

TOWN OF WOLFEBORO
ZONING BOARD OF ADJUSTMENT
July 31, 2023
DRAFT MEETING MINUTES

I. Roll Call:

Chair Audrey Cline called the meeting to order in the Great Hall, 84 South Main Street, at 7:00 p.m.

Members Present: Audrey Cline (Chair), Suzanne Ryan (Vice-Chair), Sarah Silk (Clerk), Luke Freudenberg, Cate McMahon, Charles Sumner.

Alternates Present: N Sabet Stroman

Staff: Tavis Austin

Chair A. Cline: First, the Clerk of this Board will read the Notice and report on how Public Notice and Personal Notice was given by any Board member needing to recuse themselves. Then Alternates will be seated, if necessary. A quorum of this Board is three voting members. A full Board is five voting members. If after seating the Alternates, the Board is not full, the Applicant will be given the opportunity to continue their hearing to a time and place certain for their case. For a short Board, which thereafter cannot be used as a reason for a rehearing, we'll have the Applicant present, we'll open a Public Hearing, we'll present their Case to the Board members, we'll ask questions and discuss the Case with the Applicant.

We'll invite the members of the public to speak first in favor, then opposed, and then anybody who would just like to talk. If you do come to the microphone to talk, please identify yourself by your name and address. Please direct all comments and questions to the Chair. You're not to deliberate directly with other attendees in the room. Please contain your input to the criteria used by the Board in evaluating Applications. The Zoning Board of Adjustment [ZBA] is tasked with hearing four distinct Appeal types, each with specific evaluation processes dictated by State laws of New Hampshire. I will explain each type of appeal as it comes forth. We want to hear from you and when possible, please refrain from extensively duplicating talking points that have already been made by other speakers. After hearing public comments, we will close the public hearing, deliberate amongst Board members only, and in many cases, make a decision the same night.

So at this point, I'd like to ask Clerk Sarah Silk to read the Notice:

Clerk S. Silk: E.A.C. LLC c/o Hunter's Shop N' Save and Sawyer LLC, 50 and 60 South Main Street, Tax Map 217, Lots 58 and 59. Case number 05-SE-2023 for a Special Exception for up to 25% Expansion for a Non-Conforming Structure, per Section 175-43.A.1c of the Town Zoning Ordinance.

Chair A. Cline: Would you report on the Site Visit, please?

Clerk S. Silk: Yes. It was a site visit this evening at 6:15 p.m. Present from the Board was: Suzanne, myself Audrey, Cate, Sabet and Chuck. Also present were Perry Shaw Sr. and Perry Shaw Jr., Sam Adams, Mark Bullock and Randy Tito. There was discussion about the white building coming down at the rear of the lot. There was a demonstration of the great difference [in elevation] especially at the back of the

building. Stormwater will be directed towards the front corner, School Street has a pitch to it, and there will be a Vortechs Filtration System: all regarding the on-site drainage. On July 11th 2023 the Site Plan the was presented to the Planning Board is the same. There were records found and corners located; it was a great assistance to get some work done before going to the Planning Board. it was referenced to ADA grades and it is 1.5 feet lower, due to necessity. Those are the details discussed. Thank you.

Chair A. Cline: For future land use goals, the 2019 Wolfeboro Master Plan provides education on the process of the Zoning Board of Adjustment within the context of State statutes. A local ordinance is a desirable goal and let me read a short paragraph about what a Special Exception is. As I mentioned, there's four different processes that we can hear. They each have different standards of review. This is a Special Exception to the terms of the ordinance: a specific permitted land use that is allowed when clearly defined criteria and conditions contained in the ordinance are met.

Providing for Special Exceptions makes it possible to allow uses where they are reasonable, in a uniform controlled manner, but to prohibit them where the specific conditions cannot be met. Requirements, in this sense, are measurable qualifications which are the same at all times and places, and can be expressed in specific terms. In the case of a request for a Special Exception, as the ZBA may not vary or waive any of the requirements set forth in the ordinance, all Special Exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance.

So, what does the Board do? We collect evidence and determine the facts, we apply the legal tests to the information that we found, we develop a record for court review, we make Findings of Facts, and we make a Decision. And that's basically our process. Is there any member who would need to disqualify themselves on this case?

