

**Wolfeboro Zoning Board of Adjustment  
Regular Meeting  
June 7, 2010  
Minutes**

**Members Present:** Suzanne Ryan, Vice Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, David Booth, Member, Dave Senecal and Mike Hodder, Alternates

**Members Absent:** Alan Harding, Chairman, Goerdy Hutchinson and Charlene Seibel, Alternates

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

Suzanne Ryan called this meeting to order at 7:03 PM in the Wolfeboro Public Library Meeting Room. A quorum was present.

**TM# 2331-56**

**Case # 04-V-10**

**Applicant: Michael J. O'Connell**

**Variance**

**245 South Main Street**

**Agent: Randy Tetreault, Norway Plains Associates**

Steve McGuire stepped down from this application. Mike Hodder was appointed for Alan Harding and David Senecal for Steve McGuire.

David Booth read the public and abutter notification. A site visit was held at approximately 6:45 PM.

Suzanne Ryan read the procedures for the hearing.

The applicant is seeking a variance from Section 175-135D of the Wolfeboro Planning & Zoning Ordinance to allow less than 18' of pavement width on a designated section of a proposed medical office driveway access. This

property is located at 245 South Main Street. The Variance is for the driveway width requirement associated with a two-way traffic driveway servicing a proposed parking lot of a medical office: Article XXII, Off Street Parking and Loading Requirements, §175-135.

Randy Tetreault, representing the applicant addressed the Board and reviewed the application as submitted. The application notes the property will be remodeled into a medical office with an apartment above. Code issues have risen and it appears the apartment will not exist. This use is allowed in the Village Residential Zoning District.

Jack McCosker, the applicant's builder noted the intension is to renovate the main floor into medical offices. The second floor will be left for the most part untouched and will be used by staff for things like a bathroom, kitchen and an on call space for staff. The second floor will not be accessed by patients.

Mike Hodder asked what the nature of the doctors business is.

Jack McCosker noted it is pain management and anestegeologist

Randy Tetreault noted that the reason for the variance is because of the house location. There is an area of driveway about 70' they would like to make 14' wide and not 18' wide as required. They have tried to keep a landscaping buffer. It is tight but two vehicles can pass within the 14' section. There will need to be an application to DOT for a widened driveway onto Route 28. Don Rhodes, Traffic Engineer used the total floor area of the building, reviewed the site and has calculated 6 trips per hour; 5 in and 1 out during the morning peak hour. This calculates to 1 trip every 10 minutes. The odds of 2 vehicles meeting are low. A sign will be placed for exiting cars to yield to oncoming traffic. TRC has given feedback and the parking area shown does meet the regulations. There was discussion at TRC regarding an access area for emergency vehicles from the Public Safety Building. This was only discussion and nothing has been decided.

Suzanne Ryan asked how wide the arc is where it starts to swing back to the parking lot

Randy Tetreault responded that it is 14' and quickly widens out to 17-18' within 10-12' from the back of the house.

Mike Hodder asked if there is a public right of way into the parking lot from the public safety building.

Randy Tetreault responded there is no deeded right of way and he is not sure it is possible as this was only part of the discussion in the TRC meeting. Possibly this could be paved with a chain so police or fire could cut through.

Mike Hodder noted that the ordinance is to allow safe and efficient traffic flow and if emergency vehicles zip through and out onto South Main Street, how is the planning to control traffic.

Randy Tetreault explained that a sign would be placed, noting "Yield to Oncoming Traffic" for exiting vehicles.

Mike Hodder asked if people would be told this or signs would be posted within the doctor's office.

Randy Tetreault noted 19 out of 20 times this should not be a problem.

David Booth noted signage is more of a Planning Board issue. Referring to the Schoolhouse Trust he noted the applicant is trying to keep from encroaching on the driveway edge. Is it likely that they will encroach further into the setback of the Schoolhouse Trust driveway?

Randy Tetreault noted that they will as much as a 1 - 1 ½ ' into the setback that exists now. The plan was reviewed.

David Booth asked if there were two variances or one.

Rob Houseman noted a driveway does not constitute a structure for setback.

Mike Hodder noted the spirit of the ordinance calls for orderly flow of traffic.

Suzanne Ryan asked what they plan to do about snow removal and storage.

