



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes April 13, 2010

Board Members

Mark Samsel – Chairman
Dianna Fallon – Vice-Chairman
Tom Murray – Member
Elizabeth Dunn – Member
Heath Partington – Member
Bruce Richardson – Alternate (Excused)
Jim Tierney – Alternate
John Alosso - Alternate

Staff:

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Lot #17-L-78-A-1 Case # 8-2010

Applicant – Peter Bronstein
Owner – Brett & Larissa Nigro
Location – 28 Horseshoe Rd.
Zone – Residential A

A variance is requested from Section(s) 401, 702 and Appendix A-1 and 1.10b of the proposed Cobbetts Pond Watershed Overlay District of the Zoning Ordinance to permit a garage / shed with dimensions of 16' - 3" x 24' - 4" to remain in place on a non-conforming lot of 2,578 sq ft with front setback of 8' +/- , side setback of 7.5' and 12" and back setbacks of 12" and 18" with impervious area exceeding 30% and building coverage of less than 20%.

Mrs. Fallon read the case into the record and a letter from Attorney Bronstein requesting Case 8-2010 be rescheduled to the May 11, 2010 Zoning Board meeting.

The Chairman said that this is the second time this case has been rescheduled.

Mrs. Dunn asked the abutters if they had any objection to continuing Case 8-2010. The abutters asked how many more times the case can be moved. Mrs. Dunn said that the Board can deny the request to move Case 8-2010 and act on it as it is or could deny it without prejudice.



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Mr. Richard Morway of 193 Range Road said that this was the second time he has attended a meeting expecting to hear Case 8-2010. He prepared a presentation for the Board and asked that the Board deny the request for a continuance.

Mr. Murray motioned and Mrs. Fallon seconded the motion to move Case #8-2010 to the May 11, 2010 meeting. **Motion passed 3-2.** Mrs. Dunn and Mr. Partington voted against the motion.

Lot #1-C-350 Case # 13-2010

Applicant – Joe Maynard for Benchmark Engineering

Owner – Joe Bradley

Location – 85 Kendall Pond Rd.

Zone – Rural

A variance is requested from Section(s) 401 and 702 and Appendix A-1 of the Zoning Ordinance to permit the construction of a 10' x 42' farmer's porch on the side of an existing dwelling.

The Chairman appointed Mr. Tierney to replace Mrs. Dunn who recused herself from Case 13-2010.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. The existing home, built some time in the 1800's, is centered on the lot with a circular driveway in the front. The existing house sits 26-feet from the right-of-way. The proposed farmers porch will be the same dimensions as the existing porch. The proposed porch will wrap around and tie into the addition outside the 50-foot setback. Mr. Maynard submitted two photos that were marked as Exhibits A & B. A portion of the driveway will be removed and realigned. Mr. Maynard said that 200 square feet would be in the encroachment. Mr. Maynard read the supporting criteria into the record.

Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session. **Motion passed 5-0.**

Deliberative Session, Case 13-2010

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance from Sections 401 & 702 Appendix A-1 of the Zoning Ordinance per the plan submitted. **Motion passed 5-0.**



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Lot #16-F-4 Case # 14-2010

Applicant – Joe Maynard for Benchmark Engineering

Owner – James Frazier

Location – 24 Ash St.

Zone – Residential A

A variance is requested from Section(s) 1.2A, 1.3A, 1.6, 1.6C, 1.10A, 1.10B & 1.10C of the Cobbetts Pond Watershed Protection Overlay District of the Zoning Ordinance to permit redevelopment of the property per the previously approved variance # 2-2010 which granted relief to 401, 406.2, 702 & Appendix A-1.

Mrs. Dunn returned to the Board.

Mrs. Fallon read the case into the record and mentioned that there was a letter in the file from the Conservation Commission. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Mr. Maynard explained that this application was filed in December before the posting of the Cobbetts Pond Watershed Protection Overlay District Ordinance and has been stalled until the Ordinance passed. The portions of the new Cobbetts Pond Watershed Protection ordinance that are required are the following:

- Lawn area providing 30% where 10% is allowed.
- Impervious surface (41% exists) providing 35% where 30% is allowed.
- Permeable product must be installed on the driveway within 75-feet of the pond. In this case it is impossible because permeable product can not be used within 35-feet of the septic system; a dry well will be created to manage runoff.

