

**Town of Wilmington**  
**Zoning Board of Appeals**  
**March 10, 2010**

Zoning Board Members present: Chairman, Alicia Armstrong, Jerry Bottcher, Tom Hinman, Bob Girardin, Jim Carmelitano and Jean Baker.

Public present: Randy Preston, Steve Corvelli, Scott Allen, AES, Carol Girardin, Sylvia Mustelier, Ceil Stephenson, Alison & Gary Follos, Marilyn Monesco, Judi Gould, Nancy Gonyea, Nadine Hathaway, Don DeMacy, Michelle Burns, Larry Gibbons, Al Armstrong, Gail Mitchell, Tom Bradshaw, Tina Preston, Ray Curran, Kathy Daggett, Rarilee & Tom Conway, Kate Santerre, Bob Guynup, Bill Waldy, Lora Bushy, Tim Preston, Dick & Jane Sibalski, Scott Avery, Nancy LeBlanc, Tim Follos, Gary Bushy, Jeri Wright Paul Wos , Thomas Carr, Yvonne Farmer, Mary Sue & Terry Dobbins, Jessica Collier, Darin Forbes , Jason Bell and Shirley Lawrence.

CALL TO ORDER at 7:00 pm by Chairman Armstrong.

**Pubic Hearing #1**

Kate Santerre-Lighthouse Bakery-Route 86-conditional use permit to operate restaurant and bakery.

\*Would be open six days a week from 7 am to 3 pm and serve breakfast and lunch.

\*She is presently approved under the Department of Agriculture for her bakery. She will be meeting with the DOH for their approval.

\*JERRY BOTTCHER PRESENTED A MOTION TO APPROVE THE APPLICATION AS PRESENTED; SECONDED BY TOM HINMAN; CARRIED UNANIMOUSLY.

\*Public hearing closed at 7:03 pm.

**REGULAR MEETING CALLED TO ORDER AT 7:04 PM**

**NEW BUSINESS**

**STEINHOFF'S – APPLICATION FOR A CONDITIONAL USE PERMIT**

\*Jason Bell, the manager, was present representing the owners, the Gibsons.

\*There are no major changes to the operation.

\*Public hearing was set for April 21st .

**TOM CONWAY-APPLICATION FOR A CONDITIONAL USE PERMIT**

\*Tom wants to open a fly shop in their building on Route 86 that houses the ACO offices.

\*He will have a guide service.

\*The real estate office will remain in the building.

\*Public hearing was set for April 21st.

**OLD BUSINESS**

**BOWMAN LANE FIRST COLUMBIA DEVELOPMENT PROJECT**

\*Alicia thanked those that attended the public hearing.

\*She noted that First Columbia owns the property and something can be built there.

\*Alicia gave an update of the project to date.

\*Jerry Bottcher presented a motion to approve the application with conditions, seconded by Jim Carmelitano

March 10, 2010

\*Discussion:

\*Bob Girardin read the following statement:

When I was appointed to the Zoning Board over 25 years ago, I thought “Well, I’ll put my time in and perform some public service.”

I came to realize that the Zoning Board of Appeals is an important arm of town government. We are not here to enforce but to grant an easing of the Land Use Code This easing or “conditional use” will be decided within the parameters set forth in our code. So, when deciding on an issue we are obligated to consider these objectives. To quote these objectives as they pertain to this consideration:

I quote page 101-The purpose of this code is to insure optimum conservation, unique scenic wildlife and recreational use and on Page 501 under general standards-“to take into account, character appearance, size, intensity and to consider the comfort and convenience of the residents of Wilmington in general and residents of the IMMEDIATE NEIGHBORHOOD IN PARTICULAR.

With these directions from the people of Wilmington as set forth in the Land Use Code, I would like to put forth my opinions and conclusion on this issue.

First I find it difficult to believe 1st Columbia was unaware of the discord this proposition would cause the people of Wilmington. I believe this is a self-created hardship.

Secondly, there is no doubt that the town beach is a unique scenic recreational area. This uniqueness is not enhanced but diminished by the construction of overly dense placement of town houses (condos). Some have said if the board doesn’t pass this with all our controls, others may build who are not suitable. If building is done on this property and falls within zoning requirements, it would not even be considered by the board but would still fall within all restrictions of zoning.

Third, the comfort and convenience of the public and immediate neighborhood is stressed. In my estimation the people of Wilmington and the immediate neighbors have overwhelmingly rejected this project. I think we should take the public opinion into consideration.

March 10, 2010  
Zoning Board of Appeals  
Page 3

The town beach is a wonderful place; unique in our town. I feel this ambiance would be lost with the building of this high density project.

I MUST VOTE “NO” ON THIS ISSUE.

