



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes October 26, 2010

Board Members

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

Staff

Tim Corwin – ZBA/Code Enforcement Administrator
Patricia Kovolyan – Administrative Assistant

Lot #17-J-122, Case #51-2010 (Continued from October 12, 2010)

Applicant – Benchmark Engineering, Inc.
Owner – Branden & Cheryl Tsetsilas
Location – 2 Fox Street
Zone – Residence District A

A variance is requested from (i) **Section 702/Appendix A-1** to install a carport to be located no less than 19 ft. from the front lot line along Fox Street where a minimum 50 ft. setback is required, and 22 ft. from the front lot line along Bell Road where a minimum 50 ft. setback is required; and (ii) from **Section 703** to permit the construction of a carport within the front yard where accessory structures are permitted in side and rear yards only.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owners, presented the case.

- Property has street frontage on three sides.
- Driveway will be off of Fox Road
- 16' X 24' carport will be built over an existing paved area.
- Total of four photos on two sheets were submitted and marked as Exhibits A&B.
- Peaked roof on carport to keep with the character of the home.
- The existing wall behind the carport is approximately 3 feet high.



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Mr. Maynard read the supporting facts into the record.

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

Motion passed 5-0.

Deliberative Session, Case #51-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

The Board discussed the uniqueness of the lot, having frontage on three sides and the area chosen being the best location for the carport.

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case 51-2010, Lot #17-J-122, as requested per the plan submitted. **Motion passed 5-0.**

Lot 17-J-137, Case #52-2010 (Continued from October 12, 2010)

Applicant – Benchmark Engineering, Inc.

Owner – Frank & Frances Morse

Location – 15 Gardner Road

Zone – Residence District A

Applicant proposes to construct a garage expansion within the minimum required side and front yards, construct an expansion of a non-conforming house, and construct a deck within the minimum required rear yard. Relief is requested from (i) **Section 702/Appendix A-1** to permit the expansion of a garage to be located no less than 22 ft. from the front lot line where a minimum 50 ft. setback is required, and no less than 14 ft. from the side lot line where a minimum 30 ft. setback is required; (ii) **Section 406.2** to permit a 150 sq. ft. expansion of the non-conforming house where no expansion is permitted, and from Section 702/Appendix A-1 to permit the construction of the house expansion at a distance of 38 ft. from the shoreland reference line where a minimum 50 ft. setback is required; (iii) **Section 406.2** to permit a 60 sq. ft. deck to be constructed onto the existing non-conforming house and from Section 702/Appendix A-1 to permit the porch to be located no less than 15 feet from the rear lot line where a minimum 30 ft. setback is required; (iv) **Section 616.6(c)(1)** to permit 38% grass coverage where only 10% is permitted; and (v) **Section 702/Appendix A-1** to permit construction on a lot having an area of 27,470 sq. ft where 50,000 sq. ft. is the minimum required, and on a lot not having frontage on a public street where minimum frontage of 175 ft is required.



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Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark, representing the owner, presented the case.

- Total of six photos on three sheets were submitted and marked as Exhibits A, B & C.
- Letter of support from Kenneth Martineau was submitted and marked as Exhibit D.
- 6' X 10' deck falls within the 50' shoreline buffer.
- The proposed 150 square foot addition will be in the rear and to the side of the garage.
- Raze the existing shed.
- Amount of grass coverage will be reduced.
- Drainage improvements will be required.

Mr. Maynard read the supporting facts into the record.

Mr. Arthur Vanderlinden of 13 Gardner Road spoke in opposition stating that this property is already non-conforming and should not be allowed to become more non-conforming. Mr. Vanderlinden asked the Board to turn down the garage portion of the request.

Mr. Maynard said the abutter's property (Mr. Vanderlinden) sits a lot higher and looks over the applicant's property. The owner would agree to maintain a 30' setback and still keep the addition for the boat storage.

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

Deliberative Session, Case 52-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

The Board Members had no issues with the deck or the addition and no problems with the percentage of lawn coverage because it will be reduced.

Mr. Murray motioned and Mrs. Dunn seconded the motion to grant a variance for Case 52-2010 as requested per plan with the exception that the garage expansion be located no closer to the front lot line than 30 feet where 22 feet was requested. **Motion passed 5-0.**



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Lot 17-1-113A, Case #53-2010 (Continued from October 12, 2010)

Applicant – Benchmark Engineering, Inc.

