

Wolfeboro Zoning Board of Adjustment
August 2, 2021 7:00 PM
The Great Hall at Wolfeboro Town Hall
Meeting Minutes

Introduction:

Members Present/Roll call: Audrey Cline, Chairman; Luke Freudenburg, Vice Chairman ; Tim Cronin, Clerk; Sarah Silk, Member; Suzanne Ryan, Member; Dave Senecal, Alternate Member.

Members Excused: None

Staff Present: Tavis Austin, Director of Planning & Development; Mary Jane Shelton, Recording Assistant

I. Call to Order: The meeting was called to order at 7:00 pm.

Audrey Cline explained that there are no hearings scheduled and that tonight's meeting will be a work session for the Board.

Rules of Procedure:

Suzanne Ryan stated that in the past she had requested the Board review the Rules of Procedure, or By Laws, and would like to work with one or two other Board members on a subcommittee to update such. Audrey Cline agreed some changes need to be made and suggested that, rather than a subcommittee, each Board member review the Rules of Procedure individually and then present their feedback to the Board as a whole for a discussion. Sarah Silk felt a dedicated work session to the matter is warranted and recommended having Board members review the material in advance and come to that work session with concrete suggestions. Tim Cronin agreed with that approach. Tim Cronin then asked Suzanne Ryan to give a specific example of an area she feels needs addressing. Suzanne Ryan cited the site visits and costs of notifications as items that should be more clearly outlined. Luke Freudenburg agrees that a session dedicated to reviewing the procedures so that meetings are facilitated in a clear and efficient way for all involved. Audrey Cline further broke down the areas being addressed into three categories: (1) rules of procedure; (2) operating decisions the Board has made; and (3) instructions for applicant. Suzanne Ryan commented that the Rules of Procedure should state that the Application Process

is adopted therein. Tim Cronin supported Sarah Silk's suggestion that Board members should bring forth any item/areas that they feel need addressing. He further stated the Board needs to not only look at the application process requirements but also what the Board has to do in reviewing such. Tim added that the Board meetings have been drifting so far off base with a lot of the questions being asked of the applicants that have nothing to do with the subject application and cited a case from a prior meeting. Sarah Silk referenced flow charts from a prior year ZBA handbook. Audrey Cline stated that those flow charts are not updated nor complete. Sarah Silk inquired about steps not included on the flow chart -- i.e., who puts the ZBA packet together, sends the notification to the newspaper, etc. Audrey Cline informed that those information items are slated to be reviewed later in this meeting, and added that she agrees a separate work session should be scheduled for ZBA Rules of Procedure with individual Board members reviewing such prior to the work session and then bringing suggestions as to what revisions they propose. She also offered that there is information in some of the NH municipal books which gives recommendations for what should be included in the rules of procedure. Tim Cronin offered that in his 26 years of experience with zoning, the process should be that the Planning Department has the guidelines of what the applicant needs to put together and the Zoning Board of Adjustment's role is to review the application as presented. The applicant should present their case, go through their five criteria, and the ZBA either agrees or disagrees. Audrey Cline stated the ZBA's role is to ask questions to get information from the applicant and any one else that would like to speak. From that information, the Board members extract what information is relevant to the case being presented and make their decision based upon such. Audrey Cline compared the ZBA review to a court case wherein the applicant and their attorney are presenting only one side of the issue which is why the Board must ask questions. Audrey Cline agreed that recent cases were lengthy due to the complexities of each and the amount of testimony by both the applicant and the abutters. Tim Cronin gave an example of what he felt was irrelevant questioning regarding the sailing program during the NH Boat Museum hearing.

Both Sarah Silk and Audrey Cline commented that the type of number of hearings on the July ZBA agenda -- which in total involved two administrative appeals, two special exceptions, and two variances with one application for three different procedures-- was unusual. Tim Cronin commented that he did not feel it is necessary to read the applicable statute each time a case is presented and eliminating such could reduce the length of the hearing. Audrey Cline stated that she reads the statute because the Master Plan asks for education of the public on the ZBA process and feels reading the statute is necessary. Sarah Silk stated that she does feel there is a need for public education and suggested that Audrey Cline provide a definition of special exception, variance, etc. at the beginning of a meeting.

Suzanne Ryan stated that Dave Senecal offered to assist her with a draft Rules of Procedures.

