

## **Wolfeboro Zoning Board of Adjustment**

**June 23, 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..

**Members Excused:** None

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

In accordance with Emergency Order #12, for members of the public, this is to confirm that we are:

1. Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means through GoToMeeting. All members of the public and Board have the ability to communicate contemporaneously during this meeting through the GoToMeeting platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #+1 (646) 749-3122 followed by the audio access code 918-242-429, or by video following the directions on the Town of Wolfeboro Website posted on the home page under the Virtual Town Meeting Login Information page.
2. Providing public notice of the necessary information for accessing the meeting; we previously gave notice to the public of how to access the meeting in-person or using GoToMeeting and in, and instructions are provided on the Town of Wolfeboro website at wolfeboronh.us on the Virtual Town Meeting Login Information page.
3. Providing a mechanism for the public to alert the public body during the meeting if there are problems with access; If anybody has a problem accessing the meeting via phone or computer, please immediately call 603-391-8489 OR email [planningdirector@wolfeboronh.us](mailto:planningdirector@wolfeboronh.us) In the event that the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Thank you.

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

**III. Public Hearings:**

**Case #: 06-AAD-21**

**Applicant: LP Gas Inc., Eastern Propane Gas Inc.**

**Tax Map/Lot#: 161-014-003, Wolfeboro Oil Drive**

**Formal Submission Date: 5/5/21**

**Project: Appeal of Planning Board Administrative Decision of 4/6/21**

**Zoning District: Pine Hill Road Development District**

**Agent: Randy Walker, Walker & Varney P.C.**

Audrey Cline then read the description of what constitutes an administrative decision appeal, the process to be followed and the role of the Zoning Board of Adjustment.

Randy Walker, an attorney with Walker & Varney PC, representing LP Gas Inc. , commonly referred to as Eastern Propane, presented the facts surrounding his client's appeal of the Planning Board decision regarding the location of two diesel storage tanks on Wolfeboro Oil Drive and operate a distribution facility there. This would be a better and safer location than the current one located on Lehner Street.

Proposed location - on a dead end road, off of 109A on Wolfeboro Oil Drive, not visible from the road

Property is located in the Wolfeboro business park and has an existing fuel distribution facility operated by Eastern Propane on an abutting lot

Wolfeboro Oil specifically acquired the subject property to locate both its propane and diesel distribution facilities. Eastern Propane is the successor to Wolfeboro Oil.

Abutters have no objection

The current location of Eastern Propane's diesel tanks is in a congested downtown area and only a foot above the high water mark of the lake.

The proposed location is out of town and will be a safer, state of the art facility.

Existing propane distribution on property is equivalent to the proposed diesel distribution

There are significant problems with the current Eastern Propane facility -i.e. location, safety etc, -- the proposed location is a win/win situation

Eastern Propane presented their proposed diesel fuel distribution facility and was advised by the Town Planner and Code Enforcement Officer that the project represented a permitted use. Eastern Propane then went before the Technical Review Committee and, after being given their blessing, proceeded to expend significant funds to design the proposed facility.

The Town Planner's Review indicated the application was complete and recommended three standard conditions.

Eastern Propane then went before the Planning Board, who determined by a 4-3 vote, that the proposed facility did not represent a permitted use per the ordinance.

Attorney Walker stated that the Planning Board 's decision was a close vote due to the lack of clarity of the ordinance as to permitted uses and that one dissenting Board member suggested

Eastern Propane go to the ZBA and request a variance for their requested use, suggesting they were in support of the concept and merits of the proposed facility.

Attorney Walker then read the permitted uses from the ordinance, §175-96 (k), wherein "storage facilities" are identified as a permitted use. He then read the definition as a "storage facility is pmi as a structure or part of a structure for storing goods, wares and merchand ise, whether for the owner or for others." The two proposed diesel storage tanks are structures and the diese l fuel is a good or merchandise, while "storage for others" suggests sales would be pennissible. The definition of storage facility includes " wholesale distribution centers" but that term is not defined in the ordinance, nor "wholesale distribution facility" which appears elsewhere in the ordinance. Eastern Propane's intended customer base is Wolfeboro truckers, heavy equipment operators, contractors, snow plowers, farmers and diesel car owners. The Town of Wolfeboro and School District would also be able to use the proposed facility. The only other diesel fuel provider in town is the 7-11 store/facility, otherwise an individual would need to travel to Alton or Ossipee to get diesel fuel.

