



**ZONING BOARD OF ADJUSTMENT
Draft Minutes (Revised)**

February 22, 2022 - 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/>

Attendance:

Chairman Mike Scholz- present
Vice Chair Nick Shea- present
Pam Skinner, Secretary- present
Michelle Stith, regular member- present
Neelima Gogumalla, regular member- present
Betty Dunn, alternate- present

Staff:

Julie Suech, Planning Technician
Chris Sullivan, Planning Director
Anitra Lincicum, minute taker (present via Zoom)

Call to Order

Public Hearing

**Case #57-2021: Parcel(s) 18-L-300 (continued from January 11, 2022)
Applicant – The Dubai Group, Karl Dubai
Owner – Angle Wood Pond Realty Trust, Inc.
Location – 1-3 Sharma Way (aka 55 Range Road)
Zoning District – Professional, Business and Technology, Residential A & WPOD**

Variance relief is requested from Section(s) 603.1.1 & 614.2 to permit 100 two-bedroom townhomes, arranged in fourplexes, where this particular type and configuration of residential use is not allowed in the PBT, RDA & WPOD zones.

Ms. Skinner read the case into the record; this is a continuation from January. The list of abutters was read previously.

39 Mr. Karl Dubay addressed the Board. Mr. Dubay stated that they went through the bulleted list in order to try and
40 answer the questions brought forward at the previous meeting: traffic study, fiscal impact information, property
41 differentials, and confirmatory information from the SAU to see the number of projected school kids from that
42 development. Mr. Dubay provided a supplemental memo regarding the criteria as well.

43
44 Attorney Morgan Hollis addressed the Board and is representing the applicant and they have been submitted as
45 exhibits to the memorandum. Attorney Hollis stated that this has been zoned this way for a number of years.
46 Attorney Hollis stated that the traffic relates to the health, safety and welfare. Mr. Dubay stated that they are half
47 the density than previously proposed. Mr. Dubay stated that they have 3D renderings so that they can see the
48 buildings. Chairman Scholz asked if there was a map that shows the boundary of the 2 districts; it is stated that it is
49 outlined on page 4. Mr. Dubay went into further detail around how many students they projected might be in each
50 condo as an estimate. Chairman Scholz asked the market rate in today's market. Mr. Dubay stated that he could get
51 another letter from a broker and he thought these units might sell in the high \$700,000 range.

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53 Chairman Scholz invited public comment.

54
55 Mr. Tom Earley, 14 Westchester Rd. addressed the Board. Mr. Earley stated that he is here as a resident, not a
56 Planning Board member this evening. Mr. Earley stated that the voters voted to make this a commercial property
57 and he does think this is a voter issue and needs to go in front of the voters to change this zone from a commercial
58 to a residential district. Mr. Earley stated that this is zoned PBT and there is not a tool set for this zone to have
59 regulations around residential property in a PBT district Mr. Earley stated that there is a different set of tools and
60 rules that govern a residential district and these have not been determined Mr. Earley stated that the evaluation that
61 was done was built in the 80s but these are much larger condos with a bonus room and an unfinished basement.
62 Mr. Earley stated that he sees these condos as different from those condos built in the 80's and he is concerned
63 they will be a larger burden on the schools than projected by the applicant. Mr. Earley stated that he understands
64 that there are on decisions being made this evening.

65
66 Mr. Earley stated that he understands that Vice Chair Shea is related to a realtor who has dealing with Dr. Sharma.
67 Vice Chair Shea stated that he does not have a relationship with his father, Mr. Harry Shea who does represent Mr.
68 Sharma. Chairman Scholz says that he understands Vice Chair Shea was not obligated to share that information.
69 Vice Chair Shea stated he does not have a business relationship with his father or a personal relationship with his
70 father. Chairman Scholz appreciates what Vice Chair Shea disclosed and the discussion and standard for recusing
71 oneself as a Board member.

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73 Chairman Scholz asked when the communication was with the SAU. Mr. Earley stated that it was in September.
74 Mr. Earley reiterated that the tolerances for new students were very thin, especially at Golden Brook.

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76 Mr. Kristi St. Laurent, stated that she chairs the Economic Development Committee. Ms. St. Laurent stated that
77 changing this over to a residential district completely changes this intent of the district from what was voted on by
78 the voters. Ms. St. Laurent stated that there are many businesses in the PBT that cannot be done remotely; those
79 were listed out by Ms. St. Laurent. Ms. St. Laurent stated that this proposal flies in the face of the previously
80 designed master plan and the will of the voters in the PBT district.

