



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Zoning Board of Adjustment Approved Minutes November 25, 2014

Board Members:

Mark Samsel, Chairman – Present
Mike Scholz, Vice-Chairman – Present
Heath Partington, Secretary – Present
Jay Yennaco, Member – Present

Jim Tierney, Member – Present
Mike Mazalewski, Alternate – Excused
Kevin Hughes, Alternate – Present

Staff:

Dick Gregory, Code Enforcement Administrator
Kerry Lee Noel, ZBA Minute Taker

The Chair called the meeting to order at 7:30 pm, introduced the Board and Staff, and explained the meeting process.

Public Hearing

Mr. Partington read Case #41-2014 into the record.

Case # 41-2014, Lot 11-A-1400 & 11-A-1418

Applicant – Mr. Karl Dubay, The Dubay Group, Inc.
Owner – Pliskin Family Revocable Trust, Robert & Doris Pliskin Trustees
Location – 15 Pilgrim Road
Zone – Rural

Variances from the following sections of the Zoning Ordinance are requested to allow an open space subdivision.

Section 611.6.3 to allow two (2) new lots off Chestnut Street to be 40,326 sq. ft., and 71,646 sq. ft., and one (1) lot with an existing house on Pilgrim Road to be 535,126 sq. ft. where 30,000 sq. ft. is the maximum permitted.

Section 611.6.4.3.1 to allow the 35 homes within the subdivision to have a front setback greater than the maximum allowed of 50 ft.

Mr. Samsel states that several letters were received requesting to continue the case due to difficulty of attending with regard to the upcoming holiday. He continues reviewing the letters received from abutters regarding the case, and states that written testimony is acceptable and we should continue hearing this case.

The Board discusses the option and proceeds with the case. There are 9 pages of letters from abutters.

Mr. Scholz motions to waive the reading of the abutter list due to the fact that the list was large and already public.

2nd by Mr. Tierney

Vote 5-0-0 - Motion carries

Mr. Partington reads a letter of the Owner's Authorization from The Pliskin Family Revocable Trust; I Robert Pliskin, Trustee of the The Pliskin Family Revocable Trust, 15 Pilgrim Road, Windham, NH 03087, owner of parcels 11-A-1400 and 11-A-1418 in Windham, NH, hereby authorize The Dubai Group, Inc. to make applications to the Town of Windham and NHDES for design and permitting on the properties. The letter is dated October 29, 2014.

Mr. Dubai of the Dubai Group addresses the Board and introduces the Pliskins who are present. He offers plans to the Board that have been updated and that are seeking less variance than originally applied for. The plans are entered into the Record as Exhibit A. The property is 120 acres, 2/3 will be deeded as open space. He continues, of the 35 total lots only 3 would require a variance. There are a handful of lots that are non-conforming to the new ordinance. Mr. Dubai presents a pictorial depiction of the lot locations, to demonstrate the non-conforming size and the sizes being sought. This open space development offers 2/3 open space and 1/3 dedicated to the development. The maximum lot size; ¾ acre or 30,000 sq. ft., frontage along the road shall be 60-100 ft. wide. A 15 foot side and front set-back within a strip of 20 - 50 ft. within the right of way, our plan follows that criteria. For the Pliskin house lot, we would agree to a covenant that states that no further sub-division would occur for that lot. The buffers are intact between the development and the abutters. The subdivision would have an association and be maintained by such.

Mr. Dubai continues, describing the attributes and aesthetic quality of the design that utilize buffers and open space. We are asking for 75 feet rather than 50 for the loop drive. The hardship is to create a high end result and increase the buffers and setbacks. The plans and surveys are complete. The Trails Committee has requested trail access through easements. One crossing exists for the whole project.

Mr. Tierney inquires why a conventional subdivision has not been designed.

Mr. Dubai states that this development was planned in the spirit of the open space criteria. The two lots off Chestnut could be reconfigured with no buffers and fall within the criteria but we felt it is the right thing to do. As a designer it is the best design for the abutters and open space. Under open space there are covenants to protect the area.

Mr. Tierney inquires, what is the percentage of open space is?

Mr. Dubai states 65% under the survey.

Mr. Tierney inquires with regard to the plan depicting 3 green coloured lot areas and inquires if the association have the right to maintain that area.

Mr. Dubai states yes, under a covenant, for example there is a stone wall and natural field, they will be preserved.

Mr. Tierney inquires, what would prevent the owner of lot 2 from changing the landscape.

Mr. Dubai states it will be included in the legal documents of the association.

Discussion occurs regarding the placement of the driveways and the main access road.

Mr. Dubay states the association would have a 3 tiered approach due to the different classification of the lots.

Mr. Yennaco questions the minimum or maximum home size with regard to the proposed lots off of Chestnut.

Mr. Dubay states, if there are covenants on those lots currently they will be adhered to. If there are none we can put it in writing, whatever is recommended.

Mr. Yennaco states that the proposed setbacks and the hardship for the variance, is the whole reason for asking for the variance is aesthetic value.

