



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Minutes
March 13, 2012

Board Members:

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

Staff:

Laura Scott - Community Development Director
Mimi Kolodziej – Planning Assistant

Seat Alternates:

Mr. Murray appointed Mr. Tierney to be seated for Mr. Samsel and Mr. Scholz to be seated for Ms. Dunn.

Mr. Partington reminded the Board that this would be Ms. Fallon's and Mr. Murray's final meeting. On behalf of the Board and Staff, Mr. Partington and Ms. Scott thanked them for their service and presented them with a gift.

Lot 21-V-253D; Case #8-2012

Applicant –Benchmark Engineering, Inc.
Owner – Sciacca Family Revocable Trust
Location _ 3 Willow Road
Zone – Residential A

A variance is requested from the Town of Windham Zoning Ordinance and Land Use Regulations from Section 1200.1.3 to permit the conversion of the existing seasonal dwelling to a full time year round use. The variance is requested whereas the subject lot has 100+- feet of frontage where 175 ft is required; the subject lot size is 8,712 +- sq ft where 50,000 sq ft is required; the subject dwelling has a 10 +- ft side setback and the existing shed on the property has a 9 +- ft side setback where 30 feet is required and; the subject dwelling has a 6+- ft front setback to Willow Road where 50 ft is required.

Mr. Scholz read the case and abutters' list into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case for a year round conversion.

- There is an existing 2 bedroom house and one out building on the property with an on-site well and a form of septic system.
- A new Clean Solution septic system plan, which was presented to the Board, is awaiting approval from the State and will be installed as soon as there is an issue with the existing system. The current system, however, is working fine at this point.
- The permit application before the State satisfies the septic system component.

March 13, 2012 Approved ZBA Minutes

- At this time, the permit application is requesting dimensional setback relief in accordance with the conversion rules.
- There is no proposal for expansion or any changes to the structure at this time.

Mr. Maynard walked through the 5 variance criteria.

Chairman Murray opened discussion to the Public who were in favor of the request. Hearing none, he opened discussion to anyone who was opposed to the request. Mr. Scholz read an e-mail into the record from abutters Monica Brown, David Soulard, and William Brown who voiced their objection and concern that the potential for increased water/septic usage on the property due to its year round conversion might potentially contaminate existing groundwater supply due to the aged septic system not designed for this capacity.

Mr. Maynard rebutted that once the State approves the new Clean Solution Septic System, which operates 4 ft above the water line (current system operates 2 ft above) with its pre-treatment function before releasing, the result will be a betterment . He mentioned that there is ample separation between the applicant's property and the abutters' properties.

Mr. Scholz motioned and Ms. Fallon seconded the motion to go into Deliberative Session. Motion passed: 5-0.

Deliberative Session, Case #8-2012

Mr. Tierney said he had no issue with the year round change of the property as long as the new septic system was in place. The rest of the Board were in agreement.

Mr. Tierney motioned to grant Case #8-2012 relief from Section 1200.1.3 of the Zoning Ordinance subject to State septic approval. Ms. Fallon seconded. Motion passed: 5-0.

Application for Re-Hearing Case: 5-2012 (18-L-450)

Ms. Scott provided the Board with a Notice of Decision and explained that this is an opportunity for the Board to review their decision.

Mr. Murray explained that the Board will be looking for any new information, any technical errors, or any compelling information that will provide the Board a reason to rehear the case. Mr. Scholz was not in attendance at the original meeting, but had watched the video and read the minutes.

Mr. Murray read through the 21 points of the Attorney's Application noting the items that the Board needed to reconsider. The other points were all statements of fact.

After lengthy discussion, the Board was in full agreement, voting 5-0, on each of the following numbers from the Attorney's Application in which they found no technical errors and no new information: #5, #7, #9, #10, #14, #17 and #21 (a-i).

Mr. Partington motioned and Ms. Fallon seconded the motion to deny the rehearing. Motion passed: 5-0.

Member Binder Update Tab 5

The Members received an update to the Community Development Department Fees.

Review and Approval of 2/28/12 Draft Meeting Minutes

Mr. Tierney motioned and Mr. Scholz seconded to approve the minutes of February 28, 2012 as amended. Motion passed: 3-0-2. Ms. Fallon and Mr. Murray abstained.

Memo – ZBA application process

The Board discussed the use of a new Letter of Denial form that will keep the Board informed of previous transactions of which they may otherwise not have been aware.

Ms. Scott recommended that if the Board would like a true Letter of Denial, then it should be part of the ZBA Application. In which case, the applicant will meet with staff prior to submittal to receive the Denial Letter.

Ms. Scott noted that when it comes to a full variance application, there is nothing to deny yet. Consequently, Staff is doing a “backwards” Letter of Denial informing the applicant that they cannot proceed to step two without the approval needed at step one. If the Board agrees with the form and process of this Denial, it will begin being used at the meeting on March 27.

Mr. Tierney thought that the latest letter and its language met the intent and showed that the application had been reviewed by Staff and it was in writing. The Board discussed the format of the letter and, in general, liked the amount of detail the letter asked for. Board and Staff were in agreement that the new Letter of Denial form met the criteria and will begin using it as of the 3/27 meeting.

Mr. Partington asked whether the Board needed to change their by-laws to account for the new form and process. The Board decided to address it after the elections and the selection of new Board members.

Ms. Scott drew the Board’s attention to their Packets and the Deacon’s Place Court Case decision in which the Court upheld the Planning Board and Zoning Board’s decisions and granted the Plaintiff a “Builders Remedy.”

Ms. Scott informed Mr. Murray that she will e-mail to the Board a memo from Attorney Campbell about a non-public memo being made public to the Board. She also informed the Board, that Staff has created and makes available in the office a binder of all legal memos not tied to a specific case.

The Board walked through various pieces of correspondence and will be looking forward to the 2012 LGC Workshops announcement.

Ms. Fallon thanked the Board for the respectful and professional way in which the Board conducted their meetings and treated each other when they were not all in agreement on an item. She has enjoyed her time as a member.

Mr. Murray felt that the Board was diversified and although not always in agreement, they were respectful.

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

The meeting adjourned at 9:24 pm.

These minutes are respectfully submitted for your approval by Mimi Kolodziej.