

**RECEIVED AND RECORDED**

Feb 7, 2014 M

Wolfeboro Zoning Board of Adjustment

Regular Meeting

February 3, 2014

Minutes

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_  
*[Signature]*  
WOLFEBORO, N.H. TOWN CLERK

**Members Present:** Alan Harding, Chairman, Suzanne Ryan, Vice-Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, Mike Hodder, Member, Fred Tedeschi, Alternate and Hank Why, 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 Town Hall Meeting Room. A quorum was present.

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

Suzanne Ryan asked for a point of order. She asked Chairman Harding why he is chairing this application when on October 7, 2013 when Attorney Murray was presenting the two cases he opted to step down.

Chairman Harding responded it was personal choice for a specific reason in which he does not have to and does not intent to divulge.

Suzanne Ryan responded she wants to know what circumstances have changed as Mr. Murray is still the attorney on the case. Why does he feel the rules have changed.

The Board agreed there is no issue and the question was answered by Chairman Harding and moved onto the hearing.

**Appointments**

**TM# 273-9**

**Case # 03-V-14**

**Applicant: Marcia Crossan**

**Variance**

**Agent: Roger Murray, Esq.**

Public Hearing for the a Variance under Article XIII, 175-86, Section A1 of the Wolfeboro Planning & Zoning Ordinance to maintain two existing dwelling units on the property pursuant to RSA 674:33, V. This property is located at 16 Alpine Meadows.

Steve McGuire read the Abutter and Public Notification for the record. A site visit was held at approximately 4:10 pm prior to the hearing.

The applicant is seeking a Variance to Section 175-86,A to allow two dwellings on a lot. The Variance application is an attempt to remedy an existing zoning violation under an enforcement action.

Noted:

- The apartment was built in violation of the building permit
- No appeal from the enforcement action has been filed
- The applicant's engineer documents a side line setback violation in which the application will need to file for an Equitable Waiver to remedy the matter
- The septic system has not been updated to meet the potential for increase septic load

Attorney Murray addressed the Board and reviewed the application as submitted. In 1994 Marcia married Brian Crossan who owned the property prior to the marriage. On July 19, 2002 Mr. Crossan obtained a building permit for the garage. On March 12, 2003 a Certificate of Occupancy was obtained for the garage. Sometime after that he undertook a renovation of the garage. They have not been able to pinpoint that date. The upstairs of the garage was converted to an apartment. His client assumed he had obtained all the permits needed and had no idea things were done not in accordance with the ordinance. In 2010 the parties were divorced and Marcia was awarded the house. Also in September 2010 her mother, Vera Carvalho moved into the property and Marcia has been caring for her ever since. Marcia became aware of the problem when she received a letter from Audrey Cline dated March 14, 2011 that stated the "garage may have been renovated into an apartment without the necessary permits". This came as a surprise and she found herself in the position in trying to care for an elderly mother, facing a zoning problem and having limited financial resources. The initial attorney worked with the town and tried to come to a resolution and eventually Attorney Murray came in and has worked with the town and Audrey Cline and this application is based on information received from her. This variance is to allow the two existing dwelling units on the property to remain in place.

This variance is being done in under RSA 674:33 V:

*Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:*

*(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.*

Attorney Murray reviewed the five points required for the variance submitted with the application. A correction was noted in the submitted criteria #3. Mr. Crossan had conveyed  $\frac{1}{2}$  interest during the course of the marriage and the second  $\frac{1}{2}$  interest upon the divorce.

Attorney Murray concluded they believe this Variance is the best solution to the problem as there is no Plan B. There are two dwellings and the main dwelling cannot be converted to be usable.

Suzanne Ryan asked if Mrs. Crossan owns the whole property with the two dwellings and if so where does she live. Additionally she asked if the first floor in the main house has a bathroom as well as a chair lift being installed in the main house.

Attorney Murray responded that she owns the entire property and lives with her mother in the garage apartment. There is no one living in the house at the present time. There is a bathroom on the first floor and a chairlift could possibly be installed but he does not know enough about them. The house is broken up. There is a kitchen and living room and a loft in the middle.

Steve McGuire noted 674:33 V (b)" *In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises"* and asked if the applicant would go along with the limit.

Attorney Murray consulted with Marcia and agreed that the time limit would be fine.

Attorney Murray explained the attaching of the buildings were explored however due to the town's regulations and determination attaching the buildings is not a viable option.

