



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes May 8, 2012

Board Members:

Mark Samsel, Chairman - Present
Heath Partington, Vice-Chairman - Present
Elizabeth Dunn, Member - Present
Jim Tierney, Member - Present
Jay Yennaco, Member - Excused
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 7:32 pm, introduced the Board Members and staff, and explained the meeting process.

Seat Alternates

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

The Chairman stated there would be a change to the sequence of the meeting and the Board will hear the Public Hearing first and move the ZBA Alternate interviews/appointments to the 2nd item on the agenda.

Public Hearings

Lot 11-A-1620, Case #11-2012 (continued from March 27th)

Applicant – Edward N. Herbert Assoc., Inc.

Owner – Kenneth & Susan Hebert

Location – 53 Blossom Road

Zone – Rural District

A variance is requested from Article 702 and Appendix A-1 to permit a two lot subdivision such that the proposed lot with the existing house will have a contiguous buildable area of 18,004 sq. ft. outside the WWPD where 30,000 sq. ft. is required.

Ms. Dunn read the case Lot 11-A-1620, Case #11-2012 into the record.

- Ms. Prendergast stated that a letter from the applicant and some pictures were added to the Board's packets.
- Mr. Wes Aspinwall spoke for the applicant. The applicant is proposing to create a two lot subdivision out of one lot and it would be a conforming lot. The existing house is not conforming. The WWPD bisects this large lot into two pieces. The WWPD leaves the applicant with a buildable area of 18,004 sq. ft. They would like to build with frontage on Greenway Rd. Mr. Aspinwall read a letter from the applicants, Kenneth & Susan Hebert, regarding why they are requesting this variance. The main reason was that they are the primary caretakers for their elderly grandmother and mother, and the current house is not conducive to this. The land they would like to build on is excess land they own.
- Mr. Aspinwall read the 5 criteria for the variance into the record. Mr. Aspinwall stated that the applicants could not put anything on the other side of their lot as it is physically isolated and is split by the WWPD, i.e., a pool, addition, garage, etc.
- The Chairman asked Mr. Aspinwall what the percentage of the coverage on the new lot would be. Mr. Aspinwall stated he did not measure. The Chairman asked where the proposed entry to the new house on the new lot would be. Mr. Aspinwall stated that it would be on Greenway Road and was already assigned a street number. Greenway Road was the most suitable spot.
- Ms. Dunn asked where the current septic and well are now. Mr. Aspinwall pointed them out on the plan on the board. Ms. Dunn asked about the abutting properties well. Mr. Aspinwall stated he has not looked at that. He stated the well is approximately 75 feet from the septic. Mrs. Dunn asked where the abutting house is. Mr. Aspinwall pointed it out on the plan on the board.
- Ms. Dunn stated that this subdivision was done around 1985 and Herbert Assoc. was involved. She questioned why this lot wasn't subdivided at that time. Mr. Aspinwall stated that at that time the Town required more than 1.6 acres and he had a copy of the subdivision plans if the Board wanted to see them. Ms. Dunn stated that there was a reason why this lot wasn't subdivided then. She does not think the 30,000 sq ft provision was in effect in 1985. Mr. Aspinwall stated that it wasn't two lots when it was created.
- Mr. Tierney asked if the lot that exists now is a non-conforming lot. Ms. Prendergast stated no. Mr. Tierney asked if it was subdivided now would it make it a non conforming lot. Ms. Prendergast stated yes.

The Chairman opened the Hearing to the public.

- Ms. Susan Hebert, 53 Blossom Rd, gave the Board some history of the subdivision. She stated that the builder told her it was cheaper to place the house where it currently is. A culvert was placed under the road for the WWPD drainage. She stated that their need now is to accommodate her grandmother and mother-in-law who are both in wheelchairs with a new house on the other side of the WWPD bisect. They want to be able to utilize their property fully. They have no intention of taking any trees down or encroaching on the abutters' property. They have always been good neighbors.

