

**TOWN OF NORTHFIELD**  
**ZONING BOARD OF ADJUSTMENT**  
**April 23, 2012**

**MINUTES**

Present: Keith Murray, Dave Liberatore, Phil Cain, Brian Brown, Kent Finemore, Polly Fife and Steve Bluhm. Also present: Gerald Coogan, LRPC.

**Minutes:** Dave Liberatore moved, seconded by Polly Fife to accept the minutes of September 26, 2011 as read. Motion passed.

**Paul Lavallee: Application for a Special Exception to allow a Group Home at 23 Elm Street, (Tax Map U7 Lot 79) in the R2 zone.** After discussion relative to the definition of a Residential Home Care facility versus a Group Home, the prior and proposed use of the building as a Day Care and whether a Special Exception or a Variance is needed, Keith Murray moved, seconded by Dave Liberatore to accept the application as complete. Motion passed.

Amy ....., Atty representing the applicant presented a letter to the board to describe the federal laws that apply to this type of property. The Federal Fair Housing laws require that municipalities bend their rules to accommodate people with disabilities which includes those with substance abuse. The group will function as a single family which is allowed in the residential zone.

Paul Lavallee explained that the application is to allow a place for women who have completed a recovery unit at a facility such at the Webster Place. It would allow them to have a safe place to go that will provide support for continuing recovery from alcohol or substance abuse before returning to their families. Mr. Lavallee is involved with the Webster Place recovery facility and he is looking to create a place where women who have completed that recovery unit can go for a period of time and receive support from a group home. The house will have rules relative to safety and sobriety, no alcohol and drugs allowed. This will not be separate apartments but all living together as a family. It will be supervised, but the women will live together and maintain the home while they are working elsewhere. They are subject to random drug testing. They are living together for peer support until they feel strong enough to leave. The point is to give women more time to recover from their substance abuse before returning to their former lives. This will be for women only 18 years and up. No children will be allowed. There will be no medical supervision provided and no products with alcohol.

Wendy Lavallee stated that in New Hampshire, if a women wants to be in this type of support home they would have to go in another state far away from their family. This would be the first “sober house” for women in the state of NH. Tammy Graham added that this is an opportunity for women to come out of their recovery unit and continue their recovery before returning to family where the problems began. The women will be

screened before acceptance in the home and must want to be at the home for continued support.

Polly Fife asked about accommodations in the home. Paul Lavalley replied that the Fire Department has reviewed the home and gave approval for 16 beds, but they plan to start out with 4 or 5 residents. There are 2 kitchens and 4 bathrooms with one more bathroom planned.

Polly Fife asked what accommodations will be made for disability needs. The house is not set up for physical disabilities, but will function well for substance abuse disability. There are no plans for any changes to the building or parking lot. The only renovations needed are updating the sprinkler system and firebox and adding a shower. Board members questioned whether the improvements would allow the home to become a duplex. The applicant is willing to include a contingent that the home will not become a duplex.

Kent Finemore asked about the Federal Fair Housing law and the requirement to “bend the laws”. It states that reasonable accommodations need to be made by the town in their rules. Gerald Coogan advised that the applicant should still go through the application process, but the town should make reasonable accommodations to allow for disabilities while ensuring safety, etc. Kent Finemore asked the applicant if their position is that this is a single family home. The response is that they want to work with the town and if a Special exception is needed then that is what they will do.

Public hearing: Rosemary Brown pointed out that this building is close to the school and traffic will be an issue as it was when the Day Care was there. Public hearing closed.

Steve Bluhm questioned whether this is for a Special Exception or a variance. Dave Liberatore pointed out that the Day Care would have more traffic because of dropping off children and picking them up daily. There will be traffic because the women will be going and coming to work. Keith Murray commented that having this facility near the school is not a concern because there will be no alcohol or drugs allowed and we shouldn't be discriminating the residents based upon their disability. Kent Finemore noted that the Planning Board has the ability to comment on this application, but nothing has been submitted. He suggested that the ZBA should seek advice from the Town's attorney relative to the application, the Federal Fair Housing laws and any conditions of approval that should be included. Polly added that we need to clarify the single family versus a residential home care facility and whether this is a variance or special exception. She added that approving a residential home care facility could open up a future use that we are not considering right now.

Members discussed at length the need for advice from the Attorney while not extending the application for too long. Gerald Coogan spoke with Town Counsel about the application and he did not have any strong reservations or concerns.

