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WOLFEBORO, N.H. TOWN CLERK

Wolfeboro Zoning Board of Adjustment

Regular Meeting

5 March 2018

Minutes

Members Present: Fred Tedeschi, Chairman, Mike Hodder, Vice Chairman, Susan Raser, Clerk, Sarah Silk, Member, Tim Cronin, Alternate and Suzanne Ryan, Alternate (arrived late).

Members Absent: Hank Why, Member and David Senecal, Alternate – Both Excused

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

Chairman Tedeschi called this meeting to order at 7:01 pm in the Great Hall at the Wolfeboro Town Hall. A quorum was present.

Tim Cronin was seated for all three hearings.

Appointments:

TM# 182-9

Case # 05-V-18

Applicant: Gary Grimes

Variance

Public Hearing for a Variance under Section 175-88.3 of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a 24' x 32' single-family dwelling. This property is located TM# 182-9, Governor Wentworth Highway.

Susan Raser read the abutter and public notification for the record. A site visit was held at approximately 4:15 pm prior to the meeting and a quorum was present. Site visit attendance and notes are in and part of the record in the file.

The applicant has requested a variance for all setbacks and lot coverage on an oddly shaped lot with frontage on Governor Wentworth Highway. The town generalized tax map indicates that the lot has approximately 125' of frontage on Route 109, a maximum depth of approximately 80', with a trapezoidal shape. The applicant has provided a hand drawn plan with a proposed house dimension of

25' x 35'. The applicant should clarify if this includes overhang measurement. The proposed structure is shown as 20' from the front property line, 10' less than the 30' required in the RR zone. It is just 8' from the side property line, where a 25' setback is required. The proposal appears to be compliant with the eastern side setback and rear setback of 25'.

It is unclear what the proposed lot coverage is. However, based on an approximately 6,100 sq. ft. lot and a driveway/house an impervious area of approximately 1,625 sq. ft. would exist. The proposed lot coverage is approximately 27% which is compliant with the zoning ordinance maximum of 40% for lots under 0.25 acres in size. The submitted drawing does not include a clear scale of drawing based on the measurements shown. Generally surveyed plans are required for construction of new single-family dwelling units with setback encroachments. Should the Board choose to approve this variance, a condition for an as-built certified plot plan may be required.

Gary Grimes addressed the Board and reviewed the application; five points required and plans as submitted.

The Board discussed the lot being an actual lot of record; the small size of the lot; the setback violations; if there is a required well setback from the property line and septic placement; the expired driveway permit and a requirement the permit would need to be renewed from the state; lack of a scaled drawing; requirement of an as-built if approved; buildable lots in general; and lot coverage

Matt Sullivan responded there is a subdivision plan from 1973 and the lot was intended for telecommunications. A subdivision plan was presented. Further it was explained there are many factors that go into determining if a lot is buildable, however in this case he sees no reason this lot would not be buildable.

Gary Grimes verified the requested 25' x 35' size includes overhangs.

Chairman Tedeschi opened the public hearing.

Alan Fredrickson, 50 Martin Hill Road also owns all the other lots in the existing subdivision and receives a tax bill for each lot. This lot was created for NE Telephone in the late 50's. When he purchased his property, he was told by his real estate agent this lot was not a buildable lot. Rob Houseman the previous town planner had stated it was not a buildable lot, as did their attorney. He made an offer on the property and never heard another word about it. He believes it was sold for \$1,500 and a house will not work on the property. He does not know if a septic will fit. Also, there is an existing culvert that freezes and creates a 5' sheet of ice at the end of the driveway. If the variance is granted the value of their lots would be affected. The drainage from Martin Hill Road is in question and he is opposed to variance being granted.

Robert Compton, 20 Martin Hill Road stated he is opposed to this lot being built on. It cannot meet the setback requirement and permitting process for an excavation permit; 178.8B.

Matt Sullivan responded that excavation permits do not apply to development of single family dwelling lots.

Ken Perry, Realtor who represented the Frederickson's stated he concurs with the previous statements. The original deed was created in September 1958. The abutting lots the Frederickson's own are more than 1 acre and the subject lot is much smaller. There is no way a septic system and well would fit on the lot and the next lots well would need to be 75' away. Ken Perry stated the plan does not specify the building use, but the plan is tied to the deed.