Clerk S. Silk: Madam Chair, I have a question about whether one of our members should step down [for this hearing]? I have a copy of a statement by the Wolfeboro Board of Selectmen, noting that they would not grant municipal estoppel, outlined as a Condition of Approval by the Wolfeboro Planning Board; rather Hunter's Shop N' Save will seek approval of a Special Exception by the Wolfeboro Zoning Board of Adjustment on July 31st 2023.

It was a statement from the Board of Selectmen [BOS]. The BOS Minutes say their meeting went into Non-Public, they talked to an attorney, they came out of Non-Public, and Luke Freudenberg was present on all of those occasions. And there was a certain amount of judgment being made, for that Decision by BOS. I also have the Planning Board Minutes from Tuesday, July 11th. If you refer to pages 8-9 in those Minutes, you will see that as a member of the ZBA - though he said he was not testifying as such - Luke did make a lot of judgmental calls about this application.

I know it probably sounds like the "ethics conscience" for the ZBA, but I'm always trying to make sure that when we do our deliberations, we are above reproach. I did not sit at the last couple of meetings because I felt I had a reason to have a conflict of interest. And I know I've been very conscientious about making sure that our Board follows all of our Crossing The T's and Dotting The I's when our Chair has an item before us. So with an abundance of caution, I would just suggest that perhaps Luke should step down because of the appearance of a conflict.

Vice-Chair S. Ryan: Is that a motion?

Chair A. Cline: Well, I'd like to hear what Luke has to say before.

L. Freudenberg: I appreciate your comments, Sarah: all those things are true. It did go before the Board of Selectmen [BOS] after the Planning Board's attorney advised them that the potential for municipal estoppel was available, possibly, to BOS. I found, personally, that the information [given at the Planning Board meeting] was in poor judgment. It was not sound legal advice. It did a disservice to both: the Planning Board and BOS. Case law is very clear: municipal estoppel has never been used in that approach.

So, I believe that I did what was right for the Town of Wolfeboro, as I have no vested interest in any of these matters that are before this hearing tonight. But I would like to bring up a couple of things: I agree that people are making statements about cases in the public, and we have a small town. For instance, the Chairwoman made a comment on Facebook saying that - please correct me if I'm wrong with the terminology - when it came to a project such as this, an applicant should plan on spending 12 to 18 months in the planning review process and they should be capable of having the financial resources available to produce such a thing [a project].

In my mind, my comments were benign about this subject: what the ZBA should be hearing or what it shouldn't be hearing, in my opinion, as a citizen. And what BOS should be hearing or shouldn't be hearing, in my opinion, as a citizen. That comment actually deals with a specific part of this case. Furthermore, Suzanne Ryan got up after me at the Planning Board meeting and also made comments regarding me and my character. So, if I'm getting called out: I fully admit to what I said, I support what I said, I still believe what I said, I'd say it again even tonight.

There are powerful forces at work in this town that hide behind the cloak and use other groups to facilitate the information and their agenda. Some of them are sitting the audience here tonight. And it's embarrassing, because we have applicants that come before the Town Boards time and time again, and we sit here as members of the Town of Wolfeboro, to do things in an ethical and expedient way. That's all I've ever tried to do. I had hoped the Planning Board would have taken out the Fifth Condition of Approval on 7/11/2023. They wiggled and wobbled at the end, because they were thinking about it.

My statement calling out the Planning Board and the people hearing it is on par with the Planning Board's entire case. They basically laid it out so that the Board of Selectmen could step in with municipal estoppel and completely remove the ZBA from the process. So, I would be happy to step down if the other two ZBA members would step down, and let the four remaining members hear this case clearly and cleanly. Everyone's made public statements. The three of us have all made public statements, so I'll step down if those two will step down.

Clerk S. Silk: I think, with all due respect Madam Chair, the difference here is that I do have the Planning Board Minutes and it shows that Suzanne Ryan asked a technical question relevant to the [site] plan before the Planning Board and that she makes absolutely no comments relative to approval of the [site] plan, or not. Any personal comments about Luke are not pertinent to this Decision that we're making tonight.

Chair A. Cline: So, I actually did hear almost all of the testimony at the Planning Board hearing on 7/11/2023, including Suzanne's questions about technical aspects of the project. And I don't feel like there was any kind of judgment as to whether or not it applied to this Special Exception hearing. They were questions similar to everyone else's in the audience.