Paul Lavallee explained that he had talked with the Laconia Planning about a similar plan and their attorney advised them that there would be no zoning applications needed. He called it a single family residence and nothing more. He has submitted this information as an exchange of emails to the town. Kent Finemore will ask the attorney to review that information which may simplify the issue. Steve Bluhm had a problem calling it a single family home because in fact it is a business. Dana Dickson asked if the Board can continue the meeting but change it to a variance if that is what the attorney advises.

Dave Liberatore moved, seconded by Keith Murraray to continue the application to May 30, 2012 and forward the application and minutes to the town's attorney for review. Motion passed.

Kent Finemore suggested that the Planning Board can make an approval conditioned upon the ZBA approval. Mrs. Lavallee asked if the attorney agrees with the Laconia attorney would they be able to go ahead without needing a variance or special exception. Attorney asked that the information from town's attorney be forwarded to the applicant before the next meeting if appropriate. Kent Finemore responded that he expects that the Attorney would suggest conditions of approval. Paul Lavallee asked if they can purchase the house and move in 5 people based upon the town's definition of a family. Kent Finemore recommends that he speak with the Code Enforcement officer relative to this question.

**Daniel D. Durgin: Application for a variance from Article 7 Table 2 of the Northfield Zoning Ordinance to allow construction of a 32'x30' garage and single family home on a lot that does not have the required road frontage on Ledge Road (Tax Map R6 Lot 15B-1) in the R1 zone.** Gerald Coogan reported that the application is complete. Dana Dickson stated that the issue here is for obtaining a building permit on the lot because the road has been discontinued. There is a structure on the lot currently. Dave Liberatore questioned whether the application is complete without a sketch of the proposed building, whether there are going to be 2 residences on the lot, etc. The instructions clearly require a sketch with measurements, etc. Kent Finemore replied that the application is really for allowing a building on a lot that does not have frontage on a Class V road. Polly Fife asked why the application is for a garage at this time and a home in the future. Dave Liberatore tried to visit the property but could not find it. Gerald Coogan pointed out that this is a complicated issue because of the discontinued road that was discontinued in 1941 and you have a municipal estoppel and other issues. He suggested that it would be important to visit the site. Even though the application may not be complete, he suggested that the Board continue the discussion while the Board is in session. Kent Finemore replied that we really can't discuss the application until it is accepted as complete but he agreed to ask Dan about the property. The sketch usually gives a representation of the setbacks and location of building. Brian Brown asked if we are getting into an easement situation because the road has been discontinued.

Dana Dickson explained that the lot has been surveyed which determined that the lot does not have road frontage. Ledge Road is town maintained to a point before his property,

but there are two existing residences beyond the maintained road. There was a sign saying the road was Class VI until last month when it was removed by the Selectmen. Mr. Wilson explained because the road is discontinued the existing road is now a private road to his house and the School Bus will not pick up children at his house. The subdivision that occurred on the south side of the Ledge Road was after the road was discontinued, but was considered as Class VI on the plan. Gerald Coogan commented that this has been a problem because the town ignored its own regulations over the years.

Dan Durgin stated that he did submit a drawing of the lot with his application. Polly Fife asked that the Board accept the application in order to continue the discussion as there are so many town issues. Keith Murray moved, seconded by Dave Liberatore to accept the application as complete. Motion passed.

Kent Finemore asked Dan to show where the existing building is. It is about in the center of the lot. He does not intend for the garage to be a residence, but plans to build a home in the future. He has requested an easement from the neighbor in order to get electricity to the property, but has not been able to gain one. Kent Finemore clarified that the application is for a garage and a single family home, not two residences. Gerald Coogan asked for clarification on whether there would need to be a variance for a residence in the future. Dana Dickson explained that this is really only for the access and that if he gets a variance to obtain a building permit on the lot which does not have frontage he would not need an additional variance to build a residence. Keith Murray reviewed the history of the lot, that it had frontage until 1941 when the road was discontinued, but the town has approved buildings and subdivisions since 1941 thinking that it was a Class VI road. Does that set a precedent? In 1977 the town approved a subdivision on this section of the road thinking that this road was Class VI. Dan Durgin added that the Town Meeting voted to discontinue the road but they were required to notify abutters, etc. and there is no evidence that notification was sent. Gerald Coogan commented that road issues are very complicated and this has been reviewed by the Town's Attorney. He recommended that the Board visit the site. Members discussed whether a site visit would be necessary and what it would solve.

Public hearing: Walter Wilson, abutter, asked that the Board make a site visit and note the water issues. In the past the Board of Selectmen and Road Agent gave him permission to put gravel on the road. He has maintained the road for 24 years. Mr. Durgin currently has his tree removal business there. In 2002 Mr. Wilson petitioned the town to upgrade the road to Class V in order to have his child picked up by the school bus, but was denied. Dana Dickson stated that in the past when it is a private driveway the town has allowed building permits with letters of release of town's responsibility in the past. Now the town requires upgrading the road to Class V standards. He recommends the site visit. He does not know who owns the road at this point.

