



**ZONING BOARD OF ADJUSTMENT**

**Approved Minutes**

**March 07, 2023 – 7:00 pm @ Community Development Department**

**Physical Location:** 3 North Lowell Road (Community Development Department) Live  
**Broadcast:** WCTV Channel 20 – Local Cable TV  
**Live Stream:** <http://www.wctv21.com/>

**To access via Zoom:** [ZBA Meeting](#)

**Meeting number/access code:** 865 4393 1593 **Password:** 250013 **To join by phone:** 1 646 876 9923

**Attendance:**

**Betty Dunn, Chairman-** present

**Nick Shea, Vice Chair-** excused

**Pam Skinner, Secretary-** present

**Michelle Stith, regular member-** present

**Neelima Gogumalla, regular member-** present

**Mike Scholz, alternate-** present, seated for Vice Chair Shea

**Galen Stearns, alternate-** present

**Staff:**

**Alexander Mello, Community Development Director**

**Julie Suech, Planning Technician**

**Anitra Lincicum, minute taker (present via Zoom)**

**Rehearing Request – [Case #40-2022](#): Parcel 17-M-5, 17 Armstrong Road**

Chairman Dunn recused herself from the case. Mr. Scholz was seated as the Chair at this time as he has been in the past for Case #40-2023. Mr. Stearns was seated for Chairman Dunn.

**A motion was made by Ms. Gogumalla to reconsider the January 10<sup>th</sup> meeting minutes as approved and amended. Seconded by Ms. Skinner. Vote 5-0. Motion passes.**

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**A motion was made by Ms. Gogumalla to reapprove the January 10<sup>th</sup> meeting minutes as amended. Seconded by Ms. Stith. Vote 4-0-1. Mr. Stearns abstained. Motion passes.**

The Board discussed the schedule with the applicant’s attorney, Attorney Chris Dresher, to make sure the schedule was amenable to the applicant.

**A motion was made by Ms. Stith to continue the Case #40-2022 to March 28<sup>th</sup>, 2023 to the first case on the agenda. Seconded by Mr. Stearns. Vote 5-0. Motion passes.**

Chairman Dunn rejoined the Board for Case #39-2022.

**Case #39-2022 Parcel 18-L-300  
Applicant – Angle Wood Pond Realty Trust, Inc.  
Owner – Angle Wood Pond Realty Trust, Inc.  
Location – 55 Range Road  
Zoning District – Mixed Use (PBT / Residential District A / WPOD)**

Variance relief is requested from **Sections 602.1.6.2, 603.1, 614.2** to permit 100 multi-family dwelling units, which would include 28 two-bedroom units in the Residential District A, 56 two-bedroom units in the Professional Business Technology (PBT) District, and 16 one-bedroom dwelling units also in the PBT District. The application is also requesting the 16 one-bedroom dwelling units in the PBT to permit Customary Home Occupation(s), which are proposed to be located above professional and business offices in four mixed-use buildings, without being required to obtain a Conditional Use Permit.

Chairman Dunn reviewed the case as it has been heard by the Board thus far. The Board is currently in deliberative session regarding this case. Mr. Scholz was seated for the case by the Chair.

Mr. Scholz discussed Residence A and the potential uses of that district. Mr. Scholz stated that the Board granted an earlier variance for this property in the PBT district. Mr. Scholz discussed the variance being contrary to public interest nor does he think the spirit of the ordinance is observed. Mr. Scholz stated that this was meant to be an employment center and he struggles with the number of residences on the lot. Mr. Scholz thinks that the intent was for small businesses to exist on the property. Mr. Scholz does not think it meets the substantial justice prong. Mr. Scholz does think it meets the 4<sup>th</sup> criteria. Mr. Scholz does think the applicant did a good job laying out the plan. Mr. Scholz then mentioned the hardship criteria and that he does not think it meets the fifth criteria.

Ms. Skinner, does not think it meets the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> criteria. Mr. Skinner stated that the purpose of the ordinance was an employment center.

Ms. Stith sees this as a commercial area and it is zoned PBT. Ms. Stith stated that this is a business district and the PBT allows for a large variety of uses and using this as an employment center is part of that vision. The applicant does have an approved plan and the addition of 100 non-age restricted residences would be a loss to the town. Ms. Stith does believe it meets the 4<sup>th</sup> criteria but not the 5<sup>th</sup>.

Ms. Gogumalla stated that she does think that this is what the town wanted and that has been her position from the beginning. Ms. Gogumalla does not think it meets criteria 1,2 and 5.