Mr. Dubay discusses the hardship conditions.

Mr. Samsel questions the configuration of the entrance off of Chestnut and if the cul-de-sac will remain.

Mr. Dubay states the Planning Board will review this and we are required to have a landscape design. It is a town right of way. The cul-de-sac will remain.

Discussion occurs regarding the right of way, trails and trail easement.

Mr. Dubay reads the 5 points of the criteria into the record.

Mr. Partington inquires of the distance of the setbacks for lots 33 & 34.

Mr. Dubay states that they would probably be more than 100 feet or beyond. We would be looking for the maximum, including the Pliskin home.

Mr. Samsel opens the meeting to the public.

Mr. Dan Potter, of 6 Chestnut Street, states he is in opposition, respectfully asks that the Chestnut Street lots be conventional, with regard to any variance considered the Highclere Development. The lot size should be relatively the same size as the lots currently existing on Chestnut. A single driveway, the aesthetics and setback are concerns.

Ms. Val Munoz, of 11 Easy Street, spoke to traffic relative to the Highclere Development.

Mr. Samsel states the Zoning Board of Adjustment is specific to the information relative to variances brought before the ZBA. Concerns regarding the specifics of the development can be brought before the Planning Board.

Mr. Case states that his concerns are that the Conservation Commission inquired why the lots weren't divided separately, the Pliskin homestead had frontage on Meetinghouse Road, a portion was removed and merged with another lot.

Mr. Paul Goodhill, of 50 Blossom Road an abutter, questioned if the planning board has already approved this development.

Mr. Tierney states that it will be in the future, without the ZBA approval, it cannot go forward to the planning board. All legal abutters will be notified and it is in the newspaper.

Mr. Partington reads an email received from Mr. Carl Voelcker and Christina Belew, of 7 Chestnut Street. The plan appears to show the alteration or removal of the Chestnut cul-de-sac and its replacement of a straight road onto the Highclere subdivision. It also appears to show a hiking trail into the subdivision. We request that the cul-de-sac remain as is.

Mr. Dubay states that the existing Chestnut cul-de-sac will remain the same. We could change the 3 lots on Chestnut to follow all of the existing criteria without having to go through this process. I suggest the Chestnut lots renew their covenants. The Highclere path next to Hawthorne, it is a deeded right-of-away.

Discussion occurs regarding traffic, wetlands and WWPD.

Motion by Mr. Partington to go into Deliberative Session at 9:31 pm, with a six minute recess. 2nd by Mr. Scholz

Vote 5-0-0 – Motion carries

Mr. Samsel states at 9:37 pm the Board is back in session.

Discussion occurs to discuss the variance request separately.

Mr. Partington states, in regards to the Highclere frontage variance request, that there is no change in character, no hazards, reviews the 5 criteria, hardship hurdle, what makes this different, there is no benefit to deny.

Mr. Scholz states that the topography and characteristics create the special conditions of the property.

Mr. Yennaco also agrees.

Mr. Tierney agrees regarding the hardship and the benefits, he agrees.

Mr. Samsel also concurs with the Board and states that these subdivisions have a lot of creativity and it is a compelling project. This ordinance is new and this would test the ordinance.

Discussion occurs regarding the open space ordinance, uniqueness, diminished value and the hardship criteria.

Mr. Partington motions to approve the setbacks for Case #41-2014 Lot 11-A-1400 & 11-A-1418. Grant the variance for section 611.6.4.3.1 to allow lot 2 to have 100 foot front setback, lot 5 to have a 75 foot front setback and to allow lot 8 to have a 75 foot front setback. Which is greater than the maximum allowed setback as presented.

2nd Mr. Scholz

Vote: 5-0-0 – Motion carries

Motion by Mr. Tierney for Lot 11-A-1400 and 11-A-1418, Case #41-2014 Section 611.6.3 to allow the 2 lots off Chestnut Street to be 34,359 & 63,779 sq. ft. and one lot with the existing house to be 535,126 sq. ft. where 30,000 sq. ft. is the maximum. To allow the maximum submitted under the covenants that would meet or exceed the covenants for lots 33 and 34 current or expired on Chestnut Street.

2nd Mr. Scholz

Vote: 4-1-0 (Mr. Partington) – Motion carries

Motion by Mr. Scholz Case #41-2014, Lot 11-A, 1400 and 11-A-1418, Section 611.6.4.3.1 to allow lots 33, 34 & 35 within the subdivision to have a front setback greater than the maximum allow of 50 feet as presented.

2nd by Mr. Tierney

Vote: 4-1-0 (Mr. Partington) – Motion carries

Mr. Partington states that hardship criteria has not been met, it is contrary to the public interest, the spirit of the ordinance was not observed and it was not proven that the values of surrounding properties were not going to be diminished.

Mr. Samsel states that this decision can be appealed within 30 days.

Mr. Partington reads Case #42-2014 into the record.

