



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes April 24, 2012

Board Members:

Mark Samsel, Chairman - Present
Heath Partington, Vice-Chairman - Present
Elizabeth Dunn, Member - Present
Jim Tierney, Member - Recused
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.

Seat Alternates

The Chairman appointed Mr. Scholz to sit for Mr. Tierney.

ZBA Alternative Interviews/Appointments

The Chairman stated there were two applicants who could not attend this evening, so there would be no interviews this evening. They will be scheduled for the next meeting and a discussion will take place at the end of this meeting as to how many alternates the Board would like.

Public Hearings

Lot 22-R-818, Case #13-2012
Applicant – James & Sheri Weeks
Owner – Same
Location – 27 Squire Armour Road
Zone – Rural District

A variance is requested from section 710.3.1 of the Zoning Ordinance to permit an 8 foot high fence where 6 feet is allowed.

Ms. Dunn read the case into the record Case 13-2012.

Jim and Sheri Weeks, the applicants, of 27 Squire Armour Road spoke regarding their application. Their property is parallel with Route 93. Route 93 is under construction and they have tried to work with the

Town and DOT for a sound barrier to no avail. They are requesting an 8 foot fence for sound protection and safety for their property.

- The Chairman asked how long the fence would be. Ms. Weeks stated the fence would be approximately 100 feet in the back parallel to the highway.
- Mr. Partington asked if it was the entire back of their property. Both applicants stated it would be right in the middle of the property.
- Ms. Dunn asked the Weeks' to clarify. Mr. Weeks stated it would be basically the length of the house, possibly 85 feet. Ms. Dunn asked if it was 6 feet on the sides of the house and 8 feet in the back. Mr. Weeks replied yes.
- The Chairman stated to the Board that it is difficult not knowing exactly where the fence would be. He would like a drawing. Mr. Weeks stated he gave one to the building inspector. Ms. Prendergast had a copy and gave it to the Chairman. She stated that the applicant would have to provide one with the application and they are also in the Canobie Lake Watershed so the applicant might have to look at that.
- The applicant read the criteria for the 5 points into the record.
- Mr. Partington asked where the 8 foot fence size came from. Mr. Weeks stated that was the highest he could go with a fence.
- Ms. Dunn asked what material the fence would be constructed out of. Mr. Weeks stated it would be a white vinyl privacy fence. Mr. Yennaco asked if it was solid or slats. Mr. Weeks stated solid.
- The Chairman asked if the applicant was looking for 100 feet. Mr. Weeks stated they did not know. Ms. Weeks stated that they would know after they went through the process as they need to have the land cleared. Mr. Yennaco would like a drawing to scale.

The Chairman opened the discussion to the public. Hearing no comments, the Chairman closed public comment.

Mr. Weeks stated that after the variance was approved they would need to get a building permit.

- Mr. Scholz stated he would like guidance as 710.3.1 was changed per town vote. The old ordinance stated the fence had to be on the lot line, the new ordinance states it should be off the lot line.
- Mr. Tom Case, a member of the public, explained the new ordinance.

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

- Ms. Dunn stated she was familiar with the noise issues. She stated she doesn't think that there are any other options for the applicants to protect their property. This does not affect their neighbors. She stated this is a hardship issue because of the Route 93 project and she said it meets the 5 criteria. Mr. Yennaco and Mr. Scholz agreed. The Chairman is not sure of what special conditions this

property meets but agrees with Ms. Dunn. He stated the applicant has tried working with DOT to no avail.

Mr. Yennaco motioned to grant Case #13--2012, Lot 22-R-818, relief from Section 710.3.1 of the Zoning Ordinance on the condition that the fence is no longer than 150 linear feet of length and 8 feet high with a drawing to scale and style to be submitted to the Planning Department. Ms. Dunn seconded the motion. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

Mr. Weeks requested a waiver of his fees. The Chairman stated they would be setting a precedent if granted. His recommendation to the Board was to not grant this request. Ms. Weeks stated that they have spent a significant amount of time and money trying to work with DOT and also hire an engineer. The Chairman stated they can request a waiver from the BOS. Mr. Partington asked if that was in the ZBA By-Laws. The Chairman replied no. Mr. Yennaco state the applicants should go to the BOS for a waiver.

