

**Wolfeboro Zoning Board of Adjustment**  
**Regular Meeting**  
**July 19, 2010**  
**Minutes**

**Members Present:** Alan Harding, Chairman, Suzanne Ryan, Vice-Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, Dave Senecal, Charlene Seibel and Mike Hodder, Alternates.

**Members Excused:** David Booth, Member

**Members Absent:** Geordy Hutchinson, Alternate

**Staff Present:** Rob Houseman Director of Planning & Zoning, Audrey Cline, Code Officer and Amelia Capone-Muccio Recording Secretary.

Chairman Harding called the meeting to order at 7:00 PM in the meeting room of the Wolfeboro Public Library. A quorum was present. He reviewed the procedures of conducting a Public Hearing.

➤ ***TM#203-25***  
***Case # 06-AAD-10***  
***A.M.K Revocable Trust***  
***26 Bay Street***  
***Appeal of Administrative Decision***

Chairman Harding opened the Public Hearing.

Mr. McGuire read the public notice and the abutter notification and stated a site visit was held this evening at 6:35 PM.

Chairman Harding appointed Charlene Seibel to sit on this application for David Booth.

Paul Kimball, agent for the A.M.K Revocable Trust joined the Board and provided the Board with the History of the buildings on this property, noting that the buildings were used mostly for storage for the former tenant Bay Street Discount. He explained that he received notice from the Code Enforcement Officer to file a change of use for 7 King Street and he believes this is an error and provided documentation supporting his opinion, including a site plan dated 2004. He explained this site plan shows 1,500 square feet of warehouse space and 500 square feet of retail space and disagrees any change of use had taken place.

Chairman Harding questioned if the site plan he submitted was approved by the Planning Board.

Mr. Kimball replied it was. He explained that this plan shows the parking and use of the buildings. He stated he hired an attorney in the past to clear up the issues with this property and that according to the statute this property is considered vested and he is immune from Article XVII Bay Street Limited Business District.

Chairman Harding clarified that they have an approved site plan approval from 1/10/00 showing 1,500 square feet of warehouse space and 500 square feet of retail space, but noted that the site plan he submitted from 2004 is not signed. He questioned why they don't have a signed copy.

Mr. Kimball replied he has the minutes that confirm the site plan approval, but also feels the law protects him.

Mrs. Seibel questioned his comments referring to the "warehouse".

Mr. Kimball replied the property has been a warehouse for 10 years.

Mrs. Ryan questioned if he could certify the plan of 2004 has been signed or provide a copy of the minutes.

Mr. Houseman stated there was a decision on 6/1/04 case# 2004-23 and that the site plan had no changes from the 1999 plan as to the layout of the buildings.

Mr. Kimball stated if the building was approved, why is he here, there has been no changes to the outside and they are not doing anything different. He stated they are willing to change the parking spaces if necessary.

Chairman Harding asked if anyone else wished to speak for or against the appeal, being none he asked Mr. Houseman to speak to the issue.

Mr. Houseman stated that this is the former location of Bay Street Discount and that the Department became aware of a change of use through the local newspaper advertising a bookstore at that location. He explained that the Code Enforcement Officer notified A.M.K Revocable Trust that this change of use must comply with the current code. He explained how code applies to change of use.

Mrs. Ryan questioned what standard the town uses to trigger change of use.

Mr. Houseman replied retail to retail would not be a change of use. This building was built as warehouse/bulk storage and now has changed to retail use, where the public is entering a portion of the building and that has to comply with current code and life safety. He explained they need to memorialize the change of use on record and ensure the building complies with code and life safety.

Ms. Cline stated she has not been inside the building and has to make a judgment on what she knows about the building and that the advertisement of the bookstore triggered her to notify them to apply for change of use, since the public will be entering the building. She understands the applicant's position, but she does not see 1,500 square feet of warehouse and 500 square feet of storage, she sees it as more retail. She explained a code review could be done separate from the zoning issue.

Mrs. Seibel questioned how #4 from Deputy Fire Chief Zotti's letter dated 12/9/09 figures in with the issue.

Ms. Cline replied that issue has been resolved.

Mrs. Seibel questioned if the storage of varnish and paints will require fire bond between the first and second floor.

Ms Cline replied she does not know a code review can be done separately than the zoning. She stated her issue is she sees more retail space than storage space.

