

**Wolfeboro Zoning Board of Adjustment**  
**Regular Meeting**  
**5 November 2018**  
**Minutes**

RECEIVED AND RECORDED

11/19, 2018 7:30 AM

Book No. Page No.

WOLFEBORO, N.H. TOWN CLERK

**Members Present:** Fred Tedeschi, Tim Cronin, Luke Freudenberg, Sarah Silk, Members

**Members Absent:** Peter Colcord, Member 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 7:01 pm at the Wolfeboro Public Library.

**A. Appointments:**

**TM# 243-60**

**Case 19-V-18**

**Applicant: Sonja Kinzmaier**

**Variance**

Public Hearing for a Variance under Article 175-70, Section A (1) (2) of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a residence. This property is located at 9 Fairway Drive. A site visit was held at approximately 4:05 pm prior to the public hearing. Sarah Silk noted she did not attend the site visit however is familiar with the property.

Fred Tedeschi stepped down from this meeting as he is a member of the Association this property is located in.

**Application Summary:**

The applicant seeks to construct a single-family dwelling unit and attached garage on an existing lot of record on Fairway Drive.

Due to environmental conditions (wetlands) on the lot, the house is being placed to the rear corner of the lot and therefore cannot meeting the maximum setback in the Village Residential (VR) zone of 30 feet. The project is subject to Special Use Permit review for wetlands impacts by the Planning Board.

Brian Berlind, Land Technical Services reviewed the application, plan and five points required for the requested variance as submitted in the application. Color photos taken on 11.5.2018 were submitted for the record.

A 24" culvert is proposed and has been approved by the State of NH and as noted this application will need to go to the Planning Board for approval as well.

Public Comments:

Carol McCabe, 7 Fairway View Drive commented the stream that is depicted as seasonal is not. It has overflowed onto #s 3, 5 & 7 Fairway Drive.

No other persons spoke in favor or against this application and the Public Hearing was closed.

Deliberations:

The Board reviewed the following criteria:

- a. The variance will not be contrary to the public interest.  
*The option presented has the least impact. The Board agreed this criterion has been met.*
- b. The variance is consistent with the spirit of the ordinance.  
*The Board agreed this is the only place the dwelling can be constructed and agreed this criterion has been met.*
- c. Substantial justice is done by granting the variance.  
*The Board agreed this criterion has been met.*
- d. Granting the variance will not diminish the value of surrounding properties.  
*The Board agreed this criterion has been met.*
- e. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.  
*The Board agreed this criterion has been met.*

It was moved by Tim Cronin and seconded by Luke Freudenberg to approve the variance application for TM# 243-60, Case 19-V-18, Applicant: Sonja KinzImaier based upon all of the five criteria being met and further subject to conditions 1-5 as listed in the Planners Review dated 30 October 2018 as follows:

1. The following plans are incorporated as part of this approval:

Proposed Home for Sonja T. KinzImaier – 9 Fairway Drive – Wolfeboro, NH 03894 – Prepared by Land Tech – P.O. Box 60 – Ossipee, NH 03864 – dated October 5<sup>th</sup>, 2018

2. All federal, state, and local permits to be received, including but not limited to Town of Wolfeboro Subdivision and Building Permit approval.

3. 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.

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 good cause.

All members voted in favor of the application and the motion passed.

**TM# 228-44**

**Case # 20-SE-18 – Corrected Case #**

**Applicant: The 1994 Sandra G. Ballentine Family Trust**

**Special Exception**

Public Hearing for a Special Exception under Article 175, Section 43 A of the Wolfeboro Planning & Zoning Ordinance to allow for the expansion of a non-conforming structure. **This property is located at 22 Hopewell Point Road.** A site visit was held at approximately 4:25 pm prior to the public hearing. Sarah Silk noted she did not attend the site visit however is familiar with the property.

**Summary of Application:**

The applicant seeks to construct an addition to existing single-family dwelling unit within a setback area. No further line encroachment is proposed; therefore, a special exception is the appropriate relief.

The proposed addition is compliant with the 25% threshold based on a 165 sq. ft. expansion within the 50' structure setback which is equal to 19.03% of the total allowed expansion. The total non-conforming habitable space acting as the base measurement is 867 sq. ft.

Matt Sullivan noted to this application was noticed as a Variance instead of a Special Exception however being the criteria is more restrictive for a variance, he is comfortable moving forward with the application if there are no objections.

Vaune Dugan representing the applicant reviewed the application, plan and eight points required for the requested special exception as submitted in the application.

Public Comment:

Sarah Silk asked if there is a lot of rock and will there be additional runoff that will make an impact.

Vaune Dugan responded the rain drips off onto pervious surfaces and the new roof line will improve this.

Fred Tedeschi noted the house is 25' from the lot line and there is a vacant lot between the next dwelling and the subject property. The wall will be 4" from the existing structure and the drip line 5'.

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

Deliberations:

The Board reviewed the following eight criteria:

1. Site suitability: that the specific site is an appropriate location for the proposed use or structure. This includes adequate usable space; adequate access; and absence of environmental constraints (floodplain, steep slope, etc.).