Tim Cronin questioned if there is a cut off for how long a ZBA meeting runs. Audrey Cline stated there is nothing at present limiting the length of meetings, but that other towns have rules as to how to handle meetings which exceed a certain time limit. Sarah Silk made a couple of suggestions as to how to preemptively take measures to avoid lengthy meetings while still meeting the requirement that applications be heard within a certain amount of time after the application is submitted. Tim Cronin stated he feels it is the Board's responsibility to hear applications in a timely manner, and not delay the applicant's project, despite any inconvenience to the Board. Sarah Silk and Dave Senecal both commented that the effectiveness of the Board members evaluation process is diminished when hearings go beyond a certain time and that an alternative would be, in those instances, to continue the hearing by scheduling an additional ZBA meeting that same month. Dave Senecal further stated that if the volume of ZBA applications continues to increase, the Board should consider automatically scheduling two meetings per month.

Audrey Cline suggested rearranging the agenda and placing the New Business after the Public Hearings. Suzanne Ryan made a suggestion of a 9:00 pm cut off time wherein the Board can decide whether to continue or not. The majority of Board members felt that decision/procedure should be discussed under New Business and that the Board should proceed as scheduled for this meeting. The Board then discussed the process for continuation of a hearing, namely -- if the hearing is opened it can be continued without re-notification in the newspaper, however if the hearing is not opened and is rescheduled to another date it must be re-noticed in the newspaper. Tavis Austin stated that, going forward, it is his intention to contact the ZBA Chair and request a second monthly meeting if he foresees a controversial or lengthy hearing and then it can be noticed in the newspaper for that additional monthly meeting.

Audrey Cline stated that the Board should not rush their decisions, taking the time to hear input, and should continue a matter if that is deemed necessary.

Luke Freudenburg made a motion, and Sarah Silk seconded, that the ZBA not take on any new hearings after 10:00 pm. The vote was 3 in favor; 1 opposed; 1 abstaining.

Sarah Silk commented that she has a conflicting meeting on the second Monday of each month and would prefer supplemental meetings be scheduled for the third Monday. Tavis Austin stated the only potential conflict with the third Monday is the Budget Committee.

Suzanne Ryan commented that if ZBA puts a waiver in the Rules of Procedures, they can extend their meetings beyond the 10:00 pm deadline.

Site Visits Scheduling and Noticing:

Tavis Austin advised that, now he knows the Board's preference, he will schedule a Board site visit for each application it hears and include it with every notice hereafter. He asked the Board's preference on scheduling times. Sarah Silk advised that historically the visits start approximately at 6:00 pm with the furthest site being scheduled first, so that the Board will be able to reach the Town Hall by 6:45pm or so. That time would be adjusted based on the location and number of cases to be heard, and in the winter the process would be started around 4:00 pm accounting for daylight hours. Suzanne Ryan confirmed that site visits are advertised letting the engineers and abutters know, with the Clerk taking notes and attendance. Audrey Cline commented that individual site visits by Board members are allowed as long as three members are present together for Special Exception applications.

Sarah Silk requested that a Board member contact list be circulated so that members can notify if they are not able to attend a site visit. Special note was made that at least three members must be present at Special Exception site visits and Board members should notify the Planning Director and ZBA Chair if they are unable to make such site visits.

Packet Distribution Timeline:

Audrey Cline inquired as to what the earliest date the Board could receive the meeting packets in order to review the materials. Tavis Austin stated that he would see what he could do to accommodate the request. Sarah Silk stated that receiving packets the Friday prior to the meeting means that any questions a Board member may have could not be addressed until the day of the meeting. Suzanne Ryan stated that in the past Planning Department staff strived to receive packets by the Wednesday prior, or Thursday at the latest. Tavis Austin stated that the newspaper legal notification must be done 14 days prior to the meeting not including legal holidays. Suzanne Ryan stated her understanding is that the ZBA does not have to treat an application as the Planning Board does, in particular they do not have to accept an application as complete. The Planning Director and/or staff review the application and determine if it is adequate enough to forward it. Suzanne Ryan's understanding is that the Planning Director can not forward it, and asked for clarification of such. That the Planning Director can forward an application to the ZBA if it meets criteria on the checklist even if the Planning Director believes it is an application at "at risk" of denial. Tavis Austin inquired if the Board finds the Planner's