Matt Sullivan this is a request for setback relief and not lot coverage. Further it is recommended should this application be approved the requirement for an as-built survey.

Corey Rider explained the as-built survey would be required once the footings are poured.

Ken Perry also noted this lot was sold by Northern NE Telephone on 8.30.2013 to West River Road LLC and then sold 11.25.2015 to Mr. Grimes.

Gary Grimes responded this lot passed a perc test, there are no wetlands and he sees no reason a septic and well could not be located on it.

Matt Sullivan commented with appropriate relief and permits most lots can be buildable.

Chairman Tedeschi close the public hearing.

The Board discussed the application.

It was moved by Mike Hodder and seconded by Tim Cronin that the Board deny without prejudice TM# 182-9, Case # 05-V-18, Applicant: Gary Grimes due to the special conditions of the property and the abutters testimony. All members voted in favor and the motion passed.

TM# 251-11

Case # 06-V-18

Applicant: David & Gayle Slossberg

Variance

Agent: Randy Walker, Esq.

Susan Raser read the abutter and public notification for the record. A site visit was held at approximately 4:40 pm prior to the meeting and a quorum was present. Site visit attendance and notes are in and part of the record in the file.

Public Hearing for a Variance under Section 175-64 (A)4 of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a single deck to permit ingress and egress to main floor of home from the lakeside of the property while reducing impervious surface and converting non-encroaching part of existing main deck to interior living space. This property is located 45 Canopache Drive.

The applicant proposes the construction of a deck on an existing waterfront single family dwelling unit to allow for access to ingress and egress to the lake side of the house. This deck will replace and consolidate two existing decks. The existing structure includes 14 square feet of existing setback encroachment per the applicant's narrative letter. The proposed deck construction produces a 50' primary structure shoreland setback encroachment of 205 square feet with the maximum encroachment being 5.7' at the northern end and 2' at the southern end. Detailed proposed deck dimension are in section 1.b of the applicant's narrative letter. A shoreland plan has been provided for spatial reference but only includes proposed conditions for review. The project proposes a decrease in impervious surface coverage from 21% to 20.3%.

Randy Walked addressed the Board reviewed the application, plans and five criteria required for a variance. Letters from neighbors, in favor of the application were submitted from Adam Dow – 95 Canopache Road; Nancy Swaffield – 409 South Main Street and Canopache Road; and Donna Leavitt – 94 Canopache Road.

Randy Walker explained his clients purchased the property in 2017. In the building file there was an application for a garage in 1989 which shows a deck; a letter from 1999 letter to Mrs. Swift from Richard Hammer was also in the file noting the deck was inspected but no permit by the town had been issued and there was no further follow-up or enforcement action from the town. As part of this application the decks are being taken down and will have no impact whether they existed without permits.

Chairman Tedeschi opened the public hearing and no person spoke in favor or against the application. The public hearing was closed.

The Board reviewed the five criteria required for the variance.

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;

The Board agreed this project will not alter character of the neighborhood; not endanger the public welfare; is in accordance with the spirit of the ordinance; and consistent with the surrounding properties and will have no negative impact on the shorefront as this is the furthest home and deck away, in the neighborhood.

(3) Substantial justice is done;

The town gains nothing by strict enforcement of the ordinance and the applicant would lose.

(4) The values of surrounding properties are not diminished.

The Board agreed this project would be consistent with the surrounding properties and not negatively impact values and the abutters agree.

(5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(ii) The proposed use is a reasonable one.

The Board agreed special condition exist and the property is constrained by the septic placement and a seasonal stream in the area on the opposite side of the house. Placement of the deck makes common sense and is reasonable.

It was moved by Mile Hodder and seconded by Sarah Silk to approve TM# 251-11, Case # 06-V-18, Applicant: David & Gayle Slossberg for a Variance for a single deck on the lake side of the property with not more than a shoreland setback encroachment of 205 square feet with the maximum encroachment being 5.7' at the northern end and 2' at the southern end together with conditions 1-5 as detailed in the Planners Review dated March 1, 2018 and a 6th condition that an as-built certification for the deck be completed by a licensed land surveyor. All members voted in favor. The motion passed.

