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Wolfeboro Zoning Board of Adjustment

Regular Meeting

4 February 2019

Minutes

Members Present: Fred Tedeschi, Chairman, Sarah Silk, Vice-Chairman, Tim Cronin, Clerk, Peter Colcord and Luke Freudenberg, Members and David Senecal, Alternate

Staff Present: Matt Sullivan, Director of Planning & Development and Robin Kingston, Administrative Assistant

Fred Tedeschi called this meeting to order at 7:00 pm. A quorum was present.

Appointments:

TM# 217-196

Case 01-V-19

Applicant: Jared Burke & Wes Burke

Agent: Phillip Marbury, Esq.

Public Hearing for a Variance under Article X, Section 175-144 (B) of the Wolfeboro Planning & Zoning Ordinance to allow for the renovation of an existing barn to allow for two additional residential units. This property is located at 112 North Main Street.

Tim Cronin read the abutter and public notification for the record. A site visit was held at approximately 4:05 pm prior to the public hearing.

Application Summary:

The applicant/owner seeks to convert an existing garage/barn into two (2) multi-family units. The lot was approved via special exception in 1979 for four (4) multi-family units. Therefore, the proposed density is six (6) units on 0.264 acres. The permitted density in the Village Residential (VR) District is two (2) units per acre. The proposed density exceeds this threshold. There is no dimensional footprint expansion proposed per the provided plans. I expect there will be discussion of the available parking on site. Eight (8) parking spaces were required by the 1979 Special Exception. The following parking standards control multi-family uses: Multifamily dwelling: CBD, LSA, WF, all other districts where permitted 1 per unit, plus 1 visitor per three units or portion thereof Three-unit building 5 Four-unit building 7 Although these regulations could be interpreted to require additional parking based on the four (4) unit requirement, my interpretation of the ordinance is that the requirement for six (6) units is six (6) Department of

Planning and Development 2 parking spaces in addition to two (2) visitor spaces. I do not believe that one applies the four (4) unit, seven (7) space requirement, and require additional parking based on the alternative standard. I am however concerned that the proposal violates Section 175-70 relating to a maximum building separation of 20'. The existing building meets this ordinance as it is a private garage/barn. However, conversion would create a non-conformity that requires an additional variance. It is unclear if these buildings are proposed to be connected. The subject lot is 0.264 acres in size according to the recorded plan of land. Therefore a 30% lot coverage standard applies. Because no dimensional expansion is proposed, the lot coverage is exacerbated such that a variance is required. However, should a connection be proposed between the two (2) buildings, the property could become more non-conforming.

§ 175-70 Setback requirements; height requirements; coverage. A. Setback requirements. (1) Front yard (street): (a) Minimum: 20 feet. (b) Maximum: 30 feet. (2) Side yard: 10 feet. (3) Rear yard: 10 feet. B. Maximum height permitted: 30 feet, for structures with roofs with a pitch of less than 10/12, and 35 feet if 10/12 or greater. However, the height restrictions shall not apply to appurtenant structures, such as church spires, belfries, cupolas, domes, chimneys, flagpoles, antennas or similar structures, provided that no such structure shall exceed a maximum footprint of 144 square feet. C. No building shall be closer than 20 feet to any other building on the same lot, except for private garages. D. Percent coverage: 30%. [Note: Lots equal to or smaller than 0.25 acre: 40%.] E. Garages shall be located to the side or rear of the principal dwelling unit. The garage shall be integrated into and masked by the residence or set back at least 15 feet behind the front building line and not be the dominant architectural feature of the streetscape. Please note that the existing owner has been granted a permit to lift the foundation only.

Phillip Marbury, Esq. representing the applicant addressed the Board and reviewed the application and plans submitted. The barn as it exists today has no purpose. There are many units in the area they have multifamily units which is not out of character for the area. The area needs quality and affordable rental units. The five points required for the variance as submitted were reviewed.

Tim Cronin asked when the barn and house were built. Attorney Marbury responded they were built at the same time in the 1800's. Historically the barn was used for hootnanny, storage and commercial industrial purposes.

Matt Sullivan noted the Code Enforcement Officer was incorrect in stating the number of units in the written denial and he is aware the application is for six units.

Fred Tedeschi asked if there were other uses for the property such as car storage.

Attorney Marbury responded he does not have an answer.

Sarah Silk asked about the external trash container noted as a concern and asked could the trash be placed inside the barn.

Matt Sullivan responded depending on the nature of the containment area it could be subject to structure setbacks.

Attorney Marbury noted it was a suggestion to contain the trash area and if so, it would need to be subject to the proper setbacks.

Public Comments:

No person spoke in favor of the application.

