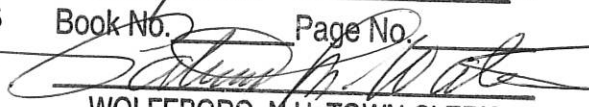


Wolfeboro Zoning Board of Adjustment **RECEIVED AND RECORDED**
Regular Meeting 8/8, 2016 8:12 M
August 1, 2016 Book No. Page No.
Minutes 
WOLFEBORO, N.H. TOWN CLERK

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

Members Absent: Sarah Silk, Alternate

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

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

Consideration of Motion for Rehearing

Families in Transition

Green Mountain Realty, LLC - Owner

Submitted by Brian Lombard

TM# 217-70

Case # 07-V-2016

Brian Lombard submitted a Motion for Re-hearing for application Case # 07-V-16, TM# 217-70 for a Variance approved by the Zoning Board of Adjustment on June 6, 2016 and affirmed on June 13, 2016.

Chairman Tedeschi explained as this is a public meeting and not a public hearing, no public input will be taken. The Board discussed the motion for rehearing.

Chris Franson read the Notice of Public meeting.

Families in Transition (FITS) Counsel Rick Sager submitted a letter in opposition to the Motion for Rehearing.

Rob Houseman addressed the Board and informed them on July 28 email his office received an email from Denise Williams and an attachment to the email. That information was forwarded to the ZBA's Counsel for review and Counsel advises the Board as follows:

1. The Board should consider the information submitted by the deadline ~~by~~ of July 13, 2016
2. If the Board chooses to rehear the applicant this information would be part of the rehearing package.

3. This information was submitted untimely.

Counsel advises against accepting the email and information from Ms. Williams submitted at this time.

Chairman Tedeschi reviewed the requirements for the motion for rehearing.

The Board discussed whether they could waive the time limit of the Statute, adding information at this time and changing evidence on all other testimony.

Rob Houseman explained the Statute does not provide for a waiver of the 30-day clock only for the petitioner to provide additional information. The Waiver would only be if the Minutes and the Notice of Decision were not filed within a timely manner.

It was moved by Fred Tedeschi and seconded by Mike Hodder to not accept the submission from Ms. Williams since it was not received in a timely fashion. All members voted in favor and the motion passed.

The Board discussed the Motion for Rehearing as submitted by Brian Lombard. There needs to be good reason submitted by the petitioner.

Mike Hodder read from Peter Laughlin's NH Practice and summarizing "The Board made a technical error or there was new evidence that was not available at the original hearing" in order to grant the Motion for Rehearing.

Suzanne Ryan also read from Peter Laughlin; reference not cited; "Technical Error need not be such that results in a new decision. The ZBA is free to grant a rehearing to correct its reasoning in a decision in which it feels it reached a correct result. David Scott points out the reasons for granting a rehearing should be compelling ones and the Board has no right to reopen a case on the same set of facts unless it is convinced it that it is an injustice would be otherwise created. "

Fred Tedeschi raised two issues. When asked for evidence concerning diminution of the property he had asked for sales, not tax assessments. Assessments are notoriously unreliable as they are not based on actual sales. The other issues missed by Mr. Norton was the evidence provided showed values from 1991 before the properties were purchased by FIT. On that basis the ZBA made a technical error. The info was not pointed out and if Mr. Norton had the expertise he claimed would not have made presentation or would have pointed out that to the ZBA.

Discussion as to what an expert witness is and if Ms. Williams' was an expert witness. It was questioned whether Ms. Williams' was given her due and discussion as to the sales analysis of area was done. Additionally, discussion occurred about the initial letter submitted by Mr. Lombard. It was described as a well written letter and the majority of the Board did not

overlook it and considered all the evidence. Discussion also occurred of Board members own personal knowledge and sales of the area, weighing evidence and not blindly accepting it.

Rob Houseman cautioned the Board during discussion not to discuss issues that could be construed as rehearing the case.

It was moved by Mike Hodder and seconded by Chris Franson to deny the appeal for Motion for Rehearing. Mike Hodder, Chris Franson and Hank Why voted in favor. Fred Tedeschi and Suzanne Ryan voted in opposition. The motion passed.

The ZBA recessed for 5 minutes at 7:30 and reconvened at 7:35 pm.

TM# 142-4

Case # 13-V-16

Applicant: Joseph & Mary Balboni

Variance

Agent: John Kalled, Esq.

Public Hearing for a Variance from IX, Section 175-64A(4) of the Wolfeboro Planning & Zoning Ordinance to allow the addition of a 30' x 50' garage with an area of encroachment of 654 sq. ft. and setback from the shoreline 34.5'. This property is located at 730 North Main Street. A site visit will be held at approximately 6:25 pm.

Chris Franson read the abutter and public notification. A site visit was held prior to the meeting and minutes were submitted for the record.

John Kalled, Esq. submitted a continuance request on behalf of the applicant until the next regularly scheduled Zoning Board meeting.

Rob Houseman explained in the packet there was a copy of an incomplete Town Shoreland Application. The application triggers a storm water management plan which has not been submitted to the town.

Board discussed the request and the previous continuance request by the applicant.

Rob Houseman explained the Board can continue to date certain and no certified notice would be required. Staff could notify the applicant via first class mail or the Board could request notification by Certified Mail with the applicant bearing the cost.

It was moved by Suzanne Ryan and seconded by Mike Hodder to grant the continuance request to September 12, 2016, post legal notice in the paper and notify abutters by certified mail with the applicant bearing the cost. All members voted in favor.

