 72.5+/- ft.

These lots are considered lawfully existing nonconforming lots of record due to lot size and frontage.

Randy Tetreault addressed the Board and reviewed the application and plan for the Boundary Line Adjustment as submitted in the application. The five required variance points were reviewed as submitted. The applicant had appeared before the Planning Board and the Planning Board Minutes of August 3, 2010 were noted as well as an opinion from Town Counsel.

David Booth asked Kathy Barnard if the representations as set forth in the application regarding the Planning Boards actions and Town Counsels opinion are correct and in compliance with the Planning Board

Kathy Barnard responded they were.

Richard Masse, 74 Moose Point Road - representing he and his wife Andrea Dudley, are both in support of the application.

The Public Hearing was closed.

The Board reviewed to five required variance points of the application.

David Booth noted the Planning Board agreed this is an improved configuration.

1. The Board agreed granting the Variance would not be contrary to the Public Interest.
2. The Spirit of the Ordinance is observed. The majority of the Board agreed this condition was met. Suzanne Ryan stated she has a problem as you are making lake frontage more non conforming on one lot than it is now. David Booth stated they balance themselves by making the other lot more conforming. Steve McGuire stated more conforming is better.
3. The Board agreed granting the Variance would do substantial justice

4. The Board agreed granting the Variance would not diminish the values of surrounding properties.
5. The Board agreed special conditions exist that distinguish it from other properties in the area.

It was moved by David Booth and seconded by Kathy Barnard with regard to 10-V-2010, Variance request for The Mary C. Marden 2002 Trust to approve the application as submitted with the understanding that all five of the variance criteria have been met. All members voted in favor. The motion passed.

Other Business:

It was moved by Suzanne Ryan to defer the remaining business until the next meeting and a moved to adjourn at five minutes of ten. Steve McGuire seconded the motion.

Motion withdrawn.

Rules of Procedure

This is the second reading of the Final Version of the Rules of Procedure.

Suzanne Ryan suggested on Page 6 between J & K there is no finish - it should be added - "Board deliberations shall be held in public and closed to public comment" or it could say "When the deliberation portion of the hearing is declared the Board shall deliberate in public and no further testimony will normally be received".

The Board discussed this suggestion and decided this was already stated in the Rules.

It was moved by Kathy Barnard and seconded Steve McGuire to adopt the Rules of Procedure most recently amended December 10, 2007 as the two public hearings of these Rules have been held. All members voted in favor. The motion passed.

Fall Planning & Zoning Conference:

If any member of the Board wishes to attend the Conference on November 13, 2010 please let the Planning Office know.

Respectfully Submitted,

Robin Kingston, Secretary