Clerk S. Silk: The technical question had to do with a proposed drive-thru pickup window [for Walgreen's].

Chair A. Cline: I appreciate when Suzanne is in the audience, asking questions that are very relevant. As to what I said, Luke, when I said 12 to 18 months, I was talking about the entire project, not just the review process. I was talking about construction and everything else. And that was related to the applicant's desire

to get up [reopen] by spring of 2024. And I was thinking that's really a difficult timeframe. So, I don't believe my comment has any effect on whether I think the Special Exception criteria are met, or not. I haven't heard the Case yet. So, I do not feel as if I will volunteer to recuse myself. Would anybody else like to speak?

Vice-Chair S. Ryan: Yes, I'd like to speak to this. The difference in asking a question as to making a judgement or perceived as making a judgement, which Luke did. He was basically saying, "Planning Board: approve this, it shouldn't go to ZBA because they don't have the capability." Besides being thrown under the bus, I think you gave an analogy: that the federal government can come in for a catastrophe without having to follow regulations. And the Town can come into abbreviated formats, and they don't have to really go through the whole scenario [review process], "Don't send it to the ZBA." The impression that I got from what you said is, "Just approve it tonight." You're not one who is pro land use and pro zoning, I think your personal record shows that. So, legally, do you have to step down? No. Can we make you step down? No. Should you step down? Yes. Because as a Selectman, you went on further, to make another decision about the municipal estoppel. And I would bet 10 to 1 you voted not to send it here [to ZBA]. I bet that vote was three to two.

Clerk S. Silk: We don't want to know that vote, it's not supposed to be disclosed.

Vice-Chair S. Ryan: Are you making a motion?

Chair A. Cline: Suzanne, are you done making your point? Okay. Luke, I want to ask you, part of what this Board does is collect evidence and make Decisions based on the facts. It appears as if you've already made up your mind. My question is, if you hear facts that you didn't know before, are you capable of changing your mind? Or have you already decided that you're going to vote to approve this, regardless?

L. Freudenberg: Not saying how I would vote on this issue, that would be unethical. I do support the grocery store. I do support this plan. I've reviewed it extensively. We have not gone through the Findings of Facts yet. I believe that I have zero vested interest in this, other than being in the Town of Wolfboro and caring greatly about the people as residents and the businesses. And yes, I can always be impartial.

Chair A. Cline: So, when you said that government should just get out of the way, that's not a blanket statement?

L. Freudenberg: I said, "I think sometimes what government should do, is just get out of the way." Yes, I truly believe that. I believe we boggle some of these cases down in minutiae. We cost people tens of thousands of dollars: in time and in coming back and forth for more and more and more meetings. I personally think it's embarrassing for the Town and I want to see us process Cases faster. I want to see us do what's right by the people of Wolfboro. And, I don't want to see interest groups. I don't think it happens here [at ZBA], but it certainly happens on other Boards. There are powerful interest groups in this town, and individuals who put a lot of pressure on the Boards and hold up a lot of these Cases.

A lot of time is spent and a lot of effort and lawyers and engineers and meetings that we must sit through. And it's embarrassing, I'm tired of it. So, I am going to sit tonight, so you guys can vote to say I shouldn't. But I'm going sit for my town, and I'm going to sit for the people in Wolfboro, and I can hear this case impartially.

Chair A. Cline: I guess what I want to point out, I think it's kind of ironic, because you do feel so strongly that these processes should move along quickly: no matter what the ZBA Decision is tonight, the position you've taken leaves us really open for appeal. And that could put us out 30 days, 90 days. And that's you, getting in the way. I just wanted to point that out. Anybody else?

Clerk S. Silk: That doesn't respond to something Luke said, when he talks about what's right for the people, the town, including the people who voted in these zoning ordinances. We're talking about the majority of the voters. To be fair to them, as well as to the applicant, we need to make certain that the process is above reproach. If you are so embarrassed by being on this Board, would you like to put in your resignation? I'm never embarrassed to represent what the voters voted for.

Chair A. Cline: Anybody else? Would anybody like to make a motion?

C. Sumner: I don't think there's a motion to be made here. I think all five people you see on this Board tonight are capable of making a good Decision. And I'd just like to move on.