80 Chairman Dunn cited the Chester Rod and Gun Case of 2005 and another case from 2007 in reference  
81 to criteria 1, 2 and 5. Chairman Dunn stated in reference to the PBT ordinance, the intent is to be a  
82 business center and compatible with the neighboring uses. There is a component of some businesses but  
83 it would take away the ability for this to be used as an employment center. Chairman Dunn does see that  
84 this would alter the essential character of the area with 100 dwelling units. The commercial and  
85 residential areas are separate from each other. Chairman Dunn stated that the ZBA and the variances are  
86 meant to be a safety valve and not kicking a hole in the tank that has the pressure. Chairman Dunn does  
87 not think this meets criteria 1 and 2, nor does it meet the goals and objectives of the Master Plan.  
88 Statistics around the school and the substantial justice prong were also cited by Chairman Dunn. If the  
89 individual wants to make a return on his property it is essential that is not outweighed by the gain to the  
90 general public according to Chairman Dunn. Chairman Dunn stated that there is an approved plan that  
91 complies with PBT and senior housing in the rear of the lot. Chairman Dunn stated that there is a large  
92 stock of high-end housing on town and there is not a lot of moderate housing available. Chairman Dunn  
93 stated that the factors in developing the property are known, the lack of water and sewer. Were  
94 mentioned by Chairman Dunn. But, there is not water on the lot as there was not before. Also, the real  
95 estate market is not an issue that is inherent to the land.

96  
97 Mr. Scholz did read from the variance criteria, particularly the 5<sup>th</sup> criteria. Mr. Scholz stated that he sees  
98 this as contrary to the public interest.

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100 **A motion was made by Mr. Scholz for Case #39-2022 to deny the variance request because the**  
101 **applicant did not satisfy their burden to meet all the variance criteria considering all the evidence**  
102 **and exhibits presented. Seconded by Ms. Gogumalla.**

103  
104 **Yes to deny, Mr. Scholz, reasons for denial: 1 (public interest), 2 (spirit of the ordinance), 3**  
105 **(substantial justice) and 5 (hardship)**

106 **Yes to deny, Ms. Gogumalla, reasons for denial: 1 (public interest), 2 (spirit of the ordinance) and**  
107 **5 (hardship)**

108 **Yes to deny, Ms. Stith, reasons for denial: 1 (public interest), 2 (spirit of the ordinance) and 5**  
109 **(hardship)**

110 **Yes to deny Ms. Skinner, reasons for denial: 1 (public interest), 2 (spirit of the ordinance), 3**  
111 **(substantial justice) and 5 (hardship)**

112 **Yes to deny Chairman Dunn, , reasons for denial: 1 (public interest), 2 (spirit of the ordinance), 3**  
113 **(substantial justice) and 5 (hardship)**

114  
115 Chairman Dunn stated that the proposal violates the basic zoning ordinance and it alters the basic  
116 character of the neighborhood. Substantial justice: there is substantial loss to the public in terms of an  
117 employment center. Mr. Scholz stated that this lot can be used in strict conformance with the ordinance,  
118 it has been administrated with the current use and can be used in the PBT district and it demonstrated  
119 that they can make reasonable use of it.

120  
121 Chairman Dunn stated that they are bound by the variance criteria. Mr. Scholz stated that the applicant  
122 and the attorney did a great job presenting the case.

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124 **Vote 5-0.**

125 **Motion passes.**

126 **The Chairman advised of the 30-day appeal period.**

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**Case #10-2023 Parcel 17-G-6 & 17-G-20**  
**Applicant – Middlesex Glass Co., Nick Arena**  
**Owner – 106 Indian Rock Rd LLC & GW Trust, Diana Wolthers, Trustee**  
**Location – 102 Indian Rock Rd and 82 Range Rd**  
**Zoning District – Gateway Commercial District/ WPOD**

Variance relief is requested from **Section(s): 618.2, 618.3.10** to construct a 77, 900 Sq.Ft. mixed use commercial building, that would include the assembly of prefabricated parts. The proposed use is prohibited in the Gateway Commercial District. Furthermore, Windham Zoning Ordinance prohibits any single structure within the district to have a building footprint of greater than 40,000 Sq. Ft.

Ms. Dunn seated Mr. Scholz for this case.  
Ms. Skinner read the case into the record. There was a letter of authorization. The Board waived the reading of the list of abutters contained in the public packet and available online.

Attorney John Sokul addressed the Board. Mr. Nick Arena, the applicant, was in the audience, Ms. Wolthers, the property owner was also in the audience.

