

Wolfeboro Zoning Board of Adjustment

4 November 2019

7:00 pm

The Great Hall at Wolfeboro Town Hall

Meeting Minutes

RECEIVED AND RECORDED

11/12, 2019 8:50 A.M.

Book No. Page No.

WOLFEBORO, N.H. TOWN CLERK

Members Present: Fred Tedeschi, Chairman, Sarah Silk, Vice Chairman, Peter Colcord, Member Luke Freudenberg, Member, Audrey Cline, Alternate and Suzanne Ryan, Alternate

Members Absent (Excused): Tim Cronin, Clerk and Dave Senecal, Alternate

Staff Present: Matthew Sullivan, Director of Planning & Zoning, Robin Kingston, Administrative Assistant

Call to Order:

This meeting was called to order at 7:05 pm. A quorum was present.

Audrey Cline was seated for the hearings.

Appointments:

TM# 147-6

Case # 16-V-19

Applicant: Wright Museum

Variance

Agent: Jim Rines, White Mountain Survey

Public Hearing for a Variance under Article 1XIII, Section 175-86 of the Wolfeboro Planning & Zoning Ordinance to allow the use of the existing structures and designated portion of land to store and maintain the Museum's vehicles only. Public access to the property is prohibited. This is not for public use. This property is located at 65 Trotting Track Road. A site visit was held at approximately 4:35 pm prior to the public hearing.

Fred Tedeschi read the abutter and public notice for the record.

Application Summary:

This application serves an amendment to the previously submitted application. There are two (2) primary adjustments to the application:

1. The requested use has been amended to museum vehicle storage and maintenance only. This could allow for the transference of the property to another museum entity.
2. A use-restriction area has been added and is delineated on the included planset. This use restriction allows for the storage and maintenance with 35' the center line of the access from Trotting Track Road and the storage area. In total, this permits the requested use in 12.3 acres of the 33-acre parcel.

Per the 10/11/2019 narrative letter provided by the applicant, the Variance requests the conversion of the existing Everett S. Albee site into a maintenance facility for museum vehicles and storage of those vehicles on site while awaiting maintenance.

It was expressed by the applicant's agent that the facility will not be open to the public during the May Technical Review Committee meeting and within the agent's narrative letter. The users will be Museum staff and volunteers ONLY. To reiterate, this facility will not be open to the public.

If approved, this application is subject to Site Plan Review by the Wolfeboro Planning Board.

A property history has been provided by the applicant. Please note that there no other filed approvals on the site other than the referenced subdivision application in 1991.

Jim Rines reviewed the application, plans and five points required for the variance requested as submitted.

Audrey Cline asked if the property is being used for something right now; if there is a time limit on the easement access from Rt. 28; how many vehicles will be stored and serviced at any time and how they get to this location; why is there a large area unrestricted as it is a prime wetland; why is 75' for the access road; has the right Museum considered placing the balance of land into protection conservation permanently conservation; will they be rebuilding and adding plumbing or new buildings; and Is the property taxable or is it coming off the tax rolls.

Jim Rines responded that the structures are presently there but not being used, the easement will be for 3 years; the number of vehicles stored on the property will vary and they will be both driven or trailered; the area is not a prime wetland; the width is to allow for drainage; the Museum has not considered placing the balance into conservation protection; the septic system has been inspected and is not being planned to be rebuilt and no additional buildings with plumbing are planned; and the property will be a non-profit use.

A statement from Everett Albee was reviewed and was prepared as a result of what was transpiring at that time and is part of the building file.

Jim Rines gave a history of the property. Town never placed in writing what needed to be done to bring the property into compliance. The Town did hire Albee and purchased gravel there. This current application is an opportunity to bring this property into compliance.

Concern from Sarah Silk and Audrey Cline the repose to criteria #5 Hardship is not met in the applicant's rationale.

Sarah Silk stated the illegal use is out of service and does not exist any longer.

Jim Rines responded there are existing structures and the size of the parcel make it unique for the area.

Fred Tedeschi noted the abutting uses are commercial.

Sarah Silk and Audrey Cline noted the property can have any use allowed in the Residential District so there is not a hardship

Jim Rines noted the point is in the immediate is commercial with a small residential area of small lots nearby. This property has been on the market for some time and the only offer.

Rich from Berkshire Hathaway stated the property has been on the market for over a year a number of lookers and one other offer which was low and not accepted.

Matt Sullivan stated the illegal nonconformity were residential uses.

