

Town of Wolfeboro
Zoning Board
Minutes Of

Monday, June 27, 2022-- 7:00 PM

1. Roll Call:

Audrey Cline, Chairman; Sarah Silk Member; Suzanne Ryan Member; Tim Cronin, Member; Cate McMahon, Alternate; Chuck Schumer Alternate; Nancy Stroman, Alternate

Luke Freudenberg, Member--Absent

Staff present: Tavis Austin, AICP, Director of Planning and Development

2. Public Hearings

A. Cline asked that C. McMahon to remain a voting member as designated June 06, 2022 on all cases on the night's agenda.

A. Cline discussed with applicant's attorney, Randy Walker, the order of the agenda items. It was decided proceed with Case 11-V-22; remaining cases to be discussed after conclusion of #11-V-22.

The Board resumed the hearing for Case #11-V-22.

S. Ryan suggested the applicant had submitted a lot of information and her belief is that some of the information was not relevant to the case.

A. Cline cited numerous sections from R. Walker's 06/22/22 letter to the Board. She noted that much of the letter did not specifically address the five variance criteria.

R. Walker stated the Board has discretion and ability to interpret the ordinance as a literal read and may not be appropriate specifically where the ordinance is inconsistent with itself.

A. Cline clarified that the request of this Case is for an increased density and specified that she was looking to hear from the applicant what special conditions of the property that warranted the variance—what's unique about the property?

S. Ryan stated that this discussion was not appropriate outside of the Board's deliberation.

A. Cline mentioned the Board needing to understand the complete position of the applicant and their application prior to deliberation.

S. Ryan noted the 6/22/22 letter stated there was 'no objection' to the project while she believed the Conservation Commission (ConCom) and questions raised at Planning Board (PB) non-binding meeting and prior Technical Review Committee (TRC) meeting suggested some objection. Further, the letter inappropriately showed similarity with Birch Hill; she

enumerated points from a Birch Hill Estates Homeowners Association document. She continued noting that according to ITE traffic counts, the proposed development would create 450 vehicle trips per day on 109A.

R. Walker stated it is unique that his client opted to present to the TRC, PB, and ConCom, prior to submitting application for the ZBA. He continued stating that intent of showing comparison to Birch Hill Estates and Sugar Hill was to point out those projects are not really 'seen' by the public—hidden from view—in a manner similar to that of the proposed project.

T. Cronin appreciated R. Walker's clarification on the reference to Sugar Hill and Birch Hill Estates.

A. Cline concurred.

Michelle Hansen, applicant, outlined her submission to the Board. She also referenced an email from the State that supported the proposed project.

G. Hutchinson, applicant, spoke to further comparable components of Birch Hill Estates noting specifically the undeveloped sections that would be very similar to the proposed project. He then introduced Bonnie Dale.

B. Dale introduced herself noting her ownership of two, much larger, manufactured home communities. She stated her love of Wolfeboro and commented on how appropriate she believed such a project would be for Wolfeboro. She spoke to community safety and the neighborhood qualities of such projects—not the trailer parks of previous decades.

R. Walker summarized from prior hearings: 25 sites result from a strict and literal read of §175-152 B of the Conservation Subdivision Regulations which, again, doesn't jive with other sections of the same regulations. He noted that the required reduction of 20% of the land for roadways in accordance with the prescriptive formula doesn't work with larger tracts of land. It appears to work on a 10 or 15 AC site, but if you consider a 1,000 AC site, 200 AC would be subtracted for roadways. Formula does not appear to meet spirit of the regulation.

R. Walker continued reiterating prior discussion of the minimum lot size of 1 AC from the Manufactured Housing Overlay, despite the Conservation Subdivision Regulations ability afforded to the Planning Board to reduce lot size and the Residential Zoning District's permission for 1 AC for the first unit and 0.5 AC for each additional unit which, if used, would put the base net density at 50 units rather than the 25 units dictated by the Conservation Subdivision Regulation. He stated the Conservation Subdivision Regulations' Purpose speaks to flexibility. He then discussed three specific points.

