

**TOWN OF WOLFEBORO
PLANNING BOARD
March 2, 2021
Minutes**

I. Call to Order: Chairman Barnard opened the virtual meeting at 7:00 PM.

Kathy Barnard read the following script:

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. However, the Planning Board has jointly decided to proceed with a 'hybrid' meeting format allowing the public to access and participate in the meeting via in-person attendance at Wolfeboro Town Hall or via GoToMeeting at the following login site: <https://global.gotomeeting.com/join/918242429>

Please call 603-569-5970 OR e-mail planningdirector@wolfeboronh.us if you have any questions or concerns about in-person attendance.

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

II. Introduction of Board Members:

At this time I would like to take a roll-call vote of ALL members present. For those participating virtually, please indicate if you have any other individuals present in the room with you.

Members Present: Kathy Barnard, Chairperson; Brad Harriman, Board of Selectmen's Representative; John Thurston; Mike Hodder; Peter Goodwin (remote with no one else present in the room), Vaune Dugan (remote with no one else present in the room), Julie Jacobs, Alternate.

Members Absent: Susan Repplier

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

III. Public Hearings:

**Applicants: Phillip and Erica Marbury,
R & M Family Trust,**

Aaron & Samantha Marbury

Tax Map 57, Lot 1 - 1160 Center Street (Rte 28)

Residential/Agricultural District

Case #2021-02

4 Lot Subdivision

Phillip Marbury reviewed the requirements for the four lot subdivision application. Each of the four lots has 400+ feet of road frontage along Route 28 and each exceeds the minimum square footage required for a building lot in the zone in which they are located. Thus, the applicant believes they have met each requirement under the Wolfeboro subdivision ordinance. The applicant's intention is to build two additional houses for his brothers and their families, with his family residing in the present structure.

Kathy Barnard commented that the applicant had attended the TRC meeting on January 6, 2021 at which it was recommended to the applicant to consider coming before the Planning Board for a pre-application meeting. The purpose of such a meeting would have been to address issues which may arise from this parcel of land being a sensitive wetlands area. The other issue brought up at the TRC was for the applicant to consider a conservation subdivision which would involve the lots being closer together and surrounded by conservation land.

Phillip Marbury replied that the applicant did consider a conservation subdivision but did not feel it was as viable an approach due to the nature of the wetlands. He reiterated that each of the lots, as surveyed and presented on the plans, meets the wetlands and soil densities.

Kathy Barnard brought forth another concern that came up during both the TRC and Planner's reviews which the driveway was being considered to serve three of the lots. It is shown on the plan as 30 feet wide on the plan. The specific concern centers on the subject driveway crossing wetlands and likely involving a bridge. That would need approval/compliance with the wetland overlay district and require the Conservation Commission reviewing the application.

Tavis Austin replied that those issues would be addressed when the applicant applied for development of the subject lots. At this time the applicant is only requesting subdivision to create the lots.

Kathy Barnard reiterated her position that access to lots should also be considered when creating a subdivision of "buildable" lots. She further pointed out that the plans included with the application show a shared driveway, 30 feet wide to three lots, which impacts the wetlands area.

Phillip Marbury replied that discussions have begun with DES and the applicant intends to comply with any required permitting. However, at this point, the application is simply for a subdivision and that the plan submitted was intended to show that each lot meets the

minimum required square footage and road frontage and that the intention is to have a shared driveway for three lots.

Kathy Barnard cited Section 174-C (1) regarding the compliance of sewage disposal systems in all subdivision plans, stating that is a requirement of the Town's ordinance. She further stated that the Board generally reviews all easements when considering subdivision applications so that there are no issues in future ownership of the subject property. Kathy also referenced *Section G (2)b - Natural Water Courses - "wherein a development is traversed by a natural watercourse, a stormwater easement or drainage right of way should be provided."* She stated she believes it is a requirement in this case.

Phillip Marbury responded that, while he understands the concerns, he feels that those will be addressed at the time of development of the subdivision. He also noted that the applicant's intention is not to develop Lot 4. At the point of site plans, the referenced reviews and permits will be obtained.

