



September 11, 2012

COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes

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
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 7:32 pm, introduced the Board Members and staff, and explained the meeting process.

The Chairman asked for a moment of silence in observance of September 11th.

Public Hearings

Ms. Dunn read Case #34-2012 into the record and the abutters list. She also read a letter from Kenneth and Susan Hebert giving Edward N. Herbert Assoc., Inc. and Gove Engineering permission to speak on their behalf.

Lot 11-A-1620, Case #34-2012

Applicant – Edward N. Herbert Assoc., Inc.

Owner – Kenneth & Susan Hebert

Location – 53 Blossom Road

Zone – Rural

A variance is requested from Section 702 and Appendix A-1 to permit the lot to be subdivided such that the lot with the existing house, lot 11-A-1620, will have a minimum lot area by soil type of 93.07% of the normal required area.

- Mr. Wes Aspinwall, Edward N. Herbert Assoc., Inc., addressed the Board. He stated he was a licensed land surveyor and part owner of Herbert Associates. He stated he was before the Board approximately a month and a half ago. The lot with the house has a WWPD and has less than 30,000 sq ft. The Zoning Board granted the applicant a variance. Then they went to the Planning

Board. Mr. Aspinwall wanted to speak about the issues with this lot first. When they did the last subdivision (5/8/12) the reason they asked for a variance in the first place was because of the HIS System and soil based lot size calculations. He explained to the Board how these two items were classified years ago and how technology has changed the way it is done now. At one point the Town gave a tolerance of 5% which they would accept for the Ordinance. The general policy was as long as the lots were 95% or more they would meet the intent of the Ordinance. He has given the Town consultant the information and the consultant stated the lot calculations did not meet the Ordinance. He stated there has also been a change of Planning Department staff and they do not do things the way they were done with the 5% tolerance. He stated this is the first case that was reviewed by the outside engineer and he doesn't question him, but the engineer did not know about the past tolerance. He has moved the lot line over to give one lot 30,000 sq ft and now they are asking for a variance for the second lot. He stated a representative from Gove Associates is in the audience and will speak to the Board if they want.

- The Chairman asked Mr. Aspinwall if this was similar to the last variance but now they are changing the lot line with an area of 18,004 sq ft outside of the WWPD.
- Mr. Aspinwall stated that they are moving the lot line 8 feet.
- Mrs. Dunn questioned if on the last variance for these lots if the decision stated "as per plan".
- Ms. Prendergast read the minutes of the meeting and it did not say "per plan".
- Mr. Aspinwall stated he had two letters from abutters, one from 51 Blossom Rd and one from 56 Blossom Road. He also had a letter from the applicants explaining why they would like to do this to their property.
- Mr. Aspinwall read the 5 criteria and also spoke about Mr. & Mrs. Hebert's letter. The letter was entered as Exhibit A.
- Mr. Aspinwall called the Board's attention to the lot areas by soil type as recently determined and also pictures of the house that were available in the Board's packet.
- The Chairman read a letter from Mr. Phil Jappy of 51 Blossom Road and a letter from Mr. Doug Watson of 56 Blossom Road stating they were in favor. He also read the letter the letter from the Hebert's stating the reason they wanted to subdivide, providing another house for their aging parent and grandparent.

The Chairman opened the hearing to the public at 8:07 pm, hearing no comment; the public comment period was closed.

- Mr. Aspinwall stated he is sure the Board understands the plan and the issues.
- Ms. Dunn asked Mr. Aspinwall if when he did the original mapping his calculations came out with 95% or 97%. Mr. Aspinwall stated yes, it was 96%. Ms. Dunn asked if the new calculations on one lot would be 100% and the other lot 93.07%. Mr. Aspinwall stated yes because they moved the lot line.

- Mr. Partington asked how far off the calculations were. Mr. Aspinwall stated one lot was just under 96% and the other lot was just over 97%. Mr. Partington asked Mr. Aspinwall if those were his numbers. Mr. Aspinwall stated that the engineering company was using his numbers and that he didn't meet the Ordinance.
- Mr. Tierney stated that the previous administrative general policy was as long as the lots were 95% or more they would meet the intent of the ordinance and that was in place before but no longer exists because of new staff.

The Chairman entertained a motion to go into Deliberative Session.

Mr. Partington motioned, seconded by Mr. Yennaco. Motion passed 5 – 0.

- Mr. Yennaco stated that based on the last comment by Mr. Aspinwall the land consultant did not do any calculations and they just used Mr. Aspinwall's numbers.
- Mr. Partington stated that it certainly meets four criteria and meets the uniqueness issue.
- Ms. Dunn stated this request was so minimal and it is certainly in the spirit and intent.

