

Wolfeboro Zoning Board of Adjustment

Regular Meeting

July 19, 2016

Minutes

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7/25, 20 16 12:20 P

Book No.

Page No.

Salvatore M. Wate
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

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.

TM# 259-18

Case # 09-V-16

Applicant: Spencer Johnson

Variance

Agent: Carrier Carpentry

Public Hearing for a Variance from Article 175.64, Section A2D of the Wolfeboro Planning & Zoning Ordinance for a 3' extension on the garage to allow for the two vehicles to park in the garage correctly. The short turn in the driveway does not allow for it as is. This property is located at 7 Puffs Point.

Chris Franson read the public and abutter notification. A site visit was held at approximately 6:35 pm prior to the hearing on July 19, 2016 prior to the meeting. Minutes of the site visit were submitted for the record.

The applicant is seeking a variance in order to connect a three foot addition to the side of the garage. The proposed encroachment into the setback is approximately seven feet at its closet point.

Chairman Tedeschi opened the public hearing.

Brandon Carrier, Carrier Carpentry addressed the Board and reviewed the application and plan as submitted. DES Approval has been granted for the Shoreland Permit.

Sarah Silk noted the corner would be 18' according to the application however at the site visit it was noted it will be 20'.

A revised plan was submitted and noted the encroachment is actually 3 feet less than noted in the original plan and application.

No person spoke in favor or against the application and 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.
2. The spirit of the ordinance is observed.
The Board felt this criterion was met.
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.
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, an a variance is therefore necessary to enable a reasonable use of it.

Suzanne Ryan stated the she does not feel the application meets #5 as she does not see any uniqueness in the lot as the lots are similar in the area.

Mike Hodder noted the lot is unique in its configuration which is a special condition.

Suzanne Ryan stated if the landscaping was changed they could make a different arch and there is another alternative.

Chris Franson stated she feels the applicant is burdened by the setbacks in relation to the amount of shorefront.

Sarah Silk and Fred Tedeschi both questioned if the lot is unique as Lot 15 is similar in size and shape to the subject lot.

Hank Why stated he felt the lot is unique and agreed with Mike Hodder's comments.

Chairman Tedeschi reopened the public hearing to ask the applicant's agent how wide the garage door is currently and how wide the proposed garage door is.

Brendon Carrier responded the current door is 16' and the proposed is 18'. Additionally addressing the suggestion about changing the landscaping, they are restricted by the location of the septic system and any changes in the other direction would also require a variance. Last year there was an accident when backing out of the garage and this is what prompted the addition.

Chairman Tedeschi closed the re-opened public hearing.

It was moved by Mike Hodder and seconded by Chris Franson to grant the Variance for TM# 259-18, Case # 09-V-16, with the conditions as stated in the Planners Review as the applicant's agent has adequately shown the five criteria necessary for approval have been met.

It was moved by Suzanne Ryan to amend the motion to include the dimensions. There was not second to the amendment.

It was moved by Fred Tedeschi and seconded by Mike Hodder to include the words one story in included in condition #1 be added reading the approval is for a 3 foot, one story addition to the existing garage.

The Board discussed adding the wording and noted the existing garage is only one story with a shed roof.

Chairman Tedeschi called for a vote on the amendment. All members voted in favor and the amendment passed.

It was moved by Fred Tedeschi and seconded by Suzanne Ryan to amend condition #2 to read to including the application and plans after the words "by the applicant".

The amendment was discussed. Mike Hodder stated the wording is not necessary as it is repetition.

Chairman Tedeschi called for a vote on the amendment. Fred Tedeschi, Chris Franson, Hank Why and Suzanne Ryan voted in favor of the amendment. Mike Hodder voted in opposition. The amendment passed.

Chairman Tedeschi called for a vote on the amended motion as follows:

To grant the Variance for TM# 259-18, Case # 09-V-16, with the conditions as stated in the Planners Review as the applicant's agent has adequately shown the five criteria necessary for approval have been met.

1. The approval is for the construction of a three foot, one story addition to the existing garage, as shown on the sketch plan.
2. 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.
3. The application, as submitted to the ZBA, does not satisfy all applicable requirements for a building permit or Shoreland Permit.
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.

