

**TOWN OF WOLFEBORO
PLANNING BOARD
January 16, 2024
APPROVED MINUTES**

I. Call to Order

Chair Kathy Barnard called the meeting to order at 7:00PM.

II. Introduction of Planning Board Members

Members Present: Kathy Barnard, Chair; Doug Breskin, Vice-Chair; Brad Harriman, Selectmen's Representative; John Thurston, Roger Murray, Vaune Dugan, Peter Goodwin, Members. Steve Webster, Julie Jacobs, Alternates.

Members Absent: Jane Nielsen, Alternate.

Staff Present: Tavis Austin, Director of Planning and Development, Michaela Beckwith, Recording Secretary.

III. Public Hearing

Kathy Barnard stated the Planning Board will be continuing the following agenda item due to the weather.

Lifetime Green Homes, LLC – Special Use Permit

Lifetime Green Homes, LLC – Site Plan Review

Kathy Barnard appointed Julie Jacobs to sit in for Vaune Dugan.

Board needs to consider the proposed first floor parking in regards to the Site Plan Review. Stating current Bay Street Limited District regulations states no apartments on the first floor are permitted.

John Thurston requested clarification as to the Board members who sat on the previous meeting for this application.

The Board reviewed the December 5, 2023 meeting to finalize the Board members sitting on each public hearing.

Kathy Barnard appointed Steve Webster to sit for the Special Use Permit application. As she sat on the prior meeting, Vaune Dugan will sit on the Site Plan Review application.

Jeffrey Brem, Lifetime Green Homes, LLC, questioned if the site plan needed acceptance.

Kathy Barnard replied no, noting the Board needs to determine whether the proposed parking is on the ground floor.

Doug Breskin stated a member of public/resident, Audrey Cline, wrote a letter containing information from several elevator companies and their respective codes regarding definitions of first floor.

Tavis Austin stated the public hearing is not open for comment.

John Thurston expressed concern regarding the letter being read into the record, stating the Board needs to determine whether the application meets the ordinance.

Tavis Austin stated the Board received guidance from legal counsel to determine what constitutes 1st floor as the ordinance does not provide a definition.

Roger Murray stated the architectural plan clearly shows apartments on the first floor with underground parking, noting the ordinance. He also stated the applicant does have the ability to seek resolution from the Board of Zoning and Adjustment.

Doug Breskin stated the architectural renderings depict the residential entrance from street view.

Peter Goodwin suggested charging a fee for parking on the first floor would be deemed a commercial use.

Jeffrey Brem stated the fitness center would be deemed as such as well.

Roger Murray stated the height requirements would not be met.

Steve Webster stated most buildings are built using at grade elevation is deemed the first floor.

John Thurston added to Steve Webster's comment stating lake level is 504.3', noting the proposed building's first floor elevation is above lake level.

Jeffrey Brem stated Mr. Thurston is correct stating the lake level is 504.32', noting the first floor is accessed above lake level at 507.5'.

It was moved by John Thurston to accept the application's first floor parking and second floor residential apartments. Peter Goodwin seconded the motion. Roll call vote – Vaune Dugan – no, Peter Goodwin – yes, Roger Murray – no, Doug Breskin – no, John Thurston – yes, Brad Harriman – no, Kathy Barnard – no. The motion failed (2-5-0).

Kathy Barnard stated the applicant may go before the Board of Zoning and Adjustment should they chose to seek a variance for the first-floor parking.

Jeffrey Brem questioned if he has the option to sell fitness memberships to meet a commercial first floor use.

Doug Breskin stated he does not believe selling fitness memberships will satisfy the ordinance.

John Thurston stated the fitness memberships would provide a commercial application to the first floor of the building, noting the apartments are on the second floor.

Tavis Austin recommended the Board articulate findings of fact.

Brad Harriman stated his reasons for his vote, noting the grade as shown in the architectural renderings on three sides of the building.

Roger Murray stated he agrees with Brad Harriman's statement.

Doug Breskin stated the intent of ordinance for appearance is to view store fronts on the first floor/street level with apartments being above.

Peter Goodwin suggested the grading, landscaping and possible steps be amended in regards to appearance of first floor versus ground floor.

Roger Murray stated the height requirements would not be met if grading/landscaping level was lowered.