The first point was to state the end goal of the analysis was to determine what the site can sustain and the applicant believes 90 units can be sustained. In fact the project is not over density as the applicant has demonstrated complete compliance with the Conservation Subdivision Regulations with the exception of the density, therefore the variance request.

The second point from R. Walker, is that if the applicant proposed multi-family housing, 90 units would be permitted. The applicant is asking for this same density but in the form of single-family homes.

R. Walker's third point was reference to three court cases: *Nauseau v. Deering*, where open space determined appropriate to be used in density calculations; *Rancourt v. Manchester*, where extra large lot (3 AC where 1 AC required by zone), sufficient to permit variance for an additional horse; and *Harrington v. Town of Warren*, where development of manufactured home project required minimum of 10 AC parcel with a cap of 25 units was granted a variance to increase the density.

R. Walker then addressed special conditions of the project property. He noted the recent approval of the same density on an abutting property by this same ZBA. He commented that there were not many 45 AC parcels in Town with access to Town water, ability to develop same density with multi-family projects, and that this project site was uniquely remote in its location—surrounded by commercial and industrial type uses and setback from the road providing frontage. Therefore based on these three points, there is an unreasonable hardship presented within this variance request.

N. Stroman asked R. Walker to bullet point the compliance with the Conservation Subdivision Regulations.

R. Walker stated the project is flexible and innovative, proposes shorter roads with reduced pavement, compliance with the required 50% open space. Again the project comports with the Regulations with the exception of the requested density.

S. Silk asked about garages.

G. Hutchinson stated that some lots may be sized for garages or a carport.

R. Walker re-stated the net density formula within the Conservation Subdivision Regulations isn't necessarily fair or appropriate for large parcels of land as the rationale decreases with increased lot size. The applicant has tried to be innovative and flexible with their design, regulations permit 90 units of multi-family, why not single family treated the same, and project parcel is largest parcel is strongest argument against fair and substantial relationship between regulation and site.

S. Ryan presented a map she had prepared showing larger lots within a mile.

R. Walker stated that their parcel was the largest lot that was served by Town water.

A. Cline, agreed with R. Walker, noting that she had found 6 parcels on N. Main and 6 parcels on Beach Pond Road that were of similar size and seem to lend themselves to strict application of the Conservation Subdivision Regulations; more importantly the Board should be focused on large lots—greater than 10 AC—with Town water, within the Residential zone, and within the Manufactured Housing Overlay district.

S. Silk questioned with the roads as shown on the submitted plan were within the 20% required by the Regulation.

Chris Berry, applicant's engineer, stated they removed the 20% as required by the regulations, however, the depicted road is much less than the 20%.

C. Sumner noted that while 450 vehicle trips may be generated, over a 12 hour period, such would be less than 1 car per minute.

S. Ryan contested C. Sumner's statement stating that traffic counts are estimates 'per day' not per minute.

C. Sumner commented he wasn't challenging the number of daily vehicle trips and that his comment was to assert the likely observable impact.

A. Cline opened the floor to public comment.

Tony Fallon spoke in favor of the project stating his belief that the project meets the spirit of the Regulations, the proposed homes meet the archetypal spirit of a home as opposed to multi-family structures, and concluded by noting the Wolfeboro desperately needs such housing and he supports the proposed cluster concept to provide said housing—similar to the existing Birch Hill Estates.

S. Ryan moved to close the public hearing at 8:25 PM. The motion was seconded by S. Silk and passed with a unanimous vote.

The Board commenced deliberations regarding the five variance criteria starting with 1 and 2 together as follows:

T. Cronin stated his belief that the project supports public interest and furthers the spirit of the ordinance.

S. Ryan provided an overview of the purpose of the ZBA. She continued noting that 90 units, as proposed, alters the essential character of the neighborhood and would create cumulative impacts, and the allowing such density here would open the door to similar projects of this magnitude. She re-stated her earlier points related to traffic volume.

