

**TOWN OF WOLFEBORO
PLANNING BOARD
February 9, 2021
Minutes**

Call to Order:

Chairman Barnard opened the hybrid 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; John Thurston; Mike Hodder; Susan Repplier; 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: None

Staff Present: Tavis Austin, Director of Planning and Development; Steven Paquin, Code Enforcement Officer; Mary Jane Shelton, Recording Assistant.

III. Public Hearings:

Applicant: O'Hare Enterprises, LLC

Address: 33 Tips Cove Road, Wolfeboro, NH

Project: Special Use Permit for raised walkway on shorefront

Agent: James F. Rines, White Mountain Survey & Engineering, Inc.

Case #2021-01

Tax Map #240-001

Jim Rines explained the applicant is seeking a special use permit to construct an elevated walkway for access to their docks with the walkway being within the wetlands buffer and structure setbacks. The lot is 3.4 acres in size with 377 feet of waterfront on Lake Winnepesaukee. The 5 foot wide elevated walkway is to run from the middle of the lot to the southerly end where there are proposed docks. Watermark Marine Construction is handling the permitting, etc. for the proposed docks. This dock location was based on DES requirements to minimize impacts on public waters. The path from the storage area which houses beach items to the proposed docks goes through an isolated wetlands area. Although a single path is allowed in this area, the applicant felt this would compact the soil and contribute to erosion. Therefore, the applicant is requesting to construct a raised walkway. This will not impact the wetlands, but the walkway itself will have 612 square feet of impact, plus 111 square feet related to the steps. The applicant has received a DES amended Shoreland permit for the elevated walkway.

Jim Rines confirmed that he had received the Conservation Commission comments sent by Kathy Barnard and addressed those comments. Specifically, the Commission commented on the location of the docks, questioning whether the depth of the lake was significantly different in the proposed dock location versus other places along the subject property waterfront. Jim Rines stated that he could not speak to that as Watermark Marine Construction is handling the proposed dock construction. Also, the Commission commented on the advantage of the dock being constructed further than the required 20 feet from the common boundary line, which also is related to Watermark Marine Construction's plan.

The Commission also commented favorably regarding the proposal only removing one tree and indicated a preference of the proposed path versus one along the ground as well.

Julie Jacobs inquired as to the height of the walkway. Jim Rines responded that the intent is to have the walkway constructed just above the ground.

Mike Hodder inquired as to the origin, nature and progression of the wetland which the raised walkway will go over. Jim Rines described the area as poorly drained wetlands with some ferns and high bush blueberries. Jim believed it was caused by ice pushing against the shoreline and creating a berm approximately 4.5 feet high.

John Thurston inquired why there was not a site visit for this project. Tavis Austin stated he was unaware that staff were to schedule site visits but will do so moving forward.

Vaune Dugan expressed that she also favors site visits by Planning Board members for special use permits.

Peter Goodwin commented that he feels it is a benefit having the walkway close to ground level so that there is less ground disturbance if something needs to be retrieved, etc. from the surrounding ground area.

John Thurston requested for clarification of the wetlands being affected. He further inquired

if the applicant would be agreeable to add supplemental blueberry bushes equal to the amount of area covered by the walkway.

Mike Hodder inquired about the following criteria:

175-10.C.(1)(a) - Lack of Alternatives, versus 175-5.G - Preserve and enhance those aesthetic values associated with the Wetlands Conservation Overlay District: In both cases, the principal argument is to prevent long term erosion due to compacted soil and is also the justification for the proposed location of the walkway for access to the docks.

175-10.C. (1)(b) - Essential Need: In the applicant's response to this criteria, it is stated that this exception must be allowed in order for use of the rest of the property.

Mike Hodder questioned if there is no alternative, other than the proposed walkway, to get items from the storage area to the proposed dock. He asked for verification that the proposed location of the walkway represents the most convenient, not the only, pathway and that is the rationale for the location. Mike Hodder further stated his understanding that the principal justification is for the convenience of the applicant and the reason for the location is that otherwise the soil, absent a walkway would become compacted.

Jim Rines stated that: 1) the proposed pathway is the most convenient; 2) the applicant is allowed, by both the State and the Town, to have a path to their dock and shoreline; 3) if the special use permit for the walkway structure is now allowed, the applicant is still permitted to utilize the pathway laid out and the result will be compaction of the soil; 4) the alternative to not allowing the structure will result in a negative impact to the environment.

