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Wolfeboro Zoning Board of Adjustment

Regular Meeting

June 13, 2016

Minutes

WOLFEBORO, NH. TOWN CLERK
TOWN CLERK

Members Present: Fred Tedeschi, Chairman, Mike Hodder, Vice- Chairman, Chris Franson, Clerk, Hank Why and Suzanne Ryan, Members, David Senecal, and Sarah Silk, Alternates

Members Absent: Susan Raser, (Excused)

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

Chairman Tedeschi called this meeting to order at 7:00 pm at the Wolfeboro Public Library Meeting Room.

Applicant: TM# 266-1

Owner: Hingham Realty Trust

Case # 06-SE-16

Public Hearing

Special Exception

Public Hearing for a Special Exception from Article 175.55 (1) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a single family dwelling on a lot with no frontage. This property is located off Gould Road in Alton. The applicant is seeking to construct a new home on a vacant parcel that has access via Gould Road, a private easement accessway.

Chris Franson read the Public and abutter notification for the record. A site visit was held at approximately 6:30 pm. Minutes of the site visit were submitted for the file.

John Rourke addressed the Board and reviewed the plan as submitted with the application and pointed out an area where the dwelling would potentially go.. There had been an existing structure since the 1920's which was raised over a year ago. A portion of the house was in Alton and a portion was in Wolfeboro. The road to the lot is approximately 1 mile long with the majority of the road being in Alton and a short section as you approach the lot in Wolfeboro. The lot was merged and approved by the Planning Board previously. The road will be improved with proper drainage and gravel. Both Alton and Wolfeboro Fire Departments met with the applicant and road improvements were discussed. A photo of the previously existing dwelling

was submitted. Letters from both the Wolfeboro and Alton Fire Departments were submitted and are part of the file. Alton Fire Department is in agreement that Wolfeboro Fire Department will dictate approvals. No specific dwelling has been determined however it is estimated the dwelling will be approximately 7,000 sq. ft.

The 8 points required for the Special Exception were reviewed as submitted.

Chris Franson noted Corey Ryder, Code Enforcement Officer submitted a memo to the Board stating the site can be fully compliant to accommodate a dwelling in both building and zoning setback. The septic will be located on the back lot through an easement. The proposed single-family dwelling would comply with all state and local regulations. A letter from Chief Chase, Wolfeboro Police Department was submitted for the record which is consistent with the Wolfeboro and Alton Fire Departments concurrence.

There is a right of way (see documents in file) and the right of way is depicted on the plan.

No person spoke in favor or opposition to the application.

Chairman Tedeschi closed the Public Hearing.

The Board reviewed the 7 Criteria for lots with no frontage as follows:

- (1) Review and comment by the Planning Board.*
- (2) The lot complies with all other zoning requirements and no application will be considered without a compliance determination issued by the Code Enforcement Officer. If not, the property owner(s) shall first obtain any necessary variance(s).*
- (3) The general special exception criteria of § 175-127A through H are satisfied.*
- (4) Proof of the applicant's deeded right of access to the lot shall be made part of and included with the application submitted to the Zoning Board of Adjustment.*
- (5) Driveway access site plan approval by the appropriate public safety officer(s) shall be made part of and included with the application submitted to the Zoning Board of Adjustment. Any approval shall include a condition precedent, requiring the construction and approval of the driveway by the public safety officer(s) prior to the issuance of the certificate of occupancy.*
- (6) The applicant shall endorse the Town's "Acknowledgment Regarding Issuance of a Building Permit on a Private Way," which shall be made part of and be included with the application submitted to the Zoning Board of Adjustment. The endorsed document shall be recorded if the application is approved.*
- (7) The applicant shall endorse the Town's "Acknowledgment Regarding Ineligibility for Subdivision Approval," which shall be made part of and be included with the application submitted to the Zoning Board of Adjustment. The endorsed document shall be recorded if the application is approved.*

The Board agreed the criteria has been met.

The Board reviewed the 8 criteria required for the Special Exception as follows:

1. Site Suitability: The specific site is an appropriate location for the proposed use or structure:

This includes:

- a). Adequate usable space
- b). Adequate access
- c). Absence of environmental constraints (floodplain, steep slopes, etc.)