Vaune Dugan stated the natural grade around a building is 512' with no more than 30' above grade. She stated there is an issue with commercial space on the first floor at this location due to poor retail locale, noting the determination of such is not an issue of Planning Board and needs to be brought before the Board of Zoning and Adjustment for a variance.

Kathy Barnard stated the applicant can request a variance from the Board of Zoning and Adjustment.

John Thurston stated he disagrees and expressed concern of the findings.

Jeffrey Brem stated he does not understand the Board's findings.

Kathy Barnard stated the findings would be written and sent to him in the legal notice of decision.

John Thurston requests clarification on the findings of facts.

Tavis Austin questioned the Board's determination of the regulation reading that the first floor needs to look like retail, referencing the Board members discussion and statements.

Vaune Dugan replied her statement includes the issue of retail not being suitable for the proposed location however that is not a point for the Planning Board.

Tavis Austin stated the Board may interpret the regulation to determine retail on the first floor with apartments above.

Roger Murray stated he interprets to current regulation to require commercial use on the first floor.

Jeffrey Brem stated the ordinance does not include language requiring commercial use on the first floor noting however it states clearly no apartments on the first floor.

Roger Murray replied stating the first floor cannot contain residential apartments, it needs to be used commercially unless it will be vacant space.

Kathy Barnard stated the Board needs to look at current regulations and their take a conservative view. She stated the applicant go before the ZBA and then come back to the Planning Board.

Jeffrey Brem questioned the Board's determination of findings which include commercial use being required on the first floor, noting the regulation does not use such language.

Doug Breskin stated the ordinance does state apartments on first floor are not permitted.

Roger Murray suggested the applicant appeal for a variance include first floor apartments be permitted due to the location not being suitable for retail or commercial use.

Doug Breskin stated first floor apartments may be an appropriate use for the proposed location, noting a variance is needed to make that determination.

Jeffrey Brem stated a variance request requires reasoning and rationale.

Doug Breskin replied yes, noting the location could deem first floor residences permissible.

Roger Murray stated the request for a variance speaks to the requirement of no residential apartments on the first floor.

Jeffrey Brem requested the Planning Board's support of his variance request in front of the Board of Appeals.

Roger Murray stated he does not believe this would be appropriate.

Tavis Austin suggested the applicant use the meeting minutes.

Kathy Barnard requested a motion be made to deny the Site Plan Review application.

Jeffrey Brem requested a continuance to a future meeting instead of a denial.

Roger Murray stated the Board has 90 days to act on application however if the applicant agrees to an extension, an exception could be made to continue to a date certain or upon receipt of a variance.

John Thurston stated he is appalled by his fellow Board members. He stated the applicant has already come before the Board for a discussion regarding the project and to seek opinions.

John Thurston removed himself from the Planning Board meeting.

Peter Goodwin stated he agrees with John Thurston in regards to the issues being brought forth noting such could have been brought up and discussed prior. He stated he doesn't believe what the Board is doing is morally correct due to the applicant not receiving correct information and guidance on the project/application however, the Board is following the regulations, so it is technically correct.

Kathy Barnard asked Tavis Austin if this can be continued to a later date.

Tavis Austin stated the earliest available deadline of February 12th for the March 4th ZBA meeting would lend to the Planning Board's March 19th meeting. He suggested the Board accept the application as complete with the understanding of a variance being necessary to continue the application.

Steve Webster stated the ground level of the proposed building is the first floor.

Peter Goodwin stated the first floor is the ground level only on the north side not the south side.

Tavis Austin stated the general finding seems to mean what is viewed from the street is the first floor.

It was moved by Peter Goodwin to reevaluate the vote that was just taken.

Roger Murray stated according to Robert's rules of order, if a vote is to be reconsidered, the motion needs to be made by a member of the prevailing side.

Roger Murray stated his concern with the front setback of the covered walkway. He suggested the applicant address such with the Board of Zoning and Adjustment noting the issue of what defines the building as the covered walkway is not attached to the building. He also noted the Board of Selectman needs to address access to Bridge Falls path via the covered walkway.

Doug Breskin stated the covered walkway should also be discussed with the Board of Zoning and Adjustment noting the existing residential access should not be impacted.