recommendations or the Planning Director's Review helpful to the Board. That Review is often the hold up. If the ZBA Board only wants the bare bones, Tavis stated he can scan in every application and make those available at an earlier date. He further stated that the Planner's Review consists of stating what the applicant is applying for and what the ordinance is, and then adding in the standard conditions. Tim Cronin stated that in the past the Planner's conditions were automatically incorporated into the ZBA's decision. Tavis Austin gave an example of a recent application that he did not feel a complete site plan was required for determination of a Special Exception, however the Board determined it did need a complete site plan. Audrey Cline commented that the section of the ordinance that the applicant is asking for relief from should be included in the information provided to the Board. Sarah Silk stated she feels it is helpful for Tavis to include the language of the zoning ordinance which is being referenced. Audrey Cline stated that language can be included on the denial as well as on the Planner's Review. Luke Freudenberg summarized the Board members are looking to get, at a minimum, the case information with the denial earlier than Friday before the meeting. Tavis Austin reminded the Board that public comment will not be included in that information and that what the Board will be evaluating at the hearing is whether the applicant met or not met the five criteria. He further stated that everything the Board needs to evaluate a special exception, for example, is on the application form -- i.e., why it was denied, how the applicant addressed the criteria, etc. Suzanne Ryan reiterated that the Board could receive the application and the related denial earlier, followed by the Planner's Review on Thursday or Friday prior to a meeting. Tavis Austin commented that what he is hearing tonight is that Board members are referencing out of date materials when reviewing ordinance as to cause of denial. Suzanne acknowledged there is a time limit after an application, however, she feels the Code Enforcement Officer is responsible for a portion of the work that needs to be completed allowing the Planning Director time to complete his portion. Audrey Cline objected, stating that Tavis Austin is the Code Enforcement Officer's superior and as such is responsible for reviewing/overseeing that Code Enforcement evaluation. Tavis Austin gave an example of a recent variance application which began with the denial of a shoreland permit which he wrote the denial for. Tavis confirmed that he is ultimately responsible for either creating or overseeing the denial letter.

In summary, Board members would like to receive by Wednesday or Thursday prior to a ZBA meeting: (1) the denial which precipitated the application; and (2) the application. Soon thereafter, preferably before late Friday, they would like to receive the Planner's Review on the subject application. In addition, Audrey Cline requested that the case files, including the historic file on the property, regarding each application be brought to the meeting by the Planner.

Tavis Austin informed the Board that an applicant cannot have a building permit issued if there is an existing violation on the property. His position is that prior variance information, etc. is not

relevant to the current case being reviewed. Audrey Cline stated that, in the past, she has had the prior Planner access the historical file during a meeting and provide pertinent information to the current review. Audrey also commented that the Board should not feel rushed to a decision and be able to take the time necessary for a complete and thorough review.

Luke Freudenburg commented that he feels receiving the Planner's Review is an important part of his review of meeting materials. Tavis Austin stated that he is going to revise the Planner's Review, eliminating what is in the legal notice, and streamline by including the relevant code section, as well as drafting an approval motion and a denial motion referencing the appropriate information for each. Luke Freudenburg, as well as Suzanne Ryan, requested that the required criteria still appear on the Planner's Review. Sarah Silk commented that in the past the Board, when approving an application, often reference "approved with the conditions as cited in the Planner's Review" in the Board's motion. These conditions are often boilerplate conditions, but assist the Board in crafting their motion and streamline the process by being referenced rather than read, even in the cases where additional conditions are included.

Tavis Austin defined for the Board the terms "conditions precedent" versus "conditions subsequent". Audrey Cline explained those relate to conditions which come up after testimony and will never be included in the pre-meeting materials.

Audrey Cline stated that the conditions being discussed are those included on the Planner's Review and asked if those historically have been read aloud when a motion to approve an application is made. Suzanne Ryan stated that the Board has handed it both ways -- i.e., reading each condition into the motion and/or including a reference to the "conditions contained in the Planner's Review" in the motion to approve. Audrey Cline then asked for and received confirmation that those conditions are included on the Notice of Decision which the applicant subsequently receives which is recorded. Sarah Silk inquired if NOD's are required to be noticed in the newspaper. Tavis Austin advised her that is not required. Suzanne Ryan expressed her opinion that NOD's should be placed in the newspaper. Audrey Cline stated that NOD's should be posted online. Tavis Austin stated that he can arrange to have NOD's posted online, but an additional fee would need to be added to the application if the NOD is to be noticed in the newspaper.

