



# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes July 13, 2010

### Board Members

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

### Staff

Michael McGuire – Building Inspector  
Patricia Kovolyan – Administrative Assistant

### Lot # 16-D-14 Case # 27-2010

Applicant – Benchmark Engineering Inc.  
Owner – Susan Messina  
Location – 25 North Shore Rd  
Zone – Residential A

A variance is requested from Section(s) 401 for the expansion of a non-conforming lot and structure, 406.2 for the increase of footprint and volume, 601.3 for the erection of a permanent structure within the WWPDP, 601.4.2 for land area within 100 feet of any wetland greater than 1 acre, 602.1.9.2 for not being attached or contained within the primary structure, 601.4.8 for the alteration of the surface configuration of the land, 616.6(c)(1) for exceeding the allowed 10% of lawn area, 616.8 (a) and 702 and Appendix A-1 of the Zoning Ordinance to permit the reconstruction of existing shed and dwelling in same footprint, construct a new detached garage with accessory apartment above and construct a covered walkway from upper parking area to dwelling.

### Required

50 ft shoreline set back  
50 ft street set back  
30 ft side set back  
100 ft WWPDP  
100 ft tributary buffer  
10 % lawn area  
50,000 sq ft lot size

### Provided

3 ft dwell / 6 ft shed  
30 ft  
3 ft shed  
15 ft dwelling  
15 ft dwelling  
20%  
35,980 sq ft



## BOARD OF ADJUSTMENT

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

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted four photos, marked as Exhibit A and presented the case. The existing home is 3-feet from Cobbetts Pond. North Shore Road is an easement within this property. The lot is burdened by a wetland that drains to a culvert that goes under North Shore road. With the new CPIA Ordinance there is also a tributary buffer setback that mimics a WWPD. The house is accessed by a path that winds along the side of a hill. There is a 30-foot difference in elevation between where you park your car and where you enter the house. Impervious area of the existing house is 19.1%. Placing the garage and accessory apartment in the area shown on the displayed plan will provide more protection to the WWPD than if the garage was attached to the home. The impacts to the pond will be less detrimental if the garage is closer to the road. Shoreline will allow the garage to be built behind the main dwelling the majority of trees would have to be removed to accomplish that and there would need to be extensive grading. Mr. Maynard showed on the displayed plan the direction of the water flow. Impacts to the property would be less detrimental if the garage was kept close to the road. There are three drainage improvements proposed. The applicant is trying to maintain an all weather access along the existing path. A covered walkway is proposed with a roof and open sides. A new septic system and foundation will be installed.

Mr. Murray questioned the size of the proposed garage (26' X 48'). Mr. Maynard replied that he is well below the impervious coverage for the lot. The applicant would like to park a boat in the garage along with cars and use the fourth bay for storage. The garage would look like a small cape style building with dormers on the street side.

Mr. Tierney said that the applicant is seeking relief from the definition of accessory apartments and under the state building code it is going to be considered a second dwelling because the garage would not be attached to the main dwelling by a common wall. Mr. Tierney went on to say that Section 603.1.1 of the Ordinance would be violated because the garage as proposed is a second dwelling.

Mrs. Dunn said the issue at hand is if whether or not this is a second dwelling on a single lot. It cannot be an accessory apartment because it does not have a common wall and it is not contained entirely in the principle building.

Mr. Maynard read the supporting facts into the record.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to go into Deliberative Session.

**Motion passed 5-0.**



## BOARD OF ADJUSTMENT

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

### Deliberative Session, Case 27-2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Section 401 for the expansion of a non-conforming lot and structure, 406.2 for the increase of footprint and volume, 601.3 for the erection of two permanent structures within the WWPD, 601.4.2 for land area within 100 feet of any wetland greater than 1 acre, 601.4.8 for the alteration of the surface configuration of the land, 616.6(c)(1) for exceeding the allowed 10% of lawn area, 616.8 (a) and 702 and Appendix A-1 of the Zoning Ordinance to permit the reconstruction of existing shed and dwelling in same footprint, construct a new detached single story garage and construct a covered walkway from upper parking area to dwelling. Mrs. Dunn withdrew her motion.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to open the meeting to public testimony for the purpose of hearing if Mr. Maynard would like a continuance to amend his request. **Motion passed 5-0.**

### Public Session

Mr. Tierney said that since the plan for the garage was not submitted the Board can deny without prejudice.