TM# 148-12

Case # 07-V-18

Applicant: Heidi vonGontz-Cogean

Variance

Susan Raser read the abutter and public notification for the record. A site visit was held at approximately 4:25 pm prior to the meeting and a quorum was present. Site visit notes and attendance are in and part of the record in the file.

Public Hearing for a Variance under Article VI, Section 175-44 of the Wolfeboro Planning & Zoning Ordinance to allow for an additional sign on the property for existing 1810 House Bed & Breakfast. This property is located 458 Center Street.

The applicant has requested a variance for the number of signs on this property: two signs are allowed on a property, with one permitted per business. The posted and proposed 2018 zoning amendments allow for the maximum allowed size for freestanding signs in the GR zoning district at 1 square foot. Therefore, the variance is needed for the dimension of the sign. A 6 square foot sign is proposed directly next to an existing sign. The applicant should clarify if the existing sign is 6 square feet in size and whether this variance request is for the addition of the Winery signage only.

Matt Sullivan explained in the GR district, one sign is permitted per business. The variance is for the dimension being proposed and the additional sign size is for 36 sq. ft.

Heidi vonGontz-Cogean reviewed the application as submitted and noted she would prefer one 36 sq. ft. sign advertising all three businesses; The Antiques Business, the 1810 Bed and Breakfast and the Winery as one free standing sign on posts.

The Board had several questions as to the actual number of businesses on the property, the number of signs, sizes, free standing, and the word “Antiques” painted on the barn.

Matt Sullivan noted the word “Antiques” on the side of the barn would not be taken into consideration as a sign for that business.

The Board discussed the applicant requesting a withdrawal and resubmitting a Variance application encompassing all three signs and additionally noted the application should address how the sign will be lit.

Heidi vonGontz-Coegan stated she is withdrawing the application without prejudice.

Consideration of Minutes:

October 2, 2018

Corrections:

Change Header date to 10.2.2017

Change all references of Time to **Tim**.

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Members Absent: ~~Sarah Silk, Alternate~~ Suzanne Ryan, Alternate (excused)

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Sarah Silk asked how many commercial units will remain **on the 1st floor** if the 2nd floor is converted to residential units and what type of rental units will they be; daily, monthly, yearly?

Jim Rines noted it does reduce the commercial space in the area but if the demand for commercial space is not there hence the reason ~~the reason~~ for the conversion and one of the criteria of the CBD is to create mixes on the property so they are advancing the purpose.

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Time Cronin asked of the 5 required parking spaces would be marked as designated spaces.

Jim Rines responded that two residential units are allowed and the applicant is requesting three. Presumably you are reducing **the need for parking as** the renters are working and out during the day so the parking spaces are available and most of the businesses are 9-5.

Matt Sullivan responded that in his opinion there is no requirement for on-site parking being required for either commercial or residential. The reason he is recommending designated on-site parking is specifically to remove the vehicles from ~~main street~~ Main Street during the winter.

Douglas Phillips, :President of the Wolfeboro Bay Manor Association and they are a model for the same scenario as the applicant. Each of the 8 residential units are owner occupied and each has an assigned parking space. Parking is an issue behind Main Street however in the winter the population is reduced and hence the parking need is reduced. There was no single objection from any of the unit owners in the condominium association for the applicant's request. Designated parking should be required for on-site and the call. As for the Wolfeboro Market Place is deeded parking space and this has little to do with designated for the store. The Board of the Wolfeboro Bay Manor asks that strong consideration be given to a minimum of 4 spaces designated and one swing space to be dedicated within a reasonable distance of their door.

It was moved by Mike Hodder and seconded by Sarah Silk to approve the minutes of October 2, 2017 as amended. All members voted in favor. The motion passed.

November 6, 2017

Change all references of Time to **Tim**.

