



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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www.WindhamNewHampshire.com

**Approved Minutes Zoning Board of Adjustment
September 22, 2015
7:30 pm @ Community Development Office**

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mike Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Present			

Staff:

Dick Gregory, Code Enforcement Administrator

Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Scholz

Case #30-2015, abutter list, and letter of authorization read into the record by Mr. Samsel

Lot 11-A-248, Case # 30-2015

Applicant: KRD Builders

Owner: Ed Zabawski

Location: 7 Yorkshire Road

Zone: Rural, Wetland & Watershed Protection District (WWPD)

Variance relief from the following Sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the construction of a 26' x65' free standing garage.

Section 601.3 to allow a garage to be constructed in the WWPD where none is allowed.

Section 702, App. A-1 to allow the garage to be 10 ft. from the side lot line where, 30 ft. is required.

Jeremy MacLeod, KRD Builders presented an overview of the case and reviewed the 5 variance criteria. Mr. MacLeod pointed out on the 'plan of the land' the only available location for the proposed garage. Mr. MacLeod pointed out the wetlands on the plan.

Mr. Samsel asked the applicant for clarification of his request for relief of 10 feet whereas the plan shows 10.5 feet.

Applicant Mr. MacLeod, responded that the 10 feet would be fine.

Mr. Samsel advised the applicant he cannot have relief granted for more than is requested.

Applicant confirmed that he did not wish to ask for any additional relief beyond the 10 feet requested.

Approved ZBA minutes September 22, 2015

Chairman Scholz asked what will the impervious building coverage be after the garage is built; and how many bays will the garage have.

The applicant Mr. MacLeod does not have the answer regarding impervious land coverage. Mr. MacLeod responded there will be 2 bays; the garage is a steel building with a steel roof.

Mr. Partington asked if the plan will go before the PB.

Mr. Gregory replied it will not go in front of the PB.

Mr. Breton asked if there any other doors beyond the 2 shown in the (picture) plan.

Applicant responded there is one additional man door between the 2 bays.

Mr. Breton believes the applicant needs an additional door in the back of the garage for fire safety.

Mr. Breton asked if the applicant intends to leave the existing stone wall in the back of the property intact.

Applicant responded he will be leaving the stone wall undisturbed.

Chairman Scholz and applicant reviewed the location of the stone wall on the plan.

Chairman Scholz opened the hearing to the public

Terence Sullivan, 39 Oriole Road

- Asked if the water that comes down off the ridge off oriole road, which is pitched east to west, will it be interrupted in any way?
- Mr. Sullivan pointed out on the map, as requested per Mr. Samsel, the area of concern on the plan map, the direction of the water flow, and where his property is affected by the water flow.

Wayne Morris, Chairman of Conservation Commission

- Representing the Conservation Commission
- Site was walked by the commission last week.
- Concerned that no topo is involved.
- Drainage off the building itself is a concern,
- There is no plan for the drainage off the building into the WWPD.
- Would like the applicant to come back to the Conservation Commission Committee with a plan showing what the applicant will do with the drainage.
- The plan may need some kind of containment of the runoff.
- The Conservation Commission Committee would like to see better detail what is involved regarding runoff and water drainage.

Jon Howarth, 38 Oriole Road

- Concerned about water issues.
- Already an issue with standing water on his property

Mr. Breton asked the applicant if he would agree to go back to Conservation Commission Committee with a drainage plan. The applicant is agreeable. Mr. Breton suggested to continue the hearing after the applicant presents the drainage plan to the Conservation Commission Committee.

Owner, Ed Zabawski responded to the abutters concerns (as noted above). Mr. Zabawski pointed out that the abutters' homes are located above hill from the owner. Mr. Zabawski described water flow as falling straight down and onto flat property. Mr. Zabawski described his driveway as uphill from the proposed garage and the water flow (after the garage is built) will continue to flow to the back of the property in the same area where it drains to now; there will be no change in the flow after the garage is built.

Terrence Sullivan, 39 Oriole Rd does not agree with Mr. Zabawski concerning the location of his home in proximity to Mr. Zabawski home. Mr. Sullivan does not agree his home is uphill from the applicant/owner. Mr. Sullivan described the properties as almost flat. Mr. Sullivan further clarified that his only concern is about the water flow; he wants to make sure additional water doesn't flow onto his property.

