



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Draft Minutes October 25, 2011

Board Members:

Tom Murray – Chairman
Heath Partington – Vice-Chairman
Elizabeth Dunn – Member
Mark Samsel – Member
Dianna Fallon – Member (Excused)
Jim Tierney – Alternate
Mike Scholz – Alternate (8:04 PM)

Staff

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

Seat Alternates

The Chairman appointed Mr. Tierney to replace Mrs. Fallon for this meeting.

Mr. Corwin advised the Board that in making the revisions to the September 13, 2011 minutes requested by the Board and while listening to the video on line he noticed how difficult it is to understand what the Members were saying and asked that the Board realize that the microphones do not pick up everything that is being said.

October 25 Lot 8-B-1, Case #42-2011 – Continued from 9/27/11

Applicant – Greg's Auto Village of Windham

Owner – ADRS Realty, LLC

Location – 68 Rockingham Road

Zone – Commercial District A/Wetland and Watershed Protection District

Applicant proposes to reconfigure its parking lot and provide additional parking space. A variance is requested from (a) Section 601.3 to permit an approximately 1,100 sq. ft. parking area in the WWPD, where parking is not a permitted use in the WWPD; (b) Section 601.3 to reconfigure the parking and vehicle storage areas in currently paved areas located within the WWPD that were not approved for such uses per the approved site plan; (c) Section 704.3.2 to provide one handicap parking space where two are required; (d) Section 704.2.7 to permit parking within the minimum required twenty (20) ft. setback; and (e) Sections 704.2.7 and 704.2.4 to permit parking spaces that have obstructed access to and from a street and which do not have adequate vehicular access to the street.

Mrs. Dunn read the case into the record.



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Greg & Mary Peters presented their case and Mr. Corwin displayed both the original and updated plans.

Mr. Peters, using the displayed plans explained that:

- Mr. Peters - the area in the rear was never designated as a parking area.
- Mr. Peters - proposing to park on the paved areas as always.
- Mr. Peters - proposing two additional parking spaces on the end.
- Mr. Tierney - areas in the rear of the plan, labeled as “D” would be better suited as display not parking areas.
- Mr. Tierney – eight spaces alongside the building could never be parking areas because there is no way to go *to and from* those parking spaces and therefore that should be an expanded display area.
- Mr. Peters – Occupies 60% of the building therefore he should only be required to have 40% of the parking.
- Mr. Peters proposes only one handicap parking space.
- Mrs. Peters read the supporting facts into the record.

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

Deliberative Session, Case 42-2011

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

Mr. Tierney motioned and Mr. Partington seconded the motion to grant a variance for Case 42-2011 from Section 601.3 of the Zoning Ordinance to reconfigure the parking and storage/display area on the property and to provide additional parking areas in currently paved areas located within the WWPD and from Section 704.3.2 of the Zoning Ordinance to permit one handicap parking space where two are required. Motion passed 5-0.

Mr. Tierney motioned and Mr. Partington seconded the motion to deny the request for a variance for Case 42-2011 from Section 601.3 to permit additional parking (spaces marked C on the plan submitted) in the WWPD and to deny the request for a variance from Section 704.2.7 to permit parking within the 20 foot setback. Request denied 5-0 because it did not meet the spirit and intent.



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Lot 11-A-1418, Case #45-2011

Applicant – AWAC Realty Trust

Owner – AWAC Realty Trust

Location – 76 Meetinghouse Road

Zone – Rural District

On April 6, 2011, the Planning Board voted not to accept the Applicant's Major Open Space/Workforce Housing Subdivision/Site Plan Application due to the fact that the submitted application did not meet the requirements outlined in Section 611.6.7.1 of the Town of Windham Zoning Ordinance and Land Use Regulations which requires that 65% of the total area of the development be set aside as permanent open space. Application is an Appeal of the Planning Board's administrative decision that the application does not meet Section 611.6.7.1.

Mrs. Dunn read the case into the record.

Mrs. Dunn suggested that the Board only hear input regarding the timeliness of the Appeal of an Administrative Decision.

The Chairman advised Attorney Sumner Kalman to speak only about the timeliness of the application.

Attorney Kalman, representing the owner, submitted a booklet and a letter dated October 25, 2011 (Exhibit A). Attorney Kalman explained that the reason the owner is before the Zoning Board is because Judge McHugh in his final order dated September 1, 2011 (*Thus the appropriate procedure here is to have the plaintiff submit a request for a variance with respect to the open space component of its plan for development. If unsuccessful at the ZBA, the plaintiff may appeal the decision to this Court. It will then be up to this Court to determine whether the denial of the variance was either unlawful or unreasonable under the law.*) directed the Applicant to go before the Board of Adjustment on this issue that was generated by the Planning Board's refusal to invoke jurisdiction and accept the application. Attorney Kalman went on to say that if a variance is necessary then that would be considered on the merit at the point when the Planning Board invoked jurisdiction and accepted the plan. The applicant never got to that point.

