

RECEIVED AND RECORDED

July 13, 20 15 M

Wolfeboro Zoning Board of Adjustment  
Regular Meeting  
6 July 2015 2015

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_

WOLFEBORO N.H. TOWN CLERK  
*Patricia M. MacInnis*

Minutes

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

**Members Absent:** None

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

Mike Hodder called this meeting to order at 7:00 PM in the Wolfeboro Public Library Meeting Room. A quorum was present.

The Rules of Procedure for the Public Hearings were reviewed.

**Public Hearings:**

**TM# 251-35**  
**Case # 03-V-15**  
**Richard & Elizabeth Christofore**  
**Variance**

Alan Harding read the Public and Abutter notification for the record. A site visit was held at approximately 6:30 pm.

Public Hearing for a Variance from Article 175, Section 80 of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of an attached 24' x 28' garage of which the back corner of the garage will encroach into the side line setback by 4'. This property is located at the 17 Anagance Lane.

The applicant is seeking a variance to Section 175-80 in order to construct a 24' x 28' garage with an encroachment into the side yard setback of approximately 4'. It should be noted that prior to 2010 the setbacks were a 2 tier system with pre-1988 lots having a 10' setback and lots created after 1988 the setback was 25'. In 2010 the zoning was amended in order to level the playing field regarding setbacks. In addition, this lot was surveyed for subdivision approval. The applicant has submitted a scaled print of the tax map since a survey exists with the location of the house.

Richard Christofore addressed the Board and reviewed the application and plan as submitted.

A letter from Zannah Richards, Maxfield Real Estate as submitted with the application was read for the record.

Suzanne Ryan asked where the location of the septic is and stated she is stuck on reasonable use as he can move the garage from the back corner and move it forward or make it smaller as other properties in the area have one stall garages.

Mike Hodder disagreed as it is the applicants right to apply for a variance.

Fred Tedeschi noted the proposed footprint is 24; x 28' and the rear corner of the garage is encroaching by 4'.

Hank Why asked if it is possible to move the garage forward.

Mr. Christofore noted it would change the way it looks on the house and you have to worry about the front setback and placing cars in the driveway.

Chairman Hodder opened the public hearing,

No person spoke in favor of the application.

Chris Pelletier, 15 Anagance Lane noted his concern is the runoff as it will come to his property line. A garage roof will shed more runoff on his property. The Board should stick by the rules, he was denied when he applied.

Diane Pelletier, 15 Anagance Lane agreed with her husband and noted runoff is an issue.

Alan Harding asked what makes her think this addition will affect them.

Diane Pelletier stated the concern is runoff and erosion but she has not seen the plans.

Mr. Christofore stated the roofline will go to the back and front and everything is going to be regarded. They can also put getters along the back.

Alan Harding asked if the drainage will change.

Mr. Christofore stated it will not change and they can grade it to make it better. They can regrade and have gutters and have it run through the culvert on the other side of the house.

There were no further comments and the public hearing was closed.

Deliberations:

1. The variance will not be contrary to the public interest.  
*Hank Why felt this condition was not met.*
2. The spirit of the ordinance is observed.  
*Fred Tedeschi felt this condition was not met.*
3. That substantial justice is done.
4. The values of surrounding properties will not be diminished.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of this property that distinguish it from other properties.

Owing to the special conditions at the property that distinguish it from other properties in the area it cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use.

*Fred Tedeschi and Suzanne Ryan felt this condition was not met.*

Mike Hodder asked if the Board would consider a condition of approval that the drainage be directed away from the west side abutter. The Board discussed this condition.

*It was moved by Suzanne Ryan to approve the Variance request for relief from Article 175, Section 80 for the construction of a 24' x 28' attached garage attached to the west side of the house. The garage is proposed to be set back 8' from the front of the house and will encroach 4' into the current 20' side setback as shown on the June 5, 2015 plan. Mr. Christofore, the applicant shall mitigate the drainage runoff from the garage so as not to impact the abutter.*

Additionally:

- 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, may not satisfy the submittal requirements for a Building Permit.*
- 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.*

*Alan Hardina seconded the motion.*

Discussion:

Hank Why asked if the condition for drainage control in the motion is enforceable.

Rob Houseman responded it is worded well as it does not require re-draining, it could be infiltration or other types of improvements.

Alan Harding, Suzanne Ryan, Hank Why and Mike Hodder voted in favor. Fred Tedeschi voted in opposition. The motion carried.

