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Wolfeboro Zoning Board of Adjustment

Regular Meeting

November 5, 2012

Minutes

WOLFEBORO, N.H. TOWN CLERK

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

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 procedures and rules for the public hearing were noted.

Request for Rehearing

TM# 59-1

Case # 07-RSA-11

Applicant: Corey A. Eastman II

Submitted on behalf of Jonathan Doherty, Gordon Lang and Stephen Lang

Kathy Barnard noted she saw no technical error or read any new evidence that wasn't available at the time of the hearing

Suzanne Ryan commented she feels new info was given that was not readily available at the time of the hearing, that being the hearing report from the legislature that documents one core issue of a full residence versus a shed.

Kathy Barnard responded that information was available and was discussed.

Suzanne Ryan responded that information was available but not discussed.

Mike Hodder commented he had asked Attorney Baldwin at the time of the hearing if she had evidence to support testimony offered at the time this amendment was

proposed and she said she did. Nothing offered in the amendment to the filing is new. Also, there is nothing to suggest the ZBA made an error in its previous ruling.

David Booth agreed there is no new evidence and no error.

Steve McGuire commented he sees nothing submitted by Attorney Baldwin that would be new information but he looks forward to this issue being resolved by the courts.

Alan Harding read the following statement:

The arguments set forth in the Motion for Rehearing dated October 5, 2012 are substantially unrelated to the purpose of the hearing in question which was to address a Remand Order from the Superior Court on a single issue: whether the applicant met the requirement that "the circumstances of the case (07-RSA-11) do not require the building structure or part thereof to be related to existing or proposed streets" AKA threshold condition #2 in RSA 674: 41 11.

After extensive deliberations the Board voted unanimously "to approve threshold condition #2 since the circumstances of this case do not require the building to be related to existing or proposed streets and therefore, satisfy Judge Houron's Remand Order dated July 17, 2012 and thereby reaffirm our original approval of Case #07-RSA-11 on November 7, 2011". I cannot overlook the fact that was one year ago tonight.

It was moved by Alan Harding and seconded by Kathy Barnard to deny the Motion for Rehearing since there is no compelling evidence presented or technical error on the part of the ZBA. Alan Haring, Kathy Barnard, David Booth and Steve McGuire voted in favor of the motion. Suzanne Ryan voted in opposition. The motion passed.

TM# 80-1

Case # 11-RSA-12

Applicant: Barry Caswell

Appeal of NH RSA 674:41

Continued Public Hearing

Steve McGuire read the public notice and noted this is a continuation of the first hearing held on October 1, 2012.

Public Hearing for the Appeal from NH RSA 674:41 to allow for the construction of a dwelling on a lot having no road frontage. This property is located on off York Road.

David Booth stepped down from the hearing and Fred Tedeschi was appointed.

Attorney Kurt DeVlyder addressed the Board and submitted a letter of Agent Appointment. Prior applications of similar properties have been granted by this Board with very limited conditions; the Sandra Pearson-King property was granted approval and the parcel is located behind this subject parcel and the only way to it is through the same throughway. While all parcels are unique this application is almost the same thing but the Pearson-King parcel is more difficult to access because it has to go through this subject lot. There is no practical difference except this subject parcel is not as difficult to access.

Alan Harding commented that previous applications were individual and the ZBA is dealing with this application and not the others.

The points required for granting the relief were addressed as follows.

1. There would be a hardship to the applicant because he would not be able to build a single-family residence on his property like other parcels in town and in particular, that area.
2. There is no relation to existing streets. This parcel dates back to a parcel of land from 1803 and has since been separated from and has deeded access by easement from York Road to Beach Pond Road.
3. The length of the access route is not an issue as there are no requirements from the town that an access route be a certain length.
4. The Fire Department looked into this matter as indicated in the 10/16/2012 memo from Deputy Chief Zotti access to the site was not in his opinion a concern and pointed out NPA 1 Fire Code 2009 noting structures can be constructed so that access requirements are not an issue and an example provided was the installation of sprinklers.

Mike Hodder disagreed that Deputy Chief Zotti said he has no problem with the application, as he has not reviewed and actual application.

Attorney DeVlyder disagrees. Deputy Chief Zotti in his memorandum did not raise any specific concern with regard to this.

