



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes February 26, 2013

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
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate - Excused

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Colleen King, Substitute ZBA Minute Taker

Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:35 pm, introduced the Board Members and staff, and explained the meeting process.

Ms. Dunn read Case #4-2013 into the record, which was continued from February 12, 2013 and Mr. Scholz was seated for Mr. Yennaco.

Case # 4-2013 Lot 21-G-600, (Con't from 2/12/13)

Applicant – Edward N. Herbert Assoc. Inc

Owner – Janet Balise Revocable Trust

Location – Range Road

Zone – Residence A District

Variances 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.

Attorney Bernard Campbell, Town of Windham Legal Counsel, addressed the Board and stated that question at hand is whether Lot #600 has a legal right of access at Range Rd. and Golden Brook Rd. In 1962, by Town vote, the road known as Simpson Rd was discontinued. The Town did not discontinue Golden Brook Rd. Attorney Campbell stated that in 1962, Lot 600 would retain a ROW onto a discontinued road by NH State law to get to Range Rd. He advised the ZBA to vote on the criteria.

Mr. Shane Gendron of Herbert Associates addressed the Board. He stated that on Monday February 25, 2013, he obtained a copy of the electronic files which an abutter submitted to the ZBA. After reviewing this data, which includes Superior Court Cases, Mr Gendron advised his client to obtain Legal Counsel. Mr.Gendron then requested the ZBA to continue this case and grant a 30 Day extention to allow time for review.

Comments

The Chairman opened the Hearing for public comment.

Wes Aspinwall, of Herbert Associates, referring to the 1962 vote, stated that both roads are shown on the old plans of the Town and that adverse possession may not refer to roads.

Jon Carpenter, 233 Range Rd, clarified that Herbert Associates drew the maps for both Mr Thorndike and the Carpenter family. Atty Campbell concurred.

Carol Pynn, Windham Historic District Committee/Heritage Commission addressed the important historical marker and sign post on the property. The granite post remains; however, the original sign is in the Historical Museum. Ms Pynn distributed photos given to her by Mr. Carpenter and requested that this historical marker and location not be disturbed or compromised by activity on the property.

Mr. Gendron requested that the letter to the ZBA from Atty. Campbell be released from confidentiality.

The Chairman closed the public portion of the Hearing.

Mr. Scholz motioned to release to the public, Atty. Campbell's letter to Nancy Prendergast, seconded by Mr. Tierney. Motion passed 5 - 0.

Mr. Partington motioned to continue this Case # 4-2013 to March 26, 2013, seconded by Ms. Dunn. Motion passed 5 - 0.

Ms Dunn read **Case #5-2013** into the record, the list of abutters and a letter of authorization giving Benchmark Engineering, Inc and Mr. Joe Maynard, permission to speak on the owner's behalf. Mr. Mazalewski was seated for Mr. Yennaco.

Lot 21-U-2, Case # 5-2013

Applicant – Benchmark Engineering Inc.

Owner – Marie Johnson

Location – 11 Lowell Road

Zone – Rural District, Wetland and Watershed Protection District, Flood Plain District

Variations from the following sections of the Zoning Ordinance are requested to allow construction of a new single family dwelling on a vacant nonconforming lot:

601.3 - to allow construction of a single family dwelling, well, septic and associated improvements within the WWPD where it is not a permitted use.

601.4 - to allow relief from the Wetland and Watershed Protection District Regulations.

601.4.6 – to allow the septic system within the WWPD and 28 ft from the edge of Collins Brook where 100 ft is required.

601.4.8 – to grant relief from submittal of a WWPD Special Permit to the Planning Board.

607 – to grant relief from the zoning requirements of the Flood Plain District.

702 and Appendix A-1 – to allow a lot area of 37,391 sq. ft. entirely within the WWPD where 50,000 sq. ft minimal lot area with 30,000 sq. ft. of contiguous area outside of the WWPD is required; and to allow a front setback of 20 ft where 50 ft is required.

Chairman Samsel read the comments from the Conservation Committee. There would be more impact to wetlands if the driveway crossed the brook.

Mr. Partington questioned whether this case should even be heard as there was a 1985 Variance denial which referenced WWPD.