Mr. Yennaco made a motion to take no action on the applicants request to waive the fees. Seconded by Mr. Partington. Motioned passed 5 – 0

Lot 17-L-82, Case #14-2012
Applicant – Benchmark Engineering, Inc
Owner – Steven & Anita Serian
Location – 3 Grove Street
Zone – Residential A

The following variances are requested from the Zoning Ordinance to permit the existing year-round structure to be razed and to allow a new single-family dwelling to be constructed with new septic and well: Section 405.2 – to allow for the increase in the area of the structure; Section 405.3 - to allow for the increase in the non-conformity of the structure; Section 405.5 - to allow for the replacement structure to be less conforming to the required setbacks; Section 406.2 – to allow for the expansion of the non-conforming structure within the building setbacks whereby rendering the expansion more non-conforming; Section 616.8 – to allow encroachment into the required buffer, Section 616.9.1 – to allow septic system encroachment into the required setback, Section 616.10.1 - to allow a new impervious surface driveway within 75 feet of any surface water or wetland area; and Section 702 and Appendix A-1 – to allow 0’ frontage where 175’ is required, to allow a lot area of 8,564 +/- sq. ft. where 50,000 sq. ft. is required, to allow setback from Lake of 20’ +/- where 50’ is required, to allow side/rear setbacks of 1’ and 5’ where 30’ is required, and to allow maximum building coverage of 20.5% where 20% 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 that the house is currently a year round home, is approximately 5 feet off of the Northerly lot line, 20 feet from Cobbett’s Pond, and the applicant would like to construct a new dwelling, add a new Clean Solutions septic system and drill a new well. The proposal is to take the existing garage and place it on the backside of the house. The current house is 26 feet wide and the new house will be 24 feet wide. They are proposing a covered walkway from the garage to the house. They are looking to center the house.

- Ms. Dunn asked if the garage is integrated into the house why would they need a covered walkway and not just enter the house through the garage. Mr. Maynard stated that the walkway was for guest access. Ms. Dunn stated that there appears to be a jog created by this. Mr. Maynard stated that there is an easement and the jog was created to go around the house back in the 1950's.
- Mr. Partington asked about the tree line on the South side of the lot. Mr. Maynard stated that it would stay in place. Mr. Partington asked what the profile of the new house would look like. Mr. Maynard admitted Exhibit A (current picture of the house) into the record. The Chairman approved adding the exhibit to the record.
- Mr. Scholz asked what the height was of the proposed home. Mr. Maynard said he was not sure but the roof line would be higher. Mr. Maynard admitted Exhibit B (photo of existing area homes) into the record. The Chairman approved adding the exhibit to the record. Mr. Scholz asked for a proposal of what the new structure looks like. Ms. Dunn asked what the elevation of the new roof was. Mr. Maynard admitted Exhibit C (cross section, elevation rendering) into the record. The Chairman approved adding the exhibit to the record.

Mr. Maynard read the criteria for the 5 points into the record.

- Ms. Dunn asked Mr. Maynard to point out on the map where the buffer and wetlands were. The Chairman asked Mr. Maynard if the existing structure was currently in the buffers. Mr. Maynard replied, yes.

The Chairman asked if there was anyone from the public who wished to speak in favor or in opposition of the application.