Randy Tetreault noted that it will be pushed down the driveway as it is now, to the back, stored and removed if necessary.

Suzanne Ryan asked why they are not removing the bulkhead to allow for additional room.

Jack McCosker noted if you go with the 14' the bulkhead could be modified and if it is not allowed they would have to remove it. If the building is sprinkled the Code allows for one egress into the basement.

Suzanne Ryan noted if this was removed they would have the 18'.

Jack McCosker explained the intent of asking for the 14' is to allow a garden buffer between the pavement and building.

Randy Tetreault noted 18' would have pavement right up against the building if the bulkhead were removed.

Suzanne Ryan responded they would lose a cobblestone or two but add a step but you could make it work. Another suggestion would be to come around the building and enter back out to the street.

Randy Tetreault noted there is not much room and the problem would be an entrance permit as DOT will only allow one. This application is based on the traffic engineer's review.

Randy Tetreault reviewed the five criteria as submitted with the application. Discussion occurred as to 5: A or B and which section applies to this application. Both have been answered in the submitted application.

David Booth read from the Five Variance Criteria Zoning in the 21<sup>st</sup> - 2009 Page 50; Crossley vs. Town of Pelham and Rancourt vs. City of Manchester.

Rob Houseman noted that the citations are related to Use Variances and not Area Variances and the cases cited were determined on the old variance criteria for use and area variances. This criteria is new to the Board and the applicants and there is no guidance out there.

Randy Tetreault noted he will choose criteria B under #5 - The proposed entrance design allows for reasonable and appropriate use with regard to traffic flow and safety for the specified use in this zone. The 18' cannot not be done reasonably - this is the whole reason for the application to begin with.

Jack McCosker noted the doctor's intent in asking for the 14' is to be able to have a landscape buffer between the drive and the building. There have been issues in the past and they want to keep vehicles away from the building.

Mike Hodder asked if he runs other offices in the state.

Randy Tetreault responded he does and this will not be his principle place of business.

Steven McGuire, 243 South Main Street read the following statement and submitted a modified sketch noting the driveway width would actually be 8' in the 14' section and the 18' would become 12' with all the required buffers.

*Stephen McGuire  
Wolfeboro ZBA  
June 7, 2010  
Re. Case # 04-V-10*

*It would appear the Applicant has not taken into consideration 175-154 Streetscape, Buffer and Screening - B - 'no streetscape, buffer and screening submitted pursuant to this section shall be approved unless it conforms to the requirements of this section'*

*Because this is a medical office next to a single family home, the applicant falls into the requirement of a "4 screen 5 buffer yard" and has not asked this Board for a variance.*

*I would like to bring special attention to:  
175-135*

*Access or egress provided for a parking lot shall be so arranged to provide a circulation system on the lot so that all vehicles may exit from and enter onto a*

*public street by being driven in a forward direction, and no vehicle shall be required to enter or leave by backing or standing within a street right-of-way waiting to enter the lot.*

*Also: 175-135 C 'must stay 3 feet away from any building or structure'.*

*Regarding the application and the criteria needed for approval:*

*The variance is contrary to the public interest because approval would create an extremely unsafe condition with vehicles trying to enter and exit from essentially a one way driveway. The applicant has not taken into consideration the requirements of the buffer nor the 3 foot zone around the building. (their own plans show the driveway abutting the access way to the basement - a structure) I would like to submit this modified sketch which shows the driveway, upon meeting the buffering and setback requirements would be approximately 8 feet in width - less than the normal garage door and still abutting the access way to the basement!*

*The spirit of the ordinance must be observed and this plan does not meet it. The Food Bank, just up the road has a one way entrance from South Main and is 14 feet in width. The new Library entrance is 20 feet, allowing for a safer entrance and exit onto the busiest road in all of Wolfeboro. This plan would create a very dangerous situation for all, both entering and exiting traffic, because for all intense and purposes, it is a one way driveway.*

*Substantial justice will not be done with the approval of this application. Because of the safety issues, the even narrower driveway once the screening and buffering requirements are met, the loss to the property owner could never equal the gain the general public would have by not having such a dangerous entrance / exit as what is proposed.*

