

WOLFEBORO ZONING BOARD OF ADJUSTMENT **RECEIVED AND RECORDED**

January 13, 2012

MINUTES

Book No.

Page No.

WOLFEBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Suzanne Ryan, Vice-Chairman, Steve McGuire, Kathy Barrard, Mike Hodder, Alternate.

Members Absent: David Booth, Member, Dave Senecal, Alternate.

Staff Present: Rob Houseman, Director of Planning & Development, Lee Ann Keathley, Secretary.

*Chairman Harding opened the meeting at 2:00 PM at the Wolfeboro Town Hall Meeting Room.
Chairman Harding appointed Mike Hodder, Alternate, to sit in for David Booth, Member.*

Consideration of Motion for Rehearing

James & Christine Zampell

Tax Map #172-3

Case #09-RSA-11

Appeal from NH RSA 674:41

Motion for rehearing submitted by James Rines, White Mountain Survey Co., Inc., as appointed as agent for James and Christine Zampell, based on a decision made by the ZBA on December 5, 2011 as follows;
The Board voted by at least three members 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 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 stated the Board is meeting to consider a Motion for Rehearing of Case #09-RSA-11 which was granted on December 5, 2011 and that there will be no public input. He read the motion to approve Case #09-RSA-11 which included 6 conditions that were approved by at least three members in favor. He reviewed the purpose of the application (to allow access; appeal from 674:41). He corrected the purpose by stating the purpose was to approve a building permit which had been granted. He also stated that he perceived an attempt in the motion to convince the ZBA that the survey presented at the time of the hearing on 12/05/2011 was merely a proposal, subject to change by the applicant; noting such was not mentioned at the hearing. He then read the dictionary definition of the word "proposal" which is "put forward for consideration, discussion or adoption". He stated the ZBA adopted and granted the original appeal with six conditions (noted above). He issued a reminder to the Board that 677:2, NOTES, #1 reads as follows; "rehearings were not to be lightly granted". He asked the Board the following questions; has the ZBA

committed a technical error and is there any new information presented in the Motion for Rehearing that was not available at the 12/05/2011 hearing.

Rob Houseman submitted a plan that depicts the approved location and the size of the approved location superimposed on the plan in addition to the proposed location.

Referencing the original motion to approve on 12/5/11, Alan Harding stated one could argue whether the proposal is all inclusive; meaning the actual survey submitted and contained within the submission is the disclaimer. He stated that as it stands now, the proposal as presented contains the disclaimer which the applicant could use without the Board doing anything.

Referencing the application form, Suzanne Ryan read the form and stated the applicant was supposed to propose what they actually physically were going to do.

Kathy Barnard stated she views an application as a proposal until the Board takes action.

Steve McGuire stated condition #1 is clear as to what the ZBA approved.

Mike Hodder stated per 677:6, the ZBA can correct its own mistakes; noting that if the Board feels they have made an error, they should be able to fix that error. He stated there were no dimensions on the plans, exact location on the ground, no contour lines and noted the Board should have been provided a plat with dimensions. Therefore, he questioned how the Board could hold the applicant to build to the plan that has no dimensions and no indication of interior layout and how could the Board hold the applicant to the conditions of approval.

Steve McGuire stated he has no issue with granting a rehearing however, noted that by granting such, the applicant has to reapply.

Mike Hodder stated the applicant has to realize that if the Board agrees to a rehearing, the Board starts from the beginning.

Suzanne Ryan stated it was not an unreasonable condition and a mistake by the Board based on the material the applicant chose to provide. However, she believes there was an error in the administration of the application and that the application should not have come before the Board until it was complete per the application requirements. She stated the application should not have been scheduled for a hearing. She does not object to grant a rehearing. She stated the information she has states the granting of a rehearing should be a compelling one and the Board has no right to reopen a case on the same set of facts unless it is convinced that an injustice would be otherwise created. She stated the applicant created their own problem however, to force the applicant to build in the approved location is an injustice.

Mike Hodder agreed with Ms. Ryan's last comment.

Steve McGuire stated that if he were the applicant, he would let this approval stand and submit a new application.

Mike Hodder stated the applicant is putting his case in jeopardy if they decide to move forward with a rehearing on the approval. Referencing 674:41 and the Corey Eastman or York Road cases, he questioned whether the ZBA saw a building plan. He questioned whether the variance is to approve plans for a building designed by a surveyor or to grant an applicant access to the property for the purpose of building.

Steve McGuire stated the Board doesn't grant building permits rather, the Board grants access to the property and acts and votes on the information provided. Referencing the Zampell case, he stated the Board was given an exact location on the property however, the Board was not provided a location on either the Eastman or York Road cases. He stated the Board's approval was structured based on the information provided by the applicant.

Kathy Barnard stated she doesn't believe the Board made a technical error and the conditions were reasonable conditions based on information brought forth at the public hearing and submitted with the application. She stated the Board has to rely on the information noted in the application and that the abutters should be able to rely on the information as well therefore, she doesn't believe it qualifies for a rehearing.

Suzanne Ryan agreed with Ms. Barnard's statements and stated the applicant can submit a new application.

It was moved by Suzanne Ryan and seconded by Kathy Barnard to deny the request for rehearing.

Discussion on the motion:

He stated the approval was based on information submitted therefore; a technical mistake was not made by the Board rather, by White Mountain Survey Co.

It was moved by Suzanne Ryan and seconded by Kathy Barnard to deny the request for rehearing for James and Christine Zampell, Case #09-RSA-11. All members voted in favor. The motion passed.

It was moved by Suzanne Ryan and seconded by Mike Hodder to adjourn the January 13, 2012 Wolfeboro Zoning Board of Adjustment meeting. All members voted in favor.

There being no further business, the meeting adjourned at 2:26 PM.

Respectfully Submitted,

Lee Ann Keathley

Lee Ann Keathley