The Chairman granted a 10 minute recess.

The Chairman called the meeting back to order.

After talking with his client, Mr. Maynard said that Ms. Messina would like to park both vehicles and a boat inside a garage. There are larger homes on North Shore Road with five car garages. Ms. Messina does not want to limit the garage to one story. The proposed garage could be constructed and the second floor left unfinished. Mr. Maynard asked to proceed with the request for the garage or continue the case to the next meeting if the Board needed to see a plan of the garage.

Mrs. Dunn motioned to continue Case 27-2010 to the July 27, 2010 meeting and ask the applicant to provide a plan of the garage. Mrs. Dunn's motion was not seconded.

Mr. Maynard drew a sketch of the proposed garage. The Chairman marked the sketch as Exhibit B at Mrs. Fallon's request.

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



## BOARD OF ADJUSTMENT

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

### Deliberative Session, Case 27-2010

Mr. Murray motioned and Mrs. Fallon seconded the motion grant a variance for Case 27-2010 as requested from Section 401 for the expansion of a non-conforming lot and structure, 406.2 for the increase of footprint and volume, 601.3 for the erection of two permanent structures within the WWPD, 601.4.2 for land area within 100 feet of any wetland greater than 1 acre, 601.4.8 for the alteration of the surface configuration of the land, 616.6(c)(1) for exceeding the allowed 10% of lawn area, 616.8 (a) and 702 and Appendix A-1 of the Zoning Ordinance to permit the reconstruction of existing shed and dwelling in same footprint, construct a new detached garage and covered walkway from upper parking area to dwelling per plan and exhibits. **Motion passed 4-1.** Mrs. Dunn voted against the motion because the hardship criteria was not met.

### Lot # 22-R-800 Case #28-2010

Applicant – Michael Guthrie & Kelly Jean Johnson

Owner – Michael Guthrie & Kelly Jean Johnson

Location – 2 Squire Armour Rd.

Zone – Rural

A variance is requested from Section(s) 710 of the Zoning Ordinance to permit the installation of a 5 foot privacy fence along the front and side lot lines which will not meet the required 60 foot setback.

Mrs. Fallon read the case into the record. Mrs. Johnson submitted thirteen photos that were marked as Exhibit A and presented her case. Mrs. Johnson occupied the property before Squire Armour Road was built. She agreed to allow the Town to change her property to accommodate the request to build a new road. The Johnsons were forced to move their driveway from Range Road to Squire Armour Road. Because of various state laws and issues with Range Road the Johnsons were not given an option regarding location of the driveway. This lot has frontage on two sides. Following are Mrs. Johnson's reasons for the request of a 5-foot privacy fence:

- Overflow of vehicles from Griffin Park use her property as a parking lot.
- Cars frequently drive above the speed limit.
- Protection of three year old from high traffic area.
- Privacy.
- Prevent neighborhood children from riding scooters, skateboards, sleds and bicycles on her property without her permission.
- Prevent unknown people from picking raspberries on her property even after being asked not to do so.
- Protection from the many Griffin Park visitors who leave their trash on her property.
- Protection from the many Griffin Park visitors who conduct personal grooming habits outside their automobiles such as diaper changing, clothes changing and cleansing.



## BOARD OF ADJUSTMENT

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

- Prevent unsolicited visitors from knocking on sliding glass doors from the rear deck instead of using the front walkway.

A 3-foot fence would not provide the privacy or protection sought by the applicant.

Mrs. Dunn motioned and Mr. Murray seconded the motion to go into Deliberative Session.