81
82 Mr. Dubay stated that the square footage in 1870 to 2400 square feet which is not double to what was built in the
83 80's as Mr. Earley contends. Mr. Dubay stated that these are high end units that are really not built for families
84 with young kids. Mr. Dubay stated that his opinion is that the schools are not at capacity and he is not sure where
85 to go to gather more information but he will try to gather more information about that topic. Mr. Dubay stated that
86 the fact of the matter is that a restaurant will not be interested in relocating without sewer for their site. Mr. Dubay
87 is interested in going to the Economic Development Committee; he would like for them to comment on this plan.

88

89 Ms. Gogumalla asked if they could have an idea as to when the comparable properties were built. Mr. Dubai
90 stated that there is evidence to support that those people who move into this area will not be a burden on the public
91 school system; they will likely have different community needs. Ms. Gogumalla asked Mr. Dubai to come back
92 prepared to talk about why Mr. Dubai would like to proceed with a mainly residential plan. Mr. Dubai stated that
93 this a split zone and it appears to be designed for specific users. Mr. Dubai stated that in some discussions, he had
94 been told by potential commercial clients that the lack of frontage and sewer are two potential issues with the site.
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96 Chairman Scholz asked where the end of the property was on the plan. Mr. Dubai stated that everything is porous
97 pavement and there are 2-way streets on a 24-foot-wide street. Mr. Dubai stated that the units would have full size
98 garages.
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100 The Chair invited limited public rebuttal at this time.
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102 Mr. Earley stated that the concept that “big pharma” will not come to town because of septic may be true. Mr.
103 Earley contends that there are businesses that are clamoring to come here; he has seen 4 commercial approved
104 application in the last few weeks. Mr. Earley would like to understand why businesses are not coming to Windham
105 if this is, indeed, the case. Chairman Scholz asked if they were seeing any effect at all, regardless if it is negative
106 or positive. Mr. Earley stated that he believes that the applicant is looking for highest and best use. Mr. Earley and
107 Chairman Scholz discussed the development that is happening at Exit 1 in Salem in the next town and how this
108 expansive site varies from the PBT district they are currently discussing. Mr. Earley stated that they have a
109 population of outside businesses who would like to come to Windham. Mr. Earley stated that Windham appears to
110 have businesses that would like to come here. Mr. Earley stated that he would not fault a developer for looking for
111 highest and best use but that might not be the will of the voters in this case.
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113 **A motion was made by Ms. Stith to continue Case #57 to March 29th 2022 at 7pm. Seconded by Ms. Skinner.**
114 **Vote 5-0. Motion passes.**
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116 **Case #59-2021: Parcel 13-A-198 (continued from January 11, 2022)**

117 **Applicant – The Dubai Group, Karl Dubai**

118 **Owner – AFS Realty, LLC**

119 **Location – 1 Industrial Drive**

120 **Zoning District – Limited Industrial & WPOD**
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122 Variance relief is requested from Section 401 and Section 606.1 to expand the existing school by adding an
123 approximately 12,000 SF single story building where such use is not allowed in the Limited Industrial District.
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125 Mr. Dubai stated that there were letters submitted from the public who are parents of students at Windham
126 Academy.
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128 The Board and Mr. Dubai discussed that two abutters wrote a letter and they might be here and it might be an
129 issue of traffic and safety. Mr. Dubai stated that they did go before TRC. Mr. Dubai stated that right now the
130 school is grades K-6. Mr. Dubai stated that they are only adding their last 2 grades. There are 293 students spread
131 out over 7 grades and the school would be adding 2 more grades. Mr. Dubai stated that the school would not have
132 enough room for 500 students. Mr. Dubai stated that they will be expanding the campus. Mr. Dubai stated that
133 this industrial park has changed over the 30 years. Mr. Dubai stated that there are a lot of other vehicles in this
134 area other than trucks.
135

136 Ms. Gogumalla stated that she is concerned that there is only one exit and one entrance. Mr. Dubai stated that
137 there are a lot of things they can do to improve the traffic such as painting the driveways in the area. Mr. Dubai
138 stated that the traffic report is still overstating their traffic by 200%. Ms. Dunn asked why Mr. Dubai submitted a

139 traffic report that he believed to be inaccurate or incorrect. Mr. Dubay stated that he had a responsibility to respond
140 to the traffic study submitted but it was submitted by an abutter, not him. Chairman Scholz asked if there had been
141 an increase in the number of drop offs since the report. Mr. Dubay stated that there is some carpooling but it is
142 about 1 trip per kid on average. Ms. Stith asked if there was a way to absorb those trips into the plan and
143 potentially makes the loop larger. Mr. Dubay stated that making the loop larger and staggering the start times has
144 helped.