*The values of surrounding properties will be diminished because of this extended use as both an apartment and a pain clinic. When Steve and Cindy (former owners) lived there, maybe a total of 8 trips a day were generated from this property. Compare that to one patient every 7.5 minutes. That is not counting staff, tenants, and technicians. This traffic alone will have a negative impact especially on my property and to a somewhat lesser degree on the Brooks home.*

*Literal enforcement of the provisions of the ordinance will not result in unnecessary hardship because the applicant does have other alternatives. He can purchase an easement from the town, he could buy the Brooks home, he could buy my home, and all of these would allow for a much safer entrance and exit from his*

*new clinic. He could tear down the home and develop a narrower building and provide a wider driveway.*

*Trying to put a clinic and apartment with the required parking is not a reasonable use of the property and should have been considered before the applicant purchased it. The property is just too small. It may be an allowed use in this zone, but this parcel is just not big enough to accommodate it. You cannot put 10 lbs. into a 5 lbs. bag, especially when it comes to safety.*

*Even though this is an area variance, unlike most area variances, a side yard reduction, a front yard setback, were a sign can be located, etc. This request runs to the very heart of public safety. South Main Street is the most heavily traveled and more accidents happen on this stretch than any other road in Wolfeboro. If anything, regarding this parcel, good planning would dictate a wider driveway, not narrower, just as the library and church and hospital have done. This application should be denied, encourage the applicant to come back with a better plan, and one that promotes safety.*

David Booth noted this is a permitted use. The doctor is trying to reduce the safety risks and noted the applicant could come to the Planning Board without a need for a variance. The applicant is trying to make it better.

Mike Hodder noted that he is trying to make it better and the criteria is being applied to residential and commercial properties as referenced 175.135 D. They are coming to the Board to make the driveway safer.

Randy Tetreault noted he understands Mr. McGuire's concerns, There are buffer requirements for the parking area but there are none for the driveway. They are trying to keep the existing buffer and landscaping. When creating the overlay zone the Planning Board must have looked at the parcels in the area in which some are smaller and some are larger. They are trying to be less obtrusive. Even if a right can be obtained to exit to the Public Safety Building Lot this really is not feasible. In that case the drive would only have to be 12'. This is solely a dimensional variance. They could go to the Planning Board and pave right up to the building.

Steve McGuire noted he will be the last family to live in his house as it will eventually be purchased and turned into a doctor's office. This does not mean he needs to sit on his front porch and watch people get rear ended in front of his property. The driveway is too small. This is a change of use and

has to meet all the current regulations as it can. He now sits on his front porch and watches accidents coming in and out of Huggin's and this is going to be worse.

Suzanne Ryan ended the public portion and the Board deliberated on the application.

Suzanne Ryan discussed 175:31 - Change of Use - B - All other districts. Changes of use shall meet the requirements of this article for said expanded areas as required by the article. Spirit of Ordinance - 175:128 - Objective - any use of land involving the arrival or departure of motor vehicles and all uses requiring the delivery and shipment of goods as part of their function shall be designed to operate to do the following of A, B, C & D. Obviously we are talking about safety but C states "reduce hazards to pedestrians upon the sidewalks" . She wonders what this will do on the sidewalk if there is a stacking type issue. D states "Protect adjoining lots and the general public from nuisance and hazards such as noise, glare, headlights, fumes, glare from the heat of the parking lot, a lack of visual relief from expanses of pavement, and acceleration of runoff, surface water". She does not see a lack of visual relief and she believes that D does apply in this situation, to the abutters. She did a calculation and using a 10 minute interval with cars in and out - based on a 6-8 hours day and she ended up with 48 per day coming in and then doubled it would be 96 cars. While it is not 100-200 cars like a mini shopping mall, it is substantial to their own calculations. Further 175:137 E - No Vehicles shall be standing within the street right of way to enter a lot; this is a possibility especially if they do not get the snow off Mr. McGuire's fence or next to their building, they will be stacked up.

David Booth noted Suzanne Ryan is challenging the fundamental use of the property, but the fact is the use is permitted.

Suzanne Ryan responded that she is looking at the safety. Yes it makes it better at 14' but she thinks it's better at 16'. She is not inclined to go with 14'. There are other ways to remedy the width; the bulkhead being one and the cobblestones and steps being another.

