



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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(603) 432-3806 / Fax (603) 432-7362

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**Approved Minutes Zoning Board of Adjustment
August 11, 2015
7:30 pm @ Community Development Office**

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mike Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Excused			

Staff:

Dick Gregory, Code Enforcement Administrator

Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Scholz

Public Hearing

Lot 17-J-104, Case # 21-2015 continued from 7-28-2015

Applicant: Joseph Maynard/ Benchmark Engineering, Inc.

Owner: Roberts Family Trust

Location: 15 Rocky Ridge Road

Zone: Residence A – Cobbetts Pond & Canobie Lake Watershed Protection District (CPCLWPD)

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to raze the existing dwelling and allow the construction of a new dwelling. Section 401 to allow an increase in the extent of the non-conforming use or structure.

Section 406.2 to allow an increase in volume from 10,900 cu. ft. to 12,600 cu. ft. and an increase in footprint from 984 sq. ft. to 1,220 sq. ft.

Section 702, App. A-1 to allow a frontage of 50 ft. where 175 ft. is required, a lot area of 6,856 sq. ft. where 50,000 sq. ft. is required, side setbacks of 9 ft. & 4 ft. where 30 ft. is required, a rear (lake) setback of 12 ft. where 50 ft. is required and a front setback of 26 ft. where 50 ft. is required.

(Chairman Scholz appointed Mr. Hughes to sit for Mr. Breton for this case.)

A letter of authorization and the abutter list were read into the record by Mr. Samsel.

Applicant, Joseph Maynard addressed the Board. Mr. Maynard explained uniqueness of the property is its steepness and that all the home owners along the lake own part of the road as part of their property. Home owner Mrs. Roberts owns the lot next to 15 Rocky Ridge Road and that lot shares a septic system with the property behind it. The proposal is asking for building coverage to be 26.6% to allow for a dwelling with a master and an attached garage to be built. Mr. Maynard met with the Mr. Thrasher, the neighbor that lives behind Lot behind 15 Rocky Ridge Road. Mr.

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Maynard explained the neighbors all get along very well and work together on projects like this. Mrs. Roberts wants to build a one story dwelling to maintain the lake view for her neighbors behind her which is why there is an increase in building coverage. The proposed plan will decrease impervious coverage from 60.5% to 58.7%. The dwelling will be built as a one story out of consideration for the neighbors that live behind the lot. The house will end up being pushed back from 4 feet to 12 feet from the water. The existing well will be decommissioned and relocated by the water and then a state approved septic system can be built. Mr. Maynard reviewed the 5 variance criteria.

Mr. Samsel inquired about the current parking conditions and the current walkway from the parking area to the house and how they will change with the proposal.

Mr. Maynard outlined current existing parking on the project map and explained there will be a 2 car garage with additional space in front of the garage for 2 cars. Currently there is a steep full set of stairs from the parking area to the house. The proposal eliminates the steep stairs.

Mr. Samsel asked if the difference in building coverage between the former and what is proposed is due to the garage. Mr. Maynard confirmed the increase in building coverage is due to the addition of an attached garage.

Chairman Scholz invited the public to speak in favor and/or opposition to the project. There were no public comments.

Motion by Mr. Samsel to go into deliberation

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

Mr. Samsel believes the property and the neighborhood are unique. The proposal provides improvements in impervious coverage, septic system, and safety by removing the existing steep stairs. Mr. Samsel believes the proposal paid a great deal of attention to details. While the ZBA has been strict in not approving an increase in building coverage beyond 20% in the past, Mr. Samsel believes the presentation has the merits to allow what is proposed.

Mr. Partington reviewed the 5 variance criteria. Mr. Partington questions if the proposal is too much footage, if the plan is reasonable, and if a garage is worth a 4 foot setback. Mr. Partington is willing to hear what the other ZBA members have to say about the above stated issues.

Chairman Scholz questions if it could be a one care garage to help reduce the building coverage issues. Chairman Scholz believes overall it is a challenged lot due to its size and elevation. There is a lot of reasonableness in the proposal.

Mr. Hughes inquired about the distance between Mrs. Roberts dwelling and her neighbors. Mr. Partington pointed out on the map the existing side setbacks and believes there is about 20 feet between Mrs. Roberts and her neighbor. Mr. Partington believes there will be a greater separation between the 2 structures after construction.