- Ms. Lillian Garcia-Palmer, 3 Greenway Road, addressed the Board. Ms. Garcia-Palmer stated that the variance is only 60% of what is required that the applicant is looking for. She stated that the new lot, which is only 1.1 acres, would affect the surrounding property values conflicting with one of the 5 criteria the applicant read into the record. She stated she has spoken to realtors who also confirmed that approval of this variance would affect her property values. She stated that when she bought the home in 1997 she was told that the lot was not buildable. The new driveway and traffic pattern would be a safety concern. She stated that where the new house is to be located is all ledge, and she questioned the ramifications on her well, sediment of her house, leach field, her siding and her roof. She asked what the applicants proposed to do with the old house. She stated that a 1.1 acre lot would be the smallest in the neighborhood, the mean average lot sizes of the neighborhood was 2.7 acres. She understands according to the regulations that they would need 100 feet and they are proposing 92 feet. Mr. Tierney stated the applicants have frontage on two roads, Blossom and Greenway. Ms. Garcia-Palmer questioned how this construction would affect her family. Ms. Garcia-Palmer showed the Board the graphs she made with the acreage of the neighborhood lots. Mr. Partington asked to see them.
- Mr. Scott Palmer, 3 Greenway Road, addressed the Board. He stated that Ms. Dunn asked a question he has also pondered, why wasn't this lot built in 1985. Mr. Palmer showed the board how small the lot would be on the plan on the board. He disputed Mr. Aspinwall's statement that the surrounding properties would not be diminished. He questioned what the effects would be on his well and leach field when they started drilling. He stated that he is compassionate but does not see how this relates to the granting of a variance.
- Ms. Dunn stated the Board received two letters from Mr. Doug Watson of 51 Horseshoe Rd and Ms. Mary Japy of 51 Blossom Road expressing no opposition or concern.
- Ms. Prendergast stated that the existing house does not fall into the WWPD, #12 on the drawing needs to be updated and there are no variances on this property at this time.
- Mr. Aspinwall showed the Board the original plan from 1985. The regulations at that time stated that only a soil scientist look at the plan. The criteria for the WWPD was different at that time. The Planning Board approved the Plan in standard review and it was a conforming lot at that time. The house was not in the WWPD at that time but was close. He does not believe the current house needs a variance, perhaps an equitable waiver. Mr. Aspinwall stated that the statements of Ms. Garcia-Palmer that this lot is 60% are not true. They have been measured and the applicant would have asked for a variance if that was the case. He told Ms. Garcia-Palmer that the lot was buildable and that realtors say that to sell houses. Mr. Tierney stated that there are test pits on both lots so a house could have been built on either at the time of the original subdivision. Mr. Aspinwall stated there would be a turnaround in the driveway as the proposed driveway is 90 feet long. He stated this is a comparable use of the land as this is a residential subdivision. The intent is not to de-grade the area; the current house is large and well taken care of. The new house would have two floors with a cellar. It will be of comparable value and size of the other houses in the neighborhood. Mr. Aspinwall stated it would not diminish the values of the other houses in the neighborhood. He stated he would supply the Board with an appraisal report if requested. Most of the construction outside would be completed within 3 months. He takes exception to Ms. Garcia-Palmer's

comments that this does not do justice. He stated that this variance request is scaleable and in proportion.

- Ms. Dunn stated she is concerned with blasting. She asked what was found with the test pits and how much blasting would be done. Mr. Aspinwall stated that garage is about one foot below the finished foundation. There is ledge but they might be able to build above it. The intention is to have very minimal blasting. The driveway would be at grade to minimize blasting. There may be a little hammering in the Southeast corner. There will be noise when drilling the well, he expects minimal if any.
- Mr. Scholz asked if the house would be built on Blossom Rd. Mr. Aspinwall stated that it is a corner lot so the address is already on Greenway. Mr. Scholz asked where the proposed well would be located. Mr. Aspinwall pointed it out on the plan. It possibly could be moved 10 feet towards Blossom. Mr. Scholz asked if the applicant had explored expanding the current house. Mr. Aspinwall stated that with the special condition of hardship in that most of the lot is not usable, they cannot put an accessory structure as it is so far away and it would be crossing the WWPD. He stated that this complies with present zoning regulations and only needs a variance for the 30,000 sq ft. There are special conditions for the hardship, this lot is 2.8 acres, with approximately 1 acre of wet area.
- Ms. Dunn stated that the problem with the old lot is that it does not meet the 30% of contiguous area. She asked about the new lot and does this include the building setbacks. Mr. Aspinwall stated 38,456 sq ft and that does not include the WWPD.
- Ms. Garcia-Palmer stated he is asking for a 60% variance for the WWPD, She asked what the proposal was for the old house. Mr. Tierney stated that was not relevant, the lot conforms. Mr. Scholz asked Ms. Garcia-Palmer if she is questioning the lot size because of diminution of property values. Ms. Garcia-Palmer stated yes. Ms. Dunn stated to Ms. Garcia-Palmer that certainly there is a reasonable worry associated with the blasting but there have been significant changes to the blasting policy since the Granite St problem.

