

**TOWN OF WOLFEBORO
ZONING BOARD OF ADJUSTMENT
April 3, 2023
DRAFT MINUTES**

Chair Audrey Cline called the meeting to order at the Great Hall, Wolfeboro Town Hall at 7:00 pm.

I. Roll Call

Members Present: Audrey Cline, Chair, Suzanne Ryan, Vice-Chair, Sarah Silk, Clerk, Luke Freudenberg, Member, Cate McMahon, Chuck Sumner, Alternates.

Member Absent: Nancy Stroman, Alternate.

Staff Present: Tavis Austin, Director of Planning and Development.

Audrey Cline recommended moving the agenda items so that the appointment of the vacant member seat and election of officers be addressed first.

Sarah Silk questioned whether Audrey Cline could sit on the Board because her application remains within the thirty-day appeal period and in addition, Ms. Cline has also asked for a rehearing.

Tavis Austin stated Ms. Cline could sit during the appeal period.

Sarah Silk asked Mr. Austin if he talked to Town Counsel regarding such.

Tavis Austin replied no and stated that since the Board is not talking about a case there is no reason she cannot sit.

Sarah Silk stated she is not comfortable with such and feels it is a conflict of interest.

Luke Freudenberg stated he believes Ms. Cline's purpose in moving the agenda items is to step down later in the meeting. He asked Ms. Cline if that is her intention.

Audrey Cline replied yes.

Suzanne Ryan asked if the Board was going to discuss Ms. Cline's request for rehearing.

Tavis Austin stated the Board did not accept jurisdiction over the case therefore, there is no thirty-day appeal period.

The Board discussed the order of the agenda.

Suzanne Ryan stated she would prefer to not move forward with the meeting and doesn't feel it would be good practice to hold the meeting.

Tavis Austin stated the Board has to make a decision on the motion for rehearing within thirty days of last Friday (March 31) and, the Board needs to review minutes and, the only reason why this meeting is moving forward is because the Chair asked for such to address Rules of Procedure and minutes.

Suzanne Ryan stated the Board has to sit at the table with an applicant that will be coming before the Board again and feels uncomfortable with such.

It was moved by Suzanne Ryan to adjourn the April 3, 2023 Zoning Board of Adjustment meeting.

Board Discussion:

Cate McMahon asked if the Board is obliged to deal with the motion for rehearing.

Tavis Austin replied yes, the Board is required to deal with the motion for rehearing within thirty days of March 31. He stated the Board can't address the matter at their April 5 meeting because the meeting is outside of the thirty days. He stated the remainder of the Board members could schedule a special meeting to address the motion for rehearing and noted the Board is not rehearing the case rather, it's whether the Board will or will not hear the case.

Suzanne Ryan stated she made the motion to adjourn because of the thirty-day issue and the motion for rehearing.

The Board discussed member appointments, elected members v. appointed members and, when a member term expires.

Tavis Austin stated elected memberships continue until the person is re-elected or replaced.

Suzanne Ryan stated she is leaving the meeting and left the table.

Sarah Silk stated she doesn't feel comfortable with Ms. Cline sitting with there being an appeal.

Sarah Silk seconded the motion.

Suzanne Ryan returned to the table.

Audrey Cline confirmed that she could vote on the motion to adjourn and stated she would vote to not adjourn.

Sarah Silk stated Audrey Cline should not be voting and participating until all of her cases are before the Board are resolved.

Tavis Austin stated she does not have a case before the Board.

Suzanne Ryan stated the motion for rehearing is a pending case; noting the chairman of the Board is asking for a rehearing of her case.

Tavis Austin stated it is not a pending case now and the Board only has to vote on whether to rehear the case. He stated Ms. Cline is voting on the motion to adjourn.

Suzanne Ryan exited the meeting at 7:13 pm.

The Board discussed recusal of board members.

******At this point of the video recording the camera turned off. The Board believed that they had adjourned the meeting.***

******There was no formal vote on the adjournment as observed on the video recording.***

******The meeting reconvened shortly thereafter and video recording resumed.***

Audrey Cline, Chair, appointed Cate McMahon, alternate, to sit on the Board.

II. **Public Hearing(s)**

None.

III. **Unfinished Business**

a. **Rules of Procedure**

Such was tabled.

IV. **New Business**

a. **Appointment to Vacant Member Seat**

Audrey Cline stated Tim Cronin stepped down prior to his term expiring; noting there is a vacant seat on the Board. She stated the way the seat is filled is by a vote of the Board to fill that seat until the end of the term that is vacant which is next year.

It was moved by Sarah Silk to appoint Chuck Sumner to the vacant member seat of the ZBA, seat vacated by Tim Cronin. Luke Freudenberg seconded. All members voted in favor. The motion passed (4-0).

It was noted that Chuck Sumner would serve as a member of the Board for one year.

b. **Election of Officers**

It was moved by Cate McMahon to nominate Audrey Cline as Chair of the ZBA. Chuck Sumner seconded.

Discussion of the motion:

Sarah Silk stated she would be abstaining from the vote because she doesn't believe that Audrey should be at the meeting this evening.

Audrey Cline stated she would be happy to accept the nomination.