Mike Hodder asked for insight as to the number of individuals who will be utilizing the pathway - i.e., a family vs a horde of people. Jim Rines replied it will be a family. Mike Hodder asked for clarification of "family". Jim Rines stated it is a substantial sized family as the dwelling has 11 bedrooms.

Kathy Barnard asked if there were any further questions regarding the applicant's responses to the criteria for a special use permit.

There being no further questions, **Mike Hodder made a motion, and John Thurston seconded, to accept the application as complete. Roll call vote: Vaune Dugan - yes; Peter Goodwin - yes; Susan Replier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Application accepted as complete by a unanimous vote (7-0).**

Kathy Barnard opened the public hearing. No public comment presented.

Vaune Dugan and John Thurston expressed interest in a site visit. Mike Hodder stated a site visit would not be helpful at this time due to snow covering the subject area. John Thurston concurred. Consensus was that moving forward site visits for special use permits would be scheduled.

John Thurston reiterated his preference for supplemental blueberry bushes to be planted to offset a portion of the ground square footage covered by the walkway.

Tavis Austin commented that the current ordinance allows for a 6 ft. wide walkway, whether it be gravel/stone, etc. which would not require a special exception permit. Therefore, in order for the Board to request additional plantings, a finding requiring such would be needed.

Mike Hodder suggested that the finding is simply requesting additional high or low bush blueberries be planted to offset the impact of the tree being removed to construct the raised walkway.

Tavis Austin then read into the record the following suggested conditions:

The following plans, as amended by the Planning Board approval, are incorporated into the approval:

Special Use Permit Application Plan for, O’Hare Enterprises, LLC, Tips Cove Road, Wolfboro, New Hampshire. (Sheet1/1 as received January 04, 2021)

1. The applicant shall include proposed walkways in the certificate of Monumentation as required with the Shoreland Impact Permit.
2. The applicant shall be responsible for the payment of all recording fees for Notice of Decision.
3. 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.
4. Applicant shall be responsible for planting twenty (20), two-three foot (2-3’) tall blueberry bushes in the wetland buffer area, to be designated by the applicant and his agent/landscaper.

Kathy Barnard closed the public hearing.

John Thurston made a motion, that was seconded by Peter Goodwin, to approve the application for a special use permit, Case #2021-01. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Replier - yes; Mike Hodder - no; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes; Motion is approved by a vote of 6 - 1.

Vaune Dugan made a procedural suggestion that photographs submitted with a Shoreland permit be provided to the Board in lieu of a site visit when weather conditions do not permit such. Moving forward, Tavis Austin stated he will schedule site visits upon acceptance of a special use permit as well as including pictures contained in the DES Shoreland permit that

are germane to the special use permit evaluation.

IV. Public Meetings:

A. Voluntary Lot Merger -

Applicant:

Katherine Karlson Revocable Trust
580 S. Main Street
Tax Map 252-033-000 and Tax Map 252-033-001)
Zoning District: Shorefront Residential

The owner has requested a lot merger of Tax Map Lot 252-003-000 (~.41 acres) and Tax Map Lot 252-003-001 (~.03 acres). Lot 252-003-000 is developed by a primary structure. Neither of the current lots appear to be conforming from an area perspective and only 252-003-000 has the required lot frontage. Lot 252-003-001 had disputed ownership which has been addressed by action of the Board of Selectmen and referenced in the application materials.

John Thurston requested clarification from Brad Harriman on the ownership of Lot 252-033-001. Brad Harriman explained that for confidentiality he could not give specifics but in summary there was litigation involving the subject parcel and that neither side in the case could show conclusive proof of ownership. Through the litigation process, the Town came to an agreement to Release Claim of Rights to put the parcel back into ownership. The manner in which the parcel was being used, the erosion as well as safety factors all played a part in the Town's decision to make this resolution of ownership. Vaune Dugan asked if there was another public access to Rust Pond. Brad Harriman believes that there is another point of access but it has not been researched. Mike Hodder commented that this parcel was used as a public boat launch up through last summer.

