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WOLFEBORO, N.H. TOWN CLERK

**Wolfeboro Zoning Board of Adjustments
Regular Meeting
May 6, 2013
Minutes**

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

Members Absent: David Senecal, Alternate and Hank Why, 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 Town Hall Meeting Room. A quorum was present.

The Rules and the Procedures for the Public Hearings were reviewed.

Appointments

TM# 149-17

Case # 02-V-13

Applicant: George & Nancy Nazzaro

Variance from Article IX, Section 175-64 A (1) (2)

Agent: Attorney Roger Murray

Suzanne Ryan stepped down from this hearing and Fred Tedeschi was seated.

Steve McGuire read the Public and Abutter Notice for the record. A site visit was held at approximately 6:10 PM prior to the hearing.

Public Hearing for a Variance from Article IX, Section 175-64, A (1) (2) of the Planning & Zoning Ordinance to allow for the removal of two existing non-conforming garages and construct a new garage with less than the required setback from Fernald Crossing Road and Tax Map # 149-18. This property is located at 69 Fernald Crossing. A site visit was held at approximately 6:10 PM prior to the hearing.

The applicant proposes to move the footprint of the existing garage, currently one foot from the property line, back from the property line five feet and attach it to a new dwelling. The variance is required because the new footprint would create a new encroachment into the side setback.

Attorney Murray addressed the Board and noted a correction on the Planner Review, 2nd Plan Paragraph; the date of the Plan should be April 4, 2013 and not April 3, 2013. The application, plans and five criteria required a variance were reviewed as submitted with the application.

Kathy Barnard asked for clarification if the garage is attached to the house.

Attorney Murray responded that it is not.

Steve McGuire asked how many lots on Fernald Crossing are less than ½ acre and how many of those have non-conforming conditions.

Attorney Murray responded virtually all of them on the lakeside are but he has not done a survey and there is no actual survey of all of Fernald Crossing. As for the lots, probably each one has non-conforming conditions.

Suzanne Ryan asked a question relative to the uniqueness of the lot and Roger Murray pointed out she had stepped down from the application and is not participating.

Suzanne Ryan disagreed and responded that she was stepping down as a voting member only, but could ask questions as an alternate would.

Attorney Murray disagreed.

Mike Hodder noted the Town Tax Map shows this lot as the second largest lot along Fernald Crossing. To argue special conditions based on the small size of the lot does not hold because all the lots along Fernald Crossing are small, probably all non-conforming and will probably all come before the ZBA for a variance if they want to do something substantial. Arguing special conditions based on the size of the lot is somewhat hard to suggest there is something special and peculiar about this lot that makes it stand out.

Attorney Murray pointed out a portion of this lot is subject to a right of way. The 149' of frontage means there is a 25' setback from the right of way. When looking at special conditions you cannot just look at this small area, otherwise each time you have an old subdivision with small lots it would never be possible to obtain a variance. Under the current zoning, you are going to need one acre and 150' of frontage and will have to do a high intensity soil test. These lots, because of their small size are of kind of locked in. When you look at the building envelope on this lot is it very small and narrow.

Mike Hodder would like to broaden the special conditions to the nature of the area in which the property lies.

Attorney Murray also noted Fernald Crossing is a road and is subject to a front setback of 30'.

Mike Hodder asked if there is a permit for DES Shoreland Approval and if so, should that approval be a condition if this application is approved.

Steve McGuire asked the total area of the two buildings being taken down, dug well, front and back porches, as it appears to be a net decrease in the total footprint.

Attorney Murray responded he does not have those figures.

A copy of the NH DES Shoreland Approval was submitted.

Fred Tedeschi asked how much larger the proposed garage is compared to the two structures being taken down.

Attorney Murray explained there will be no net increase of total square footage but the new garage constitutes a small increase in square footage. The current is about 400 sq. ft. and the proposed is about 554 sq. ft.

Rob Houseman explained the applicant is allowed up to a 30% increase including impervious area of the driveway.

Attorney Murray noted he learned after the site visit, the entire house will be torn down and be rebuilt further back from the shore.

Mike Hodder asked if the Conservation Commission offered an opinion on the DES application.

Rob Houseman responded that did not.

Mike Hodder noted the DES Permit is a permit to modify an existing structure.

