



COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Draft Zoning Board of Adjustment Minutes April 10, 2012

Board Members:

Mark Samsel, Chairman - present
Heath Partington, Vice-Chairman - present
Elizabeth Dunn, Member - present
Jim Tierney, Member - present
Jay Yennaco, Member - present
Mike Scholz, Alternate - present

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Cathy Pinette, ZBA Minute Taker

Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:30 pm, introduced the Board Members and staff and explained the meeting process.

Interview for Alternate Members

The Board is seeking alternate members until April 17, 2012. 2 interested applicants were in attendance. Remaining applicants will be scheduled for the April 24, 2012 meeting. A decision will be made at that time.

Interviewed

- Tony Pellegrini - Mr. Pellegrini stated that he had previously been a member of the Board for 15 years and would like to be considered as an alternate. The Chairman asked the term length he would like. Mr. Pellegrini stated 1 year. Ms. Dunn asked the following questions of the applicant: What he found the most difficult part of the position; He stated many cases were simple, but now the rules have changed. Was he willing to attend trainings; He replied yes. How did he feel about making decisions that were unpopular; He stated that it was a necessary part of the position. Mr. Partington asked the applicant if he was elected to the previous Board; Mr. Pellegrino stated at first he was appointed, and then elected.
- Larry Jackson - Mr. Jackson has been a resident for 7 years, previously living in York Maine. In York he was a volunteer on the EDC, Planning Board and BOS. He would like to become involved in Windham. Ms. Dunn asked the following questions of the applicant: If he had ever watched a Planning Board meeting; he stated, no. Was he willing to attend trainings; yes, How did he feel about making tough decisions; he was used to that being on previous boards. Mr. Partington asked the applicant what he saw as the similarities and differences in Windham and York; commercial and

residential and he would like to look at these to help relieve some of the tax burdens. The Chairman asked what term limit he would like; the applicant stated whatever the Board decides.

Public Hearings

Lot 16-Q-178, Case #4-2012(Continued from 1/24/12)

Applicant – Joe Maynard, Benchmark Engineering

Owner – Phyllis D. Churchill, Trustee of the Phyllis D. Churchill Trust

Location – 22 First Street

Zone – Residence District A

Variations are requested from Sections 616.9.2, 1200.1, 1200.3, and 1200.4 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the conversion of an existing seasonal dwelling to a full time year-round dwelling on a lot that is nonconforming and that has a sewage-holding tank, which was installed in 1988. No improvements to the site or the structure are proposed in conjunction with this conversion.

- Ms. Dunn read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Mr. Maynard distributed a copy of a supplemental variance application.
- The State of NH approved the septic design last week. The owner can place the septic on another lot she owns behind her lot. Mr. Maynard walked through the 5 variance criteria. Ms. Dunn asked for assurance that the other lot would not be sold. Mr. Maynard stated that if the lot was sold that the plan will be null and void. Ms. Dunn stated that the variance goes with the land. Mr. Maynard said they could add an easement to the other lot if the board requested, subject to sewer becoming available.

The Chairman opened the discussion to the public

- Ms. Carolyn Webber, 19 Cobbett's Pond Rd, believes that the applicant should be able to live there year round; she is popular with her neighbors, loves the lake, volunteers in town and it would be in the best interest of the Town to grant the variances.
- The Chairman stated there were ten letters of support for this case.

Mr. Partington motioned and Mr. Tierney seconded the motion to go into Deliberative Session in consideration of the 5 points as presented by the applicant. Motion passed: 5-0.

Deliberative Session, Case #4-2012

- Mr. Tierney said he had no issue with the year round change of the property now that the new septic system was approved. The rest of the Board was in agreement.

Mr. Tierney motioned to grant Case #4-2012, Lot 16-Q-178, relief from Section 1200.1.3 of the Zoning Ordinance to allow a seasonal dwelling to be converted to a year round subject to the recording of an easement on lot 16-R -750 for the benefit of lot 16-Q-178 septic. Ms. Dunn seconded. Motion passed: 5-0.

The Chairman advised all of the 30 day appeal process.

Seat Alternates:

Mr. Tierney recused himself from Case #12-2012. The Chairman appointed Mr. Scholz to be seated for Mr. Tierney.