Owner – Joseph Levis, Jr.

Location – 20 Walkey Road

Zone – Residence District A

Applicant proposes to remove an existing non-conforming house on an undersized lot and construct a new home on the lot to be located within all minimum required yards and partially within the Wetland and Watershed Protection District. Relief is requested from (i) **Section 405.2 and 405.3** to permit the replacement of a pre-existing non-conforming structure having an area of 792 sq. ft. with a new structure having an area of 1,132 sq. ft. where no such increase is permitted; (ii) **Section 601.3** to permit the construction of a house to extend 25 ft. into the Wetland and Watershed Protection District; (iii) **Section 616.6(c)(1)** to permit 50% lawn where 10% is permitted; (iv) **Section 702/Appendix A-1** to permit the construction of a house to be located no less than 20 ft. from the front lot line where a minimum 50 ft. setback is required, no less than 20 ft. from the other front lot line where a minimum 50 ft. setback is required, no less than 18 ft. from the side lot line where a minimum 30 ft. setback is required, and no less than 10 ft. from the other side lot line where a minimum 30 ft. setback is required; (v) **Section 702/Appendix A-1** to permit construction on a lot having an area of 6,634 sq. ft where 50,000 sq. ft. is the minimum required; (vi) **Section 702/Appendix A-1** to permit construction on a lot not having frontage on a public street where minimum frontage of 175 ft. is required; and (vii) **Section 702/Appendix A-1** to permit building coverage of 23% where 20% is permitted.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted two letters of support marked as Exhibits A & B and presented the case. The property is located on Walkey Road thru the Lakeview Farm property.

- Property has road frontage on three sides.
- A shoreline protection setback burdens the property.
- WWPD associated with the property.
- Driveway will be off of Walkey Road
- 3000 square feet of grass coverage which would be 50% of the 6000 square foot lot.
- Septic System will be outside of WWPD.
- Requesting a 10 foot setback which would be an improvement over the 5 foot setback.

Mr. Maynard read the supporting facts into the record.

The following abutters spoke in favor of the request:

- Edward Walkey of 22 Walkey Road said this would be an improvement.
- Vincent Bonanno of 27 Walkey Road said this would be an improvement to the neighborhood.



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- Brandon Tsetsilas of 31 Walkey Road is one of two year round residents in the area and is looking forward to the improvement.
- Mr. Joe Levis Sr. of 30 Walkey Road (Father of the Applicant) stated that this is a unique opportunity for his son.

Mr. Maynard said that all the neighbors are in agreement with the proposal and they want to see an improvement to the property.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #53-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Chairman Samsel had no issues with the request, and valued the input of the neighbors, the improvements that have been presented and the attention to any sensitivities.

Mrs. Dunn asked if the size of the presented plan causes diminution of the surrounding properties and whether it is in the spirit and intent of the ordinance. The problem is that this is such a large house on such a small lot and that the height of the new structure is the most striking aspect.

Mr. Murray said the 35 foot height requirement will be met. The problem is the contour and grading of the lot.

Mr. Partington said looking at what is currently in the neighborhood he doesn't think the proposed dwelling would cause diminution of the surrounding properties.

Mr. Murray said the side setbacks will be improved and the dwelling will be centered on the lot. The impervious surface will slightly increase but the runoff will be treated so the lot will function better than it currently does.

Mrs. Dunn motioned and Mr. Murray seconded the motion to grant a variance for Case #53-2010 as requested per the plan submitted. **Motion passed 5-0.**



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Lot 1-C-2014, Case # 55 -2010

Applicant – Tedd Jounakos

Owner – Teresa Carne

Location – 10 Juniper Road

Zone – Rural District

Variations are requested from (a) Section 702/Appendix A-1 to permit the construction of a 12 ft. by 24 ft. carport to be located 22 ft. from the side lot line where a minimum 30 ft. setback is required, and (b) Section 702/Appendix A-1 to permit the construction of a 10 ft. by 12 ft. shed to be located 3 ft. from the side lot line where a minimum 30 ft. setback is required.

