



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment
Draft Minutes
February 8, 2011

Board Members

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

Staff

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

Case #3-2011, Lot #3-B-360

Applicant – Melchior A. Salvo
Owner – Melchior A. Salvo
Location – 137 Rockingham Road
Zone – Rural District

Applicant intends to seek approval for a customary home occupation for a picnic table sales, outdoor recreation equipment sales, and cosmetic sales business use of the property. A variance is requested from (a) Section 602.1.6.5 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the public display of goods and the exterior storage of material which is not permitted for a customary home occupation use; (b) Section 602.1.6.10 to permit additional parking areas in excess of those necessary for normal residential purposes, where such additional parking areas are not permitted for a customary home occupation use; and (c) Section 706 to permit a 3.6 ft. by 7 ft. freestanding sign advertising the picnic table/outdoor recreation equipment sales business and a 1.5 ft. by 2 ft. freestanding sign advertising the cosmetic sales business, where only one (1) 3 sq. ft. sign is permitted for a customary home occupation use.

Mr. Corwin, ZBA/Code Enforcement Administrator, advised the Board that in addition to residing at the property the owner also uses the property for commercial purposes. The owner makes and sells picnic tables, outdoor recreational equipment and cosmetics are also sold from the site. A 3.6' X 7' permanent sign advertising the picnic table business and a smaller

temporary sign advertising the cosmetic business are also located on the property. A complaint was filed regarding the commercial use of the property and the signs which are not permitted in the rural zone. The owner has operated the picnic table business from this location for 20 years or longer. Prior to 2002 the property was zoned Business District A so the business may have been a permitted use. The business never received site plan approval and cannot be considered a legal non-conforming use. Mr. Salvo will seek a conditional use permit from the Planning Board for a Customary Home Occupation. The owner requires a variance from the Zoning Board because he does not meet all of the criteria for a Customary Home Occupation as set forth in Section 602.1.6 of the Ordinance. There is an approved sign permit in the Building File for a 2' X 2' sign. The file also contains a drawing of a 4' x 6' sign but no permit or site plan approval. The owner also requires a variance to permit two signs, one of which exceeds the 3 square foot maximum permitted area. The owner requires relief for the following:

- The public display of goods and the exterior storage of material.
- To permit additional parking areas in excess of those necessary for normal residential purposes.
- To permit a 3.6' X 7' freestanding sign advertising the equipment sales business and a 1.5' X 2' freestanding sign advertising the cosmetic sales business.

The owner, Mr. Salvo, presented his case. Mr. Salvo has been in business in this location for thirty years with the town's knowledge. Mr. Salvo explained that he did receive verbal approvals over the years from former Building Inspectors. The existing parking lot that was approved in 1987 does not need to be increased.

Board Members requested the building file be available for review. Mr. Murray said that if Mr. Salvo has been in business for 30 years there must be vested rights. Mr. Murray wanted to review the specific variances that were granted for the property. Mrs. Dunn said it is important to see if parking was part of another variance.

Mr. Tierney said that he does not believe that Section 602.1.6.10 applies in this case because the ordinance talks about no additional parking and the applicant is not expanding his parking.

Mr. Murray motioned and Mrs. Fallon seconded the motion to waive the reading into the record of the five criteria as set forth in Applicant's Variance Application. **Motion passed 5-0.**

Mr. Salvo submitted a postcard marked as Exhibit A and 18 photos marked as Exhibit B and mentioned that the Town of Windham has an account with him and the Windham School Department purchased tables from him.

Mr. Salvo submitted a photo, marked as Exhibit C, showing displayed goods. Mr. Salvo has an 8' X 10' office area in his home.

Mr. Jake Paiva of 5 Rockingham Road asked about bounce house rentals.

Mr. Salvo said that he does rent bounce houses and displays them on his yard for purposes of cleaning them only.

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

Deliberative Session, Case #3-2011

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in Applicant's Variance Application.

Mrs. Dunn motioned and Mr. Partington seconded the motion that the Board determines that no variance is necessary from Section 602.1.6.10 of the Zoning Ordinance for the existing parking area. **Motion passed 5-0.**

Mrs. Dunn motioned to grant a variance from Section 602.1.6.5 of the Zoning Ordinance to permit the public display of goods with the condition that the display be limited to two swing sets, two picnic tables and one porch swing. **No Second.**

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Section 706.6 of the Zoning Ordinance to permit a single sign no larger than 3.6' X 7'. **Motion passed 4-1.** Mr. Partington voted against the motion because it did not meet the spirit and intent of the ordinance and did not meet the hardship requirement.