Lot 3-B-625, Case #12-2012 (Continued from 3/27/12)

Applicant – Benchmark Engineering, Inc

Owner – Murray Properties, LLC

Location – 183 Rockingham Road

Zone – Commercial A

The application is proposing to raze the existing building and redevelop the property with a new 25,000 sq ft commercial building with associated improvements, including reconfiguring the parking lot. The proposal, as presented, requires variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations:

601.1 – Wetland and Watershed Protection District – Purpose

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601.3 - Wetland and Watershed Protection District – Uses Permitted - to allow a portion of the proposed commercial building and associated parking within the W.W.P.D.;

601.3.8 - Wetland and Watershed Protection District – Uses Permitted - Driveways, streets and roads – to allow a portion of the site drives and parking spaces to be located within the W.W.P.D.;

601.3.9 - Wetland and Watershed Protection District – Uses Permitted - Utility systems - to allow the proposed solar trees to be located entirely within the W.W.P.D.;

602.2 – Rural District – Uses Permitted Upon Site Plan Application and Review;

702 – Area, Frontage, Yard and Floor Area Requirements,

Appendix A-1 - to allow for a minimum of a 35ft frontline setback where 75ft is required;

702.5 - Area, Frontage, Yard and Floor Area Requirements – to allow the proposed non-residential use closer than 100’ from a residential zoning district without required screening;

702.7 - Area, Frontage, Yard and Floor Area Requirements – Energy of Communications Systems – to allow the installation of “solar trees” within the 50ft required setback;

704.2.2.1 - Design of Off-Street Parking and Loading Spaces – to not require a 10 ft landscaped buffer for screening of adjacent residentially zoned land;

704.2.2.2 - Design of Off-Street Parking and Loading Spaces – to not require a 6ft high fence for screening of adjacent residentially zoned land;

704.2.7 - Design of Off-Street Parking and Loading Spaces – to allow parking within 5ft of the side property line where 10ft is required and 12ft from the front line where 20ft is required;

704.2.10 - Design of Off-Street Parking and Loading Spaces – to allow the proposed parking area for to not have interior landscaping areas.;

706.8 – Signs Regulations – to allow the proposed sign to have a setback of 5ft from the front lot line where 10 ft is required and 15 ft from the side property line where 50ft is required.

Ms. Dunn read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- Mr. Maynard stated there are 3 curb cuts on Rt. 28, there is now poor visibility on Rt. 28 due to trees, and there are structures in the WWPD. The proposal is to raze and rebuild with a new building. At this time all run off from the parking lot and Rt. 28 goes into the WWPD. There was an increase in the parking lot approximately 5 years ago. There will be easements on the land that is being given to the town from H & B homes for ballfields on the North and South side. These easements will allow a detention pond to catch the run off. This is a substantial benefit to the land. There are current encroachments into the WWPD now and the new building will have less of an encroachment. This land leaves limited space to construct anything considering the WWPD. There will be a treatment area for the runoff.
- The Chairman asked the following questions: What kind of relief are you asking for on the South end; approximately 800 feet. What about the North side; 100 feet, solar trees will be here, this is also zoned Commercial A. What are North and South; 45 feet. Mr. Maynard stated he would also like relief from the signage requirements as the sign is now in the State of NH right of way. They are not sure if they are putting the sign on the North or South side. There is only 12 feet. The regulations state 50 feet.
- Ms. Dunn asked the following questions: regarding the easements, Mr. Maynard stated that Mr. Murray has an option in the easements. The town will own the land but the easements could be used for sewer loading, drainage, a well, or site distance. She questioned the height of the solar trees, runoff and tree clearing. The board and Mr. Maynard discussed and came to the conclusion that they would probably be no more than 20 feet high. They will be placed on grade and will not block any views. The runoff from the solar trees would be clear water and the flow will be regulated into a detention pond. There was very little vegetative area where the trees were planned. She questioned the old road access. Mr. Maynard stated that the Recreation Dept. would like to keep it open for access. Is the applicant working with the Historic Committee on this; No, they have not reached out to them yet but will. Ms. Dunn questioned if there had been recent tree cutting on the lot and Mr. Maynard stated he wasn't aware of any.
- Mr. Partington asked the following questions: You are asking for relief from the buffers; Mr. Maynard stated yes, the other lots with easements will never be developed. Regarding the sign, Mr. Partington asked about the 50 feet and Mr. Maynard responded he only had 5 feet. Mr. Partington believes the following are not need 601.1, 601.1.1, 601.3.9 and 602.2. He feels 702, 702.5, and 702.7 are needed. The following is not needed due to town vote; 704.2.2.1, 704.2.2.2, 704.2.7 and 704.2.10 as a variance. 706.8 is still needed.

The Board's consensus was to remove 601.1, 601.1.1 and 602.2.