Mrs. Fallon read the case into the record.

Mr. Corwin advised the Board that the applicant proposes a carport to be attached onto the residence 22 feet from the side lot line and a shed 3 feet from the same side lot line. Mr. Corwin included with his memo a drawing showing elevations of the proposed carport and shed.

Mr. Theodore Jounakos, representing the owner, presented the case. Nothing can be placed in the rear of the property because of the location of the septic system and underground utilities are located in the front yard. The carport will be on 5 sonor tubes with 6' X 6' posts and will be open on three sides. Mr. Jounakos proposed a change to his request for the shed. He would like to move it 5 feet from the property line and reduce the shed from 10 feet to 8 feet. The shed was placed in line with the carport in order not to obstruct the view from his neighbor's porch. The shed cannot be placed directly behind the carport because of the hard wood trees. Mr. Jounakos read the supporting facts into the record.

Mr. Henry LaBranche of 12 Juniper Road spoke in support of this request stating that he understands that the applicant wants some protection for his vehicles and asked the Zoning Board to consider a stipulation that the structure stay a carport. Mr. LaBranche supports the shed being 5 feet from the property line because Mr. Labranche's house is 30 feet from the property line.

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

Deliberative Session, Case 55-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.



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The Board Members agreed that they did not have a problem with the carport but were having difficulty with the hardship requirement for the shed.

Mr. Partington motioned and Mr. Murray seconded the motion to grant a variance for Case 55-2010 from Section 702 Appendix A-1 to permit a carport to be located 22 feet from the side lot line per the plan submitted. **Motion passed 5-0.**

Mr. Partington motioned and Mr. Murray seconded the motion to deny a variance for Case 55-2010 for the shed to be located 5 feet from the side lot line per the amended plan. **Motion passed 5-0; request denied.**

Lot 12-A-532, Case # 56-2010

Applicant – MacThompson Realty Inc.

Owner – MacThompson Realty Inc.

Location – 125 Indian Rock Road

Zone – Gateway Commercial District, Cobbetts Pond Watershed Protection Overlay District, Wetland and Watershed Protection District

Applicant proposes to redevelop the property as a café with drive-thru service and a bank. The property is currently improved with a single-family residence. Variances are requested from (a) Section 601.3 to locate portions of the proposed parking area and drive-thru lane within the Wetlands and Watershed Protection District; (b) Section 605.3.2 to permit an eating and drinking establishment having off-premise consumption where such establishments are permitted only where consumption is primarily intended to be on the premises; and (c) Section 704.2.7 to permit off-street parking to be located 0 feet from the property line along Indian Rock Road where a minimum of 20 feet is required.

Mrs. Fallon read the case into the record. Mr. Karl Dubay of the Dubay Group, representing the owner, presented the case. Almost two years ago the Zoning Board granted three variances for this property and Mr. Dubay was before the Board to have the same variances granted. Mr. Dubay showed on the displayed plan the configuration of the proposal that includes a bank, miscellaneous retail space and a café with drive thru service. The retaining wall was removed and replaced with a vegetated wall. There will be parking in the front along the right-of-way. The site has full drainage treatment. Quite a bit of the right-of-way was taken by the state. At its most narrow point the parking would be about 1 foot from the right-of-way. The exiting procedure has been worked out with NH Department of Transportation. There will be some employee parking, an underground tank and 34 square feet of the drive thru in the WWPD. The drive thru component for the café will allow traffic flow both on and off the site to move quicker. There are 42 parking spaces on the existing plan.

The Chairman suggested that the Board consider the supporting facts in Mr. Dubay's written testimony. The Board was in agreement.



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Attorney Jerry Prunier advised the Board that the retail space is only 600 square feet in size.

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

Deliberative Session, Case 56-2010

The Board entered the Deliberative Session based on testimony provided and the five points as written and submitted with the application.

Mr. Murray had no issues with the request.

Mr. Partington said the current plan is more aesthetically pleasing than the previous plan but had an issue with the drive thru.

Mrs. Fallon supported Mr. Partington's comments regarding the drive thru.

Mrs. Dunn went through the five criteria.