Mr. Murray motioned to grant a variance from Section 602.1.6.5 of the Zoning Ordinance to permit the public display of fourteen swing sets, five tables, two wishing wells and one porch swing. **No Second.**

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance from Section 602.1.6.5 with no restrictions. **Motion passed 3-2.** Mrs. Dunn and Mr. Partington voted against the motion because it did not meet the spirit and intent of the ordinance and did not meet the hardship requirement.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to deny the request for a variance from Section 706 of the Zoning Ordinance to permit a 1.5' X 2' freestanding sign advertising the cosmetic sales business. **Motion granted 5-0; request denied.**

Case #4-2011, Lot #3-B-110

Applicant – Michael A. Guertin

Owner – Stephen A. Espinola

Location – 117 Rockingham Road

Zone – Rural District

A variance is requested from Section 602.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to operate a motor vehicle sales business having on display no more than one (1) motor vehicle at a time, where commercial uses are not permitted in the Rural District.

The applicant, Michael Guertin, explained that he would like to use the property to periodically continue to sell one automobile per month. Mr. Guertin submitted three photos marked as Exhibit A. Mr. Guertin will put a vehicle with a price on it in the parking lot without flags or balloons. Mr. Guertin read the supporting facts into the record.

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

Deliberative Session, Case 4-2011

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

Mr. Partington motioned and Mrs. Dunn seconded the motion to deny Case #4-2011 as requested. **Motion passed 4-1; request denied.** The Board denied this request because it did not meet the spirit and intent or the hardship requirement.

Case #5-2011, Lot #17-M-13

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – Thomas Jeffrey Holdings, LLC

Location – 27 Armstrong Road

Zone – Residence District A

Applicant proposes to raze the existing non-conforming home and shed and construct a new 26 ft. by 30 ft. 1 ½ story home with a 12 ft. by 12 ft. deck and 12 ft. by 12 ft. covered porch attached to the rear. The entire property is located within the 100 foot Cobbett's Pond tributary stream buffer. Variances are requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the construction of a home to be located no less than 14 ft. from the 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 22 ft. from the other side lot line where a minimum 30 ft. setback is required; (b) Section 616.8 to permit construction within the 100 foot wide Cobbett's Pond tributary stream buffer, where construction is not permitted within the buffer; and (c) Section 702/Appendix A-1 to permit construction on a lot having an area of 7,400 sq. ft +/- where 50,000 sq. ft. is the minimum required, and on a lot having frontage on a public street of 92.8 ft. where minimum frontage of 175 ft. is required.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- Property was purchased from the Town of Windham.
- Existing home and shed will be razed.
- Proposed footprint same as the existing home.
- Proposed dwelling will have a full basement.
- Proposed dwelling will be one and one half stories and will be centered on the lot.
- Clean Solutions Septic System Plan.
- Two photos were submitted and marked as Exhibit A.

Mr. Maynard read the supporting facts into the record.

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

Deliberative Session, Case #5-2011

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 5-2011 per the plan submitted. **Motion passed 5-0.**

Mr. Murray motioned and Mrs. Dunn seconded the motion to move Case #7-2011 ahead of Case #6-2011. **Motion passed 5-0.**

Case #7-2011, Lot #11-A-620

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – Jeffrey P. Thompson Revocable Trust

Location – 15 North Lowell Road

Zone – Residence District B

A variance is requested from Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the construction of a 26 ft. by 26 ft. garage to be located no less than 35 ft. from the front lot line where a minimum 50 ft. setback is required, and no less than 7 ft. from the side lot line where a minimum 30 ft. setback is required.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- The existing home and barn were built in 1868.
- Mr. Maynard submitted four photos that were marked as Exhibits A through D.
- The property is surrounded on two sides by condominium complexes.
- The lot is isolated from abutting projects.
- All abutting properties are developed. There is no other land available for purchase.

The Chairman suggested that the reading of the five criteria as set forth in Applicant's Variance Application be waived.

Mrs. Dunn motioned and Mr. Murray seconded the motion to waive the reading of the five criteria as set forth in Applicant's Variance Application into the record. **Motion passed 5-0.**

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

Deliberative Session, Case 7-2011

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in Applicant's Variance Application.