Mr. Maynard mentioned a letter received from Attorney Difruscia and his meeting with her regarding the intentions of the ordinance. An improvement will be made by removing the screen room and creating a vegetated swale. The septic system in the area of the screen room will be removed and the new system that was installed will be utilized. By creating the vegetated swale any runoff coming from the hill will be pretreated causing a large drainage improvement. Another improvement is the proposed dry well that will manage runoff.

Mrs. Dunn said that while reviewing the file she looked at some of the dates and found that the Building permit was applied for in November well before the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance. Mrs. Dunn questioned whether the variance was needed because if you look at Statute 676:12 it states *I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if: (a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7...* The proposed changes, according to Ms. Scott, were posted on December 24, 2009.



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Mrs. Dunn went on to say the application was submitted on November 16, 2009 and asked why this ordinance applies. Mrs. Dunn read a portion of the January 14, 2010 letter from Attorney Campbell that does not delineate between those applications which were filed before and after the posting of the Cobbetts Pond Watershed Article.

The Board asked Mr. Maynard the filing date of his Zoning Board application. Mr. Maynard said he filed around December 18, 2009 (actually it was December 11, 2009). The Cobbetts Pond Watershed Protection Overlay Ordinance was posted on December 24, 2009.

The members had a lengthy discussion regarding the applicability of RSA 676:12.

The first motion was crafted by Mrs. Dunn, Mr. Samsel and Mr. Murray. Mrs. Dunn motioned that the Zoning Board has determined that the Cobbetts Pond Watershed Protection Overlay Ordinance Section 616 does not apply to this application and no variance is necessary. Relying on RSA 676:12 the Board has determined (Mark) In applying RSA 676:12 because the application for Case 14-2010 occurred 6 days prior to the posting of the Cobbetts Protection Ordinance therefore (Tom) no relief is necessary from Section 616.

Attorney Kathleen DiFruscia, legal advisor to the Cobbetts Pond Improvement Association said she did not look at the application process or the building code but it was certainly the intent that any development that was approved and if the process was started prior to the posting of the ordinance they would not have to go for a variance.

Mrs. Dunn changed her motion.

Mrs. Dunn motioned and Mr. Murray seconded the motion. Having applied RSA 676:12 the Zoning Board has determined because the building permit application was received prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance no relief is necessary from Section 616 for 24 Ash Street. **Motion passed 5-0.**

Lot #17-J-113 Case # 15-2010

Applicant – Joe Maynard for Benchmark Engineering

Owner – Matthew Gaudio

Location – 16 Rocky Ridge Rd.

Zone – Residential A

A variance is requested from Section(s) 1.2A, 1.3A, 1.6, 1.6C, 1.8, 1.10C of the Cobbetts Pond Watershed Protection Overlay District of the Zoning Ordinance to permit the redevelopment of the property per the previously approved variance Case # 46-2009 & 46A-2009 which granted relief to 401, 702 & Appendix A-1.



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Mrs. Fallon read the case into the record and a letter from the Conservation Commission stating that they reviewed the plan and had no objections.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, explained that the application for 16 Rocky Ridge was filed prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance.

Mrs. Dunn motioned and Mr. Murray seconded the motion. Having applied RSA 676:12 the Zoning Board has determined because the building permit application was received prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance no relief is necessary from Section 616 for 16 Rocky Ridge. **Motion passed 5-0.**

Lot #17-M- 22 Case # 16-2010

Applicant – Joe Maynard for Benchmark Engineering

Owner – Richard Armstrong & Alan Armstrong

Location – 19 Oak St

Zone – Residential A

A variance is requested from Section(s) 1.2A, 1.3A, 1.6, 1.6C, 1.10A, 1.10B of the Cobbetts Pond Watershed Protection Overlay District to permit the redevelopment of the property per previously approved variance case # 12-2009 which granted relief to 401, 405, 406, 702 and Appendix A-1.