Attorney Sokul stated that when they submitted the application it was before they could sit down and speak with the code enforcement officer. Attorney Sokul stated that their use is not an allowed use. The size of the building has been reduced from 79,000 square feet to 48,000 square feet. Attorney Sokul stated that he has knowledge of the site’s history.

Mr. Nick Arena, the applicant, addressed the Board. Mr. Arena stated that they are looking to build a new facility for his business on the site. Mr. Arena stated that they have 160 employees and there are two separate companies, one for auto and the other for buildings, both install glass products. Mr. Arena stated that the company strives to give back to surrounding community and they are always looking to innovate. Mr. Arena stated that they are currently located in Tewksbury, MA. Mr. Arena stated that about 50% of their employees are in the field and the rest would be in the proposed building.

Mr. Karl Dubay from the Dubay Group is representing the applicant and addressed the Board. Mr. Dubay stated that they worked to make a much smaller building footprint. The front of the building would look like a high-end office building according to Mr. Dubay. Mr. Dubay stated that the building would be 2 levels and there would could potentially be two points of access to the site. Mr. Dubay discussed the history of the area and the accessibility to the area. Mr. Dubay stated that there would be porous pavement. Mr. Dubay made a comparison between this proposed use of the area and Market Square in Lynnfield.

Mr. Dubay stated that there would be one driveway curb cut and the applicant meets the parking criteria. The building is punched way into the site according to Mr. Dubay and there is a 125-foot buffer. There would not be a distribution center according to Mr. Dubay. . The business manufactures panels and then puts them on a truck and assembles them in the field. Mr. Dubay stated that the site is not in the WWPD. Mr. Dubay stated that they are in contact with someone on the Conservation Commission about the potential for solar in the area. Mr. Dubay mentioned the lake overlay district and they meet the 30% lake overlay district. There are 30 acres and about 14% of that is the roof and 15 to 16% would be impervious. Mr. Dubay stated that they are in contact with Pennichuck water to see if water to the site instead of a well is possible.

Mr. Stearns asked about the intended manufacturing for the company on the site.

176  
177 Mr. Dubay stated that the total overall traffic load will be a little bit less substantial than other retail areas. Mr.  
178 Arena stated that there would be 6 to 8 trucks with deliveries in the morning and then a second delivery at 10  
179 am. The size of the deliveries are not usually more than 6-8 feet by 20 feet. Mr. Arena said they use pick up  
180 trucks with trailers. Mr. Arena stated that the aluminum is recycled and there is cardboard but they do not  
181 have a lot of trash. Mr. Arena said they have a trash company coming twice a week and that is contracted  
182 through JRM from Peabody.

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184 Attorney Sokul discussed the manufacturing and how little was done on site.

185  
186 Attorney Sokul then reviewed the 5 variance criteria. Attorney Sokul stated that he thought this would  
187 fit the essential character of the locality. Attorney Sokul does not think it would threaten the health  
188 safety or welfare. There is not gas or fumes from the manufacturing. Attorney Sokul stated the water  
189 and septic requirements can be supported. Attorney Sokul stated that the business does not have a huge  
190 traffic demand. This site will need some blasting done.

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192 Mr. Dubay stated that none of the commercial businesses in the area have an issue with the request as  
193 presented. Mr. Dubay reviewed the special conditions of the property prong and the variance prong  
194 regarding the fair and substantial justice prong.

195  
196 Attorney Sokul stated that a fair and substantial connection exists between the ordinance and requested  
197 relief. Attorney Sokul stated that the land use is an equitable one and will allow a reasonable  
198 development.

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200 Chairman Dunn stated that she does not think she has enough information to put her questions together  
201 yet. Chairman Dunn inquired on the amount of blasting that would have to occur on the site and how  
202 the proposal would comply with the WPOD requirements. Some information about the blasting would  
203 be helpful for the Board. The Board would also like to know how much of this is related to other phases  
204 of the project.

205  
206 Mr. Dubay addressed the Board to discuss blasting. Mr. Scholz asked about what might be needed in  
207 one area of the property. This site will be split into 2 platforms to reduce the need for the blasting. Mr.  
208 Dubay stated they will be working with the hillside to make less blasting necessary. Mr. Dubay stated  
209 that they understood they would have to be very careful with the blasting. Mr. Dubay stated that they  
210 would meet the lake overlay district criteria and they are not looking for any relief on that.