Mike Hodder stated it seems to him in general they are dealing with a neighborhood which is under change, turning itself slowly into a medical



facility area. Mr. McGuire suggested they tear down the house and put something else up. Do we want to preserve the village look to the building? If this is denied because we think the drive of 16' with no plantings and no landscaping is better, you are going to be left with a building with a driveway right up to or, you are going to be left with a much uglier situation. We have to accept the fact we are dealing with a changing neighborhood.

Kathy Barnard noted the reason for the overlay district is for a mixed use and the character should be maintained and enhanced. This is a way to deal with and keep the atmosphere.

David Senecal noted during the site visit and according to the plan 18" meets site review and ordinance for drive width for 2 vehicles. You can stack four cars in the area that comes back 18'. Fours cars can be stacked - 2 going out and 2 coming in. There is enough area safety wise. DOT will be involved in a revised curb cut. Removal of the apartment takes a few trips a day away. The lot is unique and the applicant is trying to maintain the side yard.

### **Review of Criteria:**

#### **#1:**

Mike Hodder - Granting is not contrary - since town will benefit from a pain management specialist.

Kathy Barnard - Not contrary - will not create congestion in the street because stacking is provided on site and this meets the purpose of the overlay district.

David Senecal agrees with Kathy and noted the DOT will get involved with an amended drive cut.

David Booth - the application supports public interest.

Suzanne Ryan commented it is contrary to the public interest and will be a nuisance and a hazard.

#### **# 2 -**

Mike Hodder- the only portion of the objective he would have any trouble is A. It seems to him with the signage and some notice in the applicant's office to remind patients to yield to oncoming traffic this can be overcome

Kathy Barnard noted it is upheld by the improvements proposed and is more orderly and safer.

David Senecal noted traffic flow is quite complicated and the proposal makes it safer.

David Booth has no problem with # 2 and agrees with what has been said.

Suzanne Ryan noted the legal purpose is for safety and her concern is cars stacking up and backing up.

### **#3 -**

Mike Hodder noted the town at large will benefit from this use, in this location and people outside of town will also benefit.

Kathy Barnard agrees the use is consistent with the overlay district and the streetscape will be maintained.

David Senecal agrees with what has been said.

David Booth noted improved public welfare and safety as it relates to this permitted use.

Suzanne Ryan agrees as justice is granted to the general public and this outweighs injustice to applicant.

### **#4**

Mike Hodder - suspects property values will be increased as this part of the village enhancement.

Kathy Barnard agrees property values would not be diminished and this existing structure will be renovated and this will be positive.

David Senecal agrees and the streetscape of the building will not change. It will be residential in appearance. There will be no constant traffic movement on weekends and at night unlike a residential property.

David Booth noted values will not be diminished for the reasons set forth by his colleagues.

Suzanne Ryan commented whether they are or not she does not know to what degree but we have not received any evidence one way or the other, so she would have to agree they will not be changed.

**# 5 -**

Mike Hodder noted the proximity to Mr. McGuire's house and the physical location of the structure and commercial use of structure requires they widen the drive to the best of their ability.

Kathy Barnard noted special conditions do exist because of the location of existing structure. It is not being demolished and needs to be maintained in its location.

David Senecal agrees and noted this building runs lengthways to the road and most others run perpendicular.

David Booth noted there are special conditions: 3 abutter's on one side, public safety on the other and Huggins Hospital across the street.

Suzanne Ryan does not agree there are special conditions. This is not special or unique. This is shared by other parcels of land in the district. The lots are all small and typical of the others.

**# 5 - B**

Mike Hodder noted he answered this previously and he does believe there are special conditions and applicant has shown them.

Kathy Barnard answered this earlier.

David Senecal answered earlier. Parking is in the rear and mostly hidden by the house. The access is through the driveway.

David Booth cannot add anything additional and has no problem with B.

Suzanne Ryan noted this could be used in conformance as it is.

David Booth read the following recommended conditions for approval.

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, 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. This project, as submitted to the ZBA, does not satisfy all applicable requirements for site plan approval.

3. The ZBA's action on this application does not pre-empt any of the applicable Zoning and Site Plan requirements necessitated for ZBA and Planning Board consideration.

