

**Wolfeboro Zoning Board of Adjustment  
Regular Meeting  
1 December 2014**

**Minutes**

**RECEIVED AND RECORDED**

*12/8*, 20 *14* *3:40* *P*

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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**

**5 Wickers Drive**

Fred Tedeschi, Clerk, read the public and abutter notification. A site visit was held at approximately 4:10 pm. Minutes of the site visit were submitted for the file. Christine Franson was not present at the site visit however did visit the site at a previous time.

Public Hearing for a Variance from Article VI, Section 175-44 of the Wolfeboro Planning & Zoning Ordinance to allow for a back lit sign displaying the company name on the side of the building measuring 208" long and 66" tall. This property is located at 5 Wickers Drive.

The applicant is seeking a variance to allow for a sign 95.33 sq. ft. and internally illuminated. The sign for this use is permitted as a commercial wall mounted sign and the sign size is limited to not more than 24 sq. ft. The maximum permitted wall sign is *"the lesser of 10% of the face of the building or 24 sq. ft."*

Daniel Mills, President GI Plastek addressed the Board and explained the sign that presently exists, once erected on the building is fairly small and the overhanging light cast

a shadow on sunny days. Photos were submitted demonstrating this. The 5 points required for the variance were reviewed as submitted.

Mike Hodder noted the request is for a sign approximately 3 x's larger than the existing sign and also asked if the previous sign was backlit.

Daniel Mills responded the one there now is lit from above.

Alan Harding asked if this is the largest building in Wolfeboro.

Rob Houseman responded it is not the largest building in Wolfeboro but is one of the top 3 non-governmental, non-profit commercial/industrial buildings.

Alan Harding asked the square footage of the existing sign.

Daniel Mills responded it is 24 sq. ft. and was approved by the Code Officer in June 2014. A copy of the permit was submitted for the record. The approximate dimensions of the current sign are 2'x12'.

Alan Harding asked the square footage of the previous sign and the dimensions of the side of the building prior to renovation.

Daniel Mills responded the previous sign was 36 sq. ft.

Rob Houseman responded the old building was 20'x200' = 4,000 sq. ft. and the renovated/new building is 141'x30' = 4,230 sq. ft.

Mike Hodder asked about the sign at the corner of Wicker's Drive off 109A and asked if it is illuminated or a street light nearby? He also asked what the purpose of the sign on the building is.

Daniel Mills responded it is to advertise who they are.

Mike Hodder asked if people coming to the building generally know why they are coming there as the sign on the building is not to attract people coming by or to give directions to truckers who are making deliveries or pickups.

Daniel Mills responded that is correct.

Mike Hodder asked what the point is of having a bigger sign on the building.

Daniel Mills responded as an industry, every company out there has a sign on the building.

Mike Hodder asked if it is just a matter of corporate ego.

Daniel Mills responded they are proud of being a company in Wolfeboro and would like a bigger sign there.

Mike Hodder asked if they have considered changing the lighting source that is there now, to say two arching spots directed at the sign to completely illuminate it so the sign can be read on a sunny day without the obstruction of the overhang.

Daniel Mills responded they have not.

Fred Tedeschi noted there was a sign on the old building that was backlit and one to the entrance of the parking lot that was also lit and asked if the one at entrance will be given up. He asked if the two signs together are approximately the size they are looking for now.

Daniel Mills responded they are smaller.

Christine Franson commented that she refers back to the Master Plan where theoretically the ordinance comes from. When the town developed the Master Plan it was clear people liked Wolfeboro because it is not like "Anytown, USA". From being on the Planning Board there has been extensive discussion about signs and still it has been felt strongly, illuminated signs are kind of a slippery slope. It's what she calls sign creepage and before you know it you look like "Anytown, USA". As she drives along the road near GI Plasteck she sees some of the other signs like Winnepesaukee Lumber and Thursty have smaller signs that are lit by exterior sources and they are fine. Trucks manage to find their location and those signs are quite attractive. It has been said that a sign is not to direct traffic into the facility because people know that it is there so she has a hard time with the concept of a bigger sign that is lit which would be the one and only of its kind in town and just for advertising. This would be a major change to the neighborhood because everyone else in the area is going to ask for a similar sign.

