



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes July 24, 2012

Board Members:

Mark Samsel, Chairman - Present
Heath Partington, Vice-Chairman - Present
Elizabeth Dunn, Member - Excused
Jim Tierney, Member - Present
Jay Yennaco, Member – Present
Mike Scholz, Alternate – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, 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.

The Chairman asked Mr. Scholz to sit for Ms. Dunn.

Public Hearings

Mr. Scholz read Lot 16-C-19, Case #27-2012 into the record including the abutter's list. He stated he also had a letter from the Conservation Committee who had no comment.

Lot 16-C-19, Case #27-2012

Applicant – Benchmark Engineering, Inc.

Owner – 5 King Street Trust

Location – 17 Ash Street

Zone – Residential A District

Variations from the following sections of the Zoning Ordinance are requested to permit the construction of a garage and breezeway with a room above and to add a deck to the existing home: **Section 401** – to allow for an increase in the extent of the non-conforming structure; **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 616.10.3** – to allow relief from submittal of a storm water management and erosion control plan to the Planning Board; **Section 702** and **Appendix A-1** – to allow 130' +/- frontage where 175' is required; to allow a lot area of 14,249 sq ft +/- where 50,000 sq ft is required; to allow a 14' +/- front setback for the existing house where 50' is required; to

allow a 34' +/- front setback for the proposed addition where 50' is required; to allow 14' +/- side setback for the existing house where 30' is required; to allow 28' +/- side setback for the proposed addition where 30' is required.

- Mr. Tierney stated that in Section 702 and Appendix A-1 most items refer to a pre-existing non-conforming.
- Mr. Joe Maynard, on behalf of the applicant, 5 King Street Trust, addressed the Board. He stated that a variance was granted before that wasn't acted on. Mr. Tierney asked Mr. Maynard if they were demolishing the building. Mr. Maynard stated no. he stated the current ranch is 14 feet from Ash St, 14 feet from the on site well and there is a septic system on the lot but it is not on file. They are proposing construction of a garage and breezeway with a room above and to add a deck to the existing home. He stated the abutting house in the back is about 100 feet away. They are also proposing a new septic system. He stated there will be living space above both the garage and breezeway. The Chairman asked Mr. Maynard for a rendering. Mr. Maynard stated there was one in the Board's packet. Mr. Maynard read the 5 criteria into the record.
- Mr. Partington asked Mr. Maynard how much of the tree buffer on the left rear of the lot would be taken out. Mr. Maynard stated not much, but they will need to do a setback for the septic, he is just taking out a small section. Mr. Partington asked if they are putting in a septic. Mr. Maynard stated that if the current septic is in the area that the garage is going they will replace it; otherwise it will be replaced when necessary.
- Mr. Tierney asked Mr. Maynard how long the sheds have been on the property. Mr. Maynard stated he was not sure. An abutter who was present in the audience told Mr. Maynard and the Board the sheds have been there forever.
- Mr. Scholz asked Mr. Maynard why he was asking for relief from Section 616.10.3, Mr. Maynard stated that the impact of this project is only 6% but the way the Ordinance is written he has to apply for outside review.
- Mr. Tierney asked if they needed to apply for a Shoreline permit. Mr. Maynard stated if he needs new footings he will but that would be a Minor application.
- Mr. Mazalewski asked if the breezeway was open. Mr. Maynard stated no, it is enclosed. Mr. Mazalewski asked if it was conditional space. Mr. Maynard stated yes. Mr. Mazalewski asked where the stairs would be located. Mr. Maynard stated they would be inside.

The Chairman opened the hearing to the public at 7:53 pm.

- Mr. Maynard had three letters from direct abutters who are in favor of granting the variance. Mr. Scholz read the letters to the Board and public. Alphonse and Karen Marcil, PO Box 311, Windham (Exhibit A), Mr. and Mr. Tracy Talcott, 16 Ash St., Windham (Exhibit B) and Sal and Jean Morando, 19 Ash St., Windham (Exhibit C). The Chairman admitted the Exhibits into the record. Mr. Scholz stated there is a letter from the Conservation Committee with "no comment"

The Chairman closed public comment at 7:55 pm.