Wholesale is not defined in the ordinance, but traditionally defined in the dictionary as sale of goods at a lower cost bought in volume. Eastern Propane's proposed facility qualifies as either a wholesale distribution center or facility. In addition, the Pine Hill Road district allows retail facilities.

Attorney Walker stated that it was suggested at the Planning Board meeting on 4/6/21 that the proposed facility would be a pennitted use in the C2 district which is located downtown in Bean Park. That district permits storage of volatile fuels as well as service and filing stations. Attorney Walker compared diesel fuel to heating oil, stating that neither is considered a volatile fuel in the industry. Therefore, the proposed facility should not be restricted to that district.

In summary, Attorney Walker stated that the proposed facility is exactly the type of business that was intended for the business park location as it is a better, safer and more remote location. He further compared the proposed state of the art facility to the existing facility which is dated and in an extremely undesirable location. He believes the ordinance is clear and that the proposed Eastern Propane facility is a permitted use in the Pine Hill Road district and respectfully requested that the ZBA reverse the Planning Board's prior decision.

Tim Cronin inquired if the existing tanks on Lehner Street would be removed. Attorney Walker respond ed that the goal is to keep the existing diesel fuel facility open until the new facility is up and running.

Audrey Cline stated that the ZBA is charged with how the ordinance reads presently and does not have the authority to change the ordinance. An administrative appeal is specifically to say "is this use allowed in this zoning?" "What language in the ordinance tells us what is and is not allowed?"

Audrey Cline inquired if Attorney Walker agreed that the statement regarding volatile fuels, service stations and filling stations, current ly in the C2 district , was removed from the Pine Hill Road district when the zoning district was chang ed. Attorney Walker agreed that wording was removed but pointed out that the reference to wholesale distribution facilities remained. He also

added that it is his understanding that there is proposed discussion to put that wording back into the Pine Hill Road district going forward and feels that it is more pertinent than what was done in the past. Audrey Cline stated that the Planning Board creates the wording for the legislative body, who are the people who vote at Town Meeting. We need to look at their wording seriously and trust in what they said. She believes it was purposeful that they took specific wording out of one zone and left it in the C2 district. She specifically identified "the storage of volatile fuels, garages, and filling or service stations" as three uses that the Planning Board removed from the Pine Hill Road district and the applicant is in agreement of such.

A discussion ensued as to the volatility of diesel fuel. Attorney Walker's position was that diesel fuel is not considered volatile in the fuel industry given its chemical properties. Audrey Cline stated her research found otherwise, including that the fire code considers it volatile and that diesel fuel is more volatile than heating oil.

Attorney Walker rebutted that 1) he did not agree with volatility of diesel fuel; and 2) the permitted uses wording left in the Pine Hill Road district included wholesale distribution facilities/centers which allows for the proposed Eastern Propane facility and cited a 2001 Supreme Court case from Carroll County involving KSC Realty Trust v Town of Freedom (146 NH 271) wherein the "transport and sale are incidental to the permitted use" of storage of a commodity under the definition of storage facility.

Audrey Cline stated that the issue being addressed in the administrative appeal has to do with "volatile fuels" as the ordinance clearly states in what zoning district volatile fuels can and cannot be stored. Currently, volatile fuels are only permitted in the C2 zoning district.

Sarah Silk added that her experience in 32 years as a Site Coordinator for a Household Hazardous Product Facility in Wolfeboro, all flammable liquids are treated the same -- gasoline, diesel fuel, etc.

Audrey Cline further distinguished between volatile and flammable as being a fuel that changes from a liquid to a vapor or a solid to a vapor at a certain temperature/rate. NFPA determines diesel as Class 2 Flammable liquid and without there being a definition or distinction in the ordinance, Audrey Cline expressed that she felt the Planning Board was intentional in its removing that language from the Pine Hill Road district. She stated the purpose of this hearing is to determine the intention of the ordinance.

Suzanne Ryan stated that when a change in an ordinance is posted in a legal notice it is clearly stated what language is being taken out or changed.

Audrey Cline stated that, because this is an administrative appeal, the determination will not just apply to the lot in question. Rather it means that volatile fuels would be allowed as a primary use in all 30 lots in the Pine Hill Road district. Fuel that is stored as an accessory use as in a contractor's yard is accessory to the main purpose of the business. This is asking for a primary use for volatile fuel.