TM# 217-144

Case # 14-V-16

Applicant: Hilltop Trust/Joseph R. Valley, Trustee

Variance

Agent: Barry Boucher

Public Hearing for a Variance from the Wolfeboro Planning & Zoning Ordinance to allow for the building of a single family dwelling on 1.06 acres beyond the Village Residential setback of 20' to 30' from the road to the front of the dwelling. The lot is constrained by a Town of Wolfeboro owned sewer pump station and a stream on the front portion of this lot. This property is located at 53 Sewall Road.

Chris Franson read the abutter and public notification. A site visit was held at approximately 6:40 pm. Minutes were submitted for the file.

Barry Boucher, Bearco Builders addressed the Board and reviewed the application and plan submitted. The Town of Wolfeboro's Pump Station is located within the setback.

Dave Senecal asked if underground electric service and water/sewer have been installed to the site.

Barry Boucher confirmed that was correct.

Hank Why noted the zoning setbacks have changed since the lot was created and an original building permit was obtained in 2001.

Public Comment:

No person spoke in favor.

Ole Nielsen, 43 Sewall Road spoke in opposition. The planned building is not a single family dwelling but a giant garage with an apartment above. 53 Sewall Road has a pump station and an existing garage building. For the past 16 years Mr. Montrone has been doing construction on his surrounding property and has used 53 Sewall Road for dumping of debris from houses torn down, landscaping materials, construction equipment and a parking area. The noise from the site is year-round from construction activity. The existing garage could be torn down and the structure proposed built.

Chris Franson asked how tall is the proposed structure.

Mr. Boucher responded approximately 34'.

Paul Montrone responded he is sympathetic to Mr. Nielsen. It is the first he heard of the issues. This is a single family lot and there is one extra garage proposed going from a 2 car to a 3 car attached garage. On the first floor and there will be 3 bedrooms and they will meet all the town zoning requirements. Tearing down the current structure is not really an option because they do not want to live in front of a pump station. They will do a lot of planting with trees and shrubs and can make sure a buffer area is created between this lot and the one owned by Mr. Nielson. The 3 car garage is proposed as his family is expanding and he is encouraging them to come visit. He has replaced cottages that were on other lots and hopes with all of the improvements they also improve the neighborhood. He stated he will work with Mr. Nielson and try and resolve any concerns he has. Additionally, the lot is constricted by the pump station and wetlands.

Ole Nielsen stated he appreciates it but he is not talking about beautiful landscape.

The Board reviewed the plan with the wetlands depicted.

The Board discussed possibly moving the proposed dwelling further from Mr. Nielsen's property.

Mr. Montrone noted they would have to remove some beautiful older maples however he would review the site to see if it is possible.

Rob Houseman commented about defining the building envelope as he would not want to Board to depict a specific location. The applicant needs to be able to meet all of the other zoning restrictions.

There being no further comment the Public Hearing was closed.

The Board reviewed and deliberated the 5 criteria required for the Variance as follows:

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

The Board felt this criterion was met and is not contrary as there is no other building envelope on the lot.

2. The spirit of the ordinance is observed.

The Board felt this criterion was met and noted water and sewer exists on the site and all other aspect of the project meet the ordinance requirements and will not alter the character of the neighborhood.

3. That substantial justice is done.

The Board felt this criterion was met.

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

The Board agreed this criterion was met. There is no other place to locate the dwelling and noted this will be an improvement to the neighborhood. There is no evidence to state the properties will or will not diminish in value. The planned structure seems to fit the neighborhood.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because: The Special Conditions of this property that distinguish it from other properties.

(B) Owing to special conditions of the property, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The Board agreed this criterion has been met and the lot is constricted by the Town's Pump Station and wetlands which necessitates the setback.

It was moved by Hank Why and seconded by Mike Hodder to grant the variance for TM# 217-44, Case # 14-V-16 with the following conditions:

1. *All of the documentation submitted in the application package by the applicant including the application and plan, 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.*

All members voted in favor and the motion passed.

Consideration of Minutes:

July 11 – 2016

It was moved by Mike Hodder and seconded by Hank Why to approve the July 11, 2016 minutes. All members voted in favor. The motion passed.

July 19, 2016

Corrections:

Page 1

3rd paragraph from the bottom, second sentence, last word, change "closet to closest"

Page 2

5th criteria (B) change “an to and”

4th paragraph from the bottom change “arch to arc”

Page 5

1st sentence, 1st line change “used to use”

3rd paragraph

3rd paragraph, 2nd line change “grapes to fruit”

4th line change “form to from”

5th line change “space to spaced”

6th line change “captain to captan”

2nd paragraph from the bottom change, 2nd sentence should read “ Only 10% of the grapes used to make the wine will be grown on site and he determines this does not raise the winery to an agricultural production site.”

Page 7

3rd line – change “of to to”

Under criteria 5 reasons – change “*The property and large barn are unique and are in a micro-climate which is an important factor.*”

Page 8

Paragraph just before Public Comment, 2nd sentence change “change grapes to fruit”, last sentence change “name to named”

Page 13

5th paragraph change removed the second word “extensively”

Page 14

2nd line up from the bottom change to read “Suzanne Ryan disagreed as information was taken from abutters.”

Page 15

Underline and italicize the motion “*It was moved by Mike Hodder and seconded by Chris Franson to approve the minutes of June 13, 2016 as amended.*”

It was moved by Hank Why and seconded by Chris Franson to approve the minutes of July 19, 2016 as amended. All members voted in favor and the motion passed.

There being no further business this meeting was adjourned at 8:50 pm.

Respectfully Submitted,

Robin Kingston
Administrative Assistant