

Wolfeboro Zoning Board of Adjustment

Regular Meeting

24 April 2017

Minutes

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WOLFEBORO, N.H. TOWN CLERK

Members Present: Fred Tedeschi, Chairman, Mike Hodder, Vice- Chairman, Hank Why and Sarah Silk, Members, David Senecal, Alternate and Tim Cronin, Alternate

Members Absent: Susan Raser, Member

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

Chairman Tedeschi called this meeting to order at 7:02 pm in The Great Hall at the Wolfeboro Town Hall. A quorum was present.

Appointments

TM# 199-7

Case # 5-V-17

Applicant: Robert & Julie Palmason

Variance

Agent: Chris Boldt, Esq.

Hank Why and David Senecal stepped down from this hearing. Suzanne Ryan and Tim Cronin were seated.

Public Hearing for a Variance from IX, Section 175-64A(2)c of the Wolfeboro Planning & Zoning Ordinance to add a detached garage to an existing non-conforming single family residence. This property is located at 567 Forest Road. A site visit was held at approximately 6:05 pm prior to the meeting.

This project was granted a Building Permit (#2016001013) and Shoreland Permit (#2016-14S) by the Town of Wolfeboro. On 01/18/2017, the Town of Wolfeboro revoked these permits due to an error in interpretation and clear violation of Article 175, Sections 64 and 180(B) of the Town of Wolfeboro Planning Ordinance. Specifically, the proposed project produced additional encroachment into the side setbacks (20') of the property.

The applicant has poured a foundation based on the receipt of the Building and Shoreland permits. At the time of the revocation, the applicant was asked to cease and desist all activities associated with the project. The applicant's statement and materials are on file.

Attorney Boldt gave an overview of the site, the project, site plans and reviewed the application and plans as submitted. Further Attorney Boldt noted an error submitted in the application that the garage on the Ager property is the closet structure to this parcel, does in fact have windows.

The Board asked a number of questions based on the presentation given by attorney Boldt and additionally questioned the effects of runoff.

Attorney Boldt responded to a number of questions by the Board and confirmed the blueberry bushes to be planted would be high bush blueberries, the garage is attached only by a breezeway. The ZBA is a safety valve for any conflicts in the zoning ordinance. Substantial justice is the balance is what is the good to the public versus the harm to the applicant. While they are separate criteria, criteria 1 & 2 are many times taken in unison. Hardship on the lot includes the existing dwelling location being boarded by significant woodlands on one side and the topography helping to somewhat dictate the garage location.

Chairman Tedeschi opened the public hearing.

Attorney Ceaser, representing TM# TM 199-6, David & Martha Ager spoke in opposition. A package of information including a chart of Comparable Size Lots with Shorefront and photos was submitted and reviewed. There are no special conditions that distinguish this property from others in the area. The applicant could situate the garage on the opposite side of the property as there is more room. Under Criteria 1 & 2 – The setbacks required are what is necessary to protect the integrity of the neighborhood. The cumulative impact contributes to over development and decreased property values. Justice is not served by granting this variance. Based on the chart provided other lots could have the ability to obtain variances as well. Rob Houseman sent an email in September 2016 and noted this proposal violated the 20' setback. The applicant should have known their actions were not proper and have self-inflicted this hardship. Property values would be affected and privacy would be lost by the Ager's. Their bedroom windows face this lot and they would be looking at a garage that is not within the required setback. Privacy, overcrowding and over development and to some degree obstruction of view, as well as diminution of property value are concerns of the Ager's. The addition of the garage would create overdevelopment and there is not a need for this Variance as a garage structure can be built near the opposite boundary line and not violate the setback.

The Board noted the non-conformity is 6.5' and questioned where the significant loss of privacy is.

Attorney Ceaser stated that 6.5' is significant.

Rebuttal:

Attorney Bolt addressed the email from Rob Houseman noted by Attorney Ceaser plus an additional email from John Krebs on 9/30/2016. The complete set of emails indicates the applicants did go through the approval process. The chart submitted by Attorney Ceaser did not include all the surrounding lots. The issue is to consider this lot and its features and locations of existing structures. Each variance stands on its own merit. The photos show the windows in the Ager's dwelling however this was a lakefront property and most of the time the windows one would be looking through would be towards the lake. Additionally, the location of the septic system is a factor in the proposed location of the garage. The ability to obtain the DES permit is a condition and feature. If the applicant has one less foot of shore frontage they would only be required to have a 5' setback.

Attorney Ceaser rebutted she did not include Lot 11 in the chart as she was using it to show similar properties.

There being no further comments, the public hearing was closed.

Matt Sullivan submitted for the record communications with Suzanne Ryan relative this application and Chairman Tedeschi asked for the Board to review communications submitted. The Board deliberated on the application and the criteria required for a variance.

1. The variance will not be contrary to the public interest

Suzanne Ryan and Sarah Silk felt this criterion was not met. Mike Hodder, Tim Cronin and Fred Tedeschi felt this criterion was met.

2. The spirit of the ordinance is observed:

Mike Hodder, Tim Cronin and Fred Tedeschi felt this criterion was met. Suzanne Ryan and Sarah Silk felt this criterion was not met.

3. Substantial Justice is done:

The Board felt this criterion was met.

4. The value of surrounding properties not be diminished:

Suzanne Ryan felt this criterion was not met. The remainder of the Board felt this criterion was met.

5. *Special conditions exist such that literal enforcement of the ordinance results in an unnecessary hardship as no fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the proposed use.*

The Board felt this criterion was met.

It was moved by Suzanne Ryan to approve the variance for Case # 5-V-17, TM# 199-7, the Palmason's for the setback encroachment for a 24' x 36' as built three car garage with a non-enclosed breezeway with conditions 1-5 cited by reference in the Planner's Review.

Mike Hodder seconded the motion.

Mike Hodder made an amendment to the motion that the applicant shall emulate the runoff from the garage roof by the rain gardens or similar structure.

This amendment was discussed.

Matt Sullivan noted the storm water regulations will take care of the concerns. Drip edges and infiltration trenches around the perimeter of the structure are shown on the plan.

Mike Hodder withdrew his amendment.

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

Consideration of Minutes:

3 April 2017

The Board deferred the Consideration of Minutes to the next meeting.

Board Elections

Chairman

It was moved by Sarah Silk and seconded by Mike Hodder that Fred Tedeschi serve as Chairman. All members voted in favor. The motion carried.

Vice-Chairman

It was moved by Fred Tedeschi and seconded by Hank Why that Mike Hodder continue as Vice-Chairman. All members voted in favor. The motion carried.

Clerk

The election of Clerk was tabled to the next meeting.

Other Business:

May ZBA Meeting

No applications have been received for the May ZBA Meeting and there is not a need for a meeting.

Case Updates:

Cantwell Case – The Attorney is working on filing a response and there is a motion to fast track the case and an objection to that has been made by Mr. Cantwell.

FIT Case – There has been a request for reconsideration on the Appeal Decision.

Sal's Automotive, Center Street Location – Sarah Silk had asked Matt Sullivan to address the Soda Machine outside and during the application process the applicant stated there would be no changes to the exterior.

Matt Sullivan responded there are issues on site such as a propane tank on the site are being addressed however he would not consider the soda machine and exterior change.

The soda machine issue was discussed and Board members were informed if they would like to file a written complain, they may do so. The propane tank is a much larger issue that it being dealt with.

It was moved by Suzanne Ryan and seconded by Mike Hodder there being no further business, this meeting be adjourned at 8:51 pm. All members voted in favor. The motion carried.

Respectfully Submitted,



Robin Kingston
Administrative Assistant