The applicant, Mr. MacLeod responded that he is happy to come back with a perimeter drainage plan. Mr. MacLeod commented that he is looking for direction from the ZBA

Chairman Scholz's finds it a challenge trying to figure out the topography and the water flow issues identified by the abutters. Chairman Scholz believes the water flow issues will be clarified with a drainage plan.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Samsel to continue Case # 30-2015 to October 13, 2015 to allow the applicant to present more relevant information on topography, develop a drainage plan and present it to the Conservation Commission Committee, and then for the ZBA to have feedback from The Conservation Commission Committee.

Second by Mr. Breton

Vote 5-0-0

Motion Carries

Prior to reading the next case into the record, Mr. Samsel asked Mr. Peter March with N.H. Signs to explain his purpose and intent with the various applications submitted so that the ZBA will know how to proceed with regard to proper order for hearing cases. Mr. March explained the purpose and intent for the multiple applications submitted

Mr. Samsel asked Mr. Gregory what was issued with the original permit.

Mr. Gregory explained that the first permit was issued to change the 'Sunoco' to 'Mobile'. Mr. Gregory explained that the permit was granted in error and revoked on the basis that he could not grant permission to change the name on a pre-existing nonconforming sign.

Case # 31-2015 read into the record by Mr. Samsel

Motion by Mr. Partington to waive the reading of the 5 page abutter list (on file for this case) into the record.

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Lot 14-A-1100, Case # 31-2015

Applicant: N. H. Signs

Owner: Klemm's Corner LLC

Location: 18 Mammoth Road

Zone: Neighborhood Business (NB)

Appeal the decision of the Code Enforcement Administrator to revoke part of a sign permit issued in error on July 31, 2015.

Applicant Mr. Peter March described the nature of the error resulting in his town issued sign permit to be revoked and presented his case for an administrative appeal to the ZBA. Mr. March finds the Windham code itself is invalid in this case. Mr. March's is appealing the administrative decision under Section 674:19 of the NH State Code. Mr. March reviewed his letter on file for the case detailing the basis for his appeal under Section 674:19 of the NH State Code.

Mr. Gregory, Code Enforcement Administrator

- The initial sign change request was for the Mobil name and the permit was granted.
- After further review in the office, Mr. Gregory became aware that the change is not allowed in Windham.
- After the permit was issued Mr. Gregory learned it is against the code of Windham to change the copy of an existing nonconforming sign in the town of Windham.

Chairman Scholz asked if the permit originally issued was (only) to allow the copy changed from Sunoco to Mobile; and that the changing to the LED was not in the original permit issued.

Mr. Gregory confirmed that the original permit issued was only for the requested copy change from Sunoco to Mobil.

Mr. Samsel commented that Section 706.3.1 all signs (except for pre-existing nonconforming) signs must conform to these regulations..... Mr. Samsel does not understand based on what is written in the parenthesis, as noted above, how any part of 706 is applicable.

Mr. Breton commented that Sunoco to Mobil is a change in copy and doesn't change the intent. The change in name does not affect anyone. The ordinance is a deterrent to do business in Windham. Businesses especially gas stations change names quite frequently.

Mr. Partington asked if the staff can legally issue a permit then 4 days later recall the permit because they made a mistake. I would think that once a decision is made then someone from the public would need to appeal it within a 30 day window. Staff and ZBA members were not sure of the answer to Mr. Parrington's question.

Applicant, Mr. March explained that once the permit is denied it allows him to ask for the Led electronic reader board.

Chairman Scholz clarified that a specific decision is being appealed, and the LED was not part of the notice of decision. The applicant is requesting to appeal a decision that has not been made based on the LED electronic reader board.

Mr. Partington commented that in the past it has been decided that some sections asked for in the variance are not needed and may be considered the same issue with this case.

Mr. Breton commented the applicant would not need a variance if the administrative appeal is overturned.

