

Wolfeboro Zoning Board of Adjustment

Regular Meeting
6 October 2014

RECEIVED AND RECORDED

October 14, 2014 2:50 PM

Minutes

Book No. _____ Page No. _____

Patricia M. Waterman

WOLFEBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Mike Hodder, Vice Chairman, Fred Tedeschi, Clerk, Suzanne Ryan, Member, Hank Why, Member, and Christine Franson, Alternate

Members Absent: David Senecal, Alternate (excused)

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.

Alan Harding reviewed the Rules of Procedure for the Public Hearings.

Public Hearings:

GI Plastek

Case # 15-V-14

TM# 161-13

Variance

Chairman Harding opened the Public Hearing.

Rob Houseman explained GI Plastek has made an application for a variance request for a sign. Additional data was needed relative to criteria# 2 and a request was made to the applicant for the information. The record file was incomplete as for the existing signage and the application requires all five criteria to be addressed. The applicant was also notified the 5th criteria needed to be addressed. The applicant requested a continuance of the Public Hearing to the November 3, 2014 meeting. Abutters were notified by phone of the continuance requested and Robin Kingston was staffed at the site in the event anyone arrived for the posted site visit.

It was moved by Suzanne Ryan and seconded by Mike Hodder to continue the scheduled public hearing for GI Plastek, Case 15-V-14, TM# 161-13 to November 3, 2014 at the Wolfeboro Public Library at 7:00 pm. All members voted in favor and the motion passed.

The Board discussed notification of the continued hearing. Rob Houseman explained the applicant and abutters would be sent new notices via regular mail as the application was

continued this evening. The Board requested the notices be sent certified and the public notice be published in the Granite State News as well.

Mike Hodder asked for a point of order and suggested the Board not have the applicants read the application and criteria as the Board has read the points and could just accept them. This would save time, effort and duplication.

The Board discussed this and decided to table the suggestion and hold a discussion at a work session of the Board.

TM # 204-57

Case # 16-V-14

Richard Aucoin & Katrina Aucoin

Variance

85 Center Street

Fred Tedeschi, Clerk read the Abutter and Public Notification for the record. A site visit was held at approximately 6:15 pm prior to the hearing.

Alan Harding submitted the minutes of the site visit (attached).

Public Hearing for a Variance from Article 175, Section 92 of the Wolfeboro Planning & Zoning Ordinance to allow for a Christian Church with no modification to the exterior of the building. This property is located at 85 Center Street.

The applicant is seeking a variance to allow for the conversion of the building at 85 Center Street to a church.

Katrina Aucoin addressed the Board and reviewed the 5 criteria as submitted with the application.

Alan Harding questioned the parking plan and Mike Hodder asked if there is a formal parking agreement.

Katrina Aucoin explained it is shared with the Laker and they are allowed to use the side to parking in the evenings and Sundays. Additionally there is municipal parking very close to the site. The on-site parking will be reserved for families, the elderly and handicap.

Suzanne Ryan asked hours of operations and questioned other activities that will take place.

Katrina Aucoin responded the hours on Sundays will be approximately 8:00 am – Noon or 1 pm and a Wednesday night bible study and from approximately 6:00 pm – 9:00 pm.

Mike Hodder noted the size of the congregation is approximately 35 which was noted has almost doubled and asked if the trend is to increase that number.

Katrina Aucoin responded she hopes to grow and increase in size.

Suzanne Ryan asked about the fire code of the building and the maximum number of persons allowed for assembly.

Katrina Aucoin responded it is rated for 170 persons.

Mike Hodder asked how long the musical instruments are used.

Katrina Aucoin responded the duration of musical usage of the space is usually no more than ½ hour for the service. There is a sound check before the service, usually around 8:30 am.

Alan Harding asked the maximum decibel level of the music.

Katrina Aucoin responded said she is not sure but would find out if needed.

Suzann Ryan asked about criteria #3 – Place of Assembly – and asked what the use was prior to this requested use.

Katrina Aucoin responded that is was previously approved for an auction house.

Suzanne Ryan confirmed the status is a non-profit 501.3.C, asked where the other church is located and approximately how far the other church is located from this location.

Katrina Aucoin responded it is located in Wentworth Plaza – the four unit strip mall next to Trites. The Baptist church is located not too far up the street.

Mike Hodder asked how many families make up the 35 member congregation and would all 35 members would come in their own cars.

