

**Wolfeboro Zoning Board of Adjustment
Regular Meeting
October 5, 2015**

Minutes

RECEIVED AND RECORDED

10-13, 2015 7:56AM

Book No. _____ Page No. _____
151 Patricia M. Waterman
WOLFEBORO, N.H. TOWN CLERK

Members Present: Mike Hodder, Chairman, Alan Harding, Clerk, Hank Why, Member, Suzanne Ryan, Member, Christine Franson, Alternate and Sarah Silk, Alternate

Members Absent: David Senecal, Alternate (excused) and Fred Tedeschi, Vice-Chairman (un-excused)

Staff Present: Rob Houseman, Director of Planning & Zoning and Robin Kingston, Administrative Assistant

Chairman Hodder called this meeting to order at 7:00 PM in the Wolfeboro Public Library Meeting Room. A quorum was present. The Conduct of the Meeting the Rules of Procedures for the Public Hearing and the requirements of the Appeal of Administrative Decision were reviewed.

Appointments:

TM# 231-64

Case # 08-V-15 (08-AAD-15)

Applicant: Mary & James Leather

Appeal of Administrative Decision

Agent: David Thurston

Chris Franson was seated for Fred Tedeschi.

Public Hearing for an Appeal of Administrative Decision of the Code Enforcement Officer, Corey Ryder, dated 31 July 2015 as follows: Notice of Violation – This Notice is to inform you that your South Main street property referenced above is in violation of Town of Wolfeboro Zoning Ordinance, Chapter 175 Zoning, Article VI, General Provisions:

Specifically, Temporary signs for a new business and seasonal business. Special advertising devices such as banners, pennants and streamers are permitted for up to 30 days. The size shall not exceed 25% of the face of the business.

This property is located at 279 Main Street. A site visit was held at approximately 6:45 pm prior to the hearing. Minutes of the site visit were submitted and are part of the file.

The applicant is seeking an Appeal of Administrative Decision made by Corey Ryder, acting in his capacity as the Code Enforcement Officer. The history of the violation notice is as follows:

- July 17, 2015 letter from Corey Ryder, CEO, instructing the owner to remove the temporary signs.
- July 31, 2015 Notice of Violation from Corey Ryder, CEO, with assistance from Town Counsel noting the following:
 - Seasonal businesses are permitted temporary signage for 30 days from the date it re-opens
 - A sign permit is necessary for the temporary sign
 - Only one (1) "Open" sign is permitted on the property

It should be noted the July 31, 2015 letter included the following statement:

"Your deadline to appeal to the Zoning Board of Adjustment under an Appeal of Administrative Decision has passed without application submitted on your behalf and therefore the appeal process is no longer an option available to you"

This statement was in error since neither enforcement letter established a reasonable time of appeal. Subsequently staff has been instructed to state the timeframe and right of appeal.

David Thurston addressed the Board and reviewed the appeal. Article 175-44 – Temporary Signs was read. A banner of up to 25% of the face of the business is allowed. The face is 935 sq. ft. and would allow a banner of up to 225 sq. ft., It does not say when they are allowed or how often. It says you are allowed 30 days. The Notice of Violation dated July 31st from Corey Ryder notes: "*Seasonal businesses are permitted temporary signage for 30 days from the date it re-opens*". Nowhere under 175-44 does it state that. In a one block area there are seven homes not counting this home and 13 businesses which all have signs much larger. Allowing this business to advertise with banners, flags and pennants allows them to be equal advertisers as their neighbors. The value of the properties have already been determined with the businesses that exist now, so values are worth more. The hardship is they are allowed a 24" x 26" sign and all the businesses around them have much larger signs. Several sign sizes of surrounding businesses were noted. They are looking for the same opportunity as their neighbors have. They believe they have followed the ordinance of 175-44 and the way it is written and not the terms someone wants it to appear. They are looking for the Board to waive the banner requirement because the ordinance is unspecific. Because someone made a complaint and wants to interpret it differently than the way it is written is the hardship in front of the Board.

Clarification was sought by the Board on the applicant's theory as to the 30 day limit.

David Thurston explained the ordinance does not state immediately upon reopening. It just states continuous so if there is a spring sale they can fly a banner for 30 days and

then again if they have a Columbus Day weekend sale they should be allowed to fly it for another 30 days. There is nothing in the ordinance that states you cannot do that. Someone is reading past the vague portion of the ordinance and interpreting their own meaning.

The Board pointed out a permit is needed for the signs so it starts the clock of 30 days which is clearly stated.

The Board discussed the violation notice date and the appeal time frame. An appeal was filed in August which missed the August meeting deadline so the application was scheduled for September which in turn was postponed.

