

**WOLFEBORO PLANNING BOARD
REGULAR MEETING
June 2, 2009
MINUTES**

Members Present: Kathy Barnard, Chairman, Stacie Jo Pope, Vice-Chairman, Marge Webster, Selectman's Representative, Chris Franson, Jennifer Haskell, Richard O'Donnell, Members, Dave Alessandrone, Steve Buck, Alternates.

Members Absent: Kristi Ginter, Selectman's Representative, Fae Moore, Member.

Staff Present: Rob Houseman, Director of Planning & Development, Lee Ann Keathley, Secretary.

Chairman Barnard opened the meeting at 7:01 PM.

Chairman Barnard appointed Dave Alessandrone, Alternate, to sit in for Fae Moore, Member.

Consideration of Minutes

May 5, 2009

Corrections:

Page 4, 5th paragraph: strike "per parking space".

It was moved by Marge Webster and seconded by Stacie Jo Pope to approve the May 5, 2009 Wolfeboro Planning Board minutes as amended. All members voted in favor. The motion passed.

May 19, 2009

Corrections:

Page 1, Members Absent; strike "Kristi Ginter, Selectman's Representative" and insert in "Members Present".
Page 3, 2nd paragraph, to read as follows; "Richard O'Donnell questioned whether Federal regulations applied."

Page 3, Commercial Zoning, 9th paragraph, 1st sentence; insert "and" between "use" & "not".

It was moved by Marge Webster and seconded by Stacie Jo Pope to approve the May 19, 2009 Wolfeboro Planning Board minutes as amended. All members voted in favor. The motion passed.

Informational Items

- **OEP – Shoreland Protection Act**

Rob Houseman stated the BOS amended the Planning Board's request to include a portion of Foss Field parking lot and drainage ditch to the plan. He stated the Office of Energy & Planning (OEP) reviewed the request and recommended the exemption from the urbanized area.

- **Role of an Alternate Member**

Rob Houseman stated he received guidance from Town Counsel regarding the role of an alternate member of the Board.

Public Comment

No public comment.

Subcommittee Reports

- TRC
5/6/09; Two nonbinding applications; an outdoor patio at El Cenntario and a Change of Use from residential to office at 646 Center Street.
- Master Plan Implementation Committee
Meeting scheduled for 6/8/09.
- CIPC
No report.
- Smart Growth
Meeting scheduled for 6/4/09.

Action Items

Richard & Amy Kirst
Request for extension of Notice of Decision
TM #218-39
Case #200745

Rob Houseman stated Richard & Amy Kirst acquired the parcel from the previous owner who obtained a Special Use Permit for the property. He stated the applicant is fully compliant with the approved plan.

It was moved by Richard O'Donnell and seconded by Marge Webster to grant a two year extension of Case #200745, with an expiration date of October 3, 2011, subject to the original conditions of approval. All members voted in favor. The motion passed.

Wolfeboro Camp School
Release of Financial Security
TM #253-7, 245-21
Case #200812

It was moved by Stacie Jo Pope and seconded by Jennifer Haskell to approve the Release of Financial Security for Wolfeboro Camp School (Phase I) in the amount of \$7,094.00, including all accrued interest. All members voted in favor. The motion passed.

SCHEDULED APPOINTMENTS

Gerald & Susan Maus
Special Use Permit; Wetlands Buffer & Boathouse
Agent: Jim Rines, White Mountain Survey Co.
Tax Map #259-29
Case #200915

Rob Houseman reviewed the Planner Review for June 2, 2009 stating the applicant proposes to remove an impervious tennis court, construct a driveway / parking area within the buffer area and construct a new 25'X35' boathouse. He stated the Health Officer and Code Enforcement Officer have signed off on the application and the Conservation Commission conducted a site visit and provided comments and recommendations per their memorandum, dated 5/29/09.

Regina Nadeau reviewed the history of the site and submitted photographs, plans and the NH DES letter of denial of a previous application for the construction of a boathouse (2007).

Roger Murray objected to the information presented to the Board by Ms. Nadeau; noting such is not part of the record file and provided at the last minute.

Rob Houseman stated the information being distributed is not new information. He stated that predominantly the area of the house is located within the 50' buffer area and the deck is located in the water therefore, the lot is considered nonconforming. He stated the tennis court is an accessory structure and also nonconforming. He stated two years ago the owners proposed moving the house further back from the shoreline however, could not meet the 50' shorefront setback therefore, the owner applied for a Shoreland Waiver however, because the State would not recognize the Town's limitations regarding the wetland buffer, the applicant withdrew their application for a building permit because a Variance and Special Use Permit would have been necessary. He stated the applicant previously applied for a boathouse and the State denied such; noting that once excavation into the shoreline occurs, a new shoreline is created therefore, the 50' setback gets pushed inward. He stated the original plans of the house have been reduced and the location of the house has been reoriented and due to such, a new location for the boathouse is proposed; noting that it meets the 50' shorefront setback.