Suzanne Ryan commented they only allowed a backlit sign for the hospital for obvious reasons as it's an emergency facility and emergency vehicles need to find it. She just recently came up from Philadelphia and New Jersey and our industrial park is not meant to look like that with signage. It's a small park and she thinks it will remain so. A backlit sign does not accomplish anything. Clark Plaza has the gooseneck overhang kind of lighting and it is more appropriate in keeping with the town and does not frustrate the ordinance by keeping that kind of lighting rather than the backlit. There is no gain and if anything they need to light the sign at the corner of the driveway.

Alan Harding asked if the moose at Clark Plaza considered a sign.

Rob Houseman responded under the current ordinance it would be considered a sign, no different than the tank at the Wright Museum.

Alan Harding asked if anyone knows the surface area of the moose.

Rob Houseman responded he could probably figure it out before the Board gets into deliberations.

Hank Why noted the application is for a larger sign that faces Wicker's Drive and not the highway.

Daniel Mills stated he was contacted by Paul Zimmerman and as a supporter of their application a letter in favor of the Variance and backlit signs was read and submitted for the record.

Alan Harding asked the height and length of the old building and the dimensions of the old sign.

Daniel Mills responded it was 20' high and 200' long and the sign was approximately 5' x 5'.

Rob Houseman commented the old sign was 6' x 6'.

Alan Harding noted the applicant had 36 sq. ft. and a variance is being sought for a 96 sq. ft. sign.

Daniel Mills responded that is correct and the height and length of the new building is 30' x 141' as the dock bays are now set back.

Suzanne Ryan asked Rob Houseman for background in response to Mr. Zimmerman's letter as he sees the inequities of these lit and backlit signs.

Rob Houseman responded the issue he believes Mr. Zimmerman is trying to highlight is that signs that were internally illuminated and pre dating the ordinance are allowed to stay, a handful of them. The sign ordinance that covers internally illuminated signs has been in place since 1997. It was updated in an attempt to prevent sign pollution to development; a combination of off premise signs, internally illuminated signs, architectural signs such as the old Kokopelli sign. As is the norm, uses matriculate out so when someone comes to update something and they want to do something different, they do not get the right to grandfathering. They get to have what they have but if they want to change something they have to comply.

No other person spoke in favor or against this application and the public hearing was closed.

The Board deliberated on the application.

Suzanne Ryan commented the ordinance is very specific and clear and they are here tonight for two variances. If this were to be granted she feels very strongly it would frustrate #2 of the variance criteria, There is another means by which this could be achieved and not go against the ordinance. She does see there is another alternative for lighting the sign and would not be in favor of the backlit sign nor in favor of enlarging the sign.

Mike Hodder commented he cannot vote in favor of the variance on points 1,2 &3. The request clearly conflicts with the purpose of the ordinance and it will alter the essential character of the neighborhood. It will do a larger injustice to the town by frustrating the ordinance and the applicants benefit is vastly outweighed by the loss to the town by granting such an extra ordinary area sign. He cannot talk to property values being diminished or not but his suspicion is they would be by having a sign internally lit probably all night long. He finds no hardship demonstrated. The property has a sign on the highway directing people who need to know where to go. The sign on the building does nothing but advertise the building to those who already know it is there. There are no special conditions to the property and therefore literal enforcement would not result in an unnecessary hardship.

Alan Harding commented he believes this is a unique, modern building. He is not arguing against the sign ordinances in Wolfeboro, there has to be considerations given to the uniqueness of the property and this is a unique property. This is one of the largest businesses in the Town of Wolfeboro. He is looking at this on a percentage basis that when the older picture with the old sign was taken, the percentage of the surface of that side was .009. It seems to him the makers of the ordinance had a consideration of the percentage of the surface of the side of the building, where it would be located, even though they went to a minimum of 10% or the minimum of 24 sq. ft. Regardless of the reasons this company wants the sign they have a right to want the sign and the ZBA has a right to grant them a variance for the sign if they believe there is fairness involved in the variance request and he thinks there is. If they were to use the same percentage on the new building the approved percentage, liken to what was there before, would be 38 sq. ft. They are asking for 96 sq. ft. but they are also asking for a variance form the 24 sq. ft. If they could reach a compromise based on the uniqueness of the building they would be wise to do so. He does not see how the values of surrounding properties would be affected with a larger or smaller sign. This is a big building, big business and this should not affect surrounding properties, it is an industrial park. Further he believes the spirit is the sign ordinance needs to be revised and thought about. He is leaning towards approving this but not to the extent the applicant has requested. The difference between 24 sq. ft. and 38 sq. ft. may be where it is. As for lighting he has no problem with it.