Katrina Aucoin responded that most of their family members are carpooling together. On average there are 8-10 cars.

Suzanne Ryan asked if they have been holding services there already and what brought them to the ZBA.

Katrina Aucoin responded she has been there cleaning and preparing it and if she is there doing something she always encourages members to stop in. There have been no services held there.

Rob Houseman explained presently there are no valid approvals for the property. The karate studio sought approval as a tenant under a previous owner and the approval was appealed and undone. The Wolfeboro Falls and Central Business Districts are exempted from the parking requirements for an expansion of use or change of use as long as there are no modifications to the exterior of the building.

Chris Franson asked if the expansion or change of use triggers the ADA access to be updated.

Rob Houseman responded that is part of the Building Permit process. The term “Place of Assembly” is a Building and Fire Code standard, there is no Church Standard. This building was updated and renovated by the current owner for an auction house or other type of place of assembly. In the Zoning Ordinance a church is defined

Mike Hodder asked about a change to commercial use and if a commercial use is what the Board of looking at.

Rob Houseman answered Zoning has a broad brush. Under site plan review and other standards the State of NH defines our authority for Site Plan Review as non-residential, non 1 & 2 family or multi-family so everything else is commercial for that purpose. That is the way he has treated that use but the ZBA can overrule his interpretation for the purpose of traffic and everything else for the use. The owners of the property plan to retain ownership and this building will not come off the tax rolls.

Alan Harding asked about signage.

Katrina Aucoin explained they had previously discussed with Rob Houseman one sign on the side of the building.

Fred Tedeschi asked how long the lease is for.

Katrina Aucoin responded the lease is for 2 years.

Hank Why noted a statement made that this was a new use that is changing to another new use.

Mike Hodder responded that was just a misunderstanding.

Alan Harding opened the public hearing.

Richard Aucoin, Laconia NH and Katrina’s dad addressed the Board. He noted many of Katrina’s accomplishments. She has attracted many young people and hopes and believes she will stir up a level of interest and activity in the 20 something community and

will contribute to a real sense of life. The person, location and vision she has will be a real plus to the community.

Pat Lovering addressed the Board and explained she and her husband have been owners of the building since 2008. There has been a tremendous amount of updating and renovating with gentle hands because they love that building. About 1 year ago they started looking for a tenant. They could have rented it for a restaurant but did not want that type of change to building. This is located right on the Bridge Falls Path and that type of change would have too much of an impact in that area relative to traffic. It is not a matter of where they park; it would have been crossing the street. The apartment upstairs is rented. When Katrina approached her about renting the building and walked into it she could tell she was going to love it and take care of it as much as they do. This is an appropriate use of their building and they are overjoyed to think of the church being there for a period of time.

No persons spoke in opposition and the public hearing was closed.

The Board discussed the application.

Suzanne Ryan has no problems with the first four criteria. The 5th criteria gets her hung up. The property could be reasonably used for other purposes, however she thinks the ZBA has recently set precedence with the pewter shop in Back Bay being used as a church. There is Church Religious Federal Law – *42 U.S.C. ch. 21B—Religious Freedom Restoration; General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government can demonstrate that imposition of the burden on that person, assembly or institution., (1)* She noted the church does not put a substantial burden on the town and this overrides criteria # 5 and is inclined to approve the application.

Mike Hodder feels it is not contrary to public interest. The public gains nothing by denying and may gain by approving, there is no alteration of fundamental character to the neighborhood, the exterior of the building is unchanged and the ownership remains unchanged. The spirit of the ordinance is observed, substantial justice is done and town does not gain or lose by denying. The values of surrounding property will not be

(1) http://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act
diminished as they have heard no testimony otherwise. The purpose of the Zoning Ordinance is to create an area in that part of town that encourages commercial use and he finds no change in the commercial nature, only the use inside. This property will function well for the applied use and is in a good location.

Hank Why commented he feels it meets all 5 criteria and is a fine addition and hopes youth get involved.

Fred Tedeschi agreed he also struggles with # 5 and the proposed use is similar to those permitted by right. This is not a heavy use in terms for public service; building is not that large and does not create a lot of traffic in that area.

Alan Harding agreed the applicant was diligent with the application, accepts what was presented in the application and would vote to approve.

It was moved by Suzanne Ryan to approve the application for TM# 204-57, Case # 16V-14 a Variance for 85 Center Street for a place of assembly, (religious church) and that the board sees no need for a change of use application to the town and it meets all 5 criteria as depicted by the various board members.