The Chairman said it is a straightforward question as to whether or not the Board feels that if a decision from the Planning Board was not made then why should the Board even be hearing a timeliness issue or an appeal. If that decision was made back on April 9, 2011, why didn't that appeal come before the Board before this time? The Chairman asked if the Board felt as if the filing of the appeal was timely and that he felt that a decision was made, regardless of



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acceptance, that was appealable to the Zoning Board. Coming in front of the Board at this time is untimely and the Board should move on to the variance request.

Mrs. Dunn motioned and Mr. Tierney seconded the motion not to accept the Administrative Appeal, Case #45-2011, because it is untimely. Motion Passed 5-0.

Lot 11-A-1418, Case #46-2011

Applicant – AWAC Realty Trust

Owner – AWAC Realty Trust

Location – 76 Meetinghouse Road

Zone – Rural District

Applicant proposes a twelve (12) lot “open space” subdivision per Section 611 of the Town of Windham Zoning Ordinance and Land Use Regulations, consisting of three (3) workforce housing homes and nine (9) market rate homes on individual lots. A variance is requested from Section 611.6.7.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit 16.25% open space where 65% open space is required.

Mr. Tierney motioned and Mr. Samsel seconded the motion to waive the reading of the list of abutters for Case 46-2011. Motion passed 5-0.

Mrs. Dunn read the case into the record.

Attorney Sumner Kalman, representing the owner, introduced Karl Dubay of the Dubay Group to give a brief overview.

Mr. Dubay explained that the Cricket Ridge Workforce Housing proposal has been through conceptualls and design review with the Planning Board. This plan is similar to other approved Open Space Projects located in Windham:

- One acre per lot.
- Proposed houses are similar to other single family homes in the area.
- Not a multi-family or duplex housing project.
- Wooded buffers are included in this design.
- There are no wetland impacts and the project has stayed away from the WWPD.
- Additional voluntary buffer setbacks have been added as it relates to abutter input.
- Will look, feel and function as any other cul-de-sac community.
- The only variable is the 65% requirement which states, of the entire project area, 65% needs to be a lot of open space.
- Mr. Dubay explained lot sizing for OSRD, Open Space Residential Development (presentation marked as Exhibit B).



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The Chairman said he was not prepared to approve this request tonight; he would like to have the time to do the math and there was a lot of information that he was seeing for the first time.

Attorney Kalman went through the packet he submitted.

- Tab 7 - In the July 26, 2011 minutes three of the five members voted that Windham does not have its fair share of Workforce Housing. (Mr. Scholz pointed out that the minutes included in Attorney Kalman's packet (minutes that were on the Town Website) were not the approved July 26, 2011 minutes).
- Tab 1 – Is the actual Workforce Housing Statute. The most important words being *economic viability*.
- Tab 5 – Fougere Report, an economic analysis, looking at all the costs involved in the project.
- Tab 8 – A copy of Regulation 1000.

Mr. Murray asked where the numbers \$278,000.00 and \$85,000.00 came from.

Mr. Dubay said the selling price is based on law. According to Mr. Keach of Keach Nordstrom, town consultant, the RPC is the authority which would set the numbers by other RSA's.

Attorney Kalman read the supporting facts into the record.

Mr. Tom Case commented that normally a 50,000 square foot lot is required, drop it to 30,000 square feet. That equals 60% of the lot with 40% left over. It would make sense to have 40% open space with 60% lot instead of 65% open space. Why add another 25% to the 40% that was taken from the lot.

The following residents spoke in opposition to this request.

- Mr. James Maloof of 82 Meetinghouse Road
- Mr. Stanley Yost of 84 Meetinghouse Road
- Ms. Dana Call of 80 Meetinghouse Road
- Sister (non-resident) of James Maloof 108 Wildwood Drive, Westwood Ma.

Mr. Corwin will follow up with Attorney Campbell regarding a procedural question.

Mrs. Dunn motioned and Mr. Samsel seconded the motion to continue Case 46-2011 to the November 8, 2011 meeting. Motion passed 5-0.



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Adjournment

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

The next meeting of the Zoning Board of Adjustment is scheduled for November 8, 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.