Respectfully,  
Bob Girardin

The following conditions were presented by Jerry Bottcher as part of the motion:

1. That these units remain and be taxed forever as townhouses and not condominiums or any other designation or entity.
2. No illegal, noxious offensive activity or excessive noise shall be permitted on any part of the property that may be deemed an annoyance, discomfort, or embarrassment to the neighborhood. First Columbia will be expected to establish specific guidelines to reduce the noise level from stereos, televisions, musical instruments and the like.
3. Parking by owners, renters, or guests, must be confined to designated areas on the property only. No parking by owners, renters or guests may be permitted on any part of Route 86, Bowman Lane, or upon the public beach parking area. No parking on grassed or wooded areas.
4. No light shall be emitted from any portion of the property which is unreasonably bright or causes any excessive glare to the abutting neighborhood or the neighborhood across Lake Everest.
5. No owners of any individual unit shall be allowed to rent their units to any party unless at least one member of that party is present and a responsible adult of at least 21 years of age.
6. All pets shall be under the control of their owners at all times and shall not be allowed off the property except when properly leashed and accompanied by the owner or his or her representative. Dogs are not to be left outside unattended or chained anywhere on the property.
7. No abandoned, unlicensed, or inoperable automobile or vehicle of any kind shall be stored or parked on any lot or upon any part of the property.
8. No outside construction shall begin before 8 a.m. or continue past 7 p.m. weekdays or before 10 a.m. and past 6 p.m. on Saturday. No construction on Sundays.
9. No tree may be removed with a diameter exceeding 8 inches from a height 4 feet above level ground beyond 20 feet of any driveway, parking area, or structure on the property unless such tree is deemed to be a potential hazard or safety issue.
10. No outside television antennae or satellite dish shall be erected upon or attached to any unit or lot on any portion of the property.
11. No shed, shack, trailer, camper, tent or other temporary or movable building or structure of any kind shall be erected or be permitted to remain on any part of the land.

March 10, 2010  
Zoning Board of Appeals  
Page 4

12. Any present or future signage must be consistent with and conform to any current or future local or state sign ordinances. Except for signs erected by or with the permission of First Columbia in connection with the initial marketing of units, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Unit, on any lot or other portion of the property. (Including temporary signs advertising Units for sale or rent by the unit's owners.
13. No trash, garbage, rubbish, debris, waste material or other refuse shall be deposited or allowed to accumulate or remain on any part of the property. No fires, burning of trash, chips, debris or refuse of any kind shall be permitted on any part of the land except during periods of construction.
14. No grass shall be allowed to grow to a height exceeding 6 inches on any area deemed to be a yard or any common area considered to be a maintained or landscaped area. The landscaping of each lot shall be maintained by the owner in a safe, neat, attractive and well kept condition, which shall include lawns mowed, hedges, shrubs and trees pruned or trimmed, adequate watering, replacement of dead, diseased or dying materials, and removal of weeds and debris.
15. No outdoor drying or airing of any clothing, bedding or other items shall be permitted on the property or on any lot or Unit. No clotheslines of any type shall be permitted on any lot or Unit or other portion of the property.

Additional conditions submitted by Jean Baker

16. Construction should be completed in three phases beginning at Route 86 and progress towards the beach.
17. First Columbia should pave Bowman Lane and deed it to the Town.
18. Interior roads should be kept plowed and maintained for Fire and Rescue access.

Additional conditions submitted by Scott Allen of AES.

19. The applicant should provide proof that the project has been approved by the NYS Department of Health.
20. A SPEDES permit should be issued before a building permit is issued.
21. The board should receive a complete set of the final plans.

- \*Paul Was stated that there will be underground cable service instead of satellite.
- \*The Homeowners Association fees will cover the grounds and roads maintenance.
- \*Bob Girardin feels this project should not be in the town center and that there was an overwhelming group against the project. He would like to see something that stays within the zoning in that area.
- \*Jean Baker did not feel that there was an overwhelming representation.
- \*DEC and DOH would have to approve and planning board would do site plan review.
- \*All recent studies by the town promote Village Center development.
- \*Paul Was stated that they will build one building at a time and the HOA would cover all the conditions as well as other conditions. They are hoping for a 2-3 year build out.

March 10, 2010  
Zoning Board of Appeals  
Page 5

- \*Bob Girardin feels the people of Wilmington are not in favor of the project and that the board is doing them a disservice if they approve it.
- \*Scott Allen went over the responsibilities and process to be taken by the board. He also noted that the conditions could be applied to the variance and the conditional use permit.

Jean Baker submitted the following for public record;

#### FACTORS CONTRIBUTING TO MY DECISION ON THE FIRST COLUMBIA APPLICATION FOR AN AREA VARIANCE

Will the variance create/produce an undesirable change in the character of the neighborhood or be a detriment to the nearby properties?