Chairman Scholz offered to come out of deliberation if the ZBA members had questions and concerns regarding the side setbacks.

Mr. Samsel is more concerned about the percentage of coverage and less concerned about the distance between structures. Mr. Samsel believes the distance between structures is reasonable for this location and a 2 car garage is reasonable. Overall the plan as proposed is reasonable.

Chairman Scholz agrees with Mr. Samsel that a dual garage is not unreasonable. The decrease in impervious coverage is a positive. The lot is a challenged lake lot, it is encumbered by existing road. The plan keeps the septic away from the lake. The proposal meets the spirit & intent of the ordinance because it is an overall improvement. It moves the structure further away from the lake.

Chairman Scholz was initially concerned about public safety; there seems to be enough room to back a car out of the driveway and turn around safely. The plan is reasonable and meets the 5 variance criteria. Chairman Scholz asked if relief from Section 401 is needed.

Mr. Samsel believes relief from 401 is needed as there is an increase.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Samsel to grant relief for Lot 17-J-104 from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to raze the existing dwelling and allow the construction of a new dwelling. Section 401 to allow an increase in the extent of the non-conforming use or structure. Section 406.2 to allow an increase in volume from 10,900 cu. ft. to 12,600 cu. ft. and an increase in footprint from 984 sq. ft. to 1,220 sq. ft. Section 702, App. A-1 to allow a frontage of 50 ft. where 175 ft. is required, a lot area of 6,856 sq. ft. where 50,000 sq. ft. is required, side setbacks of 9 ft. & 4 ft. where 30 ft. is required, a rear (lake) setback of 12 ft. where 50 ft. is required and a front setback of 26 ft. where 50 ft. is required as presented.

Second by Mr. Hughes

Vote 5-0-0

Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period.

(Chairman Scholz appointed Mr. Mazalewski to sit for Mr. Breton for this case.)

Lot 17-I-111C, Case #22-2015 continued from 7-28-2015

Applicant: Joseph Maynard, Benchmark Engineering, Inc.

Owner: David & Linda Latta

Location: 23 Walkey Road

Zone: Residential A & Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWPD) & Wetland & Watershed Protection District (WWPD). Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is needed to raze the existing structure and to allow construction of a new dwelling.

Section 401 to allow an increase in the extent of the non-conforming use or structure.

Section 406.2 to allow an increase in volume from 7,215 cu. ft. to 28,062 cu. ft. and an increase in footprint from 962 sq. ft. to 1,330 sq. ft.

Section 601.3 to allow a dwelling to be constructed in the WWPD which is not allowed.

Section 601.4.6 to allow a septic system to be 50 ft. from the WWPD where 100 ft. is required.

Section 601.4.8 to allow the construction of the dwelling without a special permit from the Planning Board.

Section 601.4.8.3 to not require evidence that the WWPD disturbance is the minimum possible.

Section 601.4.8.4 to not require WWPD markers.

Section 616.6.4.1 to allow a driveway within the 75 ft. buffer.

Section 616.8 to allow some of the 100 ft. buffer to be disturbed.

Section 616.9 to allow the septic system to be 50 ft. from hydric-B soil where 75 ft. is required.

Section 702, App. A-1 to allow a frontage of 70 ft. where 175 ft. is required, a lot area of 4,650 sq. ft. where 50,000 sq. ft. is required, a side setback of 9 ft. where 30 ft. is required, and a front setback of 26 ft. where 50 ft. is required and a rear setback of 5 ft. where 30 ft. is required.

A letter of authorization and the abutter list were read into the record by Mr. Samsel.

Mr. Partington pointed out that 5 members of the public spoke in favor of the plan at the last meeting.