Kent Finemore would like to speak with Scott McGuffin who has reviewed this situation and also consult the Board's Attorney Matthew Serge. Members reviewed the tax map to clarify the lots and where the road was discontinued. Glenn Smith submitted a report from Dave Krause relative to the survey and the road. Dan Durgin does not understand

how the town can just stop the road and he referred to regulations regarding discontinuing a road that were not completed. Kent Finemore asked what rights other landowners have to access their properties. Dan Durgin believes he has access rights to his lot as he has 500 feet of frontage on Ledge Road. He can't find any easements for any properties in this area. He quoted the book "Hard Road to Travel" (page 67) which states that a street shown on a subdivision plan gives access including the right to maintain the road. Kent Finemore asked Walter Wilson what he has understood his rights to access to be. He thought it was a Class VI road when he bought it. The discontinued issue came up when Dan's property was surveyed. He suggested that it be considered as a Class VI road but he would like to see it accepted by the town. Dan Durgin presented a letter from Dave Krause relative to the historical access was from Ledge Road. Public hearing closed.

Kent Finemore would like to conduct a site walk and speak with Scott McGuffin who has reviewed this issue at length. He does not think the site walk will answer any questions relative to access to the lot. Dave Liberatore thinks this issue needs to be resolved by the Board of Selectmen once and for all. Polly Fife asked if the Selectmen are going to look at this and wondered if the Board of Adjustment really has the ability to make this decision. Kent Finemore commented that whether or not the town decides whether to maintain the road, the question is who owns the road and if it is private then the abutters need to work out how it is to be used. Brian Brown agreed that we need more research about liabilities and who owns the road. Gerald Coogan added that he spoke with Scott McGuffin who is of the opinion that because of all the actions made by the town, the Board should grant the variance to allow a building permit and if they do so, the town should take steps to formalize the easement over the road, get it reclassified as Class VI and have the landowners to sign releases of liability.

Kent Finemore reminded the Board that it has a responsibility to enforce the Zoning Ordinance and protect the town from poorly researched decisions. This is a situation where the town can be drawn into a dispute among abutters. The road situation needs to be clarified before we can make a decision. Polly Fife would like more back up behind a decision because it is such a complicated situation, and we need legal advice and support for any decision.

Public hearing re-opened: Steve Bluhm spoke as a Selectmen explaining the history. The road was discontinued in 1941 by the town meeting and the Selectmen do not have the authority to change that. However, there have been two subdivisions that occurred on that portion of the road that were approved after 1941. The town does not hire surveyors to check the work of surveyors for subdivision. Gerald Coogan explained "municipal estoppel as "you can't change what you have been doing, if the town has been ignoring the town's regulations, you can't start enforcing them now". The problem is, the town does not own that property as it was reverted to the abutters when the road was closed. Dana Dickson commented that Scott McGuffin has studied this at length, but the issue is who owns the road. He says that when a road is discontinued the land reverts back to the abutters. Dan Durgin asked if Mr. Wilson has received a variance for his building. He did not, therefore Dan thinks he should have a building permit. Glenn Smith stated that Scott McGuffin has worked with the Selectmen since 2007 to clear up ownership of this

road. Dan Durgin added that there is a law stated that town's needed a court order in order to discontinue a road and could not be done only by town meeting. He believes that the town did not comply with the law when it discontinued the road. Scott McGuffin believes that the town followed the correct procedures for discontinuing a road. Steve Bluhm stated that the Selectmen have taken this situation seriously. Walter Wilson expressed concern about Dan Durgin's tree removal business being on the property. Public hearing closed.

Dave Liberatore suggested holding a site visit and request an opinion from Matt Serge. Brian Brown asked if we are considering the use of the land or the access to the land. Kent Finemore stated its clear that there is not frontage on a Class V road, but it is muddied by the presence of residences on this portion of the road and does not want to push the town into a liability over a private issue. Polly Fife thinks it is time to clarify the confusion and a site walk is necessary along with back up from the attorney. Dave Liberatore moved, seconded by Keith Murray to have a site walk on the Ledge Road property at 6 PM on May 1, 2012 and to continue the application to May 30, 2012 and to forward the application and minutes to Atty. Matt Serge. Motion passed.

**Other:** Keith Murray made a presentation relative to the new and improved Northfield Economic Development Committee.

Meeting adjourned at 10:00 pm.

Respectfully submitted,

Eliza Conde, Secretary

*Minutes approved 05-30-2012*