Luke Freudenberg noted his company placed an offer on the property and was discouraged. These are illegal structures and no compliance letter has been sent by the Town. This would bring the property into compliance.

Audrey Cline stated staff turnover, Board of Selectmen not giving approval for enforcement and fear are reasons violations are not enforced by towns

Jim Rines stated the first step in bringing the property into compliance is going to the ZBA.

Public Comments:

Roger Murray, Esq. Lake Wentworth Watershed Association and Single Rose Enterprise spoke in favor of the application. The Wright Museum has worked with them over the last few months to address any of their concerns. The Town cannot come back to the owners and tell them to tear the structure(s) down if they have known about it for years and have let it continue. The proposed use is an appropriate one and helps safeguard the Town Beach and Hersey Brook.

The application addresses concerns and is a public benefit and will not diminish property values. They property could have 15 homes and septic systems; this would be a much larger concern; with this application the use is limited.

Christopher Coache, 458 Center Street endorses this plan as a direct abutter. The only concern he would have is making sure proper lighting is used on the property to not inhibit the night sky.

No person spoke against the application.

Jim Rines noted lighting will be addressed at the Site Plan Review if approved by the ZBA and further noted the proposed plan is to have the lighting would be on motion sensors so it would only come on when activated.

The Public Hearing was closed.

Deliberations:

Suzanne Ryan recommended that if this approved note the acreage amounts be listed.

The Board deliberation on the five criteria required for a variance.

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;

Members Opposed: this is a residential area and contrary to the public interest. Affordable housing could go there.

Members In favor: There would be no better custodian than the applicant and they have worked with Lake Wentworth Association large difference than having houses. This does not increase the density of development. Will not alter the character of the neighborhood.

- (3) Substantial justice is done;

Members Opposed: There would be no loss to the applicant, and it does not meet the benchmark as the property is useful and this use in not a gain to the general public.

Members In favor: This helps keep character of the neighborhood, they applicant is not developing the entire parcel and not using the majority of the property.

- (4) The values of surrounding properties are not diminished;

Members agreed the has been no professional opinion one way or the other.

- (5) Literal enforcement of the provisions of the ordinance would result in an

unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and 2 1998 Land Use Law Update, Timothy Bates, Esq., NH OSP Annual Planning and Zoning Conference, May 30, 1998. II-8 THE BOARD OF ADJUSTMENT IN NH NOVEMBER 2014 - NH OEP

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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.

Members opposed: The parcel could be used for a different less intensive use and this is not a public benefit. A less intensive use than what could be.

Members in favor: This application and parcel does meet the Special Conditions as the application was prefaced and bring the property legally into compliance. Appears distinguished from other properties in the area, meets the criteria and will be well screen property.

MOITON by Audrey Cline; 2nd Sarah Silk to disapprove the variance in that it does not meet all five criteria. Sarah Silk 2nd. Sarah Silk and Audrey Cline vote in favor. Luke Freudenberg, Peter Colcord and Fred Tedeschi voted in opposition. *Motion fails.*

MOTION by Fred Tedeschi; 2nd Luke Freudenberg to approve based the application based on discussions and subject to conditions listed in the Planner Review with an additional condition there be a note on the plan clearly delineating acreage to be used and acreage not to be used. 12.3 acres of the 33-acre parcel being used Tedeschi vote in favor; Audrey Cline voted in opposition; Sarah Silk abstained. *Motion passed.*

Conditions:

1. All federal, state, and local permits to be received, including but not limited to Town of Wolfeboro Site Plan Review and Building Permit approval.
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 following plans are incorporated as part of this approval.

Plan 1. Zoning Application and Site Plan Review, The Estate of Everett S. Albee, II., Owner: The Estate of Everett S. Albee, II, P.O. Box 59 Wolfeboro Falls, NH, 03896, Applicant: The Wright

Museum, P.O. Box 1212, Wolfeboro, NH, 03894 Project Location: 55 Trotting Track Road, Wolfeboro, NH, 03894, Tax Map 147 Lot 006 prepared by Jim Rines, P.E., L.L.S, C.P.E.S.C. White Mountain Survey & Engineering, Inc., P.O. Box 440, Ossipee, NH, 03864. Dated September 9th, 2019 and amended to October 11th, 2019.

