

**Town of Wolfeboro
Zoning Board of Adjustment
September 20, 2021
MINUTES**

Members Present: Luke Freudenberg, Vice-Chairman and BOS Representative, Tim Cronin, Clerk, Sarah Silk, Member, Dave Senecal, Alternate.

Members Absent: Audrey Cline, Chairman, Suzanne Ryan, Member.

Staff Present: Tavis Austin, Director of Planning & Development.

I. Call to Order

Luke Freudenberg called the meeting to order at the Great Hall at 7:00 PM. A quorum was present.

II. Unfinished Business

None.

III. New Business

a. Taylor Homes

Tax Map #203-47

case #16-V-21, Variance from Article 175, Section 105 B

Formal Submission/Public Hearing

Tim Cronin read the application into the record; Taylor Homes, Taylor Drive, Tax Map #203-47, Case #16-V-21, public hearing for a variance from Article 175, Section 105 B from the Wolfeboro Planning and Zoning Ordinance to allow for a variance for the allowed maximum height in the zone. He stated formal submission has been placed with the Town.

He noted a site visit took place today and members present at said meeting are as follows; Luke Freudenberg, Tim Cronin, Sarah Silk, Dave Senecal, Tavis Austin and Steve Paquin.

Sarah Silk requested Dave Senecal to step down from the application; noting Mr. Senecal has a close relative that is an abutter. She stated one of the reasons the applicant is requesting approval is for enhanced value in the neighborhood. She expressed concern for a perceived conflict of interest whether there is a conflict or not.

Dave Senecal stated he is recusing himself because one of the abutters is his sister and brother-in-law even though he feels he could be objective.

Luke Freudenberg asked the applicant if they would like to move forward with only a Board of three voting members or continue until a seating of all five members of the Board.

Kirk Beswick, Director of Facilities, Taylor Homes Inc., declined the option to continue the application. He stated Taylor Homes is requesting a variance from the 35' height restriction of the ordinance for a building proposed to be located on its Back Bay campus that would

provide assisted living, memory care and nursing care. He stated the building is an extension of care from what is currently being provided to residents; noting the proposal includes a three-story building with segregated floors based on the level of care provided on each floor. He stated the building would be environmentally attractive that exhibit the same architectural design as the other buildings and include exterior gardens. He noted preliminary work has been performed which includes borings that note the site is suitable for construction. He stated the property is residential in nature and is in keeping with the Town's Master Plan. He reviewed a letter prepared by Taylor Homes, dated August 30, 2021, which addresses the five criteria of the request of a variance (see attached).

Tim Cronin questioned the number of residents in the new building.

Kirk Beswick replied 61 beds.

Sarah Silk questioned the average cost of care for the 61 beds.

Michael Flaherty, President, Taylor Homes Inc., stated the fees include an entrance fee is purchased that amortizes over several years then an additional fee for service is paid depending upon the level of care provided. He stated on average the cost per unit for independent living is \$1,200-\$1,500 and the cost for assisted living (an apartment) is \$6,000-\$8,000/month (depending upon the size of the apartment and type of services provided). He stated memory care is slightly higher than assisted living and nursing care is \$10,000/month. He stated that residency is continued if a person outlives their financial resources; noting the organization provides \$1.7 million/year on charitable care.

Tim Cronin questioned the number of jobs the proposal would create.

Michael Flaherty stated such is hard to determine and noted the facility in its current size employs 230-240 employees.

Sarah Silk confirmed the site is currently approved for eight units.

Kirk Beswick replied yes and noted the infrastructure (water, sewer and stormwater) are currently in place.

Sarah Silk questioned whether the hardship criteria has been met and stated she doesn't believe it has. She asked what is the hardship that is preventing the construction of those eight units that were granted.

Kirk Beswick stated the eight cottages were approved for independent living and not approved or designed for assisted living, memory care or nursing care which cannot be met through the eight approved cottages.

Sarah Silk stated there is no information provided from realtors regarding property values; noting such is a criteria required by the ZBA to review.

Vice-Chairman Freudenberg opened the public hearing.

David Booth, Trustee, Huggins Hospital stated the hospital supports and endorses the proposal. He stated memory care patients currently have to go out of Wolfeboro to receive care and noted that it would be a hardship if the program had to be abandoned or modified.

Tim Cronin asked if there is a waiting list for Ossipee's assisted living.

David Booth stated there is a waiting list everywhere and that the demand for residential services is immense.