**Motion passed 5-0.**

### **Deliberative Session, Case 28-2010**

Mrs. Dunn reviewed the criteria. Mrs. Fallon motioned and Mr. Murray seconded the motion to approve a variance for Case 28-2010 to construct a 5-foot privacy fence on the owners property line per the plan submitted. **Motion passed 4-1.** Mrs. Dunn voted against the motion because the request did not meet the hardship criteria under Sections A & B.

### **Lot # 22-L-20 & 22 Case # 29-2010**

Applicant – Richard Hannon

Owner – Richard Hannon

Location – (52) 54 West Shore Rd

Zone – Residential A

A **variance** is requested from the Town of Windham Zoning Ordinance and Land Use Regulations Section(s) 401 and 702 and Appendix A-1 to permit the removal of a shed, garage and tennis court and to construct a new dwelling on 2 under sized lots which will be merged as a condition of the variance. The resulting lot having street frontage of 100 ft where 175ft is required, a front setback of 36 ft where 50 ft is required, side setbacks of 20 ft where 30 ft is required and lot area of 9,582 sq ft where 50,000 sq ft is required.

### **Deliberative Session**

### **Lot #22-L-20 & 22, Case #29-2010**

Mrs. Dunn recused herself from Case 29-2010 because she made prior statements about the case. The Chairman appointed Mr. Tierney to replace Mrs. Dunn.

Mrs. Fallon read the case into the record. The owner, Mr. Richard Hannon, presented his case. A variance was granted for this request expired on May 5, 2010. Mr. Hannon asked the Board to extend or renew the variance. The Chairman asked Mr. Hannon what occurred during the past year. Mr. Hannon said that the two lots were merged and during the course of the year Mr. Hannon tried to sell the property. There is a builder that wants to buy the property if there is a building permit. The garage, tennis court and shed will be removed from the lot. Mr. Hannon showed on the displayed plan that the well will be 75' from the enviro-system. All state approvals, including Shoreline Protection have been received. Mr. Hannon read the supporting facts into the record.



## BOARD OF ADJUSTMENT

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

Mrs. Dunn of Woodvue Road spoke in opposition to this request. Mrs. Dunn said that the applicant has not met the criteria for the granting of a variance. The applicant addressed the criteria for a law that is no longer in existence. There are no area variances any more. The applicant has failed to meet the hardship criteria. This lot is too small.

The Chairman said that lot coverage would be 17%.

Mr. Hannon had no other statements.

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

### **Deliberative Session, Case 29-2010**

Mr. Partington reviewed the criteria. Mr. Partington motioned and Mrs. Fallon seconded the motion to approve a variance for Case #29-2010 from Sections 401 & 702 Appendix A-1 to permit the removal of a shed, garage and tennis court and to construct a new dwelling. The resulting lot having street frontage of 100 feet where 175 feet is required a front setback of 36 feet where 50 feet is required, side setbacks of 20 feet where 30 feet is required and lot area of 9582 square feet where 50,000 square feet is required. **Motion passed 5-0.**

Mr. Tierney stepped down and the Chairman asked Mrs. Dunn to rejoin the Board for the balance of the meeting.

### **Minutes**

Mr. Murray motioned and Mr Partington seconded the motion to approve the June 22, 2010 minutes. **Motion passed 4-0-1.** Mrs. Fallon abstained because she was not at the June 22, 2010 meeting.

### **Miscellaneous Board Business**

#### **Extending Variances**

Mrs. Fallon read into the record a letter dated July 6, 2010 from Mr. Joseph Maynard of Benchmark Engineering regarding Cases 18-2009 and 19-2009 Abbott Road. Mr. Maynard explained in his letter that both cases were granted a variance on July 29, 2009. Due to the location of the properties a number of permits are required from multiple state agencies before construction can begin. Mr. Maynard has received the required Shoreland permits. The only outstanding permit is from the Subsurface Systems Bureau and some easements are being reviewed by the same agency that will take a few more weeks to finalize. The letter goes on to say that it has been Mr. Maynard's understanding that the Board's position on when a permit may expire depends on if they are "actively" working towards the development that received the approval. In Mr. Maynard's case he has been working toward the approval of the state permits. Mr. Maynard's client will continue construction once the necessary permits are obtained and



## BOARD OF ADJUSTMENT

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

would like to make sure there is no issue with obtaining a building permit for the project after July 29, 2010. Mr. Maynard's letter respectfully requested a response from the Board.