Chair A. Cline: So generally - and we've done this a number of times before - if somebody wants to make a motion to take a non-binding vote, that's what happens: it's not binding.

Clerk S. Silk: When I've recused myself in the past, you guys voted and I voted, too, if I would recuse myself.

Chair A. Cline: It's always the decision of the Board members.

Vice-Chair S. Ryan: And it's only the Board that can do it, the public can't do it. So, I'll make a motion that...

Clerk S. Silk: I already made the motion.

C. Sumner: Nobody heard it.

Clerk S. Silk: The motion is to have Luke step down from this Case, then Suzanne said, "Is that a motion?" And I said yes. Chair A. Cline: Okay, then I'll second it. The motion did not pass (2-2-0).

Clerk S. Silk: We can take the vote and he can refuse to step down, but at least we're on the record as trying to make this Case less appeal-able.

Chair A. Cline: This is consistent with our actions in the past, very consistent. So Luke, the motion's been made. How do you vote?

L. Freudenberg: No.

Clerk S. Silk: I think you should step down. Yes.

Vice-Chair S. Ryan: I've been on both ends of this situation: when I've been asked to step down, and I have. And when I've been asked to step down, and I have not. It's a matter of what you think is in the best interest of the outcome and then your conscience. I begin to wonder. So, yes.

Chair A. Cline: I think it's not a good idea for Luke to sit [for this Case], just from a formal and legal standpoint, but I'm recusing myself in this vote.

C. Sumner: I vote No.

L. Freudenberg: I don't want to make this..In the end, this alleviates that responsibility. I believe this Board can make the right decision tonight. And I believe they will, so I will step down.

Chair A. Cline to Alternate C. McMahon: It's your turn to sit as a voting member, if you're willing.

C. McMahon: Okay.

Vice-Chair S. Ryan: All right, I would like to address to the public and maybe some of the Board members who are not current on what's happened, this is a way to fill in the gaps. On July 11th, Hunter's had its final Site Plan Review with the Planning Board. The issue came up if Hunter's should go to the ZBA for a Special Exception, or not. The Planning Board's attorney was present, he advised them, and based on that legal advice, the Planning Board decided to ship it over to the Board of Selectmen.

On July 13th, the Board of Selectmen [BOS] had a special, non-meeting with their legal counsel [different attorney] to determine what path BOS should take; including the possibility of going to court. The public didn't get to see that. What I'm trying to convey is, BOS determined, "We are not going to send this Case to court," for various reasons and upon their attorney's legal advice. It's outlined, if you want to see the description of what BOS did, and what BOS said, as to why this Case is before the ZBA tonight. The public was out of the loop on what transpired, but that's the basis of how this Case landed here today, before us.

Chair A. Cline: Are you making the point that it's not ZBA that decides whether it comes to us, or not?

Vice-Chair S. Ryan: The other thing that I'd like to say, there was a big emphasis made - in a negative way - about how long it took to get through the review process. There were negative comments. I would say that I didn't hear the applicant complain. I didn't hear the engineers complain. I heard unverified discussion and negative comments from other people. But I believe this wasn't an unusual sequence of events that happened. The engineer very kindly wrote up a timeline for what happened, and when. The applicant wasn't even allowed to start work until the Fire Marshal was finished, until the site was able to be managed safely.

Briefly, the review sequence is: an applicant must go to Technical Review Committee [TRC] first. They have an option to go to the Planning Board for informal applications, which is to their benefit and the Planning Board's benefit and the public's benefit, because you get to hear about the process as it's moving along. And so they did conceptual plans and preliminary plans. And out of that process came a lot of good stuff

I think two things are the best things that could have happened: one, improving stormwater drainage. Two, the facade and the appearance of the building (though this is subjective) underwent a great improvement because of public comment. And you're not going to be disappointed. In total, the applicant went to the Planning Board seven times and on the eighth time their Site Plan was approved. That's not unusual. That's very typical for a project that happens once in a generation. So, it's unfortunate that staff felt that they didn't have to come to us for a Special Exception. But at any rate, they did and they're here.

N Sabet Stroman May I ask, wouldn't this usually come to zoning [ZBA] first, before the Planning Board?

Vice-Chair S. Ryan It can go either way, it's the applicants choice.

