

Wolfeboro Zoning Board Adjustment
.June 7, 2021 7:00 PM
The Great Hall at Wolfeboro Town Hall
Meeting Minutes

Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order #2020-04, this Board is authorized to meet electronically. **The Zoning Board of Adjustment has jointly decided to proceed with a hybrid virtual meeting format allowing for members of the public and Board to attend remotely.**

In accordance with RSA 91-A: 2, III, Board members may attend the meeting remotely, which a public body has the authorization to allow.

Introduction:

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

Members Excused: None

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

Votes taken during this meeting will be via roll call vote for all members.

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 Logil} il}f() J}}. li<.?I} p g .

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@jwolfborough.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.

I. **Call to Order:** The meeting was called to order at 7:17 pm.

II. Public Hearings:

Luke Freudenberg announced that through a series of errors of Town staff and the posting of the hearings to be heard this evening - specifically Case #06-ADD-21, Case #07-V-21, Case #09-AAD-21, Case #10-SE-21, Case #11-V-21, and Case #12-SE-21- pertinent information was not posted correctly, nor posted as public hearings or site visits. The Granite State News publication, in publishing these proposed public hearings, published them under the heading of Wolfeboro Planning Board with the incorrect date. Luke Freudenberg further explained that, in meeting with Town Counsel, it was advised that the Zoning Board of Adjustments not hear any of the aforementioned cases at this time. Luke Freudenberg proposed that the cases be moved to a date certain, and if in concurrence with the Board, that the cases be heard Wednesday, June 23, 2021. This would be a special meeting, due to the gravity of the situation and the Board's utmost respect for the public's ability to be heard in a meaningful timeframe, and would allow these cases to be heard in as timely a manner as possible.

Sarah Silk questioned the Board's ability to hear Case# Case #08-V-21 regarding the Wolfeboro Public Library. Tavis Austin offered that, with the exception of the Granite State News typographical errors, that case had been noticed correctly and could be heard if not objected to by the applicant.

Luke Freudenberg made a motion to have the June 7, 2021 meeting moved to June 23, 2021 at 7pm. Audrey Cline seconded that motion. The motion was then amended/clarified to move that the following cases be re-noticed to June 23, 2021 at The Great Hall at 7:00 pm: Case #06-ADD-21, Case #07-V-21, Case #09-AAD-21, Case #10-SE-21, Case #11-V-21, and

Case #12-SE-21. Further, that Case# Case #08-V-21 still be heard at this 6/7/21 meeting. Roll call vote resulted in a unanimous vote of 5-0 in favor.

Luke Freudenberg once again apologized for the delay in hearing these cases but, under the advice of the Town Counsel, it is the best course of action for all concerned.

The Board then discussed the Special Exception cases which must be noticed as public meetings and, per ordinance, three members must be present at the same time. The other case site visits can be done independently by members. The Board agreed to notice the site visits to be held on June 23, 2021 for Case #12-SE-21 (Sherman) at 5:30 pm and Case #10- SE-21 (Boat Museum) at 6:00 pm.

Tim Cronin then read into the record the following case to be heard:

Case #08-V-21

Applicant: Wolfeboro Public Library

Project: Requested Variance Relief from Section 175, Section 44-G, Table 2

Tax Map/Lot #: 231-060

Zoning District(s): Residence /Office/Institutional District

The applicant has requested a variance to permit a larger sign than permitted in the ROI District.

Cindy Scott, Director of the Wolfeboro Public Library, explained that in conjunction with the expansion to the library a new sign was required. The design chosen is larger than the size that is currently allowed but is within 10% of the size of the front of the building, actually only 4.2%. It is felt that the proposed sign is appropriate and proportionate for both the size and design of the new library building. In addition, there is a need to identify the building as the public library. Therefore a variance is being requested to install the proposed sign on the building. Cindy Scott then read the criteria and the responses to each (copy attached).

The public hearing was opened.

Sarah Silk as if there would also be a sign on the lawn area in front of the building, between the library and the road. Cindy Scott responded that the sign committee had determined that would not be a good location for a sign as the space was not adequate. Sarah Silk commented that was a positive thing as a sign in that location would hinder visibility when vehicles are exiting the library.

Audrey Cline inquired as to what type of lighting would be used with the sign. Cindy Scott

responded that the proposed lights are downward facing, have a shield around them, can be adjusted directionally and are able to be dimmed as well as turned off and on.