Suzanne Ryan commented that if approved it would set the tone by which another applicant could come in requesting the same thing.

Mike Hodder commented he is in favor of encouraging the town's economic health and is happy GI Plastek is in town employing hopefully people who live here in town and that adds to the towns tax base. In Alan Harding's argument one important portion of the town is being overlooked and that is anyone who is not either the owner or involved in the ownership of GI Plastek. The ordinance was passed by the people of the town; they wanted signs no larger than 24 sq. ft. regardless of the size of the building. They did not want anything larger and that cannot be overlooked just as you cannot overlook they voted not to have internally lit signs.

Christine Franson commented the latest sign ordinance was reviewed 2 years ago,

Hank Why commented the sign could be illuminated nicely by not being internally lit. As for size he is interested to hear if a 38 sq. ft. sign would be acceptable.

Mike Hodder pointed out the applicant is asking for a 95.33 sq. ft. sign, not a sign the size to be set by the ZBA.

Alan Harding noted they could re-enter public session and ask the applicant.

Fred Tedeschi stated he shares the Chairman's concern regarding proportionality as it is an issue. He has concerns with some of the signs in town, particularly the High School. He saw no reason why a backlit sign that size needs to be there. He understands why a variance would be granted to the hospital because of the emergency need. In this location, developing a business park, typically they have large signs advertising the companies and nature of business, but this should go to the Planning Board and then to the voters. His preference here would be to say you can put the sign back up that they had which is larger than they have now, however this would be another application. He has not seen enough facts develop for his vote to say it meets the criteria and is not contrary to the public interest and the spirit of the ordinance is observed. This is not a minor extension in size; this would be close to 3 – 4 times of what would be allowed. He would vote not to approve it. If the applicant amends his application tonight then the ZBA has the ability to approve it.

It was moved by Alan Harding to reopen the hearing for the discussion for a reduction of the size of the sign. Fred Tedeschi seconded the motion. Alan Harding, Fred Tedeschi, Hank Why and Suzanne Ryan voted in favor. Mike Hodder voted in opposition. The motion passed.

Daniel Mills was asked if he would accept a 38 sq. ft. sign and what kind of lighting would he accept.



Daniel Mills responded he would accept 38 sq.ft. and have just the letters back lit and only illuminated from 4 pm to 8 pm in the evening.

Hank Why commented the old sign preceded the ordinance.

Chairman Harding re-closed the hearing.

It was moved by Suzanne Ryan to deny the application as presented for the two variances for the back lit and size, TM#161-13, Case # 15-V-14. Mike Hodder seconded the motion. Hank Why, Mike Hodder, Suzanne Ryan and Fred Tedeschi voted in favor of the motion. Alan Harding voted in opposition. The motion passed.

Fred Tedeschi asked to make a motion to approve the amendment to the application even though Mr. Hodder commented that it is irregular but it does not seem improbable.

It was moved by Alan Harding to amend pursuant to the approval and recommendation of the applicant to have a 38 sq.ft. which is back lit which is what they had before. Fred Tedeschi seconded the motion.

Christine Franson stated she is opposed to anything back lit as it is contrary to the ordinance and it changes to spirit of the neighborhood. It is against the dark sky initiative to have lights.

Suzanne Ryan commented there is nothing to prevent the applicant from resubmitting his own application for a change to tweak it and or going to the Planning Board as an advocate to change the ordinance. She does not think the ZBA should do it.

Mike Hodder stated he completely agrees. What the ZBA is heading towards is finding law that does not currently exist to support an application. We are not applying law; we are trying to find reasons or ways around ordinances in order to allow an application to go through. We should be taking the application on its merits, applying it against our ordinances, using what we know, what we have been taught and applying it against an application of those basis and not be bending our ordinances to suit a particular application. He is completely opposed to the application either 96 sq. ft. or 38 sq. ft.

Hank Why asked Rob Houseman is the application is changed here, what about the advertising and public notice that was done.

Alan Harding asked Rob Houseman if this is acceptable.

Rob Houseman responded the vote to deny the application stops the application where it is.

