



## COMMUNITY DEVELOPMENT

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### Draft Zoning Board of Adjustment Minutes February 12, 2013

#### 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 – Excused  
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 7:33 pm, introduced the Board Members and staff, and explained the meeting process.

Ms. Dunn read Case #3-2013 into the record, the list of the abutters, and stated she had a letter from Mr. Wallace Heath stating that a representative from Logan Mechanical could speak on his behalf.

#### Lot 21-B-24, Case # 3-2013

Applicant – Scott Heath  
Owner – Wallace & Hope Heath  
Location – 2 Copps Hill Road  
Zone – Residence A District

Variances from the following sections of the Zoning Ordinance are requested to permit the addition of a breezeway and garage to the existing single family home: **Section 702** and **Appendix A-1**  
- to allow a side setback of no more than 15 feet where 30 feet is required.

The Chair stated he had a full copy of the 1973 plan for the Board to look at.

- Mr. Scott Heath addressed the Board. He stated his parents have lived at 2 Copps Hill Road for many years. He stated they needed a handicap ramp. He stated they wanted to build a garage and breezeway and put the handicap ramp in the garage. The garage was approved in 1973 but was never built.

#### Questions/comments from the Board

- What is the size of the garage? Mr. Heath stated 24' x 32' with a breezeway to put the handicap ramp inside on the back side of the garage.

- The drawing shows 20 feet but the applicant is looking for 15 feet, is that correct? Mr. Heath stated yes.
- Is the proposed garage bigger than the one approved on the original plan? Mr. Heath stated yes.
- Mr. Heath showed the house on the lot on the CAI query manager online to the Board.
- Is the applicant taking any trees down? Mr. Heath stated he doesn't think so.
- Mr. Tierney asked Ms. Prendergast how come the size of the garage and the breezeway wasn't spelled out in the hearing notice and the plot plan presented is not to scale. Ms. Prendergast stated that the applicant took the original plan and drew on it.
- What is a set back from the street? Mr. Heath stated approximately 80 feet.
- What was the elevation of the proposal? Mr. Heath stated he didn't have that information.
- What is currently on the side of the house were they are putting the garage? Mr. Heath stated sheds, but he will be getting rid of them.
- Will the ramp be in the breezeway? Mr. Heath stated no, in the garage
- Mr. Partington asked Ms. Prendergast if the notice should say “no less than 15 feet” as opposed to “no more than 15 feet”. Ms. Prendergast stated yes.

Mr. Heath read the five criteria into the record.

The Chair opened the hearing to the public at 7:52 PM, hearing no input, the public portion was closed.

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

- The Board discussed the five criteria. The application meets the spirit and intent of the ordinance, there is no diminution, it is in the public's interest, hardship as the lot is wet on one side, and it will not be on top of the neighbors. The Board would like the following proposed conditions: a correct plan with the correct numbers, to remove at least one shed, verification of the 1973 plan, and when they install a new driveway the old driveway is removed.

**Ms. Dunn motioned to go back into Public Session, seconded by Mr. Partington. Motion passed 5 – 0.**

- Mr. Heath stated he has not discussed with his parents about getting rid of the old driveway as it is gravel.

**Ms. Dunn motioned to go back into Deliberative Session, seconded by Mr. Tierney. Motion passed 5 – 0.**

- The Board is not inclined to make a condition of the driveway and is just recommending to the applicant.

**Ms. Dunn motioned, in consideration of the five criteria, to grant the variance for Case #3-2013, Lot 21-B-24, from Section 702 and Appendix A-1 of the Zoning Ordinance to allow a side setback of no less than 15 feet where 30 feet is required conditioned upon the removal of the existing shed that is located on the same side of the property and upon submittal of a written and signed plan showing the dimensions of the garage, seconded by Mr. Yennaco. Motion passed 5 – 0.**

The Chair advised all of the 30 day appeal.

- The Board discussed certified plot plans and having that part of their Bylaws.

Ms. Dunn read Case # 4-2013 into the record, the list of abutters, and a letter from Janet Balise giving Edward Herbert Associates permission to speak on her behalf.

**Lot 21-G-600, Case # 4-2013**

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Janet Balise Revocable Trust

Location – Range Road

Zone – Residence A District

Variations from the following sections of the Zoning Ordinance are requested to permit the construction of a single family home on a pre-existing non-conforming lot: **Section 702 and Appendix A-1** - to allow zero feet of frontage where 175 feet is required.

- Mr. Shane Gendron of Herbert Associates addressed the Board. He stated this property was off of Range Road and had no frontage. He gave the Board a copy of the plot plan, the plot plan with an aerial view, the septic approval, the deed, a plan his office prepared in 1977 for Mrs. Carpenter, and an excerpt from the book A Hard Road To Travel. He stated some of Simpson Road is still maintained and they are proposing a driveway from this area. They have centered the house on the lot, there is a large buffer to the lot line, there is a WPD on the lot, there is a small wetland in the back, and the 1977 plan shows Simpson Road. The deed states that the road provides right of access to the landowners. Mr. Gendron spoke about A Hard Road To Travel and discontinuance of roads and the right to pass. He stated you cannot landlock parcels. The applicant would like to put a house up.