The Board agreed this criteria has been met. There is some concern over the steep slope however this will be taken up at the Planning Board Site Plan Review.

2. Immediate Neighborhood Impact: That the proposal is not detrimental injurious, obnoxious or offensive to the abutting properties in particular and to the neighborhood in general. Typical impacts, which extend beyond the proposed site include:

- a. Excessive trip generation
- b. Noise or vibration
- c. Dust, glare of heat
- d. Smoke, fumes, gas or odors
- e. Inappropriate hours of operation

The Board agreed this criteria has been met, will not change or is not applicable.

3. That there will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking:

The Board agreed this criteria has been met.

4. Availability of public services and facilities: That the following services and facilities are available and adequate to serve the needs of the use designed and proposed:

- a. Sewer
- b. Water
- c. Storm water Drainage
- d. Fire Protection
- e. Streets
- f. Parks
- g. Schools

The Board agreed this criteria has been met.

5. Appropriateness of Site Plan: Consideration shall be given to the following:

- a. Parking Scheme
- b. Traffic Circulation
- c. Open Space
- d. Fencing/Screening
- e. Landscaping
- f. Signage

g. Commercial Vehicles

h. Lighting Impact

The Board agreed this criteria has been met.

6. Immediate neighborhood integrity: That the uses and established use patterns be weighed with recent change trends in the neighborhood.

The Board agreed this criteria has been met and noted there will be increased separation between dwellings.

7. Impact on property values: That the proposed use will not cause or contribute to decline in property values of adjacent properties.

The Board agreed this criteria has been met and noted with an approximately 7,000 sq. ft. dwelling this should not have a diminution in surrounding values.

8. The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan.

The Board agreed this criteria has been met.

It was moved by Fred Tedeschi and seconded by Mike Hodder to grant the Special Exception from Article 175.55.1 of the Wolfeboro Planning and Zoning Ordinance to allow for the construction of a single family dwelling on a lot with no road frontage. The approval is subject to 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 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.*
- 2. The application, as submitted to the ZBA, does not satisfy all applicable 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 all 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.*
- 5. The road shall be constructed before construction of the residence shall begin.*
- 6. Subject to site plan approval specifically by the Planning Board for the location of the house and drainage and other similar issues.*

Mike Hodder amended the motion that construction and approval of improvements to Gould Road be approved by the Alton and Wolfeboro Fire Departments. Suzanne Ryan seconded the Amendment.

Rob Housemen noted a Shore Land Permit will be required however this does not require Planning Board Site Plan Approval.

It was moved by Fred Tedeschi and seconded by Suzanne Ryan to remove condition 6 in the original motion.

All members voted in favor of the amendments.

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

MRNH Retreat LLC

TM# -18-6-1

Case # 08-V-16

Variance

Agent: Shawn Bergeron

Public Hearing for a Variance from XIII A, Section 175-88.4 of the Wolfeboro Planning & Zoning Ordinance for the construction of a storage garage on a lot with no dwelling. This property is located on Center Street (north of Kingswood Youth Center).

Chris Franson read the Public and Abutter notification for the record. A site visit was held at approximately 6:10 pm. Minutes of the site visit were submitted for the file.

Mike Hodder disclosed as Chairman of the Library Board of Trustees he engaged Mr. Bergeron's firm to complete a study of the Library but does not feel this requires him to recuse himself

Shawn Bergeron reviewed the application, plan submitted with the application and the five criteria required for a variance.

Mike Hodder asked Rob Houseman about the Wolfeboro Railroad's Right-of-Way

Rob Houseman reported the trail is owned by the State of NH Bureau of Rails & Trails.

Chris Franson asked why no proposed residence for the lot.

Shawn Bergeron responded the owners have no need for a residence as they own an abutting lot however it is divided by the right of way for the trail. Further the abutting properties are commercial as well as properties to the north with the exception of one dwelling. The cleared area near the road, viewed at the site visit would be the location of the storage building. The building would primarily be used for storage of boats and vehicles for the winter months.