The Board discussed the house being removed and replaced at a different location and Rob Houseman explained the applicant would need to have the DES Approval amended.

Chairman Harding opened the Public Hearing.

Scott Shallcross, 74 Fernald Crossing spoke in favor of this application as it will be an improvement. The current buildings on the property are dilapidated and this will improve the aesthetics of the area and the quality of the neighborhood.

Dennis Gourley, abuts the property and agrees the two buildings are eyesores, need to come down and this will be a great improvement to the area.

Attorney Murray noted his clients bought house in June 2012 so they are not talking about their maintenance and upkeep records.

Chairman Harding closed the Public Hearing.

The Board deliberated on the application and agreed on the following points:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance is observed
3. That substantial justice is done
4. The values of surrounding properties will not be diminished
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.
 - (A) Owing to special conditions of the property, set forth above, that distinguishes it from other properties in the area:
 - (i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.
 - (ii) The proposed use is a reasonable one.
 - (B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use

It was agreed all criteria have been met, as this is clearly an application on setbacks. The house is being moved back from the shore. Special conditions are severe setbacks and the building envelope on the lot. Special conditions apply to each lot on Fernald Crossing and the Board has to take a broader view and look at the area in total. The entire area sets the stage for special conditions and this lot is integral part in this neighborhood. The applicant has taken pains to more closely conform with the current zoning ordinance, which is always an improvement. The lot will be tidier with the removal of the two garages and the ordinance is to protect over development. The character of the neighborhood will not be changed and the town loses nothing in granting this variance but rather gains, as there is no diminution of property values.

It was moved by Kathy Barnard and seconded by Mike Hodder to grant the setback variances that were requested for Case # 02-V-13, TM# 149-17 based on all of the criteria having been satisfied. All members voted in favor of the motion. The motion passed.

Case # 03-V-13

TM # 218-148 & 149

First Congregational Church

Variance from Article 27, Section 175-175

Agent: Ann Vivian

Chairman Harding noted Suzanne Ryan is now seated back with the Board.

Steve McGuire read the Public and Abutter Notice for the record. A site visit was held at approximately 6:30 PM prior to the hearing.

Public Hearing for a Variance from Article X, Section 175-70 and 175-175 of the Planning & Zoning Ordinance to allow for the increase in total lot coverage of all impervious surfaces from 64% (29,778 sq. ft.) to 71% (33,149 sq. ft.). This property is located at 115 South Main Street. A site visit was held at approximately 6:30 PM prior to the hearing.

The property consists of two-tax maps parcel; however, as part of the Planning Board process the parcels shall be merged. The applicant proposes to raze the front portion of the church (the sanctuary) since it has been deemed structurally unsound and reconstruct the church space with a 1,655 sq.ft. addition. The purpose of the addition is to make the building ADA complaint and modify the seating layout in order to eliminate the seating under the current balcony and separated from the other seating by an access aisle. The proposal does not constitute an expansion of seating capacity. In addition, the proposed layout is designed to improve overall safety of the site by providing a buffer between vehicular and pedestrian traffic and provide for a safe drop off. The variance is triggered by the lot coverage requirements.

Ann Vivian, GVV Architects reviewed the application and plans by TFM Engineering. An overview of the proposal and circulation access was reviewed. TM # 218-148, the parking lot, is 59 % of the lot coverage and the proposed lot coverage is 63%. The added coverage on the lot will be the increased width of the drive as more of the new drive is located on TM # 218-148 than TM # 218-149. There are currently two handicap spaces and both are two steep to be ADA complaint. The renovation will provide relocated handicap spaces. They will also be adding a handicap drop off in addition to relocating the parking spaces and add an accessible walkway that allows access to the main door of the church. The walkway in front is conceived as an extra wide sidewalk and there will be bollards at the ends. For ceremonial occasions, like a wedding or a funeral it is wide enough so the bollards can be removed and a limousine or Hearst could access the front door for drop off. It has not been decided how this will be paved. Brick pavers, grass paved, or something more pervious are being considered. There is an area on the east side of the building where asphalt has been added, which could be returned to gravel and be pervious. The overall scheme of the project is to remove the oldest portion of the building (the sanctuary) because it is structurally unsound. When it is razed, proper drainage can be installed and some impervious surface can be removed which has not been figured into he calculations. The new building will have perimeter drains. An alley will be closed in, located between the 1990 addition and the original 1912 building. The existing storm water systems will continue as existing. The proposed plan, when the lots are merged, will have a building coverage 18% and coverage due to everything else impervious is 51% for a total of 69%.

