

Wolfeboro Zoning Board of Ad **RECEIVED AND RECORDED**  
Regular Meeting 7/18, 20 11 8:00 A M  
July 11, 2011 Book No.                      Page No.                       
Minutes                       
WOLFEBORO, N.H. TOWN CLERK

**Members Present:** Alan Harding, Chairman, Suzanne Ryan, Vice Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, and David Senecal, Alternate

**Members Absent:** David Booth, Member and Mike Hodder, 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 and the conduct of public hearing was reviewed.

Alan Harding explained the position of alternates participating during an application however, they shall not be participating in deliberations, motions or voting if they have not been appointed for the particular hearing.

**TM# 80-2**

**Case # 06-RSA-11**

**Applicant: Sandra Pearson-King**

**Appeal From NH RSA 674:41**

Steve McGuire read the public and abutter notification for the record. A site visit was held at approximately 6:00 PM prior to the meeting.

Appeal from NH RSA 674:41 to allow for the construction of a dwelling where there is no road frontage. The property is located at TM# 80-20, York Road.

RSA 674:41 requires frontage on a Class V or better highway, or a road platted by the Planning Board during the subdivision of land, or Class VI highway with selectmen approval prior to issuance of a building permit. RSA 674:41, II allows an aggrieved individual to seek relief from this statute, provided the applicant can

demonstrate that there is an unnecessary hardship or practical difficulty in the enforcement of the provision and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets.

Suzanne Ryan asked for a continuance because she has not received a couple of case laws and information from the ZBA attorney that was forwarded to the rest of the Board. This is unfair to herself and the applicant.

David Senecal noted he did not have what Suzanne Ryan was referring to.

Alan Harding explained there were numerous emails today relating to a map, which replaced the one received with the package as well as explanations and an acknowledgement and recommendation from the ZBA attorney if this case were to be approved

Kathy Barnard noted Suzanne Ryan had posed some questions and they were answered by Mr. Houseman.

Suzanne Ryan asked again for a continuance because she has read some other literature that may be contrary to what came in tonight.

David Senecal agreed if the applicant or the whole Board has not seen them it would be fair to continue this application.

Kathy Barnard asked for clarification on which parcel they were looking at this evening because at the site visit one parcel was talked about and on the map another was highlighted.

Rob Houseman addressed the Board and asked that the applicant be allowed to present the application. The information submitted today was based on a conversation with the Chairman that asked if a map could be supplied that shows the relation of the parcel and surrounding area out to Beach Pond Road. He personally created the map and it appears he highlighted the 40 acre parcel and not the subject parcel. The map is somewhat messy because he tried to keep to scale so they Board could see out to Beach Pond Road. He also tried to include the Cresse property, which was before this Board in 2001 for the same relief. The second item received was a follow up to an item in the packet being the Release of

Waiver document. The ZBA Attorney does not like the Release of Waiver document because the statute clearly says the Town has no liability. When an agreement is formed that states the Town has no liability for the following, it implies the Town may have liability for other things. The attorney has created an Acknowledgement Document to be recorded rather than an agreement; in which the acknowledgement document acknowledges this is the statute that applies and there is no liability or requirement from the town. The third thing was the discussion of the waiver, her explanation of the waiver and a discussion as to whether or not this needs to be submitted to the building department for receipt of denial by the building inspector so that it can be appealed here at the ZBA. Her position is "no" it does not because the denial is inherent in the State RSA and there is no reason to make the applicant submit a legal full application, pay fees knowing it is going to be denied and then make the applicant come to the Zoning Board for relief. There was no case law that had been provided to the board for this application. It is wholly appropriate that if the Board hear the application and if they are not ready to make a decision, to continue the application to a date certain.

Suzanne Ryan stated that she does not have a problem hearing the application but she does not like to do it on the fly as she likes to digest what she reads and what she read is different from what she has been reading so she would like to weigh the two factors and continue this application for a decision.

The Board agreed to hear the application.