- **Mr. Tierney stated on a sheet** it shows a deck coming off but doesn't show the porch. Mr. Maynard said the deck will remain and will be tied in. It appears the 30 foot setback goes to the side of the porch. Mr. Maynard stated that was correct.
- Mr. Scholz stated if the need relief from Section 406.2 why do they need relief from Section 401. Mr. Tierney stated Section 401 is needed for the porch. He stated Section 401 is for volume and Section 406.2 is for expansion and it does not meet the front and left side setbacks.
- Mr. Maynard stated he has spoken to the neighbors and this is a very small project.

The Chairman entertained a motion to go into Deliberative Session.

Motion by Mr. Partington to go into Deliberative Session, seconded by Mr. Scholz. Motion passed 5 – 0.

- The Chairman asked Mr. Tierney about relief under Section 702 and Appendix A-1. Mr. Tierney stated there is a 14 foot front setback, a 34 foot front setback, and a 28 side setback, everything else is pre-existing. The Chairman and Mr. Partington agreed.
- Mr. Partington stated that other than Section 616.10.3 they meet the criteria. Section 616.10.3 does not meet the hardship criteria. Mr. Yennaco agreed.
- Mr. Scholz stated he is not inclined to grant relief from Section 616.10.3.
- Mr. Tierney stated Section 616.10.3 is questionable. He agrees with Mr. Partington, it is part of the Ordinance; it is a minor plan and stated it should still be reviewed.

The Chairman stated the Board would need two motions. He entertained two motions.

Mr. Scholz motioned, in consideration of the 5 criteria, to deny relief from Section 616.10.3, seconded by Mr. Yennaco. Motion passed 5 – 0. Motioned denied.

- Mr. Partington stated it does not meet the criteria.
- The Chairman stated it does not meet the criteria
- Mr. Scholz stated it does not meet the spirit and intent
- Mr. Yennaco agreed with Mr. Partington and Mr. Scholz
- Mr. Tierney agreed with Mr. Partington and Mr. Scholz

Mr. Tierney motioned, in consideration of the 5 criteria, to grant relief from Section 401, Section 406.2, and Section 702 and Appendix A-1 to permit the construction of a garage and addition as shown on the plans dated 6/17/12, to allow a 14' +/- front setback for the existing house where 50' is required; to allow a 34'+/- front setback for the proposed addition where 50' is required and to allow 28' +/- side setback for the proposed addition where 30' is required. No relief is needed to allow 130' +/- frontage where 175' is required; to allow a lot area of 14,249 sq ft +/- where 50,000 sq ft is required and to allow 14' +/- side setback for the existing house where 30' is required, seconded by Mr. Yennaco. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

Mr. Scholz read Case #28-2012 into the record including the abutter's list. He stated he also had 2 letters of authorization signed by several people.

Lot 25-C-250, Case #28-2012

Applicant – Benchmark Engineering, Inc.

Owner – Friends of Moeckel Pond; Donald Bellemare

Location – 25 Moeckel Road

Zone – Residential A

Variations from the following sections of the Zoning Ordinance are requested to subdivide tax map 25-C Lot 250 into 3 non-conforming parcels of land with no frontage or limited frontage on a Town Road, and to request W.W.P.D. relief: **Section 601.3** - to allow construction of permanent building or structure (s) within the W.W.P.D.; **Section 601.4.1** - to allow WWPD setback of 50' where 150' is required;

Section 601.4.6- to allow for a waste disposal system located closer than one hundred feet (100') to a wetland contiguous to the W.W.P.D. or within the W.W.P.D. **Section 601.4.8**- to allow relief from submittal of a special permit application to the Planning Board; and **Section 702** and **Appendix A-1** as follows:

Parcel 25-C-252 – to allow 0 +/- frontage in Windham where 175' is required; to allow a lot area of 39,123+/- sq ft where 50,000 sq ft is required; and to allow the house lot based on area instead of soils.