- Ms. Kathleen Cavanaugh-Fabrizio, an abutter, 5 Grove Street, wanted to see the plan and asked if the deck will still be a deck. Mr. Maynard said the deck is moving back about 7 feet.
- Mr. Peter Coffin, an abutter, 1 Grove Street, had the following questions/comments: He stated the new driveway will create a sloping issue and wanted to know the impact of that; what is the surface of the new driveway; the numbers on the setbacks on the properties do not match; is the width of the walkway 4 feet; will it be a permanent structure; if the walkway is permanent that will add to the width of the house; how will his well be protected; would like to know how the Clean Solution septic system will effect the trees; he will see a roof when he looks out one of his upstairs windows which he now has a view out of. Mr. Maynard addressed Mr. Coffin's concerns. He stated there will be a slope adjustment but there will be no effect on the easement. The driveway will be gravel. The walkway has steps. The walkway is 4 feet in width. There is no intention of cutting the trees. He does not anticipate any blasting; if it is required, he will follow the Town's ordinance. They are trying to keep the new septic in areas that are already disturbed. Mr. Maynard said the applicant is willing to work with the neighbors on any of their concerns.

Public comment was closed.

- Ms. Dunn questioned Mr. Maynard about the height of the new structure. Mr. Maynard stated that the new house ridge was probably 26 or 27 feet. The current house has a flat roof, approximately 16 feet. Ms. Dunn stated she was concerned about this being overwhelming in this area.

- The Chairman asked what the size of the garage would be as it was it was 400 sq. ft. currently. Mr. Maynard replied it is the same square footage.
- Mr. Yennaco stated the picture appears to have a large space above the garage. Mr. Maynard stated it was very small and for storage only. The house is 36 x 24.

Mr. Partington 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.

- Mr. Partington stated that the new structure and new septic look good but stated this is just making a bad situation worse. The abutter is too close and overcrowding will be an issue.
- Ms. Dunn stated that her concern is for diminution of the property values. There is a huge difference in size. This is a tiny lot with other close properties. The list of variances is huge. She stated it is not in the spirit and intent of the ordinance and has a real potential of overwhelming the other properties.
- Mr. Yennaco agrees with Ms. Dunn but stated that the current garage will no longer be there, the house will be moved back but still is in the buffer and it appears to be moving away as far as possible. He stated overcrowding can't be helped; the real concern is the literal size of the structure on a small lot. The covered walkway needs to be addressed but overall this is positive.
- Mr. Scholz stated he has an issue with the covered walkway. The house would encroach more on the Southerly neighbor. He is concerned about the 18" setback.
- The Chairman said he concurs with the statements of the Board but there are benefits. He is concerned about the maximum building coverage of 20.5%. He did not hear any testimony from the abutters regarding the roof line, just the view from the neighbor's window.
- Ms. Dunn stated the applicant needed something for guest access but not necessarily a covered walkway. Mr. Scholz agreed.
- Ms. Dunn stated she has significant concerns regarding the scale and scope of the proposal.

Mr. Scholz motioned to grant Lot 17-L-82, Case #14-2012 Sections 405.2, 405.3, 405.5, 406.2, 616.8, 616.91, and 616.10.1, to allow Section 702 Appendix A-1 with a side setback of 1 feet and 8 feet on the Southerly side where a 30 foot setback is required per plan submitted . Mr. Partington seconded the motion. Motion was granted 3 – 2 with Mr. Partington and Ms. Dunn voting not in favor.

Mr. Partington stated this did not meet the spirit and intent of the ordinance due to overcrowding. Ms. Dunn agreed and also stated it would diminish the surrounding property values. The Chairman and Mr. Scholz agreed.

The Chairman advised all of the 30 day appeal process.

Mr. Scholz motioned to deny Lot 17-L-82, Case #14-2012 from Section 702 Appendix A-1 the maximum building coverage 20.5% where 20% is required and deny a south side setback of 5 feet

for the purpose of a covered porch. Mr. Yennaco seconded the motion. Motion passed 4 – 1 to deny.

The Chairman advised all of the 30 day appeal process.

Mr. Partington stated this did not meet the spirit and intent of the ordinance due to overcrowding. Ms. Dunn agreed and also stated it would diminish the surrounding property values. The Chairman and Mr. Scholz agreed.