Alan Harding clarified Deputy Chief Zotti's letter outlined the parameters they look for and no final judgment will be made. What the Board would look for if this application is approved, are conditions. They would have to be satisfied and Mr. Caswell would have to submit plans to be reviewed.

Attorney DeVlyder agreed and noted the applicant is not at that stage.

Attorney DeVlyder explained the building does not need to be related to existing roads because this is a single-family dwelling. If this were a large industrial complex, the access to the main road would have to be such to handle a high traffic count, drainage, disposal of snow and the road has to stand up over time. This is a single family home and the road already exists and access TM # 80-2 . Further, there is no official map of the town and therefore there would be no distortion of it. This parcel will not serve to increase the population of town and would be consistent with the use of surrounding parcels. The characteristics of the land lend itself to the use as a single-family dwelling. He does not feel the Master Plan intends to limit the development of this lot. This is not an unpopulated area as there are dwellings in this area and York Road has residences. The issuance of the permit will not cause undue hardship to future purchases or create additional costs to the town.

Suzanne Ryan noted the Police Department and Fire Department were asked to do a site visit, which they did not do so she is not putting much stock into the Fire Department's letter.

The Board discussed the letter from Deputy Chief Zotti.

Attorney DeVlyder noted there is a copy of the easement in the file which is the same for TM# 80-2.

The Board discussed the layout of the easement, actual location and a possible survey depicting it on a plan. Concerns in the discussion included where the location is and wetland crossings.

Suzanne Ryan stated she has found town approval by the Planning Board showing a survey that's platted the easement and it is not just an easement, it is a private road given confirmation by the Boards Counsel and the previous Town Manager. In 1992 the Planning Board approved a survey with a platted private road, York Road. In 1981 the 122 ace and the 42 acre lot were platted with the same easement configuration and this was the same in 1975. In 1975 there was s subdivision they divided out the

front lots and they denoted 240 acres of remaining land. Copies of these plans were submitted for the file. With her research she stated this is a private road under the statute. She does not feel the ZBA has the jurisdiction under the statute. For the record E of RSA 674:41 is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the governing local body. There is a process when there is an approved street it goes to the Planning Board not the ZBA. There is a process that would guarantee that a private road would be brought up to the towns standard of a private road and if there is not a condition the road is brought up to those standards, the ZBA should not approve it.

Steve McGuire noted if this has been subdivided and approved by the Planning Board, there can be no further lots until it goes for re-subdivision.

Rob Houseman addressed the Board and explained the document entitled: "1975 Eldridge Subdivision" has a notation "remaining land" and this is only depicting lots that have frontage on Beech Pond Road only. Barry Caswell's lot was created in 1803, the 40 acre parcel, and is not shown on this subdivision because it is not part of it, it is behind this subdivision. The copy entitled 1981 and in the upper left corner there are words that say "Pollinni Brothers", this is the Caswell lot that is subject tonight. It is not shown on any of these plans. This lot exists separate and distinct from all these plans just given to the Board from Suzanne Ryan. The lines shown on the plans are not the platting of a private way, The subdivision plan in 1975 was the creation of lots only with frontage on Beech Pond Road. The rear access is a platted easement over the parcel owned by the town (the old chlorine tank lot). ROW on the plan was written on by someone, not the surveyor. The easement was created and written in the deeds and in the letter by Guy Crapp creating the easement encumbrance over the towns parcel. Whatever this is called it was never platted by the Planning Board as part of an approval.

The Board discussed private roads and easements.

Suzanne Ryan noted the 1992 plan has a signature block, which is not being addressed and it states this is a platted road, a survey and platted road and is done so under RSA 676:18, for the purposed of platting out the road and surveying the property.

Mike Hodder stated there are no widths or dimensions.

Rob Houseman responded this is a plan of land never submitted to the Town of Wolfeboro for approval. It was recorded at the registry of Deeds for the record recognizing the property of the Burt Eldridge Estate is shown here. That is all it is. There is no Planning board signature block, which the statute requires.

Suzanne Ryan disagrees and as this is also to record any public or private way. She stated she is trying to prove that this York road is a private way.

Rob Houseman responded that you cannot use a plan of land recorded to supersede the Planning Boards authority.

Suzanne Ryan stated this document makes this is a private road.