Applicant, Joseph Maynard addressed the Board. This is one of the eyesores of Walkey Road that is being redeveloped. The lot has an existing year round dwelling on the property with a septic system over the lot line. The septic system was previously under a violation for failure with the Town. The dwelling is currently abandoned. The new owners are looking to raze the home and construct a new single family dwelling. All the homes surrounding 23 Walkey Road have been redeveloped within recent years. The existing well is in the front of the house and existing septic is behind the house. The septic was leeching towards the pond. Mr. Maynard is attempting to center the home as much as possible. He is looking for relief to achieve the best possible setbacks to allow for installation of a new, state approved, clean septic system. The new footprint is actually smaller than the existing one. The design meets the town's height restriction. The lot has many burdens. Although it is not waterfront there is a community beach across the street and the lot does fall within the shoreline buffer protection. The brook that flows behind the property has WWPD and a CPIA buffer. If WWPD placards are required they will go through the front yard of the house and doesn't seem feasible. The lot has an easement which was granted to a previous owner who built a shed over the lot line. The shed will remain on the property. The easement was granted by the developer of the conduit association and goes with the lot. The lot is about 65 X 70 and if setbacks were applied there would not be any buildable area on the property.

Mr. Samsel asked if the WWPD and CPIA buffer line are the same.

Applicant explained the buffers are exactly the same.

Mr. Partington asked about Section 616.8 to allow some of the 100 ft. buffer to be disturbed; it has several sections. 616.8.1 deals with the 100 foot wide buffer, 616.8.2 says that any reduction in the buffer can be granted by The Planning Board, 616.8.3 is that all development shall be located outside of the required buffer zone, 616.8.4 addresses land uses not permitted within the buffer zone. Mr. Partington asked the applicant if he wants relief from all the sections listed above.

Mr. Maynard replied he has all of those things now. The entire lot that currently exists is developed up to the lot line and sits within the same buffer. Mr. Maynard is attempting to center the new home on the lot and would like to maintain the 5 feet around the structure instead of having space behind the home which can't be utilized which is what that buffer would require. Mr. Maynard is going to the Planning Board for Cobbetts Pond and Canobie Lake watershed.

Chairman Scholz and the Mr. Maynard agree that a variance from 616.8.2 has to be granted by the ZBA before Mr. Maynard can to the Planning Board.

Mr. Partington addressed that granting relief from 616.8.4, in theory, will allow the applicant to do any of the things listed as not permissible land uses within the buffer zone.

Mr. Maynard pointed out the property is currently totally developed lot line to lot line. Mr. Maynard explained if the house itself has an oil furnace then it has an oil tank so that is fuel storage within the structure. He is not looking to have the property as a commercial enterprise, rather looking to have it as residential use. Chairman Scholz believes the ZBA can clarify in a motion what is permitted in the buffer zone. Mr. Partington inquired if the ZBA knows exactly what is in the buffer. Mr. Maynard replied that anything related to a single family dwelling is needed.

Mr. Partington inquired about 2 subsections of 616.9. Section to 616.9.1 addresses for any new construction, an Effluent Disposal System (EDS) shall be installed in accordance to NH DES regulations requiring a 75 foot setback. 616.9.4 states if any septic assessment or an on-site inspection indicates that the existing system is in failure, a plan for a replacement system shall be submitted to NH DES within 30 days from the date of the onsite inspection.

Mr. Maynard will comply with the ISDS rules but needs a waiver to the ISDS rules in order to replace the existing system. The previous owner was under violation with the Town over the current septic system. Mr. Maynard is working towards complying with 616.9.4 however, the property is currently abandoned and the system is not in use.

Mr. Partington is concerned about being faced with granting relief from 616.9.4 in the future in the event the new system should fail. Chairman Scholz will ask members to address the issue when the Board goes into deliberation.

Mr. Partington inquired about 601.4.8.3: to not require evidence that the WWPD disturbance is the minimum possible. 601.4.8.3 was not on the original request and is appearing on the new request.

Mr. Maynard explained the proposal is utilizing the bare minimum to rebuild the lot. Granting relief from 601.4.8.3 allows Mr. Maynard to go before the Planning Board as an administrative review rather than a public hearing and all that a public hearing entails.

Mr. Samsel inquired about the redundancy of the application. Mr. Maynard explained the redundancy is due to the brook running behind the home which requires WWPD and CPIA buffer relief.

Mr. Maynard explained he is seeking relief to help with the cost for his client. The proposal is not a large development. The proposal is a small lot and the owner is attempting to rebuild a single home. Mr. Maynard is attempting to avoid an expensive process due to duplication of efforts for the client.

Mr. Samsel inquired about the age of the existing house. Applicant thought the house was built in 1960's or 1970's; an unidentified member of the public stated it was built in 1940's.

