

Wolfeboro Zoning Board of Adjustment

Regular Meeting
5 December 2016

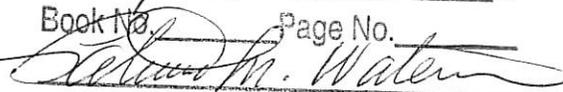
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Minutes

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WOLFEBORO, N.H. TOWN CLERK

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

Staff: Matt Sullivan, Director of Planning & Development, 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.

TM# 148-17

Case # 24-V-16

Applicant: Garrison Grubisa

Variance

591 Center Street

Agent: Scott Aim, Owner of Peerless Motor Company

Motion for Rehearing filed by Karen Burnett Kurie of Decision made by the ZBA on November 7, 2016.

Board Decision:

It was voted by at least three members to grant the variance requested for TM # 148-17, Case # 24-V-16, Applicant: Garrison Grubisa for a Variance from Section 175-88.4 of the Wolfeboro Planning & Zoning Ordinance to allow for a change of use from storage space to a workshop for the installation of custom motorcycle parts 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imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part.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 application, as submitted to the ZBA, does not satisfy all applicable requirements for a building permit.
3. 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.

Suzanne Ryan noted in the motion the applicant suggested notification was inaccurate or not complete and the new information was there was new info on decibels. Further it is clear the Board did not approve the motorcycle inspection station and she wants it clear and they do not have permission from the Board to have an inspection station. The applicant during the original hearing stated they did not need a state license.

Chris Franson disagreed and noted it is stated in the record that the requirement is to test decibels and make sure all parts are street legal.

Suzanne Ryan stated she is trying to make sure the board did not authorize that and it would alleviate the Motion for rehearing applicant's concern and would send a message to the applicant for the motorcycle shop that he does not have permission from the Board to do that

Chris Franson stated that is not her understanding.

Mike Hodder commented he finds no substance in the Motion for Rehearing. Public notices are advisory. The Board does not approve DMV Motorcycle Stations. The applicant wants to apply for a DMV permit they do not come to the ZBA. There was considerable discussion during the hearing about the noise levels likely to be heard during the operation and customization with the work being done inside the garage basement level.

Suzanne Ryan responded the DMV will not give a permit unless the town has authorized it first. She wants it understood the ZBA approved a change from storage to a motorcycle parts shop.

Mike Hodder responded if the applicant needs permission from the town it will not be the ZBA.

Suzanne Ryan responded she would think they would need to come to the ZBA because it is what the decision was based on.

Fred Tedeschi noted there was a thorough discussion of the noise level and the activities that would be taking place. Route 28 is a major thoroughfare and that separates the residential areas, particularly the appellants house from the proposed shop and the noise level on the street would probably be more. If the state requires further approvals, they would have to come back to the town.

Matt Sullivan commented his understanding of the DMV process is an appropriate town officer at an administrative level to sign off on whether a given use is approved by the town, so it might not come back before the ZBA.

It was moved by Mike Hodder that the Board deny the application for rehearing of Karen Burnett Kurie, Case # 24-V-16. Suzanne Ryan seconded the motion. All members voted in favor. The motion passed.

Case # 23-V-16

TM# 242-8

Applicant: Robert & Helen Conrad

Agent: Shannon Alther, TMS Architects

Variance

165 Clark Road

Continued Public Hearing

Hank Why recused himself and Susan Raser was seated.

Continued Public Hearing for a Variance from Section 175-64 of the Wolfeboro Planning & Zoning Ordinance to allow the replacement of an existing dwelling on the existing footprint and relocation of existing garage to be attached to the dwelling 8' x 14' shed that will encroach into the side line setback. This property is located at 165 Clark Road (corrected address).

This project proposes the following:

- Removal of an existing garage within of 11'-11 3/8" of southern side setbacks and 8'-5 7/8" of northern side setbacks
- Construction of a two-car garage addition to the home with minimum side setbacks of 2'-9 3/8" on northern setbacks and 1'2'-9 3/8" on southern setbacks.
- Relocation of septic tank and leach field 50' additional from the shorefront area,
- Partial re-construction, renovation of, and addition to an existing home resulting additional square footage
- Additional infringement of the existing home into setbacks to the southern side of the property, and addition of a walkway between the driveway and home
- Installation of pervious pavers and surfaces during the redevelopment of the site to reduce impervious surface coverage but increase driveway, walkway, and patio coverage

The new plan set does not indicate specific areas of pervious vs. impervious patio and driveway areas. The applicant/agent should clarify the total area of pervious pavers. The applicant/agent should confirm that areas shown on A0.3 of the original plan set are accurate. The original plan set includes the following proposed pervious surface coverage of the driveway (1,925 sq. ft.), walkway (133 sq. ft.), bluestone patio (267 sq. ft.), and other patio (880 sq. ft.) areas. This is a total of 3,205

sq. ft. of pervious surfaces (detailed on new plan set sheet A.05). It appears from the revised plan set that the proposed bluestone pervious patio area has been removed from the project.