Plan 2. Zoning Application and Site Plan Review Detail Plan, The Estate of Everett S. Albee, II., Owner: The Estate of Everett S. Albee, II, P.O. Box 59 Wolfeboro Falls, NH, 03896, Applicant: The Wright Museum, P.O. Box 1212, Wolfeboro, NH, 03894 Project Location: 55 Trotting Track Road, Wolfeboro, NH, 03894, Tax Map 147 Lot 006 prepared by Jim Rines, P.E., L.L.S, C.P.E.S.C. White Mountain Survey & Engineering, Inc., P.O. Box 440, Ossipee, NH, 03864. Dated September 9th, 2019 and amended to October 11th, 2019.

4. The application, as submitted to the ZBA, does not satisfy the submittal requirements for a Building Permit.
5. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall be responsible for the payment of all recording fees.
6. 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.
7. The use shall be restricted to the area shown on the planset as incorporated above.
8. The approved use shall allow for the storage and maintenance of museum vehicles only.
9. The use shall not include the storage and maintenance of public vehicles nor shall the site be used by the general public.
10. Note on plan delineating acreage to be used and acreage not to be used.

TM# 243-63

Case # 17-V-19

Applicant: Patricia & William Indelicato

Variance

Agent: Jim Rines, White Mountain Survey

Public Hearing for a Variance under Article IX, Section 174.64 (2) of the Wolfeboro Planning & Zoning Ordinance to allow for an addition to the existing roof overhang of the barn/garage such that the overhang setback will be reduced from 18' 6" to 17'2". This property is located at 127 Kingswood Road. A site visit was held at approximately 4:10 pm prior to the public hearing.

Application Summary:

The applicant proposes to increase the size of the eave of the existing garage, thereby increasing the encroachment into the side setback. This modification is in the interest architectural harmony with the proposed home on the lot (to be reconstructed). Please note that this application has been granted a Special Use Permit for wetlands impacts by the Planning Board in 2019.

The proposed encroachment will decrease the structural setback, from 18.6' to 17.2', where 25' is required. This is a maximum encroachment of 7.8'.

The applicant has provided a narrative letter addressing the five (5) variance criteria.

This application is based on the following planset:

- Zoning Board Application Plan, Owner/Applicant: Patricia and William Indelicato, 49 Sanfordtown Road, Redding, CT 06896-2412, Project Location: 127 Kingswood Road, Wolfeboro, NH, 03894, Tax Map 243-063, prepared by White Mountain Survey & Engineering, P.O Box 440, Ossipee, NH, Dated October 11th, 2019.
- Zoning Board Application Plan, Owner/Applicant: Patricia and William Indelicato, 49 Sanfordtown Road, Redding, CT 06896-2412, Project Location: 127 Kingswood Road, Wolfeboro, NH, 03894, Tax Map 243-063, prepared by White Mountain Survey & Engineering, P.O Box 440, Ossipee, NH, Dated August 12th, 2019.
- Indelicato Garage, Sheet, A2.0, Proposed Elevations, Owner/Applicant: Patricia and William Indelicato, 49 Sanfordtown Road, Redding, CT 06896-2412, Project Location: 127 Kingswood Road, Wolfeboro, NH, 03894, Tax Map 243-063, prepared by TMS Architects, Dated May 21st, 2019.
- Indelicato Garage, Sheet, A2.1, Conceptual Perspectives, Owner/Applicant: Patricia and William Indelicato, 49 Sanfordtown Road, Redding, CT 06896-2412, Project Location: 127 Kingswood Road, Wolfeboro, NH, 03894, Tax Map 243-063, prepared by TMS Architects, Dated May 21st, 2019.

Jim Rines reviewed the plans, application and five criteria required for the requested variance.

No person spoke in favor or against this application and the public hearing was closed.

Deliberations:

(1) The variance will not be contrary to the public interest;

The Board agree there is no threat, and this will not be injurious to the public. The abutter is the golf club and encroaching 1' further into the setback will have no impact.

(2) The spirit of the ordinance is observed;

The Board agreed the proposal does not alter the character of the area.

(3) Substantial justice is done;

The Board agreed no harm would be done to anyone and the design of the buildings will make this more attractive. There was a 10' setback when constructed.

(4) The values of surrounding properties are not diminished.

There Board agreed there was no testimony that this will diminish the values.

(5) *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public

purposes of the ordinance provision and the specific application of that provision to the property; and 2 1998 Land Use Law Update, Timothy Bates, Esq., NH OSP Annual Planning and Zoning Conference, May 30, 1998. II-8 THE BOARD OF ADJUSTMENT IN NH NOVEMBER 2014 - NH OEP (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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 adjacent to the garage are wetlands which is a special condition and the proposal will not result in overdevelopment of the land.