145
146 Mr. Dubay stated that he is willing to pay for an additional traffic study before the next meeting. Chairman Scholz
147 stated that there may have been students who were remote the last year or so and he wonders how this might have
148 effected traffic.

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150 Chairman Scholz talked about the percentage of students who might have been remote and may or may not have
151 returned to school full time at this point. Ms. Dunn stated that the Board that they have letters from parents who
152 are happy with the school and see an improvement on the traffic. Ms. Dunn stated that she does not see how they
153 can spend more time on this without the expert testimony regarding the traffic.

154
155 Mr. Dubay stated that a letter came in at 3pm. Chairman Scholz does want to ask the Board if they have any
156 additional questions.

157
158 Mr. Dubay stated that they are continuing to add mitigation techniques and they will add for those. Mr. Dubay
159 stated that he would like to correct the record as there are not Windham Academy parents and students running
160 around in front of the other units. Mr. Dubay also stated that he is paying some of these studies out of his own
161 pocket.

162
163 Chairman Scholz stated that there are many other uses for the properties in that area.

164
165 The proposal is to expand and if they have more students, there will be more traffic according to Chairman Scholz.
166 Mr. Dubay stated that he is hearing that they need more information and he is willing to work with staff. Mr.
167 Dubay stated that he would hire another traffic engineer.

168
169 Mr. Dubay stated that he would like to have a meeting with the other condo members. Chairman Scholz stated that
170 businesses change and they need to look at what goes into these buildings.

171
172 Chairman Scholz invited public comment at this time.

173
174 Mr. Steven Gore, 4 Edinburg Road addressed the Board. Mr. Gore has owned property at 3 Industrial Drive since
175 2010. Mr. Gore stated that traffic has become more and more of an issue and had a power point presentation for
176 the Board. Chairman Scholz labeled the presentation Exhibit A1. Mr. Gore stated that he was not out there more
177 than 20 minutes and at the time, the line went down to the bottom of the hill. Mr. Gore stated that it seems there
178 needs to be a turning light. There are 2 driveways and both driveways were blocked. The northern exit is blocked.
179 Mr. Gore stated that there are multiple delivery trucks all day long as well. Mr. Gore stated that they have not
180 heard from Mr. Dubay and the traffic study was just a preliminary study. Some of the numbers that are in there do
181 not make sense to him either. Mr. Gore stated that many of these kids cannot be bused in since they come from
182 other towns. Mr. Gore stated that there was minor accident in October that blocked his driveway. Mr. Gore stated
183 that the issue is that the driveway is blocked. Mr. Gore stated that perhaps the school has outgrown the
184 infrastructure of the area. Mr. Gore asked if there might be another site that is more suitable for the school. Mr.
185 Gore stated that certainly over the last 2 years they have found an increase in the traffic. Mr. Gore stated that he
186 did pay for the traffic study independently and it was intended to be preliminary because as far as he could tell, one
187 had not been done. Mr. Gore stated that he located in Windham to accommodate his business. Mr. Gore stated that
188 tenants have reported water pressure issues in their buildings and the buildings are located at the top of the hill.

189 Mr. Gore also stated that some families miss their time slots and they need to park and block some of the
190 businesses to bring their students into the building. Mr. Gore stated that the Gateway District, might be a better
191 option for the school. Mr. Gore questions if the school's expansion might have outgrown this space at this time.
192 Chairman Scholz asked if Mr. Gore has noticed a change over time and also asked how Covid has impacted the
193 traffic. Mr. Gore stated that he made the observation that they see students taking walks around some of the
194 buildings and he did not state they were from Windham Academy; Mr. Gore stated he enjoyed seeing the students
195 walk around and get fresh air no matter what building they come from. Mr. Gore is willing to participate in a
196 broader discussion about the area.

