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Wolfeboro Zoning Board of Adjustment 1/4, 2016 4:00 PM

Regular Meeting Book No. Page No.

Minutes *Alan M. Harding*

January 4, 2016 WOLFEBORO, N.H. TOWN CLERK

Board Members Present: Mike Hodder, Chairman, Fred Tedeschi, Vice-Chairman, Alan Harding, Clerk, Hank Why and Suzanne Ryan, Members, Chris Franson, Sarah Silk and Susan Raser Alternates

Members Absent: David Senecal, Alternate (excused)

Staff Present: Rob Houseman, Director of Planning & Development 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 and the Rules of Procedures for the Public Hearing and the requirements for a Variance were reviewed

**TM# 204-13**

**Case # 01-V-16**

**Applicant: 94 Center Street, LLC**

**Variance**

Alan Harding read the Public and Abutter Notification for the Record. The record of Site Visit attendees and Site Minutes were submitted for the record.

Public Hearing for an Variance from Article 175, Section 114 of the Wolfeboro Planning & Zoning Ordinance for the construction of second means of egress; decks and stairs. This property is located at 94 Center Street. A site visit was held at approximately 4:15 pm prior to the hearing.

Will Ianazzi addressed the Board and explained a variance has been requested to install a second egress. The need stems from the small size of the lot. The stairs would not meet the 15' setback requirement for a deck and set of stairs. The deck and stairs have been designed as small as possible to meet proper egress and as to not affect abutters. They have been designed as a second set of egress, not the primary set. The primary means are existing on the side of the building where there is adequate space for the tenants to stay on the property. In no case do they affect an abutter by walking onto their property to exit the building and get to the side walk. The original plans were emailed to Don Ruthier, abutter at 96 Center Street and he asked

if changes could be made to them. There is an alternate design with possible less of an impact. Although flexible in the design, the ZBA asked the applicant which design he is requesting approval for. The applicant responded the original design and plans submitted are being requested for the variance minus the one set of stairs to the right.

Suzanne Ryan asked if the numbers differ in the setbacks in the alternate design.

The applicant reviewed the alternate plan and showed where it would be different however it would be 9' on the 96 Center Street side. The deck location does not change only the location of the circular stairs. He believes what matters to the abutter most are the stairs coming off the edge of the deck and the applicant would not install them. If the stairs are moved to the side it becomes a 6' setback in one location.

Rob Houseman explained the ZBA after hearing the testimony; can approve a plan with conditions as long as the conditions do not alter the intent of the application. If the issue is removing the stairs, he believes that is consistent with the submittal. If it is moving the stairs so there is a new encroachment, the application should be reconsidered.

The applicant stated he will leave the location of the spiral stairs as shown on the application but will eliminate the set of stairs that shows going towards 96 Center Street.

Sarah Silk asked if there were any safety function to the stairs being eliminated.

Rob Houseman explained it was only for the first floor and he is now going to tie the spiral stairs into the first floor.

The applicant stated they are rehabbing the building and bringing the entire building up to today's code with full fire alarm and sprinkler systems. In reviewing the renovation plans with the building inspector and fire department, they asked for a second means of egress, which is a life safety issue.

Suzanne Ryan asked as this is a non-confirming building and lot are there still going to be apartments on the 2<sup>nd</sup> and 3<sup>rd</sup> floors with retail space on the 1<sup>st</sup> floor and how did the apartments ever get approved without a 2<sup>nd</sup> means of egress.

The applicant responded the building was purchased in September and two apartments existed with 2 retail spaces below. In his opinion the apartments were not habitable. The Building has been like that since 1930 and seems to have always been apartments above.

Suzanne Ryan stated it is of interest and importance to her how it became discontinued. Was it a one family and they just let people live there?

Rob Houseman responded the use has never been discontinued; it was a Duco property and has always been 2 residential units.

Mike Hodder also noted there has always been a store in that location since the 1790's.

Fred Tedeschi asked if the applicant also needs a variance for the porch.

The applicant explained you need a platform to step out to and the size is to meet code. This has been a voluntary upgrade to bring the building into conformance and they want to meet all aspects of today's code.

Alan Harding asked if the applicant is aware of a letter from Mr. Riech.

The applicant responded he has read the letter and the way he interprets it is Mr. Reich would object if they were egressing onto his property, but they are not, they are egressing and walking up the side of their building with adequate space. It starts at approximately 10' feet from the sideline and as you continue they still have approximately 6'. There will be a stone walkway on the left side and a brick walkway on the right side, which never existed previously. The previous owner had the tenants walking on the neighbor's hot top and entering directly into the building. They have agreed with their neighbor this route will no longer be followed, that is the purpose of the walk.

Suzanne Ryan asked if the fire department mandated this be done.

The applicant responded that only if he wants to use the upper two floors.