Audrey Cline stated that we now have an IT staff member and such items can be part of a bigger discussion as to protocol and accessibility of information to both the Board and the public. Tavis Austin questioned if the posted information would be a listing of what projects had been approved or denied, or if it would be the actual NOD's. Audrey Cline stated her preference

would be to have all of the information under each meeting date that is related to such - i.e., application information, NOD's, etc. Sarah Silk commented that posting the NOD's online would be useful and feels noticing in the newspaper would not be as helpful. Tim Cronin concurred that posting the NOD's online makes more sense. Tavis Austin stated that, based on his experience, he has not had inquiries from individuals looking for information regarding the ZBA NOD's, except in the instance of an abutter. His opinion is that putting the entire application, Planner Review, NOD, newspaper notice, etc. online is extremely time consuming. In the time he has been in Wolfeboro, he has not had members of the public request to view files that are coming before the Board. Sarah Silk commented that due to COVID it is difficult to generalize what the public would be interested in versus what they are currently requesting access to. Tavis clarified that in his 20 years in planning he has experienced a similar lack of public requests. Sarah Silk also commented that it may be helpful, especially prior to Town elections, to have an online record of the ZBA's approval/denial rate to reference in response to voters' generalizations about such.

Audrey Cline stated that as we go forward with the new IT staff member, it may be helpful to review what can be put online. Tavis Austin inquired if the ZBA would like him to require an electronic submission to the application process. Audrey Cline expressed that is his decision as it is an administrative decision, but doesn't understand why it currently is not required. Tavis Austin stated that he only needs one paper copy for the archive file, but still has to make multiple paper copies for the Board. Tavis explained maintaining online becomes cumbersome when the Board asks to amend current online files, which is time consuming. The IT person will not be responsible for posting information online, but rather ensuring that the electronic system works. Audrey Cline commented that it is an administrative work flow process and hopefully things will improve over time as there has not been an online process in existence for that long.

Communications and Miscellaneous:

Audrey Cline stated that the ZBA members would like copies of any questions presented to the Town attorney put in email form and the responses thereto. Tavis Austin asked for guidance as to the approval process before forwarding inquiries to Town counsel. Discussion ensued as to whether it should be a majority Board vote or unanimous. Sarah Silk and Tim Cronin expressed it should be a majority or consensus. Audrey Cline commented she felt the Board should have access to the Town attorney and should not be hesitant due to the cost of such. She further stated that the cost of getting something wrong is very high. Sarah Silk commented that the Board can use municipal associations for questions as well. Audrey commented that general questions to municipal associates may do well for some questions if not related to a specific case. General

questions can be asked by any Board member and Tavis Austin will forward them to NHMA.

Suzanne Ryan asked if attorney directed questions could be forwarded through Audrey Cline. In response, Audrey Cline stated that any attorney directed questions should be discussed by the Board as a group prior to submission so that any follow up questions, etc. could be addressed. Tim Cronin stated that in the five years he has been on the Wolfeboro ZBA, he has experienced the Attorney being involved only twice. Audrey Cline stated she sees that as a problem. Tim Cronin felt it was not an issue. Audrey Cline said she has things go to court which possibly could have been answered by the Town attorney. Tim Cronin asked if that was related to Wolfeboro. Audrey Cline stated that it was not related to Wolfeboro as she has just started here. Her experience was related to working with other ZBA's for fifteen years. She further stated that she felt it was important to get a quick answer and avoid going down a legally shaky road. Tim Cronin agreed that if you get into that type of situation it would be warranted, but he has only seen it happen twice in Wolfeboro -- it is a rare occasion. Suzanne Ryan asked that the question being asked of the attorney be included in their response. Tavis Austin replied that what feedback he is getting from the Board is that, prior to submitting a request to Town counsel, the Board will author it's own question, agree upon its language and then request a response. Audrey Cline concurred with that process. Tavis advised that procedural questions can be submitted to him by individual Board members and he will respond and copy the entire Board.

Approval of Minutes:

Tavis Austin advised that there is no statutory requirement to approve the minutes. They can be postponed to a future date. He also added that any suggestions/comments Board members may have do not have to change the actual minutes, as the minute taker is the one who heard the meeting. He does not believe the Board has the ability to force the minutes to be changed. Sarah Silk stated that the Board takes a vote on acceptance of minutes. Tavis stated the Board does not have to vote on acceptance of the minutes. Audrey Cline stated that the purpose of the minutes is to uphold whatever decision the Board made and, therefore, Board members review what they said to make sure it reflects what they said, and therefore can ask that the minutes be reflective of what was said. Tavis Austin gave an example of a hypothetical board member reading the minutes and wanting to make changes because the minutes reflected what they said but not what they "meant" to say.