Audrey Cline, Cate McMahon, Chuck Sumner, Luke Freudenberg voted in favor. Sarah Silk abstained. The motion passed (4-0-1).

Luke Freudenberg asked Chuck Sumner if he would be comfortable accepting the vice-chair position.

Chuck Sumner replied no.

Luke Freudenberg asked Sarah Silk if she would accept the vice-chair position.

Sarah Silk stated she would respectfully decline.

It was moved by Sarah Silk to appoint Suzanne Ryan as Vice-Chair of the ZBA. Luke Freudenberg seconded the motion. All members voted in favor. The motion passed unanimously (5-0-0).

Sarah Silk stated she would ask to become Clerk in Tim Cronin's place.

It was moved by Luke Freudenberg to appoint Sarah Silk as Clerk of the ZBA. Audrey Cline seconded the motion. All members voted in favor. The motion passed unanimously (5-0-0).

V. **Approval of Minutes**

It was moved by Sarah Silk to table the November 14, 2022 and January 9, 2023 Zoning Board of Adjustment minutes. Luke Freudenberg seconded the motion. Luke Freudenberg, Sarah Silk, Cate McMahon, Chuck Sumner voted in favor. Audrey Cline abstained. The motion passed (4-0-1).

Tavis Austin noted the March 6, 2023 minutes would also be carried forward; noting the minutes were not on tonight's agenda.

VI. Communications and Miscellaneous

Audrey Cline recused herself.

Tavis Austin stated the Board has received a motion for rehearing from Audrey Cline; noting it is a request to the Board to reconsider its vote on Case #01-AAD-23 from March 6, 2023. He stated it is not a hearing tonight and has not been noticed as such rather, it is whether the Board wants to re-open the case to which the Board decided it did not have jurisdiction over the appeal of a Planning Board decision.

It was moved by Luke Freudenberg to deny the Motion of Rehearing request for Case #01-AAD-23 based on Town Counsel guidance that the Board does not have jurisdiction and the applicant has the ability through the court system to seek remediation in this matter. Chuck Sumner seconded the motion.

Discussion of the motion:

Sarah Silk questioned whether another reason to deny the motion for rehearing would be since warrant articles 2-10 were not voted in.

Tavis Austin stated he wouldn't know what the outcome would be if the Board decided to hear it and decide in case of the appellant because the warrant article is dead except perhaps a letter from the ZBA admonishing the "Planning Board." He stated this is a procedural step that the applicant needs to go through should the applicant want to go to the court level as identified in the motion. If the Board were to continue with the motion as approved the applicant would then have the ability to go to higher court. He stated that whether the ZBA hears or doesn't hear this case, the zoning article is dead.

Cate McMahon stated she would vote to grant the motion for rehearing. She stated the Planning Board made a decision affecting a whole block of properties and feels there is grounds for further discussion.

Sarah Silk stated she recalls the attorney stating there is no standing because there was no application for a particular lot under that particular zoning change because it hadn't been voted in at that time.

Cate McMahon stated the Planning Board's action, which was appealed, did not refer to a particular piece of property but rather, a category of future particular cases which affects a whole category of the same kind of case. She questioned whether a category of cases could represent a particular property, dilemma, or action.

Tavis Austin stated the attorney spoke to the legislative function of the Planning Board and when the Planning Board is pursuing its legislative function it is not appealable to the ZBA regardless of the number of properties.

Sarah Silk stated she sees the request as an appeal and the Board has been told that it does not have jurisdiction. She stated the fact that none of the warrant articles (2-10) passed, the point is moot because that zoning does not exist.

Cate McMahon read Ms. Cline's appeal (page 2 of the submitted Motion for Rehearing) and stated she is in favor of further study on the matter.

Sarah Silk stated any issue relative to noticing should be looked into by the applicant with the person who did the notification. She stated if such was not corrected and done in a timely or correct manner then that person's immediate supervisor should be notified. She stated if there is an issue with the notification process then such can be addressed in Superior Court.

Tavis Austin stated in this particular case, Town counsel agreed that the Town didn't follow the appropriate noticing. However, because the ZBA never had a public hearing there was no actual failure to notice the case appropriately because there was no hearing.

Sarah Silk asked why the ZBA members did not receive this information.

Tavis Austin stated because the motion for hearing was received Friday afternoon. He asked how the ZBA would be approached as a group in an unnoticed meeting prior to 7 pm this evening when the Board was already scheduled to meet.

Sarah Silk stated it is unfortunate that the ZBA did not have all of the adequate information prior to the meeting. She stated if Town counsel had been asked any question that it is unfortunate that the members weren't advised.

Luke Freudenberg, Sarah Silk, Chuck Sumner voted in favor. Cate McMahon opposed. The motion passed (3-1-0).

VII. Motion to Adjourn

It was moved by Luke Freudenberg and seconded by Chuck Sumner to adjourn the April 3, 2023 Zoning Board of Adjustment meeting. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting adjourned at 7:35 pm.

Respectfully Submitted,

Lee Ann Hendrickson

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***The minutes were based off the video recording of the April 3, 2023 Zoning Board of Adjustment meeting.*