Mrs. Dunn suggested that the Board refer Mr. Maynard's letter to Attorney Campbell and get an opinion on whether the actions are substantial enough not to require another variance.

The Chairman read into the record Section 906 of the Zoning Ordinance. *Duration of Approvals: - Any variance or special exception granted by the Board of Adjustment shall be terminated one (1) year from its issuance by the Board of Adjustment and recorded with the Town Clerk unless the variance or special exception granted has been exercised by the recipient. However, this Section shall not preclude the earlier invalidity of a variance or special exception if prior to its exercise by the recipient the circumstances in existence at the time or its issuance have altered appreciably.*

The Chairman said that Mr. Maynard should get his application in before July 29, 2010 and request relief from Section 906 of the Ordinance.

### Joint Meeting

Mrs. Fallon read into the record a letter dated July 13, 2010 from Mr. Peter Zohdi of Edward N. Herbert Associates, Inc. regarding the septic design for buildings 6 & 7 at Lot 19-A-801, Brookview Road, Windham Meadows Condo Associations, Inc. asking to be placed on an agenda of a joint meeting with the Planning & Zoning Boards. The existing leach bed is in failure. The proposed location for the new leach bed is partially within the WWPD and requires a Special Permit from the Planning Board and a Variance from Section 601.4.6 from the Zoning Board. The Town and State approvals are needed quickly so that the resident can install the new system.

After reading into the record RSA 676:2 Joint Meetings and Hearings, the Chairman said that the applicant does have the right to request a joint meeting. Joint meetings can be used to move things along. In this case it sounds like the situation needs to move along. Procedures regarding joint meetings can be adopted into the by-laws at the July 27, 2010 meeting.

The Chairman will talk with Attorney Campbell regarding Mr. Zohdi's request. The Members are inclined to have a joint meeting with the Planning Board. The Chairman instructed Mrs. Kovolyan to draft a letter to Mr. Zohdi with copies to the Planning Board and Ms. Scott advising him that his request was reviewed at the July 13<sup>th</sup> meeting and the Board would like to move forward with his request, however, there are procedural questions the Board has for Attorney Campbell.



## BOARD OF ADJUSTMENT

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

### August 5, 2010 Meeting

The Board would like to have a meeting on August 5, 2010 to discuss by-laws. Mrs. Kovolyan will check meeting room availability.

### Alternates

Mrs. Dunn motioned and Mr. Partington seconded the motion to appoint Mr. Salvatore Basile and Mr. Mike Scholz as alternates to two year terms. **Motion passed 5-0.**

The Chairman advised Mrs. Kovolyan to send a letter to each alternate welcoming them to the Board.

### Correspondence

- Notice from NHLGC regarding the 23<sup>rd</sup> Municipal Volunteer of the Year Awards.
- Notice from NHLGV regarding the 69<sup>th</sup> Annual Conference scheduled for November 17-19 2010.
- Copy of June 23, 2010 letter from Jonathan Sycamore to Phil LoChiatto regarding the Village Center District concept.
- Email from Byan McDade to Laura Scott regarding a request to modify the ZBA By-laws.
- Copy of letter from Peter Zohdo to Laura Scott regarding Septic Design for Buildings 6 & 7 at Windham Meadows requesting a joint meeting with the Planning & Zoning Boards.
- Letter from Joe Maynard to Mark Samsel regarding ZBA Cases 18 & 19 -2009 Abbott Road.

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 July 27, 2010 at 7:30 PM in the Community Development Department.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.





## **BOARD OF ADJUSTMENT**

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