Speaking in opposition:

Don Ruthier, 96 Center Street asked which plan is being considered. The applicant and Mr. Ruthier reviewed the plan. Mr. Ruthier asked about the Board requiring a barrier between the properties as it could be a condition of approval. He stated he called the Planning Department this week and asked if these stairs and decks are something the Planning Department is requiring and Mr. Houseman said I do not know, maybe the Code Enforcement Department is. The Life Safety Department is requiring a second egress, not necessarily a staircase. During his renovation a few years ago, the Fire Department required a deck to come out of the window but no stairs. This goes to the issue of hardship as if it is required there is a hardship and if not there is no hardship and does not require a variance. The land is just not large enough for this

and there is an exit about 2' from his driveway and he is afraid that people will come on his driveway and the problem in the back is there is 2' and 6' and he is worried they will come his way to get to the parking lot. This would diminish the value of his property and adversely affect his property. There is a reason there are setbacks and unless there is a good reason for it, he feels it is contrary to the purpose of the statute, which is one of the five criteria. The Board could approve the second plan which makes changes that minimize the impact. A barrier was requested so people will not come on his property and asked it be a condition of approval. He asked the current plan be rejected and the Board adopt the proposed second plan.

Mike Hodder asked if he has had issues in the past with people coming on his property and being struck by cars.

Mr. Ruthier responded in the issue of litigation, with icy conditions and such, he fears for the future although there have been no incidents during his ownership.

Mike Hodder explained the Board has the authority of conditional approval to be confined to the actual project at hand.

Mr. Ruthier responded the Board has the authority to require a barrier and secondly asked the Board to reject the plan submitted because there is another plan that has lessor of an impact.

Suzanne Ryan asked if the maximum lot coverage of 60% is exceeded and secondly the Board could reject the application without prejudice if the applicant would bring back an application more palatable to the abutter.

Mr. Ruthier asked if this is a mandated requirement and the applicant has been instructed this is how it has to be met or is this the applicant deciding on his own to do this. If that is the case, there is no hardship.

Mike Hodder explained hardship with the land itself.

Mr. Ruthier stated that unless there is something unique about the property, not that the applicant wants to build this type of egress there is no reason to approve the variance. If it were mandated by the codes then that is another thing.

Rob Houseman refuted Mr. Ruthier's recollection of the recalled conversation they had. The first floor of the property is business and the second and third floor residential. The fire and building code are different than that of an all residential building; that was the conversation they had. Regarding the purpose of the egress; for an apartment in elevation of 21', a landing is necessary to allow for access. Building and fire code differ slightly within the code itself.

Suzanne Ryan asked could it be the structural type of egress that is different. Can it be a landing and a fire escape?

Rob Houseman responded the applicant has proposed a solution that meets the fire code, which is before the Board. Are there alternatives, yes.

Mike Hodder responded that no member of the Board is qualified to develop a second means of egress for this application.

Mr. Ianazzi asked the plan presented minus the one set of stairs to the right is the one to be considered. There is an actual walkway now of flagstones and a large landscape timber that exists. He does not need permission to complete a walkway, he is making it safer.

Chris Franson noted the tenants probably would not be using the spiral staircase much as a means of access and egress.

Fred Tedeschi noted the current Fire Code is really the main reason for the request and he would like to see a document from the fire department, which gives the requirements.

Rob Houseman noted the lot coverage is approximately 32% and to clarify the stairs were not required on the abutter's property as it is a different type of property.

Don Ruthier noted he was told he needed a deck for egress and the fire department could put a ladder to it. He disagrees with hardship. Setback is to protect all of the abutters. Legally there is no hardship. It is vague what the fire department is regulating. He does not agree with the view of the definition of hardship. The setback protects the neighbors as well. Has the applicant over designed this because legally there is no hardship.

The applicant noted he asked the architect for a design with minimum impact. The width of the stairs are 36", there is no over design. There will be nothing designed to prompt the tenant to walk on the abutters property as pointed out on the plan by Alan Harding. There is a retaining wall there and there is no room to walk where Mr. Ruthier pointed out.

There being no further comments the Public Hearing was closed.

Deliberations:

Michael Hodder stated the following Findings of Fact:

1. The width of the largest section of the read lot side to side is approximately 35'
2. It is a very narrow lot
3. The building seems to have been built around 1920
4. The lot is .10 acres per the town maps available on line
5. It is the second smallest lot in the neighborhood
6. It is the only one with a rear lot so configured
7. The smallest is right across the street (the Chinese Food Restaurant) and that building according to the town map intrudes into the Route 28 right-of-way; the third smallest lot is .11 acres (The Odd Fellows Building)
8. It is clear from the plan that no matter where an egress were to be placed in the back of the building (because it cannot go in the front) it is going to violate the setback
9. The applicant has no choice but to violate the setback if he is going to put a rear egress opportunity for the second and third residential floors.