Chairman Scholz opened the hearing to the public

Karen Elgart, 6 Colonial Rd. #3

- Secretary of the condominiums next to the gas station
- Received a notice and is here at the meeting to find out what is going on.
- Feeling under assault, businesses are trying to get bigger and more commercial.
- Is the sign going to be brighter, bigger, and will it be on all night?
- Will the sign go off when the station closes?
- Some of the residents of the condominiums can see the sign from their homes.
- Is this the only sign being discussed tonight

Mr. Breton gave a copy of the picture of the sign to the Ms. Elgart.

Applicant Mr. March responded that there is no change in the copy or the size of the sign. There is actually a decrease in brightness by decreasing the area

Mr. Breton believes the change in copy from Sunoco to Mobil doesn't change the intent so the sign does not need to be brought into conforming. The change in copy has no effect on anyone. The applicant is taking 15 year old sign that advertises gas prices and utilizing modern technology to advertise gas prices.

Motion by Mr. Samsel to go into deliberation

Second Mr. Breton

Vote 5-0-0

Motion carries

Mr. Partington commented the procedural issue is correct. Mr. Partington believes the ZBA should only address the permit that was revoked as part of the appeal. Mr. Partington believes the ZBA should consider the 4 criteria for a natural expansion established from the case of *New London Land Use Assn. V. New London ZBA*, 130 N.H. 510 (1988) in making a decision. If the ZBA decides the sign continues to be a pre-existing nonconforming use there is no further discussion required. The proposed change arises naturally, makes the existing use more available, no impact on abutting properties and meets all 4 criteria referenced .

Mr. Samsel agrees with Mr. Partington. The sign ordinance needs to be re-evaluated.

Chairman Scholz believes there is a conflict with the RSA and the town ordinance.

Mr. Breton agrees with Mr. Partington. Mr. Breton asked Chairman Scholz that once the decision is rendered the ZBA ruling becomes the new ordinance. The logic being: The PB makes the

ordinance, code enforcement administers the ordinance, and the ZBA decision becomes the new ordinance.

Chairman Scholz does not agree with Mr. Breton, everything is a case by case basis. The decision made does not change the ordinance.

Mr. Samsel agrees with the Chairman

Mr. Breton believes the ZBA interpretation of the RSA becomes the law moving forward. Chairman Scholz will ask council.

Motion by Mr. Samsel for Lot 14-A-1100, Case # 31-2015 based on testimony presented with the respect in the change in copy from Sunoco to Mobile to grant the appeal of the decision of the Code Enforcement Administrator to revoke part of a sign permit issued in error on July 31, 2015.

Second by Mr. Breton

Vote 5-0-0

Motion carries

Case # 33-2015, and letter of authorization read into the record by Mr. Samsel.

Motion by Mr. Samsel to waive the reading of the 5 page abutter list (on file for this case) into the record

Second by Mr. Breton

Vote 5-0-0

Motion carries

Lot 14-A-1100, Case # 33-2015

Applicant: N. H. Signs

Owner: Klemm's Corner LLC

Location: 18 Mammoth Road

Zone: Neighborhood Business (NB)

Variance relief from the following Sections of the Town of Windham Zoning Ordinance & Land Use Regulation is requested to install a free standing sign with a LED number display:

Section 706.8 to allow a sign with changeable copy which is not allowed the (NB).

Section 706.5.1.2 to allow an Electronic Reader Board sign consisting of, only LED price changers to indicate the price of motor fuel.

Applicant, Mr. Peter March presented his case and reviewed the LED price changes and reviewed the 4 criteria for a natural expansion as outlined under the case of *New London Land Use Assn. V New London ZBA, 130 N.H. 510 (1988)*.

Chairman Scholz opened to the public, no public comment

Chairman clarified the picture of the sign in the packet is not what is being asked for. There is an updated picture on file and before the ZBA. The resulting signage will be smaller than what exists today

Applicant confirmed the signage will be smaller and reviewed the details of what will make it smaller reduction in the signage by 16 sq. using the LED reader board.
Chairman Scholz asked if the numbers will be larger and hence more visible.