Tavis Austin advised that the subdivision regulations are generalized to allow the Planning Board to adjust their review appropriately. He referenced §174-9(C) which addresses NHDES compliance, and §174-9(A)(2)(b) which provides requirements for proposed lots within a subdivision that contain wetlands and Type B soils.

Mike Hodder inquired if the applicant took counsel prior to this presentation as to what information/requirements the Board typically would expect - i.e., the nature of the land for which a subdivision is being requested. Traditionally the application presenter is an engineer/wetlands scientist to address the Board's anticipated information requests. He stated that he does not believe the application is complete as evidenced by the lack of information to answer the Chairwoman's concerns. Mike further stated that his position is that this information is necessary to safely approve the application. He identified four issues he has with the application and its lack of addressing the following:

- 1) information and confirmation of the electric department easement locations and existence;
- 2) a wetlands scientist's analytical report is missing (standard for an application of this nature);
- 3) Wiley Brook, and the sensitive natural wetlands area associated with it, eventually ends up in Lake Wentworth, ultimately affecting the larger lake as well as the economy of the area;
- 4) Need to show access to the lots for the Board to approve a four lot subdivision, effectively confirming they are buildable lots. The hand drawn driveway shows no specific information as to its composition and construction, whether it meets Town standards for emergency access, etc. (Specifically, Mike identified his

concern with emergency access to Lot 4 and stated he could not in good conscience approve such without the proper information).

Phillip Marbury stated that the driveway lines on the plan were drawn by an engineer and that the actual language for an easement is something that the applicant will address, but believes that is not required for a subdivision approval.

Mike Hodder reiterated that if the applicant is basing their case on each lot's frontage/access to Rte. 28, then he needs to demonstrate how each of the lots will access Rte. 28 separately. If access is to be jointly, via a shared roadway/driveway, then regulation 174.7(D) (3) suggests that the applicant provide more detailed information as to the means of access. Specifically, the referenced regulation states that "final road profiles and cross sections are required." Despite whether the applicant calls the subject access a driveway or a road, this information is crucial to the review and approval of the application. Mike further stated that the Fire Department Assistant Chief included in his TRC report that he has some concerns about the subject access road/driveway. Mike also cited a previous situation on York Road wherein the fire department trucks were unable to navigate that private road to respond to a house fire.

Peter Goodwin also expressed concern with access to subject lots over the wetlands and Wiley Brook and with the ultimate effect that could have on Lake Wentworth and ultimately Lake Winnepesaukee. He also stated that, although a strict reading of the regulations may indicate you can subdivide anything, he would like further information which would prevent any future buyer of any one of these lots from having to deal with these issues the Board is grappling with.

Vaune Dugan stated she is uncomfortable with approving Lots 3 and 4 specifically, as she is unsure that a wetlands permit will be obtainable for a driveway crossing to those lots. If the Board were to approve the subdivision without a wetlands permit, it would effectively be creating paper lots that are undevelopable. Vaune also stated that the applicant would need a Special Exception from the Town to cross Wiley Brook.

John Thurston stated that after reviewing the application he felt the same consternation that other Board members voiced. However, he conceded that a) the Planner has put the application forth to the Board as meeting the subdivision requirements, and b) the applicant has met the requirements of road frontage and minimum lot size. If the Board were to deny the application, he feels it could be challenged in a court of law and the applicant may prevail.

Kathy Barnard clarified that the Board is not speaking about denying the application, but rather requesting additional information to approve the subdivision.

Brad Harriman commented that the shared driveway to Lots 2, 3 and 4 represented a benefit in that it likely would only cross Wiley Brook at one location versus multiple access points causing increased impact to the wetlands. He further stated he was wrestling with the issue of the Board's ability to require further information as the application meets the road frontage and minimum lot size requirements. As each lot gets developed, the applicant will have to come back before the Planning Board and others to get the prerequisite approvals, permits, etc. He stated his belief that the current application meets the requirements and intent of the subdivision ordinance.

Kathy Barnard expressed her concern that, if the Board approves the subdivision, those lots could then be sold and the buyer would be saddled with requirements that may not get municipal approval. It is creating a legal lot that may not be buildable.

Peter Goodwin interjected that any potential purchaser of such lot(s) would be subject to a 'buyer beware' situation and that the applicant may want to consider withdrawing their application and submitting it later with further information.