Parcel 25-C-250 – to allow 0 +/- frontage in Windham where 175' is required; to allow a lot area of 16,511+/- sq ft where 50,000 sq ft is required;

Parcel 25-C-253 - to allow 117' +/- frontage in Windham where 175' is required; to allow a lot area of 40,534+/- sq ft where 50,000 sq ft is required.

- Mr. Joe Maynard, representing the Friends of Moeckel Pond and Donald Bellemare, addressed the Board. He stated they would like to subdivide the property into three lots. The house on the lot has no frontage in Windham, frontage is in Pelham. When you add the square footage of the land in Windham and the land in Pelham it is a 50,000 sq ft lot. An abutter is trying to buy the lot with the house but the Friends of Moeckel Pond are going forward with dividing the parcel. One lot will be the dam lot and is not buildable, half is in Windham and half is in Pelham. The last lot will be deeded to the Conservation Committee. He is asking for WWPD relief as right now Moeckel Pond is drained but it is also considered Golden Brook which is a WWPD. If you have the WWPD on the lot, the majority is in Windham and a small portion is in Pelham. He is looking for a 50 foot setback because if the pond is filled and the dam is reconstructed it will be a 50 foot setback that is needed. He is also looking for 50 feet on the lot for Conservation which will be used as a staging area for construction vehicles when they repair the dam. They will leave gravel for parking for Dear Leap.
- Mr. Partington questioned Mr. Maynard about the waste system. Mr. Maynard explained that this lot is WWPD because Golden Brook's setback is 100 feet. The setback for Moeckel Pond when it is drained is 50 feet. He stated the septic at the current house is between 50 and 75 feet. Mr. Partington asked Mr. Maynard where the current septic is located. Mr. Maynard stated he does not know. Mr. Partington asked if relief from Section 601.3 was for the house or the dam. Mr. Maynard stated it was for the house.

- Mr. Tierney asked Mr. Maynard if they are demolishing and building a new house. Mr. Maynard stated they are not and they are leaving the existing structure in place and an abutter wants to purchase it.
- Mr. Maynard read the five criteria into the record.
- Mr. Tierney stated that the variances for the dam will be for 5 years and if they don't replace it that they would have to come back to the Board. Mr. Maynard stated he left the dam out and he just wants to subdivide into three lots.

The Chairman opened the hearing to the public at 8:27 pm.

- Mr. Joe Maynard addressed the Board. He stated he was in favor of granting the variances. He spoke to a lot of people in Town who agree it is good for the Town and the Friends of Moeckel Pond did a great job.

The Public hearing comment was closed at 8:28 pm.

Mr. Scholz stated he had a letter from the Conservation Committee and they fully support this.

The Chairman entertained a motion to go into Deliberative Session.

Motion by Mr. Tierney to go into Deliberative Session, seconded by Mr. Yennaco. Motion passed 5 – 0.

- Mr. Yennaco stated he is concerned with the lot with the current structure and the request of a 50 foot setback on what is currently there and not in the future. His decision will be based on the Golden Brook 100 foot setback. He stated the Board is working with what they have.
- The Chairman stated that if the variances are granted they could come back when Moeckel Pond is filled.
- Mr. Scholz stated they would need some relief to do something.
- Mr. Tierney asked the Board what their thoughts were on Section 601.4.8. The Chairman read Section 601.4.8 for the Board and the public.
- Mr. Tierney stated he has no issues with granting relief from Section 601.4.8, there is definitely a hardship with the parcel and it is unique.
- Mr. Partington stated he would be against granting that relief due to the spirit and intent or the hardship. He is also concerned with granting it on the WWPD where they don't know what is there.
- The Chairman is neutral on Section 601.4.8.
- Ms. Prendergast stated there is a \$25.00 fee for a WWPD permit.

The Chairman entertained a motion.

Mr. Partington motioned, in consideration of the five criteria, to deny relief from Section 601.4.8. There was no second to this motion.

Mr. Partington motioned, in consideration of the five criteria, to grant relief from Sections 601.2, 601.4.1, 604.6, and Section 702 and Appendix A-1 as requested, per plan submitted, and purposely leaving out Section 601.48., seconded by Mr. Scholz. Motion passed 5 – 0.