Chris Franson asked about the change of use portion of the motion.

Suzanne Ryan responded Rob Housemen stated that it was at the discretion of the Board.

Chris Franson asked for that part to be left off of the motion.

Suzanne Ryan agreed and amended her motion to leave off the part about no need for a change of use and have it as a second discussion and also added the conditions recommended by the Planner.

Chris Franson also asked for the word “depicted; to be changed to “discussed”.

Suzanne Ryan agreed.

Hank Why seconded the amended motion.

Staff read the motion.

It was moved by Suzanne Ryan and seconded by Hank Why to approve TM# 204-57, case # 16-V-14 for a Variance for 85 Center Street for a place of assembly (religious church) as the application meets all 5 criteria as discussed by the Board. Further the following four conditions are part of this approval:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the 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 herein shall generally be determining.

2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application.

3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.

4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.

All members voted in favor and the amended motion passed.

Suzanne Ryan said she believed Mr. Housman said it could be a determination of the Board if they felt there needed to be a change of use submitted to the town with the should the ZBA approve it.

Rob Houseman addressed the Board and explained the interchange he had with Mike Hodder related to the discussion as to whether the church, by his interpretation was in fact a commercial use. A change of use is something they put in the file no matter what. Currently there is no use.

Suzanne Ryan responded she does not see it as a commercial operation. A church is tax exempt and is not out to make money so it is like a change of use but they could exempt it.

Rob Housman explained the purpose of the change of use permit. The town has an expedited process for those uses permitted by zoning by right in all commercial zones. They can go from one permitted use to another without coming through Site Plan Review provided they file for a Change of Use Permit. The reason for the permit is because one of the things that have to be looked at for a change of occupancy or use; unless it's an identical use and there has been no lapse in the occupancy, is the Building and Fire Code and the mechanism used to get in the building is the Change of Use Permit Application. They use it as a way to educate, conform and assure Code compliance. He is not sure the ZBA has the ability to exempt them. The renovations that took place in the building were done under the Building Code and Fire Code definition for Place of Assembly.

TM # 217-74

Case # 14-V-14

Applicant: Kirk Gilmore & John Agostine

Variance

50 Union Street

Fred Tedeschi, Clerk read the Abutter and Public Notification for the record. A site visit was held at approximately 6:15 pm prior to the hearing.

Alan Harding submitted the minutes of the site visit (attached).

Public Hearing for a Variance from Article XIV, Section 175.89 of the Wolfeboro Planning and Zoning Ordinance to allow for a second exit (other egress) door on second level. This property is located at 50 Union Street. A site visit was held at approximately 6:35 pm prior to the hearing.

The applicant is proposing to construct a secondary means of escape from the main level of the building. The applicant wishes to use the current exit door, previously associated with an egress door, deck and stairs to the rear of the building. The applicant submitted a rendering of the proposed changes and a survey of the property prior to the removal of the back stairs. Rob Housman suggested the ZBA, should they move to approve this variance discuss whether an as-built survey will be required as a condition of any approval.

Kirk Gilmore addressed the Board, gave background and reviewed the application as submitted.

Suzanne Ryan noted the applicant and legal notice referred to Section 175.89 of the Zoning Ordinance and the Planner refers to Section 175.90.

The Board discussed this and noted the intent and both references to Section 175.89 and 175.90 in the applicant's variance application.

Alan Harding read into the record a letter from the Child Advocacy Center which is attached to these minutes and placed in the file.

Mike Hodder asked about the reference in paragraph 2 of the letter from the Advocacy Center asking the applicant to adhere to the terms of the Reciprocal Easement. In addition they would like to be sure access to their parking spaces be kept clear of construction. The applicant was asked if the access to parking areas is different from the easement or does the easement address the shared parking.

Kirk Gilmore responded the easement addresses the shared parking.

Mike Hodder asked how they can be assured of that and how will they keep the construction off the easement.

Kirk Gilmore responded they have three parking spaces on their property the area can be staged for construction as well as off-site parking on Lehner Street where construction vehicles can park as well as the property owners if needed.

Brandan Carrier, Carrier Carpentry of Wolfeboro addressed the Board and confirmed they previously performed work at this location and used one of the parking spots for the job

and parked their construction vehicle on Union Street or wherever was available and would have no problem doing the same thing this time.

Suzanne Ryan noted the landing off the deck needs the variance but the deck and staircase do not need the variance.