Regina Nadeau stated the driveway and boathouse impacts the Town's wetland buffer setback however, noted that with the removal of the tennis courts, there will be a reduction of impact to the wetland area. She stated the proposed boathouse counts as a two slip boathouse; noting State law only allows for 5 boat slips therefore, the applicant proposes to remove the roof of the existing open sided docking structure (because such structure could be considered a boathouse by State law). She stated to date, the tennis courts have not been removed.

Rob Houseman verified one dock would be removed and the roof on the existing structure would be removed.

Jim Rines distributed revised plans and stated the Conservation Commission expressed concern for the navigational buoy; noting such is depicted on the plan and an imaginary projection line from the property into the lake is shown on the plan; noting such is 64' between the right angle projection of the navigational buoy. He stated the Commission commented that in order to gain access to the boathouse, a person would have to come within 1' of the dock on the abutting property. He stated there would be no need to come within 1' of the dock to gain access. He stated rotating the location of the boathouse (from the original request to NH DES) allows for additional room to navigate around the buoy. He stated the spot shot soundings are depicted on the plan to address water depth. He stated there is currently 5,863 SF of permanent impact and noted the proposed permanent impact in the wetland buffer is 4,599 SF (net decrease between existing and proposed is 1,264 SF of impervious area; 21.5% reduction in wetland buffer). He reviewed the changes to a letter dated 5/1/09 that had been revised on 6/2/09.

Kathy Barnard questioned whether an alternative location exists for the construction of the boathouse.

Jim Rines stated the proposed location is the only location available to create a 900 SF boathouse that would comply with the 50' setback. He stated the proposal addresses the concern noted in the 2007 denial; noting the boathouse had been placed perpendicular therefore, causing a boat to gain access that would be more parallel to the abutter's dock.

Kathy Barnard questioned the Conservation Commission's comment regarding the lack of a re-vegetation plan.

Jim Rines stated the intent is to re-vegetate in accordance with the Comprehensive Shoreland Protection Act (CSPA). He recommended placing such as a condition of approval.

Chris Franson questioned whether the proposed size / calculations of the boathouse include overhangs.

Jim Rines replied no.

Chris Franson questioned whether the ordinance states that the walls or overhang is included in the 900 SF.

Rob Houseman stated the 900 SF in the Town's ordinance was an attempt to mirror the State's requirement. He stated the State permits a boathouse up to 900 SF.

Kathy Barnard stated the language states that the footprint will not exceed 900 SF and questioned whether the overhangs would be included in the footprint.

Jim Rines stated his interpretation was that the overhang was not included in the footprint. He stated the State considers the 900 SF restriction as the open water feature that is covered by the structure. He measured the plan and noted an error; noting the exterior dimension, including the overhangs, being 25'x36'.

Chris Franson questioned where the runoff from the roof is directed and how such would be filtered.

Jim Rines stated the roof is a low pitched roof that would be pitched off to the sides; run off is towards the lake (overland flow). He stated there is no proposed filter related to water quality.

Chris Franson requested further explanation regarding the dredging for the boathouse.

Jim Rines explained such.

Marge Webster questioned the changes in the laws that have occurred that affect the application.

Jim Rines reviewed such.

Richard O'Donnell questioned whether the total amount of driveway is impervious or pervious.

Jim Rines stated the driveway was originally a paved loop driveway and a portion of the driveway has been torn up for the construction process.

Richard O'Donnell questioned what is proposed.

Jim Rines replied standard pavement.

Richard O'Donnell requested clarification regarding the existing perched beach.

Jim Rines noted the perched beach is permitted by the State. He reviewed the depth of the water at the location of the boathouse.

Chris Franson questioned whether the applicant has applied to the State for a permit for the boathouse (referencing the Boathouse Ordinance which states the applicant has received a permit from NH DES).

Jim Rines replied no and noted the permit is related to construction and not the application process. He requested the Board grant conditional approval contingent upon State approval. He stated there is no risk to the Town if the applicant does not receive State approval.

It was moved by Stacie Jo Pope and seconded by Marge Webster to accept the application as complete. All members voted in favor. The motion passed.

Chairman Barnard opened the public hearing.