Alan Harding withdrew the motion. Fred Tedeschi withdrew his second.

**Todd & Megan Fichter**

**Case # 15-V-14**

**TM# 138-13**

**Variance**

**4 North Wakefield Road**

Fred Tedeschi, Clerk, read the public and abutter notification. A site visit was held at approximately 3:45 pm.

Public Hearing for a Variance from Article XX, Section 175-124, A, (1) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a 7' x 35' farmers porch along the front entry to the home (removal of existing entryway) for property located at 4 North Wakefield Road.

The applicant submitted a tax map rendering of the property since no survey exists. The applicant has provided the building setback and notes the house is approximately 31' from property line and the attached garage is approximately 17' from the from property line. Staff, using the online GIS has concluded that the applicant's measurements represent the setback from the edge of pavement and not the property line and the garage is approximately 7' from the property line and the house is approximately 21' from the property line. The applicant desires to construct a 7' x 35' farmer's porch onto the house. This action would create a new encroachment into the front setback and triggers the need for a variance.

Todd Fichter reviewed the application as submitted.

Suzanne Ryan stated they received a note from the Town Planner saying the measurements the applicant used varies from the GIS system and she has an issue with that. He also says the allowance would be an encroachment into the front setback equal to the current encroachment and the 7' porch is not equal to the setback, it is 7' from the house and not equal to the garage setback. That said, when you take the GIS, the reason she brought this up is the Planner asked the ZBA to discuss whether an as-built survey would be required as to a condition of any approval. She went to the GIS website and she reminds everyone there is a disclaimer to that website, as well there should be, and it is, "GIS make no guarantees to these measurements, it's taken from a variety of sources and computed and this is what they come up with" Well from that she said wait a minute, she worked on the Master Plan on roads and streets and she does not see that North Wakefield Road is 68' wide according to the GIS, not even close.

Alan Harding asked what the width is.

Suzanne Ryan responded that according to the town records it is 26' and if you use Stoneham Road which crosses his street, the GIS says it is 39' and the town records say it is 38'.



Christine Franson asked if she used the measuring tool.

Suzanne Ryan responded she did and she overlaid Stoneham Road over North Wakefield Road, which would be a more accurate measurement and he has an extra 14' from the 21' from the corner of his house versus the drawing that was sent to the by the Planner without the street on it.

Rob Houseman responded the discussion is not where the street is it is where the property line is. He is being accused of doing something he did not do.

Suzanne Ryan stated she is not accusing, she is talking about what the machine did and what the Planner sent them and then she did the whole overlay.

Rob Houseman responded that she cannot draw lines on a piece of paper and say it is more accurate than the GIS.

Suzanne Ryan responded that of course you can, what is the disclaimer for then, it's saying it might not be accurate and she is bringing that to the attention of the Board.

Mike Hodder asked in the absence of a survey how do we know where the property line is.

Rob Houseman responded the best use of the information we have available is the GIS in lieu of other documentation. If you are not going to require a survey which has been the practice of the Board in the past in situations where the encroachment is the encroachment, the GIS is the best instrument.

Mike Hodder asked if there is a front property set by a surveyor.

Rob Houseman responded there is no front property line had been set by a surveyor.

Mike Hodder responded we are relying on the GIS to set this encroachment.

Rob Houseman responded we have a scaled drawing provided by the applicant. Using that alone you can discern the measurements he used are inaccurate because it has a scale to the property line. He went to the GIS and took that exact same information and used the measure tool, and we do not measure to the edge of pavement or the travel lane, the property line is the fee in which a person owns. The GIS was established with "Order One Mapping". There were benchmarks placed in the field, the area was flown, it has an accuracy of plus or minus a meter, it then took all survey data available and built the base information, like a jigsaw puzzle, and then filled in with survey, then it took the deeds and filled in the balance, and then everything else they had to scale.

Mike Hodder asked if the applicant is satisfied with that change.

Todd Fichter responded he really has not heard what the change is.

Staff responded a copy of the review was to the applicant on Tuesday, November 25, 2014 for his information.

Suzanne Ryan responded she wants the applicant to have a copy of what she has. Lets get it straight, a street is a dirt road, that was a cow path to start with and the town had discerned a road surface survey of all the streets in town where they physically went over all the streets and did the widths of the streets.

Mike Hodder responded that North Main Street was once an Indian pathway which is irrelevant.