The Board took a 5 minute recess at 9:13 pm and was back in session at 9:18 pm.

Applicant – Benchmark Engineering Inc.

Owner – Brian Tedesco

Location – 43 Sawtelle Road

Zone – Residential A

The following variances are requested from the Zoning Ordinance to permit the existing structure to be razed and to allow a new year round single-family dwelling to be constructed: Section 405.2 – to allow for the increase in the area of the structure; Section 405.3 - to allow for the increase in the non-conformity of the structure; Section 405.5 - to allow for the replacement structure to be less conforming to the required setbacks; Section 406.2 – to allow for the expansion of the non-conforming structure within the building setbacks whereby rendering the expansion more non-conforming; and Section 702

Ms. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Mr. Maynard stated the applicant would like to raze the structure and build a new one. This property is not directly on the water but is only inches off of Sawtelle Road. The new footprint will be 28 x 32 with 900 square feet; they are proposing a new well and Clean Solutions septic system. They are reducing the impervious coverage which is now over 40%. Mr. Maynard read the criteria for the 5 points into the record.

- Ms. Dunn asked Mr. Maynard for a picture of the proposed house. Mr. Maynard pointed to his drawing on the board. He stated the house would be a Cape style. Ms. Dunn asked about the height of the structure. Mr. Maynard stated the new one would be approximately 23.4 feet high and the existing one was 19.4 feet high. Ms. Dunn asked if there would be a crawl space for a basement. Mr. Maynard stated yes, the current and the proposed both have crawl spaces.

The Chairman asked if there was anyone from the public who wished to speak in favor or in opposition of the application. Hearing none, the public comment period was closed.

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

- Ms. Scholz stated it would be an improvement over the existing structure. He stated that the new septic would be good. This is in the spirit and intent of the ordinance.
- Mr. Yennaco agreed with Mr. Scholz stating the applicant did the best he could, he is improving the setbacks and the septic was a large improvement.

- Mr. Partington stated that the property was now being moved away from the road and he stated it meets the 5 criteria.
- Ms. Dunn stated it was a significant improvement even though it increases the non-conformity, the scale fits much better into the lot and area, it is not intrusive to the abutters and meets the 5 criteria.
- The Chairman concurs.

Mr. Partington made a motion to grant relief to Lot 17-C-100, Case #15-2012 as in the application and official posting as requested. Seconded by Mr. Scholz. Motioned passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

Lot 21-H-1, Case #16-2012

Applicant – Benchmark Engineering, Inc

Owner – Kevin Blanchette

Location – 47 Cobbett’s Pond Road

Zone – Residential A

The application is proposing to add a screen porch, a new 552 +/- sq. ft. addition, and a balcony to the existing year round home, as well as to relocate an existing shed further back from the Pond. The following variances are requested from the Zoning Ordinance: Section 405.2 – to allow for the increase in the area of the structure; Section 405.3 - to allow for the increase in the non-conformity of the structure; Section 405.5 - to allow for the replacement structure to be less conforming to the required setbacks; Section 406.2 – to allow for the expansion of the non-conforming structure within the building setbacks whereby rendering the expansion more non-conforming; Section 616.6.2 – to allow minor excavation associated with the addition without an erosion and sedimentation control plan prepared by an engineer licensed in the State of New Hampshire; and Section 702-Appendix A-1 – to allow 120’ +/- frontage where 175’ is required, to allow a lot area of 31,450 +/- sq. ft. where 50,000 sq. ft. is required, to allow side setbacks of 17’ and 2’ where 30’ 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 that the applicant would like to construct a 24’ x 23’ addition to the existing house and will construct a one story peaked roof over the new room. They would be enlarging one side of the house with a screened porch. They would be adding a balcony and relocating an existing shed.