Sandra Pearson-King addressed the Board and explained she would like to purchase a 50 acre parcel from Barry Caswell where she would like to build a single family home. There is no driveway to the property. If this application were to be denied this would be her hardship because she cannot build a house on her property she wants to buy.

Alan Harding stated the second fact supporting the request is "be a practical difficulty in the enforcement of the provision and when the circumstances of the case do not require the building, structure, or part thereof to be related to existing or proposed streets. This he and their attorney do not understand section and this section is usually disregarded.

David Senecal asked when these lots were subdivided.

Barry Caswell, owner of the property explained he bought the property from the Pollini Brothers and the lots were existing at that time. The Pollini Brothers were using the property as a gravel pit back in the 1940's or 1950's and it was part of the Hersey estate.

David Senecal noted the lots were there before zoning and RSA 674:41 was probably created for this exact reason, as there are many lots like this around the state.

Steve McGuire asked if the hardship is - "she cannot build a house if she purchases the land and if she does not purchase the lot does the hardship exist?"

Sandra Pearson-King responded she would not be able to purchase the land that fit her criteria that she has been looking for a number of years and that would be a hardship.

Rob Houseman reviewed the map of the subject parcel, surrounding parcels and relation to Beach Pond Road.

The Bertram Creese application, TM# 112-1 of September 2001 was discussed. This was an application very similar to this application and was approved.

Alan Harding read a portion of a correspondence from Attorney Spector.

The distance from Beach Pond Road to Mr. Caswell's House is about one mile and about another mile to the subject property.

Kathy Barnard asked about getting access.

It was explained that Mr. Caswell owns several parcels and an easement would be given through those parcels to the subject parcel. The Town also has an easement.

Kathy Barnard asked how you come up with a safe access way. Who looks at the plan for the driveway? Steep, width, grade etc.

Rob Houseman explained there is new standard if a drive is servicing three or more dwellings. The Fire Dept will determine the width.

The Board discussed road length, width and the number of dwellings the driveway would serve.

*It was moved by Steve McGuire to continue the public hearing to the August 1<sup>st</sup> meeting. Suzanne Ryan seconded the motion.*

The Board discussed the motion.

Several items were discussed such as asking the Fire Department and the Planning Board for their input on the application and looking for guidance from the Planning Board.

Rob Houseman asked Board members if they have specific points that need to be clarified or questions answered to please forward them to the Chairman and himself by Friday, July 15<sup>th</sup>.

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

#### **Consideration of Minutes:**

June 6, 2011

Page 2 - 3<sup>rd</sup> Paragraph - add "and" after the word "Board" in the first sentence.  
Next to the last sentence change 4,096 sq. ft. to 1,024 sq. ft.

Page 3 - 2<sup>nd</sup> Paragraph - last sentence remove "of the" to "to"

5<sup>th</sup> Paragraph - change "a" to "the" before the word year.

7<sup>th</sup> Paragraph - 2<sup>nd</sup> sentence - strike the word "are"

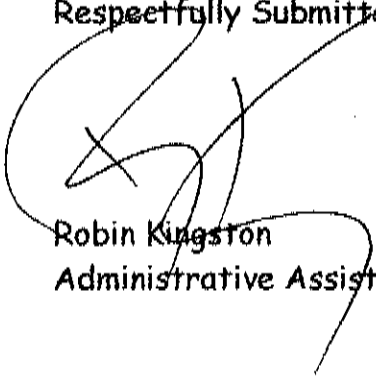
Page 5 - 4<sup>th</sup> sentence - strike the second word "are"

Page 6 - add the Board Generally Agreed under deliberations of Criteria #'s 2,3,4 & 5.

It was moved by Suzanne Ryan and seconded by Kathy Barnard to approve the minutes of June 6, 2011 as amended. Kathy Barnard, Steve McGuire, Alan Harding and Suzanne Ryan voted in favor. David Senecal abstained. The motion passed.

There being no further business the meeting was adjourned at 8:30 PM.

Respectfully Submitted,



Robin Kingston  
Administrative Assistant