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(1) The values of surrounding properties are not diminished;
The Board agreed this criterion has been met. There has been no information this will diminish property values. ~~There has been no evidence presented to~~

The Board agreed this criterion has been met. As currently built the front porch is unsafe and cannot be ~~replaced~~ expanded given the current setbacks. As it is already in violation, the use is in place and reasonable. When the dwelling was built this was not a violation of a setback.

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Robin Wyman stated the 25% expansion is based on the square footage of the 5 cabins only. The rec hall square footage was not calculated nor was the residence on the property. There is a possibility the residence may be expanded in the future and the Wyman's do not want the ~~residence residents~~ residents to be affected by any expansion of the cabins. The deck is 12.5' x 3.5' (33 sq. ft.) ~~deck~~ and the bedroom expansion is 12.5' x 13.5' (169 sq. ft.) The camp currently sleeps two persons and with the bedroom expansion will sleep four persons. There will be a separate exterior entrance to the addition. Plans of the cabin expansion ~~was~~ were given to the Board for review.

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The Board discussed bringing the structure forward to be flush with the garage. Attorney Marbury explained that it is not possible due to constraints of the lot with the ledge and need for storm drainage and as he understood it septic, however he believes this dwelling will be on town sewer.

It was moved by Suzanne Ryan and seconded by Tim Cronin to approve the minutes of November 6, 2017 as amended. All members voted in favor. The motion passed.

8 January 2018

Change all references of Time to **Tim**.

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Add: **Members Absent: Mike Hodder, Vice Chairman, Hank Why and Sarah Silk, Members (All Excused)**

Tim Cronin, **David Senecal and Suzanne Ryan** ~~were~~ was seated for the hearing.

Public Hearing for an Appeal of Administrative Decision of an October 18, 2017 Board of Selectmen Decision to grant authorization of a Building Permit for property owned by Michael A. Simmons which

fronts on a Class VI portion of Stoneham Road. This property is located at TM# 104-11. ~~A site visit will be held at approximately 3:50 pm prior to the meeting.~~

Susan Raser read the abutter and public notification for the record. A site visit was held at approximately 3:30 prior to the meeting attended by Susan Raser and Time Cronin. **There was not a quorum present.**

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Tim Cronin, Dave Senecal and Suzanne Ryan, **Alternates** were seated for the hearing.

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Fred Tedeschi ~~clarified~~ asked Tom McCullough does not object to a house but the proposed is too large. Mr. McCullough agreed.

~~Claire~~ Clare Bjorkman, 37 King Street stated she feels a complete survey should be done on the property and the size of the home proposed is too large.

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It was moved by Suzanne Ryan to deny the application for Case 02-V-18, TM 203-032, Randy Willette due to the fact they do not have a survey and the drawings provided were not done by NH Licensed Surveyor and lack a surveyor's stamp and additionally the square footage is in question. Susan Raser ~~2nd~~ **seconded** the motion. All members voted in favor. The motion passed.

It was moved by Susan Raser and seconded by Tim Cronin to approve the minutes of January 8, 2018 as amended. Fred Tedeschi, Susan Raser, Tim Cronin and Suzanne Ryan voted in favor. Mike Hodder abstained. The motion passed

February 5, 2018

Page 1

Public Hearing for an Appeal of Administrative Decision of an October 18, 2017 Board of Selectmen Decision to grant authorization of a Building Permit for property owned by Michael A. Simmons which fronts on a Class VI portion of Stoneham Road. This property is located at TM# 104-11. ~~A site visit was held at approximately 4:00 pm prior to the meeting.~~ **A site visit was held at approximately 4:00 pm prior to the meeting and a quorum was present. Site visit notes and attendance are in and part of the record in the file.**

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Attorney ~~Morgan Spector~~ **Spector Morgan** stated RSA 91 has no provisions to disallow attendance regarding attendance by teleconference due to a presentation to be given and not viewed by the attendee. Further the Board was not apprised of this prior to the hearing, and had the Board been noticed previously the attendee could have possibly viewed the presentation.

Fred Tedeschi noted the TM#s ~~103-~~ **104-10** & 104-9 are not the lots for this Appeal. The subject property is TM# 104-11 with no frontage off Stoddard Road. Additionally, the trees displayed are in the Town of Wolfeboro's Right of Way.

