



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Approved Minutes Community Development Department September 23, 2014

Board Members:

Mark Samsel, Chairman – Present
Mike Scholz, Vice-Chairman – Present
Heath Partington, Secretary – Present
Jay Yennaco, Member – Present, arrived at 8pm

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

Staff:

Dick Gregory, Code Enforcement Administrator
Laura Accaputo, ZBA Minute Taker

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

The Chair sat Mr. Hughes for Mr. Yennaco

Public Hearing

Mr. Partington read Case #33-2014 into the record

Lot 17-L-22, Case # 33-2014 CONTINUED FROM SEPTEMBER-9-2014

Applicant/Owner – Manuel Loureio

Location: 51 Horseshoe Rd.

Zone: Residence A, Cobbett's Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow an addition on a pre-existing non-conforming lot:

Section 702, Appendix A-1 allow a 520 sq. ft. single story addition within 27 ft. from the side lot line where 30 ft. required.

Applicants Gloria and Manuel Loureio introduced themselves to the Board and Ms. Loureio then read the 5 criteria into the record.

- The Chair asked for clarification of the distance from the side lot line as the posting lists 27ft and the drawing shows 28ft. Mr. Loureio stated it is closer to 28ft.
- Mr. Tierney noted the proposed deck shown on the drawing is not included in the measurement for this request and will require a separate variance or will have to be eliminated.

The Chair opened the Hearing to the public at 7:45pm.

- Ronald Ducharme, 120 Range Road, addressed the Board. He stated he is a direct abutter and has no problem with the request.

The Chair closed the public portion at 7:46pm.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Scholz. Motion passed: 5-0.

- Mr. Partington stated he believes this request meets the 5 criteria; there will be no change to the character of the area; there are no health and safety issues; there will be substantial justice to the owner and no negative impact to the public or diminished property values; and the uniqueness is the existing structure and the lay of the land. He also noted the addition is a reasonable size. The Board agreed.

Mr. Scholz motioned for Case #33-2014, Lot 17-L-22, in consideration of the five criteria, to grant relief from Section 702, Appendix A-1 to allow a 520 sq. ft. single story addition within 27 ft. from the side lot line where 30 ft. is required, seconded by Mr. Partington. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Lots 21-C-80 & 21-D -70, Case # 35-2014 CONTINUED FROM SEPTEMBER 9, 2014
 Applicant – Joseph Maynard/ Benchmark Engineering
 Owners – EB RICH, LLC & Bernice Kowalski-Richards
 Location – 208 & 212 Range Road
 Zone – Residence A, Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow a five (5) lot Open Space Subdivision with four (4) lots on a common drive with zero frontage on a public way and one (1) lot to have over 100 ft. maximum frontage on a public way and to waive the Road Standards contained in the Subdivision Regulations:

Section 611.6.2 to waive the Road Standards as detailed in the Sub Division regulations for the common drive.

Section 611.6.3 to allow two (2) building lots to be 38,500 & 45,000 sq. ft. where 30,000 sq. ft. is the maximum allowed.

Section 611.6.4.3.2 to allow four (4) lots to have zero (0) frontage where 60 to 100 feet is required and one (1) lot to have more than the maximum of 100 ft.

- The Chair stated the applicant is requesting a continuation until the next ZBA meeting to allow time for review of TRC comments which were received by the Board just prior to the meeting.

Mr. Partington motioned to continue Case #35-2014 until the October 14, 2014 meeting, seconded by Mr. Scholz. Motion passed: 5-0.

Mr. Partington read Case #34-2014 into the record which was opened and continued from the last meeting in order to repost with the correct Section.

Lot 21-K-27, Case # 34-2014

Applicant/Owner - Erin Upton

Location – 68 Turtle Rock Rd.

Zone – Residence A, Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow continued use of a chicken coop on a pre-existing non-conforming lot:

Section 602.1.4 to allow a chicken coop to remain 10 ft. from the property line where 50 ft. is recommended.

Section 602.6.1 to allowed continued construction of a chicken coop without a Minor Watershed Application.