197
198 Ms. Dunn asked what comes in and out of Mr. Gore's business. Mr. Gore stated that they have tractor trailers and
199 other deliveries like Fed Ed coming in and out of their building. Ms. Gogumalla asked if he had paid for the traffic
200 study. Mr. Gore stated that he and Mr. Connors paid for the study.

201
202 Mr. John Connors 70 Lowell Road addressed the Board. Mr. Connors owns 3 Industrial Drive and manages other
203 properties. Mr. Connors stated that he was here in December and then the meeting was moved to January. The
204 traffic study was done at the suggestion of police. Had a traffic study been done, they might not have asked for one
205 but they did at the advice of counsel. The 497 students are the number that came from Walter; Mr. Connors stated
206 that that number is not in the minutes. Yet, 430 students are in the minutes. The two numbers were derived from
207 discussions at the first meeting on this case. Mr. Connors stated that communications from Mr. Dubay have been
208 non-existent. Mr. Connors stated that they would love to communicate but it has been a one-way street. This is an
209 industrial park and the traffic with the school may be a problem going forward. Mr. Connors runs a business and
210 his clients cannot get to his place of business. Mr. Connors asked the town if there was a school evacuation plan;
211 Mr. Connors would like to know what that plan might be.

212
213 Both Mr. Gore and Mr. Connors stated that they are not sure what the solutions is and they are sympathetic to the
214 needs of the families at the school.

215
216 Chairman Scholz asked about secondary access since another Board member brought it up. Mr. Connors and Mr.
217 Gore stated that a secondary access would certainly help but Mr. Connors state he is not sure how that might
218 happen. Mr. Connors submitted the accident report to the Board.

219
220 Mr. Al Sfeir of Bedford NH addressed the Board and he owns the building that Windham Academy is currently
221 located. Mr. Sfeir stated he hears the concerns of the neighbors. Mr. Sfeir understands that they have a business to
222 run and they should communicate a lot better; they have a point and he thinks there is a way to all coexist. A lot of
223 the kids are happy there according to Mr. Sfeir. There is an emergency plan and it has to be approved by the state.
224 Mr. Sfeir discussed the school having another exit. Mr. Sfeir wrote a letter to Mr. Dave Sullivan, town
225 administrator, to see if the town might sell the piece of property that could be the access if the town is willing to
226 sell them the small sliver of land. The additional school or building could also help as the pickup could be staged.
227 Mr. Sfeir also discussed water and that they may be able to access public water on the Route 111 side of the
228 property. Mr. Sfeir would like to be able to utilize the current playground and expand upon it. Mr. Sfeir talked
229 about expanding to have a gymnasium and a STEAM lab and other amenities for the students. Mr. Sfeir believes
230 there is a solution to the complex traffic issues. Mr. Sfeir talked about the fact that there is a shoulder on the road
231 so an emergency lane can be built to help alleviate the traffic. Chairman Scholz stated that the Board would like to
232 see these solutions when the applicant returns before the Board. Mr. Sfeir stated that he understands that some of
233 these solutions may be long term such as building out the next building and buying the sliver of land. Ms. Stith
234 asked if they might be using a portable building in the interim to expansion. Mr. Sfeir stated that they may have to
235 do that; the construction needs to begin in June when school is let out.

236
237 Mr. Chris Baker, 5 Chestnut St. addressed the Board. Mr. Baker is one of the original founders of the school. Mr.
238 Baker stated that 3 of his 4 kids attend the school, it has been a labor of love for him over the years. Mr. Baker