Chair A. Cline And the applicant can do it concurrently, as well. Comments? Questions? Applicant, would you like to step up? Okay. The Public Hearing is open.

II. Public Hearing:

E.A.C. LLC c/o HUNTERS SHOP N SAVE / SAWYER, LLC – 50 & 60 SOUTH MAIN STREET – Tax Map & Lot 217-58-59 – Case 05- SE-2023

Special Exception – Up to 25% Expansion for Non- Conforming Structure, 175-43 A (1) (c)

Vice-Chair S. Ryan I'd like to say that the Zoning Board of Adjustment [ZBA] does take jurisdiction over this application and that it meets the conditions of the checklist [of Approval Criteria for a Special Exception] and that Applicant is here under section 175-43.A.1.c of the Town Zoning Ordinance, to allow for a 25% expansion of a non-conforming building.

Sam Adams Esq Hi, my name is Sam Adams. I'm with Adams & Bullock, I represent E.A.C. LLC and Sawyer LLC. This is my law partner Mark Bullock, and we'll be going over the points here for the Zoning Board of Adjustment this evening.

Mark Bullock Esq Good afternoon. Esteemed members of the Zoning Board of Adjustment [ZBA], thank you for hearing me to comment prior to your deliberations on this matter. My name is Mark Bullock, here on behalf of E.A.C. the petitioner for the petition in front of the Board [ZBA] today. Again, thank you very much the opportunity comment for your deliberations on this matter. To just outline briefly why we're here today and our position on the matter - before I turn it back over to Sam Adams - a professional that can speak to much more detail about things that I cannot. I would like to say that ultimately, we are here today because of their specific interpretation of a zoning regulation: one that is hotly debated. As to the accuracy of interpretation, the correctness of the drafting of the zoning ordinance, and the conflict with the spirit and intent of itself and other regulations.

Chair A. Cline I'm sorry, could you say that again, slowly?

Mark Bullock Esq Absolutely. We're here today with the interpretation of the Zoning Board [of Adjustment] ordinance. And I'd like to be clear: I don't agree with interpretation that was put forward by the Planning Board. That's not why we're here today. As is usually common with the law, we're not here to rewrite the law. We're not here to argue whether the apostrophe means one thing, or the comma means another.

We're here to work with letter of law that we are given. Today, I've heard a little bit about the Zoning Board [of Adjustment's] concerns regarding making a decision that's not going to cause problems down the line. This is wise. If you have been advised by your own counsel to do such a thing, it's admirable that you are already thinking of it, because we want these decisions to stand. The longer we take in addressing these issues, and trying to un-write the decisions that are made, and trying to attack the ideas that we come up with, and change their minds later down the road, the further the dates [will be] that the community can get back to healing, can get back to what's normal.

As has been stated, on July 11th 2023, the Planning Board issued Conditions of Approval requiring one of three options:

- 1) One option was the filing of municipal estoppel by the Board of Selectmen. As we noted, the Board of Selectmen [BOS] has denied their ability to do such a thing. It's not within their power, as I've been advised by their counsel.
- 2) Alternatively, the Board of Selectmen [BOS] noted that the court could issue the same ruling. This is technically correct. This is within the court's purview; however, we're looking at a very extensive

timeline. It could be months, possibly into years, with [a final resolution to] this matter: especially when it's been so rarely touched by courts at all levels in the State of New Hampshire.

Chair A. Cline I'm sorry, can you say that again?

Mark Bullock Esq Estoppel cannot be addressed by the Board of Selectmen, as though the State.

Chair A. Cline Okay.

Mark Bullock Esq It can be addressed by the courts, but we're looking at an extensive timeline to do so. This would only delay the rebuilding of the town's grocery store and for the inhabitants to get back to normal. Today, we're actually here under the last option: the Special Exception. It is clearly within this Zoning Board of Adjustment's power to issue [a Decision] and is, by my argument, the best option because it follows not only the letter of your authority, but the letter of the law itself.

As I said, we're not here to reinterpret the Zoning Board of Adjustment [ZBA], or the zoning regulations themselves. We're here to follow that we've been given. The ZBA can, if it so chooses, approve this petition in one of two ways. It can prove this finding that no Special Exception is needed, stating that the statute does not require such an exception. Personally, I agree with this interpretation. But again, this is a moot opinion, one that does not matter. We've already been told what is required of us, that a Special Exception is necessary and the only way to move forward. Ignoring that opens this to an appeal down the road. Within thirty days, we will see at least one if not multiple petitions on appeal. Again, this will, just like the court path, extend the dates until this community can begin to repair itself.