Chairman Scholz asked if it was a 2 story dwelling. Mr. Maynard confirmed it is a 2 story dwelling with a garage underneath

Mr. Mazalewski inquired about the attic. Mr. Maynard confirmed there is an attic and it meets the town's height ordinance.

Mr. Partington asked about Section 601.8.4.8. Mr. Partington recalled the applicant asked for this last and the Board voted it wasn't necessary because the ordinance covered it. It is the Planning Board's discretion to have the markers placed appropriately.

Mr. Samsel asked how long do the WWPD markers have to stay in place. Mr. Maynard is not aware of anything in the ordinance that says how long the WWPD markers have to stay in place.

Mr. Maynard recently placed 50 WWPD markers on a different plan and 40 were missing when upon re-inspection. It doesn't make sense to the applicant to place the markers on a small residential lot where the markers would go through the middle of the front lawn.

Joe Levis, 30 Walkey Road. Mr. Levis lives across the street from the proposed lot. The property has been a problem for many years. All neighbors are in support of the plan and can't wait for it to be done. The existing property is an eye sore and is going to be a huge improvement to the neighborhood.

Motion by Mr. Samsel go into deliberation

Second Ms. Skinner

Vote 5-0-0

Motion by Mr. Mazalewski to come out of deliberation

Second by Mr. Samsel

Vote 5-0-0

Mr. Mazalewski asked Mr. Gregory about the height of the building. Mr. Gregory explained the height requirements in Windham have nothing to do with the height of the building. The Town

requires the height of the ceiling of the habitable space not to exceed 35 feet. Mr. Gregory confirmed the ceiling in the attic of the proposal is under 35 feet.

Motion by Mr. Mazalewski to go back into deliberation

Second by Mr. Samsel

Vote 5-0-0

Mr. Samsel pointed out the ZBA has heard about the WWPD markers multiple times and believes relief should be granted in this case. The proposal is for a small residential lot and placing the WWPD markers according to the ordinance would require the markers to go through the front lawn.

Chairman Scholz believes, after hearing testimony, the applicant is asking for relief from duplicate efforts.

Mr. Partington reviewed the 5 variance criteria. With regards to Section 601.4.8.3 and 601.4.8.4, the criteria for those two sections has not been met. Granting relief from those sections is contrary to the public's best interest and does not meet the spirit and intent of the ordinance. The Planning Board has some discretion with regards to the placement of the WWPD markers. If the homeowner doesn't like where the marker is placed they will probably take it down. The project is a complete rebuild and is right in the WWPD we should require as much evidence as possible. If the ordinance has duplication the Planning Board and the voting public should visit that. Until that time Mr. Partington believes the Board should adhere to the ordinance unless these things meet the 5 criteria. Mr. Partington reviewed that the ZBA wants to grant relief from all of Section 616.8 while carefully considering to only grant relief under Section 616.8.4 for items that are associated with a single family residence. With regards to Section 616.9, the ZBA talked about relief from Sections 616.9.1 and 616.9.2 as necessary. Relief from Section 616.9.3 is not necessary because it is a subdivision regulation and unrelated to the proposal. Relief from Section 616.9.4 was related to a failing septic system which Mr. Partington did not want to grant relief for reasons previously stated.

Chairman Scholz agrees that with regards to Section 616.8, specifying a single family residence puts the intent there that the code enforcement administrator can interpret. Chairman Scholz clarified with Mr. Partington that he is not inclined on Section 601.4.8.3 and section 601.4.8.4. Chairman Scholz pointed out the applicant provided testimony that he plans to the Planning Board and thought this was additional documentation to the Planning Board.

Mr. Mazalewski pointed out with regards to Section 406.2 asking to allow an increase in volume from 7,215 cu. ft. to 28,062 cu. ft. and an increase in footprint from 962 sq. ft. to 1,330 sq. ft. The ZBA heard testimony that there the plan is decreasing the footprint, the numbers don't match. Chairman Scholz asked for Mr. Maynard's clarification.

Mr. Maynard clarified the existing footprint is 1231, the proposed footprint is 987 + decks.

Chairman Scholz clarified there is a decrease in the footprint with the proposed structure and assumes it was not posted correctly.