Issues relative to the removal of trees on the abutting property, in addition to the patio encroachment, addressed by Mr. Krebs in a previous memo to the Board, do appear to be rectified on the updated plan set. However, the board should confirm with the applicant/agent. The applicant has indicated on plan sheets A0.3a and A0.4 that the final plans will be verified by Norway Plains Assoc. and Randy Tetrault, LLS. However, with the particularly constrained nature of the site and proximity of development to setbacks and property lines, the Board may wish to consider requiring a NH Licensed Land Surveyor stamped and prepared plan before approval.

Shannon Alther, TMS Archtiects addressed the Board. The ZBA has been supplied updated drawings. Proposed pavers were discussed with product information submitted. Aqua Brick and Eco Stone are both being considered and a maintenance plan for the type of paver they choose will be developed. A 3 D sprinkler system will be installed to help with fire protection. DES Approvals will be required.

Mike Hodder noted his concerns with plans A.03 & A.03A being based on preliminary plans and to date have not been verified by a licensed surveyor. As the applicant is looking for intrusion into setbacks he would like to see a survey.

Chris Franson commented the entire house was to be torn down and the new plan submitted is a different design.

Shannon Alther responded the goal was to tear down the dwelling however there are a few foundation walls that will probably remain in place.

Suzanne Ryan commented she would not support a plan without a licensed survey stamp.

The Board discussed and agreed a survey would be necessary.

Shannon Alther requested a continuance of the hearing in order to give time to address the board's concerns and submit the requested information and survey plans.

It was moved by Suzanne Ryan and seconded by Mike Hodder to continue the Public Hearing to February 6, 2017, 7 pm at The Great Hall in the Wolfboro Town Hall. All Members voted in favor. The motion passed.

TM# 218-150

Case # 25-AAD-16

Applicant: Gregory Cantwell

Appeal of Administrative Decision made by the Planning Board 10/4/2016

Sarah Silk stepped down from this application and submitted written reasoning and basis and also a request that Mike Hodder step down.

Mike Hodder stated he would not step down under the juris standard.

Sarah Silk stated the ZBA can request a non-binding vote.

It was moved by Suzanne Ryan to have Mike Hodder step down from the hearing. The motion failed for lack of a second.

David Senecal stepped down from the hearing.

Chris Franson read the abutter and public notification for the record.

Public Hearing for an Appeal of Administrative Decision of the approval of the site plan for Brewster Academy Case # 201621, granted on October 4, 2016 by the Wolfeboro Planning Board for the construction of a dormitory to house existing student population and house two faculty families per wing for a total of four faculty families. This property is located off Clark Road.

The applicant is seeking an Appeal from the Administrative Decision made by the Planning Board relative to Article 175, Section 68-73 of the Wolfeboro Planning and Zoning Ordinance.

Section 175-2 (A) of the Town of Wolfeboro Zoning Ordinance states:

*The following descriptions of land establish the boundaries of zoning districts. **These written descriptions take precedent over any graphic representation that may be produced.** The boundaries between districts are, unless otherwise indicated, the center lines of streets, alleys, waterways, or such lines extended.*

The ROI (Residence/Office/Institutional) Overlay District Boundaries, as amended 03/10/2009, are described in Section 175-37 (A):

*Boundaries: **all parcels with frontage**, as of the date of adoption, on the South Main Street corridor from Pickering Corner to the Town Library/Episcopal Church.*

The Lot Configuration/Consolidation Plan, approved by the Wolfeboro Planning Board on

05/01/2001 (recorded at CCRD B174/P35), lots 231-018, 231-003, 231-004, and 218-050 were merged to create a new lot 218-050 of approximately 63 acres in size. The resulting parcel has road frontage on South Main St.

It is Matt Sullivan's determination is that parcel 218-050 (63 Acres), owned by Brewster Academy, and created on 05/01/2001, has road frontage on South Main St. and is therefore entirely within the ROI Overlay District as described in the Zoning Ordinance.

The appellant's statement can be best summarized as an administrative error in the application of the ROI overlay district boundaries in the context of their representation on the May, 2012 Zoning Map

Greg Cantwell addressed the Board. The parcels having frontage on South Main Street would be considered as part of the ROI however lot 18 is separate. The map submitted as part of the application was reviewed.