Randy Walker stated he is in favor of the proposal. He stated Taylor Homes has been a great asset to the Town and provides needed services to the community. He stated the property is located in a commercial district, within 10' of the height requirement and the building will be below the tree line. He reviewed the commercial businesses along the same side of Bay Street that currently exist and stated the building would be unseen from the road as it sits on 30 acres. He stated he doesn't believe there is a diminution in property values and noted there are no abutters objecting to the proposal. He stated the proposal doesn't alter the essential character of the neighborhood and that due to the wetlands on the site Taylor Homes expanded upward. He stated the proposal is consistent with the ordinance and the Town's Master Plan which encourages this type of use. He requested approval of the application.

Member of the public (resident and trustee of Taylor Homes) stated Taylor Homes has worked diligently to move this plan forward and requested approval of the application.

Sarah Silk questioned the roof pitch.

Mark Moeller, JSA Architects, replied 12'. He stated the building is a three-story building with a walkout and noted the building height calculations are from the average existing grade (5' lower on average than what is seen on the front of the building) to the midpoint of the pitched roof. He stated the peak will still be below 35' and noted the intent was to keep as compact a footprint as possible. He reviewed the footprint of the building.

Luke Freudenberg addressed criteria #1-The variance will not be contrary to the public interest; stating he feels the proposal has been adequately outlined in the application and that it serves the public interest; noting health care is needed for the community. He stated Wolfeboro has the oldest population in NH (an average of 60.1 years of **age**). He stated the service proposed will be a benefit to both Taylor Homes and Wolfeboro.

Sarah Silk expressed concern with Mr. Freudenberg's statement and stated that in order to go to Sugar Hill, Taylor Homes or Riverwood a person has to have a certain level of income. She stated the proposal doesn't relieve the congestion for facilities such as Mountain View where the majority of people in Wolfeboro will go. She stated a variance is granted when something is not allowed. She stated it is a good idea to add additional healthcare however, to attribute the proposal to being beneficial to the general public is misleading; noting the proposal is for a specific section of the general public.

Tim Cronin stated both his parents live at Sugar Hill and are excited that Taylor Homes now owns the property and the ability that should someday they lose their mental faculty and

need memory care or assisted living that it will be in the same organization in the same town where their family is.

Sarah Silk stated that perhaps Mr. Cronin should have stepped down due to a perceived bias.

Tim Cronin stated it isn't necessary to step down. He addressed criteria #2 - The spirit and intent of the ordinance is observed; stating the building height and profile is shielded from abutters. He stated no one will be hindered by the project and feels that reasonable efforts were demonstrated by the applicant.

Tim Cronin addressed criteria #3 - Substantial justice is done; stating the applicant has exhibited reasonable effort. He stated if the 61 beds were reduced to 40 beds the project would not be economically feasible to run an operation.

Luke Freudenberg addressed criteria #4 - The values of surrounding properties are not diminished; stating there is an inability for other buildings to be constructed around the proposed building and the building will not be able to be seen because it is hidden within the Taylor Homes community itself. He stated the property is located in the commercial zone and even though there are no reviews by realtors he feels the proposal will enhance the area (\$20+ million investment in the Town of Wolfeboro).

Sarah Silk stated the Board has no realtor or expert testimony stating the proposal will or will not impact the surrounding properties.

Tim Cronin addressed criteria #5 - Literal enforcement of the zoning ordinance would result in an unnecessary hardship; stating such relates to the economics of running the operation as he previously stated. He stated there are pre-existing nonconformities on site that include wetlands and the configuration of the land mass that impact the project. He referenced the cost-benefit analysis and stated the building is not visible from the road.

Sarah Silk stated the commercial businesses in the area are one to two story buildings, with the exception of one 2.5 story building. He stated the existing businesses border wetlands and feels the cost benefit analysis is what made Taylor Homes realize that if they made the project smaller, they would get less money; noting such is not a criteria the Board should consider. She stated she doesn't believe the criteria has been met.

It was moved by Tim Cronin and seconded by Luke Freudenberg to approve Cose #16-V-21 for Taylor Homes having found the application materials and related discussion to demonstrate compliance with the five variance criteria has been met. Luke Freudenberg, Tim Cronin voted In favor. Sarah Silk opposed. The motion passed 12-1-0J.

- IV. Communications and Miscellaneous
- a. Submittal of Q & A's to Town Attorney
- None.

b. Member Discussion Items

None.