Mr. Joe Maynard explained his client's case and addressed the previous ZBA denial of a 1985 Variance request. He stated that the criteria for a Variance were different in 1985. He referenced a 1980 plot plan with wetlands which appear to have been physically altered when compared to current wetland drawing.

Mr. Scholz stated that that the WWPD was still in place.

Mr. Mazalewski stated that there is new technology for septic systems and new information that was not available in 1985.

Chairman Samsel agreed that there is enough change over time and the quality of information presented to go forth with this Hearing.

Ms Dunn explained that the Variance criteria changed and that alone is enough to warrant this Hearing.

Mr. Partington motioned to go move forward with the Hearing as circumstances have changed. Mr. Mazalewski seconded and the Board approved with a 5-0 vote.

Mr. Maynard gave a history of Mrs. Johnson's ownership. In 1966, Herbert Associates drew a plot plan which showed the Brook. It appears that the brook location has been altered over the years. In 1980, although the wetlands were identified, they were not accurate. The Flood Plains have changed and the entire lot is now encumbered by the WWPD and Flood Plains. Although there will be an impact on wetlands regardless of where the house is located, they are making every attempt to minimize the impact to the WWPD and Collins Brook, understanding that the prior location of Collins Brook is different from today.

Mr. Tierney has concerns with the serious flooding on the lot.

Mr. Maynard stated that the house itself has never flooded and the house and well head would be 3' above flood plain. He stated that Mrs. Johnson has owned this property for many years and believes that the special conditions of the lot, along with the WWPD, prevent her from building anything. The proposed use is reasonable and modest. The lot is burdened by topography, flood plains and WWPD.

Mr. Partington stated that according to Ms Prendergast's letter to the ZBA, no relief is needed for 601.4 and 607. He continued that there is no need to go through the entire section of 601.4 & 607.

Chairman Samsel opened the Hearing for public comment. No public comments. Chairman closed the public portion of the meeting.

Mr. Partington motioned to go into deliberative session; seconded by Mr. Tierney. Motion passed 5 - 0.

Ms. Dunn stated the lot is horrendous. She is concerned with the flood plain and the history of flooding on the lot.

Mr. Tierney questioned whether it was ever a buildable lot, and the downstream impact.

Chairman Samsel stated his concern with not allowing reasonable use. The level of engineering drawings gives him less concern and shows consideration to the Ordinance. He believes that the Spirit and Intent has been favorably presented.

Mr. Partington addressed concern with 601.4.6 and the septic being within 30' of the brook. Although it is much too close, it is the best possible solution.

Mr. Tierney stated that there are other uses to the lot, than a single family dwelling in the Rural District. Mr. Mazalewski concurred.

Mr. Partington motioned to deny the Variances for Case 5-2013, from Sections 601.3, 601.4.6, 601.4.8, 702 and Appendix A-1 as it does not meet the Spirit and Intent of the Ordinance, per plan submitted. Seconded by Mr. Tierney. Motion passed, 5-0.

Mr. Partington motioned that for Case 5-2013, relief from the entirety of Sections 601.4 (other than 601.4.6 & 601.4.8) and 607 is not necessary for this plan. Seconded by Mr. Tierney. Motion passed 5-0.

Ms Dunn read **Case #6-2013** into the record, the list of abutters and a letter of authorization giving Benchmark Engineering, Inc and Mr Joe Maynard, permission to speak on the owner's behalf. Mr. Scholz was seated for Mr. Yennaco.

Case # 6-2013 Lot 21-Z-267

Applicant – Benchmark Engineering Inc.

Owner – Phillipe Bouchard

Location – 2 Horne Road

Zone – Residence A District, Cobbetts Pond Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow 1,600 sq ft of area and 50 ft of frontage along Cobbetts Pond Road to be subdivided from lot 21-Z-267 and added to lot 21-Z-275:

401 – to allow an increase in the extent of the non-conforming use.

702 and Appendix A-1 –to allow 33 ft of frontage along Cobbetts Pond Road where 175 ft is required and to allow a lot area of 26,198 sq. ft. where 50,000 sq. ft is required.

Mr. Maynard reviewed the case and explained the need for safer driveway visibility and access. In 2011 this property was granted a variance to construct a single family dwelling with the majority of the

street frontage on Horne Rd. There is 55' frontage on Cobbetts Pond Rd. The impervious coverage is well below the cap allowed. Mr. Maynard is aware that that a Shoreline Permit will be required as well as Planning Board approval.

