

Wolfeboro Zoning Board of Adjustment

Regular Meeting

November 15, 2010

Minutes

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WOLFEBORO, N.H. TOWN CLERK

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

Members Absent: David Senecal, Alternate, Geordy Hutchinson, Alternate and Charlene Siebel, Alternate

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 Public Library Meeting Room. A quorum was present. The Board and staff were introduced.

TM# 243-43

Case # 09-V-2010

Applicants: Russell J. & Melissa L. Merka

Variance

Agents: Attorney Vanderzanden, Jim Rines, White Mountain Survey Co., In.
Continued Public Hearing

Alan Harding read the following statement notifying the public the application has been withdrawn:

Before we open the public hearing, I need to announce that the Merka's have withdrawn their variance application. The Board therefore need take no further action on this application; however as a board we did want to explain to the public, that based on the information that we have received and the law that we have reviewed in great detail, it is the Board's understanding that the proposed Community Residence is exempt from local zoning under the cases of Northern NH Mental Health Housing v. Town of Conway and Region 10 Client Management, Inc. v. Town of Hampstead. The Board's understanding is bolstered by a recent letter

from the State of NH, Dept. Of Health and Human Services which indicates that there are 2 other similar facilities in Wolfeboro, which confirms that this community residence may not have more than 3 beds, and which further indicates that community residences are not subject to local zoning. A variance is not necessary to allow the proposed use, and the Board has no authority to prevent the applicant from withdrawing the application.

The following letter, dated November 15, 2010 was read into the record:

Received from Edwinna Vanderzanden, Esq. to:
Laura Spector, Esq.
Mitchell Municipal Group, PA
25 Beacon St East
Laconia NH 03246

RE: Case # 09-V-2010, Merka Zoning Variance Application to the Board to the Town of Wolfeboro

Dear Ms Spector:

It is our understanding that the Board, after a thorough review of our application and submissions in support thereof, has determined that no variance is necessary as the contemplated use, a certified community residence for brain injured persons, is exempt under the Board's reading of NH RSA 171-A:1, *et seq* and cases interpreting and applying that statute. Based upon that information, my client has instructed me to withdraw the pending application. We further understand that the Code Enforcement office accepts this conclusion and will not pursue any enforcement action against the contemplated occupancy of 15 Eagle Trace.

We do wish to stress however that separate and apart from the Board's conclusion that the use is exempt, we strongly believe that my client's proposed use is a permitted use under the Town's ordinance and to the extent that a variance might have been required, a grant of that variance would be mandated as a reasonable accommodation under provisions of the United States Fair Housing Act and decisions of the various US trial and appellate court applying that statute.

We thank you and the Board for your consideration throughout and trust that no further action on this matter will be necessary. However, in the event that any other board or commission of the Town or individuals seek to enjoin or

interfere with the proposed use, which will commence almost immediately, we have agreed that my client will immediately resubmit its variance application and the Board has agreed to act on it as promptly as permissible under the ordinance.

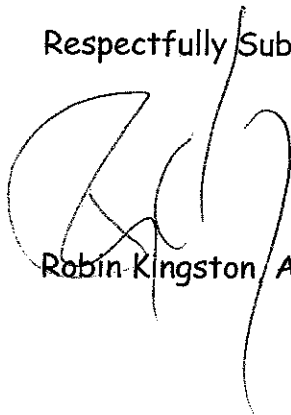
Sincerely, Edwinna Vanderzanden

Copies via email were sent to:

Jennifer Haskell, Esq., Robert T. Houseman, James Rines, P.E., LLS, C.P.E. S. C., Christine Lavallo, Esq., NH Legal Assistance, NH Office of Public Guardian, Russell and Melissa Merka, David Armstrong, John C. Burnside, Esq.

It was moved by Suzanne Ryan and seconded by Steve McGuire that there being no further business before the Board, this meeting was adjourned at 7:07 PM. All members voted in favor. The motion passed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Robin Kingston', written over the printed name.

Robin Kingston Administrative Assistant