Alternatively, what this Board can do, and what I encourage it to do heavily, is today unanimously approve the Special Exception. You may do so in stating that you do not believe the Special Exception is necessary; however, given the letter of the law and the interpretation of the requirements imposed, you can approve the Special Exception nonetheless. This is backed by the law. This is backed by the interpretation of the law thus far.

Arguably, at worst, this is a gray area that needs to be corrected in the law: perhaps it was a scrivener's error, perhaps a drafting error, perhaps something else entirely that I can't come up with. But that is an issue for another time and another date. Today we're here to interpret what we've been given, what we have within the authority and bounds that we have. Not only that, we are here to move the community back towards normal, back towards healing. Thank you.

Sam Adams Esq Do you prefer to go through the facts supporting the requests in the application?

Fact #1 re: Site Suitability: The specific site is an appropriate location for the proposed structure which includes adequate usable space, adequate access and absence of environmental constraints. Due to loss by fire, this is a proposed rebuild by an existing local business previously operating in this location for over 70 years. It is a permitted use in the C-1 zone and is deemed a preexisting, non-conforming structure because it was not located within 15 feet of the front property street line.

Fact #2 re: Immediate Neighborhood Impact: The proposal is not of detrimental interest or noxious or offensive to the abutting properties or the neighborhood in general. Typical impacts which extend beyond the proposed site include excessive trip generation, noise or vibration, dust glare, heat, smoke fumes, gas or odors, or inappropriate hours of operation. The proposed grocery store will be generally located in the same location as the former store.

The above-mentioned items A through E were thoroughly discussed with the Planning Board, Town Department Heads, Abutting Property Owners, and the general Public during multiple TRC [Technical Review Committee] and Planning Board meetings. Based on those discussions and approvals, the above-mentioned items were deemed appropriate for the use; therefore, the proposal is not of detrimental interest or noxious or offensive to the abutting properties.

Fact #3 re: No Undue Nuisance or Serious Hazards to Pedestrian or Vehicular Traffic (including the location and design of access-ways and off-street parking): The proposed design, including building location, and slightly adjusted on-site parking along and adjacent to the front, inside of the main entrance, allow for better ADA access, safer and more efficient truck deliveries, and general vehicular parking. No changes are being proposed to the existing, on-street parking; therefore, there will be no undue nuisance or serious hazard to any pedestrian or vehicular traffic.

Fact #4 re: Availability of Public Services and Facilities: The following services and facilities are available and adequate to serve the needs of the use. The proposed sewer, water, and stormwater drainage, fire protection, streets, parks, schools, as stated in Section #2 [above]: multiple TRC meetings were held with various Department Heads to determine utility connection suitability, potential compliance, and other site development impacts. The proposed project will be connected with new municipal water and sewer lines, and electrical connections, utilizing all new associated building amenities. All services are available and adequate to update and serve the needs of the proposed use as designed.

Fact #5 re: Appropriateness of Site Plan: Consideration shall be given to the following: A) Parking Scheme, B) Traffic Circulation, C) Open Space, D) Fencing or Screening, E) Landscaping, F) Signage, G) Commercial Vehicles, H) Lighting Impact. Items A and B will generally remain consistent with former operations. Items C, D, E have been addressed by fencing and screening designed to buffer abutting residential uses. A landscaping plan has been provided to enhance the existing minimal landscaping without adversely impacting the existing areas that need to remain. Item F: The existing sign at the entrance will remain, a new sign on the building maintenance entrance is proposed and will meet the sign ordinance. Item G: Commercial vehicles are not parked on-site or may be parked in the rear of the building in employee parking if needed. Item H: Any new proposed lighting will comply with current lighting requirements.

Now we're at Fact #6 re: Immediate Neighborhood Integrity, the uses and established use patterns will be made with recent change trends in the neighborhood. The proposed use is historically established as a use in this zone. Adjacent commercial uses and businesses are all in close proximity to "downtown functions" and are consistent with the overall zoning ordinance requirements.