Mrs. Fallon read the case into the record and a letter from the Conservation Commission stating that they reviewed the plan and had no objections.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, explained that the application for 19 Oak Street was filed prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance.

Mrs. Dunn motioned and Mr. Murray seconded the motion. Having applied RSA 676:12 the Zoning Board has determined because the building permit application was received prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance no relief is necessary from Section 616 for 19 Oak Street. **Motion passed 5-0.**



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Lot #17-L-50 Case # 17-2010

Applicant – Joe Maynard for Benchmark Engineering

Owner – Derek & Jessica Monson

Location – 18 Turtle Rock Rd.

Zone – Residential A

A variance is requested from Section(s) 1.2A, 1.3A, 1.6, 1.6C, 1.10B, 1.10C of the Cobbetts Pond Watershed Protection Overlay District of the zoning ordinance to permit the redevelopment of the property per previously approved variance case # 31-2009 which granted relief to 405, 405.2, 405.5, 702 & Appendix A-1

Mrs. Fallon read the case into the record and a letter from the Conservation Commission stating that they reviewed the plan and had no objections.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, explained that the application for 18 Turtle Rock Road was filed prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance and that he received Shoreland approval on December 10, 2009.

Mrs. Dunn motioned and Mr. Murray seconded the motion. Having applied RSA 676:12 the Zoning Board has determined because the building permit application was received prior to the posting of the Cobbetts Pond Watershed Protection Overlay Ordinance no relief is necessary from Section 616 for 18 Turtle Rock Road. **Motion passed 5-0.**

The Chairman granted a five- minute recess.

The Chairman called the meeting back to order.

Lot #9-A-400, Case #3-2010 (Continued from March 9, 2010)

Applicant – Steven A. Clark for Marc Sneider

Owner – Brian Bauchman

Location – 120 Haverhill Road

Zone – Rural

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on January 26, 2010

The Chairman appointed Mr. Tierney to replace Mr. Partington who recused himself from the rehearing request of Case 3-2010. Mr. Partington recused himself because of public statements he had made regarding Case 3-2010.



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The Chairman read into the record the following:

The following relief is sought in the Board's decision:

- 1. That the owner be required to relocate all of his business as of April 1, 2010. The owner of the property shall only have the right to store three tow vehicles.*
- 2. No employees or business activity is allowed at the property as of April 1, 2010*
- 3. No auto repair or maintenance of business and personal vehicles for friends and family shall be allowed and must be immediately discontinued.*

The Chairman read a portion of the four-page February 25, 2010 letter submitted by Steven Clark of Boutin Altieri.

Mrs. Dunn asked if this is now moot because this agreement was to have effect up until April 1, 2010. Mr. Samsel said the opportunity to challenge the agreement is still in play regardless of the dates.

Mrs. Dunn said one of the criteria to grant a rehearing is new information that was not available at the time of the original decision. The new information that was not available the night of the decision was that the Board thought the court would take action but the court did not.

Mrs. Fallon said that there is no new information in relationship to Ms. Scott's letter.

After the Board reviewed the submitted information Mr. Murray motioned and Mrs. Fallon seconded the motion to deny the request for a rehearing of Case 3-2010 because there was no new information and no technical error was made. Request denied; **motion passed 4-1**. Mrs. Dunn voted against the motion because there was new information and an error was made in the original decision.

Mr. Partington returned to the Board.

Approval of April 7, 2010 Minutes

The April 7, 2010 minutes will be reviewed at the April 20, 2010 meeting.



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Miscellaneous Business

Mr. Murray said he has concerns regarding procedure and the way the Cobbetts Pond Watershed Protection Overlay Ordinance is written. Mr. Murray would like to have the process clarified and would like to have a meeting with Town Counsel, the Planning Board and staff.

Mr. Partington motioned and Mr. Murray seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for **April 20, 2010 at 7:00 PM** at the Town Hall.