

Wolfeboro Zoning Board of Adjustment
7 December 2020 7:00pm
The Great Hall at Wolfeboro Town Hall
Meeting Minutes

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 Zoning Board of Adjustment has jointly decided to proceed with a 'hybrid' meeting format allowing for members of the public and Board to attend and participate in the meeting in-person or virtually.**

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

At this time I would like to take a roll-call vote of ALL members present. For those participating virtually, please indicate why your attendance is not reasonably practical and if you have any other individuals present in the room with you.

Introduction:

Members Present/Roll call: Luke Freudenberg, Chairman; Sarah Silk, Vice Chairman; Tim Cronin, Clerk (attending remotely, due to COVID, alone); Audrey Cline, Member (attending remotely, due to COVID, alone); Suzanne Ryan, Member (attending remotely, due to COVID, alone).

Members Excused: Dave Senecal, Alternate

Staff Present: Tavis Austin, Director of Planning & Development; Mary Jane Shelton, Recording Assistant (attending remotely)

Votes taken during this meeting will be via roll call vote for all members.

In accordance with Emergency Order #12, for members of the public, this is to confirm that we are:

1. Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means through GoToMeeting. All members of the public and Board have

the ability to communicate contemporaneously during this meeting through the GoToMeeting platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #+1 (646) 749-3122 followed by the audio access code 918-242-429, or by video following the directions on the Town of Wolfeboro Website posted on the home page under the Virtual Town Meeting Login Information page.

2. Providing public notice of the necessary information for accessing the meeting; we previously gave notice to the public of how to access the meeting in-person or using GoToMeeting and in, and instructions are provided on the Town of Wolfeboro website at wolfeboronh.us on the Virtual Town Meeting Login Information page.

3. Providing a mechanism for the public to alert the public body during the meeting if there are problems with access; If anybody has a problem accessing the meeting via phone or computer, please immediately call 603-391-8489 OR email planningdirector@wolfeboronh.us In the event that the public is unable to access the meeting, we will adjourn the meeting and have it rescheduled at that time.

Thank you.

I. Call to Order: The meeting was called to order at 7:19 pm due to technical difficulties. A quorum was present.

II. Public Hearings:

Tax Map # 203-62, 63,64, 65 - Case # 17-SE-20

Applicant: New Hampshire Boat Museum - Public Hearing for a Special Exception under Article XVII, Section 175-107-E of the Wolfeboro Planning & Zoning Ordinance to allow for a Special Exception for Boat Museum with a 6 year expiration. Property is located at 5 - 59 Bay Street, which is in the Bay Street Limited Business District.

Luke Freudenberg, Chairman, read the case into the record.

Robert Sterndale, Trustee of the NH Boat Museum, gave a summary of the application. The NH Boat Museum previously received approval on August 7, 2017 for the Special Exception and such approval was subject to a 2 year expiration. Subsequently the Museum received site plan approval from the Wolfeboro Planning Board on September 14, 2018 and State approval for alteration of terrain on October 8, 2019. Due to the expiration of the prior ZBA special exception, the Museum is re-applying for a special exception and requesting a 5 year expiration on the same. Mr. Sterndale then reviewed the eight point

special exception request which was submitted.

Luke Freudenberg opened the Public Hearing.

Suzanne Ryan asked if this application would be going before the Planning Board again and was advised by Tavis Austin that it would not be. Suzanne Ryan further inquired about specifics of hours and days of operation. Robert Sterndale stated he preferred not to commit and constrain the museum to specific days/hours as they may have fundraisers, etc. which may deviate from “normal museum hours”. Further discussion ensued as to whether there are restrictions on hours of operation for other businesses in the area. The consensus was that compliance with the Town noise ordinance was more likely the appropriate determinant.

Suzanne Ryan laid out some concerns regarding the impact of increased traffic in that area and improvements of Bay Street that will be required as identified in the Master Plan.

Luke Freudenberg closed the Public Hearing.

Suzanne Ryan brought to the attention of the board the impact that the increased commercial traffic will have on the Bay Street area.

Audrey Cline asked that the Town’s legal counsel be consulted regarding the ability of the ZBA to grant a Special Exception with a 5 year expiration. Sarah Silk also expressed concern about issuing a 5 year expiration at the outset; her preference being that the applicant return to the Board prior to the 2 year expiration if a further extension is needed. Suzanne Ryan concurred, adding that granting a Special Exception with a 5 year expiration would set a precedent that would prove problematic for the Board in the future.

Suzanne Ryan made a motion, which was seconded by Sarah Silk, to only grant a 2 year expiration, not grant a 5 year expiration, with a Special Exception application. Roll call vote: Tim Cronin - yes; Sarah Silk - yes, Suzanne Ryan - yes; Audrey Cline - yes; Luke Freudenberg - yes. Motion passes unanimously with a vote of 5-0.