Requirements 1 & 2:

Mike Hodder stated the application is not contrary to the public interest and the spirit of the ordinance is observed. The Wolfeboro Falls Limited Business District was created to help create a transitional neighborhood of mixed commercial and residential uses. This would promote the purpose by creating life and safety measures, which are up to current code and properly constructed decent mix of retail and commercial space. The Board agreed item # 1 has been met.

Fred Tedeschi commented he would like the Fire Department to confirm this is the minimum size to meet code because it is the basis of the variance in condition #2.

Susan Raser commented the architect designed the egress with the least amount of footprint possible.

Chris Franson noted it meets what is described in the transitional zone and noted the downtown area setbacks are even less.

Suzanne Ryan agreed with Fred Tedeschi and further stated that without a letter from the Fire Department, you can say no. The architect is from MA so how much do they know about Code Compliance.

Alan Harding noted copies of the Public Hearing Notice had been distributed the town offices, which means the Fire Chief received this and if they had a question, he would be here at the meeting. Additionally the Fire Department would have to inspect this property for occupancy.

Rob Houseman explained Corey Ryder, Code Enforcement Officer and Tom Zotti, Deputy Fire Chief met several times with the applicant regarding Code Compliance.

Susan Raser noted the request is also to preserve the safety of the occupants allowing a 2<sup>nd</sup> egress.

Requirement #3: Substantial justice is done; the town gains a renovated building but by upholding a violation of 5' of setback space, the town gains nothing.

Fred Tedeschi is looking at balance; changing a rule adopted by town vote and the authority the ZBA is given is to do the minimal amount of violence to that rule. He would like to know what the Life Safety Code says.

Mike Hodder commented this is what the applicant has asked for. This is a non-conforming building and to be built today it would require a number of variances due to the size of the lot.

Suzanne Ryan asked if the Board wants to consider a continuation in order to obtain that information.

The Board did not want to consider a continuance.

Sarah Silk noted part of hardship is the applicant is required to put in a 2<sup>nd</sup> egress and it would be helpful for the fire department to weigh in on the application. The Town did vote an increased setback and this is a small property that does not meet code. The egress will be better suited for the town and safer for the renters. She is not without sympathy for the next door neighbor and the applicant has demonstrated he is trying to keep future tenants on his property.

Chris Franson commented it is a good thing when a building becomes more conforming and enhances the tax rolls.

Requirement #4 – The property values are not likely to be diminished. One abutter feels the values will be diminished however, the renovated building will be nice and one can only assume it is a benefit to neighborhood.

#5 – Hardship – Special Conditions – It is clear this parcel suffers under special conditions and is on a very constrained lot. It abuts directly to the sidewalk, there is nowhere in the back to put anything without violating setbacks and it has very tight setbacks on the sides. The town gains

nothing by upholding its ordinance and stands to lose a renovated building and possibly an anchor to the neighborhood. The use is reasonable with secondary egress.

Suzanne Ryan disagrees as there is a reasonable alternate use and if there is another alternative; a fire escape and that is permitted under the code; reasonable use is not available. Fred Tedeschi agreed.

It was moved by Mike Hodder and seconded by Hank Why that after given the facts of the case as stated and for the reasons brought out in testimony that the application for William Ianazzi, Manager: 94 Center Street LLC; Case # 01-V-16 a Variance for TM# 204-13 be approved with the following conditions:

1. The approval is for the construction of a secondary means of egress (decks and stairs) to the second and third floors in conformance with the submitted scaled prints.
2. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this 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.
3. The application, as submitted to the ZBA, may not satisfy the submittal requirements for a Building Permit.
4. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.
5. 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.

It was moved by Suzanne Ryan and seconded by Fred Tedeschi to amend condition # 1 to add the wording "dated 10/30/2015". All members voted in favor of the amendment. The amendment passed.

It was moved by Fred Tedeschi and seconded by Hank Why to add first floor to condition #1. All members voted in favor. The amendment passed.

Motion called for a vote with two amendments. Hank Why, Mike Hodder and Alan Harding voted in favor. Fred Tedeschi and Suzanne Ryan voted in opposition. The motion with amendments passed.

### **Consideration of Minutes:**

December 4, 2015

Page 4 – add “abutter” next to Gail Antonucci in the 5<sup>th</sup> paragraph.



Page 6 – 6<sup>th</sup> line down change Hoddere to Hodder

*It was moved by Suzanne Ryan and seconded by Mike Hodder to approve the minutes as amended. All members voted in favor.*

**Other Business:**

Rules of Procedure

The two competing versions will be reviewed and a small discussion will take place at the February meeting.

There being no further business, this meeting was adjourned at 8:29 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'RK', is written over the text 'Respectfully Submitted,'.

Robin Kingston  
Administrative Assistant