Roger Murray, representing Conrad Klefos and Constance Klefos Trust, stated it is premature for the Planning Board to take any action on the application. He stated the new ordinance governing the boathouse specifically provides that the applicant has received a permit from the NH DES; noting the Board is unaware of what DES may require of the applicant. He stated the prior boathouse application was denied in October 2007 and a subsequent request for reconsideration was also denied. Referencing the Conservation Commission's letter, dated 5/29/09, he stated the Commission requested a study be performed to analyze whether the proposed location is the best location on the site for the boathouse and recommended the Board require such in addition to submittal of a re-vegetation plan. He reviewed 175-4 and the NH Code of Administrative Rules. He stated a safety hazard is created by the location of the boathouse; noting such is near his client's boundary line and dock. He stated although the navigational buoy has been depicted on the plan, they have not located the hazard (a ledge that stands out on the northerly edge of the boathouse and directs traffic towards his client's waterfront; such noted in DES' 2007 denial). He stated such was recognized by NHDES in its denial for reconsideration of the permit application in 2007. He stated runoff from the boathouse roof is going directly into the lake without filtration. He stated the dredging of the lake bottom would negatively impact fish and wildlife and destabilize the shoreline; in addition, nutrients from the fill around the foundation will erode into the lake and encourage the growth of invasive aquatic plants. He reviewed 175-9; noting there are current docks on the north side of the property that are away from the wetlands and buffer. He stated there is currently a boathouse in that location; noting the purpose of a boathouse can be satisfied with the existing conditions. He stated the application, as submitted, does not meet the requirements of the ordinance and therefore, the Board should deny the application. He requested the Board take no action until NH DES reviews the application and approves such. He stated that it appears that the fill for the driveway could be moved farther from the wetlands and the hammerhead be eliminated. He stated the boathouse would interfere with the safety and reasonable use of his client's property.

Jennifer Haskell verified the Klefos' dock is located 9' from the property line and questioned the amount of shore frontage.

Conrad Klefos replied 250'.

Richard O'Donnell questioned whether the Special Use Permit (SUP) requires DES approval prior to SUP approval by the Board.

Rob Houseman stated the State of NH does not invoke jurisdiction over an encroachment into the buffer. He stated the Shorefront Residential change that occurred in 2009 requires a DES permit in advance of submittal for a building permit; an amendment that adopted the Comprehensive Shoreland Protection Act but, imposed the applicant to submit to the State for the permit prior. He reviewed the language of the Boathouse Ordinance.

Richard O'Donnell questioned the finding of the Conservation Commission.

Rob Houseman stated the Commission provides comment to the Planning Board in addition to the State.

Conrad Klefos, Trustee of the Constance Klefos Trust, stated Delings Cove is a popular waterskiing location due to the prevailing winds and consequently, there is continuous wave activity; noting the dredging will create further disturbance. He stated the boathouse has been re-angled from the original application; noting the original position of the boathouse was designed to avoid the rock ledge. He stated the soundings were conducted in high water; noting such is not normal water conditions. He stated the boat operator will have to come towards his dock in order to avoid the ledge. He stated the tennis court is a moot point because it does not exist.

Roger Murray stated a letter from DES, dated 7/2/08, states that approximately 75' of the waterfront buffer had not been maintained in accordance to the applicable regulations.

Conrad Klefos stated the perched beach was not constructed properly and expressed concern for the lack of adherence to regulations by the applicant.

Regina Nadeau stated RSA 483-B does not apply to boathouses; noting a specific exemption which exempts out of water dependant structures therefore the complaint that they are not dealing with a tree point system is not factual and the complaint that the structure has to be 20' from the shore is not applicable because that law does not apply to the application. She stated RSA 42-A (Dredge & Fill law) does apply to the application; noting she spoke to DES this week and the State has typically required local approvals first however, the State inspector stated they are not required to get local approval first in this instance. She stated the Town rules are more stringent because the Town has the rules relating to the wetlands buffer in which the State does not. She stated if the Town denies the application, the applicant cannot apply to the State. She stated there is no harm to the Board to review the application and nothing that prohibits the Board to do such. She stated the issues noted by the Conservation Commission have been addressed, White Mountain Survey Co. conducted ledge probes and soundings (noting the ledge is within a State water body therefore, such becomes an issue for the State), the application complies with boating laws and what the State considers as a reasonable setback. She stated her client would not go through the expense of constructing a boathouse if it could not be accessed. She stated the neighbor has requested a study be performed however, noted a licensed surveyor testified and depicted on the plan that nowhere on the property does an alternate location exist. She stated the applicant is amenable to a condition relative to a plan for re-vegetation. She stated if the law further changes, the applicant would come back to the Board for a revised approval. She stated the boathouse is a typical accessory structure to a waterfront property; noting dug in boathouses are allowed if the requirements have been met. She requested conditional approval subject to State approval. She distributed photographs that depict the location of the mouth of the boathouse in relation to the abutting property; noting the purpose of the proposal is not for economic gain rather, there is no other option to locate the boathouse.