- Mr. Yennaco asked the following questions: Where does the runoff go from the current parking lot; Mr. Maynard replied into the wetland. Mr. Yennaco asked if there will be less runoff with the new parking area and the solar trees; Mr. Maynard stated that it will be better quality going into the pond and it will be pretreated. Mr. Yennaco asked about the easements; Mr. Maynard said the easements were already in place and Mr. Murray has the option to purchase the easements if the plan is approved.
- Mr. Maynard presented a letter from the Conservation Committee with no comment and a letter of support from H&B Homes Corp. dated March 22, 2012 (Exhibit A).

- David E. LeFevre, Esq. representing the applicant spoke in regards to this case. He stated there is no meaningful building envelope because of the WWPD. Overall the project is betterment. Structures will be set back more. The use is reasonable as it is in the commercial district, it does not alter the essential character of the property, it will not alter the character of the neighborhood, there is no threat to the public's health, it is not contrary to the public as it provides a greater level of protection to the WWPD, there would be no gain to the public by denying this request but a significant loss to the applicant. A "Memorandum of Law in Support of Application for Appeal for a Variance" submitted by David E. LeFevre, Esq. and dated March 27, 2012 was marked as Exhibit B.

The Chairman opened the discussion to the public

- Norman Babineau, an abutter, of 188 Rockingham Rd addressed the Board. He was in favor of granting the variances as it would be an improvement to the property and neighborhood. He is opposed to a 5 foot sign set back. Mr. Maynard spoke to the sign setback. If the sign is on the South side the set back would be 10 feet, if it is on the North side it would be 5 feet.
- Mr. Jim Tierney, speaking as a resident, 96 Lowell Rd. said he believed that solar trees were covered under NH RSA 672.3.a as a utility.

Mr. Scholz motioned and Mr. Yennaco seconded the motion to go into Deliberative Session in consideration of the 5 points as presented by the applicant. . Motion passed: 5-0.

The Board decided to vote on each request.

Mr. Scholz motion that no variance is required for 601.1, 601.1, 601.3.9 and 602.2. Seconded by Mr. Partington. Motion passed 5 – 0.

Ms. Dunn motioned that the Board take no action on the following: 704.2.1, 704.2.2, 704.2.7 and 704.2.10. Seconded by Mr. Scholz. Motion passed 6-0.

The Board discussed the remaining variances.

Ms. Dunn stated that this was a unique parcel with special conditions of the property but was close to two other parcels. Mr. Scholz stated that these 2 parcels were deeded to the town. Mr. Partington stated it was a nice property but unfortunately it takes up too much of the WWPD as is, so he thought there was a hardship. Mr. Scholz stated that he was very happy with the drainage and improvements the applicant was proposing, it would be beneficial to the WWPD despite the encroachments. Ms. Dunn said her only concern was the sign distance. Mr. Scholz would like the sign distance 10 feet. Mr. Scholz would like a condition to approve with easements on the lots. Mr. Maynard stated that there is not a specific reason for the easements but could add an easement to allow drainage on the plan. Mr. Partington would like to know the height of the solar trees. Mr. Yennaco stated the height wasn't needed as it would be cost-prohibitive to build taller than needed. Mr. Yennaco also made reference to the solar trees on Ledge Road.

Mr. Scholz made a motion to grant Case #12-2012 relief from 601.3, 601.3.8, 702 Appendix A-1, 702.5, and 702.7 as requested; and 706.8 to allow the proposed sign to have a setback of 15 feet from the side property line where 50 ft is required. The approval is conditioned on the recording

of the drainage easement on lot 3B-601 per the plan submitted. Ms. Dunn seconded. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

Mr. Tierney returned to the Board and Mr. Scholz stepped down.

Review and Approval of March 27, 2012 Meeting Minutes

Mr. Partington motioned to approve the minutes of March 27, 2012 as amended, seconded by Mr. Yennaco. Pass 5 – 0.

Bylaw Discussion

The Chairman asked how the board would like to proceed; he would like to go through a prioritizing process as the by-laws have not been updated in 2 or 3 years. He will email the Board members with a list. The consensus of the Board was to obtain a list for prioritizing and then schedule a meeting to discuss.

Member Binder Updates

- Table of Contents
- Member List (Tab #1)
- Zoning Ordinance (Tab #3)
- Zoning Map (Tab #12)
- Canobie Lake Watershed Map and Parcel List (Tab #12)
- Appeal of Administrative Decision Application (Tab #4)

Other Business

Correspondence – There will be an Affordable Housing Workshop on 5/8/12 at the Exeter Town Offices.

There were correspondences from Atty. Campbell. Please let Nancy know if you would like a copy.

Motion to adjourn was made by Mr. Scholz, seconded by Mr. Partington, passed 5-0. Meeting was adjourned at 9:35 pm.

These minutes are in draft form and respectfully submitted for your approval by Cathy Pinette, ZBA Minute Taker