Luke Freudenberg felt the ordinance change should have defined what wholesale goods are

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allowed. He further stated that, without specific definition of permitted wholesale goods, the requested use does fall under wholesale distribution. He further stated that he feels this should have been handled at the Planning Board level and it makes sense to move a volatile fuel facility from a downtown area to a more remote location.

Suzanne Ryan expressed that this is only the administrative appeal portion of the meeting, and arguments relative to suitable location, etc. should be reserved for the variance portion of the hearing.

The public hearing was opened. No public comments were brought forth.

The public hearing was closed.

Suzanne Ryan stated that the key component of an administrative appeal, regardless of the subject matter, per RSA 674-33, and she quoted from Attorney Peter Laughlin "the intent of the law is an important consideration but must be spelled out in terms specific enough to be understood. The Board of Adjustments cannot make its determination on the strength of a statement of purpose alone when that statement is not backed by concisely phrased provisions. The construction of a term of a zoning ordinance is a question of law. The proper inquiry is the ascertainment of the intent of the acting body. When an appeal is made, the Board must apply the strict letter of the law.. ." The point being, under RSA 674-33 IV, "if allowed, the ordinance should list a specific use to be permitted in this category and the conditions that must be met". Our ordinance is not specific and Suzanne Ryan felt the Planning Board made the correct decision.

Suzanne Ryan made a motion that Case 06-AAD-21, Eastern Propane Gas, Inc., an Administrative Appeal of the Planning Board's decision on 4/6/21 was correct that a variance must be applied for from the Zoning Board of Adjustment to allow the Planning Board to proceed to a formal site plan review for two 10,000 gallon above ground diesel fuel storage tanks and to operate a diesel fuel distribution facility for public usage as the proposed usage is not allowed currently in the Pine Hill Road zoning district and the ZBA deny this administrative appeal. Sarah Silk seconded this motion for discussion.

Sarah Silk expressed that although she feels the Town's intent was to have facilities such as Eastern Propane's proposal to be located in the Pine Hill Road zoning district, if the correct language/terminology is not documented then the existing zoning prevails.

Audrey Cline feels the proposed motion wording is too wide. She would reword to exclude the issue of the storage facility as it is currently a permitted use in the subject district. And the ordinance tells us where certain uses are allowed, not by where they are not allowed.

Suzanne Ryan withdrew her motion, and Sarah Silk with drew her second of that motion.

Suzanne Ryan made a mot ion, supporting the Planning Board's decision on Case 06-AAD-21 that a variance must be applied for with the ZBA, and that placement /usage of two 10,000 gallon storage tanks for diesel fuel is not allowed within the Pine Hill Road zoning district and that specific terminology in our zoning ordinance do not give specific infomrntion to allow such. Sarah Silk seconded the motion for discussion.

The Board then referred back to the Appeal.

Suzanne Ryan withdrew her motion.

**Suzanne Ryan made a motion, supporting the Planning Board's decision on Case 06-AAD-21, and the Zoning Board of Adjustment denies the administrative appeal because the use is not permitted in the Pine Hill Residential Development District zone as the use of volatile fuel is not allowed nor defined within our ordinance. Sarah Silk seconded for discussion.**

Tim Cronin voiced his position that he feels the wholesale storage and distribution of fuel is allowable in the Pine Hill Road Development District.

Luke Freudenberg stated that he feels we are operating the premise that the language regarding volatile fuels was removed for a specific reason. He pointed out the obvious disadvantages of the current location of the Eastern Propane diesel fuel location in relation to a storm drain and a pump chamber that deposits into Back Bay.

Audrey Cline reiterated that it is not the ZBA's authority to determine the rationale behind the Planning Board's decision to change in zoning ordinance language.

**A vote was then taken on the motion. Three members voted in favor, two opposed. Motion passed by a vote of 3-2 to deny the Administrative Appeal. Case #06-AAD-21.**

**Case#: 07-V-21**

**Applicant: LP Gas Inc., Eastern Propane Gas Inc.**

**Tax Map/Lot#: 161-014-003, Wolfeboro Oil Drive**

**Formal Submission Date: 5/5/21**

**Project: Requested Variance Relief under Article 15, Chapter 175, Section 96**

**Construction of two above ground storage tanks and fuel distribution**

**Zoning District: Pine Hill Road Development District**

**Agent: Randy Walker, Walker & Varney P.C.**

Attorney Walker reviewed the five criteria for a variance.