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

TM# 148-12

Case # 10-V-16

Applicant: Heidi Von Gotz Cogean

Variance

Agent: White Mountain Survey & Engineering, Inc.

Public Hearing for a Variance from XIII, Section 175-86 of the Wolfeboro Planning & Zoning Ordinance to allow for the operation of a seasonal, family run, small production federally bonded winery, fermenting wine from grapes and fruit grown on-site and/or purchased as well as operating a tasting room per NH Wine Manufacturer Licensing and selling the bottles of the wine as well as miscellaneous winery related products (jelly, crackers and logo glassware). This property is located at 458 Center Street.

Chris Franson read the abutter and public notification for the record. A site visit was held at approximately 5:40 pm prior to the hearing on July 19, 2016 prior to the meeting. Minutes were submitted for the record.

The applicant has a purchase and sales agreement on the 1810 Bed & Breakfast property and is seeking a Variance and for the establishment of a winery associated with a proposed vineyard.

James Rines, PE submitted a letter dated June 14, 2016 explaining the proposed used which is included in the application package. It has been determined a winery requires a variance as only 10% of the wine produced shall be made from grapes grown on site.

Chairman Tedeschi opened the public hearing.

Jim Rines reviewed the application, submitted letter, plan and five points required for the variance. The imported grapes are imported in June and August. Additionally the vines are not fertilized. The soil would be tested and there may be limited applications of lime, magnesium and compost from crushed grapes and clippings. There is no extra irrigation need and Chemical 7 is applied if there is more than 3 Japanese beetles per leaf are found and space 2 weeks apart. If Black Rot is found a fungicide called Captain would be used if needed. There is minimal waste. The tanks which are 266 gallons each are cleaned outdoors, twice per year with no more than 5 gallons of water with a potassium sulfate powder as well as an antioxidant known as E224 and goes onto the ground. Simple Green cleaner is used inside the tasting room. Additionally the micro-climate is conducive to the growing of the grapes.

Chris Franson asked about any smell from the fermentation.

Heidi Von Gotz-Cogean explained yeast is used in the fermentation process and a fruit odor is detected inside the building. There is no ventilation required. She has never detected any odor outside of their building at Newfound Lake Vineyards.

Suzanne Ryan stated she is perplexed as why a variance is required as this application fits under a Special Exception without a variance and this is extra burdensome to the applicant.

Rob Houseman explained the issue at hand, and he is required to take the most conservative approach. Where only 10% of the product is produced on site he determined this does not raise the winery to an agricultural production on site. Agrotourism has very specific criteria.

Heidi Von Gotz-Cogean explained under an ideal circumstance to obtain 50-100 lbs. per plant will take about 5-6 years. An estimate of possibly 10 lbs. per vine at 3 years by about 22 vines per row (3 rows) at 100' would give approximately 300 vines. The grapes are delivered in pick up trucks each holding 1,000 lbs. The percentage of production at 3 years of purchased grapes is 60% for grape wine; fruit wine is approximately 40%; of that 60% approximately 70% is from purchased grapes. There will always be an import of red grapes. The percentage of the total production from the land at 3 years, grown on the land will be about 900 liters bottles. The winery in Bristol will be moving to Wolfeboro. At the Bristol location about 20% of the total products (grapes, wine, fruit) is grown on site.

The Board discussed the production percentage on the land and the statute requirements as related to Agrotourism.

Rob Houseman explained the production of wine was substantially related to the crops grown on the site. This was discussed with the applicant and counsel prior to this variance application being submitted. As the applicant is not appealing the decision rendered so the Board can choose to deny the application because they do not believe one is needed, is one option; if the application is granted, it is done and they can move forward. As for the 10% rule, the ZBA can establish any standard and that holds forward. The ZBA is creating a decision that can be applied down the line in a similar or like situation. Further the statute defines Agrotourism as a working farm of at least 10 acres and this parcel is 7.4 acres.

Mike Hodder stated he does not agree as the ZBA is not held by precedence. For the record he is not applying any criticism of the Zoning Administrator as he is taking the most conservative view.