The Board discussed with the applicant why a commercial variance was not applied for and also discussed creating living space in the storage building.

Shawn Bergeron explained they felt that it would be circumnavigating the ordinance.

Rob Houseman explained if there were to be a commercial variance granted for this property they would be allowed commercial storage operation. The property has always been zoned residential and the abutting properties were granted variances for commercial operations.

No person spoke in favor or against this application.

Shawn Bergeron requested a withdrawal of the application without prejudice. This will allow the applicants and agent to review options.

It was moved by Suzanne Ryan and seconded by Fred Tedeschi to grant the requested withdrawal of the application without prejudice. All members voted in favor. The motion passed.

Woodbine Senior Living, LLC

TM# 133-28

Case # 13-V-14

Variance Extension Request

Agent: Jim Rines

Public Hearing for an extension request for a Variance granted 30 June 2014 for construction of an Alzheimer and Assisted Living Facility for property located on Governor Wentworth Highway.

Jim Rines addressed the Board and summarized the letter submitted with the application for the requested extension as the applicant has not met the last condition of the Planning Board's Approval relative to water supply. He explained the wells drilled and the State of NH DES requirements for 48 hour pump down tests. The State also felt that two of the wells are hydrologically connected and one well was discounted. The permitting process and timeline as submitted was reviewed as well as the funds expended to date.

It was explained the aquifer not as located where it is shown on the Cotton Map which was originally relied upon by the applicant and is what the Town uses. DES has noted a location where a well may be drilled. The applicant needs time to make a number of decisions and the time for approval will soon expire. Close to \$600,000 to date has been spent on this project.

A few Board members disagreed with the cost estimate, felt the requested extended length of time requested was too long, felt here is a poor business plan, questioned the engineers decisions and when the applicant should face reality and give up on the project.

Rob Houseman noted the applicant incurred most expenses after the variance was granted.

Public Comment:

Tom Furtuna, 9 College Road discussed the water situation and how this project puts the wells in the area in jeopardy which was the initial concern. He granted permission for his well to be monitored.

Jim Brown, 678 Center Street expressed his concern of the use of time and the applicants expended funds should not be a concern. Funding and timing should be done within the 2 year variance approval timeframe. He also noted he spoke with DES and according to Mr. Roy he has not spoken to the applicants engineer since April. Life does not give you extensions and the ZBA should not extend this.

Rebuttal:

Jim Rines responded to Mr. Fortuna's concern. He has a bedrock well and he granted approval for well monitoring. A well drilled in the area DES depicted should have no impact on his well.

Jim Rines responded to Jim Browns concerns and stated the IRS gives extensions. He is correct he spoke to DES on April 29th and this application was filed on May 11th in order to meet the submittal deadline for this meeting. The applicant needs to make a decision and did not want to race into one.

There being no further comment the public hearing was closed.

The Board discussed the extension request and as there is no case law or previous decisions regarding extensions of time for good cause, the ZBA would need to craft their own meaning as to what good cause is. The majority of the Board felt the applicant has not abandoned the project and has been working to receive the approvals required and has expended a substantial amount of funds on this project which demonstrates vesting.

A few members of the Board disagreed and felt there is no vesting and a majority of the costs are ordinary to obtain approvals in any project, the ability to obtain funding for the project as well as managerial problems and engineering decisions were questioned.

The length of time requested was discussed and opinions differed between 6, 12 and 18 months.

It was moved by Chris Franson and seconded by Suzanne Ryan to grant a 12 month Variance Extension for Woodbine Senior Living, LLC from June 30, 2016 to July 1, 2017. Fred Tedeschi, Mike Hodder, Hank Why and Chris Franson voted in favor of the motions. Suzanne Ryan abstained. The motion passed.

Families in Transition

Review and Vote for Approval of Written Decision of June 6, 2016

TM# 217-70

Case # 07-V-16

The Board reviewed the written decision and made some minor changes and reviewed the following for approval as the Board had suspended the hearing pending review of the written decision.