Attorney Hyde representing Mr. Simmons addressed the Board in rebuttal. The statement that Superior Court had ordered Mr. Green to file the appeal is untrue. The Case is stayed, and Mr. Green needs to exhaust his remedies. This is ~~his~~ **Mr. Simmon's** second approval of the Building Permit approved by the Board of Selectmen. MR. Green has filed multiple appeals of multiple bodies.

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an impact on Mr. Green. **(Remove extra space)** There is nothing the Board of Selectmen did that they should **not** have done nor did they fail to do something they should not have. Many of the arguments raised by Attorney Nix are not applicable. Mr. Simmons does not have to show a hardship. There is no easement across the other lots. If the Simmons issued an easement across the other lots, then they would have to come before the ZBA under RSA 674:41. Tree cutting is nothing the Board needs to deal with. Future purchasers will know what they are buying. The town plow can still turn around in Mr. Green's driveway as it does now. This is not a dead-end road, it is a public scenic Class VI Road. The road to the Simmon's driveway will be improved ~~at his~~ **Mr. Simmon's** expense which **the road** has existed since the 1800's. Utilities will be underground and changing the grade of the road will not change the alignment. If a stonewall is damaged it is required to be repaired. Gates and bars is not permitted across ~~another~~ **another's** side of the road.

Fred Tedeschi read 674:41:II and noted it seems supports Mr. Simmons view.

Jim Rines addressed the Board and responded to the critique of the design plans. The lot has always had only frontage on a Class VI Road and it makes no difference who owns the lots. Mr. Simmons is looking to construct a 1600 – 1800 sq. ft. 2-bedroom home. The Road is 750' and stationing starts at 1+0 and ends at 7+50. Forest Road is a dead-end Road and is 5,050' and there are many lots both developed and undeveloped. Pleasant Valley Road is 15,750' with 329 developed lots and 65 undeveloped.

Sandy Knoll Road in Tuftonboro that was referred to in the presentation is ~~called~~ named so **by name** for a reason. Copies of the NRCS Soil Types were submitted and reviewed. There area they are working are 95% stable soils and Sandy Knoll is approximately 95% unstable. No test borings have been done on the property by either White Mountain Survey or Mr. Selling and therefore the Carroll County Soils Maps are relied upon for data. The limits of impact. The road is not going to be 2' higher only 100' and 650' has less than 2'. The overlay of cross section should not be relied upon. The area of impact is a result of computer generated model. The trees are growing in a compacted system, this is a road and people drive down it. Any trees they have determined may be impacted have been flagged. Further Mr. Rines explained his experience and local design projects which have no drainage issues and finds the aspersions casted offensive.

Attorney Nix objected to Attorney Hyde's late objection to the issues regarding jurisdiction. RSA 674:41, It was reviewed. The transfer of lots and chronical events should be focused on. There were easements that could have been granted to allow for access to this lot. The Sandy Knoll Road issue is being litigated right now. Thomas Selling, PE took topography from the plan and **that** is standard operating procedures. **Attorney Nix stated** it is clear the drainage analysis is inadequate.

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Shirley Tuten, Stoneham Road stated her concerns are the neighbors were not notified of permits or applications. This is not a drivable road and there will be an impact on the trees. There is concern ~~blasting with~~ the bedrock and underground utilities.

Pamela McKittrick, 515 Stoneham Road stated she is opposed because it will alter and destroy the character of the neighborhood. If allowed this will set a precedence and the ZBA ~~show~~ **should** not allow the application.

Kevin Green, 603 Stoneham Road stated this is a scenic road and the ZBA cannot allow it to be destroyed. Further Mr. Green read letters in opposition from: ~~Pamela McKittrick, 515 Stoneham Road;~~ Jonathan Hopewell, 70 Jenness Farm Road; Benjamin Green, non-owner and Ann & Jerry Calvert - *Copies on file.*

Suzanne Ryan, 592 Stoneham Road addressed the Board and **objected to the grant of the permit for Mr. Simmons.** She ~~A letter was read~~ read a letter with supporting documentation. – *Copies on file.*

Attorney Hyde responded and noted Wolfeboro has created a Class VI Road Policy that permits building a on Class VI. This policy came into effect after the 2007 Master Plan and was amended in 2017. Proper notices were sent out and the policy is legal.