1. The variance would not change the character, negatively impact nor challenge the safety of the district.
2. Variance is in the spirit of the ordinance.
3. Substantial justice will be done. Proposal is for a modest two station dispensing station that will replace the antiquated facility on Lehner Street, benefitting the general public by drawing traffic out of the downtown core, utilizing a state of the art facility vs. a grandfathered facility and environmentally beneficial by moving the facility further away from the Lake. It also provides a necessary service for diesel vehicle operators.
4. Values of surrounding properties will not be diminished. No objections were voiced by any abutters.
5. Literal enforcement of the ordinance would result in an unnecessary hardship. This is the last undeveloped lot in the business park and uniquely abutted by the propane distribution facility, and the proposed use meets the intended uses of the subject district. The proposed location is a good and useful one for this facility.

Attorney Walker respectfully requested a variance as applied for.

Suzanne Ryan inquired about the internal restrictions and services to be available/performed at the proposed facility, specifically if the general public would have access.

Bill Massey, Regional Manager for Eastern Propane, addressed the Board. He stated the facility will not be gated. Their internal restrictions include limiting the amount of fuel that can be pumped at one time. General public would pay with credit card, while regular customers will have a key fob for purchasing. There are no attendants, but 24 hour surveillance. The apron is designed by the state to contain spillage.

Audrey Cline voiced her concern with the retail operation portion. She is okay with wholesale to business and/or contractors which will likely be the bulk of the consumers, but believes other individuals should go to a manned facility. In the zoning language, a retail establishment is defined as establishments selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to those goods. She feels Eastern Propane can issue key fobs to their regular clients and monitor their usage as well as expecting a level of responsibility which it cannot do with open access by the general public.

Audrey Cline opened the public hearing.

Jerome Holding of Grove Street expressed endorsement of moving the facility from the downtown area.

Attorney Walker asked that Board members voice any concerns/issues at this time so that the applicant may be made aware of the same.

Audrey Cline closed the public hearing.

Audrey Cline commented that, at a minimum, she feels there should be a pot-a-potty on the site as it will be open 24/7 for snow plows etc. She additionally would like to formally ask the applicant to abandon the Lehner Street facility so that it cannot be sold and grandfathered at its current use.

Tim Cronin asked for a point of order regarding such a stipulation for granting of a variance.

Audrey Cline pointed out that part of their argument for the variance is that they would be improving the area on Lehner Street.

Suzanne Ryan suggested getting a legal opinion on 1) requiring the termination of the Lehner Street facility in conjunction with moving the facility to Wolfeboro Drive; and 2) the retail portion of the proposed facility.

Tavis Austin felt a restriction on retail business would be difficult to enforce.

Luke Freudenberg gave a personal account of his use of the Lehner Street facility and stated that he feels the proposal is a win/win situation for the Town and that Eastern Propane is investing hundreds of thousands of dollars to do this for the community.

Suzanne Ryan stated for the record that under the variance being applied for there are no assurances that the Lehner Street facility will be closed, thus that should not be assumed as an advantage of the proposed new facility.

Tim Cronin made a motion, which was seconded by Audrey Cline, to reopen the Public Hearing. Board members voted 4 to 1 to do so.

Attorney Walker then stated Eastern Propane would be willing to represent that as a condition of approval that Eastern Propane will close the Lehner Street facility, so long as there is no loss of service. Eastern Propane would close the Lehner Street facility simultaneously with opening the Wolfeboro Oil Drive facility, and not operate at two sites. Suzanne Ryan inquired, and Attorney Walker confirmed that the tanks at Lehner Street would be removed.

The Public Hearing was then closed.

Five Criteria:

1. Does not alter the essential character of the neighborhood and will not threaten the health or safety of the area.
2. A variance granted would be in the spirit of the ordinance.
3. Substantial justice will be accomplished by the numerous benefits to the community.
4. Values of surrounding properties will not be diminished as it is a business park with other commercial businesses.
5. Literal enforcement would result in an unnecessary hardship as the applicant's other facility is abutting the subject property and there would be no public benefit to denying it.