Kirk Gilmore responded that is correct.

Suzanne Ryan stated this should be clear in an approval.

The Board discussed the variance request.

Kirk Gilmore responded it is 36" from the back of the building to the property line and 144" along the west boundary. The 144" includes a side of the deck.

Rob Houseman explained the rear setback is 5' and the deck off the back and extending to the side along the back is an encroachment, once the setback is compiled with then the deck is fully conforming. The variance being sought is for that portion that creates the new encroachment. The stairs and the other portion can be built tomorrow with just a permit.

Fred Tedeschi asked if they moved the stairs to the side would no variance would be required.

Kirk Gilmore responded that no matter the location a variance would be needed for some portion of the project.

Chris Franson asked about the survey and if they know the exact boundary.

Kirk Gilmore responded both the Monzione's and themselves had the property surveyed prior to closing on the property.

Suzanne Ryan asked if the Code requires two means of egress.

Kirk Gilmore responded the Code does not require it however Deputy Fire Chief Zotti has submitted a letter in favor of the second egress which was submitted in addition to the application.

Chairman Harding opened the Public Hearing.

Joe Monzione 20 School Street explained he and Barbara Rickards own the property. He commented the applicants have done a fine job in the community and he is in favor of what they are proposing. They both had surveys done and the rear egress had been eliminated. This is s a good proposal.

Kirk Gilmore read a Letter of Support from Robert & Karen Arndt, 40 Union Street. The letter is attached to these minutes and a copy placed in the file.

No persons spoke in opposition and the Public Hearing was closed.

The Board discussed the application.

Mike Hodder commented the application is fine and the abutter most effected does not have a problem with it. This is not contrary to the public interest. The town gains by approving and would lose if denied. The spirit of the ordinance is observed if you read the purpose for Section 175.88.7. This is a very tight property. The town gains more by granting this and the no property values will be diminished. There are special conditions to this property.

Suzanne Ryan asked what distinguishes it from other properties in the area.

Mike Hodder responded he uses the same general rule of thumb they apply to shorefront properties elsewhere in town. You are dealing with properties created either sometime before there was zoning or other times when zoning ordinances were not appropriately applied. We have lots that would not be approved today, some very larger and some very small all abutting with virtually no setbacks. When properties are looked at in those areas he looks at the entire area because it is the area that has a problem.

Chris Franson noted the property also has a historical value which distinguishes it from others and keeping it looking that way as it fits the character. If exterior window changes were required it would diminish the value.

Fred Tedeschi commented they have a right to build along the side of house and there is no practical way to get to it from another location inside the house. He has no issue with a 3' x 12' path to a deck they have a right to build.

Hank Why commented the lot is very tight and an as-built plan is an excellent condition to add, otherwise it meets the criteria.

Alan Harding noted the building is squeezed into location. A second egress is important as he lived through a fire because they had something like this proposed second egress and if a fire happens it is everything.

It was moved by Mike Hodder and seconded by Hank Why to approve Case # 14-V-14, TM# 217-74 for a Variance from Article XIV, 175-90, for Kirk Gilmore and John Agostine, with the four conditions in the Planner's Memo dated 9/29/2014 and a fifth condition that an as-built survey be submitted upon completion of the job to the Codes Enforcement Officer for the permanent record.

Staff read the motion as follows:

It was moved by Mike Hodder and seconded by Hank Why to approve Case # 14-V-14, TM# 217-74 for a Variance from Article XIV, 175-90, for Kirk Gilmore and John Agostine, with the four conditions in the Planner's Memo dated 9/29/2014 and a fifth condition that an as-built survey be submitted upon completion of the job to the Codes Enforcement Officer for the permanent record.

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of the 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 herein shall generally be determining.
2. The application, as submitted to the ZBA, does not satisfy all applicable requirements for Site Plan Review application.
3. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.
4. This variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.
5. An as-built survey shall be submitted upon completion of the job to the Codes Enforcement Officer for the permanent.

All members voted in favor of the motion and the motion passed.

Consideration of Minutes:

30 June 2014

Alan Harding commented in all the time with the ZBA he has never seen so many pages of minutes and congratulated the Administrative Assistant in putting them together in such a good fashion, it took a lot of work. There are minor things but because of the totality of the minutes he does not want to make any changes unless there is something substantial.