Steve McGuire asked if there are calculations of the increase due to safety reasons.

Ann Vivian noted she has not done calculations on the computer but pointed to areas on the plans that are trade offs. The real additional increase in the whole project is for safety and accessibility.

Kathy Barnard asked how much of the additional building coverage is related to ADA requirements.

Ann Vivian explained by extending the sanctuary width they are able to gain an entrance that is more accessible. The project will add a second egress, closed staircase, which meets with Fire Safety Code and is an improvement. Additional improvements are the addition of the drive and walkway, the fire separation stairs, the second means of egress from the sanctuary and the additional width of the sanctuary. Currently there is sheet drainage into to swales and catch basin and this will remain with possible small changes to the contours.

The criteria as submitted in Attachment "A" submitted April 19, 2013 was reviewed by Ann Vivian.

Fred Tedeschi asked to fully comply with the Zoning Ordinance without a variance, how many parking spaces would need to be removed.

Ann Vivian responded approximately half to two thirds.

Fred Tedeschi asked if thought had been given to using pervious paving.

Ann Vivian explained that pervious paving is not recommended in areas of high traffic volume, as it does not hold up as well. The plan was reviewed locating the parking area and driveway that will be altered. Improvements to the access and egress areas were also reviewed.

Alan Harding noted the parking lot is used by Carpenter School and visitors to the Town Hall.

Ann Vivian also noted the church is designated as an area of refuge for Carpenter School and this facilitates community use.

Alan Harding opened the Public Hearing.

Bruce Terkelson, Wolfeboro, spoke in favor of the application. The parking lot serves the town, which includes visits to school and town hall. There is a lot that goes on in the parking lot during the week when there church is not using it.

Barbara Wood, Wolfeboro, spoke in favor and noted the church serves the community and has for over 100 years. The church is in dire straits, with the building that is no longer serviceable and they need a new church. The church has raised the amount of money they can afford to put into the building and the ZBA needs to approve it because it is an asset to the town as many people use it to meet there; it is not just a church.

Lisa Braiderman, Wolfeboro and representing Brewster Academy spoke in favor of the project. The church is currently meeting and worshipping at Anderson Hall and they are happy to accommodate them. They are also lessees of the Josiah Brown Trust and Brown Hall, a dorm abutting this property. They are happy see improvements on the egress and any improvement to the walking and driving areas are a benefit.

Attorney Arthur Hoover representing Anthony and Marie Malloy, who are abutters to this project addressed the Board. The Malloy's do not oppose the variance request but noted he is here for some instruction and input from the applicant. The Malloy's have a 12' right of way that runs through the church property and asked if it is identified on the plan.

Ann Vivian noted she described it, but is not sure if the engineer has noted it on the plan.

Attorney Hoover asked if the right of way will be disturbed or relocated in any way. Additionally the Malloy's also have a waterline easement and asked if that will be disturbed or relocated.

Ann Vivian noted the right of way would not be disturbed.

Rob Houseman explained the Malloy's have an easement and a small waterline.

Attorney Hoover responded that he wants to make sure that the location is noted on the plan.

Ann Vivian noted it will be identified, noted and accommodations made for it if necessary.

Attorney Hoover and Ann Vivian agreed to have a discussion regarding concerns and clarification after the hearing.

Approximately 35 +- persons in attendance confirmed they were in favor of this project.

Alan Harding closed the public hearing.

The Board deliberated on the application and agreed on the following points required for the variance.

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance is observed
3. That substantial justice is done
4. The values of surrounding properties will not be diminished

5. Literal enforcement of the provisions of the ordinance would result in and unnecessary hardship because: The Special Conditions of this property that distinguish it from other properties.

(A) Owing to special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.

(ii) The proposed use is a reasonable one.