**Suzanne Ryan made a motion to approve the variance application for LP Gas Inc./Eastern Propane Gas Inc., Case#: 07-V-21, Tax Map/Lot#: 161-014-003, to permit the construction and installation of two 10,000 gallon above ground diesel fuel storage tanks and operate a diesel fuel distribution facility for Eastern Propane with the condition, as agreed, that upon the opening of the Wolfeboro Oil Drive facility, Eastern Propane will discontinue and dismantle the Lehner Street facility and remove the storage tanks located there. Luke Freudenberg seconded that motion. The Board approved the variance by a vote of 5-0.**

**Audrey Cline proposed an amendment to the motion that the retail operation be restricted to key fob sales only. Sarah Silk seconded that amendment. The Board vote on the amendment was 3 to 2 in favor.**

**Case#: 09-AAD-21**

**Applicant: New Hampshire Boat Museum**

**Tax Map/Lot#: 163-2-IE, 399 Center Street, Wolfeboro**

**Formal Submission Date: 5/1/21**

**Project: Appeal of Administrative Decision re: Accessory Structures**

**Zoning District: Residential**

**Agent: Randy Walker, Walker & Varney P.C.**

Applicant proposed two accessory storage structures. Town of Wolfeboro staff determined such would require a new Special Exception as the proposed structures are to be subordinate to a Special Exception Use. Applicant appealing that determination.

Randy Walker, Esq., representing the New Hampshire Boat Museum, summarized that the reason for the Administrative Appeal is due to the Planning Director and Code Enforcement Officer's denial of the Boat Museum's application to construct two 40' x 150' one story warehouses on their 12 acre property. Each storage structure will have 10 bays and 12' x 12' doors with a small side bump out with an entry door. Although the warehouses would be an accessory use, the underlying use was permitted by Special Exception. The Boat Museum's position is that the ordinance does not make any distinction as to the underlying use when considering an accessory use. Attorney Walker cited case law wherein a golf course wanted to erect a maintenance building in a residential zone. The building was deemed an accessory structure to be used for storage, similar to what the Boat Museum is proposing, and designed to service the main business. The proposed storage building will be used as an accessory building to support the purpose and mission of the Boat Museum. Reference was made to RSA 175:81 Permitted Uses and 175:82 Special Exception Uses. The accessory structures being proposed meet the criteria - i.e., are not habitable space, are detached from the primary structure on the same lot, are incidental and subordinate to the primary structure and are limited to two per lot. The ordinance draws no distinction between uses permitted as a matter of right (Article 175-86) or permitted by special exception (Article 185-87). Based on the information put forth, the New Hampshire Boat Museum feels their permit should have been

granted.

The Town Planner and Building Code Enforcement Officer's position was that a business granted under a Special Exception in the Residential Zone is not automatically entitled to a permit for two accessory structures as would a residence in that same zone.

Audrey Cline clarified that the ZBA is a Town Board which adjudicates zoning between citizens and citizens. The Board has no rights to the properties, so each time they take something from one citizen and give it to another, the Board does not gain anything. So it is important that the Board provide the ability for public hearing.

Suzanne Ryan requested clarification of the Building Code Officer's Notice of Decision. Tavis Austin clarified that what was determined to be not permitted was an accessory use under 175-81 B and/or C, Accessory Structures and Accessory Uses. Staff read that as permitted uses are one single detached structure per lot and Accessory Structures and Accessory Uses "to permitted uses". Under 175-82, Special Exception Uses, 175-82L, Museums with Frontage on a State Numbered Highway, staff determined that the Zoning Board at the time of approval did contemplate any accessory structures, but rather approved a museum with a parking lot. Further, staff believed a site plan review would be required as it is an expansion of a non-residential use, a non-permitted use in the zone.

Randy Walker stated it should simply be a determination of whether or not the storage units will be an accessory use/structure to the NH Boat Museum.

Tim Cronin questioned if the storage structures would be used to store museum property or boats that would be rented. Randy Walker clarified that it would be only storage for museum exhibits.

The public hearing was opened.

Martha Cummings, Executive Director of the New Hampshire Boat Museum, spoke in favor of the storage buildings as accessory structures with an accessory use for the Museum. The stated purpose is to store the Museum's collection which consists of over 40 boats which are currently stored in various locations.

A discussion ensued as to whether all stored boats were part of the museum collection for display or also part of the community sailing program, etc. and how those programs relate to the museum's mission.. Audrey Cline inquired as to the relevance and relationship of the anticipated Boat Museum on Bay Street and the role of these accessory buildings in that plan.

