

Wolfeboro Zoning Board of Adjustment

Regular Meeting

April 4, 2011

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, David Senecal, Alternate

Members Absent: Geordy Hutchinson, Alternate and Charlene Seibel, Alternate

Staff Present: Rob Houseman, Director of Planning & Zoning, 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 and the conduct of public hearing was reviewed.

TM# 71-2

Case # 03-V-11

Applicant: Phil Spencer

Agent:

Variance

Steve McGuire read the public and abutter notification for the record. A site visit was held at approximately 6:30 PM prior to the meeting.

Variance from Section 175-25 of the Wolfeboro Planning & Zoning Ordinance to allow for the conversion of the use as an Educational Center (permitted by Special Exception) to a facility for the repair and restoration of wooden boats and also to permit the construction of a 30' x 60' storage building to be used in connection with the wooden boat restoration business. The repair and restoration will be of the boats and would not involve motor repair. This property is located at 990 Center Street.

The applicant is proposing to purchase the property formally known as the Center of Hope and convert its use to a wooden boat repair and restoration facility. The subject was permitted by Special Exception as an educational facility. The current wooden boat facility is located on Bay Street and the applicant proposes to move the business there.

Bill Tanguay, Esq. representing the applicant addressed the Board. The Purchase and Sales Agreement was provided to the Board as well as a letter from Lisa Williams, Broker (both are part of the record). The subject building is approximately 100' long. There is also a proposed 30' x 60' barn. This proposed use is less of a density use than many uses allowed in the zoning district. The assessing card lists the value at \$403,300 which is almost four times that of sales price of \$117,000. The five points required for the variance were reviewed as submitted. The Hardship is there is no market for a residential, agricultural use or similar use because of the location, size of the building, and location of wetlands. This is a good proposed use of the property.

Suzanne Ryan asked that the Substantial Justice criteria be expanded upon:

Bill Tanguay, Esq. explained the courts guiding rule is any loss to an individual is not outweighed by a gain to the public. The property is likely to go back on the market and be there for a long time as it already has. The assessment is over \$400,000 and the sales price is \$117,000. Weigh this against the gain to the public holding to the zoning restrictions placed on the property. The property will most likely not be used for residential or agricultural purposes. You have a property that is going to deteriorate. The loss to the individual is great and there really is no gain to the public. The benefit to the community is the property will be used and the property will be taken care of and enhanced.

Kathy Barnard asked about the benefit to the community are.

Bill Tanguay, Esq. noted the empty building will not deteriorate and Phil Spencer uses the building as proposed.

David Booth asked:

1. Asked if motor testing would be done.

Phil Spencer explained he repairs boats, installs engines, and does wiring. They do run the motors to test and make sure they are running properly.

2. Are the abutting properties currently occupied?

Phil Spencer explained that Mr. Armour next to the property has his house for sale as does an abutter across the street.

David Armour representing his dad, Chuck Armour explained the house is occupied occasionally. They do come up in the summer and currently go there every few days. Although they stopped staying there in November 2010 but plan to stay there once the snow melts.

3. David Booth read the guidelines the applicant needs to establish for special conditions of the property that distinguish it from others in the area. It is not enough the property would be hard to use for other purposes. The property must be different.

Bill Tanguay, Esq. expanded on the hardship question posed. The property is located on Rt. 28, is 2.3 Acres with wetlands on the property. There is an existing building which has been there for some time. The property has had a Special Exception and is unique. The building is in excess of 100' in width with 2 front doors and a large paved parking area. If this property had no building on it, this would be a different case. It is difficult to use this property for residential purposes. Agricultural use would also be difficult because of the wetlands. The building would be good for a medical office, day care, or counseling center but they are also not permitted. The property is unique and the use limited. Currently the Special Exception is for an educational facility.

Phil Spencer explained he has one employee and sometimes in the summer he hires one more part time helper and has operated this way for 20 plus years. He has never had any more than 2 employees at any one time and does not plan on hiring more people.

The Board questioned a tax reduction currently on the property.

Rob Houseman explained the current owner has a PILOT (payment in lieu of taxes) to Town of Wolfeboro and further noted Mr. Spencer's property would not be tax exempt.