Case # 42-2014, Lot 11-A-1622

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Nazzarene & Dorothy Pellegrini

Location: 4 Floral Street

Zone – Rural

Variance from the following section of the Zoning Ordinance is requested to allow the creation of 1 new lot: Section 702, Appendix A-1 to allow the area within the existing drainage easement of 4,245 sq. ft. to be included when computing minimum lot size calculation.

Review of the abutter list. Permission of the owner to Edward N. Herbert Associates statement is reviewed.

Mr. Gendren of Herbert of Edward N. Herbert Assoc. Inc. addresses the Board, stating that the proposal for a new lot where the property exists has extensive frontage on 2.767 acres. It has a 4 bedroom home at the corner of Floral Street and Greenway Road. They would like to subdivide the lot to create one new building for their daughter to build a single family home. The driveway access for the new lot will be from Floral Street.

We have calculated an area that is a drainage easement and the ZBA ordinance doesn't not allow the drainage easement as part of the overall lot size.

He continues with the 5 criteria:

- Granting the variance will not pose any threat to the public health, safety and welfare and will not interfere with the public's use of Floral Street.
- If the variance is granted it will meet all other zoning, health and safety requirements, there will be suitable area to locate a home and improvements, while not posing any threat to the health and safety of others.
- It would allow the owner to make reasonable use of their excess land and will conform to the permitted use in the Rural District, while requiring no additional variances or waivers. It will also provide an opportunity for the Pellegrini's to build a new home for their daughter and allow them to stay close to family.
- The existing house will remain essentially unchanged while the proposed home will be of similar size and of equal or greater value. The proposed home will maintain proper setbacks to abutting properties, by maintaining natural buffers and the property will maintain the character of the neighbourhood.
- (A)(i); Due to the large area of frontage for the parcel and the location of the existing home on the parcel, special conditions are present. The proposed lot has sufficient area and width where the future home will be located. Both lots will conform with all other zoning regulations, the subdivision does not overcrowd the land or conflict with the other general purpose of the zoning ordinance as stated in section 100. Therefore there is no fair and substantial relationship between the general purpose of the ordinance provision of Section 702, Appendix A-1, and Footnote No. 1.
- (A)(ii); The proposed lot will be for a single family home, which conforms to the rural district usage requirements, and is similar to all of the abutting properties. There will be proper access to the lot, and will maintain proper setbacks and buffers to abutting properties.

Questions/Comments from the Board

Discussion occurs regarding existing frontage.

The board goes into deliberative session.

Mr. Partington reviews the 5 criteria.

Motion by Mr. Scholz for Case # 43-2014 to grant relief from Section 702 Appendix A-1 & 703 to allow the creation of one new lot to allow the area within the existing drainage easement of 4,245 sq. ft. to be included when computing minimum lot size calculation.

2nd by Mr. Tierney

Vote 5-0-0 – Motion carries

Case # 43-2014, Lot 11-A-1622

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Nazzarene & Dorothy Pellegrini

Location: 4 Floral Street

Zone – Rural

An Equitable Waiver request has been made from Section 703, Appendix A-1 & 703 of the Zoning Ordinance to permit an existing pool to be 2' within the rear setback (28' where 30' is required).

Abutter letters are reviewed.

Mr. Gendren of Herbert of Edward N. Herbert Assoc. Inc., addresses the Board. He states a waiver from ordinance Section 702, Appendix A-1 & 703 to permit an existing pool to be within the rear setback of 28 feet. This pool was existing when the current owners bought the house.

Mr. Tierney states the setback should be granted to the side set back. The dimensional requirement is 30 foot rear setback. He continues reviewing the 5 criteria.

- This existing pool was installed in 1995 and was placed 2 feet within the rear building setback as an innocent mistake, there was no intent to purposely disregard the zoning ordinance at the time of installation.
- The current owners purchased the lot in 2001 with the existing house, pool and shed. The pool has been existing since 1995.
- The pool has been existing since 1995 and is of no public or private nuisance and does not diminish the value of surrounding properties or prevent future uses of the property or surrounding properties.
- The current tax card shows a value of the pool at \$13,600.00 and far outweighs the value of relocating the pool.

The board went into deliberative session.

Motion by Mr. Tierney to grant an equitable waiver to permit the existing pool to be 2 feet in the side setback 28 feet, where 30 feet is required.

2nd Mr. Partington

Vote: 5-0-0 – Motion carries

Review and Approval of Draft Minutes – October 14, 2014

Motion by Mr. Partington to approve the minutes of October 14, 2014 as amended.

2nd Mr. Tierney

Vote: 3-0-2 (Mr. Scholz & Mr. Yennaco, abstained)- Motion carries

Mr. Gregory states that there is just one case on December 9th scheduled.

Motion by Mr. Partington to adjourn the November 25, 2014 ZBA meeting.

2nd Mr. Yennaco

Vote: 5-0-0 – Motion carries

Meeting Adjourned 10:36 pm.

Respectfully submitted, Dick Gregory