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Wolfeboro Zoning Board of Adjustment Book No. _____

Page No. _____

Regular Meeting
December 5, 2011
Minutes

[Handwritten Signature]
WOLFEBORO, N.H. TOWN CLERK

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

Members Absent: David Senecal, 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 was introduced. The Rules of Conduct for the meeting and hearings were reviewed.

TM# 172-3

Case # 09-RSA-11

Applicant: James & Christine Zampell

Appeal From NH RSA 674:41

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

David Booth stepped down from the hearing. Mike Hodder was seated.

Steve McGuire read the abutter and public notification for the record. A site visit was held at approximately 4:00 PM prior to the meeting.

Public Hearing for an Appeal from NH RSA 674:41 to allow for the construction of a single family home over a garage on a parcel with no road frontage. This property is located off Keewaydin Road.

The applicant desires a building permit for the construction of a single-family dwelling. The lot has no road frontage on a street that complies with RSA 674:41, I.

Jim Rines addressed the Board, reviewed the application and plan as submitted. Handouts of a highlighted map and case history (for informational purposes) on easements were submitted. The "Facts Supporting This Request" were reviewed as submitted along with the highlighted map. The lot will be accessible via a driveway over TM# 157-5. If the lots are sold separately in the future, an easement gaining access to TM# 172-3 over TM#

157-5 will be given. If the Board requires an easement at this time, one can be recorded but it would not be effective, as the Zampell's own both lots.

Suzanne Ryan asked if there is town water and sewer.

Jim Rines stated there will be on site septic and it will be serviced by a well. There is a seasonal water line but the applicant will not be hooking up to it.

Suzanne Ryan asked if they were asking for an updated state approved septic update.

Jim Rines responded they are filing for a new septic system.

Steve McGuire asked what the dwelling will be used for.

Jim Rines responded it will be for family members and eventually be conveyed to them.

Steve McGuire asked when the subdivision was created.

Jim Rines responded he believes it was created in 1966.

Steve McGuire asked if has there has been any consideration given to merging this lot with the developed lot.

Jim Rines stated that the have not because they could not have a dwelling on it if they did.

Steve McGuire asked what measures have been taken for soil erosion control presently.

Jim Rines stated they have not disturbed 50,000 sq. ft. so there are no requirements for an Alteration of Terrain Permit. Erosion Control fencing has been installed near the home and there is work being done with a skidder removing trees on the other lot.

Mike Hodder noted concern with the rights-of-way over Old Keewaydin Point Road. He is having trouble understanding who has a right-of-way currently and how those rights-of-way would be conveyed in the future to a non-member of the Zampell family. Looking at the deed, Tract # 1 - seems to convey TM #171-3 and Tract 2 seems to convey TM # 157-5. The conveyance of TM# 171-3 passes a right to pass along Old Keewaydin Point Road. There is no indication in the conveyance of Tract # 2 that the same right passes. Any future owner of TM # 157-5 does not seem to have a right-of- way across Old Keewaydin Point Road. That would have to be conveyed in the deed from the Zampell's to the future owners. In addition, any future of owner of TM# 157-5 would also have to receive an easement across TM# 171-3 in order to gain access. There is nothing to indicate this has been addressed. One of the criteria is, there should be no hardship to a future owner.

Jim Rines explained the future access (See Section 4 of Facts Supporting This Request). Anytime in the future the Zampell's were to convey this lot, they would have to grant the Easement. An Easement could be recorded now, but would be ineffective as long as the Zampell's own the property. There is no problem with a condition of approval that an easement be recorded. This will not have any force or effect until the lots are not owned together by the Zampell's.

Kathy Barnard asked about notification of the Association of Old Keewaydin Road.

Mr. Zampell explained they are not part of the Association but do participate, not out of necessity but out of good faith.

Steve McGuire asked what was in the original subdivision to allow access to these lots.

Jim Rines explained they were simply platted with no road frontage.

Rob Houseman explained the deed from the previous owner of lot 3 has deeded rights. This lot was merged with a back lot.

