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Wolfeboro Zoning Board of Adjustment

February 17, 2016

Public Meeting

Minutes

Book No.

Page No.

WOLFEBORO, N.H. TOWN CLERK

Members Present: Mike Hodder, Chairman, Fred Tedeschi, Vice-Chairman, Alan Harding, Clerk, Hank Why and Suzanne Ryan, Members, Chris Franson, Alternate

Members Absent: Dave Senecal, Alternate (Excused) Sarah Silk, Alternate (Excused) and Susan Raser, Alternate (Excused)

Staff: Robin Kingston, Administrative Assistant

Chairman Hodder opened the Public Meeting at 7:00 pm in the Wolfeboro Public Library Meeting Room. A quorum was present.

Consideration of Motion for Rehearing

TM # 204-13

Case # 01-V-16

94 Center Street, LLC

Variance Granted: January 4, 2016

Submitted by: Don Ruthier

Mike Hodder explained the material Board is going to consider is the application for the rehearing, the originating application for the variance, and the case record. To grant the application for the rehearing the Board must find that it has made a technical error or an error of law, or there is new evidence presented not available at the time of the originating application which has been found and is compelling enough to require the Board to reverse itself.

Suzanne Ryan commented the availability to the Board for rehearing are; 677.2 - The Board may grant such rehearing if in its opinion good reason is stated in the motion; 677.3- Motion states grounds and claims are unlawful or unreasonable; and Fisher vs. Boscawen – The Board has the first opportunity pass upon its errors which it might have made in the first hearing. Also the court may have the benefit of its judgement in a rehearing; and then Laughlin – as a general rule grant only if the petition demonstrates the Board committed a technical error need not be so that we would not come to the same decision or a new decision. Technical is procedural; it's the Boards decision was improperly made based on misapplication of law and we can correct or

if we said new evidence unavailable at the time of the hearing or it might be evidence that was unobtainable because of absence of key people or other valid reasons.

Suzanne Ryan further stated the 94 Center Street application review process was based on the erroneous premise was that the applicant was mandated to install the porch deck and stairs per fire / building code. This was technically an incorrect assumption. No evidence was produced to substantiate that, in fact Mike Hodder did not report there was anything of that nature. There was nothing that mandated the stairs / deck.

Fred Tedeschi commented the in application, Page 6 at the top, "the construction of secondary means of egress (decks and stairs) brings the building up to current code". It is pretty clear in the application that what was represented was the construction of the decks and stairs was required as a secondary means of egress. What was attached to the application for rehearing was a copy of the life safety code handbook which makes it clear that was not the case and the applicant was mistaken and probably received bad information from someone. A secondary means of egress can be a sprinkler system in which case you have met the requirements with a stairwell that has the fire code doors. Therefore the construction of the decks and stairs was not necessary as a secondary means of egress. He further stated that he thinks the Board should rehear the application and give the applicant an opportunity to present different grounds for his request for a variance.

Chris Franson commented the copy of the Life Safety Code submitted is dated 2003 and she is not able to certify this is accurate.

Mike Hodder stated he disagrees with both Suzanne Ryan and Fred Tedeschi because if you read the variance application the applicant does not state he has been told by the Fire Department he has to put a secondary means of egress in or he will not be allowed a Certificate of Occupancy in the building. The request for the variance is to construct a second means of egress - decks and stairs. He does not say "because the Fire Department told me I have to do this"; he does not say "the Life and Safety Code says it is vital that I do this"; he states that he wants to put in a second means of egress in the back - a deck and stairs. Mike Hodder further commented during deliberations of the original application he made a particular point of stating publically that the variance request that Mr. Ianazzi submitted did not hang on any Life and Safety Code requirement. It hung on a request for a second means of egress from the back of the building. He does not state anywhere in the application the Fire Department told me I have to do this. He does say that he thinks it will bring it up to code. He is not applying for a variance to satisfy the Fire Department Code requirements because he would not need a variance. How he wants to build them is part of the variance request, not why he wants to do it. When the ZBA looks at a variance request, we are not asking ourselves why does this person want to do what he wants to do. That is not the ZBA's job. The ZBA's job is to see if what the person wants to do qualifies under the five criteria and if it does we grant the variance and if it

does not then it is denied. There is no need for a rehearing; the ZBA made a correct decision based upon the evidence; there are findings of fact which support the decision, the ZBA came to the decision by a majority vote; no new evidence has been offered by the applicant for the rehearing that he could not have obtained prior to the original hearing by going to the Fire Department and asking the Chief or Deputy Chief what the Fire Code states and presenting his case at the original hearing. Granting this application for a rehearing based upon "new evidence" basically excuses the applicant for the rehearing for not having done his homework prior to the original request by the original applicant.

Hank Why commented the original application was for stairs in a tight backyard and the impact on the neighbor.

Mike Hodder agreed. The Board has a lot of power but it does not have the power to decide if what an applicant wants to do is a good idea or not. It can only decide if what the applicant wants to do fit the five criteria. The Board does not have the right to say "we do not think it is a good idea or you need to get Fire Department approval".