Suzanne Ryan responded and stated there is a dead-end road sign where the pavement ends posted back in 1984 even though the road continues all the way through.

Chairman Tedeschi closed the Public Hearing at 9:46 pm.

Sarah Silk noted as there is a difference in signs by the state that state “Dead-End” and “End of Pavement”. Further in 2007 **when she was a member of the Board of Selectmen** it was not the Board of Selectmen’s intent to let Class VI Roads become rampant development, it was to allow for someone to access their lot a short distance, maybe 50’ to 100’ in not the length proposed. This is much longer than the ~~800’~~ **1,800’** allowed for a cul-de-sac.

Attorney Spector-Morgan advised the Board. The board should consider all the **criteria**.

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Attorney Spector Morgan responded there is a concept in the Variance about self- created hardship. There is no case law that hardship, under a Variance and RSA 674:41 are the same although they use the same wording. It is unknown if the Supreme Court would consider the “Hardship” the same. Assuming they did, this could be considered. The three separate lots although conveyed in one deed, the subject lot does not have and never had frontage on a **Class V Highway, Stoddard Road**.

Sarah Silk ~~referenced~~ **read** the Master Plan and noted it states there should be no development on a Class VI Road.

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Fred Tedeschi noted it is not unusual that a person purchases adjoining lots **that** are each legitimate building lots and the challenge comes in the future if the zoning changes. The only access to Lot # 11 is over a Class VI Road. Further if this is a beautiful scenic road and the town should have an obligation to ~~perform~~ **perform** some clearing to afford its citizens **access** who have a right to use the road.

Attorney Spector Morgan responded there is very little guidance she can offer as there is no case law. This is one house ~~being~~ **gaining** access off the Class VI Road and not like you are constructing a Walmart at the end of the road where you need advanced road work.

Fred Tedeschi, Hank Why, **Suzanne Ryan and Tim Cronin** ~~both noted they~~ agreed this criterion was met.

Sarah Silk stated she believes it is a direct conflict **with the Master Plan**.

Laura Spector-Morgan responded the municipal services will not have an obligation to respond. The house will be sprinkled, and the possibility may arise where an ambulance will need to get there, and they will try. It is her understanding that the level of which the road will be

upgraded will accommodate that type of traffic. The road will serve as a driveway and afford turn around access. If someone is ~~in~~ on the Class VI road and get injured, the Town is protected

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5 & 6: "if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality"

Sarah Silk referenced Winnepesaukee Estates and the issues they have with that development.

Attorney Spector Morgan responded the circumstances are different where that was a subdivision **in which the roads** were ~~that was~~ not constructed to town standards and should have been. Anyone future ~~purchaser~~ **purchasers** of the property will be on notice as the Waiver of Liability is a recorded document and if they do their due diligence they will know.

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Jim Rines addressed the Board, reviewed the application, plans and criteria required for the variance as submitted. The property has 48' of straight line water frontage on Lake Winnepesaukee and is 9785 sq. in size. There are a number of walkways, a concrete and a slate patio which will be removed. There will be a 7.4 % reduction of impervious surface. The existing deck is 157 sq. ft. and the new deck will be 246 sq. ft. The surrounding lot sizes are larger. ~~The existing garage will be converted into living space and the addition will become the new garage.~~

The existing garage will be converted into living space and the addition will become the new garage.

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Randy Fournier addressed the Board reviewed the application, plans and the required criteria for the variance as submitted. There is no further encroachment into the setback than what exists.

The existing garage will be converted into living space and the addition will become the new garage.

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

It was moved by Sarah Silk and seconded by Susan Raser to approve the minutes of February 5, 2018 as amended. Fred Tedeschi, Susan Raser, Tim Cronin and Suzanne Ryan voted in favor. Mike Hodder abstained. The motion passed.

Respectfully Submitted,

RK

Robin Kingston
Administrative Assistant