

Wolfeboro Zoning Board of Adjustment

Regular Meeting

6 March 2017

Minutes

RECEIVED AND RECORDED  
March 31, 2017 8:24 AM  
Book No. Page No.  
51 Patricia M. Waterman  
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, and Sarah Silk, Alternate

**Members Absent:** David Senecal, Alternate (excused)

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

Chairman Tedeschi called this meeting to order at 7:00 pm in the Great Hall at the Wolfeboro Town Hall. A quorum was present.

**Case # 02-AAD-16**

**TM# 148-10**

**Applicant: Salvatore (Sal) /Nicastro & Pegleg Realty Inc.**

**Agent: Randy Walker, Esq.**

**Appeal of Administrative Decision**

**486 Center Street**

Public Hearing for an Appeal of Administrative Decision made by the Director of Planning & Development on February 3, 2017 concluding that the use of the subject property as an automobile repair facility and auto body shop had been abandoned. The property is located at 486 Center Street. A site visit was held at approximately 4:10 pm the day of the hearing.

The application forms incorrectly indicated the basis of the appeal as 175-187 of Zoning Ordinance, which is in fact the section dealing with statutory authority for appeals. However, the appeal is based on Section 175-43, Non-Conforming Uses of the Town of Wolfeboro Zoning Ordinance. Please note that unlike other appeals of administrative decision based on changes of use/occupancy or building permit denial, this appeal is based on a written decision of the Director of Planning and Development, which is attached for your review. Please use materials included in both administrative appeal and variance application packets in making a determination.

Attorney Walker reviewed the Administrative Appeal as outlined and submitted with the application.

Mike Hodder noted the use was changed from an auto repair facility in a letter dated March 15, 2016 to the Planning Board noting a change of use, it was effectively abandoned. The use was given up voluntarily.

Suzanne Ryan noted as of 2/2/2016 it was used as an auto shop and has been converted to another use. The Assessing Card and 1993 Letter from Code Officer refers to an auto body shop. This is making a non-conforming use more non-conforming use and the request does not apply.

Susan Raser noted an abandonment did not occur and this was not a significant change as they were still repairing motors and is a use from a non-conforming use to a less non-conforming use.

Suzanne Ryan stated it was an auto body shop.

Susan Raser stated this was used as an auto repair shop.

Fred Tedeschi noted the overhead doors in front will need to be removed and only one will remain in the rear of the building.

Attorney Walker noted the building has not changed and there are two bays in the rear and that has been the only garage doors as none exist in the front.

Mike Hodder concurred.

Chris Franson noted the building came more into compliance and noted the Planning Boards requirements.

Suzanne Ryan stated the applicant would need to reapply for drive cut.

Chris Franson noted the RR Districts purpose and intent and the open space development requirements.

Randy Walker responded this is not applicable and their position is they are grandfathered. They are not trying to change the building or parking area. If they had gone more than 1 year without the use, they would not have appealed the decision. This is not a case that once you change a use you cannot go back and the ordinance does not state that. The date of February

26, 2017 would have stopped use however the application was filed on 2-14-2017 so they are within the one year timeframe.

Sarah Silk before the change of use on April 19<sup>th</sup>, 2016 the use went away and this is now a new use....and you are beating a dead horse.

Randy Walker responded the ordinance states if you have a use you have one year.

#### Speaking in Opposition

Roger Murray, Esq., representing the Wentworth Water Shed Association asked the ZBA to uphold the decision of Matt Sullivan by the reasons set forth in the letter to Randy Walker. Outdoor Equipment was approved by the Planning Board in April. The property owner voluntarily changed it. Any time you change the use it changes it.

#### Speaking in Favor

Alex Hunt current owner of the property reiterated of the property and the uses throughout time and there are no residential properties in the area. The approved use is he can run a chipper or chainsaw 24 hours a day which is much more intense.

It was moved by Suzanne Ryan to uphold the Town Planning Administrators decision and the April 19, 2016 Planning Boards approved a site plan for this location and the sunset the prevision applies to the operation and the planner indication the use becomes less,

The motion failed for lack of a second.

Suzanne Ryan withdraw her motion.

It was moved by Mike Hodder and seconded by Suzanne Ryan to deny the request for the application for Case 02-AAD -17, Lot 148-10 and uphold the Town Planners Administrative Decision.

The Board discussed asking for a legal provision on the sunset provision.

Suzanne Ryan, Mike Hodder, Christine Franson and Fred Tedeschi voted in favor of the motion. Hank Why abstained. The motion passed.

Case # 03-V-16

TM# 148-10

Applicant: Salvatore (Sal) Nicastro & Pegleg Realty Inc.

Agent: Randy Walker, Esq.

Variance

486 Center Street

Public Hearing from Article 175, Section 187 of the Wolfeboro Planning & Zoning Ordinance for a Variance to allow for an automobile repair facility with limited automobile sales, coupled with the existing permitted use of retail sales and repair of outdoor equipment but in a limited and secondary capacity. ***The property is located at 486 Center Street.*** A site visit will be held at approximately 4:10 pm the day of the hearing.

The applicant seeks to operate an automobile repair facility, with automobile sales, combined with outdoor equipment repair and sales. This property is within the General Residential District. The following proposed uses are not permitted within the General Residential District:

- o Small engine repair
- o Small engine sales
- o Automobile repair
- o Automobile Sales

Randy Walker reviewed the application and five points required for the variance as submitted with the application. Businesses need to expand uses in order to survive. The Town needs to pay attention to that. The properties along Route 28 to the north and south were noted and uses reviewed. Out of 28 properties there are only 3 dwellings. The business in downtown Wolfeboro will be relocated to this area and provide a service to the area. Autocare is currently the only place you can purchase a vehicle in town.