V. Approval of Minutes

June 23, 2021

July 19, 2021

August 2, 2021

Tavis Austin stated the Board previously tabled the approval of minutes because there was minimal member attendance at prior meetings to approve the minutes and opted to table the approval of such. He noted there is again minimal member attendance at this evening's meeting.

It was moved by Sarah Slik and seconded by Luke Freudenberg to table the approval of the June 23, 2021, July 19, 2021 and August 2, 2021 minutes. All members voted in favor. The motion passed.

VI. Adjournment

It was moved by Tim Cronin and seconded by Luke Freudenberg to adjourn the September 20, 2021 Zoning Board of Adjustment meeting. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting adjourned at 7:49 pm.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson



August 30, 2021

Wolfeboro Zoning Board
84 South Main Street
PO Box 629
Wolfeboro NH 03894

Variance request responses:

1. The New Hampshire Supreme Court has held that for a variance "to be contrary to the public interest and inconsistent with the spirit of the ordinance, its grant *must violate the ordinance's 'basic zoning objectives.'* *Mere conflict with the terms of the Ordinance is insufficient.*" Harborside Associates; 162 N.H. at 514 (quoting Chester Rod, 152 N.H. at 581} (emphasis added). . This variance will not be contrary to the public interest because Section 175-1 of the Ordinance provides that the "provisions of this chapter are intended to regulate the use of land for the ... general welfare of the residents of the Town of Wolfeboro" and "in order to implement the Master Plan" The construction and eventual use of this health care building will serve the needs of the residents of Wolfeboro and surrounding communities for decades to come, as desired and documented in the {draft } Wolfeboro Master plan¹ page 198. Additionally, Taylor's planned use for this building is allowed as a Special Exception in Wolfeboro zoning.² The public interest is served because the construction and variance requested by Taylor Community will increase the well-being and welfare of the community at large and advance the Master Plan.
2. "The requirement that the variance not be contrary to the public interest is related to the requirement that [it]...be consistent with the spirit of the Ordinance." Farrar v. City of Keene 158 N.H. 684, 691

¹ "Support the construction of Continuing Care Retirement Communities"

² <https://ecode360.com/10187720#10187734> 175-107 F



(2009). The specifics of the ordinance require height restrictions of either 30 or 35 maximum feet³ depending on roof pitch. The spirit of the ordinance is understood to restrict construction of unsightly or overly tall structure that would hinder abutting sight lines or views, and is satisfied in this application for the following reasons:

- a. Building height and profile are shielded from abutters by thickly forested areas
- b. No abutting views are hindered
- c. Reasonable efforts to reduce overall height have been taken

3. In Harbor side Associates the NH Supreme Court held that the inquiry for the substantial justice prong is whether the loss to the applicant is outweighed by the gain to the general public in denying the variance. 162 N.H. at 515. This variance satisfies the requirement of fairness through the following:

- a. Reasonable efforts to limit building height have been taken
- b. The planned building height is not unreasonable
- c. The building design is in keeping with the style of the existing senior community and the surrounding neighborhood
- d. The final building height is significantly lower than the surrounding forest, making the building almost invisible to neighboring parcels

4. The values of the surrounding properties will not be negatively impacted for the following reasons:

- a. The multi-million-dollar investment Taylor will make in this project will absolutely benefit the Town of Wolfeboro and surrounding properties
- b. This building will be constructed in existing senior community in the style of existing cottages

; <https://ecode360.com/10187710#10187726>; 175 - 105 B



- c. The building will enhance the existing value of the property as a senior community.
 - d. The increase in the Taylor property's value due to this project will increase the value of abutting properties
 - e. The building will provide needed health care opportunities for the community
5. "Unnecessary hardship" for a dimensional variance means that, owing to special conditions of the property that distinguish it from other properties in the area that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. NH RSA 674:33. Literal enforcement of the provisions of the ordinance would result in and unnecessary hardship because:
- a. Special Conditions of the property that distinguish it from others:
 - i. Bordered on the north, south and west by wetlands; one being a Prime wetland
 - ii. Buildable land mass is narrow at the onset and narrower to the east, restricting opportunity for development
 - iii. Cost/benefit analysis demonstrates that planned building size with the current number rooms is required
 - iv. Property is not visible (in large part) to abutters

Based on these special conditions of the Taylor property, including the limitations on buildable land mass, and that the proposed building would not be visible to abutters, no fair and substantial relationship exists between the height restrictions in the ordinance and the specific application of that provision to the property. In addition, the proposed use is a reasonable one for the existing senior community.