There being no further discussion, the public hearing was closed.

The Board then reviewed, and agreed, that the request for a variance is in compliance with the five criteria:

1. Not contrary to public interest.
2. The spirit of the ordinance is observed.
3. Substantial justice is done.
4. Values of surrounding properties are not diminished.
5. Literal enforcement of the ordinance would result in unnecessary hardship.

Audrey Cline made a motion to approve Case #08-V-21 for a variance from the sign ordinance to allow for the 52 sq. ft. sign at the Wolfeboro Public Library as depicted on the drawings in the subject application. Suzanne Ryan seconded the motion. Audrey Cline then amended the motion to include that the lighting for the proposed sign will be shielded and downward facing. Suzanne Ryan seconded that amendment. A roll call vote resulted in a unanimous approval (5-0).

III. By-Laws and Election of Officers:

Luke Freudenberg opened the nominations for Chairperson of the ZBA.

Suzanne Ryan made a motion to nominate Audrey Cline for Chairperson, and Sarah Silk seconded that motion. Roll call vote: Sarah Silk, yes; Suzanne Ryan, yes; Tim Cronin, yes; Audrey Cline, yes; Luke Freudenberg, yes. Audrey Cline was elected as Chairperson by a vote of 5-0.

Audrey Cline then requested nominations for Vice Chairperson of the ZBA.

Tim Cronin nominated Sarah Silk, who declined the nomination.

Tim Cronin then made a motion to nominate Luke Freudenberg as Vice Chairperson and Audrey Cline seconded the motion. Roll call vote: Sarah Silk, yes; Suzanne Ryan, no; Tim Cronin, yes; Luke Freudenberg, yes; Audrey Cline, yes. Luke Freudenberg was elected as Chairperson by a vote of 4-1.

Audrey Cline then made a motion to nominate Tim Cronin as Clerk of the ZBA. The motion was seconded by Luke Freudenberg. Roll call vote: Sarah Silk, yes; Suzanne Ryan, yes; Luke Freudenberg, yes; Tim Cronin, yes; Audrey Cline, yes. Tim Cronin was elected Clerk by a vote of 5-0.

The New Zoning Board of Adjustment officers are as follows:

Chairperson - Audrey Cline

Vice Chairperson - Luke Freudenberg

Clerk- Tim Cronin

IV. Informational Items

Tavis Austin informed the Board that the applicant, Geno Ranaldi, formally withdrew his application for 67 Varney Road, Case #02-SE-21. No further action is required.

Audrey Cline asked the Board if they wanted the questions and responses contained in that April 12, 2021 email from Tavis Austin to/from Laura Spector-Morgan read aloud. It was determined that no formal reading was required, but the document (copy attached) would become part of the formal minutes /record.

Suzanne Ryan requested that a review of Rules of Procedure/Bylaws be included on the next meeting agenda.

IV. Consideration of Minutes:

The following changes are to be made to the minutes of the April 4, 2021 Zoning Board of Adjustment:

Sarah Silk added to the following sentence under Case #03-SE-21 on page 3: "Sarah Silk inquired as to the guarantee oflong term maintenance of the pervious surface area being created.

Suzanne Ryan made a motion, which was seconded by Sarah Silk, to approve the minutes of the April 4, 2021 meeting of the Zoning Board of Adjustment as amended. Roll call vote: Tim Cronin - yes; Sarah Silk - yes; Audrey Cline - yes; Suzanne Ryan - yes; Luke Freudenberg - yes. Motion was approved by a vote of 5-0 in favor.

V. Adjournment:

Suzanne Ryan made a motion, which was seconded by Luke Freudenberg, to adjourn the

meeting. Roll call vote: Tim Cronin - yes; Sarah Silk - yes, Suzanne Ryan - yes; Audrey Cline - yes; Luke Freudenberg - yes. Motion passes unanimously with a vote of 5-0.

Meeting was adjourned at 7:45 pm.

