

**TOWN OF WOLFEBORO
ZONING BOARD OF ADJUSTMENT
April 25, 2023
DRAFT MINUTES**

I. Roll Call

Audrey Cline opened the meeting at the Town Hall Annex conference room at 6:00 pm.

Members Present: Audrey Cline, Chair, Suzanne Ryan, Vice-Chair, Luke Freudenberg, Sarah Silk, Members, Nancy Stroman (remote), Cate McMahon (arrived at 6:03 pm), Alternates.

Member Absent (excused): Chuck Sumner, Member.

Staff Present: Tavis Austin, Director of Planning and Development, Lee Ann Hendrickson, Administrative Secretary.

Two members of the public were present at the meeting; John Ouhrabka, Kathy Kiley.

II. Nonpublic Session

Sarah Silk stated after the ZBA's last meeting she spoke to both the Town Manager and Christine Johnson, Town Counsel, and noted the Board needs to go into nonpublic session. She noted the guests would need to step out of the meeting.

Cate McMahon entered the meeting at 6:03 pm.

Audrey Cline appointed Cate McMahon, Alternate, to sit in for Chuck Sumner, Member.

It was moved by Sarah Silk and seconded by Luke Freudenberg to enter non-public session at 6:04 PM under RSA 91-A:3,II(I). Roll call vote; Audrey Cline - yes, Luke Freudenberg – yes, Sarah Silk – yes, Cate McMahon – yes, Nancy Stroman – yes, Suzanne Ryan - yes. The motion passed (6-0-0).

The Board re-entered public session at 6:22 PM.

Suzanne Ryan stated the Board took a vote to seal the portion of the meeting that relates to Audrey Cline's Motion for Rehearing and unseal the portion of the meeting that relates to Town Counsel's memorandum "Irregularities regarding motions to adjourn April 3, 2023 meeting".

III. New Business

Sarah Silk at the April 3, 2023 ZBA meeting there were several votes taken to adjourn and confusion as to what the vote was. She stated the camera turned off, there was discussion while the camera was off and then the camera turned back on; noting it was unclear as to whether the Board was actually adjourned. She stated Town Counsel opined that the Board was technically adjourned at the first vote and the meeting should not have continued. She stated the votes following the first motion to adjourn will have to be revisited.

The Board agreed to re-vote on the membership appointment, chair and vice-chair at a subsequent meeting and agreed to revisit the vote on Audrey Cline's Motion for Rehearing.

Audrey Cline recused herself.

Suzanne Ryan stated this portion of the meeting is public however, not considered a public hearing therefore, notification was not required. She stated Audrey Cline has requested a rehearing of her case, #01-ADD-23, an administrative appeal that was denied on March 6, 2023.

Suzanne Ryan appointed Sabat Stroman, Alternate, to sit in for Audrey Cline, Member.

She stated she would like to review what constitutes a rehearing and the Board's prevue over such. She noted the applicable statutes and stated the Board can rehear its own case if a mistake has been made prior to court. She read page 2 of Ms. Cline's Motion for Rehearing regarding notice requirements. She read RSA 676:7 I.(a) Public Hearing Notice. She questions whether there was a legal error in the notification process on the part of the Town. She questioned whether the Board wants to move forward with acting on the motion for rehearing or whether the Board would prefer to seek legal advice. She stated the Board is doing their due diligence by holding this meeting with the thirty-day period. She questioned whether the Board needs to cure the error to prevent the case from coming back to the Town.

Tavis Austin stated that if the Board's decision is the same as the first time with the procedural defect cured would the 30 days for the rehearing still occur or not.

Suzanne Ryan stated Audrey Cline has restated in a more clear and concise way what she was trying to convey and ask for in the first place.

Cate McMahon stated it is not clear to her that examples of "is controlling language for all affected base zoning districts" have been presented. She questioned what is the controlling language and requested examples of such.

Tavis Austin stated the error in that statement is that the Planning Board never voted on that question; noting that most of the appeal is based on that question and not the article moving forward to warrant. He confirmed there was an error in the notice requirements. He stated the safest way to address the matter is to re-notice the appeal.

It was moved by Luke Freudenburg to re-notice the appeal for Case #01-AAD-23 for the June ZBA meeting. Sarah Silk seconded the motion.

Discussion:

Sarah Silk confirmed the motion addresses the appeal and not the rehearing.

Roll call vote; Luke Freudenburg – yes, Sarah Silk – yes, Cate McMahon – yes, Nancy Stroman – yes, Suzanne Ryan - yes. The motion passed (5-0-0).

Nancy Stroman asked if there is a substantive difference from the second paragraph of Audrey's request for rehearing and what was submitted the first time. She questioned whether Ms. Cline edited the rationale for the rehearing highlighting the process followed.

Tavis Austin replied yes.

Nancy Stroman asked whether counsel received the motion and would it change how the attorney would interpret such.

Tavis stated it was submitted to counsel and she advised him the Board should hold a meeting and make a decision to rehear or not to rehear.

Suzanne Ryan asked if the Board agrees to send the supplemental information submitted by Ms. Cline in her motion for rehearing and whether such legally affects the Board with regard to the administrative error.

Sarah Silk stated Town Counsel needs to be notified that the Board is re-noticing the request.

Suzanne Ryan asked the Board members to forward any questions to her to submit to counsel.

Nancy Stroman stated that by submitting the second reason for the motion for rehearing, Ms. Cline is trying to send a message about something she is doing that is different than the way it is being interpreted the first time. Therefore, she requested review by counsel and ask whether she still stands by her decision.

Tavis Austin stated the statute is clear – when the Planning Board does something that is equivalent to an administrative decision that those decisions are appealable to the Zoning Board.

Cate McMahon asked if the only recourse court since Ms. Cline is stating the “Planning Board illegally and unreasonably interpreted the zoning ordinance when accepting the warrant article so worded.”

Tavis Austin replied no.

The Board agreed to submit questions to Ms. Ryan for counsel by May 12.

Luke Freudenburg stated the Board and staff need to do a better job at how they talk to each other during the meetings.

Luke Freudenburg exited the meeting at 6:53 pm.

Audrey Cline re-entered the meeting at 6:53 pm.

**IV. Unfinished Business
Rules of Procedure**

The Board agreed to table such to May 1.

Board Appointments

The Board agreed to table such to May 1.

V. Approval of Minutes

The Board agreed to table such to May 1.

VI. Communications and Miscellaneous

The Board agreed to meet at the Town Hall Annex conference room on May 1. They discussed alternative meeting locations.

VII. Motion to Adjourn

It was moved by Suzanne Ryan to adjourn the April 25, 2023 Zoning Board of Adjustment meeting. Sarah Silk seconded the motion. All members voted in favor. The motion passed.

There being no further business before the Board, the meeting adjourned at 7:00 pm.

Respectfully Submitted,

Lee Ann Hendrickson

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