Christine Franson responded that is the width of the street and not of the excess where the town owns of the right of way. The town owns more than just the street they own more where the poles and culverts are.

Mike Hodder asked if a site survey costs a lot of money.

Suzanne Ryan responded it does and we would be surveying the street for the town and then they would have it on record. She would lay odds there is no deed or survey for the road and the only things she is going on is what the town did and physically went out and measured the road and it is not what the GIS says at 68'.

Todd Fichter clarified that what is noted on his site plan is inaccurate and asked once the correct setback is put on the site plan can this application be heard.

The Board responded no, the application can go forward.

Rob Houseman gave Todd Fichter another copy of the review and noted the discrepancies

Mike Hodder noted the setback from the actual road does not change and the location of the porch will remain the same as shown at the site visit.

Todd Fichter responded that is correct. The actual setbacks will change from 7' from the garage and 17' from the house.

Hank Why noted Rob Houseman suggested an as-built survey and that would prove something.

Todd Fichter responded the only thing it will prove is the measurement he put on his site plan was incorrect.

Rob Houseman explained if a survey were to be required, you would survey a lot, not a road. The Board had a recent case, similar to this where it had the same conversation to decide whether or not an as-built survey would be required. The Board concluded a survey would not be required because the ZBA knew it was on the owner's lot and the dimensions are known. The suggestion was put out there as a matter of course. The encroachment is slightly different than represented in the application. He is not trying to cloud the discussion.

Alan Harding commented if you drawn a straight line on the side of the garage closest to the road and you extend it out, the porch is not going to go over the line it will all be contained.

Suzanne Ryan stated that if it were adjacent, like down town and a small lot she could see an as-built. This is adjacent to a town road that has no deed or survey or if it has a deed she is sure it is not 68' wide so she would like the as-built to be taken off the table and just vote on the 7' porch. On both sides of Mr. Fichter's property they both have farmers porches, granted they are not close to the road but they are in keeping with the neighborhood. She just has an issue with the measurements and as-built.

Fred Tedeschi commented the point Mike Hodder made during the last application is interesting in that he felt we should not exercise authority to make major changes in the ordinance. If that is the case, the actual measurements should be critical because then you are looking at a 7' encroachment, in a yard that is supposed to be 30' and is now 21'. It may not be significant but a 7' encroachment in a yard that is only 21' may be more significant. He is unsure of the principle we are going to apply here is. He is not aware we were making changes in the ordinance or doing violence to an ordinance by granting permission to someone to put up a lighted sign. He does not think we are doing violence here to allow someone to put up a farmers porch that goes 7' into an area there is already an encroached by a garage but if the principle is we need to be much more clear of what are facts are we need to know if it is 35' or 10' because then the size of the encroachment is significant on a percentage basis.

Mike Hodder responded he would argue we are not talking a matter of principle here but lets not go there because it is not germane to this subject.

Fred Tedeschi responded he believes it is because he feels the principle is the same.

Suzanne Ryan stated she wanted to pass in her information as public information.

Mike Hodder responded it is not public and it not part of the packets.

Suzanne Ryan argued it is part of the minutes,

Mike Hodder argued it is not. It is information added to subsequent to a public hearing.

Suzanne Ryan responded it is information she used as town official paperwork and it documents what she has said.

Mike Hodder responded it is private information and objects to it being part of the record.

Alan Harding responded that this is a prosecutorial move and he will not accept it.

Randy Walker addressed the Board and commented he and his wife both support the application. They own on two sides and his family owns across the street. This is an existing house with a bump out that is deteriorating and they want to replace it with a porch. The house is not going to move. There is no reason to require an as-built, which would probably cost more than the porch its self. It is unfortunate when applicants come before the Board they sometimes encounter costs just to get through an application. This is not contrary to the public interest. Setbacks are not an issue in their area. He has a porch as well as a neighbor on the other side that is probably closer to the property line than what Todd is proposing. There are no safety or aesthetic issues. Setbacks are to preserve a safe distance between properties. This porch is on the road side and will not impact neighbors. It is not going to be closer to the road than what already exists. Substantial justice is done by adding the porch and improves the functionality of it. The addition will improve values for this property and surrounding properties. Literal enforcement will cause an unnecessary hardship. This is one of the smallest lots in the area and they do not have a lot of geographic room. This porch is reasonable size and fits the layout of the house.