Applicant Mr. March confirmed the numbers will be larger and more visible.
Chairman Scholz asked how the speed people are driving by the sign factor into the decision.
Applicant, Mr. March responded the prices will be more visible with a longer read time for people driving by respond to the price.

Mr. Mazalewski asked if the lights go off when the gas station is closed.
Applicant Mr. March confirmed the sign will be turned off when the station is closed.
Mr. Mazalewski inquired about the lumens given off.
Applicant, Mr. March responded the lumens in the new sign do not exceed the lumens in the existing sign.

Mr. Breton asked if the lights in the back of the new sign are fluorescent behind the numbers VS the entire sign being lit up.
Applicant, Mr. March confirmed what Mr. Breton asked.

Motion by Mr. Samsel to go into deliberation

Second by Ms. Skinner

Vote 5-0-0

Motion Carries

Mr. Partington believes this is a pre-existing nonconforming use as presented. Mr. Partington pointed out that as presented, the sign does not go against any of the 4 criteria for a natural expansion as outlined under the case of *New London Land Use Assn. V New London ZBA, 130 N.H. 510 (1988)*.

Mr. Samsel commented the sign is a natural expansion of a nonconforming use.

Chairman Scholz does not agree it is a pre-existing non-conforming sign.

Mr. Breton does not agree that the display of gas prices should be considered a reader board. Mr. Breton believes it is just modern technology as a way to display the price of gas. There isn't anything to read in terms of sentences with reference to a reader board.

Mr. Samsel commented the new sign is a reader board based on the town ordinance.

Chairman Scholz believes the grandfathered use is what nonconforming is today. Chairman Scholz believes the only thing out of conformance is the size of the sign, nothing else is grandfathered. Chairman Scholz agrees if the ZBA agrees the sign is a pre-existing nonconforming sign then no variance is required

Mr. Samsel asked if the determination (if the sign is a pre-existing nonconforming) is made on the gas price numbers. Mr. Samsel commented if it was advertising specials on beer that change would

fall into a change of use and not be grandfathered in. The proposed change is not a substantially different effect.

Chairman Scholz, after hearing the member's discussion it is very clear the LED reader board is only to display gas numbers and variance is not necessary based on the fact that it is a pre-existing nonconforming sign.

Motion by Mr. Samsel for Case # 33-2015, Lot 14-A-1100 the board has determined that variance relief from the following Sections of the Town of Windham Zoning Ordinance & Land Use Regulation is not required as requested. Section 706.8 to allow a sign with changeable copy which is not allowed in the NBD and from Section 706.5.1.2 to allow an Electronic Reader Board sign consisting of, only LED price changers to indicate the price of motor fuel based on the review of the case of *New London Land Use Assn. V New London ZBA, 130 N.H. 510 (1988)* that establishes 4 criteria for natural expansion. We the board determined that the proposed change arises naturally through evolution, such as new and better technology out of the grandfathered use; it is required for the purpose of making the existing use more available to the owner and does not constitute a new and different use; the change or expansion will not render the premises proportionally less adequate for the use, in terms of the requirements of the ordinance; and the expansion will not have a substantially different effect impact on abutting property or the neighborhood. Conditions of approval that the sign lights go off when the station is closed and the total lumens of the new sign not to exceed the total lumens of the old sign, per drawing entered as exhibit A signed and dated by the applicant.

Second by Mr. Breton

Vote 5-0-0

Motion carries

Cases # 32-20 and #34-2015 withdrawn per applicant

Motion by Mr. Breton to accept request to withdraw case #32-2015 and #34-2015

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Motion by Mr. Partington to approve the draft minutes of June 23, 2015 as amended

Second by Mr. Samsel

Vote 5-0-0

Minutes approved

Motion by Mr. Partington to accept and approve the draft minutes of August 11, 2015 as amended

Second by Mr. Samsel

Vote 5-0-0

Minutes approved

Motion by Mr. Samsel to accept and approve the draft minutes of September 8, 2015 as amended

Second by Ms. Skinner

Vote 6-0-0
Minutes approved.

Motion by Mr. Samsel to adjourn
Second by Ms. Skinner
Vote 5-0-0
Meeting adjourned at 10:06pm

Minutes submitted by Suzanne Whiteford