Audrey Cline stated that going along with the purpose of the minutes to uphold whatever decision they make, she finds "especially really good job with the recording and copying down some very verbatim things, but I find that some of the statements of the Board are not as

complete as I would like them to be whereas a lot of the statements of the applicant and the abutters are verbatim, and I guess my feeling is they don't have an opportunity to say 'that's not what I said'. And so I think it might be more helpful for us to encapsulate what they said in a general way and then count on whatever it is they turn in in writing, because that's what they've submitted, rather than take the chance that they've been misquoted off of the recording in a very detailed way since there is no way for them to change that." Tavis Austin stated that at the last meeting, several people had pre-printed statements that had notes on them and as he was following along he found that what they said publicly was neither the pre-printed statement or notes. Audrey Cline stated that we are not required to write down exactly what they say. What they turn in is exactly what they say and what an applicant puts on an application is exactly what they say. The minutes are the Board's minutes. The minutes are to "uphold whatever information, we may have 200 pieces of information, and I have picked out four that I think are relevant and I speak to those in my decision. Those are the ones that are most important to get in the minutes, not the 300 that were put out there." Sarah Silk complimented the fact that a very detailed job is done on the minutes and expressed thanks. Sarah then asked if Audrey Cline was looking for a condensation of the information and then making sure that the points the Board makes to make their decision are clear. Audrey Cline stated that is the most important thing of the whole minutes. Suzanne Ryan commented that if the Board does not have a thorough record that a judge can determine how the "Board got to where they got," he is going to remand it back. Suzanne added that it is difficult for whomever takes the minutes to determine what goes in and what doesn't, although what we have been getting is almost verbatim. Tim Cronin stated that the video recordings are verbatim. Audrey Cline stated that if someone wants to put something in the record they can hand in a written copy. She also stated that we do not own the video recordings nor how long they are kept. Suzanne and Audrey then discussed if it should be attached to the minutes. Audrey Cline stated in the good old days there was an audio tape from which the minutes were prepared. It is an administrative decision as to how long video recording is kept, if we even own that recording. Tavis Austin stated that there were so many attachments to the July 19,, 2021 online posted minutes, a reference was included at the end of the minutes advising that a copy of all attachments are available in the physical file in the Planning Department office. Sarah Silk inquired if that satisfied the requirements of giving the minutes to the Town Clerk, which Tavis responded in the affirmative. Tavis further stated that the project file is the record if there ever is an appeal. He also stated what is unique about the ZBA is that courts often rely upon the whole discussion in the minutes. Audrey Cline stated the courts look at two things: 1) did the ZBA get the process right, and 2) did the ZBA have enough information to make a decision and did they make a reasonable decision. She further stated that the courts look at what the ZBA "speak/say and put in the record as being important."

In summary, Audrey Cline stated her request is that "we have more detail in the Board's decision

points and I suggest that we have a lot less detail in public input and rely on what they've turned in...with a general synopsis, a couple sentences, that says what they've talked about." She then suggested waiting on review of the minutes until there is a full Board present.

Sarah Silk referred back to prior flow charts, which Audrey admitted making, and inquired who gets information to the newspaper, etc. Tavis responded that all of the application materials get received by Terry Tavares in the Planning Department. Tavis stated he is working with her to, instead of recreating what goes in the newspaper notice, abutters' notice and the agenda, have Tavis review it once and then copy and paste it over to the other two pieces. He is used to taking all of the notices that go to the newspaper and copying that material for every abutter notice. Wolfeboro is used to abutters only receiving information regarding the case that affects them. The way it is done presently is custom tailoring abutters' notices, which creates the chance of mis-type of information. He has had less errors using the non-local paper, however the preference seems to be for the Granite State News. Audrey Cline stated that most people do not receive the other paper. Tavis Austin stated he did not believe there was a requirement to use the newspaper. Audrey Cline stated that there is a requirement for the ZBA for newspaper notices; "It must be in a newspaper of common circulation".

Audrey Cline stated she would like to find out from the IT person if they can print the zoning ordinance with page numbers and a table of contents. Tavis Austin questioned if Audrey wanted the entire 500 pages of ordinance. Audrey Cline clarified she only wanted zoning. Tavis explained that is why there is no Table of Contents since the zoning section is only one article, but will see what he can come up with. Tim Cronin suggested an electronic copy in PDF so that you can search for what you need. Tavis will look into that.

Sarah Silk made a motion, which was seconded by Tim Cronin, to adjourn. The vote was unanimous in favor.

The meeting was adjourned at 8:40 pm.

Respectfully submitted,

Mary Jane Shelton, Recording Assistant