NOTICE OF DECISION ZONING BOARD OF ADJUSTMENT

Families in Transition/Green Mountain LLC ("FIT") has applied for a variance to convert the third floor¹ of property located at 16-18 Lehner Street to 7 bedrooms to provide temporary housing for 5-7 families. Such a use is not defined in, and therefore is not permitted by, the Wolfeboro Zoning Ordinance.

The board held public hearings on May 3, 2016, May 10, 2016 and June 6, 2016 and received written and verbal testimony from those in favor and those opposed to the proposed facility. That testimony is incorporated, although not reiterated, herein, other than as discussed by the board during its deliberations.

After reviewing all of that testimony, the board finds and rules as follows:

1 & 2. The variance will not be contrary to the public interest and will observe the spirit of the ordinance

The criteria that the grant of the variance will not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. To be contrary to the public interest the variance must "unduly, and in a marked degree" conflict with the ordinance such that it violates the ordinance's "basic zoning objectives." There are two inquiries a board should make in reaching a decision regarding this criteria:

Whether it would alter the essential character of the locality.

Whether granting the variance would threaten the public health, safety or welfare.

Although two of the board members felt that the conversion of this existing 5,000 square feet of commercial space to residential space was not consistent with the public interest and the spirit of the ordinance,

¹ Office and counseling space will occupy the second floor of the property; however, these uses are permitted by the zoning ordinance and do not require a variance.

particularly when the cumulative impact of all such potentially similar variances was considered, the majority of the board found that the proposed use was not contrary to the public interest and observant of the expressed purposes of the C-1 district.

The purpose of the district is "to protect the character of the existing downtown, maintaining its pedestrian scale, while promoting a healthy mix of retail, professional office, medical and residential uses within the district and promoting mixed uses on individual properties. It is intended to enable the downtown to remain a vibrant, compact commercial center, serving the needs of community residents, the region and tourists as the economic center, and to promote a complementary and diverse mix of commercial and residential uses." § 175-88.7.

Uses permitted in the district include nursing or convalescent homes, and the like; multifamily dwellings, beds and breakfasts, and inns. Uses permitted by special exception include affordable nonprofit housing for the elderly and affordable nonprofit workforce housing. See §175-91 and 92. Currently existing uses in the neighborhood, in addition to commercial uses, include multifamily dwellings, a community center, and a nonprofit child advocacy center.

The majority of the members felt that the proposed use--temporary transitional housing--is similar to the existing, and uses permitted by right and by special exception in the district and promoted the purpose of mixing uses on individual properties. It therefore would not alter the essential character of the locality. Moreover, the board noted that this space could be converted to residential space as of right if it were, for example, converted to apartments.

The majority also discussed the public health, safety and welfare. While the majority recognized the concerns expressed by some members of the public regarding the addition of seven homeless families to the area, they noted that one cannot control who moves into a neighborhood, regardless of the type of housing they may occupy. The board also noted that the FIT facilities in other locations in New Hampshire had not produced any negative impacts on the public health, safety and welfare in those communities.

For the foregoing reasons, and based on all of the evidence in the record, the majority of the board concluded that the variance will not be contrary to the public interest and will observe the spirit of the ordinance.

3. Substantial justice will be done by the granting of the variance

Perhaps the only guiding rule as to the factor of substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The New Hampshire Supreme Court has also considered whether the proposed use is consistent with the area's present use in determining whether substantial justice is done by the grant of a variance, unless the zoning ordinance was adopted specifically to alter the neighborhood.

The majority of the board found that granting variance will do substantial justice because the benefit to town at large far outweighs the minimal loss from the deviation from the zoning ordinance. The majority discussed the gain of transitional housing that the town both lacks and needs, and found that denying the variance would deprive the town of these services only at the gain of rigidly enforcing the ordinance.

Based on all of the evidence in the record, the majority of the board concluded that substantial justice would be done by the granting of the variance.