Tavis Austin advised that the Board cannot approve or not approve the lot merger based upon whether or not there is public access to the affected water body. Julie Jacob suggested a plan to research alternate access points. Kathy Barnard pointed out that Rust Pond is not identified by the State as public waters.

Mike Hodder concurred with that statement, adding that it would not come under the jurisdiction of the Planning Board but suggested to Julie Jacobs that a private citizen could perform such research and share those findings with the Board of Selectmen.

Tavis Austin advised that he instructed Katherine Karlson to address her request for a tax abatement to the Town Assessor.

Tavis Austin presented that the only condition recommended for approval would be that the applicant be responsible for recording fees for the Notice of Merger.

Mike Hodder made a motion, which was seconded by John Thurston, to approve the requested lot merger of Lot 252-033-000 and Lot 252-033-001 as presented with the foregoing condition. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Repplier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. Vote was unanimous (7-0) in favor of the subject lot merger.

B. Voluntary Lot Merger

Applicant:

William E. Jackson
63 Meadow Lane
Tax Map 151-030-000 and Tax Map 151-031-000)
Zoning District: Rural Agricultural

The owner has requested merger of Lot 151-030 (~.23 acres) and Lot 151-031 (~.23 acres). Lot 151-030 is developed by a primary structure. Neither of the current lots are conforming from an area or frontage perspective. It appears that the existing structure of Lot 151-030 may encroach into the side setback and perhaps across the property line; a situation that would be resolved through merger of the lots.

Kathy Barnard advised the Board she had contacted the Conservation Commission to make sure they were aware of the proposed merger as it is in a marsh area. The Conservation Commission thought the merger made sense considering the nonconformity of the lots. Their only concern dealt with access to the lots which would be addressed with building permits.

Mike Hodder shared his historical knowledge of the subject lots and advised that he felt it made sense to approve the merger.

Julie Jacobs noted that that the property line appears to pass through the existing structure and Kathy Barnard confirmed the merger would make the merged lot more conforming.

John Thurston questioned if the merger allows more for space for a septic system. Tavis Austin advised the staff's position that the merger does not provide the lot owner for any more relief moving forward. John Thurston theorized that if the merger did not happen there could potentially be a dwelling with a septic system on each parcel. Therefore, he concluded, it is in the Town's best interest to approve the merger.

Tavis Austin presented the only staff recommended condition for this lot merger is that the applicant shall be responsible for recording fees for the Notice of Merger.

Mike Hodder made a motion, which was seconded by John Thurston, to approve the merger of Lot 151-030 and Lot 151-031 as presented with the foregoing condition. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Repplier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. The

request for a voluntary lot merger of Lots 151-030 and 151-031 was approved by a unanimous vote of 7-0.

Kathy Barnard summarized that the lot merger brings the merged lot more into conformity and corrects the setback issue.

C. Discussion of Habitable Space/Accessory Buildings/Structures

Kathy Barnard gave some historical background. In 2009, an individual wanted to put a bathroom into a detached garage and the Zoning Board of Adjustment approved the request. At the time, the Zoning Board of Adjustment had also had other similar situations. As a result, in 2009 the Planning Board amended the zoning ordinance to define habitable space as “a space in a building suitable for sleeping, eating or cooking”. Further, bathrooms, toilet rooms, closets, storage, hallways or utility areas in similar areas were deemed to be not habitable space. This language was adopted at the same time as an addition to the accessory building definition, which added that an accessory structure contains no habitable space. In 2019 bathrooms and toilets were deleted and wording was added “allowing toilet rooms on the first floor only”.

Tavis Austin stated his understanding that the Planning Board does not wish to allow living units in detached structures.

Kathy Barnard stressed to the Planner and Code Enforcement Officer that the intent of the Board is only to allow a half bath in a detached garage building.

Steven Paquin, Code Enforcement Officer, stated to the Board that there is a distinction in the building code between habitable space and a dwelling unit. To qualify as a dwelling, a structure must have both. A dwelling consists of four components: a bathroom, living space, sleeping space and a kitchen. So if an individual gets a building permit for an accessory building/garage with a bathroom and subsequently, without permission, establishes that structure as a “dwelling”, the Code Officer can find them in violation of state law and enforce compliance with the permitted structure and restrictions thereon.