Bob Norton, 343 Stoneham Road addressed the Board and commented both he and his wife are in favor of the application.

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

It was moved by Mike Hodder and seconded by Suzanne Ryan to approve Case # 16-V-14, TM# 138-13 for a Variance from Article XX, Section 175-124, A, (1) for a farmers porch 7' x 35' as applied for with the following four conditions.

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. Suzanne Ryan seconded motion.

Staff reread the motion.

All members voted in favor. The motion Passed.

### **Consideration of Minutes**

6 October 2014

Page 4 – 3<sup>rd</sup> paragraph – Add a period at the end of the last sentence.

Page 7 – 1<sup>st</sup> full paragraph remove the word “with” in the second line.

It was moved by Alan Harding and seconded by Hank Why to approve the minutes of 6 October 2014 as amended. All members voted in favor. The motion passed.

### **Discussion and Workshop**

#### **Findings of Fact**

Mike Hodder had previously distributed a memo and led a discussion on helping the ZBA make good decisions.

Suzanne Ryan commented she believes the ZBA has a problem with a use variance. When a change is requested, the ZBA struggles with that.

Mike Hodder responded he did not talk about area or use variances; he is concerned with a NH AG suggestion and making “Findings of Fact”, which the Board currently does not.

Christine Franson commented she relates this to being on a jury and you have to only weigh the evidence before you. Theoretically you do not bring in your attitudes, do research on your own or last minute information you show to the jury or that would be a mistrial. Just from being here sometimes the ZBA gets side tracked by that kind of information; we need to be conscious as our role as a jury and not be going off on our own and doing research or bringing in information that everyone has not had a chance to look at, at the same time.

Suzanne Ryan asked how it applies to the applicant because they do not get the Planner’s Reviews.

Christine Franson responded they are supposed to.

Suzanne Ryan responded “you saw it tonight, it didn’t happen”.

Rob Houseman and Mike Hodder responded the review was mailed on Tuesday to the Fichter’s and we cannot control if he picked up his mail or not.

Mike Hodder commented the ZBA is Judge & Jury. It is important to Christine’s point that we do not try and educate ourselves to the level of an expert witness on the issues that come before the ZBA. The ZBA is a lay board, appointed by Selectpersons who expect them to do their very best in applying the standards they have been trained in the cases that come before them. We are not supposed to sit down and educate ourselves about the telecommunications act of 1999 and all its ramifications when AT & T comes asking for a cell tower. That is not the ZBA’s function.

Suzanne Ryan responded if you are privy to that and go to a lecture or have material for that you should read up on it.

Mike Hodder agreed but what you do not want to do is try to make yourself an expert witness as those coming before you arguing their case either for or against.

Christine Franson commented if you study up on cell towers it’s almost like you’re coming to the hearing with a prejudice or opinion in a certain way so if you did have that level of expertise, wouldn’t you ask yourself whether or not you should be recusing yourself.

Suzanne Ryan stated the Law Lectures they have attended say that you can apply your own knowledge and knowledge you have gained at things such as the Law Lectures.

Mike Hodder responded if you try and educate yourself beyond the level of an ordinary layman, then you leave the Board open to an appeal based upon improper or imperfect understanding of the information that you gathered to bring to the case. We are expected to bring to the table what we have learned in law lectures, the RSA’s and handbooks. We are not expected to bring anything beyond that to the table and more importantly what we cannot do is what Suzanne Ryan did this evening and attempt to bring into the record materials she had dug up from the outside, as valid as they may be and attempt to introduce them into the record when no one including the parties before the board had seen those materials.

Suzanne Ryan responded when we get something in our packets, she read up on it and did not take it at face value so she researched it. She introduced information because the ZBA would not take her at face value. This is off the path, he wanted to talk about fact finding and this is not fact finding.

Mike Hodder responded this is the second part of his memo but to conclude this part he thinks if you introduce materials in the course of deliberations after the public hearing is closed, you are depriving the public of that information until the hearing is done as well



as during the public hearing, how are they going to get the information. They are not here to see it.

Suzanne Ryan responded to Mike Hodder to “just save it because it is not going to work, just go on with the other part of it, she does not need to be lectured”.