4. The values of surrounding properties will not be diminished by the granting of the variance

While one board member felt that FIT had not met its burden of demonstrating that surrounding property values will not be diminished by the grant of the requested variance, the majority of the board found that the information submitted by Mr. Norton on behalf of FIT to be compelling. That information concluded that properties adjacent to 28 of 31 of the FIT facilities elsewhere in the state had actually seen an increase in their

assessed values. While the board acknowledged that many of those buildings had been dilapidated and thereafter improved by FIT, while the property at issue was already in good condition, it noted that given the existing good condition of the building and the neighborhood, the maintenance of the exterior in good condition would, at most, have a neutral impact on the value of surrounding properties.

The majority also noted that the testimony presented by local realtors was not based on any actual evidence, but instead based on national studies of properties and neighborhoods that were not comparable to this family focused transitional housing.

For the foregoing reasons, and based on all of the evidence in the record, the majority of the board concluded that surrounding property values will not be diminished by the granting of the variance.

5. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that ordinance to the property and the use is a reasonable one

As an initial matter, the board considered whether the property was unique in its surroundings, and a majority found that it was. The building is located 3 to 4 blocks from the local school, and within walking distance to many services. The building is 4 stories including a basement and 19,000 square feet, which is oversized for the neighborhood, if not the town, and is dominant on the lot, which is small at 11,700 square feet. Moreover, the building is unique in that no other non-municipal building in the neighborhood town has an elevator, a third floor, sprinklers, or is ADA compliant.

The majority of the board also found that there is no fair and substantial relationship between the purpose of the ordinance and the application of the ordinance to the property and that the proposed use is a reasonable one. The majority found that the restriction on temporary transitional housing was not necessary to fulfill the ordinance's underlying purpose, given that the district anticipates mixed uses; and that the proposed use is consistent with existing and permitted uses in the district, many of which allow extended stays by unrelated persons who need special care. The board noted that allowing this use in the local mix of preexisting uses, particularly given that there would be no alteration to the exterior of building and no requirement for additional services, was reasonable.

The majority of the board noted that the first two floors of the building would remain commercial, which satisfies the mixed use purpose of the district. The proposed use was not meant to be someone's permanent residence, which might "tip" the balance in the neighborhood to too much residential; but was more like an inn, dorm, or boarding house, all of which are defined in, and permitted by, the zoning ordinance.

For the foregoing reasons, and based on all of the evidence in the record, the board therefore concluded that the literal enforcement of the zoning ordinance to this unique property would result in unnecessary hardship.

After much deliberation, the board voted 3 to 2 to approve the variance 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 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.
2. The first and second floor shall be restricted to nonresidential use.
3. The application, as submitted to the ZBA, may not satisfy the submittal requirements for a Site Plan Review.
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 a good cause.

It was moved by Mike Hodder and seconded by Fred Tedeschi to formally approve the written decision as amended. Mike Hodder, Fred Tedeschi, Hank Why, Chris Franson voted in favor. Suzanne Ryan abstained. The motion passed.

Consideration of Minutes:

May 2, 2016

Corrections:

Page 1 - Election of Officers

Add "alternates" after five members and up to three

It was moved by Suzanne Ryan and seconded by Mike Hodder to approve the minutes of May 2, 2016 as amended. All members voted in favor. The motion passed.

May 3, 2016

Corrections:

Page 2

Third Floor – 1st bullet – remove the word "to" after convert

Second Floor – 3rd – Change Live to "Life"

Page 3

1st paragraph

1st sentence – change responded to "stated"

5th sentence – insert "not" after have

2nd paragraph – add a comma after Commissioner,

3rd paragraph, 1st sentence remove "open the public hearing" and insert "stated"

Page 4

2nd paragraph change closet to "closest"

Attachment – Remove FIT's attachment

It was moved by Suzanne Ryan and seconded by Mike Hodder to accept the minutes as corrected with an amendment to detach the FIT presentation which will be in a separate public file. All members voted in favor. The motion passed.

May 10, 2016

It was moved by Mike Hodder and seconded by Chris Franson to approve the minutes of May 10, 2016 as written. All members voted in favor. The motion passed.

It was moved by Mike Hodder to adjourn this meeting at 9:54 pm. All members voted in favor. The motion passed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Robin Kingston', written over the printed name.

Robin Kingston
Administrative Assistant