Steve McGuire asked if the barn constitutes an expansion of a non-conforming use.

Rob Houseman explained the applicant is seeking a variance for the use as presented. They have included the proposed barn as information. All subsequent activity on this property requires Planning Board Approval. They are not seeking an expansion of 25%. A Special Exception preceded the Variance

Suzanne Ryan asked the applicant if the use would have external evidence of the operation.

Phil Spencer explained this application and the proposed barn is so he does not have anything out in the open and covered by tents. He is trying to get all work undercover and indoors. The hours of operation will be six days per week 8 AM - 5 PM.

The public hearing was opened.

David Senecal gave a history of the building. The building was initially built for the Wolfeboro Boat Museum, after that it served as a Western Auto Parts Store. It was not built or intended for use as a residential property. This explains the large paved parking area.

Brian Berlin, Land Tech noted the building is on a slab and is not conducive to a residential use.

David Armour read the letter submitted by his father to the Board which was previously submitted. He noted the rehab center was not an office building but a rehab center. It seems the building was expanded in the past. There was someone looking at the property for residential use and later decided against it. There is a concern about the engines and noise when they are tested. The property sits on Willey Brook which is a serene place. The use of chemicals are a concern. They have concern because will see the buildings and sometimes the boats outside from their property. His dad's house was listed in September 2010 and taken off the

market in November 2010 because they realized his father could live there even though he is using a walker.

Brian Berlin noted the building is about 150' from the lot line and 250' from the abutters' residence and the proposed barn would be located on the other side of the building being about 340' away.

Phil Spencer explained he is planning to build the barn with 10' wall height and a roof.

David Armour noted when Lisa Williams gave her opinions and values it has only been within the past few years. Realtors have a vested interest in a sale. The property sitting there is a sign of the economy across the country.

Alan Harding asked if Mr. Armours main concern is visual.

Mr. Armour concurred it is one of the main concerns although they heard things tonight that seem to alleviate some of the other concerns. The traffic, chemicals, fumes and running engines are all concerns. They would like it to remain a residential or agricultural property because what if it gets approved and someone down the road wants to open the another facility.

Alan Harding asked how far Mr. Armour's residence sits form the road.

David Armour responded they are set back about 65'.

Alan Harding noted the properties are well buffered in between.

David Armour noted the house was built in 1990.

Bill Tanguay, Esq. noted it is not a high density commercial use. The zone wants there to be limited demands of public services. This property is unique and there are no other 100' buildings with paved parking lot in the area. Just because a variance is granted does not mean that others in the future have to be.

The public portion of the hearing was closed.

The Board deliberated the variance criteria.

1. **The variance will not be contrary to the public interest because:**
Low density use; commercial since the late 60's; traditional NE craft/trade; appropriate use, in the public interest
2. **The spirit of the ordinance is observed because:**
Improves area; appropriate to the use of a reasonably unique piece of property; will improve the property and meets general, health safety and welfare of community; less traffic;
3. **Substantial justice is done because:**
No public gain by denying; commercial property in some form or another for almost 50 years; Overall improvement of property; property will reenter the tax rolls;
4. **The values of surrounding properties will not be diminished because:**
Building has been in heavier use before and during the occupancy of Mr. Armour's property. There will be no diminished value; there would be more of a lessening of values if left vacant; Studies have been done on vacant properties effecting occupied properties; improvement to the current structure and a new barn to property will be an asset
5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:** The "Special Conditions" of this property that distinguish it from other properties in the area are as follows and the proposed use is a reasonable one because:
Small lot compared to zoning of 5 acres required in the zone; Unique structure; not viable as a residence or agricultural property; unique hardship exists; special conditions of the property; building itself is a special condition; proper management will not have adverse impact; reasonable use in the area. Acknowledge abutter and concerns will be taken to the Planning Board.

It was moved by Alan Harding to approve Case # 03-V-11, TM# 71-2, the application having met all five of criteria with the following conditions:

1. All documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise update, 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 be generally 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 Planning Board Consideration.

Suzanne Ryan seconded the motion.