- Erin Upton, 68 Turtle Rock Road, addressed the Board. She stated prior to getting her chicken coop she contacted the Building Inspector to inquire about the rules and was told there is a 10ft setback requirement, she was also told to read the Best Management Practices. She set the coop 10ft from the building but couldn’t find anything about a 10ft setback requirement only a 50ft setback for a barn in the manual. She stated the coop is in a great location next to the garage and the side of the property, is lower than street level, and blocked on the other side by a fence. There are trees that shade the coop and protect the chickens from the winter elements. She believes if the coop is relocated it will be more visible to neighbors and the run area will extend past the house by 9ft.
- The Chair asked how many chickens she had and Ms. Upton answered 8.
- Mr. Tierney asked the dimensions of the coop and Ms. Upton answered 79.5” length, 46.5” width, and 78.5” height.
- Ms. Upton then read the 5 criteria into the record.

Questions/Comments from the Board

- Mr. Tierney stated the request is to allow a 10ft setback where 50ft is required but the 50ft requirement is for a barn and asked if the Best Practice Manual listed a coop and Ms. Upton stated it only listed barns. Mr. Gregory confirmed the chart did not distinguish and displayed the chart for the Board. Mr. Tierney stated the chart says an enclosed barn requires a 50ft setback but this is not an enclosed barn and he believes it is an accessory structure and since it is less than 100 sq. ft. only requires the 10ft. setback.
- Mr. Scholz asked why she was seeking relief from Section 616.6.1 and Ms. Upton stated it was listed in her denial letter and Mr. Gregory explained it was because they were adding impervious surface. The Chair asked if Section 602.1.4 was consistent with the Residence A District and Mr. Scholz stated the correct Section number is 603.1.2. He read Section 603.1.2 into the record and noted it was the same exact wording as the section posted. The Chair agreed and stated this should not hold up the application and they could amend it during the motion.

The Chair opened the hearing to the public at 8:10pm.

- Ms. Upton distributed two letters of support from Glen Williams of 66 Turtle Rock Road and Rebecca Vandeventer of 37 Turtle Rock Road which Mr. Partington read into the record and the Chair accepted as Exhibit A (Glen Williams) and Exhibit B (Rebecca Vandeventer).
- Richard Coakley, 70 Turtle Rock Road, addressed the Board. He distributed some pictures which the Chair accepted as Exhibit C. He stated the coop is 8 ½ feet not 10 feet from the building and stated his concern that heavy rains will wash waste from the chickens into Cobbetts Pond and onto his property.
- Kathleen DiFruscia, 38 Horseshoe Road, addressed the Board on behalf of the Cobbetts Pond Improvement Association. She stated Cobbetts Pond is an impaired water body and she is concerned the waste will go into the water since she hasn't seen anything on the plan to capture the runoff. She stated she would like to see a Minor Site Plan Application to deal with storm water run off since the Best Management Practices clearly specify that manure capture and runoff should be addressed on a Minor Site Plan Application and there is no hardship for the applicant to go forward with a Minor Site Plan Application. The Chair asked if this were a shed would it require a Minor Site Plan and Ms. DiFruscia answered yes.
- Chuck Upton, 68 Turtle Rock Road, stated there are bushes and 50ft of woods and he does not believe there will be any runoff to the pond. He also noted this is no different than the many ducks already on the pond.
- Erin Upton stated the fence is right on the property line and her measurement was 10ft. She also noted the thick vegetation would act as a buffer. She explained the only construction being done will be painting the coop and adding a rubber or shingle roof, a ramp, and lowering the coop. She also explained chickens do not go out in the rain or snow, the tree cover protects the run area from the rain, and the manure is picked up daily and the area is raked out either daily or every other day bagged and disposed of.
- Mr. Scholz asked if painting, lowering, or the addition of a roof to the coop is considered construction and Mr. Gregory stated only the lower height would possibly be considered as construction. Mr. Gregory also noted that since the Building Department told them they wouldn't need a permit for the coop the Board of Selectmen waived all fees for the variance application.
- Mr. Coakley asked why abutters weren't notified about the Planning Boards decision to allow chickens on this property and Mr. Tierney explained the Ordinance was changed by a Town Vote and those hearings were open to the public. He stated by right they can have chickens without notifying abutters and it is just the coop that is being questioned.
- Ms. DiFruscia stated abutters didn't get notice of the request to the Board of Selectmen to waive the fees.

The Chair closed the public portion at 8:35pm

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 5-0.