Rob Houseman stated he does not see that and it is not private road.

Suzanne Ryan read a portion of communication from Town Counsel: "There is no definition of private road. The road is either public usually for town purposes Class VI or V or it is private. Private roads might be actual roads that serve a subdivision or they may be and often are little more than a driveway. Based on the information I have been provided, York Road constitutes a private road for purposes of 674:41." She further commented that they are coming in the back door to get approval for a lot to put up a house without improving the road. We do the town an injustice if we do not make a condition on this plan to say the road has to be brought up to the standards of a private road.

Mike Hodder responded the entire length of York road should not be Mr. Caswell's responsibility.

Suzanne Ryan responded that during 155:E Gravel Excavations the town had worked with the state and proper agencies to upgrade a good portion of that road so there is only a portion from that point and beyond that needs to be upgraded. You do not have to approve every request for a lot to build a house. To not approve it would not be a taking.

Fred Tedeschi stated when reading Section D the Planning Board has not approved this portion of York Road.

Suzanne Ryan stated they are circumventing a step by not doing this.

Rob Houseman noted Counsel has advised the Board the difference between a private way and a class VI Road is the private way provision is an either or provision. The applicant gets to chose whether they submit to the Board of Selectmen and direct it to the Planning Board or they get to come to the ZBA. The difference is the case law provides the applicant alone, gets to choose which body they apply to.

Attorney DeVlyder addressed the Board and stated he does not agree this is a private road and they are before the correct body. All applicable criteria have been met as they have illustrated and asked the Board to approve the request by Mr. Caswell.

No persons spoke in favor or against the application and the public hearing was closed.

The board discussed the application, each point required for approval, opposition and possible conditions for the application.

Rob Houseman reviewed the approval process with the board and how conditions are followed through with.

It was moved by Kathy Barnard and seconded by Alan Harding to grant to approve Case # 11-RSA-12 for Barry Caswell, TM# 80-1 to allow for the construction of a dwelling on a lot having no road frontage with the following conditions:

1. The access way shall comply with the NH Fire Code as approved by the Wolfeboro Fire Department.
- 2 The Wolfeboro Police and Fire Department shall inspect the access way to determine emergency response vehicle access and all recommended improvement shall be a condition of the issuance of the certificate of occupancy.
3. All other applicable zoning ordinance standards shall be complied with prior to the issuance of the certificate of Occupancy
4. The applicant shall sign and record at the registry of deeds the "ACKNOWLEDGEMENT REGARDING BUILDING PERMIT ON A PRIVATE WAY"
5. The Owner, heirs and successors in interest shall forever release and discharge the TOWN, its officers, agents and employees from the obligation of maintaining the road and from any claim of any nature, whether in tort or otherwise, for any loss or damage, including those incurred through failure to provide municipal services, including police,

fire and ambulance services, arising out of the condition of the roadway from the point wherein the road is a Private Highway.

6. The Lot shall be deemed ineligible for subdivision under the lot's current configuration

TM# 72-8

Case # 14-V-12

Applicant: W. Michael Burke & Robin J. Allen-Burke

Variance from Article XXVII, Section 175-175

Steve McGuire read the public notice and abutter notification for the record. A site visit was conducted approximately 4:15 pm prior to the hearing.

Public Hearing for the a Variance from Article XXVII, Section 175-175 of the Wolfeboro Planning & Zoning Ordinance to allow for a Home Occupation in the 2nd floor of an existing garage for a Fitness Training Center between 500 sq. ft. and 1,000 sq. ft. This property is located at 87 Chick Road.

Rob Houseman explained the applicant had submitted a Special Exception application which the Board will not hear because the proposal does not fit the criteria of Home Occupation so a variance is needed.

Mike Burke addressed the Board and reviewed the application and plan submitted. The five points for the variance request were each addressed and reviewed.

Alan Harding asked the number of people this training center would have at any given time.

Mike Burke responded there would be a maximum of ten. The fire department will review this as it relates to the Fire Code and the square footage calculation.

There should not be much increased traffic up Chick Road. The hours of operation would be 8 am to no later than 8 pm year round. Most of the time there would only be 2 or 3 people. There would only be one employee.

Rob Houseman explained home occupations in all districts over 500 sq. ft. and less than 1,000 sq. ft. require a special exception with the occupation taking place within or attached to the dwelling.