Kathy Barnard identified the two major concerns that she feels impact this application:

- 1) Access to the subject lots via the common driveway outlined
- 2) Excessive amount of wetlands and the watercourse on the property

Kathy further stated that it is a very fragile ecological piece of property and the Town regulations give the Planning Board the authority to protect the land.

Mike Hodder stated that he shares the two concerns identified by the Chairwoman. He feels the first concern could be addressed by obtaining a wetlands certification narrative and requesting the applicant to allow the Conservation Commission to walk the land and bring back their recommendation about access via the common driveway. He does not feel it is safe for the Board to approve a four lot subdivision, (essentially four building lots), whose access is shown on a plan without any indication that access by emergency vehicles is possible. Mike further stated that he would be more inclined to accept the application, if the applicant had shown sensitivity to the means of access and sensitive nature of the area prior to presentation before the Board. It is his recommendation that the applicant withdraw their application, letting the Board rule the application incomplete and the applicant come back to the Board with more detailed information and answers to the Board's questions.

Kathy Barnard stated that under Section 174-10, the Board does have the authority to ask for more information. The Board could ask for an environmental impact analysis. However, rather than require such a costly analysis, Kathy stated she would be comfortable if the Conservation Commission did a review of the proposed subdivision. Mike Hodder concurred, stating that an environmental impact analysis would impose a financial burden on the applicant.

Phillip Marbury replied that his position is that the State of New Hampshire and Town of Wolfeboro have sufficient and adequate laws in place to ensure that anything the applicant does to development of the land with respect to houses and driveway(s) is going to meet and comply with all applicable ordinances, both state and local. He does not believe the issues brought forth by the Board are required to be addressed at the step of land subdivision.

In response, Mike Hodder cited the following:

*Regulation Section 174.10 - Independent studies and investigations --
The Planning Board reserves the right to require additional studies;*

The environmental impact statement specifications will be dictated on a case by case basis. Mike Hodder further stated that the Planning Board does have the authority but is choosing not to dictate that an environmental impact statement be obtained as it would likely be onerous. However, he advised that consulting the Conservation Commission would be a positive step toward satisfying the Board's inquiries.

Kathy Barnard expressed concern that the access way which is in question appears on the plan (Sheet 1) which was given to the Board and therefore will be part of any approval given. She also stated that throughout her career in Planning it has always been her understanding that once a subdivision is approved by a Planning Board the lot are considered legal lots which can be sold and built upon.

Further discussion ensued between the Planner and the Board regarding subdivision versus development and the requisite issues to be addressed.

John Thurston made a motion, which was seconded by Brad Harriman, to accept the application as complete. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Mike Hodder - no; John Thurston - yes; Brad Harriman - yes; Julie Jacobs - yes; Kathy Barnard - no. Motion passes 5-2.

Kathy Barnard then opened the Public Hearing:

There was only one public comment which was a question from Suzanne Ryan requesting clarification of the location of the subject parcel.

Kathy Barnard then took a poll of which Board members were interested in getting input/information from the Conservation Commission on this application. Kathy Barnard, Vaune Dugan and Peter Goodwin were in favor. Mike Hodder felt it would be irrelevant if the Commission's input was not going to be used in the review of the subject application. John Thurston, Brad Harriman and Julie Jacobs felt the Commission's review would be more appropriate later in the development process.

It then came to light that the applicant's intention was to only have houses Lots 1 (existing), 3, and 4. They do not intend to build upon Lot 2 at this time.

Kathy Barnard pointed out that the plan (Sheet 1) is not only misleading with respect to access driveway but also as to the lots to be developed. The Board is being asked to approve four building lots as shown on the plan depicting a shared drive.