Suzanne Ryan stated she disagrees with Mike Hodder.

Jim Rines explained and depicted on the plan shown, water flows north to southeast on the property and eventually flows into Lake Wentworth.

Heidi Von Gotz-Cogean explained she holds a license for pesticides and holds a permit to spray the grapes with an approved pesticide. An 8 oz. bottle of pesticide is stored in a steel cabinet inside the winery as when used is mixed with water the total volume application is less than 1 gallon twice per summer as it is applied in a fine mist onto the leaves.

Public Comment:

Andrea Dudley, 74 Moose Point Road stated she visited New Found Lake Vineyard and found the wine quite good. She also heard the detail of the operation at the site visit and is comfortable with the application. Her concern is future growth and event space as many wineries operate and what the permitting process would be as she would not be in favor of that. – More event space – is approved what is the permitting process –

Rob Houseman explained a proposal of that type would require a Variance and Site Plan Review and stated it would require a variance and site plan review.

Roger Murray, Esq., representing the Lake Wentworth Association stated from their perspective this is a good use of property and keeps it much in same state as it is now and allows the

gateway to be protected. He stated he feels a variance is necessary and stated all the requirements necessary have been met and urged the Board approve the request.

No person spoke in opposition of the application and the Public Hearing was closed.

The Board reviewed and deliberated on 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.

2. The spirit of the ordinance is observed.

The Board felt this criterion was met.

3. That substantial justice is done as there is no harm to the general public.

The Board felt this criterion was met.

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

The Board agreed this criterion was met and may improve the property values.

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

(A) Owing to special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.

(ii) The proposed use is a reasonable one.

The property and large barn are unique and the micro-climate in this location is important factor.

It was moved by Mike Hodder and seconded by Chris Franson to approve application for a Variance, Case # 10-V-16, TM# 148-12 with the conditions shown in the Planner review, numbers 1-4 inclusive.

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 Site Plan Approval.*
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 of the motion. The motion passed.

TM# 148-12

Case # 11-SE-16

Applicant: Heidi Von Gotz Cogean

Special Exception

Agent: White Mountain Survey & Engineering, Inc.

Public Hearing for a Special Exception from XII, Section 175-87A of the Wolfeboro Planning & Zoning Ordinance to allow for Agriculture, in the form of a vineyard for the purposes of growing grapes to manufacture wine in a family run, small production winery. This property is located at 458 Center Street. A site visit was held at approximately 5:40 pm prior to the hearing.

Chris Franson read the abutter and public notification for the record. A site visit was held at approximately 5:40 pm prior to the hearing. Minutes were submitted for the record.

The applicant has a purchase and sales agreement on the 1810 Bed & Breakfast property and is seeking a Special Exception for the establishment of a vineyard associated with a winery. James Rines, PE submitted a letter dated June 14, 2016 explaining the proposed use which is included in the application package. The vineyard is proposed to be a low impact operation producing approximately 10% of the fruit associated with its wine production.

Chairman Tedeschi opened the public hearing.

Jim Rines reviewed the application, submitted letter, plan and eight points required for the Special Exception.

Heidi Von Gotz-Cogean explained hours of operation in Bristol are Friday 5:30-8:30 Saturday and Sunday, noon to five. Grapes are delivered in June and late August/September. Lighting and signage will comply with the Zoning Ordinance as well as the Dark Sky Ordinance. It is planned for the winery to be named "Winnepesaukee Winery at the 1810 House"

Public Comment:

Mary August, Lake Wentworth asked about night lighting.

The Board explained it would be covered under the Dark Sky Ordinance.

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

The Board reviewed the 8 criteria required for the Special Exception as follows:

1. Site Suitability: The specific site is an appropriate location for the proposed use or structure:

This includes:

- a). Adequate usable space
- b). Adequate access
- c). Absence of environmental constraints (floodplain, steep slopes, etc.)

The Board agreed this criterion has been met.