Gregory Cantwell noted the lot designated as TM # 231-18 as not hatched on the zoning map. The Planner stated lot 150 has consumed Lot 18. In 2008 & 2009 the lots were noted by a written note as merged and the documents do not involve lot 18. There is no lot merger file and the lots are taxed separately. The map only represents the intent and this lot should be restricted by Special Use Exception criteria. The Planning Board should have been presented with a plan for Village Residential. If it is not in the ROI there are special use criteria that would apply and a Special Exception is required. This process needs to start again in the best interest of everyone and he encouraged the Board to Grant the appeal.

The Board discussed there being and intent to merge other lots.

Attorney Randy Walker addressed the Board representing Brewster Academy. The sole purpose of this Administrative Appeal is to determine if the Planning Board erred in any way in its decision; the sole issue is the boundaries of the ROI. The written description of the ROI was cited as follows:

Boundaries: all parcels with frontage, as of the date of adoption, on the South Main Street corridor from Pickering Corner to the Town Library/Episcopal Church.

The map is a guide and the issue was anticipated by both the Town and the Planning Board as follows:

Section 175-2 (A) of the Town of Wolfeboro Zoning Ordinance states:

*The following descriptions of land establish the boundaries of zoning districts. **These written***

descriptions take precedent over any graphic representation that may be produced. The boundaries between districts are, unless otherwise indicated, the center lines of streets, alleys, waterways, or such lines extended.

Huggins Hospital and Brewster Academy both approached the Planning Board with the ROI to overcome the issue of both coming in for approvals for every time they wanted to expand. Three Planners have weighed in and given their opinions as noted in Rob Houseman's Planner Review - Page 4, paragraph 9 that the parcel is in the ROI overlay district. John Krebs also came to the same conclusion as did Matt Sullivan. The lot reconfiguration and consolidation had a purpose of merging 4 existing lots; TM # 218-150, 231-18, and 2 others. This was done 15 years ago and is now one 63+- acre parcel. The plan is noted the interior lot lines are to be abandoned. The plan was approved by the Planning Board in 2001 and recorded in Plan Book 174, Page 35 at the Carroll County Registry of Deeds. TM # 18-150 is all one parcel being 65.69 acres. The only issue before the Board is the property being in the ROI, which it is. The issue of whether this requires a special exception is a red herring issue. The ordinance was changed in 2010 to help Brewster and allow for dormitories that are not allowed in others area of the Village Residential District. The Planning Board did not make an error.

Suzanne Ryan asked what map did the Planning Board use at the public hearing.

Jim Rines presented the 2006 Alter Survey which was used in the Planning Board application.

Fred Tedeschi asked about referring to the zoning map and if the public is entitled to rely on the depiction.

Randy Walker reiterated again the zoning map is incorrect and the written Section 175-2 (A) of the Town of Wolfeboro Zoning Ordinance states:

*The following descriptions of land establish the boundaries of zoning districts. **These written descriptions take precedent over any graphic representation that may be produced.** The boundaries between districts are, unless otherwise indicated, the center lines of streets, alleys, waterways, or such lines extended.*

The map is inaccurate it should be map accurate however what the voters approved is the written description and not the map.

Fred Tedeschi asked if the definition of "school" includes dormitory.

Randy Walker submitted a document from 2010 depicting Brewster as a school.

Chris Franson stated the definition of dormitory was defined later faculty housing was considered part of the school and it was broad based and inclusive which was then intent.

Fred Tedeschi asked about the size and scale of the dormitory as he sees nothing in the minutes of the Planning Board.

The Planning Board's minutes, according to Chris Franson reflects this.

Randy Walker redirected the Board's focus noting the sole issue in the Appeal is the zoning district. The written description is clear as the ordinance does not state as shown on map.

Mike Hodder commented a boarding school absent of dormitories is inconceivable.

Jim Rines addressed the Board and noted the Zoning Map and clearly it is incorrect and was certainly not their best work. In 1993 East Coast Mapping created digital files to help produce a zoning map. Since then zoning changes have occurred and the map would be updated. This change was missed by both White Mountain Survey and the Town Planner. This is why the Zoning Ordinances state the written ordinance controls.

The sole purpose of the lot consolidation was to merge the parcels in anticipation of future development. The Esterbrook Road and Clark Road parcels are not considered having frontage and Clark Road is a side setback. There does not have to be a deed exchange for such changes if the parcels are owned by the same party.

Kathy Barnard spoke against the Appeal as Chairman of the Planning Board. Design standards were focused on at the first Planning Board meeting specifically. Protecting view sheds were being worked on by the Planning Board previously and will again be on the Planning Board's agenda in 2017. The school issue knew they were talking about school. Private high school's definition would include dormitories and the Planning Board did not focus on the issue.