211  
212 Chairman Dunn asked about the traffic light in the area and its location. Mr. Dubay stated it was  
213 because of the grade. The manufacturing is much lower than the retail space. This meets all the DOT  
214 criteria for sidewalks according to Mr. Dubay. Chairman Dunn stated that the applicant is looking for 2  
215 variances, one involves the proposed use and one involves the size of the building. Mr. Dubay stated that  
216 retail is allowed. A bed and breakfast is allowed but he does not see that as a realistic use. Banks,  
217 ATMs and businesses are also allowed along with schools. Mr. Dubay reviewed the other allowed uses  
218 such as schools and service delivery driven centers. Hotels and call centers are also allowed. Mr. Dubay  
219 presented all this information as allowed uses on the property.

220  
221 Ms. Gogumalla asked for clarity on the square footage. Ms. Gogumalla asked about the glass front of  
222 the building in reference to the architectural style recommended for the district. Mr. Dubay stated that  
223 sometimes a high-end look does not match with a historic look.

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Mr. Mello stated that there are a lot of review authorities regarding blasting as there is a blasting ordinance. Mr. Mello stated that it requires a pre-blast survey and there is a protocol to the entire process. Traffic, drainage and blasting are all things that are reviewed by the town engineer. Chairman Dunn stated that blasting can be disruptive to neighbors so it is important for this Board to ask those questions. Mr. Dubai stated that he thought this was a suitable look and a suitable use for the property.

Ms. Diane Wolters, the property owner, addressed the Board. Ms. Wolters stated that there have been several projects that have gone through this Board and this is the most favorable.

Chairman Dunn invited public comment.

Ms. Kathleen DiFruscia, 38 Horseshoe Road addressed the Board via Zoom. Ms. DiFruscia stated that what concerns her is that a lot of the presentation has been made into the context of a larger property on the property. Ms. DiFruscia stated that there are a lot of questions she has about the nature of the business. She understands that a lot of these are Planning Board issues but she does have a lot of questions. This is placed between 2 irreplaceable natural resources and she does not know what kind of impact this might have. It is the entire district and she does not know what the total impact will be. The blasting issue is also a concern and she has seen the damage that can be done. Ms. DiFruscia stated that the use of the building does not conform to the purpose and intent of the zoning district and she does not think it will comply with the use of the property. Ms. DiFruscia does not think that manufacturing is intended for the area. Ms. DiFruscia would like to know if it is possible to do their business in the 40,000 square foot footprint instead of the 48,000 square foot footprint. Is this a business can fit with the area with trucks traveling in the area was also a question that was asked.

Mr. Robert Comtois, 12 Edgewood Road addressed the Board. Mr. Comtois stated that he is in opposition to the plan and he does not think it should go any further than this evening and he thinks it should be rejected. Mr. Comtois asked if the neighbors on Woodvue Road have been notified; they have.

Mr. Pat Nysten, 4 Edgewood Road, addressed the Board. Mr. Nysten asked about the other businesses in the area and he understands that aspects of this area is a transition zone and the large trucks might make this area more congested.

Mr. Jacques Lopez, 2 Edgewood Road, addressed the Board. Mr. Lopez states he appreciates that Mr. Arena came to the Zoning Board meeting as the business owner. Mr. Lopez stated that people are using part of this area as a shortcut and this area is going to become more and more congested and his suggestion would be that they try and look at another entry point. Mr. Lopez also mentioned the sun and glare and he wonders if there is any way to mitigate that; it is a small thing but he thinks it might be worth mentioning. Mr. Lopez stated that he has seen this process many times and it is hard not to fall for the pretty pictures in the presentation.

Attorney Sokul addressed the issue of fragmenting the project. Mr. Sokul stated that they are before the Board as part of Phase 1. Attorney Sokul stated that the applicant would like to make an investment in their town.

**A motion was made by Mr. Scholz to continue Case #10-2023 to April 11<sup>th</sup>, 2023. Seconded by Ms. Stith. Vote 5-0. Motion passes.**

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273 **Meeting Minutes to Review and Approve: 01-10-23, 02-14-23 & 02-21-23.**

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275 **A motion was made by Ms. Gogumalla to approve the January 24<sup>th</sup> draft minutes as amended.**  
276 **Seconded by Mr. Scholz. Vote 5-0. Motion passes.**

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278 **A motion was made by Ms. Skinner to approve the February 14 draft minutes as amended. Seconded**  
279 **by Ms. Stith. Vote 4-0-1. Mr. Scholz abstained. Motion passes.**

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281 **A motion was made by Ms. Gogumalla to adjourn at 10:15pm. Seconded by Ms. Skinner. Vote 5-0.**  
282 **Motion passes.**

283  
284 **Respectfully submitted by Anitra Lincicum**