The Chairman allowed Exhibits A & B into the record (Acres Based on Variance Proposed & Acres Before Variance Request).

- Ms. Prendergast stated that she has the original drawing if the Board would like to see it. She stated the Conservation Committee has no comments or concerns and she read the memo into the record.
- Mr. Aspinwall addressed Ms. Garcia-Palmer concerns. He stated a 60% variance is what is being requested. He disagrees that this is a not a buildable area. Regarding diminution of neighboring properties, he hasn't analyzed this and there are a number of lots that are 1 acre and the effect of the value was very minimal.

The Chairman allowed Exhibit C into the record (Assessed Values Of Neighboring Lots).

The Chairman entertained a motion to go into Deliberative session. Motion by Mr. Scholz and seconded by Mr. Partington. Motion passed 5 – 0.

- Mr. Partington stated that he believed that this would not alter the essential characteristics of the area nor diminish property values. He believes this is a hardship.
- Mr. Scholz stated that he is not convinced that the value of the surrounding properties would be diminished.
- Mr. Tierney stated that this is not changing the character of the neighborhood as the subdivision is already built. Without knowing how the ordinance read other than how the subdivision was built the existing structure is probably a legal nonconforming. He has no concerns. He believes they cannot cross over the wetlands to do anything with the other side of the property without crossing the WWPD.
- Ms. Dunn questioned why this lot wasn't made during the original subdivision. She stated that this lot was different than the other lots in the subdivision as it had frontage on 2 roads and has the wetlands issues. She referred to the "NH Planning and Land Use regulations 2011 – 2012 Edition.
- The Chairman stated focus was to be on the upper lot. It is currently conforming. He has 2 letters of support and a letter from the Conservation Committee. The abutters are in disagreement. He does not believe that this will be diminishing the property values. The assessing records show that all properties in the area only show a slight difference in value. He agrees with Mr. Tierney, with the 5 points, the uniqueness and the hardship with the wetland dividing the lot.
- Mr. Scholz agreed with the 5 points stating the WWPD issue, the lot has substantial frontage, and A1, A2, and B are not applicable. The assessor's data shows nothing to diminish the values due to acreage and size. He does not agree there will be a diminution of the surrounding properties.

Motion by Ms. Dunn to grant Lot 11-A-1620, Case #11-2012 in consideration of the 5 points, a variance from Article 702 and Appendix A-1 to permit a two lot subdivision such that the proposed lot with the existing house will have a contiguous buildable area of 18,004 sq. ft. outside the WWPD where 30,000 sq. ft. is required. Seconded by Mr. Tierney. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

ZBA Alternate Interviews/Appointments

- **Mr. Kevin Hughes**, 6 Butternut Road, stated he is a lawyer and would like to help by serving as an alternate on the ZBA. He has over 20 years of experience in real estate and financial service law. He was a volunteer on the Bedford NH Conservation Committee and has experience with the US Department of Housing and Urban Development.
- The Chairman asked Mr. Hughes what peaked his interest in volunteering. Mr. Hughes stated he has seen some concession in town and heard concerns from residents that the Town is growing quickly. He does like the mix of commercial, industrial and residential.