The Board discussed the proposed covered walkway.

Jeffrey Brem stated the covered walkway is necessary for the building permit. He requested the support of the Board for his appearance in front of the Board of Appeals.

Doug Breskin suggested the applicant use the meeting minutes and a Board member could potentially be in support of the applicant as a private citizen.

Jeffrey Brem stated he came before the Board in October, December and now January. He stated this is unfair noting the first-floor issue had not been brought to him prior.

John Thurston left the meeting.

Tavis Austin recommended the Board make a motion in regards to the covered walkway not being part of the building for setback requirements.

Kathy Barnard appointed Julie Jacobs, Alternate to sit for John Thurston, Member.

It was moved by Roger Murray that the proposed building as it is currently located does not meet setback requirements. Peter Goodwin seconded the motion. Roll call vote: Vaune Dugan – yes, Peter Goodwin – yes, Roger Murray – yes, Julie Jacobs - no, Kathy Barnard – yes, Doug Breskin – yes, Brad Harriman – yes. The motion passed (6-1-0).

Tavis Austin stated the next available meeting being in March, the application could be re-noticed noting the Board can determine whether the applicant pays the fee or not.

Jeffrey Brem stated he will pay for the re-noticing to abutters and newspaper(s).

Doug Breskin suggested the applicant not be responsible for paying the re-notice fee.

Tavis Austin stated the application cannot be continued to a future meeting unless it is accepted as complete. He stated the Board can deny the application without prejudice should they not wish to accept it as complete.

Roger Murray stated he doesn't believe the application is incomplete noting that it does not meet ordinance.

It was moved by Peter Goodwin to continue the Special Use Permit application to March 19 2024 Planning Board meeting.

Roger Murray stated the Board is required to act on an application within 90 days.

Tavis Austin questioned if the applicant was willing to waive 90-day requirement.

Jeffrey Brem replied yes, he will waive the 90 days.

Doug Breskin seconded the motion. All members voted in favor. The motion passed (7-0-0).

John Sandeen, resident, questioned the Board addressing the Special Use Permit without the Site Plan Review.

Tavis Austin Board recommended the Board act upon the Site Plan application.

It was moved by Doug Breskin to deny the Site Plan Review application of Lifetime Green Homes, LLC without prejudice. Kathy Barnard seconded the motion. Peter Goodwin abstained. The motion passed (5-1-1).

Kathy Barnard stated the Board has continued the Special Use permit application and denied the Site Plan which will be rescheduled together.

Roger Murray stated the applicant should be aware of 175-10 1 (b) 7. requires a Shoreland permit be submitted with the Special Use permit application.

Jeffrey Brem asked if the shoreland application needed to be submitted.

Roger Murray replied yes, noting the application and approved plan be submitted.

Vaune Dugan asked Tavis Austin if discussion may be continued so the applicant may not have additional issues needing to be addressed at the March meeting.

Tavis Austin replied no, stating the Board has continued the application.

Jeffrey Brem stated this was why he came in October. He noted not receiving any of the issues raised or comments from tonight's meeting at either of his prior appearances before the Board.

Petition Warrant Article – Proposed Article 01.

Tavis Austin stated the petition zoning amendment submitted to the Town clerk. He stated when this occurs, the Planning Board schedules a public hearing and votes on whether to support or not support.

Doug Breskin expressed concern of the petition's wording; noting sections 175-144 and 145 include only the title of section and no further language

Julie Jacobs questioned the purpose of the article.

Tavis Austin stated the Board needs to act on what was submitted.

Doug Breskin commented on the proposed change. He questioned if this constitutes a significant change.

Kathy Barnard stated she found the petition unclear. She noted this particular article supersedes other ordinances and the proposed change is a radical change. She suggested the petitioner appear before the Board to give more information.

Julie Jacobs questioned the process of the petition.

Doug Breskin stated the public is welcome to petition to change regulations.

Tavis Austin stated this petition will appear on the warrant as Article 3 as zoning amendments appear at the beginning.

Julie Jacobs questioned the petition being reviewed at the deliberative session(s).

Roger Murray stated he spoke with Tavis Austin. He stated he believes the intent of the petition to be to create uniformity in the permitted uses and multifamily ordinance in all districts, noting one interpretation could be to no longer allow multifamily dwellings in certain residential districts. He stated depending on the intent, this petition needs to be clarified.