Rob Houseman requested clarification regarding the impervious material in reference to the tennis court.

Conrad Klefos stated there is no tennis court; there is not 2,000 SF of tennis court.

Jim Rines stated there are remnants of the tennis court and noted such cannot be played upon. He stated the surface is impervious and has intentionally not been removed until all permits are received.

Rob Houseman verified the proposed plan shows an area to be re-vegetated.

Stacie Jo Pope questioned the need for an extended driveway area by the garage.

Jim Rines stated such is related to the turning radius area from the garage.

The Board reviewed such.

Jim Rines stated that in order to apply to the State, the applicant needs to prove they conform to local regulations. He stated the Town's regulations are stricter therefore, they are seeking Town approval first. He stated he topographically mapped the bed of the lake and noted the water level had nothing to do with the readings.

Roger Murray stated the boathouse is not a water dependant structure which is defined as a structure or any part thereof built over the waters of the State. He stated the boathouse is not in, on or over the waters of the State. He further stated the regulations under the Comprehensive Shoreland Protection Act do apply to boathouses. Referencing provision Env-Wq 1405.03; Limitations on Accessory Structures within the Waterfront Buffer, he read #(b)(2) & (c) (2) of said provision. He stated the applicant has not provided any information on what is by the buoy and what is extending back toward the shore. He stated his client is concerned that boaters will have to sweep down to the south toward his dock to avoid the ledge in order to access the boathouse. He noted disturbance to the shoreline, runoff, siltation associated with the construction of the boathouse.

Richard O'Donnell questioned whether the covered dock could be improved.

Regina Nadeau replied no, not under State law; noting such is a nonconforming structure and cannot be enclosed.

Richard O'Donnell questioned whether the structure or supports could be repaired or replaced.

Regina Nadeau replied yes.

Roger Murray stated the NH Lakes Association would prefer that boathouses not be dug in.

Jim Rines stated the State doesn't allow permanent structures rather, only seasonal canopies.

There being no further questions or comments, Chairman Barnard closed the public hearing.

Kathy Barnard recommends the application be continued to the next meeting to review the material distributed this evening.

Richard O'Donnell agreed based on new information distributed at the meeting.

Jennifer Haskell stated the applicant has supplied an abundance of information that supports the application.

Marge Webster agreed and stated the details are clear to make a decision to support the application.

Chris Franson expressed concern for the amount of vegetation proposed to be cut down and noted the issues regarding the driveway need to be addressed.

Rob Houseman stated it would be best for the State to address issues related to the CSPA.

Chris Franson stated she would prefer the Board be in receipt of the State permit prior to their approval.

Rob Houseman stated that if the wetland buffer encroachment did not exist, it would have been a straight DES permit application.

Marge Webster stated the Town's regulations are stricter than the State's regulations as it relates to the wetlands buffer. She noted the Code Enforcement Officer and Health Officer had no objection to the request.

Richard O'Donnell stated the Conservation Commission noted issues in their memo. He stated part of the driveway heading north is close to the property line on the west side and questioned setback issues related to such.

Referencing the latter, Rob Houseman stated such is not within the purview of the Board.

Kathy Barnard requested a re-vegetation plan be included as a condition of approval (as noted by the Conservation Commission) regardless of whether the State requires such. She questioned an alternative location of the driveway be constructed as partial permeable pavement.

The Board reviewed the hammerhead / turning radius area.

Stacie Jo Pope questioned whether the existing boathouse constitutes a lesser detriment to the wetlands since it already exists.

Rob Houseman stated the proposed boathouse has no impact to the wetlands rather, it impacts the shorefront; nothing no potential adverse impact created by the boathouse itself.

Richard O'Donnell questioned whether the Board could make a decision on the Special Use Permit (SUP) for the wetland encroachment separate from the decision for the boathouse.

Stacie Jo Pope stated the applications could not be separated based on the fact that both the boathouse and the driveway encroach into the buffer.