Speaking in opposition:

Rob Houseman spoke in opposition to the application. He and his wife Michelle own 19 Pleasant Street a and 18 Pleasant Street which shares a common boundary with the subject property. The Village Residential Zoning District history was reviewed. In 2009 the density was doubled, and the selectmen had concern that the town couldn't handle the buildout. This property benefits as it has a special exception for 4 units. Parking is an issue as the condition with the special exception calls for 7 parking spaces and to only add 1 additional space for six units does not meet the zoning criteria. Further, parking had previously been granted an easement on the abutting lot because at the time they were jointly owned. Parking cannot be accomplished under the standards. Trip generation will be increased. The town has no control over this being for short term or long-term rentals. The use applies to the whole property not a portion of it. The lot is .25 acres and minimum lot size in the zoning district is .5 acres for 1 dwelling unit. There is a Special Exception on this property that already allows for the 4 units. The permit application was dated 8.29.2018 was denied 9.17.2018 and notes what was denied was for first floor office space and the second floor living space. New parking must fully conform. There is no indication that speaks to lot coverage and it is in excess of 35% with no relief requested for the increase in lot coverage. This is against the public interest as the standard has been increased per living unit and there are many lots of this size in the district which share the same hardship. Most homes on North Main Street are single family properties. This would not do substantial justice as the gain to the applicant outweighs the gain to the public. Traffic, glare, snow storage will all be impacted. Surrounding properties values will diminish and there will be increased glare, traffic and noise. Hardship relates to the lot and there is none and as this property already benefits from a special exception. The lot is too small, lot coverage exceeds what is allowed, parking violates setback and the impervious area is increased. Parking cannot be regulated, and rental terms cannot be regulated. Further the town already has an area for affordable housing.

Becky Swaffield is located 2 houses down from this property on Pleasant Street. The barn could be used for parking or storage. The barn has been worked on for a long time and she asked if the town is aware of this without a building permit. There should be more oversight as to the issuance of a building permit. \$1,000 per month rental is not affordable housing and it is deceiving. This is not a benefit to the town. It is unknown about the terms of the lease. There are no protections for Air B & B's as they can be rented without limit. The residential districts need to be protected. The ZBA is one of the most powerful Boards in town.

Peter Cook, 117 north Main Street stated he agrees and is in opposition for density and all the other reasons previously mentioned.

Rebuttal:

Attorney Marbury spoke to the density and the reason the variance has been requested. The parking issue in a non-issue. There shall be one parking space for each unit and one additional for every three units. There is no issue that is not in compliance. The lot coverage is not a point because they are not seeking a variance for any additional increase. The benefit this brings to the community is good and it also preserves the visual and historical nature to this property.

Rob Houseman rebutted the parking prior to a legislative change in 2013 and only four units were permissible. The Zoning Administrator is required to take the most conservative approach. A four-unit building requires seven spaces, 1.55 parking spaces per unit.

The public hearing was closed, and Fred Tedeschi noted there are five questions that require legal council and he would propose to continue the public hearing to the next meeting.

The five questions being:

1. Special Exception Parking Requirement
2. Is a separate Variance required if the barn is not connected.
3. Is new parking required with a 10' set back
4. Is this considered affordable Housing
5. Does the Board have authority to grant relief to the original application.

Luke Freudenberg asked if this could be expedited as this application was already delayed because of a noticing error.

Matt Sullivan gave the date of March 4th, at 7 pm in the Great Hall at Town Hall as to when the application would be continued to.

I was moved by Fred Tedeschi and seconded by Sarah Silk to continue the application to March 4th, at 7 pm in the Great Hall at Town Hall to allow for legal council to give an opinion on the five questions previously noted.

Chairman Tedeschi re-opened the public hearing.

Attorney Marbury noted this is not going to be affordable housing under the Affordable Housing Act.

Rob Houseman asked if the public hearing would be re-opened if necessary, at the next meeting.

Fred Tedeschi confirmed it would be if necessary and this public hearing was closed.

Fred Tedeschi amended the original motion to remove the question relative to affordable housing. Sarah Silk seconded the amendment.

A vote was called for on the amended motion to continue the application to March 4th, at 7 pm in the Great Hall at Town Hall to allow for legal counsel to give an opinion on the four questions previously noted. Fred Tedeschi, Sarah Silk, Tim Cronin and Peter Colcord voted in favor of the motion. Luke Freudenberg voted in opposition. The motion passed.

TM# 228-39

Case # 02-V-19

Applicant: Warren & Jennifer Lyn Wilson

Agent: Randy Walker, Esq.

Public Hearing for a Variance under Article IX, Section 175-64 A (1) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction a 280 sf (14' x 20') one car 1 1/2 story garage with a 44 sq. ft. gravel drive and raze a 52 sq. ft. shed and remove 422 sq. ft. of impervious driveway. This property is located at 56 Hopewell Point Road.