Alan Harding opened the Public Hearing:

In Favor:

Jennifer Smith, Brewster Academy spoke in favor of this application. She takes Robin Burkes spinning class. She is a motivated trainer. The hours planned work for her and this is good for your health and all people here feel same way.

Nancy Hirshberg, Clark Road spoke in favor. She does not want anything to disturb the road but this house is perfect and pristine and a good location. They have done a great job and you cannot see this from the road and there should be no disturbance, Robin is an incredible trainer and an asset to Wolfeboro

Denise Derry, Bryant Road seconded everything Nancy and Jennifer said and added Chick Road will not be impacted by her business.

Jane Brogan spoke in favor and agrees with all said and this is a real asset to community and people interested in improving their health

Emily Griffen, Brewster Academy spoke in favor and seconded all said. Being able to work this into her schedule is a benefit.

In Opposition:

Holly Clark, Bickford Road, spoke in opposition. She and her husband Steve Jonas's land abut the Burke's property. The zoning in this area of town is appropriate and should not change. This is not a home occupation; legally this is a secondary use in this rural area. There are dirt roads that get rutted and hard to pass on. People come up Bickford Road and it gets chewed up. Chick Road deteriorates with increased use. Nothing about this property is different from others to make it unfair. It is zoned to be private residences and it can remain so. Property values will be lowered. This should not be permitted. The character of this neighborhood is residential and should remain so.

Mike Hodder asked if this were an agricultural use, would she feel differently.

Holly Clark responded that an agricultural use is allowed and would be different.

A copy of her statement was submitted and is included with the file.

Ken Perry, President of the north Wolfeboro Association addressed the board and spoke in opposition to this application. The North Wolfeboro Association has worked to uphold the zoning ordinances of the town. The zoning allows residential and agricultural use only. This commercial activity is not allowed in this part of town and belongs in a commercial zone. The integrity of the zoning in the area needs to be maintained. This is not a home occupation and this is not a permitted use. This belongs in the commercial zone. This is one of the two softest roads (gravel) in this part of town. There is a conservation easement of 120 acres which includes the Burke's property. They have a small two acre building envelope on their property. This is close to the building envelope of the 98 acres owned by the Clark's which is within 300' of the commercial activity. This activity would decrease the value of the property just purchased by the Clark's. Maps of the easement were submitted for the file. The Burke's driveway is in the easement and it is to be used for access to and from the house. Ken Perry read the following; "the grantor reserves the right to construct, maintain, utilize, repair or replace on the property one driveway per house site, excluded from the conservation easement, granted hereby, for a total of two driveways, one on each lot, each no wider than 20 feet and each for the purpose of vehicular and pedestrian access to and egress from the respective house site which it serves." In 2:A, "the property shall be maintained in perpetuity as open space without there being conducted thereon industrial or commercial activity except agricultural and forestry".

David Booth asked if the applicant were here considering an agriculturally oriented home occupation in the barn, would he still be here.

Ken Perry responded they would have that right he believes because it is an agricultural use, which the zoning ordinance allows.

The Board discussed the home occupation issue and noted concerns they are and are not using the home occupation criteria.

David Scaarnolis, Upper Trask Mountain spoke in opposition as this will weaken integrity of Zoning Ordinance. The property values in the area will be affected and decrease.

The Board reviewed the plans submitted and the conservation easement.

Rebuttal:

Mike Burke addressed a few points. The conservation easement surrounds their building envelope and within their building envelope they can do what they want. The traffic is not going to be different, only three or four people at any given time. The fitness center is already there. Property values will not be decreased.

Robin Allen-Burke addressed the Board. She explained this is a small business in a little room. Ken Perry has a Real Estate business with signs all over. There is no traffic and nobody is making ruts. Miss Clark comes up once a year, one week throughout the year. The barn has been there since they built it. Her daughters played basketball there. This is not this big thing these people are making it out to be. This will be by appointment only. There will be one person teaching and maybe two people or three people taking a class. There will be one class of seven once a week. The times someone will be there is not set. It will be when people need to come.

Chris Albee rebutted the opposition and made the point where this is located is very inconspicuous. As far as diminishing property values would they rather smell pigs which are allowed?