Tavis Austin then presented the following conditions:

Conditions to be met prior to signing of Plans:

1. The following plans, as amended by the Planning Board approval, are incorporated into the approval:
 - Plan 1: Sheet 1 of 4 Boundary Plan;** Tax Map 57, Lot 1, 1160 Center Street (Route 128), Wolfeboro, NH, as received February 08, 2021.
 - Plan 2: Sheet 2 of 4 Existing Conditions;** Tax Map 57, Lot 1, 1160 Center Street (Route 128), Wolfeboro, NH, as received February 08, 2021.
 - Plan 3: Sheet 3 of 4, HISS Map and Wetland Delineation;** Tax Map 57, Lot 1, 1160 Center Street (Route 128), Wolfeboro, NH, as received February 08, 2021.
 - Plan 4: Sheet 4 of 4, Test Pit Information;** Tax Map 57, Lot 1, 1160 Center Street (Route 128), Wolfeboro, NH, as received February 08, 2021.
2. The applicant shall submit a Mylar plan for recording at the Carroll County Registry of Deeds.
3. The applicant shall be responsible for the payment of all recording fees.
4. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise 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 be determining.

5. Favorable review of final easement (Municipal Electric) documents completed by Town attorney at the owner's expense.
6. The applicant shall be responsible for Monumentation and the submittal of the Certificate of Monumentation and updated plans including original stamps and signatures from an L.L.S., C.W.S., and licensed septic designer.

Conditions to be Met Prior to any Building Permit Approval OR Construction Activity:

7. NH Department of Transportation (NHDOT) Driveway Permit for modification of existing driveway access or alternate driveways shall be permitted. If not permit required from NHDOT, applicant shall present Town with such notification, in writing, from NHDOT.
8. Any shared drive if proposed shall not extend beyond Lot 4.
9. Applicant shall comply with Town regulations when proposing a wetlands crossing.

John Thurston made a motion, which was seconded by Brad Harriman, to approve Case #2021-02, Tax Map 057, Lot 001 with conditions and amended conditions. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Mike Hodder - no; John Thurston - yes; Brad Harriman - yes; Julie Jacobs - yes; Kathy Barnard - no. Motion passes 5-2.

Kathy Barnard stated that she felt this plan/application should have paid more attention to the Town's Master Plan. The Planning Board adopted a master plan and needs to look at it when considering development projects - i.e. adding conditions to improve things and in this case to protect our wetlands.

Mike Hodder stated that he was disappointed in the Board's decision to approve this case as presented. He feels the subject parcel is a very sensitive ecological area that deserves protection and likely should have been identified as a prime wetlands complex when they were first declared, as was the case both upstream and downstream of this parcel. He does not feel the Board did its due diligence in protecting that part of town and hopes the decision does not backfire on them.

Peter Goodwin stated he believes the State and Town regulations will preside in protecting the area as necessary.

IV. Public Meeting:

A. **Applicant:**

Barbara Weiss/Barbara Weiss Living Trust

10 Aspen Lane, Wolfeboro, NH

Project: Voluntary Lot Merger

Tax Map 187-085 & 187-084

Residential (R) District

The owner has requested merger of Lots 187-085 (~.27 acre) and 187-084 (~.27 acre). Lot 187-085 is developed by a primary structure. Neither of the current lots are conforming from an area or frontage perspective. Tavis Austin pointed out that both lots are nonconforming and the merger will bring the merged lot more into conformity with the zoning requirements.

Condition of Approval: Applicant shall be responsible for recording fees for Notice of Merger.

Vaune Dugan inquired as to the number of structures and was informed there was one structure on Lot 85.

Mike Hodder made a motion, and was seconded by Brad Harriman, to approve the merger of the two subject lots with the condition stated. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Julie Jacobs - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 7-0.

B. **Applicant: Craig and Carol Shepherd**

153 Nary Shores Rd, Wolfeboro, NH

Project: Voluntary Lot Merger

Shorefront Residential/Residential District

Tax Map 201-057 & 201-056

The owner has requested merger of Lots 201-056 (~.46 acre zoned SFR) and 201-057 (~1.0 acre zoned SFR and R). Lot 201-056 is developed by a primary structure. Neither of the current lots are conforming from an area or frontage perspective. Tavis pointed out that Nary Shores Road is a private access road at that location. Tavis Austin pointed out that both lots are nonconforming and the merger will bring the merged lot more into conformity with the zoning requirements.

Recommended Condition of Approval: Applicant shall be responsible for recording fees for Notice of Merger.

Since the two parcels are in different zoning districts (shorefront residential and residential), Mike Hodder inquired as to whether the regulations for the more restrictive zoning district would apply to the entire newly merged lot.