- Mr. Scholz asked Mr. Hughes how he sees the ZBA effecting growth. Mr. Hughes stated he thinks it is minimal and thinks with the planning and schools the town has grown substantially and drained resources.
- The Chairman explained to Mr. Hughes that it may be several months before he sits on a case and how did he feel about that. Mr. Hughes stated that was fine. The Chairman asked what length of term he was asking for. Mr. Hughes stated anything the Board requests is fine with him.
- Ms. Dunn asked if Mr. Hughes had a perception about the regulations in Town. Mr. Hughes stated most were positive, Ms. Dunn asked if Mr., Hughes would attend trainings for the Board. Mr. Hughes stated yes. Ms. Dunn asked him how comfortable he was making tough decisions. Mr. Hughes states that as a member you need to take an impartial role and be detached. Ms. Dunn asked if he had ever watched a ZBA meeting. Mr. Hughes replied yes.
- Mr. Partington asked what qualities Mr. Hughes believed were important to being a ZBA member. Mr. Hughes stated research skills.
- **Mr. Michael Mazalewski**, 22 Woodvue Road, stated building is in his blood, he has a contractor's license in MA, he buys and sells, or rents, properties in Salem NH and has been before the Salem Boards in the past.
- The Chairman asked Mr. Mazalewski what his view was on how the ZBA plays a role in growth. Mr. Mazalewski stated he believed it allows people to do what they want with their property, but you need to be impartial and follow the criteria.
- Ms. Dunn asked Mr. Mazalewski if he has ever attended or watched a ZBA meeting. Mr. Mazalewski stated not in Windham, but in Salem. Ms. Dunn asked what length of term he was asking for. Mr. Mazalewski stated anything the Board requests is fine with him.
- Ms. Dunn asked if Mr. Mazalewski would attend trainings for the Board. Mr. Mazalewski stated yes. Ms. Dunn asked him how comfortable he was making tough decisions. Mr. Mazalewski stated you need to judge each case on its merits, you can't get personally involved and you need to be impartial.
- Mr. Partington asked Mr. Mazalewski if he was aware that he might not sit on a case for a while as the Board may have 5 alternates. Mr. Mazalewski stated he was aware, but was not sure the Board needed 5 alternates.
- Mr. Scholz stated to Mr. Mazalewski that he stated he had some projects in Salem, had he done any in Windham. Mr. Mazalewski stated no.

The Chairman thanked Mr. Hughes and Mr. Mazalewski for their interest,

The Chairman stated that the Board will decide on alternates when Mr. Yennaco is present at the meeting and also will discuss the number of alternates the Board would have. He would like it placed on the next agenda. Ms. Dunn stated a full Board is necessary with no recusals.

Review and Approval of Draft Meeting Minutes: 4/10/2012, 4/24/2012

- The ZBA Draft Minutes of 4/10/12 were not the correct minutes – no action taken. Ms. Prendergast will provide the correct minutes at the next meeting.
- The Draft Minutes for 4/24/12 were amended.

Other Business

- Ms. Prendergast had confidential correspondence from Attorney Campbell. Ms. Dunn stated she did not see a copy of the Court's decision. Ms. Prendergast stated it would be emailed to the Board. The decision is a public document but the letter from Attorney Campbell is confidential.
- The Chairman read a letter from the Planning Board inviting the ZBA for input regarding consistent variance requests that come before the Board. Mr. Scholz suggested a database. The Chairman agreed. The Chairman also suggested the minutes reflect the notes. Mr. Scholz stated it would be beneficial to look at the data. The Chairman also stated the Board is here to provide relief from the ordinances where it is applicable.
- The Chairman thanked Mr. Partington for working on the By Law Priority List. Mr. Partington moved items to the "complete" sheet, took off what had been talked about, and needed to cross reference some items. Ms. Dunn thinks some items have slipped through the cracks. The Board will cross reference the By Laws from the Feb and December 2011 revisions. The Chairman stated the Board will set aside some time at meetings to work on a few. The Chairman asked the Board to come back with items they want to address.

Member Binder Update – ZBA Handbook updates

- Ms. Prendergast stated that the highlighted sections have been changed.

Adjournment

Motion to adjourn was made by Mr. Partington and seconded by Ms. Dunn. Motion passed 5 – 0. Meeting adjourned at 10:13 pm.

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