Tavis Austin then read the definition which is slated to go to the Town Meeting, namely: “An accessory building or structure is a structure containing no habitable space and detached from a principal building on the same lot and is incidental and subordinate to the principal building. Accessory structure shall be limited to a maximum of two per lot plus one additional structure for each 80,000 square feet over the required minimum lot size. Accessory buildings or structures shall be limited to a single half bath located on the ground floor. Swimming pools, tennis courts and like outdoor residential sports facilities, well houses, dog houses and parking areas shall be exempt from the number limitation of accessory structures.”

Steven Paquin read from the State building code regulations the definition of an accessory structure which “is accessory to and is incidental to that of a dwelling that is located on the same lot. Habitable space is space in a building for living, sleeping, eating or cooking.

Bathrooms, toilet rooms, closets, halls, storage and utility spaces and similar areas are not considered habitable. Living space is space within a dwelling unit utilized for living, sleeping, eating, cooking, bathing and washing for sanitation purposes.” In order to have a legal living space, the four criteria must be present; bedroom, living, kitchen and bathroom.

Both Kathy Barnard and Mike Hodder confirmed that they understand what the state building code allows but the Planning Board has chosen to make the Town’s regulations more restrictive by limiting accessory structures to only allow a half bath in accessory structures and such must be on the ground floor.

Alan Frederickson, owner of Top of the Hill Farm, presented his situation to the Board. He had previously received approval for an accessory building on the property to be used for agricultural purposes - i.e., storing equipment, etc. A bathroom was installed, including a shower, the purpose of which was for use by employees, exposed to hazardous or other matter, to be able to rinse off as well as for use during calving season to warm up newborn calves as needed. When the facility was inspected by the Code Enforcement Officer, an order to remove the shower was issued as it does not comply with the current ordinance. Mr. Fredrickson assured the board the accessory building is a one story, wide open structure and the purpose of the bathroom was strictly for commercial/agricultural use and he was addressing the Board for that reason.

Mike Hodder inquired if the Planner and Code Enforcement Officer knew of anything in the State statutes which would exempt Mr. Frederickson’s agricultural business from the local zoning ordinance. Steven Paquin described the State regulations which do not require Town permitting for agriculture. Mike Hodder asked Mr. Frederickson if he had been in contact with the NH Farm Bureau. Mr. Frederickson stated he had contacted the NH Farm Bureau and found there was no law in place requiring him to have a shower stall but it was recognized as being beneficial.

Kathy Barnard suggested a review of the Town ordinance to determine if there were any provisions for working farms to be treated differently than residential entities and, if none existed, to take steps to create such.

Mike Hodder volunteered to personally take on the task of investigating this matter further, both within our zoning provisions and state statutes as well as the NH Farm Bureau.

Mike Hodder suggested that the Board request the Planner and Code Enforcement Officer work together to develop a definition of habitable space and present such to the Board for consideration as an amendment to the existing definition. The rest of the Board members were in agreement with this suggestion.

Kathy Barnard reiterated that one of the Board’s goals is to protect the single family residential district from being over developed by additional dwelling units.

D. Rules of Procedure:

The first reading of the amended Rules of Procedure has occurred. Tonight is the second

reading and adoption.

Mike Hodder added a couple of minor editorial changes:

1. Change adoption date to February 9, 2021;
2. In the authority section - delete 1983 and the comma following it;
3. Page 2, section 4, 2nd paragraph - delete the colon after the word hearing;
4. Page 3, section 2, Public Notice, paragraph A, 2nd line- delete hyphen between hearing and shall

Mike Hodder made a motion, seconded by Kathy Barnard, to adopt the amended Rules of Procedure as presented with the editorial changes noted at this meeting. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Replier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. The motion passed unanimously by a vote of 7-0.

E. Natural Resources Inventory Update on Height of Hills, Summits and Mountains:

Kathy Barnard reported that it was brought to the Planning Board's attention that the March, 2011 Natural Resources Inventory was incorrect as written under Wolfeboro's Summits and Elevations. Peter Goodwin went through a process and came up with the correct elevations. It has been determined that this can be corrected administratively at a public meeting.

Peter Goodwin gave the history as to how the prior elevations had been derived and the process which was used to determine the correct elevations. The current elevations were arrived at utilizing light imaging radar which allows the heights to be measured to within 1 foot, plus or minus. Similar data can be obtained through Google Earth Pro. The heights presented are more accurate and determined to be the official measurements.