David Booth amended the motion to include: Given the location to Willey Brook the Zoning Board notes the Planning Board shall consider and be satisfied with the storage of and outdoor use of chemicals and discharge.

Kathy Barnard seconded the amendment.

Suzanne Ryan amended the motion to include: By virtue of granting this variance it nullifies the prior Special Exception for the property.

Kathy Barnard seconded the amendment.

All members voted in favor of the motion and the amendments. The motion passed.

Consideration of Minutes:

January 3, 2011

Corrections:

Page 2:

1st paragraph; 3rd line - Reverse "the on" to read "on the"

2nd to last paragraph; 1st sentence - change to read "Suzanne Ryan read the legal notice"

Page 6:

3rd Paragraph; 1st Sentence - insert "would" between applicant and rather

Page 7:

3rd paragraph from bottom - remove the word "the"

2nd paragraph from the bottom - change the word of to "off"

It was moved by David Booth and seconded by Alan Harding to approve the minutes as modified. All members voted in favor of the motion. The motion passed.

Other Business:

Mike Hodder asked for the law allowing nullification of a Special Exception.

Rob Houseman explained actions by the ZBA supersede its previous action. The info will be supplied.

Workshop:

Rules of Procedure:

Suzanne Ryan asked if the most recent approved Rules are recorded with Town Clerk. Rob Houseman noted he would check and supply a copy to the Board.

It is proposed the following be added to Section; IV Meetings 2 of the Rules of Procedure:

Alternates who are not seated by the chairman to fill the seat of an absent or recused member may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may participate in the review of the application until such time the board closes the public hearing and begins deliberation. Upon the close of the public hearing, an alternate not acting in place of a member shall not participate in the deliberation. The Chairman will announce who is participating in the deliberation or vote on each application at the beginning of the hearing and prior to entering to deliberations. During work sessions or portions of meeting that do not include a public hearing; alternates may fully participate, exclusive of any motions and votes that may be made.

Discussion

The Board discussed the inclusion of the proposed wording: Alternates leaving the table during deliberations or remaining seated.

Suzanne Ryan noted there is a whole host of concerns why abutters did not sit. She had thought about Alternates sitting at one end of the table and then about Alternates getting up and discretely leaving the table during deliberations.

David Booth noted going back 20 years Alternates have always participated in discussion but did not vote. The Municipal Association or Government Center suggested the Alternates should not sit and the Board agreed.

Suzanne Ryan noted that it was a law.

David Senecal noted he has no problem standing at the podium and voicing his opinion however sitting at the table her can get a better read on the audience. He agrees it should be up to the Chairman.

Mike Hodder disagreed and noted Alternates spend just a much time reviewing and researching each case, the law, individuals and files at Town Hall. Alternates are privy to the Boards packet and this is more than someone from the public. Speaking as a citizen he does not have enough time to cover points as he would being allowed taking part in the discussion with the Board. As long as the Alternates are identified as non voting members there is no issue with Alternates sitting at the table.

Suzanne Ryan said she has no problem with Alternates at the table for the public hearing but once the hearing is closed Alternates should discretely step down from the table.

Mike Hodder disagreed as that would be disruptive. As long as there were name plates identifying members and alternates this is not an issue.

Steve McGuire agreed with Mike Hodder. In order to keep Alternates involved they should be part of the Board and this is important in attracting good Alternates. They Alternates should maybe be seated at one end.

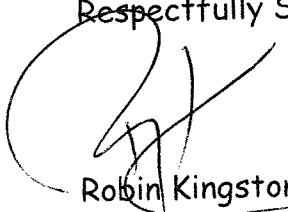
Alan Harding agreed Alternates should participate, should be involved in the discussions and have name tags.

Suzanne Ryan suggested the word "or" be change to "and" in the sentence beginning with The Chairman.

It was moved by Suzanne Ryan this be the first reading of this amendment to the Rules of Procedures subject to simplification of last sentence to the appreciation and approval of the Chairman, changing to word "or" to "and". Steve McGuire seconded. All members voted in favor. The motion passed.

There being no further business before the Board, this meeting was adjourned.

Respectfully Submitted,



Robin Kingston
Administrative Assistant