With the conditions just read David Booth moved with respect to Case # 04-V-10, TM# @231-56, Variance application by Michael O'Connell we approve this variance based on the fact that we have reviewed all five criteria and a majority of the Board has found that they have been met. This motion was seconded by David Senecal. David Booth, David Senecal, Kathy Barnard, Suzanne Ryan and Mike Hodder voted in favor of this motion. Suzanne Ryan abstained from this vote. The motion passed unanimously.

The public hearing was closed at 8:35 PM.

### **Other Business:**

David Senecal stepped down and Steve McGuire was seated.

### **Amended Rules of Procedure:**

David Booth noted the discussion surrounding site visits at the last meeting.

Staff noted the site visit wording has been added to the application and by signing and submitting the application, approval is granted for a site visit.

Suzanne Ryan noted the wording should be in the Rules of Procedure. The purpose is not only to outline what the applicant needs but what the public can expect. Suggested language for Section XIII. C and wording for Section D - "Fees" was distributed to the Board for review. She was not satisfied with the Waiver as it was written. This is a serious step and should have order to how it happens.

The Board discussed this language.

Mike Hodder noted he thinks the Board is put on the spot in every case and they have to think fast regardless of how much prep work they do ahead of time. Being put on the spot is no reason to change or implement a procedure. Waiving a provision of the Rules of Procedure is a big deal. The times the Board has been asked to waive the rules are often when the applicant is unfamiliar with the procedure and has never gone before a town board before, is at a certain loss of composure and does not really know how to handle it, such as a hand drawn un-scaled drawing. The Board in its wisdom deems the application good otherwise and decides to waive that procedure.

Suzanne Ryan noted the application is screened through the Planning Department. She feels that when filling out the application, that is the idea of having Rules of Procedure, because they do say what to do. At this time if an applicant is only going to be putting up an 8' x 8' shed he can ask to waive the scaled drawing.

Mike Hodder noted she would be inviting applicants to take the option to waive requirements they think might be an encumbrance.

Suzanne Ryan noted the applicant gets the Rules of Procedure.

Rob Houseman commented Rules of Procedure are not regulations but how the Board operates a meeting. The regulations that guide the application process should be separate and distinct. The Board should never allow an applicant to seek waivers of the way the Board. A portion of the Rules of Procedure include regulatory standards. The requirements ideally are

expressed as part of the application standard. Each time something is added to the Rules they are shifting the purpose of the focus. There are not very many applicants who ask for a copy of the Rules, they ask for a copy of the application and guidance but not the Rules of Procedure. There is a Waiver language block on the application itself requesting a waiver from the application standards not the Rules of Procedure. The Board was emailed suggested waiver language in a form.

Suzanne Ryan responded that they had not received it.

Staff located the email with the waiver language sent to the Board on May 11<sup>th</sup>.

The Board discussed language that should be included in the Rules of Procedure and language that should be included in the application itself.

Rob Houseman responded he is of the opinion the Rules of Procedure contain things that are regulatory in nature and do not belong. They are guidance to the applicant and this should be separate. The application should be the document that establishes the submittal criteria and should contain the waiver criteria.

The Board requested Rob Houseman review and make changes to the Rules of Procedure and the application process. He did not comment previously on the additions by the Board until he spoke with counsel.

The Board tabled the discussion on the Rules of Procedures and the Application until the next meeting.

Rob Houseman asked the Board to review the email Robin Kingston confirmed was sent to the Board on May 11<sup>th</sup> and resent tonight relative to waiver language.

### **Consideration of Minutes:**

24 May 2010

Suzanne Ryan asked that on Page 12; Last paragraph the word "argued" be changed to "adamantly disagreed with the chairman"

*It was moved by Steve McGuire and seconded by David Booth to approve the minutes as amended on page 12. Steve McGuire, David Booth and Mike Hodder voted in favor of the motion. Kathy Barnard and Suzanne Ryan abstained. The motion passed.*

The next regular scheduled meeting date is the 19<sup>th</sup> of July due to the July 4<sup>th</sup> holiday observed on Monday July 5<sup>th</sup> and availability of a meeting room. An application has been submitted to the Board. Staff is in the process of trying to obtain approval from the applicant to extend past the 30 day requirement for the Board to hear the application. If this is not possible staff will schedule a meeting sooner.

There being no further business, this meeting was adjourned.

Respectfully Submitted,

Robin Kingston  
Administrative Assistant