Chairman Samsel read the comments from the Conservation Commission, stating their agreement that subdividing this lot allows for a more gradual driveway. There were no comments from Assessing.

Chairman Samsel opened the Hearing for public comment.

Mr. Tom Case questioned the Hardship on this particular lot; although the request makes perfect sense when combined with the request for the next case.

Chairman Samsel closed the public portion of the Hearing.

Mr. Scholz motioned to Deliberate. Mr. Partington seconded, and Approved 5-0.

Mr. Scholz has no issue with waiving the provisions of the Ordinance, is comfortable with the proposed use, given that the land has a severe grade.

Ms Dunn stated that this request is moot if the next case is not approved.

Mr. Samsel stated that the challenge and hardship is for the driveway for the next case and suggested that this case be continued, tabled or contingent on the outcome of Case #7-2013.

Mr. Tierney motioned to table this case and rule on it after the next case # 7-2013 is heard. Mr. Scholz seconded the motion. The vote was Approved 4 – 1 with Mr. Tierney voting to deny.

Ms Dunn read **Case #7-2013** into the record, the list of abutters and a letter of authorization giving Benchmark Engineering, Inc and Mr. Joe Maynard, permission to speak on the owner's behalf. Mr. Mazalewski was seated for Mr. Yennaco.

Lot 21-Z-275 & 21-Z-276, Case # 7-2013

Applicant – Benchmark Engineering Inc.

Owner – James Harvey

Location – Cobbetts Pond Road

Zone – Residence A District, Cobbetts Pond Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow the construction of a new single family dwelling on two lots that are proposed to be merged together:

702 and Appendix A-1 – to allow 102 ft of frontage where 175 ft is required; to allow a lot area of 21,869 sq ft where 50,000 sq ft is required; to allow a front setback of 45 ft where 50 ft is required; and to allow a side setback of 20 ft where 30 ft is required.

Mr. Maynard reviewed the request of his client. Mr. Harvey bought both Lots 21-Z-275 and 276 from Mr. Roberts. The lots were merged, and one house was constructed and centered on the lot. The house sits 11' lower than the road and without being granted this Variance, the driveway would have a steep

grade. Mr. Bouchard, owner of Lot# 2-Z-267 is agreeable to subdividing off an undisturbed portion of his lot for Mr. Harvey's driveway. Mr. Maynard stated that the residential sight distance is met and NH DOT has already granted 5 curb cuts.

Mr. Partington motioned to Deliberate, and seconded by Mr. Mazalewski. Vote 5-0

Mr. Tierney stated that the hardship is due to the slope on the north side of the lot and trying to meet Shoreline requirements.

Mr. Partington stated that having the lots combined was better than 2 lots and was within the character of the area.

Ms Dunn does not feel there would be no diminution and the hardship is the slope of the land.

Chairman Samsel stated that this is the best location for the driveway and read the comments from the Conservation Commission stating that combining Lots # 275/276 is favorable. There were no comments from Assessing.

Ms Dunn made a motion to Grant the Variances for Case #7-2013 from Section 702 and Appendix A-1 to allow 102 ft of frontage where 175 ft is required, to allow a lot area of 21,869 sq ft where 50,000 sq ft is required, to allow a front setback of 45 ft, where 50 ft is required and to allow a side setback of 20 ft where 30 ft is required per plan submitted. Motion was seconded by Mr. Partington, and Approved by a vote of 4 to 1. Mr. Tierney voted to denied.

Chairman Samsel advised all of the 30 day appeal period.

Ms Dunn read **Case #6-2013** into the record, the list of abutters and a letter of authorization giving Benchmark Engineering, Inc and Mr. Joe Maynard, permission to speak on their behalf. Mr Scholz was seated for Mr. Yennaco.

Case # 6-2013 Lot 21-Z-267 (Tabled)

Applicant – Benchmark Engineering Inc.

Owner – Phillipe Bouchard

Location – 2 Horne Road

Zone – Residence A District, Cobbetts Pond Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow 1,600 sq ft of area and 50 ft of frontage along Cobbetts Pond Road to be subdivided from lot 21-Z-267 and added to lot 21-Z-275:

401 – to allow an increase in the extent of the non-conforming use.