Dr. James Farina, East Wakefield, NH, member of the museum's Board of Trustees and Chair of the Governance Committee and the Chair of the Community Sailing Program spoke in favor of the museum's classic boat preservation facilities project. The museum has been entrusted with over 40 vintage boats with an estimated value in excess of \$3 million dollars. The collection is scattered in various locations around Lake Winnepesaukee, making it nearly impossible to care for the collection. The museum cannot guarantee the future availability of these multiple scattered sites.

Douglas Smith, Beach Pond Road, Wolfeboro, is a museum volunteer and involved in the design and construction of the two accessory structures. He spoke in favor of the accessory structures and the low impact to Moose Point Road.

Donny McClean, 445 N. Main Street, Wolfeboro, spoke in favor of the administrative appeal. He stated the museum is an integral part of the community that has improved the property on which they are located. He believes they will be responsible in the manner they approach the project.

Rich Masse, Moose Point Road, Wolfeboro, spoke to the Board about the technical appeal process versus the special exception issue. He then read from a statement, attached hereto as part of the minutes, from himself and other residents of Moose Point Road regarding the Administrative Appeal and the application for a Special Exception for the NH Boat Museum's proposal to construct two accessory structures off of Moose Point Road. In summary, their position is that the fact that when the Museum was granted a Special Exception in 2007 the primary use was for a museum. The granting of that Special Exception does not guarantee the Museum the same rights as a residential structure located within the Residential Zone and it is not exempt from oversight from the Town. In addition, in light of the widely known intention of the Museum to relocate to Bay Street, residents are concerned that the primary use on which the Special Exception is based will be relocated, leaving the current location as a location consisting of storage structures. Mr. Masse further informed the Board that there was a first right of refusal to purchase the land by the Wentworth Watershed Association relative to the Special Exception granted to the Museum. If allowed to build the proposed structures, the Wentworth Watershed Association would find it difficult if the property were encumbered with commercial structures. Mr. Masse feels that situation would encourage other businesses to be drawn into developing that area for commercial use. In summary, the Moose Point Road residents feel that the Administrative Appeal should be denied.

Suzanne Ryan and Sarah Silk conveyed their position that it should be reviewed as a Special Exception for the accessory use. Tim Cronin and Luke Freudenberg concurred with that position.

The public hearing was closed.

**Suzanne Ryan made a motion, which was seconded by Sarah Silk, to deny the Administrative Appeal for Case #09-AAD-21 and uphold the Code Enforcement Officer's determination that the proposed buildings are not a permitted use but rather a special exception use under 175-81 and 175-82 because the underlying is permitted by Special Exception. Board voted 4-1 in favor of the motion.**

**Case#: 10-SE-21**

**Applicant: New Hampshire Boat Museum**

**Tax Map/Lot#: 163-2-1E, 399 Center Street, Wolfeboro**

**Formal Submission Date: 5/1/21**

**Project: Special Exception for Museum with Accessory Structures**

**Zoning District: Residential**

**Agent: Randy Walker, Walker & Varney P.C.**

Applicant is proposing two accessory storage structures. Wolfeboro Planning and Development staff determined such would require a new Special Exception as the proposed structures are to be subordinate to a Special Exception Use.

A site walk with a minimum of three ZBA members occurred on June 23, 2021. Minutes of such site walk are available upon request and attached hereto.

Randy Walker summarized that the subject property consists of 12 acres, has been used as commercial property since at least the 1960's and the museum's use was permitted by Special Exception in 2000. He referenced his prior presentation at this meeting for reiteration of the NH Boat Museum's purpose and the importance of a museum's need for storage. The only utility to these storage facilities will be electricity for lighting and security. There will be no boat maintenance in the buildings, but used strictly for storage.

Randy Walker then reviewed the criteria:

- 1) Site suitability: the Museum has operated on the site uneventfully for 21 years, it has major highway access
- 2) Immediate neighborhood impact - there will be none. Proposed use is for storage and pick up and drop offs will be infrequent, resulting in a non-appreciable amount of increased traffic. It will not create undue noise, pollution, etc.
- 3) There will be no undue nuisance or hazard to pedestrian or vehicular traffic.
- 4) Appropriateness of site plan - Planning Board will insure the proper setbacks, assuming ZBA approval. There will be no parking, nor fencing or screening, or signage proposed.
- 5) Immediate neighborhood integrity will be unaffected. The Nick and Country Cabins, immediately across the street, as well as the Lake Wentworth Inn, support this proposal and drafted letters in support which are attached. All abutters are supportive with the exception of the Wentworth Watershed Committee which supported the Museum in its 2000 Special Exception application. The proposed storage buildings are low intensity use. This proposal will not impact neighboring property values.
- 6) Proposed structure is in line with the spirit of the ordinance. Proposed structures are in line

with the Museum's mission as well as the Town's Master Plan- i.e., Pg 81 of the 2019 Master Plan states that one of the goals is to support museum facilities and plan future expansion efforts by promoting Wolfeboro as a museum hub. The storage buildings will effectuate the museum's mission.

Sarah Silk inquired as to specifics of the facilities and asked for assurances that no boats would be stored outside of the storage buildings. The buildings are 40' x 150' in size.

Suzanne Ryan expressed difficulty in determining the impact of the buildings, etc. on surrounding wetlands, runoff, etc. She stated that the Special Exception application requires an up to date plot plan or scaled drawing with specific details which are not provided in the application.

Randy Walker responded that it is difficult for an individual, or in this case a 501(c)(3) entity, to incur the costs of a plan which includes such specifics in advance of an approval. The site visit/walk anticipated initially addressing any concerns prior to a more detailed plan. A discussion ensued of the actual building area available after wetlands, setback, etc. are taken into consideration. The Board was interested in reviewing more detailed plans, as required by the application. Audrey Cline stated that in considering a Special Exception, the Board should consider the supporting criteria which enable evaluation of the proposal. Bob Sterndale, of Forest Road and Chairman of the Site Committee for the Project, who prepared the site plan submitted to the ZBA for this application, felt the drawing gave a reasonable estimate of the size and location of the proposed storage buildings. Audrey Cline suggested getting a full sized copy of the original survey.

Suzanne Ryan felt more detailed documentation was needed for the Board to evaluate the Special Exception. Luke Freudenberg and Tim Cronin asked for clarification as to what exactly the Board would need to fully evaluate the Special Exception request and avoid the applicant incurring unnecessary expenses or delays. Sarah Silk added that there were no markings at the site visit to assist the Board in visualizing the location/positioning of the proposed structures. Suzanne Ryan referred the applicant back to the specified requirements (Items A thru L) for a Special Exception in addition to helpful documentation supporting site suitability. Bob Sternberg asked the Board to consider deferring the requirement of more costly documentation until such time as a technical review is required once approval is obtained.

Suzanne Ryan made a motion that the application for a Special Exception by the Boat Museum is not complete and therefore the public hearing will not be opened. Sarah Silk seconded for discussion. Suzanne Ryan withdrew her motion, and Sarah Silk withdrew her second.

Audrey Cline then opened the public hearing.

Bob Sternberg spoke in favor of the Special Exception and described how the Museum came to the design proposed, which was the highest density for the lowest cost with modest roof spans, easy access and minimal waste of space. By locating near the existing road they will be able to use that impervious surface as a major part of the access without creating new driveways and turning radius.

Bob Conrad, of Clark Road in Wolfeboro, who is a Boat Museum trustee spoke in favor of the

Special Exception . He described other options considered by the Museum which were larger and more intrusive.

Jeannie Lewis, Red Sands Lane in Alton, a trustee for 16 years of the Boat Museum, spoke in favor of the Special Exception. The Boat Museum's collection has improved and grown and the Museum now needs space to store it.

Kerry Lynch, Prospect Hill in Melvin Village, is a co-chair of the Board of Trustees of the Museum and is involved with the sailing program, which consists of 25 small sailboats. He asked the Board to consider all the things that the Museum does for the community.

William Holding, Grove Street in Wolfeboro, spoke in support of preserving the history and heritage of the restored boats donated to the Museum.