Respectfully submitted,

Mary Jane Shelton, Recording Assistant

ZBA Questions to Town Counsel from April 2021:

From: Tavis Austin
Sent: Monday, April 12, 2021 4:13 PM
To: Laura Spector-Morgan <laura@mitchellmunigroup.com>
Cc: Steven Paquin <codes@wolfeboronh.com>
Subject: ZBA questions

Hello Laura,
The ZBA has asked for to forward two questions to you:

- 1) Can a project be conditioned to follow local/state/federal permits? Question raised following Board review of 674:33 VI. Clearly applicant cannot be required to submit local/state/federal permits prior to accepting applications, however Board asked if fair to require compliance with said permits as a condition of approval. Ultimately I suggested to Board that all other laws still apply with or without the condition, but they questioned legality of such a condition.
- 2) Section 175 -7 Estates: *Repair or replacement of legal preexisting use/structure. Where a legal, preexisting use within the buffer or setback is in need of extensive repair, it may be rebuilt. The new or rebuilt structure shall maintain the same three-dimensional envelope (same building footprint, roof line and square footage) on the parcel. The buffer shall consist of natural vegetation. All construction, forestry and agricultural activities within 100 feet of any wetlands shall be undertaken with special care to avoid erosion and siltation into the wetlands. When deemed necessary, a sediment and erosion control plan may be requested by the Planning Department.*

Meanwhile, 175-43 states: Expansion and extension.

iii Structures.

L I The purpose of this section is to establish and distinguish between permitting requirements with respect to building permits, special exceptions and variances regarding expansion or extension of existing, nonconforming structures.

.fhl Any building permit application(s) and/or application(s) to the Zoning Board of Adjustment made pursuant to this section should include a plan prepared by an NH licensed surveyor. Any application that proposes further encroachment, requiring a variance, shall include a plan prepared by an NH licensed surveyor. The plan shall include all relevant existing and proposed conditions and dimensions.

ifl Any nonconforming portion of a building or structure may be expanded or extended by no more than 25% of the nonconforming building or structure, but with no further intrusion into the setback area by special exception. The 25% expansion shall be a total cumulative expansion based on the lawfully existing nonconforming structure.

fql The basis for determining the maximum and cumulative expansion limitations (25%) shall be the existing nonconforming footprint (measured to the overhang extent) of the existing, lawful portion of the nonconforming structure, excluding appurtenant features such as exterior stairs and nonhabitable areas such as open decks.

l The nonconforming limit of encroachment is a measurement of the shortest distance between the lot line or the mean high water line and the intruding part of the structure.

ill For purposes of determining the pre-existing limit of encroachment, the structure does not include appurtenant features such as exterior stairs and nonhabitable areas such as open decks.

.fgl The basis for determining maximum and cumulative expansion limitations established shall be the existing nonconforming habitable footprint of the existing

nonconforming structure in lawful existence as of the date of this section, excluding appurtenant features.

.(h) No nonconforming portion of a building that is without a roof (such as a deck) shall be roofed over or enclosed unless it receives a special exception. A deck expansion shall not exceed 25% of the nonconforming portion and cannot further encroach into the setback.

.(i) Any proposed construction activity located within a set back area with further encroachment shall require a variance.

iii_ A structure may be expanded vertically within any setback above existing nonconforming footprint beyond 25%, but must obtain a special exception from the Zoning Board of Adjustment.

iii 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.

The question/application before the board related to the highlighted section above. So the question is (j) above permissible if the existing nonconforming structure is within a wetland buffer? Or only that portion of a structure determined to be outside said structure able to exercise 175-43A(i). The project in simple terms, replace a manufactured home with a new stick built home in same footprint but taller.

Thank you for your time on these questions. Please let me know if you need more information to adequately address them.

Tavis

Tavis J. Austin, AICP | DIRECTOR OF PLANNING AND DEVELOPMENT | TOWN OF WOLFEBORO 184 SOUTH MAIN ST. | P.O. BOX 629 | WOLFEBORO, NH 03894 | PLANNINGDIRECTOR@WOLFEBORONH.US | 603-569-5970 (EXT: 121) |

RESPONSES:

Hi Tavis.

1. Yes, this is a permissible condition of approval. it's not necessary—everyone needs to obtain and abide by all required permits - -but it's a pretty standard condition that is imposed on many approvals
2. Since the language in 1 is stricter than the general nonconforming structure provisions, it prevails, which means that within a wetland setback, any expansion of the nonconforming structure requires a variance.

Please let me know if I can be of additional assistance. Thanks.

Laura

Laura Spector-Morgan, Esquire
Mitchell Municipal Group, P.A.