Fact #7 re: Impact on Property Values: The proposed use will not cause or contribute to decline in property value of adjacent properties. The proposed building is located in the commercial zone and is therefore an appropriate use and location. The building area will be screened and buffered to protect any residential uses. The former structure was 6.5 feet from the east property line, with no buffer or fence. The new structure will be 5 feet from the east property line with fencing that will provide screening and buffering. The new structure will be up to [the current building] code and aesthetically pleasing; therefore, it will not contribute to any decline in property values of adjacent properties.

Fact #8 re: The Proposed Use or Structure is Consistent with the Spirit of the Ordinance and the Intent of the Master Plan: The existing and proposed commercial uses are permitted in a C-1 zone and are consistent with all requirements and intent of the subject zone. The Site Plan Review requirements and associated regulations were thoroughly vetted by the Planning Board and are consistent with the intent and spirit of the Town's Master Plan.

That concludes all the facts.

Randy Tetreault, Norway Plains Assoc. We have provided a site plan that specifically shows the new building outline overlaid onto the old building outline.

Regarding the Boundary Line Adjustment previously approved by the Planning Board on 6/6/2023, we consolidated three lots, we now have two lots:

Lot 58 owned by Sawyer LLC, is the 'back' lot fronting School Street, and has the existing Walgreens building on it.

Lot 59, owned by E.A.C. LLC, is the 'front' lot facing South Main and Glendon Streets, and is where the new Hunter's building will be. One difference is that we're lowering the elevation of the main floor level of Hunter's by 1.5 feet, which will improve the site grading for ADA access.

We haven't yet been able to finalize reciprocal easements that will be needed for Lots 58 and 59, until we have an approval for Hunter's.

Wendy Rogers, Hunter's Employee We have been a part of the Wolfeboro community for 70 years and we have been supporting this community for just as long. For generations, Hunter's has supported Youth Groups, Food Pantries, and Local Organizations (such as the Lions). We are an independent grocery store. We are open 365 days of the year. During Covid we were open for business every day. If I were on the Board, I would be *honored* to support this business.

John Sandeen, Wolfeboro Resident Is there a better way to understand how much larger the new store is, and where the front of the store will be? A 25% expansion sounds a bit vague. [Mr. Sandeen was given a copy of Overlay Site Plan by the Recording Secretary].

Chair A. Cline Ready to do the Findings of Fact?

Vice-Chair S. Ryan We could do the Findings of Fact, but first we make a motion to conditionally approve. And the reason that we would conditionally approve is because we find the following facts to be so. I think we can do that after the motion to approve. This is only the second time we're doing a Findings of Fact.

Chair A. Cline Okay, so let's do: 1) A motion, 2) A second, 3) Findings of Fact, and 4) A roll-call vote.

Vice-Chair Suzanne Ryan made a motion to Approve with Conditions a Special Exception for up to 25% Expansion of a Non-Conforming Structure located on Tax Map 217 Lot 58, per Article VI, Section 175-43.A.1.c. The pre-existing building footprint of $\pm 12,553$ square feet [SF] will be replaced by a new building footprint of $\pm 15,668$ SF which is an enlargement by ± 3115 SF or $\pm 24.8\%$, per the Site Plans submitted to the Wolfeboro Department of Planning and Development as of June 20, 2023.

The motion was seconded by Clerk Sarah Silk.

Conditions of Approval:

- 1. All federal, state, and local permits to be received including, but not limited to, an approved Building Permit in the Town of Wolfeboro.***
- 2. All documentation submitted in the application packages of 6/20/23 and 7/20/2023 by applicant and any requirements imposed by other agencies are part of this approval; unless otherwise stated, updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this Notice herein shall generally determine.***

3. ***The application, as submitted to the Zoning Board of Adjustment [ZBA], does not satisfy the submittal requirements for a Building Permit in the Town of Wolfeboro.***
4. ***This Notice of Decision and approved As-Built Site Plan shall be recorded at the Carroll County Registry of Deeds and the applicant shall be responsible for payment of all recording fees.***
5. ***Should the final approved Site Plans not comply substantially with the plans, terms and conditions of this Conditional Approval for a Special Exception, the property owner will be responsible for filing and obtaining an amendment to this approval.***
6. ***As part of the Building Permit application, the applicant's Site Plans shall indicate the proposed locations and dimensions of all site appurtenances required for the operation of the new retail store located on Lot 58 of Map 217, including but not limited to: exterior mechanical equipment and other exterior structures. If reciprocal easements are necessary between Lots 58 and 59 of Tax Map 217, they shall be submitted as a draft agreement prior to the issuance of Building Permits; and subsequently, finalized before issuance of the Certificate of Occupancy.***
7. ***This Special Exception is valid for two years from the date of final approval, per NH RSA 674-33 IV (b), or as further extended by the local ordinance or by the Zoning Board of Adjustment, for good cause.***