Chris Franson commented the majority of the properties noted by Attorney Walker are in a different zoning district.

Public Comments:

Attorney Murray, representing Wentworth Watershed Association spoke in opposition. Allen Road is residential and Attorney Walker did not mention Square Hill. The building is not suitable for residential use and the concern is the number of uses proposed on the property and also the storm water treatment area. Car sales is not a historical use and this has a potential effect on the public interest. The spirit of the ordinance is observed with the current approved use. The purpose is to limit the extension of non-confirming uses. Parking spaces

numbering 14 and there is concern the site cannot support the required parking spaces with all the uses. There is a presently an approved commercial use and the property was constructed as an auto repair facility however they want to add auto sales and small engine component. They are looking at the number of proposed uses and the impact. This building could be sold to someone else. The auto repair facility is not an unfair request but the other uses requested are too many.

Fred Tedeschi asked if Attorney Murray is opposing the intent of what is requested.

#### Rebuttal

Attorney Walker stated there are no abutters rejecting this request and the Lake Wentworth Association's objection is the impact. The use is minimal and businesses need to expand. You need to have a number of uses and the impact is not significant if you add up 5 hours of sales, 15 hours small engine repair and 20 hours auto repair.

Alex Hunt commented noted the comments regarding storm water drainage and noted the Planning Board now has an engineered plan for storm water drainage which it never had. Additionally, there were a number of the vehicles on the lot from the previous owner were for sale.

Attorney Murray asked if the improvements will remain in place.

Attorney Walker stated there will be no changes on the exterior of the building or land unless required by the Planning Board.

Chairman Tedeschi closed the Public Hearing

The Board discussed the application.

Suzanne Ryan stated her concern is the multitude of uses including small engine repair.

The Board reviewed the five criteria required for the variance.

1. 1 & The variance will not be contrary to the public interest.  
*The majority of the Board agreed this criterion was met.*
2. The spirit of the ordinance is observed.  
*The majority of the Board agreed this criterion was met.*
3. That substantial justice is done.  
*The majority of the Board agreed this criterion was met.*
4. The values of surrounding properties will not be diminished.

*The majority of 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, and a variance is therefore necessary to enable a reasonable use of it.

*The majority of the Board agreed this criterion was met.*

*It was moved by Mike Hodder and seconded by Hank Why to approve Case # 03-V-17, TM # 148-10, Salvatore (Sal) Nicastro & Pegleg Realty LLC to allow for an automobile repair facility with limited automobile sales, coupled with the existing permitted use of retail sales and repair of outdoor equipment but in a limited and secondary capacity with the conditions listed in the Planner's Review by reference.*

*Conditions by reference:*

1. *This approval is to allow the conversion of a small engine repair and sales to the following uses:*

*o Small engine repair*

*o Small engine sales*

*o Automobile repair*

*o Automobile Sales*

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 Site Plan Review.*

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.*

Discussion:

Suzanne Ryan asked for a clear definition of small engine repair: more clearly define – power equipment repair – Small engine repair.

Matt Sullivan stated the ordinance uses more flexible terminology and this covers the proposed uses and is encompassing of small engines.

Suzanne Ryan noted she would like to see motorcycle repair and sales excluded.

Staff reread the motion.

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

### Consideration of Minutes:

#### Page 2

Susanne Ryan asked for the size of the garage (add - ***and introduced a survey plan dated 8/1/72 and signed by the Planning Board which shows a different location for the structure.***)

Matt Sullivan noted the submitted plan is a plan of land and it is not intended to accurately represent the structure location.

Chris Franson asked how feasible it is to ~~perform~~ perform construction in such a tight envelope.

(***Add-Speaking from the audience***), David Senecal stated that he believes the construction is possible especially if some of the structure is left intact. They may require a temporary easement for construction purposes however.

Sarah Silk questioned a suggested condition ~~question~~ #4 by the Town Planner.

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The Board reviewed and discussed the proposed application and discussed reopening the public hearing to clarify questions regarding the attached (add – ***garage***) and the reconfiguration to allow for the garage, what is now impervious and what will become pervious and if the deck is subject to permitting by the town.

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It was moved by Chris Franson and seconded by ~~Chris Franson~~ (add ***Susan Raser***) to deny the Motion for Rehearing based on the fact there is no new info or error.

Fred Tedeschi spoke to the issue raised regarding Mike Hodder and noted he did not vote on this ~~the~~ case and noted the issues that someone who expressed an opinion does not necessarily deprive Mr. Cantwell of a fair second hearing. Further the case Winslow v. Town of Holderness (add -***Ruediger H. Grim v. the NH Board of Psychology and Mental Health Practice***)

) states it is the vote that counts and not the discussion. Mr. Hodder and members of the Board have disagreed and at times Mike Hodder is persuasive, ~~and noted sectioned this section of the Motion for Rehearing is rejected on that ground as well.~~

It was moved by Mike Hodder and seconded by Susan Raser to approve the minutes of February 15, 2017 as amended. All members voted in favor. The motion passed.

**Other Business:**

There is no update on the FIT Court Case.

Mr. Cantwell may be filing an appeal of the ZBA Decision in Superior Court.

The Board complimented Matt Sullivan on the content of the Planner Reviews.

Recusal Workshop is scheduled for April 17, 2017 at 5:30 pm.

April 29, 2017 is the Planning & Zoning Workshop.

The April 3, 2017 will be held in the Public Library Meeting Room.

There being no further business, this meeting was adjourned at 9:10 pm.

Respectfully Submitted,

RK

Robin Kingston  
Administrative Assistant