Mr. Kimball stated 10 years seems like a late trigger, the dictionary calls a warehouse a store. He stated the things listed on the internet should not be included in the review and that the rules won't even let you change a pain of glass.

Mr. Senecal questioned if according to the 2004 site plan would they comply with parking for that area.

Mr. Houseman replied it appears that he can comply, but the issue is that a change of use occurred and he needs to comply with life safety and codes.

Ms. Cline stated it is her opinion that they do not want to change the use because they would loose the ability to revert back to storage if they wanted to in the future.

Mr. Houseman clarified the Planning Board proposed zoning changes to expand the village core of the C2 district in 2003 and it is now the Bay Street Limited Business District.

Mr. Kimball stated it is his understanding that he cannot be denied those uses in the future according to state law and he is vested.

Mr. Houseman explained RSA 674:39 states that they have 4 years from the date of approval to vest their rights for perpetuity and this is a slightly different issue, dealing with parking and land. The uses must change to comply with current zoning and they don't get the right to revert back.

Mrs. Seibel questioned page two of Mr. Houseman's memo dated 7/13/10 regarding the 1999 site plan approval.

Mr. Houseman replied the decrease in parking for one building freed up spaces for the other.

Ms. Cline stated her notice asks the A.M.K. Revocable Trust to seek advice from the Technical Review Committee or the Planning Board to identify the proper process, she doesn't know the process needed since there is no application.

Chairman Harding explained that the Board tries to be fair and impartial and do their homework. He stated they don't work to discourage people coming to Wolfeboro. Being no others to speak for or against the appeal he closed the public hearing.

Mr. McGuire stated that it is clear there is a change of use and feels they should uphold the administrative decision.

Mrs. Ryan stated she understands what happened and the town has guides for codes and life safety that have to be met.

Mrs. Barnard supports the change of use and the proper procedure was followed.

Mrs. Seibel agreed there is a change of use.

Steve McGuire moved the Wolfeboro Zoning Board regarding Case #06-ADD-10, Tax Map #203-25, A.M.K Revocable Trust, to deny applicant's request to an Appeal of Administrative Decision under section 175-183 of the Wolfeboro Planning & Zoning Ordinance from the decision by Audrey Cline dated 29 April 2010-Notice of Violation-26 Bay Street property is in violation of the 7 September 1999 Planning Board approval and for A.M.K Revocable Trust to submit an application to the Technical Review Committee or the Planning Board for the Bay Street limited business district.Suzanne Ryan seconded.

#### *DISCUSSION:*

Ms. Seibel clarified the motion.

Members voted; Steve McGuire-yes, Suzanne Ryan-yes, Alan Harding-yes, Kathy Barnard-yes, and Charlene Seibel-yes, the motion passed.

- *TM#241-8 & 9*  
*Case # 07-V-10*  
*Thomas R. & Stacy B. Miller & Janet Boyce Trust*  
*348 & 350 Sewall Road*  
*Variance*

Chairman Harding stated the applicant's agent, James Ryan, requested a continuance of this hearing to the next meeting on 8/2/10 because he is out of town. He stated Mr. Ryan noted he would pay for the renote to the abutters. He questioned the notification requirement.

Mr. Houseman replied this serves as a notice and the abutters have been notified.

Suzanne Ryan moved the Wolfeboro Zoning Board regarding Case #07-V-10, Tax Map #2241-8 & 9, Thomas R. & Stacy B. Miller & Janet Boyce Trust, to continue the hearing for the request of a variance to the meeting on 8/2/10 at 7 PM in the meeting room of the Wolfeboro Public Library. Kathy Barnard seconded. Members voted; Steve McGuire-yes, Suzanne Ryan-yes, Alan Harding-yes, Kathy Barnard-yes, and Charlene Seibel-yes, the motion passed.

Mr. Senecal noted he would not be able to sit for that application.

- *TM#244-63*  
*Case # 08-V-10*  
*RCC Atlantic Inc. d/b/a Verizon Wireless*  
*16 McManus Road*  
*Variance*

Chairman Harding appointed Dave Senecal to sit on this application for David Booth. He excused Mrs. Seibel.

Mr. McGuire read the public notice and the abutter notification. He questioned why they are hearing this application, noting this is town property.

Mr. Houseman explained that government is exempt from this process if the request is for a government purpose, in this case the property owner is the town, but the request is for a private purpose.