Kathy Barnard asked about the right to pass - Does this mean the right to pass over Old Keewaydin Road or North Keewaydin Road.

Rob Houseman responded the right to pass takes you to the paved portion of Keewaydin Road.

Mike Hodder asked about practical difficulty as the RSA allows for no grandfathering of these lots.

Jim Rines explained these lots were created prior to the adoption of Town and State Subdivision Regulations.

Mike Hodder read the RSA and noted the intent was to prohibit development of back lots.

Jim Rines asked why even have the Statue if the intent is not to develop back lots. Further, if denied the lot cannot be built upon. This lot has been taxed as a buildable lot since its inception, others have been built on them in the area, and if denied there would be discrimination against this lot from others similarly zoned.

Mike Hodder responded that logically, they would all be approved, by Mr. Rines reasoning.

Jim Rines responded they would all meet that one specific criteria.

Suzanne Ryan asked if the septic was going to be on the lot line and if there is an easement needed.

Jim Rines explained there is none required at this time for the same reason as the access to the property. There will be a shared leach field and each property would have their own septic tank.

Suzanne Ryan asked about Homestead Rights on this lot.

Rob Houseman responded this is not a homestead property, as it is not built on.

Steve McGuire stated this is an easement nightmare if the back lots are sold to a separate person.

Kathy Barnard asked if the applicant has spoken to the Fire Department for any issues regarding driveway access.

Jim Rines responded they have not as the Zampell's own the adjoining lot to the south. If there is concern, they would accept a condition the driveway be looped.

Steve McGuire asked the applicants thoughts concerning TM# 172-004.

Jim Rines responded they cannot build on it, as there is a stream and wetlands.

Steve McGuire asked if they would consider merging it with TM# 172-003 or TM# 172-004.

Mr. Zampell asked what the benefit would be to merging the lots. This is personal thing as he has two children and wants to even it out. Mr. Zampell asked about a condition that they cannot build on it. The lot is wetland and has been deemed not buildable.

The Board and the applicant reviewed the lots adjoining TM # 172-004.

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

Mike Hodder asked if Mrs. Drinkwater's concerns were addressed and noted the Board is in receipt of a second letter stating she has no issue with the application.

Rob Houseman responded he believes she was hoping to have a conversation with her neighbor and has, but he does not know the detail of it.

Jim Rines commented the applicant has no problem merging lot 4 and 4.

Deliberations:

Kathy Barnard noted this is a conforming lot in a 1-acre zone and this is over an acre in size. Something can be arrived at to protect future owners. The lots will be merged and this is a positive aspect. The applicant is willing to consider a driveway that would loop to lot 4 and then come in front of vacant lot 3, which would allow for vehicles turning and would reduce congestion. If approved they would be approving a dwelling over a garage. The setbacks comply with Conservation Wetland Overlay District. This application is not contrary to the Master Plan. Her concern is protecting future purchasers of this lot and maybe they can keep the hearing open to obtain a legal opinion if needed until that is gotten.

Mike Hodder suggested they request the applicant draft a document easement and possibly postpone the hearing until the legal language is received.

Alan Harding reopened the hearing so Suzanne Ryan could ask if there is a hardship in delaying the hearing or not.

Mr. Zampell stated for him there is not, but for the builder and others yes there is.

Alan Harding noted the main issue is future hardship of a purchaser, which can be resolved. The applicant can obtain an airtight conveyance to access the property. In addition, the acknowledgement requiring a building permit on a private way will also be required.

Rob Houseman noted a simple solution to rectify the deeded easement. He suggested the applicant transfer the ownership of lot 3 and then grant the easement for recording.

The Board discussed methods to grant the easement.

Mike Hodder noted he withdraws any conflict he had on criteria # 1.

Steve McGuire believes that on #3 not having an official map for the town does not automatically exclude the Master Plan. Approving these back lots is contrary to the Master Plan and leads to unprecedented continued overdevelopment and shorefront overcrowding.

Suzanne Ryan noted this increase in density and overcrowding of the area is not in the best interest of what the Master Plan purports and is opposed to increased density and overpopulation the area. There is going to be people there, another family.