Rob Houseman reviewed the following recommended conditions of approval;

1. The following plan, as amended to the date of approval, is hereby incorporated into this approval;
Plan 1: Wolfeboro Special Use Application Plan for Susan and Gerald Maus, 7 Delings Cove Road, Wolfeboro, New Hampshire, Prepared by White Mountain Survey Co., Inc., PO Box 440, Ossipee, New Hampshire, 03864, undated and unsigned.
2. The applicant shall comply with the pre-construction siltation and erosion control measures and construction sequence as shown on the amended plan. In addition, an inspection by the Town shall be required of siltation devices prior to construction.
3. This application is subject to all required State permits and any conditions attached thereto. Any deviation from Town approval shall require re-permitting by the Town.
4. The applicant shall submit a re-vegetation plan in compliance with the Comprehensive Shoreland Protection Act.
5. The driveway shall be redesigned to reduce the encroachment into the wetland buffer by using recommended engineering standards and design.
6. The driveway shall be construction with porous or semi-porous paving to mitigate the impervious area.
7. A drip edge device shall be installed on the boathouse to mitigate storm water runoff from the roof.
8. The following construction requirements are recommended;
 - a. All earthwork shall occur between June 1 and October 15.

- b. The site shall have final grading, seeded and mulched by October 15 of the construction year.
9. The applicant shall be required to monument the edge of wetlands in compliance with 175-9.1 *Wetlands Boundary Monumentation*. This includes:
- i. Wetlands shall be delineated by a State of New Hampshire Certified Wetlands Scientist. Markers should be placed at 50' +/- intervals along the total wetland boundary following its general contour.
 - ii. Care shall be taken to insure that markers are placed with the appropriate spacing at points closest to any proposed or existing structure located on the property.
 - iii. The cost shall be borne by the applicant / developer or their successors in interest.
 - iv. The applicant shall be responsible for submitting a letter of certification of the posting to the Code Enforcement Office prior to the issuance of any building permit.
- The applicant shall be responsible for the payment of all recording fees.

It was moved by Marge Webster and seconded by Dave Alessandrone to approve the Gerald & Susan Maus Special Use Permit application, Case #200915, subject to the recommended conditions of approval. Marge Webster, Dave Alessandrone, Stacie Jo Pope, Jennifer Haskell, Kathy Barnard voted in favor. Richard O'Donnell, Chris Franson opposed. The motion passed.

Harry & Karen Sutton / John & Janice Brooks
Boundary Line Adjustment
Agent: Eric Roseen, Roseen Survey PLLC
Tax Map #241-65 & 66
Case #200916

Rob Houseman reviewed the Planner Review for June 2, 2009 stating the applicant proposes to reconfigure the internal boundary line through an equal exchange in area in order to correct a boundary line encroachment created by the construction of a garage on the Sutton property. He stated the applicant has requested the following waiver; Section 174-4.D.4, 5 & 6.

It was moved by Stacie Jo Pope and seconded by Jennifer Haskell to grant waiver Section 174-4.D.4, 5 & 6. All members voted in favor. The motion passed.

It was moved by Stacie Jo Pope and seconded by Marge Webster to accept the application as complete. All members voted in favor. The motion passed.

Chairman Barnard opened the public hearing.

There being no questions or comments, Chairman Barnard closed the public hearing.

Rob Houseman reviewed the following recommended conditions of approval;

1. The following plans, as amended to the date of approval, are hereby incorporated into this approval;
Plan 1: Boundary Line Adjustment Plan for John A. and Janice E.N. Brooks and Harry S. and Karen Sutton, 335 & 325 Sewall Road, Wolfeboro, NH May 13, 2009, Prepared by Eric Roseen, LLS, Roseen Survey PLLC, PO Box 1581, Wolfeboro, NH 03894.
2. The applicant shall submit a Mylar plan for recording at the Carroll County Registry of Deeds.
3. The applicant shall provide a monument certification once the boundaries are properly set.

4. The applicant shall be responsible for the payment of all recording fees.

It was moved by Richard O'Donnell and seconded by Jennifer Haskell to approve the Harry & Karen Sutton and John & Janice Brooks Boundary Line Adjustment application, Case #200916, subject to the recommended conditions of approval. All members voted in favor. The motion passed.

Robert & Michelle Walker
Special Use Permit
Agent: Sherrie Trefry, NH Soils Consultants
Tax Map #266-7
Case #200906

It was moved by Chris Franson and seconded by Marge Webster to continue the Robert & Michelle Walker Special Use Permit application, Case #200906, to July 7, 2009 subject to receipt of a letter waiving the clock. All members voted in favor. The motion passed.

It was moved by Chris Franson and seconded by Richard O'Donnell to adjourn the June 2, 2009 Wolfeboro Planning Board meeting. All members voted in favor.

There being no further business, the meeting adjourned at 10:06 PM.

Respectfully Submitted,

Lee Ann Keathley