

Jan 14, 2013 M

Book No. Page No.

Wolfeboro Zoning Board of Adjustment
Regular Meeting
January 7, 2013
Minutes

[Signature]
WOLFEBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Suzanne Ryan, Vice Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, Mike Hodder, Member and Fred Tedischi, 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.

Request for Rehearing

TM# 72-8

Case # 14-V-12

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

Variance from Article XXVII, Section 175-175

Decision Of November 5, 2012:

The Board voted by at least three members to deny the application for the home occupation on the second floor of an existing garage for a fitness training center, Case # 14-V-12, TM# 72-8 because none of the criteria have been satisfied.

Mike Hodder commented he does not agree with the two points the applicant raised in the motion. As for the Conservation Easement noted, in review of the minutes the Conservation Easement did not enter into any of the five points that were raised, was not germane, and would not affect the way the decision was made. Regarding the conflict of interest with the two members of the ZBA who are said to be members of the North Wolfeboro Area Association did not prejudice the outcome of the case. One applies the same standards as whether a juror would step down in a legal case. The principle reasons are a direct financial interest in

the outcome of the case, or a direct personal familial relationship to one or the other parties in the case. It is pretty clear neither of the two members who were members of the NWAA had a familial or financial interest.

Suzanne Ryan commented that she was a member of the North Wolfeboro Area Association and there is no conflict of interest. Copies of email sent to Mr. Perry President of the Association and the Treasurer verifying she has not been a member since either 2009 or 2010. Further Cotton Mountain is not part of the North Wolfeboro Area Association; it is East Wolfeboro (Copies Submitted). Further, even if you are a member you can participate, disclose to the Board, and ask of the Board to vote whether you should step down. Additionally not reflected in the minutes of the meeting, she had informed the Board she knew Mr. Burke from the Historic District Commission and the Chairman asked if she could be impartial and she noted she could. The information regarding misinformation from Mr. Perry is not a basis for the appeal. If the information was not correct this should have been taken up at the meeting, not later. She sees no basis for to grant the appeal.

Kathy Barnard commented she sees no compelling reason for a rehearing. There has been no new evidence and no technical error. It is up to individual members to disqualify themselves if there is a need. The ZBA focused on the criteria and made the correct decision.

Steve McGuire commented he sees no error technical or procedural error. Board made a correct decision based on the evidence submitted.

Alan Harding emphasized the alleged members of the NWAA have not been named in the motion. Alan Harding stated he is no longer a member.

Mike Hodder commented the on a decision of a Supreme Court Case McLuaghlin v. Union Leader, 99 NH 492 - 1955, "It is not any and every business relation that disqualifies a juror. If it did the newspaper subscriber, the telephone user, the electric and water consumer and those who engage in host of other common everyday habits of ordinary commercial and domestic life would be eliminated from the average jury panel" The point being this is a small town with small number of people, there are a limited number of civic and community organizations in with someone can belong and in his opinion a membership in an organization should not disqualify a citizen from serving on a board in a case like tonight's.

Alan Harding commented that even if a member in question were to pose their eligibility to the ZBA for judgment and were denied, the member still has the opportunity to stay at the table. This has nothing to do with the case and the case was discussed in its entirety.

Suzanne Ryan stated, in the application the applicant had an issue with sign and this is the wrong venue for that. They need to take it to the Board of Selectmen.

It was moved by Steve McGuire regarding Case # 14-V-12, Motion for Rehearing on the Variance Decision be denied in that we have made no technical errors or procedural errors in this application. Kathy Barnard seconded the motion. All members voted in favor. The motion passed.

Consideration of Minutes:

November 5, 2012

Corrections:

Page 3, second line - strike "on" before the word off"

4th paragraph - add "Attorney DeVlyder agreed" at the end of sentence

Page 5 - second to the last sentence - strike the "d" on purposed

Page 6 - 4th paragraph - remove the word "is" after this

5th paragraph - add "a" after not

Page 8 - after the motion - add vote - *Steve McGuire, Alan Harding, David Booth and Kathy Barnard voted in favor of the motion. Suzanne Ryan voted in opposition. The motion passed.*

Page 8 - After information of the Burke Case - add "Suzanne Ryan knew Mr. Burke through the HDC and was letting the public know this for public information and Alan Harding asked of she could be impartial and she said she could"

It was moved by Kathy Barnard and seconded by Steve McGuire to approve the minutes or November 5, 2012 as corrected. All members voted in favor of the motion. The motion passed.

19 November 2012

Page 3 - 3rd paragraph fro the bottom. Change armatures to amateurs

It was moved by Kathy Barnard and seconded by Steve McGuire to approve the minutes of 19 November 2012 as amended. All members voted in favor. The motion passed.

Other Business

Alternates and Deliberations

Mike Hodder submitted a memo to the board regarding a change in the Rules of Procedures allowing alternates to participate in deliberations as follows.

Our ZBA procedures only allow alternate members to participate in the public portion of the session, not in the subsequent deliberation. The amendment to the RSA allowing alternates wider participation on land use boards left up to the boards the degree of such participation saving only voting.

I would suggest our procedures be amended to allow alternate ZBA members to participate in the deliberation portion of a hearing. If the objection lies in possible confusion in the public's mind, I would answer that the same objection was raised to alternate presence at the table and participation in the public session from that vantage, yet confusion seems not to have arisen.

Would you please schedule discussion of this suggestion on the agenda of an upcoming meeting.

The wording of the relevant amended RSA's follows:

=====

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to alternate members of land use boards.

Be it Enacted by the Senate and House of Representatives in General Court

convened:

270:1 New Paragraph; Local Land Use Boards; Alternate Members.

Amend RSA 673:6 by inserting after paragraph IV the following new paragraph:

V. An alternate member of a local land use board may participate in meetings of the board as a nonvoting member pursuant to rules adopted under RSA 676:1.

270:2 Rules of Procedure. Amend RSA 676:1 to read as follows:

676:1 Method of Adopting Rules of Procedure. Every local land use board shall adopt rules of procedure concerning the method of conducting its business. Rules of procedure shall be adopted at a regular meeting of the board and shall be placed on file with city, town, village district clerk, or clerk for the county commissioners for public inspection. *The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.*

270:3 Effective Date. This act shall take effect upon its passage.

Approved: July 6, 2010

Effective Date: July 6, 2010

=====

The Board discussed the pros and possible cons regarding alternates sitting and participating in deliberations.

The Board asked Rob Houseman to ask Attorney Spector review this proposal and seek her opinion to see if alternate members should be allowed to participate after the close of the public hearing but not vote. If she feels it's proper, ask her to draw language for the Rules of Procedure. Suzanne Ryan also asked to find out if Deliberations are part of the vote.

Other Business

Case of Eastman - The Town is filing the official record and response by February 2, 2013.

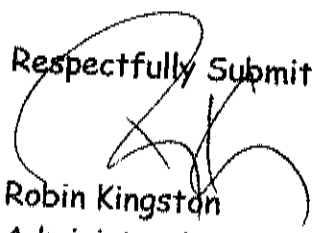
RSA 674:41

Kathy Barnard commented the Planning Board is looking at all lots without frontage before any decision is made. This is on the 2013 agenda.

Suzanne Ryan submitted a revised 2013 application for RSA 674:41 for review.

There being no further business, the meeting was adjourned at 7:41 pm.

Respectfully Submitted,


Robin Kingston
Administrative Assistant