- Mr. Scholz stated he is not convinced relief from Section 603.1.2 is required and Mr. Tierney agreed and stated Section 703 requires only a 10ft setback for an accessory building and since they already have the 10ft setback relief is not required. Mr. Tierney also noted a

coop is not defined in the Zoning Ordinance and he believes based on its size of 27.5 sq. ft. the 10ft setback applies.

- Mr. Partington asked if the size and volume of the coop is the reason they believe it doesn't require the same setback as a barn and Mr. Scholz read the definition of an accessory building into the record and stated he believes this meets that definition since there is no definition for a coop or barn in the Zoning Ordinance.

Mr. Scholz motioned for Case #34-2014, Lot 21-K-27, that relief is not required from Section 603.1.2 or Section 602.1.4 because accessory structures are covered under Section 703, seconded by Mr. Partington. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

- Mr. Partington stated regarding Section 616.6.1 the only criteria that is met is that surrounding properties will not be diminished. He believes granting the request will be contrary to public interest, the spirit of the ordinance is not observed, substantial justice will not be done, and it does not meet the hardship criteria as there is nothing unique and this is exactly why the ordinance exists.
- Mr. Scholz stated this would be required even if it was a shed and he believes it is reasonable for them to go to the Planning Board.
- Mr. Tierney stated it is the Planning Boards job to look at the overall use and area to make sure protection is there.
- Mr. Hughes and the Chair agreed.

Mr. Scholz motioned for Case #34-2014, Lot 21-K-27, to deny relief from Section 616.6.1, seconded by Mr. Hughes. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

The Chair sat Mr. Yennaco for Mr. Hughes.

Mr. Partington read Case #37-2014 into the record along with the abutter list and letter from the owners authorizing Edward N. Herbert Associates to represent them in this case.

Lot 11-A-860, Case # 37-2014

Applicant – Edward N. Herbert Assoc. Inc.

Owner – James & Patricia Flynn

Location – 35 No. Lowell Road

Zone – Residence B

Variance from the follow sections of the Zoning Ordinance are requested to allow the sub-division of a pre-existing non-conforming lot.

Section 702, Appendix A-1 to allow the two (2) newly created lots to have frontages of 34.48' each where 175 feet is required.

- Mr. Gendron of Herbert Associates addressed the Board. He stated this is a 7.47 acre pre-existing non-conforming lot with a total frontage of 68.96 ft. There are two existing

permitted uses on the parcel, the Pine Hill Elderly Housing Facility and a single family home and the owners are seeking to divide the frontage evenly so that in the future the ownership can be divided between the two uses. He stated the parcel meets the soil requirement and if allowed the two properties will share an easement for the driveway and well. He also noted they are not proposing any new construction. He then read the 5 criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked if there was an Easement Plan and Mr. Gendron replied they will submit an Easement Plan if the Planning Board requires it, otherwise they will put a note on the plan.
- Mr. Scholz asked who would maintain the driveway and Mr. Gendron replied both owners will share the cost of maintenance.

The Chair opened the hearing to the public at 8:58pm.

- James Flynn, 35 North Lowell Road, addressed the Board. He explained it is becoming difficult to manage the work demanded by the property and he is seeking to subdivide it so he can keep his home and sell Pine Hill.

The Chair closed the public portion at 9:00pm.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Yennaco. Motion passed: 5-0.

- Mr. Yennaco stated he has no issues with this request.
- Mr. Partington stated he believes this meets all 5 criteria and the uniqueness is the existing 2 uses on a single lot.
- Mr. Scholz and Mr. Tierney agreed.

Mr. Scholz motioned for Case #37-2014, Lot 11-A-860, in consideration of the 5 criteria, to grant relief from Section 702, Appendix A-1, to allow two newly created lots to have frontages of 34.48' where 175 ft. is required, as presented, seconded by Mr. Tierney. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Review and Approval of Draft Minutes – September 9, 2014

Mr. Partington motioned to approve the September 9, 2014 ZBA minutes as amended, seconded by Mr. Scholz. Motion passed: 5-0.

Mr. Yennaco motioned to adjourn the September 23, 2014 ZBA meeting at 9:05pm, seconded by Mr. Tierney. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, ZBA Minute Taker.