Suzanne Ryan read VI of RSA 674:33: *The zoning board of adjustment shall not require submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or rendering its decision.* and noted she is not sure how it applies. Long term it is not what this application is about. She prefers not to discuss what the town will do in the long run if the Board gives its approval under V and that expires and is another whole issue.

Fred Tedeschi noted Dr. Stoll's letter notes Marcia is to park her car in the main drive so she can safely transport her mother without climbing stairs by accessing the pathway that leads to the main house to the back deck. When he visited the property on 2/2/14 the main driveway was snow covered and asked how is the apartment accessed.

Attorney Murray explained his client is working with two agencies to try and get a chairlift for the stairs. She cannot use the other access because of financial constraints and trying to get it plowed out. The current method is to sit on the stairs and go one step at a time for both descending and ascending.

Fred Tedeschi asked if the applicant plans to address the substantial code violations.

Attorney Murray explained they need to make sure they have permission to have a second dwelling. If they do not then they do not have code violations.

Fred Tedeschi asked if Attorney Murray is aware of any cases that would interpret the language "when reasonable accommodations are necessary" as the challenge is what is necessary. It is not impossible to reconfigure the house to be usable.

Attorney Murray responded he was not aware of any. The statute does not require that it be impossible only necessary. There is a distinction between impossible and necessary.

Kathy Barnard asked about the chairlift mentioned.

Attorney Murray explained it would be for the garage stairs.

Mike Hodder asked the applicants intent for the house if the application is granted.

Attorney Murray explained no one is there now but she has close friends that are there in the summer that stay at the house and help her take care of her mother. It was used as a dwelling previously.

Suzanne Ryan asked if the Fire Department has looked at this property for a dwelling.

Attorney Murray responded the property was inspected by Audrey Cline and Tom Zotti. There is a letter dated 8/31/12 that go through the code violations being looked at as a residence.

Rob Houseman explained that if Audrey Cline were to approve the building permit it would be conditioned upon rectifying the code deficiencies. She could not issues a building permit in violation of zoning.

**Public Comment:**

No person spoke in favor of the application.

Barbara Clay, representing the Board of the Alpine Meadows Property Owners Association. Years ago when the garage building permit was applied for it was for a very oversized garage and the bay part of the garage was for construction vehicles in it. Above it they wanted a second floor to be used for recreation. Her husband wrote a letter stipulating those things and

the Association did not object. The main house has periodically been rented, there was a divorce and Mrs. Crossan's mother came to live with her. The second floor of the garage is a very steep stairway. The concern as a board is the condition of the road which is in very bad shape. With the house being rented there are many cars in and out. If there are financial difficulties she is sympathetic. The concern is one property with two separate units and it sets a president in the association. She would be amenable to give permission as long as her mother is alive or gone into a nursing home. Only one should be occupied not both.

Rob Houseman explained the letter would be part of the building file. At the time of application for the building permit it would not have generated any other review. Further it was explained the letter did not show opposition to the construction of the garage as submitted.

Fred Tedeschi asked if there are covenants for the association limiting the number of dwellings per lot.

Barbara Clay responded that two separate dwellings are not allowed on one lot.

Scott Sislane, President of the Alpine Meadows Property Owners Association addressed the Board. He shares the same concerns as Barbara Clay has. The issues are additional traffic because of a second dwelling on one lot.

Steve McGuire asked for clarification on the two driveways.

Barbara Clay explained they had to apply for a second driveway when the garage was built because Mr. Crossan had large construction vehicles.

Rebuttal:

Attorney Murray noted the existence of the two building is not at issue, it is the use as two dwellings. The covenants governing Alpine Meadows state *"the residence shall be used for residential purposes only and for the usual and natural uses in connection therewith. Not more than one dwelling shall be erected permitted or maintain upon the premises convey hereunder which shall not be used for more than one family but this shall not be construed to forbid construction of a garage and a bonified guest house. The premises may be rented when not owner occupied"* This is a garage or a guest house so either way it fits within the permitted uses.

Kathy Barnard asked what would need to happen to bring the garage into compliance.

Rob Houseman explained that any condition should be condition precedent, meaning it precedes the implementation of the ZBA Decision and it be resolution of the 19 listed code item outlined in the 8/31/12 letter from Audrey Cline and that any current code violations not noted.

Kathy Barnard explained she meant when there was no longer need for the space.