Mr. Tierney motioned, in consideration of the five criteria, to grant relief from Section 601.48, seconded by Mr. Yennaco. Motion passed 3 – 2.

- Mr. Partington stated it doesn't meet the spirit and intent or the hardship criteria.
- Mr. Scholz stated it doesn't meet the spirit and intent criteria.

The Chairman advised all of the 30 day appeal process.

Mr. Scholz read Case #29-2012 into the record and the abutter's list. He stated he had a letter from the property owner.

Lot 12-A-532, Case #29-2012

Applicant – Max Puyanic, ConvenientMD Urgent Care

Owner – MacThompson Realty, Inc.

Location – 125 Indian Rock Road

Zone – Gateway Commercial District

A variance from **Section 706.6.2.4** of the Zoning Ordinance is requested to permit a temporary “coming soon” sign to be displayed for up to 180 consecutive days where 15 consecutive days is allowed.

- Mr. Tierney asked Ms. Prendergast why this sign would not fall under Section 706.7.3, he read the Section for the public. Mr. Prendergast stated it does not fall under that section. Mr. Tierney asked if the sign at the site now meets the setback. Ms. Prendergast replied yes.
- Mr. Max Puyanic, ConvenientMD Urgent Care, addressed the Board. He is very excited about the project and it is moving forward. He hopes to be open by December 1st. He stated it is very important to let residents know they will be “coming soon” and the sign would be beneficial to the community. Mr. Puyanic read the 5 criteria into the record.
- The Chairman asked Mr. Puyanic if DOT has had input on the sign. Mr. Puyanic stated they currently have a 15 day permit and put the sign up and it is 70 feet away from RT 93. DOT has seen the sign and has no issues with it.
- The Chairman asked Mr. Puyanic how people will know it is “coming soon” and not open now. Mr. Puyanic stated it is now a construction site.
- Mr. Partington stated that the leasing sign is currently there. Ms. Prendergast stated it falls under a different Section of the Regulations. Mr. Partington questioned if they could put the sign on the building. Ms. Prendergast explained to the Board and public the process of a 15 day sign permit.

The Chairman opened the hearing to the public at 8:50 pm.

- Mr. Tom Case addressed the Board. He stated that generally variances go with the land. The Chairman stated that could put a condition on the variance.

Public comment was closed at 8:51 pm.

The Chairman entertained a motion to go into Deliberative Session.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed 5 – 0.

- Mr. Partington stated this was a completely reasonable request, Windham is receptive to new business and this should be in the Ordinances.
- Mr. Scholz is concerned with this being up to 6 months but does agree with Mr. Partington. He would like a condition of DOT approval and the variance does not go with the land.
- The Chairman stated he would not recommend DOT approval.
- The Chairman stated 180 days could start 30 days after the appeal process.
- Mr. Scholz asked for an explanation about the 15 day renewal policy. Ms. Prendergast explained it.

The Chairman entertained a motion.

Mr. Scholz motioned, in consideration of the 5 criteria, to grant relief from Section 706.6.2.4 to permit such sign to be displayed, with a start date of 7/25/12, with the conditions for up to 180 consecutive days where 15 consecutive days is allowed or until a certificate of occupancy is granted, seconded by Mr. Yennaco. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal process.

Mr. Yennaco recused himself from Case #22-2012. The Chairman appointed Mr. Mazalewski to sit for Mr. Yennaco.

Rehearing Request – Case #22-2012

- The Chairman stated the Board will not proceed with the hearing as the Board believes it does not have jurisdiction and this case is not materially different from the prior case heard on January 24, 2012, Case 5-2012, which was denied by the Board, subsequent request for re-hearing was denied and it currently is with Superior Court on appeal. The Chairman also stated he has not spoken to Attorney Campbell regarding this case.

The Chairman entertained a motion.

Mr. Tierney motioned to continue Case #22-2012 to date certain after consultation with Attorney Campbell, seconded by Mr. Scholz. Motion passed 5 – 0.