Findings of Fact:

1. ***The existing building footprint was legally pre-existing non-conforming.***
2. ***The Use is permitted within the C-1 Zoning District.***
3. ***The site plans show improved on-site stormwater control. For example: parking areas are regraded to redirect stormwater, new stormwater detention and processing equipment, and new landscaping.***
4. ***The site plans show improved on-site traffic movement for customer parking and truck deliveries. For example: one-way drive aisles, delivery access from Glendon St (big trucks) and School St (panel trucks), ADA parking stalls directly adjacent to the store.***
5. ***The site plans show the number of parking stalls on-site exceeds the zoning requirement.***
6. ***The site plans show the new building footprint to be less non-conforming (or more conforming) than the pre-existing footprint, because expanding the floor area brings the new building closer to the street lot lines fronting South Main and Glendon Streets.***
7. ***5-43 (A)(1)(c) allows up to a 25% expansion, whereas only a 24.8% expansion is proposed.***
8. ***The site plans meet the Special Exception checklist of Approval Criteria.***
9. ***The proposed rebuild will continue the retail use and function of a grocery store. Public testimony strongly supports this longstanding retail business upon which so many employees, customers, and non-profit organizations depend for food.***
10. ***Adequate Town utility services exist, the proposed on-site upgrades to electrical, water and sewer systems will improve the efficiency of the pre-existing, energy-intensive retail business.***
11. ***The site plans show improved ADA access. For example, the addition of a speed bump, new ADA parking stalls, a new entrance with good visibility for customers entering and exiting this store.***
12. ***The entirely new building construction in the downtown core of the C-1 Commercial District is a marked improvement to the immediate neighborhood.***

Chair Audrey Cline called a vote. All in favor: Chuck Sumner, Aye. Cate McMahon, Aye. Audrey Cline, Aye. Suzanne Ryan, Yes. Sarah Silk, Yes.

The Zoning Board of Adjustment approved the Special Exception with Conditions unanimously (5-0-0).

III. Unfinished Business

The Zoning Board of Adjustment [ZBA] continues to discuss and plan for **the additional 2nd monthly ZBA meeting, in order to better handle the workflow of Cases on Appeal**. The plan is to pre-schedule the 2nd ZBA meeting date and reserve the meeting space. If the Case load were to be lighter one month, the 2nd ZBA monthly meeting would not have to take place. A cancellation of any 2nd monthly ZBA meeting would be at the discretion of the Chair.

Chair A. Cline Let's add **Monday, August 21st 2023 at 7:00 p.m.** to meet for a Work Session to review the ZBA Rules of Procedure. For September, ZBA meetings are scheduled for 9/11/2023 and 9/25/2023. ZBA is also scheduled for 9/18/2023 (due to Labor Day Holiday), but there is the option to cancel that date.

Clerk Sarah Silk serves on three other Town Boards/Committees and is concerned that the 2nd ZBA meeting is causing conflicts with other Boards/Committees that have a longstanding meeting schedule in place. **She noted that she needs to be excused from the 8/21/2023 ZBA Work Session, as she is unable to attend due to such a conflict.**

IV. New Business

V. Minutes of Previous Meetings

Vice-Chair Suzanne Ryan made a motion to keep the status of ZBA Draft Minutes dated earlier than June 1, 2023 as Unapproved. Seconded by Charles Sumner. Approved unanimously.

VI. Communications and Miscellaneous

VII. Motion to Adjourn

At 9:50 p.m. Cate McMahon made a motion to adjourn. Seconded by Suzanne Ryan. The motion passed unanimously.

Meeting Minutes respectfully submitted by Recording Secretary: LNicolescu@WolfeboroNH.us
Elvia M. Nicolescu