**TM# 163-2-1**

**Case # 04-V-15**

**New Hampshire Boat Museum**

**Variance**

**Agent: Joe DiChiaro**

Alan Harding read the public and abutter notification for the record. A site visit was held at approximately 6:00 pm.

Hank Why, Alan Harding, and Chris Franson stepped down from the application.

Mike Hodder appointed David Senecal and Sarah Silk to be seated.

Public Hearing for a Variance from Article 175, Section 44 of the Wolfeboro Planning & Zoning Ordinance to allow for a 36 sq. ft. sign to replace the existing sign in the same location. This property is located at the 399 Center Street. A site visit will be held at approximately 6:00 pm prior to the hearing.

Joe DiChiaro addressed the board and reviewed the application, plans and photos as submitted.

Suzanne Ryan asked the history behind the sign.

Mike Hodder reviewed information he found in the files.

The Board discussed travel and sight difference, a smaller sign and the use of banners for special events.

Chairman Hodder opened the Public Hearing.

No person spoke in favor.

Andrea Dudley, Moose Point Road agreed the current sign is small, however if approved it would be super-sized. The size and placement is a concern as it would possibly block

sight lines pulling out of Moose Point Road. She suggested a sign size somewhere in between what the applicant is asking for and what presently exists.

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

Rob Houseman commented the largest sign allowed in the zoning ordinance in a small section of the Center Street Zoning is 24 sq. ft. for wall mounted and free standing signs. Temporary banners for special events are allowed 14 days prior and 2 days after an event.

**Deliberations:**

The Board discussed banners and sign size.

1. The variance will not be contrary to the public interest.  
*The Board agreed this criteria was not met.*
2. The spirit of the ordinance is observed.  
*The Board agreed this criteria was not met.*
3. That substantial justice is done.  
*The Board agreed this criteria was not met as this could create unsafe vehicular distraction.*
4. The values of surrounding properties will not be diminished.  
*The Board agreed this is unknown but would change the character of the neighborhood.*
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of this property that distinguish it from other properties.  
(A) Owing to special conditions of the property that distinguish it from other properties in the area:
  - (i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.
  - (ii) The proposed use is a reasonable one.*There are special conditions of the property but the property can continue to be used as it has been. When coupled with the ability to use banners for special events the sign presently is sufficient.*

**It was moved by Mike Hodder and seconded by David Senecal to deny Case # 04-V-15, TM # 163-2 -1E, NH Boat Museum as it failed to gain a majority affirmative vote on all five criteria necessary for approval. All members voted in favor. The motion carried.**

**TM# 218-17**

**Case # 02-V-15**

**Applicant: The P & D Zimmerman Family LTD. Partnership**

**Variance**

**Agent: Randy Walker, Esq.**

Alan Harding read the abutter and public notification for the record. A site visit was held at approximately 6:15 pm.

Public Hearing for Variances from Article 175, Section 91 (Use) and Sections 175-92.1 A (2), (3), (4) & (6) (Development Standards) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of two 40' x 100' self-storage buildings. This property is located at the corner of Pine Street and Center Street.

Attorney Walker addressed the Board and reviewed the application and plans as submitted. Letters in favor of the application from; Pensco Holdings, Terrance Weinhold, Heathstone Home, Carl Shannon, Denise Williams (subject to the retention of a wooded buffer and low lighting), Charles Logan, Lionel Bernier, Andrew Swenson (Wolfeboro Car Wash), and Ted McLean. Dunkin Donuts (has no strong issues with the application) and Irving Gas Station's company policy is not to sign such a form. (Copies submitted and are part of the file.

The particular layout and number of units of each building at this time has not been completely determined. Minimal lighting will be installed as required by the Planning Board. No sign is being requested.

Chairman Hodder opened the Public Hearing.

The Board discussed the location, building size, buffer and screening, lighting, security, other uses allowed, special conditions of the property, retention pond, traffic, enforcement of possible conditions and the additional variances requested from the development standards.

Rob Houseman noted the footprint is relatively unchanged since the initial development of the property. There has been an addition to the car wash however any new development would be held to the current standards.

Chuck Sumner, 34 Pine Street previously submitted a letter in opposition and it is part of the file. He stated he has spoken and reviewed the plans with Mr. Zimmerman and most of his concerns have been addressed. Two concerns do remain; lighting and vandalism.

Attorney Walker rebutted Mr. Sumner and noted lighting would be minimal although they would prefer no lighting but believe it will be required for safety purposes. As for

security, this property is located fairly close to the Police Station and cameras will be used.

There being no further comments the public hearing was closed.