Rob Houseman explained they would need to remove the kitchen and one bath and meet to definition of habitable space. As for the setback violation and equitable waiver will be required regardless of the outcome of this application if the survey demonstrates there is a violation.

The Board discussed accessory apartments, duplexes and the meaning of "integral to the principle dwelling".

Rob Houseman explained they interpret that is a strict way. It cannot be a 100' hallway; it cannot be a 3 season porch. It is case specific and the renderings they were given did not meet the definition.

Kathy Barnard noted that decision could have been appealed but was not.

Roger Murray noted they are looking for an approval from the Board to maintain the two dwellings. The concern he has with the Boards interchange is once they get the approval his client is going to have to start spending money to address code violations. Audrey Cline will not issue a CO until whatever code violations there may be are addresses. He has a concern about a condition of the approval if it needs to address the 19 violations listed plus anything else that come along. He is not sure if the 19 still exist and whether it is accurate. Placing that condition would be unnecessary. They need to know they can keep the two dwellings.

Mike Hodder agreed that was fair.

Fred Tedeschi asked Attorney Murray under RSA 674:33 V is it his opinion that the reasonable accommodations that are necessary would require the ZBA to give permission to occupy both structures as residences?

Attorney Murray responded the answer is yes. The application is for two dwellings whether occupied or not. The second dwelling is occupied by friends at times and they take care of her mother and give Marcia some relief.

Fred Tedeschi responded the phrase in 674:33 V "*when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises,*" Isn't "the premises" directed at the premises that is going to be occupied by the person that has the disability?

Attorney Murray responded it is the two dwellings, whether occupied or not, that is the zoning violation. The accommodation is allowing the use of the second dwelling.

Fred Tedeschi stated it seems like it is directed and the ZBA would have a right to construct a condition that says the main dwelling cannot be occupied.

Attorney Murray disagreed. The whole purpose of the provision is to provide relief for someone with a disability. The issue is the two dwellings on one lot.

Chairman Harding closed the Public Hearing.

The Board deliberated the application and discussed which criteria applies and which criteria was met.

Discussion also included:

1. A time length of the approval.
2. Rental of the main house.
3. Wear and tear of the road.
4. The abutters and Associations concerns.
5. The towns interest in having zoning rules applied uniformly.
6. The existing violations.

It was moved by Alan Harding and seconded by Kathy Barnard that the ZBA approve the application noting that all five (5) Variance criteria have been met and that the fifth criteria (Hardship) has been satisfied under RSA 674:33 V. Under this interpretation it must be noted that this variance shall survive only so long as the particular person (Vera Carvalho) has a continuing need to use the premises.

In addition to the foregoing the following condition(s) precedent must be removed as impediments to final approval prior to June 1, 2014

1). All nineteen (19) code deficiencies listed in letter dated August 31, 2012 starting with "Dwelling and garage is not separated with 5/8" Type x gyp. board" and ending with "Verify if flame of gas fired furnace is at least 18 inches above garage floor or that all combustion air comes from somewhere other than garage" and signed by Audrey Cline, CEO.

2). Applicant must apply for an Equitable Waiver to remedy an existing side line setback violation in the event the town issues a new notice of violation of the setback violation.

3). The septic system must be updated to meet any potential increase in septic load thereby not violating the public health, safety and welfare.

The Board discussed the motion with concerns of the time deadline of June 1, 2014 and the Board citing Code Violations.

Suzanne Ryan made an amendment to the motion, if they do not meet said requirements to include but not limited to as stated the variance shall only survive so long as the particular person has a continuing need to use the premises. The motion did not receive a second.

The Board continued to discuss the motion with concern of the listing of the code violations as the building permit/certificate of occupancy process will require the violations to be addressed.

Chairman Harding reopened the Public Hearing to allow Attorney Murray to speak.

Suzanne Ryan disagreed with allowing Attorney Murray to speak.

Attorney Murray stated this has gone beyond what he considers to be the issue before the Board, which is two dwellings on one lot so he did not discuss the issues that Board has brought up. In speaking with Audrey Cline they have looked at the issues the Board is aware of. In order to proceed in correcting any of them they need some assurance they can continue with the two dwellings on the property. His client can then proceed to address the issues but only with this Board approval for the two dwellings on one lot. They have not applied for an Equitable Waiver because they need a survey. His client cannot afford to get the variance, fix the code violations and get a survey all at the same time. The septic system is a state approved system for three bedrooms and has operated without issue since the addition of the apartment and prior to that. The system is maintained by DJ's Septic. At some point the property needs to be made saleable.