239 stated that the landlord has been a very standup guy, he is a problem solver. Mr. Baker stated he is on the Board of
240 trustees. There has been a lot of talk as to how they got the approvals to build the school, there is a charter each
241 year that needs to be fulfilled each year. Mr. Baker stated that there are not a lot of new cars being added to the
242 traffic since many of the students are siblings of students who currently attend. The school times will change for
243 the 7th and 8th graders. There will be spill over space for the additional building according to Mr. Baker. Mr. Baker
244 stated that there are only 28 available spots in the school after siblings register for classes. 12-25 students take a
245 bus on any given day according to Mr. Baker. There are 299 students and 50 students are from Windham; the rest
246 of the students come from other towns and there is a lot of carpooling among families. The capacity for the school
247 is 328 students. Mr. Baker asked if he could review the previously presented photos. Mr. Baker stated that when
248 the traffic study was done, there were pneumatic tubes so a lot of the traffic is not from the school but from
249 business. Yet, Chairman Scholz stated that that is the point, there this is an area for business and the school is not
250 the only traffic. Chairman Scholz stated that the traffic study was conducted to discuss the current conditions, not
251 just the school traffic. Mr. Baker spent some time explaining that even though the traffic in the photos was present,
252 yet, the pictures are showing that the cars are not blocking exits and entrances. Mr. Baker stated that the Windham
253 Academy families are seeking structure and stability in the midst of a pandemic and they would like to be good
254 neighbors as well. Mr. Baker stated that there was only remote learning in March-June of 2020; all students were
255 in person this academic year. Chairman Scholz asked if Mr. Baker was present at the 2018 meeting when the
256 variance was granted. Mr. Baker said he had. The Board and Mr. Baker discussed where the information might be
257 see where the school was approved to have a school up through Grade 8. Mr. Baker stated that the original plan
258 was up to Grade 4 and as the population progressed, the school would raise each year by grade. Mr. Baker stated
259 that the additional building will be needed to expand appropriately for students.

260

261 The Chairman called a brief recess.

262

263 Ms. Brandy Shidow, 193 Main St. in Hampstead, NH addressed the Board. Ms. Shidow stated that she agrees with
264 Ms. Baker. Of the 299 students, that makes up 211 families according to Ms. Shidow. Ms. Shidow stated that she
265 understands there have been traffic backups at certain times. Ms. Shidow stated that the families have made a
266 concerted effort to streamline the process especially in the last few weeks. Ms. Shidow stated that the times that
267 families are lining up are very limited. Ms. Shidow explained the pickup and drop off process to the Board. Ms.
268 Shidow and the Board discussed how many new families might be added to this number

269

270 Ms. Bushra Zawaydeh, 46 Bear Hill Rd addressed the Board. Ms. Zawaydeh stated that her children are very
271 happy at the Windham Academy and one of the important points for her family was that the school would
272 eventually go up to Grade 8. Ms. Zawaydeh stated that traffic is going to be a challenge at every school. Ms.
273 Zawaydeh stated that there are many different signage and traffic solutions such as: flashing signs, flashing lights,
274 an actual school sign or other traffic items. Ms. Zawaydeh stated that the pickup and drop off has been much easier
275 than other schools for her over the years.

276

277 Ms. Pamela Merrill Solomon, 13 Cricket Lane in Sandown, NH. Ms. Solomon is the parent of a third grader and
278 an incoming kindergartener. Ms. Solomon stated that there is no other school like this in the area. Ms. Solomon
279 stated that her daughter loves the school and she and other families would like to be able to provide this education
280 to their children through Grade 8. Ms. Solomon is in favor of the expansion project and the families have worked
281 hard to help alleviate the traffic challenges. Ms. Solomon stated that some of the traffic in the area is also from the
282 Windham Coop.

283

284 Ms. Kim Palmer, 17 Jacob Road addressed the Board. Ms. Palmer stated that she and her husband are frequent
285 flyers on Industrial Drive since 2015, Ms. Palmer stated that all 3 kids have gone through Windham Coop and 2 of
286 her 3 kids are at Windham Academy. Ms. Palmer stated that the back up is for the Coop not for Windham
287 Academy. There is also Green Sprouts and OT Works for Kids on the street as well; this place is particularly hard
288 to find a spot for this service as well.

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Chairman Scholz stated they need to continue to a date certain. Mr. Dubay stated that 4 weeks would be plenty. Mr. Dubay stated that he would like to meet with the traffic engineer in the next week.

The owner of the property stated that traffic is going to happen; it is about doing what is better for the kids. Having the kids staged to have staggered drop offs and pickups has been helpful. Having support to the school has also been helpful and he does not want to discredit the concerns. Also, he does not want the conversation to be about adding classes, it is about the current school situation.

Vice Chair Shea would like to know the times of day of the traffic accidents.

A motion was made by Ms. Stith to continue Case #59-2021 to April 12th at 7 pm. Seconded by Vice Chair Shea. Vote 5-0. Motion passes.

A motion was made by Ms. Stith to approve the January 25th, 2022 draft minutes as amended. Seconded by Vice Chair Shea. Vote 5-0. Motion passes.

A motion was made by Ms. Skinner to adjourn at 10:22pm. Seconded by Ms. Stith. Vote 5-0. Motion passes.

Respectfully submitted by Anitra Lincicum

Draft