Mike Hodder questioned the Master Plan logic. Maybe an application like this violates the Master Plan for some areas of town. Is denying the application intending what the Master Plan means?

The Board noted the lot is actually .52 acres and not over an acre. There was a Scribner's error on the plan.

Steve McGuire noted he has asked and wants an answer to is how many of these 1966 subdivision types or other lots of record that have been created and are still out there, how many are there and how big is this problem and it is precedence setting approving.

It was moved by Suzanne Ryan and seconded by Steve McGuire to deny the request under 674.41 for relief. Suzanne Ryan and Steve McGuire voted in favor of the motion. Kathy Barnard, Alan Harding, and Mike Hodder voted in opposition. The motion failed.

It was moved by Kathy Barnard and seconded by Mike Hodder to approve Case # 09-RSA-11 to allow for the construction of a single family home over a garage on a parcel with no road frontage, TM# 172-3, which is a half acre in size, with the following conditions:

1. The proposed is for a dwelling over the garage in the location shown on the survey presented to us and the size of the proposed dwelling over the garage is what is being approved and only what is being approved.
2. A circular driveway be constructed at the suggestion of the property owner and will cross over TM# 171-4 to TM# 172-3.
3. The merger of TM # 171-4 and TM # 172-4 must take place.
4. The Acknowledgement regarding the building permit on a private way must be submitted
5. A legally binding easement to allow for protection of future owners must be submitted and recorded in the proper County Office
6. A septic easement shall be submitted.

Alan Harding, Kathy Barnard and Mike Hodder voted in favor of the motion. Suzanne Ryan and Steve McGuire voted in opposition. The motion passed.

TM# 234-12

Case #10-V-11

Applicant: Edward Richter, Jr.

Variance

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

Mike Hodder remained seated for David Booth

Steve McGuire read the abutter and public notification for the record. A site visit was held at approximately 4:00 PM prior to the meeting.

Public Hearing for a Variance under Section 175-88.3, A (1) & (2) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a one car garage that would violate the side yard setback by approximately 4.4' and to enclose a portion of the existing porch that currently violates the front setback by 2.2'. This property is located at 21 Red Brook Circle. A site visit will be held at approximately 4:20 PM prior to the meeting.

Jim Rines addressed the Board and reviewed the plan of the property. The five points required for a variance were reviewed as submitted. The changes in the variance for setbacks were reviewed

Rob Houseman confirmed the applicant was accurate with what was presented as for the changes in the ordinance. The Zoning Map was reviewed and changes were explained as to how the zoning boundaries were created.

Suzanne Ryan asked if there was a proposal for a change in the driveway.

Jim Rines stated there will be another driveway that services from the garage. This is a corner lot and there will be two driveways constructed.

Chairman Harding opened the Public Hearing.

Ed Richter owner addressed the Board and explained he received two notices from the town and one showed Edward R. Richter and his name is Edward F. Richter, Jr.

Gary Gosbee, 28 Red Brook Circle and representing Wentworth Estates Board of Directors, spoke in favor of the application. All owners belong to the association and the seven members of the Board were unanimous in their approval.

Chairman Harding closed the public hearing.

It was moved by Steve McGuire and seconded by Suzanne Ryan, concerning Case # 10-V-11 to grant the Variance as requested. The applicant has met all of the requirements; the Variance will not be contrary to the public interest; the Spirit of the Ordinance is observed; substantial justice has been done; the values of surrounding properties will not be diminished; literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Alan Harding, Steve McGuire, Kathy Barnard and Mike Hodder voted in favor of the motion. Suzanne Ryan abstained, as it is inappropriate to not go through the criteria. The motion passed.

Consideration of Minutes:

August 1, 2011 - Minutes

Page 2 - Add "See files for supporting documentation". At the bottom of the page where it should read "Suzanne Ryan stated they are setting precedence. The town had a process in the Creese case for the building permit on York Road. There was an Appeal of Decision of the Code Officer - Notice of ZD Denied in 2001. This case is not following the process. (See files for supporting documentation)

It was moved by Alan Harding and seconded by Steve McGuire to approve the minutes of August 1, 2011 as amended. All members voted in favor. The motion passed.