Tim Cronin read the abutter and public notification for the record. A site visit was held at approximately 4:25 pm prior to the public hearing.

Summary of Application:

The applicant proposes to construct a 284 sq. ft. (~14'x20') detached garage. The detached garage is proposed as 1.5 stories but shall be compliant with all applicable height restrictions. Also proposed, is the reconfiguration of driveway area and removal of a non-conforming shed currently present on the

property.

Noted the maximum depth of encroachment into the setback has not been shown on the provided plans. I recommend that the Board certify that encroachment and incorporate that into any approval, if granted.

A detailed Variance narrative is attached for the Board's review.

Attorney Walker addressed the Board and reviewed the application, plans and five points required for the application. The plans in the package do not indicate the plans for the garage is the closest to the boundary at 11.6' from the property line and the next closest is 14.9' from the property line. New plans have been submitted.

Chairman Tedeschi opened the public hearing.

Letters in favor were received from the Shannon Family Living Trust and one from Irene and Andrew Jay which noted concern of trash cans and shrubs. The applicant is working with the neighbors to address their concerns.

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

The five points were reviewed.

The Board agreed there is extenuating circumstances on the lot being the lot size and septic location. The neighbors request has been addressed.

Chairman Tedeschi reopened the public hearing.

David Senecal noted the date on the plan is July 2018.

Attorney Walker noted there will be a revision date as of 2.4.2018 and a new plan will be submitted.

The public hearing was closed.

It was moved by Fred Tedeschi and seconded by Sarah Silk to approve the variance request in TM # 228-39, Case #02-V-19 for a variance to move a 52 sq. ft. shed and remove 422 sq. ft. of impervious driveway and replace it with a 1.5 story, 1 car garage, 280 sq. ft. in accordance with the plan submitted which includes setbacks from the property line. The Board finds the application is not contrary to the public interest because the public interest is largely to maintain the shoreline from overdevelopment. Adding an additional garage and removing a good deal of impervious pavement will increase the pervious surface and will make the property a little bit more conforming in furtherance of the zoning ordinance. Having less stormwater runoff will benefit the public and the water quality. The spirit of the ordinance is observed because it does not alter the essential character of the neighborhood, nor will it alter the health safety or welfare of the citizens of Wolfeboro, in fact it will help by increasing the pervious area. Substantial justice is done because any loss to the applicant would outweigh any gain to the general public. The general public gains by the removal of the shed that was non-conforming

and encroaches and the removal of a significant portion of impervious area. The value of the surrounding properties will not be diminished as there has been no testimony at all that there would be any diminution of value to surrounding properties. Finally, there are special conditions of this property that distinguish it from others in the neighborhood as it is apparently close to or the smallest lot on the lake. The purpose of the ordinance is to prevent overdevelopment and to maintain the integrity of the shorefront residential district This does not in any way overdevelop the shorefront and the renovations will have no impact on the 50' waterfront setback and will in fact make the property more conforming therefore the applicants proposed use is reasonable and consistent with the neighborhood. The approval includes the Planners Comments as follows:

1. All federal, state, and local permits to be received, including but not limited to Town of Wolfeboro Shoreland 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 application, as submitted to the ZBA, does not satisfy the submittal requirements for a Building Permit.
4. The following plans, revised to the date of this approval, are incorporated as part of this approval:
 - a. Existing Conditions Plan, Owner/Applicant: Warren and Jennifer Wilson, Project Location: 56 Hopewell Point Road, Wolfeboro, NH, 03894, Tax Map 228 Lot 039 prepared by Norway Plains Associates, Inc., 2 Continental Boulevard, Rochester, NH, Dated July 2018
 - b. Proposed Site Alteration Plan, Owner/Applicant: Warren and Jennifer Wilson, Project Location: 56 Hopewell Point Road, Wolfeboro, NH, 03894, Tax Map 228 Lot 039 prepared by Norway Plains Associates, Inc., 2 Continental Boulevard, Rochester, NH, Dated July 2018
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. A maximum encroachment of a minimum distance of 11.6' on the northeast corner of the garage and a 14.9' on the southeast corner of the garage into the front setback shall be verified by a licensed land surveyor in accordance with the approved plans.
7. 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:

7 January 2019

It was moved by Sarah Silk and seconded by Fred Tedeschi to approve the minutes as written.
All members voted in favor. The motion passed.

Sarah Silk asked that the packets be proofed as the pages were out of order.

There being no further business this meeting was adjourned at 8:30 pm.

Respectfully Submitted,

A square box containing a handwritten signature in black ink. The signature appears to be 'RK' with a stylized flourish.

Robin Kingston
Administrative Assistant