Alan Harding commented he strongly believes no technical errors were made. The Board listened to the applicant and the abutter. It was clear to him and the majority of the ZBA the applicant made his case. There is no new evidence presented that would have a bearing on the decision made. In sum no mistakes were made, no technical errors made and no new evidence has been presented.

Suzanne Ryan read from page 2 of the 1/4/2016 minutes as follows:

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.

And further from page 3:

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.

Suzanne Ryan further commented that 75% of the conversation that night was about the Fire Departments Building Code, suppression and all that sort of thing. Further she commented that under the second prong of hardship: *Other Reasonably Feasible Methods: A factor for an Area Variance application must show that there are no other reasonably feasible alternative methods available to implement the proposed use without a variance. The analysis includes consideration of whether an Area Variance is required to avoid an unfair financial burden on the applicant which includes examination of relative expense or alternative methods. The court*

further explained these requirements as follows: if the proposed project could be constructed such that an Area Variance would not be required the burden is on the applicant to show that the alternatives are cost prohibitive. Under this factor the ZBA may consider the feasibility of a scaled down version of the proposed use but must be sure to also consider whether the scaled down version would impose a financial burden on the land owner.

She commented she feels a fire escape is a less financial burden on the landowner than what he proposed to build.

Mike Hodder responded he is doing something in addition that the town is going to benefit from.

Alan Harding stated the ZBA is technically rehearing the case with this current discussion.

Suzanne Ryan stated she is arguing the reasons the Board should reconsider.

Mike Hodder commented if you go through the applicants reasons for requesting a rehearing and his notes, the ZBA notes them as being moot. The Board has already posed and disposed of each of the arguments. Alan Harding's point is correct.

Fred Tedeschi commented the applicants exact words in the application are "the construction of a second means of egress/decks and stairs. The design of the egress structure, deck and stairs are at a minimum size to meet code".

Page 3 of the 1/4/2016 minutes were referenced as follows:

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.

It seems clear to him the basis of the application was a requirement imposed under the Fire Code to have a secondary means of egress and that is not the case. What the applicant for the request for the rehearing has done is provide a copy of the Code which the ZBA asked for. In fact Suzanne Ryan asked for a continuance until the Board could get a copy of the Code and that was denied. To him if this goes to court, which is likely, the court is going to say the basis of the application was the Code and the ZBA made a mistake in not granting a rehearing. He has no problem giving the owner an opportunity to come in and say we want to put on a deck and

stairs because it will enhance the value of the property and not have any reference to the fact this is necessary for a secondary mean of egress.

It was moved by Fred Tedeschi to grant the application for rehearing and ask the applicant to resubmit the application. Suzanne Ryan seconded the motion.

Discussion:

Mike Hodder commented 2 members felt the case hung on a Fire Department Code requirement, which was not presented in evidence only in testimony by the applicant. The other 3 members did not feel the same way. He stated during the hearing that he did not feel the Fire Code was the hook on which the application hung. It should be treated simply as an application for a variance and the reasons for the applicants' desire to put stairs on the back were not the important part of the question, the question was did the application meet the five criteria. Three members felt it did and two members felt it did not.

Suzanne Ryan stated this could have been avoided if the hearing was continued; it would have been only for a week and would not have stopped the developer because it is an exterior thing and the ZBA would have had the information as to what was being said by the applicant and by the abutter. The ZBA would have factual information before them. Here we are probably ending up going to court and a waste of time and money had they only continued the meeting for a week. That is not fair to the applicant, not fair to the abutter and not fair to the Board. This is her personal feeling and comment.

Alan Harding commented there was no motion to continue the hearing in January; it was a general consensus by the Board not to.

Hank Why stated he felt the addition of the second egress was the right thing to do for the building although he was not aware the code would allow for a second means of egress by adding a sprinkler.

Mike Hodder stated the applicant is doing both.

Suzanne Ryan responded he could not get access to the third floor if he did not put in sprinklers. It had nothing to do with stairs and decks. The town was not going to allow him access to the third floor if he did not put in sprinklers and therefore he did not need the rear access for which he will look out on the lovely Back Bay.

Mike Hodder called for a vote on the motion.

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

It was moved by Mike Hodder to deny the application for rehearing. Alan Harding seconded the motion. Alan Harding, Hank Why and Mike Hodder voted in favor of the motion. Suzanne Ryan and Fred Tedeschi voted in opposition. The motion passed.

Other Business:

Rules of Procedure

Mike Hodder stated this is the second reading of the Rules of Procedure

Suzanne Ryan disagreed and stated that it is not on the agenda and she brought no material relative to this and was not forewarned. She stated she needs to be excused.

Mike Hodder stated if she leaves she will have an unexcused absence.

Suzanne Ryan stated she is not absent she is only absent from the 2nd half of the meeting and left the meeting.

Mike Hodder explained he had a handout from Suzanne Ryan however as she left the meeting it cannot be discussed.

Next Regular Meeting - March

Mike Hodder notified the Board he will not be in attendance at the March meeting. Fred Tedeschi, Vice-Chairman will Chair the meeting.

It was moved by Fred Tedeschi and seconded by Alan Harding as there is no further business this meeting be adjourned at 7:27 pm. All members voted in favor. The motion passed.

Respectfully Submitted,

Robin Kingston
Administrative Assistant