Mr. Yennaco was seated back on the Board. The Chairman appointed Mr. Pellegrini to sit for Mr. Scholz who was seated for Ms. Dunn.

Old/New Business – Mike Scholz alternate appointment

- The Chairman would like to address the RSA Statute regarding alternates. He stated Mr. Scholz was still seated as an alternate on the Board until a decision is made. The Board has had a few applicants in the past few months and they could revisit that, but did state that Ms. Dunn was not in attendance this evening. The Chairman stated Mr. Scholz has done a great job and attended mostly all of the meetings.
- Mr. Yennaco doesn't have any issues with drawing from the pool. Mr. Tierney and Mr. Partington agreed.
- The Chairman stated it would be a 3 year term.
- Mr. Scholz addressed the Board. He read his email he sent to the Board for his application. He stated he would like to continue to serve on the Board and would like the Board to have him serve consistent with the other alternates until on May 31st.

The Chairman thanked Mr. Scholz for his past service.

The Chairman entertained a motion.

Mr. Yennaco motioned to appoint Mr. Mike Scholz as an alternate to a three year term consistent with the other alternates, 5/31/2015, seconded by Mr. Tierney. Motion passed 5 – 0.

The Chairman appointed Mr. Scholz to replace Mr. Mr. Pellegrini for Ms. Dunn.

Review and Approval of Draft Meeting Minutes

6/12/2012 revised

Motion by Mr. Partington to accept and approve the June 12, 2012 revised minutes as amended, seconded by Mr. Tierney. Motion passed 5 – 0.

6/26/2012 revised

Motion by Mr. Partington to accept and approve the June 26, 2012 revised minutes as amended, seconded by Mr. Yennaco. Motion passed 5 – 0.

7/10/12

Motion by Mr. Partington to approve with edits the July 7, 2012 minutes, seconded by Mr. Tierney. Motion passed 4 – 0 -1 with Mr. Yennaco abstaining

Bylaws

- Ms. Prendergast provided a copy of the revised By –Laws that the Chairman wanted. She has added numbering. She also included draft language by Ms. Dunn.
- The Chairman stated it is important that under Section 5 General Rules, Section 5.9 was added regarding legal proceedings.
- The Chairman read Section 5.9. He stated he was not sure the Board needed to determine who would go. He stated that the Chair or the Vice Chair should determine that. Mr. Pellegrini stated Town counsel input would be important. Mr. Partington stated he believes that section should be removed because sometimes a member is not available. Mr. Yennaco stated this has been discussed briefly before and stated the Chair should determine as who is best suited to go for the case. Mr. Partington stated the way it is currently worded, it sounds like the Chair has to go. Mr. Tierney suggested removing that language. The Chair will remove that sequence of determination.
- The Chairman stated he would like to change the language and delete “sequence of representation will be” in line 2 after the word Vice Chair and add” acting on behalf of the Chair, shall determine which Board member shall attend such proceeding”. Mr. Partington stated a public hearing after changes would be required. Both sections 1 and 2 should be on the next agenda separately. The Chairman stated it would be for a public hearing. The Chairman read the new language.
- Ms. Prendergast stated that on the Planning Board they have a line to take a motion to “set aside”. The Chairman stated yes we have that. Mr. Partington stated also for re-numbering.

The Chairman entertained a motion.

Mr. Partington motioned to renumbering and required attendance by the Board at all legal hearings, seconded by Mr. Tierney. Motion passed 5 – 0.

Binder Updates

Tab 1 – Member List (some corrections will be made)

Tab 5 – Fees

Old/New Business

- Ms. Prendergast stated that she had read recent posting requirements from the State that Notice of Decisions be posted in the newspaper. The Community Development Office does not do that currently as there is no funding. The Chairman stated this should be discussed.
- Mr. Scholz stated that the minutes from November 10th, 2011 speak to some of the missing By-Laws.

Mail

- There were 2 magazines for the Board.

Adjournment

The Chairman entertained a motion.

Motion by Mr. Yennaco to adjourn, seconded by Mr. Scholz. Motion passed 5 – 0.

Meeting adjourned at 9:37 pm.

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