Kathy Barnard found Petition Warrant Article unclear, noting the included language and sections refer to purpose.

Tavis Austin stated the question is as it will appear on the petition warrant article. He stated he agrees with Roger Murray's comments regarding intent. He suggested the Board perhaps take the topic of multifamily dwellings to a work session for review and potential amendment.

Doug Breskin asked if it is possible to continue this topic and possibly talk to the petitioner.

Tavis Austin replied no due to time constraint.

Kathy Barnard stated she would like to speak with the petitioner as this topic is a concern.

Tavis Austin stated the question raised in the petition will be on the ballot.

Doug Breskin asked about the deadline for the Board to vote in support.

Tavis Austin replied prior to the Board's next scheduled meeting.

Kathy Barnard opened the public hearing.

Brody DeShaies, resident, requested clarification regarding warrant articles being amended at deliberative session.

Roger Murray stated zoning warrant articles are not discussed at deliberative session.

Brad Harriman stated one cannot change a petition.

Tavis Austin stated the Town of Wolfeboro does not discuss zoning amendments at deliberative session.

Doug Breskin stated he believes the person to change a petition would be the petitioner.

Brody DeShaies stated he believes the governing body is able to make changes at deliberative session. He stated he assumes the Board will vote no due to lack of information and not having knowledge of how the proposed change will impact the Town regulations.

Roger Murray stated there are people in attendance who signed the petition and asked if they had comments.

There being no further comment, Kathy Barnard closed public hearing.

Kathy Barnard stated this topic is a worthwhile discussion to have with the petitioner in the future.

Kathy Barnard moved to not recommend the petition warrant article. Doug Breskin seconded the motion. All members voted in favor. The motion passed (7-0-0).

Warrant Article Discussion

Kathy Barnard stated this is for the Shorefront

Roger Murray suggested a change to list 175 64, 65 and 67.

Tavis Austin read the proposed change.

It was moved by Roger Murray to change 175-64, 65 and 67. Doug Breskin seconded the motion.

Doug Breskin questioned Tavis Austin with regard to an interpretive statement being required.

Tavis Austin recommended the Board lists what is changing within the article. Wolfeboro only includes the question on the ballot noting the Board not infer an opinion or suggestion within its interpretive statement.

Vaune Dugan questioned the ability to include the draft for the voters to see.

Tavis Austin replied no however he stated it may be included in the voter's guide.

Kathy Barnard stated the information will be included on the Town website.

Roger Murray asked if a member of the public could speak in regards to the accurately explaining warrant article.

Ken Perry, North Wolfeboro, stated the warrant article should include a topical description of the proposed amendment so the voter understands what he or she is voting on. He requested the Board read what the discussed change is.

Tavis Austin stated one person's definition of topical description may differ from another person's.

Doug Breskin expressed concern regarding language within the warrant with regard to the substance of the change and how it will change the current regulation.

Tavis Austin suggesting specific terminology for the topical description that will not infer opinion or bias.

Peter Goodwin questioned the purpose of description being to align with State regulations.

Tavis Austin stated Board takes the Town of Wolfeboro's beliefs into account while in compliance with all State regulations.

Doug Breskin agrees that voters should review the voter's guide to be educated voter He noted his main concern is adhering to 675-3 and including proper language regarding such.

Julie Jacobs questioned adding the word current to tell voters the current.

Roger Murray stated he took the shoreline lot improvement standards into consideration when amending language used.

Tavis Austin suggested gathering a subcommittee prior to the deadline.

Kathy Barnard asked if the reviewed draft will be distributed to the Board for approval.

b. Public Comment: None.

c. Approval of Minutes:

It was moved by Peter Goodwin to approve the minutes as submitted. Roger Murray seconded the motion. All members voted in favor. The motion passed (7-0-0).

It was moved by Doug Breskin and seconded by Kathy Barnard to adjourn the January 16, 2024 Planning Board meeting.

The meeting was adjourned at 8:31PM.

Respectfully Submitted,
Michaela M. Beckwith
Michaela M. Beckwith

**** Please note these minutes are subject to amendments and approval at a later date. ****