- \*The property in question is located in the "Village Center." Most of the properties in the area are commercial in nature.
- \*I believe the project itself (16 units) will cause the impact – not the variance.
- \*I believe the created change will have a positive effect on the village for the following reasons.
  1. The plans for the project are very attractive Adirondack style buildings and well landscaped grounds.
  2. Twenty seven new families will purchase these homes. Most will be part time residents and as such will have little impact on the Town Services such as the cost of educating their children. The increased

Real Estate and School taxes paid by these families should reduce the burden on Wilmington's full time residents.

3. The new residents will bring much needed "disposable income" that will be spent in our local restaurants, shops, gas stations, etc. Perhaps increased revenues will inspire existing business to spruce up their properties as well.

Can the benefit sought by the applicant be achieved by some method available to the applicant other than granting an area variance?

\*I don't believe so.

\*Granting the variance gives the Town controls over the project that cannot otherwise be exercised. Without the variance, the developers can build within 10 feet of the beach property. With the variance, the Town can require them to build 100 feet away from the beach.

Is the requested area variance substantial?

\*Yes. However, if the variance is not granted, the developer will erect 8 duplex buildings with garages for a total of 16 units.

\*If the variance is granted they will erect 9 buildings containing 3 units each without garages for a total of 27 units.

\*Granting the variance will result in only one additional building .

\*The foot print of the property will not change significantly.

Will this variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

March 10, 2010

Zoning Board of Appeals

Page 6

\*No. The engineers report indicates there are no adverse environmental conditions.

\*The plans and drawings call for very attractive "Adirondack Style" buildings and well landscaped grounds.

\*Granting the variance will result in 11 additional units. If each unit averages a family of four, the result will produce a maximum of an additional 44 people in town on any given day. I do not believe 44 people will significantly impact the town.

Was the alleged difficulty self-created?

\*Yes. I find it difficult to believe that the principles of First Columbia, both of whom are engineers with stellar reputations, would purchase any piece of property without checking the Land Use Codes and APA restrictions.

However, while I have considered this factor, I believe the positive aspects of this project and impact on our community out-weigh any negligence on their part.

Additional factoring into my decision:

\*The developers have promised to use local workers in the construction of this project creating opportunities for tradesmen in an otherwise bleak economic climate.

\*First Columbia has verbally agreed to turn Bowman Lane over to the Town.

\*I do not believe that those opposed to this project represent a substantial percentage of our community. We have about 800 registered voters in the Town of Wilmington. Only about 70 attended the public hearing. Not everyone attending the public hearing was opposed to this project. I think it is fair to say that less than 10% of our registered voters cared enough about this project to voice their opposition in a public forum.

\*Most importantly, the people of Wilmington will not be losing their Town Beach. They will travel the same road either by car or on foot to access the beach. Beach parking will not be affected. The concerts and special events will still take place and the noise will be controlled. While the landscape will no longer be dominated by pine trees, the proposed project certainly cannot be considered an "eye sore".

\*The ZBA has a substantial list of conditions to guarantee minimal impact to our citizens. I would welcome any additional suggestions to our list of conditions.

MOTION TO APPROVE THE AREA VARIANCE WITH CONDITIONS PRESENTED BY JERRY BOTTCHER, SECONDED BY TOM HINMAN;  
ROLL CALL VOTE-ROBERT GIRARDIN-NO; JERRY BOTTCHER-YES; TOM HINMAN-YES;  
JIM CARMELITANO-YES; ALICIA ARMSTRONG-YES.

MOTION TO APPROVE APPLICATION FOR A CONDITIONAL USE PERMIT WITH  
CONDITIONS PRESENTED BY JERRY BOTTCHER, SECONDED BY JIM CARMELITANO;  
APPROVED WITH ALL IN FAVOR; NONE OPPOSED.

#### NEW BUSINESS

\*Meg Parker-conditional use application to expand her home occupation business to be a commercial business.

\*She would expand off the back of the house two stories high.

\*The first floor would be handicap accessible.

March 10, 2010

Zoning Board of Appeals

Page 7

\*She would offer more services (sound therapy, acupuncture, massage)

\*Public hearing was set for April 21st.

#### APPROVAL OF MINUTES OF THE FEBRUARY 17TH MEETING.

Motion to accept by Jerry Bottcher, seconded by Bob Girardin; carried unanimously.

#### ANNOUNCEMENTS

\*March 23 & 24th is local Government Day.

\*Elan consultant meeting is March 19th @ 1 p.m.

#### DISCUSSION -Alan Oppenheim Project

\*Alan needs nothing from the Planning Board for condos.

\*APA is the lead agency.

\*A conditional use permit and variance have already been granted.

\*The original application was for townhouses, not condos.

\*The board would like clarity by the attorney as to why that has changed and if the variance should be

re-visited.

\*Scott Allen went over the definitions of condos and town houses.

\*Randy Preston to contact the town attorney for an opinion.

\*The board will invite Alan Oppenheim to the April 21st meeting.

ADJOURNMENT-Motion by Jerry Bottcher, seconded by Tom Hinman at 9:05 p.m.