Christine Franson commented personally, she does not like it when she receives last minute information, like when people bring a letter to read because she likes time to digest and understand it. Theoretically if someone brought in new information at the last minute wouldn't you then have to continue the hearing and re-notice it so everyone has the information so they can see it?

Mike Hodder commented that by bringing info in at the public hearing or closed deliberations you are introducing material the public has not had access to. Everything the ZBA does has to be open to public scrutiny. If you are bringing in material that is not you are contaminating the proceedings.

Fred Tedeschi commented we have often had maps that are not part of what we get in our or the public had access to.

Mike Hodder agreed and noted they should not be entered as matter of record.

Suzanne Ryan asked how you are going to get information if people do not bring it. This is a whole other subject than fact findings.

Mike Hodder reminded the Board they held a session with Laura Spector, Esq, and she gave the ZBA some suggestions and one of the things she said specifically was “don't go out and educate yourself to the level of an expert and do not bring information in during the course of deliberations that everyone else has not had a chance to look at”.

Rob Houseman commented not only did Attorney Spector provide that in the presentation but she also wrote a memo specifically about Board members providing information. She said that it would cause harm to their decision making process. With regards to information provided by the applicant, abutters or anyone else, the ZBA always has the right to continue the hearing if it feels it needs to, to digest the information it has received. The issue is how do we streamline, not the deliberation but the decision to ensure it stands on a solid foundation. Finding of Fact is a critical element and he always tries to attach the 5 criteria in the reviews. The ZBA may wish to consider preparing one as a consolidation of the voting members.

Mike Hodder suggested the form should be retitled because they are not findings of fact.

Rob Houseman agreed and noted he would do that.

Mike Hodder commented the NH AG said it is good to come up with Findings of Fact and even provides a sheet in the ZBA Handbook; PG. C-11. It is different from what the ZBA has. What the ZBA has are really statements of interpretation of the ordinances as applied to a particular case. For example the case of the Lakeview application on Eagle Trace. There were issues of whether or not the application for the variance should be considered. In this case members of the Board had different opinions. There were facts that were different than the differing opinions.

Alan Harding noted the case was determined by the Supreme Court.

Mike Hodder used the Fichter Case and Finding Facts. What are the facts in the case – What is he applying for, what ordinance is being applied for, what are the encroachments, what are the setbacks, what are the numbers? If we are going to change a use what is the use he wants to apply for and is it allowed for under a special exception. The AG's words were quoted as follows; "In another town on an identical fact pattern a different decision might lawfully be reached by a different ZBA". Every case has a series of facts that can all be agreed on: The name, case #, TM#, the ordinance involved, the dimensional variances that we have to deal with, all of that. He would like to follow the AG's guideline and summarize the actual facts that all members agree on and make that summary of fact part of the decision. In the final decision, it makes no difference at all but should the decision be appealed, the court would have the facts of the case in front of it. Right now the only evidence the judge has is the notice of Decision and the Minutes of the hearing. He has to read through it all and hopefully the facts are in there on which the Board based its decision. In the Wiggins Case the judge could not find facts, the ZBA members each reviewed the DVD and had to come up with the facts the decision was based on. The ZBA Decision was upheld but hours were spent redeveloping the Findings of Facts.

The Board discussed how the Facts would be created and recorded.

Fred Tedeschi noted a case in the Town of Lebanon, where the attorney for the city said he agreed and made a motion to set aside the ZBA's decision because they had not made a fact determination. He pulled the ZBA Decision and reviewed it himself and could not understand how the attorney said they were not findings of facts. A copy of the info will be distributed to the ZBA through the Chairman for the Boards review.

The Board continued to discuss how Findings of Facts can be developed, whether the Board should in a separate document, etc.

Rob Houseman suggested he could take the AG's form, reach out the Board's Attorney and others and see if there are examples of cases with Findings of Fact so the Board would have something to reference. He is assuming it may be as simple as staff outlining in some way a sketch of the finding of fact.

Mike Hodder disagreed with staff doing that.

The Board agreed with Rob Houseman's suggestion to take the AG's form, reach out the Board's Attorney and other s and see if there are examples of cases with Findings of Fact for the Boards review.

The Board decided to continue this discussion at the next regular meeting where there are only 2 applications or less.

There being no further business, this meeting was adjourned at 9:10 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'RK' with a large loop on the left side.

Robin Kingston  
Administrative Assistant