- The Chairman asked Mr. Maynard why he was asking for relief from 702 Appendix A-1. Mr. Maynard stated he does not want relief from that. Mr. Maynard said they were already granted that. He just wants the Board to know that the property does not have the frontage. Mr. Maynard stated this is minor in nature but since the whole project is over 25,000 sq. ft. he would need a review but he is asking for relief under 616.6.2.
- Mr. Scholz asked Mr. Maynard to explain what happened to the old dwelling that was on the lot. Mr. Maynard said that was demolished. Mr. Scholz has concerns regarding the previous variances that were granted.

- Ms. Dunn read the ordinance regarding excavations. Ms. Maynard stated the application states anything over 25,000 impervious. Ms. Dunn asked about Shoreline Protection. Mr. Maynard stated they already have a permit to remove the other foundation. Mr. Scholz and Ms. Dunn both stated that the old variances are still in effect to build the other structure. Mr. Maynard stated that it was his understanding that the applicant had dissolved the condo form of ownership. Mr. Scholz stated he would agree to approval with conditions as long as the plan can move forward per the new plan submitted. The Chairman was satisfied with Mr. Maynard's intent. 702 Appendix A-1 does need to be in for relief.

The Chairman asked if there was anyone from the public who wished to speak in favor or in opposition of the application. Hearing none, the public comment period was closed.

Mr. Maynard stated this was a modest request. Mr. Maynard submitted Exhibit A (photo of the existing house) into the record. The Chairman approved adding the exhibit to the record.

Mr. Partington 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.

- Mr. Partington stated that it did meet the 5 criteria and they did grant the old variance and stated that anyone could request a variance for a frost wall.
- Ms. Dunn stated that she has a concern with 616.6.2. She sees that for erosion control plan is approved by a professional engineer. If approved by the State engineers she questioned if the Board is accomplishing the same purpose. She questioned if the applicant meets the spirit and intent of the ordinance.
- Mr. Partington does not feel that this is a hardship.
- The Chairman agrees with Ms. Dunn and stated this is a common sense approach to what Mr. Maynard is asking for on face value and he stated that a hardship could be an additional cost. This could be an ordinance that the Board might want to look at a future time if this comes to the Board many times.
- Mr. Scholz stated that because this will go to the State for approval and the State requires erosion and sediment control, he agrees with Ms. Dunn's point.

Motion by Mr. Scholz to grant relief for Lot 21-H-1, Case #16-2012 to sections 405.2, 405.3, 405.5, 406.3, 616.6.2, and 702 Appendix A-1 per plan submitted on the recording of the documents of the condition of the dissolving the condominium agreement of the property and recording at the Registry of Deeds. Seconded by Mr. Yennaco. Motion passed 4-1 with Mr. Partington voting not in favor.

Mr. Partington stated this does not meet the hardship criteria.

The Chairman advised all of the 30 day appeal process.

Review and Approval of 4/10/2012 Draft Meeting Minutes

The minutes were reviewed and amended.

Member Binder Update – Tab 1 Updated Members List

Other Business

There was a discussion regarding how many alternates are needed for the Board. Mr. Yennaco stated we can go up to 5. The Board advertised for 4. The Chairman stated that with that many new alternate members they might not sit on a case for a year. Mr. Yennaco stated he thought 3, Mr. Partington agreed. Mr. Scholz stated we had two applicants, the date had passed and the Board needs to make a decision. Mr. Partington stated we had two more people interested before the deadline. The Chairman stated we will interview the 2 new candidates at the next meeting and we will appoint 3.

The Chairman has a priority list of By-Law changes. Mr. Partington will work on this.

The Chairman stated he had a request from the Rockingham County Planning Commission for a presentation.

Mr. Partington asked that the Zoning Member list be updated to reflect that Mr. Tierney's term ends in 2012.

The Chairman distributed Attorney Campbell's correspondence to the Board for their review. Ms. Dunn stated that the correspondences were not confidential and could be placed in the file.

Adjournment

Motion to adjourn was made by Mr. Partington and seconded by Mr. Scholz. Motion passed 5 – 0.
Meeting adjourned at 10:50 pm.

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