Chairman Harding opened the Public Hearing.

Carl Gehring of Gehring & Associates, LLC, agent for the applicant, joined the Board for discussion and questioned if Mrs. Ryan would be non-bias to this request, as she previously stepped down from a the request for AT & T.

Mrs. Ryan replied she would be non-bias and has no need to step down.

Mr. Gehring reviewed the contents of the packet provided with the Board and gave a brief overview of the history of building formally the location of RCC Atlantic's site. He explained that since Verizon purchased RCC Atlantic in 2005 they have been using the current building, but it is smaller than what is typically required for Verizon's storage. He stated Verizon's typical shelter size is 12 X 30, but they can only fit a 12 X 20 shelter in this location with a generator. He explained that in the process of working on the plans for a new building they were contacted by AT & T, who was seeking to purchase the smaller building for their needs. He explained the process for this request was held up while the town and the school worked out a lot line adjustment for the encroachment onto the school property. He referred to page three of the Statement in Support of Variance Application dated May 21, 2010 and reviewed the five criteria needed with the Board.

Mrs. Ryan questioned what is stored in the building.

Mr. Gehring replied radios, batteries, etc.

Chairman Harding questioned how they power the generator.

Mr. Gehring replied it is a diesel generator with a 250-gallon belly tank and it is remotely monitored and tested weekly.

Mrs. Ryan questioned how they have been able to use the current building, but can't use it now.

Mr. Gehring explained that Verizon is known for the need of the largest building, they purchased this building from RCC Atlantic and need more space because they carry multiple licenses.

Mrs. Ryan questioned if they looked at other solutions, such as adding to the current building.

Mr. Gehring replied they have and that would still require a variance.

Mrs. Ryan questioned if they could share the building with AT & T.

Mr. Gehring replied no.

Mrs. Ryan questioned what is the smallest building they could use.

Mr. Gehring replied this building of 12 X 20 would be the smallest building.

Mrs. Ryan questioned why the generator is not listed on the variance.

Mr. Houseman clarified that a building permit is needed, but it does not need a variance.

Mrs. Ryan questioned the noise of testing the generator and referred to her email to the Town Manager. *(See attached email)*

Charlene Seibel questioned what the building is made of and if it is fire rated.

Mr. Senecal replied the buildings are prefab concrete buildings and are indestructible.

Mrs. Ryan questioned what the other carriers do without generators.

Mr. Gehring replied they have battery backups.

Mrs. Ryan questioned if they would share the generator in an emergency situation.

Mr. Gehring replied probably not.

Mrs. Ryan stated the town has a PWFS noise ordinance and questioned if the building could be built to mimic New England style homes.

Mr. Gehring replied they would discuss such with the Planning Board.

Being no others to speak for or against the application, Chairman Harding closed the Public Hearing. He stated that he feels the application was well presented and all the criteria have been met.

Mr. McGuire agreed all criteria have been met and it does meet the standards.

Mrs. Barnard feels it is consistent with the Master Plan, where the public demands more telecommunications.

Mr. Senecal agreed all criteria have been met.

Mrs. Ryan stated she feels the criteria has been met, but would like conditions of approval as follows:

1. AT & T meeting all the conditions of Planning Board approval on April 6, 2010 specifically the third party structural engineer certification.
2. Approval does not constitute future proposed construction of shelters as depicted on plan.
3. Generator must pass PWFS noise ordinance
4. The building should mimic New England style per PWFS.

**Steve McGuire moved the Wolfeboro Zoning Board regarding Case #08-V-10, Tax Map #244-63, RCC Atlantic Inc. d/b/a Verizon Wireless, 16 McManus Road, to approve Variance from**

Article X, Section 175-80 (A) and (C) for the installation of a shelter to be located within 1' of the side yard lot line and within 6' of another shelter on site where the required setbacks are 10' and 20' respectfully and approval is based on meeting all five criteria. Kathy Barnard seconded.

**DISCUSSION:**

Mrs. Ryan requested to amend the motion to include the four conditions she listed above.

Chairman Harding questioned if the Planning Board would be addressing such.

Mrs. Ryan replied she does not know.

Chairman Harding questioned if the Board would agree to hear from the applicant again. The Board agreed.