Chris Franson noted the only change would be on page 1; change the meeting location from the Wolfeboro Town Hall Meeting Room to the Wolfeboro Public Library Meeting Room.

It was moved by Alan Harding and seconded by Mike Hodder to approve the minutes as presented with the change of location to the Wolfeboro Public Library. All members voted in favor. The motion passed.


Workshop Discussion – Rules of Procedure

Mike Hodder explained he would like a workshop on the Rules of Procedure and ways to help the ZBA make good decisions. He distributed two suggestions and asked the Board briefly think about a fact, how is a fact found, and once found what to do with it and how it is governed. He asked thought be given to kinds of evidence and ways in which to weigh evidence. The Board needs to be careful with what is called evidence and the time at which it is presented and accepted by the Board.

The Board asked this Workshop to be placed on the next agenda where there are no more than two public hearings and allow approximately ½ to ¾ of an hour for discussion.

There being no further business, this meeting was adjourned at 8:42 pm.

Respectfully Submitted,



Robin Kingston
Administrative Assistant

4- attachments



The Child Advocacy Center of Carroll County~ 'protecting children, promoting justice'
56 Union Street
PO Box 948
Wolfeboro, NH 03894
(603) 569-9840

October 02, 2014

To whom it may concern:

OFFICERS

Ray Mitchell, President
Scott Kinmond, Vice-President
Patricia Anderson, Treasurer
Linda Kasiewicz, Secretary

DIRECTORS

Harley Heath, M.D.
Natalie Peterson
Shawn Coope

STAFF

Elizabeth Kelley, Executive
Director

I am in receipt of a notice from the Town of Wolfeboro regarding case #14-V-14. I will be unable to represent the Child Advocacy Center at the public hearing on this matter. However I would like to express that The Board of Directors has no issue with granting a variance to the residents of 50 Union Street as long as it does not encroach upon our property.

We would however ask that during construction the terms of our reciprocal easement agreement are followed. We would also like to seek to ensure that access to any and all of our parking spots including the access aisle of our handicap parking spot be kept free and clear of vehicles, building supplies and any other obstructions.

Cooperation in this matter will ensure the safety of the employees and volunteers of the Child Advocacy Center and the children and families that we serve.

Thank you for your attention to this matter.

Regards ,

Scott Kinmond,
Board Vice- President, CACCC

Submittal
Kirk Gilmore 21714
105114
10-6-2014

ZONING BOARD
Wolfeboro NH

We are unable to attend the meeting due to work. We reviewed the plan with Kirk Gilmore and John Agostive regarding a request for a variance to allow for a second exit (egress) door on second level. We are in favor in regards to allow the variance. We believe John + Kirk are improving the property and are contributing to the value of the neighborhood. Any questions please call us at 949-276-3811.

Sincerely

Robert + Karen Arnett

 Robert + Karen Arnett

40 Union Street
Wolfeboro NH

Wolfeboro Zoning Board of Adjustment Site Visit Minutes Checklist

Project Name: TM# 204-57 / CASE# 16-U-14 85 CENTER ST.
 Applicant: RICHARD & KATRINA AUGON
 Site Date: OCT. 6, 2014
 Time Arrived: 6:10
 Time Departed: 6:25

	Owners/Applicant Present
	RICHARD AUGON
	KATRINA AUGON
	MARITA AUGON

PAT KOVERING
JOHN KOVERING

	Board Members Present
✓	W. Alan Harding
✓	Suzanne Ryan
✓	Mike Hödder
✓	Fred Tedeschi
	David A. Senecal (EXCUSED)
✓	Hank Why
✓	Chris Francon

Submitted by: Fred Tedeschi Date: 10/6/14

Wolfeboro Zoning Board of Adjustment Site Visit Minutes Checklist

Project Name: TM # 217-74 / CASE # 14-074 SD UNION ST
 Applicant: KIRK GILMORE & JOHN AGOSTINE
 Site Date: OCT. 6, 2014
 Time Arrived: 6:30
 Time Departed: 6:40

	Owners/Applicant Present
	John Agostine
	Brendan Currier
	Kirk Gilmore

JOHN AGOSTINE
 BRENDAN CURRIER
 KIRK GILMORE

	Board Members Present
✓	W. Alan Harding
✓	Suzanne Ryan
✓	Mike Hodder
✓	Fred Tedeschi
	David A. Senecal (Excused)
✓	Hank Why
✓	Chris Franon

Submitted by: Fred Tedeschi Date: 10/6/14