Greg Cantwell rebutted the ordinance language and map do conflict and it is clear. The question is whether this consolidation incorporated Lot 18 into Lot 150. If Lot 18 still exists it is not in the ROI. The argument is because it was in the consolidation map and they have to effective lot merger on record. The Planning Department represents lot still exists as TM# 231-18 as does the taxing authority and planning authority. The simple fact is there is no evidence this is permitted lot and the law does not allow it.

Randy Walker again noted the recorded plan in 2001 with the specific note the "line to be abandoned" and the applicant is suggesting the Planning Board is wrong, as is the Assessor and three town planners.

Jim Rines noted if the ZBA follows Mr. Cantwell's logic the Smith center is violating zoning boundaries.

The public hearing was closed.

The Board discussed obtaining legal opinion as to the issue of the written zoning ordinance versus reliance on the zoning map as well as the map merger /consolidation in 2001. Additionally, does the posting of the zoning map and tax records entitle a citizen to rely on it and whether or not the consolidation is correct.

It was moved by Fred Tedeschi to continue this hearing pending a response from ZBA Counsel, Laura Spector Morgan as to if the evidence the ZBA has been presented is legally conclusive to merge the lot on which the dormitory is proposed to be built to the bigger Brewster Academy lot which would give it frontage on South Main Street which would put it in the ROI. Hank Why seconded the motion.

Kathy Barnard asked if public comment would be taken at the continued meeting. The Board discussed this and agreed public comment would be taken

Discussion

Fred Tedeschi summarized the intent of the motion is to seek legal counsel that is the actions taken by Brewster Academy, the town, the Planning Board and everyone else effected a merger of the lot on which this dormitory is proposed to be constructed with the main parcel of Brewster Academy that has frontage on South Main Street.

Mike Hodder suggested simplifying the motion and ask if the merger shown and recorded on that particular map legal.

Hank Why noted the key is whether it was merged.

Fred Tedeschi stated he wants legal opinion to confirm all steps necessary to be taken to merge lot 18, the lot on which the dormitory is proposed to be built, with the rest of Brewster Academy has frontage on South Main Street.

Call for a vote: Mike Hodder, Suzanne Ryan, Hank Why and Fred Tedeschi voted in favor. Chris Franson abstained. The motion passed.

Suzanne Ryan stated she would like to know what affect the abutters reliance on the zoning map and the tax maps has on the ZBA's decision, if any.

Fred Tedeschi moved to also ask legal counsel if the public is entitled to rely on an official map prepared and posted by the town on its website as being what the zoning says it is.

Mike Hodder responded the ordinances say specifically what the actual definition is.

Chris Franson noted the GIS is not always correct.

Fred Tedeschi responded the question is if the town published something on its website as the

zoning map, it that something the public can rely on.

Suzanne Ryan seconded the motion. Mike Hodder, Hank Why, Suzanne Ryan and Fred Tedeschi voted in favor. Chris Franson voted in opposition. The motion passed.

It was moved by Mike Hodder and seconded by Fred Tedeschi to continue the public hearing for Case # 25-AAD-16 to January 9, 2017 of the ZBA to be to be held in the Great Hall at Town Hall. All members voted in favor, The motion passed.

Consideration of Minutes:

November 7, 2016

Page 2 – 1st line should read: The Board clarified this proposal is for a detached garage and the location of the fill on the side where there is a steeper grade.

Page 4 – paragraph beginning with Mr. Grovesnor should read: Mr. Grosvenor responded and stated they value the space they have and the shed would give them noise relief from the road.

Paragraph beginning with Linda Murray “add a comma after shed”

Page 6 – paragraph beginning with Shannon Alther – correct the spelling of permeable

Page 8 – third line from bottom should read: The Board discussed many factors to consider and was given a fair in understanding of activities that will be taking place.

Lines beginning with should read: Chris Franson explained the purpose is to protect an established neighborhood.

Chris McLean stated the purpose of zoning is to protect an established neighborhood and if the established neighborhood was truly residential the zoning is flawed.

It was moved by Suzanne Ryan and seconded by Mike Hodder to approve the minutes as corrected. All members voted in favor. The motion passed.

Other Business:

Sarah Silk stated she would like to go back to the established dates for the ZBA meetings for the ZBA which had historically been the 1st and 3rd Monday’s of the month so they do not conflict with the Conservation Commission which is on the 2nd Monday of each month.

Staff explained historically if there is a holiday on the 1st Monday month the ZBA has been scheduled for the 2nd Monday. The dates are posted well in advance and the applicants have

the deadline for submittal of application and materials.

The Board discussed application timelines and at times holding an off-cycle meeting.

It was moved by Hank Why and seconded by Mike Hodder that there being no further business, this meeting be adjourned at 9:42 pm. All members voted in favor. The motion passed.

Respectfully Submitted,

Handwritten signature consisting of the letters 'R' and 'K' in a cursive, slightly stylized font.

Robin Kingston
Administrative Assistant