Mr. Gehring stated they do not want to be tied to AT & T because they are selling the structure to AT & T who could sell it to any other carrier. He noted the future locations on the site plan were part of a previous site plan showing the possible locations available.

Steve McGuire seconded the amendment for discussion.

**DISCUSSION:**

Mrs. Ryan suggested they vote on each amendment separately.

1. *AT & T meeting all the conditions of Planning Board approval on April 6, 2010 specifically the third party structural engineer certification.*

Members voted; Steve McGuire-no, Suzanne Ryan-yes, Alan Harding-no, Kathy Barnard-no, and Dave Senecal-no, amendment one failed.

2. Approval does not constitute future proposed construction of shelters as depicted on plan.

Members voted; Steve McGuire-yes, Suzanne Ryan-yes, Alan Harding-no, Kathy Barnard-no, and Dave Senecal-no, amendment two failed.

5. Generator must pass PWFS noise ordinance
6. The building should mimic New England style per PWFS.

Members voted; Steve McGuire-no, Suzanne Ryan-yes, Alan Harding-no, Kathy Barnard-no, and Dave Senecal-no, amendment three and four failed.

Members voted on original motion; Steve McGuire-yes, Suzanne Ryan-yes, Alan Harding-yes, Kathy Barnard-yes, and Dave Senecal-yes, the motion passed.

➤ *Consideration of minutes June 7, 2010*

Chairman Harding stepped down from discussion on the minutes, as he was not in attendance of the meeting.

Steve McGuire stepped down from discussion on the minutes.

Vice-Chairman Ryan appointed Michael Hodder to sit for Steve McGuire and Dave Senecal for Alan Harding.

Mrs. Seibel stated she had some corrections she would like to make to the minutes.

Vice-Chairman Ryan noted she was not in attendance of the meeting, but would present the changes for her.

Vice-Chairman Ryan made the following amendments:

- Page one, Members absent/excused, corrected Goerdy to Geordy and to add "this evening" after 6:45 PM in the second paragraph under the first application.
- Page eight, the second paragraph to include input after the word "public".
- Page twelve, to remove Suzanne Ryan from the vote on the motion as she did abstain.
- Page thirteen, the second paragraph to include "1<sup>st</sup> draft" before the word Waiver in the second to the last sentence in the second paragraph.
- Page fourteen to include "and Steve McGuire verified it." after the word "it" in the second paragraph.
- Page fifteen, to add the following after the last word in the first paragraph, "and read from the NHLGC bulletin information sheet on how and when alternates serve only in place of full members."
- Mrs. Barnard amended page thirteen, the last paragraph to change the word "and" to "an" in the third sentence and amend "the way the Board" to "the Board's Rules of Procedure" in the same sentence.

Kathy Barnard moved the Wolfeboro Zoning Board approve the minutes of June 7, 2010 as amended. Dave Senecal seconded. Members voted; Michael Hodder-yes, Suzanne Ryan-yes, Kathy Barnard-yes, and Dave Senecal-yes, the motion passed.

Chairman Harding and Steve McGuire rejoined the Board. Michael Hodder stepped down.

➤ *Rules of Procedure/ Applications*

Chairman Harding stated they have been working on these for months and they are ready for approval.

The Board discussed the right to reopen a public hearing and determined to remove that paragraph from the Rules of Procedure.

Mrs. Barnard questioned if the next step is to set a public hearing.



Mr. Houseman replied a public hearing is not needed, but they must discuss it in two consecutive meetings.

Chairman Harding noted the final read would be at the August 2, 2010 meeting.

Kathy Barnard moved the Wolfeboro Zoning Board conclude the first reading of the Rules and Procedures/Applications. Dave Senecal seconded. Members voted; Alan Harding-yes, Suzanne Ryan-yes, Steve McGuire-yes Kathy Barnard-yes, and Dave Senecal-yes, the motion passed.

Being no other business before the Board, Chairman Harding entertained a motion to adjourn.

Dave Senecal moved the Wolfeboro Zoning Board adjourn at 9:45 PM. Kathy Barnard seconded. Members voted; Alan Harding-yes, Suzanne Ryan-yes, Steve McGuire-yes Kathy Barnard-yes, and Dave Senecal-yes, the motion passed.

Respectfully submitted,  
**Amelia Capone-Muccio**  
Amelia Capone-Muccio

attachments: email two pages from Suzanne Ryan to Dave Owen dated 7/16/2010