2. Immediate Neighborhood Impact: That the proposal is not detrimental injurious, obnoxious or offensive to the abutting properties in particular and to the neighborhood in general. Typical impacts, which extend beyond the proposed site include:

- a. Excessive trip generation
- b. Noise or vibration
- c. Dust, glare of heat
- d. Smoke, fumes, gas or odors
- e. Inappropriate hours of operation

The Board agreed this criterion has been met, will not change or is not applicable.

3. That there will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking:

The Board agreed this criterion has been met, will not change or is not applicable.

4. Availability of public services and facilities: That the following services and facilities are available and adequate to serve the needs of the use designed and proposed:

- a. Sewer
- b. Water
- c. Storm water Drainage
- d. Fire Protection
- e. Streets
- f. Parks
- g. Schools

The Board agreed this criterion has been met, will not change or is not applicable.

5. Appropriateness of Site Plan: Consideration shall be given to the following:

- a. Parking Scheme
- b. Traffic Circulation
- c. Open Space
- d. Fencing/Screening
- e. Landscaping
- f. Signage
- g. Commercial Vehicles
- h. Lighting Impact

The Board agreed this criterion has been met, will not change or is not applicable.

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

The Board agreed this criterion has been met, will not change or is not applicable. Existing buildings are being used.

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

The Board agreed this criterion has been met, will not change or is not applicable. This is an improvement.

8. The proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan.

The Board agreed this criterion has been met, will not change or is not applicable. Agricultural uses are allowed as well as the Bed & Breakfast being approved.

It was moved by Mike Hodder and seconded by Hank Why to approve the Special Exception, Case # 11-SE-16, and TM # 148-12 with conditions 1-5 as listed in the Planner Review.

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 Site Plan Approval.*
3. *The approval is subject to the receipt of a variance and any conditions attached thereto.*
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 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. The motion passed.

TM# 218-17-1

Case # 12-V-16

Applicant: Zimmerman Family Ltd. Partnership

Variance

Agent: White Mountain Survey & Engineering, Inc.

Public Hearing for a Variance from XIV, Section 175-92.1.A (3) of the Wolfeboro Planning & Zoning Ordinance to allow for a retail building with multiple tenants including a bank with drive thru that makes use of an existing foundation that lies between 27' and 41.6' from the front boundary line with Center Street versus the 15' maximum setback required. This property is located at 29 Center Street. A site visit was held at approximately 6:05 pm prior to the hearing.

Dave Senecal will not be participating on this application.

Chris Franson read the abutter and public notification for the record. A site visit was held at approximately 6:05 pm prior to the hearing. Minutes were submitted for the record.

Chairman Tedeschi opened the public hearing.

The applicant is seeking a variance in order to construct a building on the existing foundation, originally installed for the Great Waters Bank. At the time of the bank approval the property was zoned C-2 Commercial and the building location complied with the setback requirements.

Jim Rines reviewed the application, plans and five points required for the Variance. This will be a one story building.

Paul Zimmerman stated Citizens bank should not be noted on the plan as it was an old plan.

The Board is dealing with setback only and using the existing footprint and pilings.

Jim Rines also noted the setback is consistent with the surrounding structures.

The Board discussed proposed highway improvements.

Paul Zimmerman noted the travel surface of Center Street is moving closer to the boundary line but the boundary line is not changing.

All permitting will be required as well as a driveway permit.

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

The Board reviewed the five criteria as follows and deliberated on the application.

The Board reviewed and deliberated on 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 a commercial neighborhood.

2. The spirit of the ordinance is observed.

The Board felt this criterion was met. The use does not conflict with the neighborhood and there is an improvement. The greater setback will not be adverse.

3. That substantial justice is done as there is no harm to the general public.

The Board felt this criterion was met. Removal of the existing foundation if a conforming foundation would be a hardship to the applicant.

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

The Board agreed this criterion was met and may improve the property values.

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

(A) Owing to special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property.

(ii) The proposed use is a reasonable one.

The Board felt this criterion was met. The setback is consistent with the surrounding structures.

It was moved by Suzanne Ryan and seconded by Mike Hodder to grant the variance TM# 218-17, Case # 12-V-16, Section XIV, Section 175-92.1.A (3) of the Wolfeboro Planning & Zoning Ordinance from setback of 15 feet required including the four conditions listed in the Planner Review.