*The Board agreed this will be an improvement to the neighborhood with the view from the street being unchanged. The new stairwell will also be an improvement. The Board agreed this criterion has been met.*

2. Immediate neighborhood impact: that the proposal is not detrimental, injurious, obnoxious or offensive to abutting properties and to the neighborhood in general. Typical negative impacts which extend beyond the proposed site include: excessive trip generation; noise or vibration; dust, glare or heat; smoke, fumes, gas or odors; and inappropriate hours of operation

*The Board agreed there will be no change, is in keeping with the neighborhood and this criterion has been met.*

3. There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of accessways and off-street parking;

*The Board agreed there will be no change and this criterion 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 as designed and proposed: Sewer; Water; Stormwater drainage; Fire protection; Police protection; Streets; Parks; and Schools

*The Board agreed there will be no change and this criterion has been met.*

5. Appropriateness of site plan. Consideration shall include: Parking scheme; Traffic circulation; Open space; Fencing/screening; Landscaping; Signage; Commercial vehicles; Lighting impact.

*The Board agreed landscaping will be improved and there will be no change in parking or traffic and this criterion has been met.*

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

*The Board agreed there will be no change, it is in keeping with the neighborhood and this criterion has been met.*

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

*The Board agreed the landscaping will improve and this proposal will be more conforming to the surrounding neighborhood. The dwelling was constructed when the setback was 30' and it will not encroach any closer to the lake than existing building. The Board agreed this criterion has been met.*

8. That the proposed use or structure is consistent with the spirit of Part 1 and the intent of the Master Plan.

*The Board agreed there will be no change and this criterion has been met.*

*It was moved by Sarah Silk and seconded by Tim Cronin to approve the Special Exception application for TM# 228-44, Case # 20-SE-18, Applicant: The 1994 Sandra G. Ballentine Family based upon all of the eight criteria being met and further subject to conditions 1-6 as listed in the Planners Review dated 30 October 2018 as follows:*

*1. The following plans are incorporated as part of this approval:*

*ZBA Plan of Proposed Conditions – Sandra and Roy Ballentine – 22 Hopewell Point Road – Wolfeboro, NH 03894 – Prepared by Norway Plains – 2 Continental Boulevard – Rochester, NH 03867 – dated October 2018*

*2. All federal, state, and local permits to be received, including but not limited to Town of Wolfeboro Building Permit and Shoreland Permit approval.*

3. 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.

4. The application, as submitted to the ZBA, does not satisfy the submission requirements for a Building Permit.

5. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.

6. This Special Exception 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 of the motion and the motion passed.

## **B. Consideration of Minutes:**

### **10 September 2018**

#### Corrections

Page 2:

The project is referred to in some materials as meeting the 25% rule for a Special Exception. However, after further discussion, due to **an** additional ~~linear~~ **linear** encroachment, this application requires a Variance.

Attorney Walker addressed the Board reviewed the application and plans as submitted. The application had an error and noted that the property was not in the shorefront setback.

Page 4:

The applicant has provided a lengthy narrative letter rebutting several opinions of the Planning Department. **4 The Planner maintains** that this lot does not have adequate frontage as defined by the ordinance.

The lot has plenty of frontage and would meet private road specifications. The town ~~singed~~ **signed** off on this in 1974 and 1987 – Signed off and built to town specs except for the turn-around. In 1974, 1978 and 2003 the Planning Board approved lots.

Page 5:

a. Substantial justice is done by granting the variance;

The lots will have greater frontage than required. Town water will continue **and be available** to the

lots and the owner will **be** responsible for the water hookup.

- a. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

This lot has sufficient frontage and access to the road and past history shows a subdivision of lots across the street. ~~Past history shows subdivision of the lot across the street and around it.~~  
This is a large enough parcel to subdivide into two lots.

Page 6:

Page 7 – 7<sup>th</sup> paragraph down – Sarah Silk asked how they will ~~ne~~ **not** be selling fluids (gasoline and lubricants) as they are being used and sold as part of the auto business.

It was moved by Sarah Silke and seconded by Tim Cronin to approve the minutes of 10 September 2018 as amended. Sarah Silk, Tim Cronin and Fred Tedeschi voted in favor of the motion. Luke Freudenberg abstained due to his absence from the meeting. The motion passed.

### **C. Other Business:**

**Superior Court Decision – Kevin E. Green, Trustee, et al v Town of Wolfeboro ZBA and Michael A. Simmons – Case #: 212-2018-CV-00062**

*The Superior Court, as part of the decision dated, 22 October 2018 as follows: The court instead directs the board to review the statutory provision for telephonic participation with all members, alternates, and staff and be certain that each standard is met in future requests for telephonic participation. This includes the requirement that the reason a member or alternate finds it is not "reasonably practical" to participate in person be stated on the record and included in the minutes.*

The Board reviewed the statutory prevision as required:

A public body may, but is not required to, allow one or more members to participate in a meeting by telephone or other electronic communication—but only if the member's attendance is "not reasonably practical." See RSA 91-A:2, III.

The reason that in-person attendance is not reasonably practical must be stated in the minutes of the meeting.

Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting. An "emergency" means that "immediate action is imperative, and the physical presence of a quorum is not reasonably practical within the period of time requiring

action.” The determination that an emergency exists is to be made by the chairman or presiding officer, and the facts upon which that determination is based must be included in the minutes. Each part of the meeting must be audible “or otherwise discernable” to the public at the physical location of the meeting. All members of the public body must be able to hear and speak to each other simultaneously during the meeting and must be audible or otherwise discernable to the public in attendance.

No meeting may be conducted by electronic mail or “any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.”

All votes taken during such a meeting must be by roll call vote.

There being no further business, this meeting was adjourned at 7:43 pm.

Respectfully Submitted,

A handwritten signature in black ink, consisting of the letters 'RK' in a stylized, cursive font.

Robin Kingston  
Administrative Assistant