November 7, 2011 - Minutes

Amendments:

Page 1 - add the word of after conduct in the first paragraph to read "

Page 3 - 2nd paragraph - change Ray to Ryan
4th paragraph, 8th line remove the word "in" after Boards

Page 5 - paragraph should read - Alan Harding stated the person Mr. Eastman bought this parcel from the seller who agreed upon a price to sell it and had the option what Mr. Eastman is doing what Mr. Eastman wants to do now. Why is this a discounted price? This property was bought 2 years ago so Mr. Lang's argument is that he somehow generated a favorable price.

Page 6 - 4th paragraph 4th sentence - and the word "in" after the

Page 7 - 1st paragraph, 1st sentence -after the word read - "in its entirety"

Page - 3rd paragraph from the bottom - change "precedence" to "precedent"

Page 9 - 1st paragraph, last sentence change "me" to "met"

4th paragraph, 2nd sentence to the end change "where in" to "wherein"

2nd paragraph add after the word "wildlife" - she noted Section 14 of the Natural Resource of the Master Plan - recommendations

Last paragraph from the bottom, last sentence add "referring to the official map"

Page 10 - 2nd paragraph change "statue" to "statute"

Page 14 - last sentence - change "congeniality" to "collegiality"

It was moved by Suzanne Ryan to accept the minutes as corrected. Steve McGuire seconded the motion. All members voted in favor and the motion passed.

Rules of Procedure

Alan Harding read the following change one page 2. This is the second reading

"Alternates, once seated to hear an application as a voting member, shall continue as a voting member of the Board on said application until such time final action is taken on the application"

It was moved by Suzanne Ryan and seconded by Steve McGuire to accept the amendment to the rules of procedure as read and accept the Rules of Procedure as Amended.. All members voted in favor and the motion passed.

Other Business:

Steve McGuire requested the Board ask the Town Planner and the Planning Board to give them guidance regarding these rear lots with no access. Specifically how many lots there are both shorefront and throughout the town. Then ask the Planning Board under what circumstances would they be all right for approval. He does not think development of rear lots is good planning and wants to know how big the problem is.

Kathy Barnard asked the Planning Board on October 4th and they agreed they should take no action at that time, as it is not appropriate for Planning board to review such things. The ZBA has specific criteria to review as they do with variances. They should be taken on a case-by-case basis. Further, looking at the Natural Resource Chapter there are a number of recommendations and the issues will come up at that time.

Steve McGuire stated he needs help with good planning.

Rob Houseman responded he does not have the capabilities in house to run the query on the information requested so he is asking their consultant if they can do it.

The Board discussed the topic.

Alan Harding asked Rob Houseman if this may be a subject for discussion for an OEP Seminar.

Rob Houseman will try and get excerpts from the book "A Hard Road to Travel" by Bernie Waugh and query the Local Government Center, ask for articles and talk with to the various attorney's as to what they are doing. The Town of New Durham - Vachon vs. New Durham challenged that community. The Board will be supplied with the case.

News Article

Alan Harding distributed an Article the Board on the Supreme Court having issues with recusal.

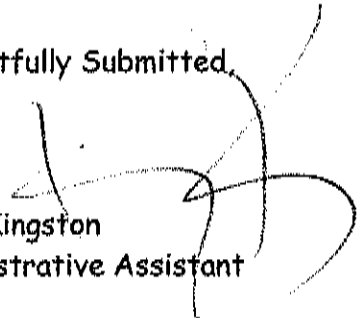
2012 ZBA Schedule

The Board reviewed the schedule 2012 and Alan Harding noted he will not be at the March 5th meeting and will not be able to sign any February decisions.

Mike Hodder noted he has a conflict with the January and September meetings.

There being no further business, this meeting was adjourned at 9:12 PM.

Respectfully Submitted,


Robin Kingston
Administrative Assistant