(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use

The presentation was well presented. The project was presented as worse case scenario and reasonable improvements are being made all around. The lot coverage and vast majority of the coverage is due to safety reasons and better egress. Not parking weddings or funerals on the street will be a safety improvement. The property is considered a community facility as used by the school and many other organizations. The safety issues are significant and the building, as existing is not going to last much longer. The ADA complaint issues are being addressed by the project as well as bringing the site into more conformity with the new Village Residential Zoning District. The Planning Board will looking at all of the details in a few weeks. The changes are well within the reasonable use and the spirit of the ordinance is being observed. There will be no diminution of property values and no imposition to the community. Substantial justice will be done and the spirit of the ordinance is observed. There would be a hardship if this application were denied.

The Board agreed all of the criteria have been met.

It was moved by Suzanne Ryan and seconded by Steve McGuire to approve # 218-148 & 149, Case #03-V-13 for the First Congregational Church as all conditions as stated in the application have been met in accordance with the applicant's presentation and the Boards comments. Additionally the following two conditions shall apply as follows:

- 1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, 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 shall herein generally be determining.*
- 2. The application as submitted to the ZBA does not satisfy all applicable requirements for Site Plan Review application.*

The Board discussed the motion and an additional condition relative to merging the two lots.

It was moved by Suzann Ryan and seconded by Steve McGuire to add a condition that the approval is subject to the two lots being merged at the time of application to the Planning Board.

Staff reread the motion as follows:

To approve # 218-148 & 149, Case #03-V-13 for the First Congregational Church as all conditions as stated in the application have been met in accordance with the applicant's presentation and the Boards comments. Additionally the following three conditions shall apply as follows:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, 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 shall herein generally be determining.
2. The application as submitted to the ZBA does not satisfy all applicable requirements for Site Plan Review application.
3. The approval is subject to the two lots being merged at the time of application to the Planning Board.

All members voted in favor of the motion and amendment as read. The motion passed.

Election of Officers:

It was moved by Steve McGuire to nominate Alan Harding as Chairman for the upcoming 2013-2014 ZBA Year.

Kathy Barnard amended the motion to re-elect all of the officers in their current seats for 2013-2014 ZBA year. Mike Hodder seconded the amendment. All members voted in favor. The motion and amendment Passed.

Consideration of Minutes:

January 7, 2013 Minutes:

Page 2 – 2nd paragraph; last sentence – strike the word “for”

Page 3 – 2nd paragraph; first sentence should read – “Suzanne Ryan stated, in the application the applicant had an issue with signage and this is the wrong venue for that.”

2nd paragraph from the bottom, last sentence change the word “of” to “if”

It was moved by Kathy Barnard and seconded by Steve McGuire to approve the minutes of January 7, 2013 as amended. All members voted in favor. The motion passed.

Alternates:

Hank Why has been appointed as a new Alternate to the ZBA. Mr. Why has an excused absence from this meeting, as does David Senecal.

OEP Meeting:

Alan Harding, Hank Why, and Suzanne Ryan will be attending the OEP Meeting on Saturday, May 11th.

Rules of Procedure

Change to Alternate Section

Mike Hodder read the following proposed change to the Rules of Procedure, Page 2 Alternates as follows:

Alternates who are not seated by the Chairman to fill the seat of an absent or recused member may participate in the Board in a limited capacity. During the public hearing Alternates may sit at the table with the regular members and may participate in the review "and deliberations" of the application, but "shall not participate in the vote on the application." Next sentence fragment – and next sentence the word "below" is struck from that paragraph.

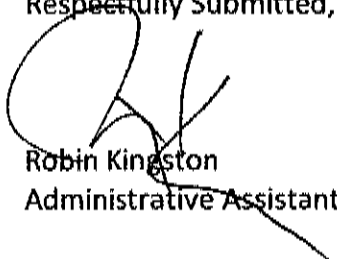
This constitutes the first reading of the change and the 2nd reading and vote for adoption will take place at the next regularly scheduled meeting on June 3, 2013.

Other Business:

The Doherty Case was heard at Carroll County Superior Court on Monday, April 29, 2013 and was attended by some members of the ZBA. Alan Harding noted he felt the ZBA's attorney did a nice job. The judge is backed up and she would not expect a decision until probably July.

There being no further business this meeting was adjourned at 8:35 PM.

Respectfully Submitted,


Robin Kingston
Administrative Assistant