Tim Cronin asked for clarification of the statute from Tavis Austin who read the statute verbatim. After further discussion, it was agreed that that statute provides for the granting of a 2 year expiration at the time of a Special Exception application/approval and that the applicant is entitled to return to the Board and request an extension, with demonstration of good cause, prior to the expiration of the 2 years.

The applicant asked for clarification as to the process for requesting an extension, if needed, prior to the expiration of the 2 year period. Tavis Austin explained the process would be the same with the difference being the applicant providing proof of good cause for the extension being requested. The applicant expressed his position that his interpretation of the statute is that the Board has the authority to grant a Special Exception with a 5 year

expiration and that the applicant is requesting such so that, if approved, the Special Exception is vested under current zoning ordinances and not subject to re-approval under zoning ordinances changes that may exist at the time an extension to the 2 years is requested.

Tim Cronin made a motion, which was seconded by Luke Freudenberg, to 1) reverse the earlier vote wherein the Board voted to grant only a 2 year expiration, not a 5 year expiration, with a Special Exception application; 2) to consult with Town legal counsel to determine the legality and ramifications of the Board granting a 5 year expiration with a Special Exception application; and 3) to continue the subject Special Exception application to a date certain. Suzanne Ryan requested the motion be amended to reflect that Town legal counsel be apprised of the current situation with the subject applicant: 1) applicant already had a Special Exception approval with a 2 year expiration, 2) that 3+ years have elapsed since the approval, and 3) the total process for this application, if another Special Exception is granted, may span up to 7 to 8 years if a Special Exception with 5 year expiration were to be granted.

Audrey Cline clarified that the original Special Exception granted has expired and the applicant is applying for a new Special Exception.

Sarah Silk questioned the need to spend funds consulting Town counsel regarding a situation where the existing application has expired and the statute allows the applicant to reapply with a 2 year expiration, if approved. Sarah Silk reiterated what Audrey Cline had previously stated, namely, that the current application before the Board is for approval of a new Special Exception and not a request for an extension. Suzanne Ryan clarified that the Special Exception applications, if granted, are given with a 2 year expiration, no more and no less. Tavis Austin confirmed the same. Roll call vote: Tim Cronin - yes; Audrey Cline - yes; Suzanne Ryan - no; Sarah Silk - yes; Luke Freudenberg - yes. Vote was 4 - 1 in favor.

Discussion ensued as to whether the current application meets the required criteria. Audrey Cline asked for clarification on the reference to a variance application date.

Audrey Cline then inquired as to availability of the water supply with regard to what would be needed for the sprinkler system, etc. and if there are adequate public services available. Tavis Austin advised that he has not been told of any issues with respect to public services but also does not believe that the building permit has been submitted. Audrey Cline questioned when it would be determined if public services will be adequate and, more particularly, when will the Board be apprised of more specifics on this project. Tavis Austin responded that an applicant must have an approved Special Exception prior to applying for a building permit wherein those

specifics would be addressed. The applicant did not apply for a building permit during the 2 years allowed during the initial Special Exception approval. Audrey Cline pointed out that the public services needs should be part of a site plan.

Tim Cronin questioned, and Tavis Austin confirmed, that a building permit cannot be issued without the issue of availability of public services being addressed.

Suzanne Ryan concurred with Audrey Cline's comments regarding the impact on public services. Audrey Cline clarified that her belief is that the road and services along Bay Street will mostly likely require upgrading irrespective of the Boat Museum, but that the Board should be cognizant of such, and updated as the project progresses, when asked to approve the Special Exception and possible extension to the expiration of such.

Audrey Cline inquired as to whether the current site plan presented was the same as that presented with the original application three years prior. Tavis Austin responded that it is the same site plan, with minor changes, and was approved by the Planning Board with conditions. Assuming the new Special Exception application is approved, Audrey Cline encouraged the applicant to update the site plan, as technical work is completed, prior to coming before the Board and requesting an extension.

Board then continued reviewing the criteria which must be met for approval of a Special Exception.

Tim Cronin made a motion, which was seconded by Audrey Cline, to approve the Special Exception application for Case #17-SE-20 with a two year expiration and subject to the conditions presented by the Town Planner. Roll call vote: Tim Cronin - yes; Audrey Cline - yes; Suzanne Ryan - no; Sarah Silk - yes; Luke Freudenberg - yes. Vote was 4 to 1 in favor.

Tax Map # 243-60 - Case # 18-V-20

Tim Cronin, Clerk, read the case into the record.

Applicant: Sonya Jauch - Public Hearing for a Variance under Article X, Section 175-70 A(1)(b) of the Wolfeboro Planning & Zoning Ordinance to allow for a variance from the front setbacks for a new single family dwelling. Property is located at 9 Fairway Drive.

