



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Minutes
Draft January 25, 2011

Roll Call:

Mark Samsel – Chairman – Present
Tom Murray – Vice Chairman – Present
Dianna Fallon – Secretary Member – Present
Elizabeth Dunn – Member – Present
Heath Partington – Member - Present

Jonathan Sycamore – Alternate – Present
Michael Scholz – Alternate – Present
Jim Tierney – Alternate - Excused
John Alosso – Alternate - Absent

Staff:

Mimi Kolodziej – Planning Assistant – Present

Call to Order / Attendance

Chairman Samsel call the meeting to order at 7:33 p.m.

Public Hearings – Continued from January 11, 2011 ZBA Meeting:

Lot 21-Z-264, Case #67-2010

Applicant – William R. Mason, Esquire
Owners – Leslie Crook
Location – 6 Horne Road

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

Applicant proposes to subdivide an existing lot into two lots, neither having frontage on a public street, and one lot not having the minimum required area. Variances are requested from Sections 401 and 702/Appendix A-1 of the Town of Windham Zoning Ordinances and Land Use Regulations to permit the subdivision of a parcel of land into two lots where (a) both lots will have frontage on a public street of 0 ft. where minimum frontage of 175 ft. is required; and (b) one lot will have an area of 35,109 sq. ft. +/- where 50,000 sq. ft. is the minimum required.

Ms. Fallon read the Hearing Notice into the record.

Bill Mason, representing the owner, Leslie Crook, requested an extension of the variance request Case #67-2010 in order to follow-up on 4 additional files regarding Lot 21-Z-264 that had just recently been assembled by Mr. Corwin. Mr. Mason needs sufficient time to summarize and consider this new information so as to adequately present it to the Board.

Ms. Dunn made a motion to extend the Hearing of Lot 21-Z-264, Case #67-2010 to the February 22, 2011 meeting. Seconded by Mr. Murray. Vote passed 5-0.

Lot 11-C-13, Case#1-2011

Applicant – Edward N Hebert Assoc., Inc.
Owner – Indian Rock Realty, LLC
Location – 91 Indian Rock Road

Zone – Commercial District A, Wetland and Watershed Protection District

Applicant proposes to construct an addition onto the existing office building which will add 36 feet onto the back of the building. A variance is requested from (a) Section 601.3 of the town of Windham Zoning Ordinance and Land Use Regulations to permit a portion of the addition to extend into the Wetland and Watershed Protection District which does not permit office buildings; and (b) Section 702/Appendix A-1 to permit the addition to be located 31 feet front from the property line along Indian Rock Road where a minimum of 75 feet is required.

Ms. Fallon read the Hearing Notice and a letter from the Conservation Commission dated January 21, 2011 into the record. The letter from the Conservation Commission stated they had no objection to the requested variance if the addition be reduced to 26' from 36' and that a topographical drainage plan be provided by the State. Their decision passed 4-1.

Mr. Peter Zohdi re-capped the variance request for the benefit of the Board. The Board discussed drainage concerns and the definition of WWPD land in reference to this variance request. Mr. Zohdi explained that it is required that the applicant collect and clean the run-off from both the new addition and the current building.

Chair Samsel opened the Hearing to the Public.

Marilyn Bailey of 3 Heron Cove had received a tour of the building in question from Mr. and Mrs. Letizio. She was amazed at the amount of business generated from the existing building and feels that the addition will help to generate even more business. Ms Bailey stated the Letizios are generous with their time and money in the Town of Windham. She is convinced that any issues that exist can be resolved.

Chair Samsel closed the Public Hearing.

Mr. Murray made a motion to go into deliberative session. Seconded by Ms. Dunn. Vote passed 5-0.

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

Ms. Dunn would like to wait for the drainage report from the State before making a decision.

Ms. Dunn made a motion to continue the Variance request until the State provides the drainage report. No second was received. Motion failed.

Mr. Murray assured the Board that the engineers constructing I93 will not allow drainage to pour onto Mr. Letizio's land. The existing building is currently situated entirely in WWPD. As such, minimal expansion is allowed under non-conforming, pre-existing conditions ordinances. Ms. Fallon offered that the spirit and intent of the WWPD Ordinance is to protect wetlands. With the improvements being made by the State's construction of I93 and Mr. Zohdi's firm, the condition would be considered betterment. Mr. Samsel read the Testimony currently in front of the Board and stated that it has received no rebuttal. Ms. Fallon questioned whether the run-off will affect Cobbetts Pond, and stated that it seemed to be protecting the Pond.

Mr. Murray made a motion to approve the application for a Variance of Lot 11-C-13, Case #1-2011 per the revised plan – Exhibit A. Seconded by Ms Fallon. Motion passed 3-2. Ms Dunn and Mr. Partington opposed because the application does not meet the spirit and intent of the Ordinance, nor does it meet the requirements for a hardship.

Lot 1-C-2550, Londonderry Road, Case #64-2010 – Request for Re-hearing

Chair Samsel had received a Re-Hearing application attached to an additional 10 pages of legal justification. Page 7 of the 10 pages highlighted the points being offered and was used as a platform for discussion. The applicants' ability to prove they had a hardship or not was discussed. Ms. Dunn talked about the value of having a road in a development and that the applicants said they could build a road. The Board continued discussing the 6 legal points listed on page 7.

Mr. Murray made a motion to deny the application for a Re-Hearing of Case#64-2010. Seconded by Mr. Partington. Motion passed 4-1. Ms. Dunn opposed.

Continuation of Deliberations re: Changes to ZBA Bylaws.

The Board has been reviewing "Applicant Withdrawal, Applicant Continuance and Board Initiated Meeting Changes." There was a first reading on 12/14/2010 and a second reading on 1/11/2011. Mr. Partington read the Applicant Withdrawal section, the Applicant Request to Re-schedule section, and the Board Initiated Meeting

Changes making minor language changes where needed with Board approval. The Board will vote to accept these changes at the next meeting after the changes have been publicly posted.

Miscellaneous Board Business

A Business Expo is being held on Thursday, January 27 from 5-8 at the High School sponsored by the PTA and Economical Development Dept.

The "Town and City" periodical was passed around.

Review and Approval of January 11, 2011 Draft Meeting Minutes

Mr. Partington noted on page 4, paragraph 1, language he reviewed on the tape and would like changed from, "...does not seem to have been done correctly," to "...but it sounds like they are not supposed to be there."

On page 6, middle of the page: Mr. Partington would like to change, "...if the ZBA limits the Commercial use in the Rural Zone too much, he is worried that they will not be successful," to "...future businesses at that site would not be giant enterprises because we (ZBA) will be limiting their hours of operation."

At the end of the first paragraph on the last page: He would like it to read, "Mr. Partington noted that the 100K issue was not presented at the first meeting."

Mr. Scholz noted that he should have been marked present at the previous meeting.

Mr. Partington made a motion to accept the Minutes of January 11, 2011 as amended. Ms. Fallon seconded. Motion passed: 5-0.

Ms. Dunn brought up "How to deal with e-mails." She would like the Board to review protocol in the Handbook. Ms. Fallon suggested the Board procure and re-read a bulletin that was previously passed around regarding this topic.

Mr. Murray made a motion to adjourn the meeting. Seconded by Ms. Fallon. Motion passed: 5-0.

Meeting adjourned at 9:47 p.m.

These draft minutes are respectfully submitted by Ms. Mimi Kolodziej.