Mary Leather addressed the Board and noted her understanding is she is allowed an open flag which is not a banner. Her "open" sign is not a banner it is an upright flag.

Mike Hodder noted she is allowed a 4 sq. ft. year round sign as per her home occupation permit allows. Her open sign is when she reopens and she has 30 days.

Mary Leather stated there are at least 6 businesses in town that fly the same "open" sign as she has.

The Board clarified this is a home occupation allowed in the VR zoning district and with conditions for approval from the Planning Board.

Further noted is the applicant has other options for requesting a larger sign however the application before the Board is to determine if what the Code Officer stated is correct. Some of the argument tonight that has been heard has used the variance criteria which is not relative to the Appeal of Administrative Decision.

Dave Thurston reiterated nowhere in the ordinance does it state "when you are seasonal or re-open", It states a banner is allowed up to 25% of the square footage of the face of the business. Does the Board want to see a 235 sq. ft. banner?

The Board asked if a banner permit was applied for?

David Thurston stated they did not apply for a permit.

The Board also discussed the difference between a Temporary Event Sign Permit and a Temporary/ Seasonal Sign.

Suzanne Ryan noted she felt that it is written in the ordinance they are allowed a sign automatically without applying for a permit, and then they can have a number of 30 days temporary signs.

Rob Houseman noted that permits are required even if they are permitted in the ordinance. In this case there were four banners that were on poles as follows: "antiques", "open", "furniture", & "gifts". These are long vertical signs on poles in the ground. From the "Mari's Treasures" sign there was a traditional sign that says open. The violation letter referred to the four signs. All signs except those that are exempt require a permit; that way Code Enforcement can track the timeframe and if the

requirements are being met. The 30 day window is interpreted as 30 consecutive days from the date of opening.

Rob Houseman also noted Corey Ryder could not attend the meeting as he attending a certification class at NH Voc. Tech

David Thurston responded to the size of the 4 banners which do not even equal 90 sq. ft. so they comply with the ordinance. They would love to have a bigger sign. They may be at fault in not filing for a permit but the reason they did not file for a permit application is because they were warned by Corey Ryder they were in violation and were told they could appeal the decision. It took them 3 months to get before the ZBA.

It was suggested the applicant speaks with Corey Ryder as to what is permitted and complete the required paperwork to obtain the appropriate permit. If they request a larger sign or a sign that is not permitted a variance could always be applied for.

There being no comment from the public and no further comments from the applicant, the public hearing was closed at 7:52 pm.

The Board deliberated on the application and the evidence presented. Opinions differed and discussion occurred as to whether permits were required, length of time allowed, the accuracy of the interpretation the review of the Code Enforcement Officer's by Town Counsel and her opinion, allowing the banners to exist to the end of the season, the ZBA having no finding, reversing the decision, in whole or in part or modifying the order and if the Board agreed the Code Enforcement Officer interpreted the Ordinance correctly.

*It was moved by Mike Hodder and seconded by Hank Why to deny the Appeal of Administrative Decision, Case #08-V-15, (08-AAD-15), Mary & James Leather, 279 South Main Street because the Code Enforcement Officer correctly interpreted the provisions of Chapter 175, Article 6 from which the appeal arose. Mike Hodder, Hank Why and Chris Franson voted in favor. Alan Harding and Suzanne Ryan voted in opposition. **The Motion Passed.***

Rob Houseman explained the postponement of the September meeting was due to a number of issues including the first Monday which is when the ZBA meets, being a holiday, the meeting being scheduled a week later on a Tuesday night, staff being on vacation, conflicts in schedules and in general the department making an error. The applicant was immediately notified as were the abutters that received notice.

Other Business:

Problem Hearing ZBA speaking

Discussion on the public being able to hear the ZBA during deliberations, public meetings and work sessions.

Rob Houseman will check with Peter at Wolfeboro Community TV for options with mics.

Rules of Procedure

It was reported the subcommittee could not agree on an element in the proposed changes for the rules. The subcommittee will meet one more time and if they still cannot agree the two versions will be brought before the entire board to decide.

Law Lecture Series

Any Board members signed up for law lecture series should contact the Planning Department for reimbursement of payment.

Consideration of Minutes:

August 3, 2015

Corrections:

Page 1, - Paragraph that starts with Rob Houseman:

1st line change "and" to "an"

2nd line change "encourage" to "encouraged"

3rd line after "guidance" should read "however they still have a"

*It was moved by Alan Harding and seconded by Mike Hodder to approve the minutes of August 17, 2015 as amended. Mike Hodder, Hank Why, Chris Franson and Alan Harding voted in favor. **The motion passed.***

There being no further business, this meeting was adjourned at 8:24 pm.

Respectfully Submitted,



Robin Kingston

Administrative Assistant