702 and Appendix A-1 –to allow 33 ft of frontage along Cobbetts Pond Road where 175 ft is required and to allow a lot area of 26,198 sq. ft. where 50,000 sq. ft is required.

Mr. Maynard reviewed the case again and reiterated the need for safer driveway visibility and road access.

Mr. Scholz discussed the relationship of the lot with the driveway location and the safety factor. He felt this was a hardship.

Ms Dunn stated that it was logical to do this.

Mr. Tierney questioned the benefit to and the use for a lot which is already undersized.

Mr. Partington made a Motion to Grant the Variances for Case # 6-2013 from Section 401 to allow an increase in the extent of the non-conforming use, Section 702 and Appendix A-1 to allow 33 ft of frontage along Cobbetts Pond Road where 175 is required and to allow a lot area of 21,198 sq ft where 50,000 sq ft is required and contingent on the merger of Lots 21-Z-275 and Lot 21-Z-276. Ms Dunn seconded the Motion with a 3-2 vote to Approve. Mr. Partington and Mr. Tierney voted to denied as the proposal did not meet the hardship criteria.

Chairman Samsel advised all of the 30 day appeal period.

Ms Dunn read **Case #8-2013, Lot 21-V-255**, into the record along with the list of abutters. Mr. Scholz was seated for Mr. Yennaco.

Lot 21-V-255, Case # 8-2013

Applicant – John Hulme

Owner – Same

Location – 6 Fish Road

Zone – Residence A District, Cobbetts Pond Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow a 3 ft x 5 ft expansion and 2 ft x 16 ft 2nd floor expansion to the existing seasonal dwelling that was damaged by a fallen tree:

401 – to allow an increase in the nonconformity of the structure.

406.2 – to allow an increase in volume and footprint of the structure on portions of the structure that are currently nonconforming.

702 and Appendix A-1 – to allow a side setback of 4 ft where 30 ft is required and a rear setback of 17 ft where 30 ft is required for the 3 ft x 5ft expansion.

John Hulme described the damage caused by a tree which fell on his dwelling. Mr. Hulme reviewed the damage and his options with the Building Inspector; where he wants to build is further away from the lot line than the other parts of the house and he is not converting to year-round.

Ms Dunn clarified the 3' x 5' footprint and stated that other portions of the existing house appear closer to the lot line.

Mr. Tierney explained the new State rule for any expansion on a non-conforming lot requires a plan to be filed with approvals; installation is not required. ZBA approval is not required for repairs.

Mr. Hulme stated that while he is repairing the damage, making the small alterations at the same time would improve the look of the dwelling and the construction time would be minimized. The property has been in his family for over 60 years. In addition, the repairs and expansion would correct the structure defects and replacing the faulty supports would add value to the property. The special condition of the property is that the lot is only 50' wide.

Mr. Partington made a Motion to Deliberate; seconded by Mr. Scholz and Approved 5 – 0.

Ms Dunn stated it was a reasonable request. Mr. Scholz and Mr. Tierney were satisfied with the proposal.

Mr. Partington made a motion to Grant the Variances for Case #8-2013 from Section 401 to allow an increase in the nonconformity of the structure, Section 406.2 to allow an increase in volume and footprint of the structure on portions of the structure that are currently nonconforming, Section 702 and Appendix A-1 to allow a side setback of 4 ft where 30 ft is required and a rear setback of 17 ft where 30 ft is required for the 3 ft x 5ft expansion as requested. Mr. Scholz seconded the Motion and was Approved with a 5 – 0 vote.

Chairman Samsel advised all of the 30 day appeal period

Review and Approval of Draft Meeting Minutes

February 12, 2013

Mr. Partington motioned to approve the minutes of February 12, 2013, seconded by Mr. Scholz Motion passed 5 – 0.

Old/New Business

Chairman Samsel requested that Nancy Prendergast provide the ZBA members with list of upcoming Court cases with dates.

Ms Dunn will accompany Attorney Campbell to Superior Court for the next hearing on March 7, 2013.

Chairman Samsel presented a gift of Appreciation to Ms Dunn and thanked her for her valued contribution to the Town of Windham as a ZBA member. Ms Dunn's term expires in March.

Adjournment

Ms Dunn motioned to adjourn, seconded by Mr. Partington and passed 5 – 0.

Meeting adjourned at 10:50 PM

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