Mike Hodder made a motion, which was seconded by Peter Goodwin, that the Planning Board adopt the list of mountain heights as presented by member Peter Goodwin and adjust the heights accordingly as recorded in the Natural Resources Inventory dated March, 2011. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Replier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. The motion passed unanimously by a vote of 7-0.

F. Lighting Committee Update:

John Thurston updated the Board. The Lighting Committee had its second meeting last evening, during which the illumination section, commercial and residential issues were discussed. The Committee attempted to address the concerns expressed in a citizen letter as well as the lighting for Bridge Falls Path area and creating a theme of lighting for various town areas. The Committee is focused on ensuring that all areas are covered.

G. Drive Thru Committee:

Kathy Barnard reported that the Drive Thru Committee had met today and that they would like to update on their progress at the Planning Board next week.

H. Impact Fee Update:

Tavis Austin reached out to Mr. Mayberry regarding the next steps. The Mayberry contract had been signed just prior to Tavis Austin starting as Town Planner and consisted of two phases. The first phase was \$2,500 for a report which the Board has received. The second phase was \$7,500 to update the existing impact fees. Unfortunately, the contract was signed for both phases, but the purchase order was completed for only phase one. Also, the second phase that had been contracted for was to update the impact fees based on the existing methodology. Should the Planning Board wish to revisit how the fees are determined, applied, utilized, etc., a new contract would need to be initiated and the process begun again.

Mike Hodder reminded the Board that when impact fees were discussed at the January 5, 2021 Board meeting there were a number of unresolved issues. He expressed his belief that it would be a mistake to recommission the contract and recommended putting the impact fees discussion on the work schedule and fine tuning the details prior to signing a new contract.

I. Short Term Rental Committee:

Kathy Barnard advised that this Committee would be reconvening February 22, 2021.

J. Stormwater Management Group:

Kathy Barnard announced the following members who would be participating on this working group: Brad Harriman, John Thurston and Kathy Barnard.

K. State Legislation Update:

Mike Hodder will be updating the Board on bills that come before the House or Senate which affect what the Planning Board is involved in. Currently there are five bills; four in the House and one in the Senate.

1. House Bill #132- prohibits ordinances that require lots more than ½ acre for a single family house if the lot doesn't have a well or a black water septic system. It is scheduled for executive session later this month.
2. House Bill #189 regarding accessory dwelling units. It will change the statutory language that will allow three ADU's on a single family lot. This is due out of committee in the middle of next month.
3. House Bill #588 regarding Tiny Homes. This is also due out of committee in the

middle of next month. Allows tiny houses, in any zone, as long they adhere to both state and municipal building codes and on any lot that allows a single family dwelling. If ADU's are permitted by a town, then tiny homes become ADU's; but you would only be allowed one tiny home per lot. Tiny homes can have their own self-contained water and sanitation. They are taxable as real estate. Tiny homes can be used as workforce housing and can be aggregated into a park of at least four units.

4. Senate Bill 86 - currently in committee and requires a Planning Board to consult with an applicant regarding inspection of a project which has been approved, and re-establishes a housing and conservation planning program. There is only one sponsor.

5. House Bill #586 - regarding inclusionary zoning, workforce housing, and planning and zoning training. Very complicated bill requiring planning and zoning members to get educated on the jobs they do. It sets up a housing champion program which gives grant incentives to towns involved in the program.

V. Information Item:

Kathy Barnard informed the Board that Sugar Hill Retirement Community was sold to Taylor Homes in Laconia.

VI. Public Comment: None

VII. Approval of Minutes:

Mike Hodder made a motion, which was seconded by Kathy Barnard, to approve the January 19, 2021 minutes. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Replier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. The motion passed unanimously by a vote of 7-0.

VII. Adjournment:

Mike Hodder made a motion, which was seconded by John Thurston, to adjourn the February 9, 2021 meeting. Roll call vote: Peter Goodwin - yes; Vaune Dugan - yes; Susan Replier - yes; Mike Hodder - yes; John Thurston - yes; Brad Harriman - yes; Kathy Barnard - yes. The motion passed unanimously by a vote of 7-0.

Meeting was adjourned at 9:07 PM.

Respectfully submitted,
Mary Jane Shelton
Recording Assistant