Suzanne Ryan asked for the public hearing to be re-opened. The Board voted not to reopen the public hearing.

Deliberations.

1. The variance will not be contrary to the public interest.

*Mike Hodder does not feel this criteria was met.*

2. The spirit of the ordinance is observed.

*Mike Hodder does not feel this criteria was met*

3. That substantial justice is done.

*Mike Hodder does not feel this criteria was met.*

4. The values of surrounding properties will not be diminished.

*Mike Hodder noted this is unknown but suspects it will diminish property values.*

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of this property that distinguish it from other properties.

(A) Owing to special conditions of the property that distinguish it from other properties in the area:

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

(ii) The proposed use is a reasonable one.

*Mike Hodder does not feel this criteria has been met.*

Hank Why does not see other practical uses of this property and this commercial activity is in a suitable location.

Alan Harding noted it is hidden, a good use, it will be providing a public service and the Planning Board will deal with the development.

Fred Tedeschi noted it is a complimentary use to commercial uses in the area. There are special circumstances to this parcel as it is separated from the natural shopping areas of the town by a large wetlands area. This is a minimally intensive use. The use is complimentary to businesses there and permits the property to be put at a higher valuation on the tax rolls, this does public good, other variances are necessary to help preserve the area it will be located in.



Suzanne Ryan stated there are other uses that could be there such as a bank or movie theater, a private school, or another elderly housing. Because the section is disjointed from the rest this may not be detrimental.

Sarah Silk commented she is not sure it is the best use and thinks other commercial uses up there would be better. There is an effort to attract pedestrians and these are warehouse buildings tucked in there. The other variances are ticking time bombs. Storage facilities are allowed in other areas of town.

It was moved by Mike Hodder to approve the Variances for Case # 02-V-15, TM# 218-17, Applicant P & D Zimmerman Family Ltd. Partnership from Article 175, Section 92.1 (Use) and Sections 92.1 A (2), (3), (4) & (6) (Development Standards) per plan dated May 6, 2015; with the following 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 Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.
3. 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.
4. This approval does not eliminate the need for Site Plan approval and this application, as submitted to the ZBA does not satisfy all applicable requirements for Site Plan Review application.

Fred Tedeschi, Hank Why, Suzanne Ryan and Alan Harding voted in favor. Mike Hodder voted in opposition. The motion passed.

**TM# 232-3**

**Case # 05-V-15**

**The Windrifter Resort Association**

**Variance**

Alan Harding read the abutter and public notification for the record.

Suzanne Ryan asked if a variance is needed because it is ADA required.

Mike Hodder noted this it is required as they are not under Federal Order.



Public Hearing for a Variance from Article 7, Section 80 of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a handicap access drive to the pool facility with handicap parking at the end of the drive. This property is located at the 337 South Main Street. A site visit was held at approximately 6:45 pm prior to the hearing.

The applicant is proposing to construct a driveway to the rear of the building labeled Unit 5-24 and a swimming pool structure to serve as ADA access for the pool. The existing facility is a lawfully existing non-conforming use and lawfully existing non-conforming lot coverage.

Christopher Swiniarski, Esq. addressed the Board and reviewed the application and plans as submitted.

Chris Franson asked about some parking spaces being taken away to make room for handicap access and asked if permeable pavement has been considered.

Tom Varney noted they have removed trailer parking and the plan complies with storm water regulations. Many things were considered and the soil does not work in that area for permeable pavement as the water table is high and soils are not compatible.

Alan Harding asked about the lot coverage.

Tom Varney explained they are looking to increase from 52.9% to 54.6% when parking is added, a total increase of 2.9%.

Attorney Swiniarski explained they have looked at many other alternatives and this is the only practical solution to make handicap access work to the pool.

Chairman Hodder opened the Public Hearing.

Cindy Tetreault, President of the Winddrifter Association spoke in favor. There have been complaints about lack of ADA accessibility and comforts. As they allow the public to access the property they fall under the ADA. They have been told they are at risk of being sued. They reviewed 10 different ways to access the pool area and this is the most comprehensive, feasible and almost the most unobtrusive way. There are also additional improvements to two units to provide ADA accommodations.

Dwight Devork, Board of Directors and ADA Improvements Committee Chairman. The population is aging and his daughter is totally handicap and her only form of exercise is swimming. They are unable to drive to the pool currently in the winter and spring conditions are prohibitive. A ramp or lift is not safe or feasible for all weather conditions. They are only one phone call away in having the ADA come in.