A. Cline stated her position that the project in fact represented orderly growth with a density comparable to the Residential density and therefore is not atypical density. She continued noting that the existing homes surrounding the project site are similar to those proposed with this project. Further, clearly traffic will increase, but that the additional traffic would be on a State road and therefore would not be atypical for the road. She concluded noting that the majority of new homes in recent years in Wolfeboro have been larger homes; therefore the proposed density here balances the growth pattern of the community.

S. Silk spoke to the 20% of the lot removed by the prescriptive formula, referred to D. Ford's memo of June 27, 2022, stated concerns of the number of ingress/egress points, and concluded stating the proposed percentage of impervious area would be detrimental to the parcel.

C. McMahon agreed with T. Cronin's remarks and noted that septic and traffic dialogue was not the question for the ZBA to discuss.

A. Cline reminded Board members not to debate one another's points. She added that the Conservation Commission—to S. Silk's point—was looking for more stringent regulation than the regulations generally and did not address density specifically.

The Board discussed the 3rd criterion as follows:

S. Ryan commented that 90 units create noise and traffic that would pose substantial change to the regulations and therefore substantial justice not done.

T. Cronin read the applicant's submission to the third criterion and agreed therewith finding substantial justice done.

A. Cline stated that substantial justice has to be done as the applicant proposes a density permitted by the zoning district, while she also recognizes that the prescriptive density formula does not work with larger lots.

S. Silk stated concern with traffic and noted that gain to the public needs to be greater than the loss to the applicant. She stated she could not see how the public gain was greater than the applicant's loss as requesting an increase from 25 units to 90 is beyond the "flexible" stated in the regulations.

C. McMahon stated her belief that substantial justice had been demonstrated and echoed T. Cronin's comments.

The Board generally discussed the 4th criterion. A. Cline noted that no proof of diminished neighborhood value had been submitted.

The Board then discussed the fifth and final criterion:

A. Cline stated the project parcel presents special conditions such that unnecessary hardship exists. She recalled her earlier comments of the North Main Street lots and Beach Pond Road parcels that may be more appropriate for a strict application of the regulation. The project parcel, however, is bounded by the Town's treatment plant and stump dump, flanked by commercial and industrial type uses, and where residential uses are nearby, the homes are similar to those proposed with the project and that strict adherence to the Conservation Subdivision Regulations is not applicable to this project site given its uniqueness.

S. Ryan opined that the project parcels are not unique and that abutting parcels have to apply the same rules. She expressed concern that granting his variance would open the door for other properties to request the same relief. She concluded noting that applicant did show lack of ability to make a reasonable return.

S. Silk commented that nothing about the property made it unique, nothing limiting density.

C. McMahon commented that Conservation Subdivision Regulations permit flexibility of design and therefore substantial justice is done.

T. Cronin expressed agreement with A. Cline's comments.

S. Ryan motioned to deny Case# 11-V-22 as submitted as the 5 criteria, as discussed, had not been met. S. Silk seconded the motion. Roll call vote: A. Cline, no; T. Cronin, no, C. McMahon, no; S. Silk, yes; S. Ryan, yes. Motion failed.

T. Cronin motioned to approve Case# 11-V-22 as submitted finding the 5 criteria, as discussed, had been met. A. Cline seconded the motion. Roll call vote: A. Cline, yes; T. Cronin, yes, C. McMahon, yes; S. Silk, no; S. Ryan, no. Motion passed, variance granted.

There was discussion of adding conditions. A. Cline stated that conditions cannot be added after the motion is voted on, they should have been brought up during discussion prior to the vote. She added that the only 'conditions' that had been eluded to were items that are required aspects of either State or other Town approvals.

S. Ryan motioned to dismiss Cases # 7 and 8-V-22 finding that they did not meet the threshold for requiring a variance. T. Cronin seconded the motion that passed with a unanimous vote.

R. Walker withdrew his request, Case # 5-V-22.

S. Ryan motioned to adjourn the meeting at 9:37 PM. A. Cline seconded the motion which passed with a unanimous vote.

Meeting Adjourned.

Submitted by T. Austin