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case 56-2010 as requested per the plan submitted. **Motion passed 3-2.** Mr. Partington voted against the motion because the request did not meet the spirit and intent of the ordinance or the hardship requirement as pertaining to the drive thru. Mrs. Dunn voted against the motion because it did not meet hardship as pertaining to the drive thru.

Lot 21-Z-267, Case # 57-2010

Applicant – Benchmark Engineering, Inc.

Owner – Phil Bouchard

Location – 2 Horne Road

Zone – Residence District A, Cobbetts Pond Watershed Protection Overlay District

Applicant proposes to raze the existing home and detached garage and construct a new home and garage/carport to be attached to the new home via a covered walkway. Variances are requested from (a) Section 702/Appendix A-1 to permit the construction of a home to be located no less than 38 ft. from the front lot line where a minimum 50 ft. setback is required, no less than 29 ft. from the side lot line where a minimum 30 ft. setback is required, and no less than 18 ft. from the shoreland reference line where a minimum 50 ft. setback is required; (b) Section 702/Appendix A-1 to permit the construction of a garage/carport to be located no less than 25 ft. from the front lot line where a minimum 50 ft. setback is required, and no less than 12 ft. from the side lot line where a minimum 30 ft. setback is required; (c) Section 616.6(c)(1) to permit 30% lawn where only 10% is permitted; and (d) Section 702/Appendix A-1 to permit construction on a lot having



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an area of 27,820 sq. ft +/- where 50,000 sq. ft. is the minimum required, and on a lot having frontage on a public street of 83 ft. where minimum frontage of 175 ft. is required.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case and stated the following:

- 80 Feet of Frontage on Cobbetts Pond Road
- Horne Road is a private Road
- Majority of new home will be on the existing footprint
- The location of the garage will be adjusted to connect to the new home
- 20% Impervious Coverage
- 38% Lawn Coverage
- Improvements will be made to the drainage

Mr. Maynard read the supporting facts into the record.

Mrs. Dunn was concerned about the size of the proposed house.

Mr. Maynard said that there are larger homes on smaller lots on Horne Road.

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

Deliberative Session, Case 57-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Partington motioned and Mr. Murray seconded the motion to grant a variance for Case 57-2010 as requested per the plan submitted. **Motion passed 5-0.**

Review and Approval of Meeting Minutes

Mrs. Dunn motioned and Mr. Partington seconded the motion to accept the September 21, 2010 minutes. **Motion passed 4-0-1.** Mr. Murray abstained.

Mrs. Dunn motioned and Mr. Partington seconded the motion to accept the September 28, 2010 minutes. **Motion passed 5-0.**

The October 12, 2010 minutes will be reviewed at the next meeting.



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Miscellaneous Board Business

Mr. Tierney brought up the manner in which Case #49-2010 was decided at the October 12, 2010 ZBA meeting. Mr. Tierney suggested that the Board should have denied the continuance and given the applicant the opportunity to present his case. The Board discussed Mr. Tierney's suggestion and the Chairman asked whether the Board should consider re-hearing the case. The Board agreed to give the matter further consideration at the ZBA by-law workshop scheduled for November 2, 2010.

The Board voted **5-0** to not schedule a meeting for December 28, 2010.

Mr. Corwin asked the Board to consider supporting the request of Peter Caron to the Board of Selectmen for a waiver of fees, with respect to a variance application filed by Mr. Caron for consideration at the November 9, 2010 ZBA meeting. The Board agreed to take no action on the waiver of fees request as it is the Board Of Selectman's purview.

Ms. Fallon read the ZBA mail into the record. The mail included:

- A letter of resignation from Board Alternate, Sal Basile
- Calendar for Zoning Ordinance Amendment Schedule
- Letter to Planning Board chair from Jonathan Sycamore (cc to ZBA) re: chain link fence at 32 Indian Rock Road
- Misc fundraising event flyer
- Letter of interest from Jonathan Sycamore to serve as an Alternate on the Board
 - The Board agreed to invite Mr. Sycamore to the next meeting of the ZBA

Adjournment

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

A workshop Meeting is scheduled for November 2, 2010 at 7:00 PM in the Community Development Department to discuss bylaws.0

The next regular meeting of the Zoning Board of Adjustment is scheduled for November 9, 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 and Tim Corwin.