**Questions/comments from the Board**

- What is the name of the other road that intersects with Simpson Road? Mr. Gendron stated Boston Post Road which is an old dirt road.
- How did the subdivision off of Candlewood get approved to landlock that parcel? Mr. Gendron stated the deed says access to the property is through Simpson Road and the road was discontinued. The deed says frontage is on the highway which is Simpson Road.
- How long will the proposed driveway be? Mr. Gendron stated 350 feet. The Board asked if the Fire Department had looked at this proposal. Mr. Gendron stated no.

- Were there any issues with slopes? Mr. Gendron stated no. He stated the way they placed the house would mix well with the other homes in the area.
- The Board questioned who had the right to allow use of the discontinued road. The Board asked Mr. Gendron if he had documentation of the discontinuance. Mr. Gendron stated no. Mr. Gendron stated he did the worst-case scenario for the discontinuance.
- The Board discussed discontinuance of roads and the RSA's.

Mr. Gendron read the five criteria.

- The Board questioned if this property was deeded separate from the other lots. Mr. Gendron stated yes.

The Chair opened the hearing to the public at 8:40 PM.

- Mr. John Carpenter, 233 Range Rd., addressed the Board. He stated he has no general objection to the plan but Simpson Road was closed in the late 1950s or 1960s which predates the applicant purchasing the property. He stated the applicant land locked themselves when they sold the land for the Candlewood development. There is also an historic marker on the Windham historical list and that should be looked at. He stated in 1977 the Town voted to close the road from his property up the hill. The access point the applicant is proposing is not the best. He stated the road was closed before the lot was created.
- The Board asked Mr. Carpenter if he thinks this is a reasonable solution for the lot. Mr. Carpenter stated no and they could go through the Candlewood subdivision.
- Mr. Brad Balise, 231 Range Rd., addressed the Board. He stated he was in opposition of this application. He stated access is an issue. He explained the history of Simpson Road and stated that the applicant is actually using Golden Brook Road as Simpson Road on their plans. It is contrary to public interest as the historic marker is there. He stated there was no hardship as this was more an issue of money than building a house and the applicant had offered the land to the abutters first. He is concerned that if they get a variance they will sell it and someone will want to subdivide. There is no substantial justice as this was caused by their own lack of planning.
- Mr. Rich Connors, 4 Candlewood Rd., addressed the Board. He stated he has no issues with the house and the applicant should have access to their property. His concern was that the backyard of this proposed house would face his front yard and his property would be diminished if something was built in the backyard.
- Ms. Karen Connors, 4 Candlewood Road, addressed the Board. She stated she bought her property knowing the lot behind them was landlocked and she is concerned with her property value.

The public portion was closed at 9:23 PM

- Mr. Gendron stated he has the previous deed from 1964 stating the deed referenced is a deed from 1926. He spoke about the Candlewood subdivision and why they did not put a driveway in through there. In regards to Golden Brook Road and Mr. Brad Balise's comments about it being the wrong road, he stated his office has determined it is Simpson Road. There is a 1977 plan approved by the Windham Planning Board recognizing the road as Simpson Road. There is no written consent of any landowner giving up their right to access their property. He stated it was a fact that the owners offered the land to the abutters first.

The deed was entered as Exhibit A and the package given to the Board at the beginning of the hearing by Mr. Gendron was entered as Exhibit B.

- The Board discussed a continuance to ask for guidance from counsel as to the discontinued road and who can do what. There is significant confusion regarding the road.

**Ms. Dunn motioned to continue the hearing. There was no second vote.**

- The Board had a lengthy discussion about continuing the hearing regarding the roads in question, discontinuance of roads, who can do what on the roads, who owns the roads, the applicant bringing more information back to the Board, and/or discussion with Town Council. The consensus of the Board was the applicant would need to bring back more information and possible discussion with Town Council.
- Mr. Gendron stated he would research and gather more evidence to support the name of the road.

**Ms. Dunn motioned to continue the public hearing for Case # 4-2013, still open to the public, for 2 weeks until we (the Board) meet with Counsel, seconded by Mr. Yennaco. Motion passed 3 – 2 with Mr. Tierney and the Chair voting against.**

- Ms. Prendergast stated she will check with Attorney Campbell to see when he can meet with the Board.

### **Review and Approval of Draft Meeting Minutes**

January 22, 2013

**Mr. Tierney motioned to approve the minutes of January 22, 2013 with minor edits, seconded by Mr. Partington. Motion passed 5 – 0.**

### **Old/New Business**

- The Chair stated the Board had an invitation to the February 20<sup>th</sup> Planning Board meeting.
- Ms. Dunn spoke about reading out loud and the five criteria. She stated some people have difficulty reading out loud and questioned whether the Board wanted to have all applicants read out loud or just discuss their points. The Chair stated the Board has been very flexible and most applicants read unless they have very lengthy statements, it is usually at the Chair's discretion. Mr. Partington and Mr. Scholz agreed with the Chair. The Chair suggested Mr. Prendergast advised the applicant on speaking to the five criteria.

- Mr. Tierney stated he received an email regarding a court case from the Community Development Department and asked if it was something Attorney Campbell needed to discuss with the Board. Ms. Prendergast stated the court date was April 10<sup>th</sup> and Attorney Campbell would probably speak with the Board.

### **Adjournment**

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

Meeting adjourned at 10:15 PM

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

DRAFT