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 Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.*
3. *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.*
4. *This approval does not eliminate the need for Site Plan Approval and this application, as submitted to the ZBA does not satisfy all applicable requirements for Site Plan Review Application.*

All members voted in favor of the motion. The motion passed.

Consideration of Minutes:

June 6, 2016

Page 2

Second paragraph – change clarified to requested clarification

Third paragraph add after the last word and – add; there will be no housing or be used for any residential purpose.

Last paragraph, 8th line – change hr to he after the word and

Page 3

6th paragraph – place a space between the school

Page 4

3rd paragraph – add abuse counseling after the word substance

Page 5

3rd paragraph – 5th line change quite to quiet

Page 6

1st paragraph, last line – add Commercial in front of C-1

Suzanne Ryan submitted an email with a number of changes and paragraphs to be added, corrected or changed. The Board reviewed and discussed the proposed changes.

The Board extensively discussed the proposed amendments extensively.

The majority of the Board agreed the proposed changes are already covered in the paragraph referenced. Additionally there is concern in altering the record with individual names and comments for a particular purpose. The minutes are not a transcript.

Suzanne Ryan stated she does not care about names but she wants what was stated and what those words are, not the way the secretary interprets those words.

The majority of the Board agreed if that particular part were to be changed then the rest would need to be verbatim and note what every other Board member stated. That is not the purpose of the minutes; it is a generalization of what was discussed. Unless this is going to be made a transcript, there is not a need for everything, everyone said, whether attributed to individuals or not.

Ryan Amendments - Page 6

1st paragraph - Two board members felt that the “loss” of this existing 5,000 square feet of commercial space by “conversion” to residential space was not consistent with the public interest and the spirit of the ordinance, particularly when the cumulative impact of all such potentially similar variances was considered, the majority of the board found that the proposed use was not contrary to the public interest and observant of the expressed purposes of the C-1 district.

It was moved by Mike Hodder and seconded by Hank Why to accept and approve the minutes of June 6, 2016 as presented and amended by the Board. Mike Hodder, Chris Franson and Hank Why voted in favor. Suzanne Ryan and Fred Tedeschi voted in opposition. The motion passed.

June 13, 2016

Suzanne Ryan submitted an email with a number of changes and paragraphs to be added, corrected or changed. The Board reviewed and discussed the proposed changes.

Page 1

Last paragraph, third line change raised to razed.

Page 2

3rd paragraph. Add a period after Board.

Add "John Rourke stated the septic will be located on the back lot through an easement.

Page 3

Change criteria to criterion where used in the singular

Page 4

Last paragraph change Shore Land to Shoreland

Page 6

2nd paragraph from the bottom, 2nd to the last sentence change the word "felt " to "said"

Last paragraph add "is" after aquifer

2nd line change replied to relied and remove change the last word to "used"

Page 7

1st line remove the first word "requested", change "here" to "there"; add after plan – that much of the claimed expenses were for other than the proclaimed costs; and change engineers to engineers'.

Last sentence change "realty" to "reality"

Suzanne Ryan questioned why her documents distributed to the Board and given to the applicant was not part of the record.

Rob Houseman noted his recollection is the Boards Counsels suggesting that Board members doing research independent and submitting things is inappropriate.

Suzanne Ryan disagreed.

Fred Tedeschi state it could be placed in the file and is not a part of the official minutes.

Page 8.

End the motion and add a sentence to read. After further discussion.

It was moved by Mike Hodder and seconded by Chris Franson to approve the minutes of June 13, 2016 as amended.

Discussion:

Suzanne Ryan asked what would happen with what she submitted; is it going to be shredded or just put in the file.

The Board agreed it is part of the email records but not the file. Staff noted there is no hard copy file, all email records are retained.

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

July 11, 2016

The Board tabled the minutes to the August 1, 2016 meeting.

There being no further business before the Board, this meeting was adjourned at 10:15 pm.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to be 'RK' with a large loop and a long horizontal stroke extending to the right.

Robin Kingston
Administrative Assistant