The Chairman entertained a motion.

Mr. Partington motioned to grant Case #34-2012 A variance is requested from Section 702 and Appendix A-1 to permit the lot to be subdivided such that the lot with the existing house, lot 11-A-1620, will have a minimum lot area by soil type of 93.07% of the normal required area, seconded by Mr. Yennaco. Motion passed 5 – 0.

The Chairman advised all of the 30 day appeal period.

Review and Approval of Draft Meeting Minutes

August 14, 2012 amended

- The minutes of August 14, 2012 were amended.

The Chairman entertained a motion to accept the amended minutes of August 14, 2012.

Mr. Partington motioned to accept approve the amended minutes of August 14, 2012, seconded by Mr. Yennaco. Motion passed 4 – 0 – 1 with Mr. Tierney abstaining.

August 28, 2012

- Minutes were amended and will go back to the Board for approval.

By-Laws Discussion

Joint Meetings

- The Chairman stated they would discuss joint meetings and hearings where the ZBA might have another meeting with other boards. The language was drafted a while ago and also taken from the handbook.
- Ms. Dunn stated they should change Chairman to Chair throughout the document.
- Mr. Tierney questioned if they needed #5 in the proposed changes as it would be the Planning Board Chair who would chair the meeting. He stated the Board should keep 5b as the chair for each committee would introduce their members.
- The Chairman stated that 5b and 5c were relevant.
- The Chairman and Mr. Tierney stated that the order of procedure is basically the same for each Board.
- The Chairman polled the Board as to whether #5 was needed in the Bylaws.
- Mr. Partington and Mr. Yennaco stated no.
- Mr. Tierney stated #1 should be included.
- The Chairman, Mr. Yennaco and Mr. Tierney stated #2 should be included
- Mr. Scholz stated #7 should be included.
- The Chairman read the language for #1, # 2 and #7. Number 7 will now be #3.
- Strike “business” in #2.
- Mr. Tierney suggested adding them as Section 4.2.1, 4.2.2 and 4.2.3.
- It was suggested that the language reflect “joint meetings and hearings” in all sentences.
- Ms. Prendergast will make the changes and post for a public hearing.

Alternate Rotation & Participation

- The Chairman stated the Board would discuss Alternate Rotation & Participation. Mr. Partington has established a log of recent rotations. The Chairman looked at, and had a copy of the Planning Board rotations.
- Mr. Partington explained to the Board how he came up with his rotation log.
- Ms. Dunn also worked on the rotations and explained how her system worked.
- The Board discussed the two Alternate Rotation & Participation proposals.
- Mr. Scholz stated sometimes the Chairman might need to schedule someone more experienced to sit on a case.

- Mr. Yennaco asked about rehearings. Ms. Dunn read her proposal for that. Mr. Tierney stated a rehearing is a merit on its own. He stated a regular member should be able to sit even if they were absent for the original hearing.
- Mr. Tierney stated he believes rotation is good.
- Mr. Scholz stated the Chairman should appoint if necessary.
- Ms. Prendergast suggested the Board have a trial of the rotation. Ms. Dunn agreed.
- The Chairman said it is nice to think there is an ideal formula but there are too many variables. He liked what Mr. Partington proposed.
- Ms. Dunn will maintain the Alternative Log.

The Alternative Rotation discussion will be placed on the next agenda.

Publishing Notice of Decision in local newspaper

- Ms. Prendergast stated this is a financial issue and she will speak to Ms. Scott.
- Mr. Scholz stated it should have been brought to the Board that the practice was stopping.
- Mr. Tierney stated the Board wants decisions published and the Department would need to go to the Board of Selectmen for more funds.

Binder Updates – Approved By-Laws (dated 8/14/2012)

Old/New Business

- The Chairman stated he received a confidential letter regarding the Cafua Hearing.
- Ms. Dunn stated she attended the Hearing on 9/7/12 with Attorney Campbell and he did an excellent job. It was expected that the judge would take it under advisement and he did.
- Ms. Prendergast stated she had the defendants Memorandum of Law and she will copy it to the Board.
- Mr. Robert Ehrick, 24 Edinburgh, addressed the Board. He has some concerns about the Castle reach area and stated the State was surveying and no one had been notified.
- The Chairman stated he should speak to the Community Development Department.

Adjournment

The Chairman entertained a motion to adjourn,

Ms. Dunn motioned to adjourn, seconded by Mr. Tierney. Motion passed 5 – 0.

Meeting adjourned at 9:00 pm.

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