Mrs. Dunn motioned and Mr. Partington seconded the motion to grant a variance for Case #7-2011 from Section 702 Appendix A-1 to permit the construction of a garage to be located no less than 35' from the front lot line and no less than 7' from the side lot line per the plan submitted. **Motion passed 5-0.**

Case #6-2011, Lot 21-V-230B

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – Charles F. and Mary E. McGonagle

Location – 32 Fish Road

Zone – Residence District A

Applicant proposes to remove a pre-existing non-conforming house and construct a larger house in the same footprint and remove a pre-existing non-conforming porch and to construct a larger porch. Applicant received a variance on September 28, 2010, Case 41-2010, for the proposed house. For the proposed porch, relief is requested from (a) Sections 405.2, 405.3 and 405.5 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the replacement of the existing non-conforming 15 ft. by 13 ft. porch with a 32 ft. by 12 ft. porch where no increase in the size of the non-conforming porch is permitted; (b) Section 702/Appendix A-1 to permit the construction of the porch to be located no less than 19 ft. from the rear lot line where a minimum 30 ft. setback is required, and no less than 5 ft. from the side lot lines where a minimum 30 ft. setback is required; (c) Section 616.10 to permit impervious area of 60% where 30% is permitted; (d) Section 702/Appendix A-1 to permit building coverage of approximately 38% where 20% is permitted; and (e) Section 702/Appendix A-1 to permit construction on a lot having an area of 2,840 sq. ft +/- where 50,000 sq. ft. is the minimum required, and on a lot having frontage of 58.5 ft. on a private street where minimum frontage of 175 ft. on a public street is required.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. A variance was granted on September 28, 2010, Case #41-2010, from Sections 405.2, 405.3, 405.5 and 702 Appendix A-1 to permit the removal of the house and to construct a larger house in the same footprint.

- The 8' X 32' covered porch will not increase the impervious coverage of the lot.
- The proposed house location is to allow room for a replacement septic system.
- The 63% of impervious surface will be reduced to 60%.
- The existing walkway will be removed.
- Deck size and impervious areas will be removed to make the reduction in impervious areas possible.
- No additional property is available for purchase to make this 2800 square foot lot more conforming.

Mr. Maynard read the supporting facts into the record.

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

Deliberative Session, Case #6-2011

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

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case #6-2011 as requested and as submitted. **Motion passed 4-1.** Mrs. Dunn voted against the motion because it did not meet the spirit and intent of the ordinance.

Case #8-2011, Lot #21-K-48

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – 26 Turtle Rock Road LLC

Location – 26 Turtle Rock Road

Zone – Residence District A

Applicant proposes to convert the existing structure from seasonal to year round use on a lot having an area of 16,590 sq. ft +/-where 50,000 sq. ft. is the minimum required, and on a lot having frontage of 38 ft. where minimum frontage of 175 ft. is required. A variance is requested from Section 1200.1.3 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the conversion of a seasonal dwelling to full time year-round use on a lot that does not conform to the dimensional requirements of Section 700, where a conversion is only permitted on a lot that meets the dimensional requirements of Section 700.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- State approved septic system was installed in 1996.
- There will be no visible changes to the building.
- There is no additional land available to make this lot more conforming.

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

Motion passed 5-0.

Deliberative Session, Case 8-2011

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

Mrs. Dunn motioned and Mr. Partington seconded the motion to grant a variance as requested for Case 8-2011. **Motion passed 5-0.**

Approval of Minutes

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to approve the January 25, 2011 minutes as amended. **Motion passed 5-0.**

By-Law Amendments

Mr. Partington motioned and Mr. Murray seconded the motion to accept the changes to the by-laws in draft #12 for *Applicant Withdrawal, Applicant Request to Reschedule and Board Initiated Meeting Changes* . **Motion passed 5-0.**

The Board discussed alternates participating in the Deliberative Session.

Mr. Corwin mentioned that under the current bylaws any changes in the fee structure or applications requires Board approval. Staff was hoping the Board would entertain an amendment to the bylaws allowing staff to deal with fee changes and applications in house without having to come back to the Board. The fees seem to be outside of the purview of the Board. Any substantive changes to the applications would be brought back to the Board for review. Staff is looking for more flexibility in making small changes to the applications. Mr. Tierney said that the Zoning Board should make fee recommendations to the Board of Selectmen. The Chairman, Mr. Samsel, said that the Board would

not relinquish form or application approval. Staff can make changes to the forms and then present those changes to the Board for their approval.

Adjournment

Mr. Partington motioned and Mrs. Dunn seconded the motion to adjourn. **Motion passed unanimously.**

The next meeting of the Zoning Board of Adjustment is scheduled for February 22, 2011 at 7:30 PM in the Community Development Department.

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