## Opposition

David Avery, a contractor in town addressed the Board. There is 51% of no impervious soil. He is a golfer and will impact it the water. They are taking parking away in the front are where it slopes forward and the water will go in the back goes towards the golf course. There are other things that can be done such as building a ramp. They already dump snow across the road onto the golf course property. This proposal is going to affect the golf course, infiltration swales will not suffice and they will be harmed if this proposal is approved.

Attorney Swiniarski rebutted they are talking about runoff and the infiltration swales are shown on the plan. There is expert testimony from an engineer and conjecture from a non-engineer. There is an issue of hardship and Mr. Avery is talking about runoff onto a golf course which is not going to be an issue. Are you saying water on a golf course is a bigger concern than access for people disabilities?

Dwight Devork noted the golf course continuously waters its lawns in the summer and he does not see runoff happening. This is designed to be an efficient water drain off and if you had such rains to cause it to overflow the swale that would be a 100 year storm. This is not a practical objection. They looked at many, many options for access and this is the most feasible and practical method in all weather conditions.

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

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

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of this property that distinguish it from other properties.

(A) Owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.
- (ii) The proposed use is a reasonable one.

Alan Harding commented based on the presentation made by the attorney and the engineer the concerns of drainage are addressed.

Hank Why noted the Planning Board will deal with the storm water management.

Mike Hodder stated he could not fault the application.

Fred Tedeschi stated the Federal law does not mandate this particular solution, although it mandates a solution. The challenge they are asking for is a significant violation of the current town standards to remain and increase. He would deny this application as there are other ways meeting the statute.

Suzanne Ryan noted federal law preempts local law and the Windrifter needs to provide accommodations.

Sarah Silk commented this is a public place and they are obligated to meet the ADA standard.

It was moved by Mike Hodder and seconded by Hank Why to grant the Variance for Case # 05-V-15, TM# 232-3, The Windrifter Resort Association on the basis the applicant has shown the Variance will be in harmony with the general purpose and intent of the zoning ordinance with the following 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 Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay recording fees.
3. 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.

Hank Why, Mike Hodder and Alan Harding voted in favor of the motion. Fred Tedeschi voted in opposition.

Suzanne Ryan stated she did not vote as she was going to offer an amendment to the motion.

Chairman Hodder explained the vote had been taken and there cannot be an amendment added.

Suzanne Ryan argued she had not voted.

Chairman Hodder asked for a revote on the motion already taken.

Hank Why, Mike Hodder and Alan Harding voted in favor of the motion. Fred Tedeschi and Suzanne Ryan voted in opposition.

Suzanne Ryan stated she wants to offer an amendment to the motion.

Chairman Hodder stated the motion has already been voted on, the vote is closed and the case is closed.

**Consideration of Minutes:**

*It was moved by Suzanne Ryan to adjourn and stated it is non-debatable. Fred Tedeschi seconded the motion.*

*Suzanne Ryan voted in favor of the motion.*

*Alan Harding, Hank Why, Mike Hodder and Fred Tedeschi voted in opposition. The motion failed.*

**6 April 2015**

**Corrections:**

Page 4 – Paragraph starting with Rob Houseman, 3<sup>rd</sup> line add the word “increase” after the word “cannot”.

*It was moved by Alan Harding and seconded by Fred Tedeschi to approve the minutes of April 6, 2015 with the correction noted.*

*Alan Harding, Mike Hodder, Chris Franson and Fred Tedeschi voted in favor. Suzanne Ryan and Hank Why abstained. The motion passed.*

**1 June 2015**

**Corrections:**

Page 1

Sarah Silk noted she should be listed as present.

Paragraph starting with Alan Harding, second line add the word “he” after “Room”.

Page 3 – Suzanne Ryan refereed to the handout and why it was not attached to the minutes as it would usually say attached to the file. (Mike Hodder stated he would look into it).

It was moved by Fred Tedeschi and seconded by Chris Franson to approve the minutes as amended.

Other Business:

Revised Variance Form – Page 1

Suzanne Ryan stated you need to vote at 2 meetings on the change.

Staff corrected her as this is only a form change.

It was moved by Chris Franson and seconded by Mike Hodder to adopt the revised variance instruction form as presented.

Mike Hodder, Chris Franson, Hank Why, Alan Harding and Fred Tedeschi voted in favor of the motion. Suzanne Ryan abstained as she has not studied it. The motion passed.

It was moved by Suzanne Ryan and seconded by Mike Hodder to adjourn the meeting at 10:22 pm. All members voted in favor. The motion passed.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'RK', is written over the typed name and title.

Robin Kingston  
Administrative Assistant