Chairman Harding closed the Public Hearing.

The Board continued to discuss concerns.

Steve McGuire made an amendment to the original motion that a copy of the Decision be placed in the registry of deeds. Suzanne Ryan seconded the amendment.

The Board discussed the amendment and points out the continuing needs and occupancy of the person. When there is no longer a need, the variance goes away for the two dwelling units allowed on the property.

Steve McGuire made a second amendment to the original motion that states. Under this interpretation it must be noted that this variance shall survive only so long as the particular person (Vera Carvalho) has a continuing need to occupy this dwelling. Suzanne Ryan seconded the amendment.

It was moved by Mike Hodder and seconded by Steve McGuire to delete the words "June 1, 2014" from the second paragraph.

Steve McGuire added to his first amendment to read a copy of the Decision be placed in the registry of deeds citing this property at the expense of the applicant. Mike Hodder seconded the amendment.

All members voted in favor of the amendments made by Steve McGuire and Mike Hodder.



Staff read the complete amended motion.

The Board voted by at least three members to grant the Variance for the application noting that all five (5) Variance criteria have been met and that the fifth criteria (Hardship) has been satisfied under RSA 674:33 V. Under this interpretation it must be noted that this variance shall survive only so long as the particular person (Vera Carvalho) has a continuing need to use and occupy this dwelling.

In addition to the foregoing the following condition(s) precedent must be removed as impediments to final approval.

1). All nineteen (19) code deficiencies listed in letter dated August 31, 2012 starting with "Dwelling and garage is not separated with 5/8" Type x gyp. board" and ending with "Verify if flame of gas fired furnace is at least 18 inches above garage floor or that all combustion air comes from somewhere other than garage" and signed by Audrey Cline, CEO.

2). Applicant must apply for an Equitable Waiver to remedy an existing side line setback violation in the event the town issues a new notice of violation of the setback violation.

3). The septic system must be updated to meet any potential increase in septic load thereby not violating the public health, safety and welfare.

4). A copy of this Decision shall be recorded at the Carroll County Registry of Deeds citing this property at the expense of the applicant.

All members voted in favor of the amended motion. The motion passed.

### Consideration of Minutes:

7 October 2013

Corrections:

Page 1, Suzanne Ryan (Un-excused)

Suzanne Ryan stated she is listed as an unexcused absence and she would like to clarify why. She stated as a board they agreed they would like to receive their materials Wednesday or Thursday before the meeting, if practical as there are times it cannot happen. In this case the email notice came Friday, they were ready because she went to the town hall Thursday looking for her packet and there was nothing there so she missed the meeting assuming there was no meeting. When she mentioned it to the chairman he said they were obligated to set aside the first meeting of every month for cases. The rules of procedure state regular meetings will be held as needed. So if she did not see the need she did not think there was a meeting. She is

not asking to have the unexcused removed from the minutes but wanted the Board to know it was not out of disregard for the meeting.

Staff clarified that she did receive the email Friday notifying her the packets were ready.

Suzanne Ryan agreed she got the email Friday.

Page 1, last paragraph, first sentence: change the word Council to Counsel.

It was moved by Kathy Barnard and seconded by Mike Hodder to approve the minutes with the one correction noted. Mike Hodder, Kathy Barnard, Fred Tedeschi and Hank Why to approve the minutes as amended, Alan Harding, Suzanne Ryan and Steve McGuire abstained. The motion passed.

6 January 2014

Page 3, Amendment /Condition 3

Suzanne Ryan made an amendment to the 1/6/2014 minutes and is not sure how the Board would like to amend it. She made an amendment the plan of 1/6/14 presented by the applicant is the reference plan used by the ZBA for approval.

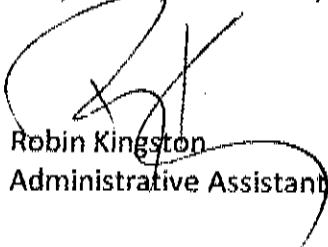
The Board discussed this and could not recall. Staff offered to the tape and review. Suzanne Ryan stated there was no need to go back through the tape and incur staff expense if the Board can agree on how they want to add the language.

The Board agreed the tape needed to be listened to.

The minutes of January 6, 2014 were table to give staff time to review the tape.

There being no further business, this meeting was adjourned at 8:10 pm.

Respectfully Submitted,



Robin Kingston  
Administrative Assistant