MOTION by Sarah Silk; 2nd Peter Colcord to approve the application and include the conditions listed in the Planner's Review and amend the plans the date of approval. All in favor. *Motion passed.*

TM# 193-13

Case # 18-V-19

Applicant: William S. Durfee

Agent: Attorney Marbury

Public Hearing for a Variance under Section 175.64 (4) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a 12' x 16' screened porch on the front of the structure. This property is located at 3 Sister Island, Lake Wentworth.

Application Summary:

The applicant proposes to construct a 12'x16' screened porch within the shorefront setback of this property within the Shorefront Residential (SFR) District. The Zoning Board should confirm that this includes the overhang as indicated on the plan. The total porch square footage is 192 square feet.

Due to weather, timing and island location a site walk has not been scheduled. The applicant was asked to provide substantial photographic evidence in lieu of a site visit which is included in the application.

The applicant has provided a narrative letter addressing the five (5) variance criteria.

The applicant has provided a porch sketch based on a White Mountain Survey boundary plan. Based on this non-surveyor stamped plan, the minimum dimension to the water is 20', a maximum encroachment of 30' into the 50' structural setback.

A NH DES permit has been received for the construction of the porch and only property on the island does not have a porch and all of them closer to the shoreline.

Attorney Marbury addressed the Board, reviewed the plans, application and photos as submitted and required for the variance.

Public Comments;

Frank Oliver, 2 Sister Island the western abutter to the property and the Durfee's neighbors for 55 years spoke in favor of the application. Photos were also submitted for the file.

No other person spoke in favor or against the application and the public hearing was closed.

Deliberations:

Audrey Cline stated she believes the porch addition would be viable from the lake and this is against one of the criteria and the spirit of the ordinance is not met. There is a large area available to build porch on the cottage that is not within the setback. Further all the dwellings are non-conforming so that is not a special condition.

(1) The variance will not be contrary to the public interest;

(2) The spirit of the ordinance is observed;

Members opposed: *Should not allow for construction within 50'*

Members in favor: Does not destroy the character, is not contrary; property is restricted and would be visible from the lake as it is wooded. There is no health or safety issue and no detriment to the neighbors as well as not out of character

(3) Substantial justice is done;

Members opposed: There would be no harm to the applicant and the porch could be placed in the back. There is no hardship.

Members in favor: DES has approval has been given for the project. The porch will be screened from the lake as trees that are not being removed. The majority of the cabin is within the 50' setback.

(4) The values of surrounding properties are not diminished.

Members agreed that no testimony given this would affect property value.

(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in

the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and 2 1998 Land Use Law Update, Timothy Bates, Esq., NH OSP Annual Planning and Zoning Conference, May 30, 1998. II-8 THE BOARD OF ADJUSTMENT IN NH NOVEMBER 2014 - NH OEP

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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.

Members in favor: The change would only impact this property. Th use is reasonable.

Requiring the porch to be located elsewhere would place and undue burden on the applicant.

MOTION by Luke Freudenberg; 2nd Sarah Silk to approve the application with the with Planner's Conditions. Luke Freudenberg, Fred Tedeschi, Sarah Silk and Peter Colcord voted in favor. Audrey Cline voted in opposition. *The motion passed.*

Consideration of Minutes:

7 October 2019

Page 1:

Members Present: Fred Tedeschi, Chairman, Sarah Silk, Vice Chairman, Tim Cronin, Clerk, Peter Colcord, Member, Luke Freudenberg, Member, Peter Colcord, Member and Audrey Cline, Alternate, **Suzanne Ryan, Alternate**

Members Absent: David Senecal, Alternate (Excused)

Page2:

Fred Tedeschi stated the nature of the variance if granted is not strictly for **the Wright Museum** but would be available for a future purchaser~~s~~

Page 3:

A. *Appropriateness of site plan. Consideration shall include:*

- (1) *Parking scheme.*
- (2) *Traffic circulation.*
- (3) *Open space.*
- (4) *Fencing/screening.*

- (5) *Landscaping.*
- (6) *Signage.*
- (7) *Commercial vehicles.*
- (8) *Lighting impact.*

MOTION by Fred Tedeschi; 2nd Peter Colcord to approve the minutes of 7 October 2019 as amended. All in favor. *Motion passed.*

There being no further business this meeting was adjourned at 9:35 pm

Respectfully Submitted,

A small, square, black and white image of a handwritten signature, likely of Robin Kingston, in cursive script.

Robin Kingston
Administrative Assistant