Holly Clark responded they have owned property for twenty years and they just bought the parcel next door knowing a great deal of it is in the conservation easement. She and her family are up here many times during the year. In terms of the hardship, there is none.

Marie Freudenberg spoke and noted there are usually two people in the cars traveling to a class. Wolfeboro Camp Ground is there and in the area.

Ken Perry responded the campground is a pre existing use and would not be allowed now, and his real estate office was established with ZBA approval in 1980.

There being no further comment, Alan Harding closed the Public Hearing

David Booth commented he does not like the way the Board was advised to address this application. For two reasons he will vote against it. He is not sure that any of

the criteria have been met. It is inappropriate the way the ZBA did not examine the special exception aspects.

The board discussed the application and points required for the variance and whether or not they should be using the Home Occupation criteria.

Rob Houseman addressed the Board and explained the applicant submitted both applications, one for a variance and one for a special exception. Counsel's opinion was provided and if the board wishes to peruse both avenues then a continuation tonight, including reopening the hearing would suffice as due notice because the special exception was advertised.

It was moved by Suzanne Ryan and seconded by Steve McGuire to reopen the public hearing and continue the public hearing on the variance.

The Board discussed the motion.

Steve McGuire withdrew his second and Suzanne Ryan withdrew the motion.

Discussion on the variance application and the five criteria.

Suzanne Ryan , Steve McGuire, Kathy Barnard, David Booth and Alan Harding all felt the application would be contrary to the public interest, substantial justice will not be met, values of surrounding properties will decrease, there is no unnecessary hardship and the spirit of the ordinance will not be served.

It was moved by Kathy Barnard and seconded by David Booth to deny the application for a home occupation on a second floor of an existing garage for fitness center, Case # 14-V-12, TM # 72-8 because the criteria has not been satisfied. All members voted in favor. The motion passed.

Consideration Minutes:

1 October 2012

It was moved by Steve McGuire and seconded by Alan Harding to accept the minutes of 1 October 2012 as written. Alan Harding, Steve McGuire, Kathy Barnard and Suzanne Ryan voted in favor. David Booth abstained due to his absence from the meeting. The motion passed.

10 September 2012

Change all "Walked" to "Walker"

Page 4

10th line down change 200 to 200'

2nd paragraph change Attorney Walker "of" he could educate the Board to "if"

3rd paragraph change Attorney he has talked to one this issue is afloat to Attorney he has talked to "on" this issue is afloat and change as the do each time they hear a case to as "they" do each time they hear a case

Page 6

Second line down change one the conditions is the release to one "of" the conditions is the release; change there is in undue financial impact to there is "no" undue financial impact

4th paragraph from the bottom change; we are her to discuss to we are "here" to discuss

2nd paragraph from the bottom change ; related was to related is?

Page 8

2nd paragraph, 2nd line change; discussion and Iis hearing to "discussion and I am hearing"

5th line change; talk to your legislatures to talk to your legislature"

5th line up change falls to "falls"

4th line up change "worle" to "world"

Page 10

2nd paragraph from the bottom, frist lined change commuted to commented

Page 11

Middle paragraph change "hear" to head

Second paragraph up change kids to kinds

Page 12

3rd paragraph up change may do or not do to may or not do

Page 13

6th paragraph down change counterpart to counterparts

Page 15

3rd paragraph form the bottom change to read ;
be so lenient in their recommendation either.

Page 16

4th paragraph change a non-secatoe to non-sequitur but if it is or if not, it is dammed
close to it.

Page 17

under Other Business - change to read "rules shall be available"

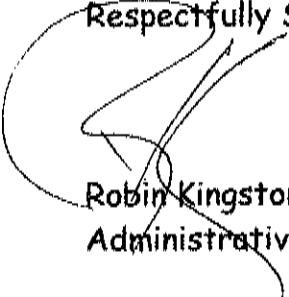
*It was moved by Steve McGuire and seconded Susanne Ryan that the minutes be
approved as amended. All members voted in favor. The motion passed.*

The Board discussed holding a workshop on November 16, 2012 to discuss RSA
674:41.

David Booth informed the Board the he is resigning as of January 1, 2013.

There being no further business this meeting was adjourned at 10:30 pm.

Respectfully Submitted,



Robin Kingston
Administrative Assistant