Tavis Austin will research the regulation as it relates to this lot merger.

Mike Hodder made a motion, and was seconded by John Thurston, to approve the merger of the two subject lots with the condition stated. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Julie Jacobs - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 7-0.

C. **Return of fees - Wolfeboro Camp School** (\$2,398.25 plus any interest accrued)

The proposal is to refund Construction Observation Funds for the portion of the project which is abandoned. The School has paid to date for the work completed.

Vaune Dugan recused herself from the discussion and vote as she is a Director of the School.

Brad Harriman clarified that the monies are for Construction Observation Funds which is for an outside engineer to oversee the project and it is not for a construction bond wherein the Town would be invested in ensuring the project was completed.

Mike Hodder made a motion, which was seconded by Brad Harriman, to release the Construction Observation funds as requested in the amount of \$2,398.25 + interest accrued to the Wolfeboro Camp School. Roll call vote: Peter Goodwin - yes; Julie Jacobs - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a vote of 6-1-0.

D. **Drive thru Committee update:**

Mike Hodder advised the Board that the revisions they had requested were made to the flyer. Kathy Barnard will work on Town flyer distribution.

Mike Hodder made a motion, which was seconded by Julie Jacobs, to approve the Drive Thru Restaurant survey flyer. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Julie Jacobs - yes; Mike Hodder - yes; John Thurston - yes; Brad

Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 7-0.

E. Master Plan Implementation Matrix update:

Tavis Austin provided a handout to the Board which outlines a compilation of the Master Plan Implementation Matrix including all of the committees and their respective goals.

F. Plan NH/Charrette update:

Tavis Austin reported that the Plan NH personnel will make a presentation to the Planning Board at the March 16, 2021 meeting at no charge. He also invited the Heritage Commission to participate.

G. 2021 Work Plan update:

Tavis Austin presented the Board with a Work Plan for 2021.

Comments for revision are as follows:

- CIP is to be moved up on the list
- Housing Update(s) should also include affordable housing
- Conservation Subdivision Regulations - a topic for a future meeting agenda should be to find out how to encourage greater usage of these regulations

V. Public Comment:

Suzanne Ryan had a hypothetical question for Tavis Austin regarding subdivision of property and an owner's ability to classify a portion of their land as a woodlot versus a building lot. Tavis responded that an owner has the ability to put any restriction they choose on their land. If an owner is planning to subdivide a large parcel they can carve out the portion they want to classify as a non-building lot prior to subdivision.

VI. Other Business:

View Shed discussion - will be added to the next meeting agenda.

Legislation:

Mike Hodder gave the following update:

- House omnibus bill which would have included inclusionary zoning, workforce housing and planning board training died on the house floor 175-172
 - Bill to allow 3 ADU's on any one residential lot is dead
 - Bill to allow lots less than ½ acre if town water and sewer is available - retained in committee 18-1
- Bill to allow tiny homes is going to be heard tomorrow in committee
- Senate omnibus bill moved to the floor for a March 4th vote
- New bill requiring a bond and a fee to appeal an approval for a site plan or subdivision
- New bill requiring all land board members be a resident of the municipality in which the Board works including ex-officio members

Approval of Minutes:

Minutes from February 9, 2021 Planning Board Meeting.

Mike Hodder made a motion, which was seconded by Kathy Barnard, to approve the draft minutes of the 2/9/21 Planning Board meeting. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 6-0.

Minutes from February 16, 2021 Planning Board Meeting.

Mike Hodder had a correction to Page 5, Paragraph 5 under Discussion of Lumbering/Viewscapes: remove the word “not” to correct the sentence to read “Mike Hodder reiterated that he does not feel educating the public in this manner is part of the responsibility of the Planning Board.”

Mike Hodder made a motion, which was seconded by Kathy Barnard, to approve the draft minutes, as amended, of the 2/16/21 Planning Board meeting. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 6-0.

VII. Adjournment:

Mike Hodder made a motion, which was seconded by John Thurston, to adjourn the meeting. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Julie Jacobs - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Motion is approved by a unanimous vote of 7-0.

Meeting was adjourned at 9:05 PM.

Respectfully submitted,
Mary Jane Shelton
Recording Assistant