Carl Crosley, Vice Chair and Representative of the Wentworth Watershed Association, spoke against the Special Exception. When the Special Exception for the Boat Museum was approved in 2000, the Association was assured that the addition of outside storage would require an additional exception and reviewed to determine if there would be impact on the neighborhood. He expressed environmental concerns and the impact on the neighboring properties. The Association properties contain a conservation easement which borders the New Hampshire Boat Museum property. The 9.5 acre easement was created to protect that area prior to it being granted to the Museum, leaving just 3 acres not part of that easement. The proposed construction will involve the removal of dozens of eighty year old trees and approach, if not invade , the adjacent wetland. The roof and impervious surface will produce a massive runoff. These concerns were brought up 16 years ago prior to conveyance to the Boat Museum and as a result of the concerns expressed by the Lake Wentworth Foundation, a predecessor to the Wentworth Watershed Association, insisted and the Boat Museum withdrew its from the Purchase and Sales Agreement its intent to apply for a variance to expand its building. The same concerns exist today. The proposal clearly has a negative environmental impact on the adjacent areas. The Boat Museum, in its initial application for a Special Exception, stated in a site suitability argument that none of its activity would be near the wetlands . The proposed placement of these storage structures clearly contradicts that claim. The Special Exception that was granted in 2000 stated that the addition of outside storage shall require an additional Special Exception to review and permit if any new impact to the neighborhood is created. (Statement is attached for the record.)

Rich Masse, Moose Point Road in Wolfeboro, speaking against the Special Exception submitted three photos to address location, setbacks, etc. of the proposed storage facilities. Mr. Masse voiced his opinion that the application should be deemed inadequate versus incomplete. He then submitted a document outlining the Moose Point Residents position regarding the Museum 's inability to meet the criteria/standards for a Special Exception (see attached). Rich Masse made a point of the fact that a contributing factor to the Town approving a Special Exception in 2000 was that the existing structure was to be used by the Museum and no new construction was proposed. He also reiterated that a good portion of the 12 acres the Museum is sited on is wetlands.

At 11:05pm, it was agreed by the Board members to take a 5 minute break and resume afterwards.

At 11:15pm it was agreed by the Board, the Applicant and the attendees present to continue to a date specific the balance of the hearing for a Special Exception for the Boat Museum (Case # 10-SE-21 ).

**Suzanne Ryan made a motion to continue the Special Exception for the NH Boat Museum to a date and time certain and for the Museum to provide the Board with at a minimum the documentation required by a Special Use application. This information to be applied to one singular plan with the proposed project. Motion passed unanimously with 5-0 vote.**

The Clerk then read the following case into the record:

**Case#: 12-SE-21**

**Applicant: James and Beth Sherman**

**Tax Map/Lot#: 102-008, 883 Center Street, Wolfeboro**

**Formal Submission Date: 5/10/21**

**Project: Special Exception for Expansion of Existing Campground**

**Zoning District: Residential**

**Agent: Randy Walker, Walker & Varney P.C.**

Wiley Brook Campground is proposing to expand their existing campground from 48 to 60 sites, within the parameters of § 175-43-A(2) which states that a nonconforming use occupying a portion of a parcel of land or a portion of a building may, by special exception, be expanded by no more than 25% of the portion of the parcel of land or building dedicated to the nonconforming use at the time of passage of this section; provided, however, that nonconforming signs may not be expanded.

Randy Walker presented an overview of the campground expansion, from 48 to 60 sites, pointing out that the septic was already in place for the 12 new sites. He then reviewed the five criteria required for granting a special exception detailing how the applicant met each one. He also mentioned that in all of the Campground's years of operation there have not been any reported complaints of noise, nuisance, etc.

The public hearing was then opened.

The Perkins, abutters from across Center Street, then spoke in favor of granting the Special Exception, stating that in all of their years of residence the Campground traffic has been minimal and residents orderly.

The public hearing was then closed.

Sarah Silk stated her position that the Campground is basically non-visible from the road, suitable

to its location and has had no negative impact to the area.

The Board then reviewed the five criteria necessary for granting a Special Exception.

Suzanne Ryan made a motion, and Luke Freudenberg seconded, to approve Case #12-SE-21 and grant a Special Exception to allow Wiley Brook Campground to expand from 48 to 60 campsites. The motion passed by a vote of 5-0.

Suzanne Ryan then made a motion, which was seconded by Audrey Cline, to renote Case # 10-SE-21, Special Exception for the New Hampshire Boat Museum and to continue to a date certain. Motion was approved by a vote of 5-0.

#### V. Adjournment:

Tim Cronin made a motion, which was seconded by Luke Freudenberg, to adjourn the meeting. Motion passes unanimously with a vote of 5-0.

Meeting was adjourned at 11:40 pm.

Respectfully submitted,

Mary Jane Shelton, Recording Assistant



Minutes Attachment:

*Those public comments submitted to the ZBA, in writing, during the meeting have been included in the project file public record.*