Agent: Bryan D. Berlind, NH LLS, Land Technical Service Corp.

Bryan Berlind explained that the application is for a variance for a project which had a variance approved previously but that the permit has expired. The only change, between

the expired application approved two years prior and the current one, is the building layout which is slightly different. Bryan Berlind reviewed the exhibit photos and setback information for the site. The minimum setback is 20' and maximum is 30'.

Bryan Berlind reviewed the responses to the five criteria contained in the variance application and the site plan, identifying that the housing footprint is the only difference from the original application two years prior.

Luke Freudenberg then took a roll call of which Board members had been on a site visit. Roll call: Audrey Cline - did not do a site visit but is familiar with the site; Tim Cronin - did a site visit prior to the prior application to the Board two years ago; Suzanne Ryan - did not visit prior to this application and was unsure if seen previously; Sarah Silk - did not visit prior to this application, but is familiar with the site; Luke Freudenberg - visited the property today.

Luke Freudenberg opened the Public Hearing.

Tim Cronin asked if the house/garage footprint was identical to that in the prior application which expired. Bryan Berlind showed on the plan that the house on the current application is slightly smaller.

Audrey Cline inquired if all of the other conditions for this Village Residential Zone are met aside from the setbacks. She specifically inquired if the garage, without a variance, needed to be to the side or rear of the house rather than on the street side as shown on the plan. Tavis Austin then read the regulation 175-70 E regarding garage placement.

Tavis Austin verified that, although there are two different plans contained in the information distributed to Board members, the information made available to the public contained the correct site plan. He further explained that the floor plan is not being reviewed with this application. The Board is reviewing the exceedance of the 30' maximum setback of the proposed structure from Fairway Drive. The application is for a structure of approximate size, similar to those in the neighborhood, to be located in excess of 30' from Fairway Drive.

Tavis Austin further clarified that once a specific house plan is submitted, it would then be submitted to the Board if a variance were required.

Luke Freudenberg closed the Public Hearing.

Suzanne Ryan made a motion that the applicant withdraw their application, without prejudice, and resubmit with a specific floor plan requesting a variance for the house as well as the garage.

Audrey Cline stated that she felt the Board cannot require that the applicant proceed in that

manner despite it possibly being more expeditious. Audrey Cline further commented that, at a minimum, there will be a note in the record for the Zoning Administrator to review the floor plan accordingly.

The applicant requested the Board move forward and take action on the current application as submitted at this time.

Suzanne Ryan stated that the intent of her motion was to expedite matters.

The prior motion was not seconded, and therefore is null and void.

The Board then reviewed the criteria for the setback variance. A discussion of Criteria 5 ensued, specifically if both conditions 5A and 5B must be met.

Suzanne Ryan made a motion, which was seconded by Sarah Silk, to approve the variance application under Article X, Section 175-70 A(1)(b) for Tax Map # 243-60, Case # 18-V-20 applied for on November 16, 2020 for a variance from the maximum 30' front setback for a new single family dwelling with the conditions as set forth by the Planner. Roll call vote: Tim Cronin - yes; Sarah Silk - yes; Audrey Cline - yes; Suzanne Ryan - yes; Luke Freudenberg - yes. Application for variance was approved 5-0 in favor.

III. Consideration of Minutes: November 9, 2020

Sarah Silk made a motion, and Luke Freudenberg seconded, to accept the minutes of the November 9, 2020 Zoning Board of Adjustment minutes. Roll call vote: Tim Cronin - yes; Sarah Silk - yes; Audrey Cline - yes; Suzanne Ryan - abstain; Luke Freudenberg - yes. Minutes were approved.

IV. Other Business:

Suzanne Ryan asked for Tavis Austin to consult Town legal counsel regarding clarification of the ZBA Variance Request, Criteria #5 “Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship....” Specifically, do both conditions (A and B) need to be met? Suzanne Ryan asked that the inquiry to and response from legal counsel be provided in writing to the Board members.

Audrey Cline inquired if Board meetings could be hosted in a smaller location which would hopefully improve audio communication with virtual attendees. The acoustics in the Great Hall are difficult to manage. Luke Freudenberg stated he would explore other options, including hosting meetings entirely virtual.

V. Adjournment:

Sarah Silk made a motion, which was seconded by Tim Cronin, to adjourn the meeting. Roll Call vote: Tim Cronin - yes; Sarah Silk - yes; Audrey Cline - yes; Suzanne Ryan - yes; Luke Freudenberg - yes. Vote was unanimous.

Meeting was adjourned at 9:04 pm.

Respectfully submitted,

Mary Jane Shelton, Recording Assistant