Mr. Maynard confirmed, at the request of Chairman Scholz, that there is an increase in volume and the proposed increase is presumably posted correctly.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Samsel to grant relief for Case #22-2015 from Section 601.4.8.4 to not require the placement of WWPD markers.

Second by Ms. Skinner.

Mr. Samsel believes due to the lot's uniqueness given that it is a yard WWPD markers are not required.

Chairman Scholz believes the lot is small and it's a front yard, the WWPD markers are not necessary.

Ms. Skinner does not think WWPD markers are necessary in a front yard.

Mr. Partington believes it should be at the Planning Board's discretion.

Vote 3-2-0 Mr. Partington and Mr. Mazalewski opposed; it is contrary to public interest, it does not meet the spirit and intent of the ordinance, and it does not meet the hardship criteria.

Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period.

Motion by Mr. Samsel to grant relief for Case #22-2015 from Section 601.4.8.3 to not require evidence that the WWPD disturbance is the minimum possible.

Second by Ms. Skinner

Mr. Samsel does not believe the Board should aspire to redundancy and that this requirement will be met by other means.

Chairman Scholz does not think Section 601.4.8.3 which talks about elevations at 50 foot intervals is applicable to the proposed lot which is just a little over 50 feet in size. The special conditions of the lot met the hardship criteria.

Mr. Partington pointed out that if the undersize lot on the lake is used to get the hardship criteria than relief will have to be granted to everyone on the lake which is the only reason Section 601.4.8.3 is here. Chairman Scholz agreed with Mr. Partington.

Vote 3-2-0, Chairman Scholz, and Mr. Partington opposed; it is contrary to public interest, it does not meet the spirit and intent of the ordinance, and it does not meet the hardship criteria.

Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period

Motion by Mr. Partington to grant for Lot 17-I-111C, Case #22-2015 variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations to raze the existing structure and to allow construction of a new dwelling.

Section 401 to allow an increase in the extent of the non-conforming use or structure.

Section 406.2 to allow an increase in volume from 7,215 cu. ft. to 28,062 cu. ft. and a decrease in the footprint from 1231 sq. ft. to 987 sq. ft.

Section 601.3 to allow a dwelling to be constructed in the WWPD which is not allowed.

Section 601.4.6 to allow a septic system to be 50 ft. from the WWPD where 100 ft. is required.

Section 601.4.8 to allow the construction of the dwelling without a special permit from the Planning Board.

Section 616.6.4.1 to allow a driveway within the 75 ft. buffer. Section

616.8.1, Section 616.8.2, Section 616.8.3, and Section 616.8.4 to allow anything required of a single family home to allow some of the 100 ft. buffer to be disturbed.

Section 616.9.1 and 616.9.2 to allow the septic system to be 50 ft. from hydric-B soil where 75 ft. is required. Section 702, App. A-1 to allow a frontage of 70 ft. where 175 ft. is required, a lot area of 4,650 sq. ft. where 50,000 sq. ft. is required, a side setback of 9 ft. where 30 ft. is required, and a front setback of 26 ft. where 50 ft. is required and a rear setback of 5 ft. where 30 ft. is required per plans submitted.

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period.

8:50pm brief recess

8:55pm hearing resumed

(Chairman Scholz appointed Mr. Hughes to sit for Mr. Breton for this case.)

Lot 17-C-26, Case# 27-2015

Applicant: Edward N. Herbert Assoc., Inc.

Owner: MacThompson Realty Trust

Location: 23 Sawtelle Road

Zone: Residence A, Cobbetts Pond & Canobie Lake Watershed Protection District (CPCLWPD)

Section 501: to allow construction of a dwelling.

Section 702, App. A-1: to allow a dwelling to be constructed on a lot with an area of 14,810 sq. ft. where 50,000 sq. ft. is required, a front setback of 32 ft. where 50 ft. is required and a frontage of 134.92 ft. where 175 ft. is required.

A letter of authorization and the abutter list were read into the record by Mr. Samsel.

Applicant Mr. Gendron addressed the Board starting with a correction to the posting. The posting reads: to allow a dwelling to be constructed on a lot with an area of 14,810 sq. ft., but should be posted to read: to allow a dwelling to be constructed on a lot with an area of 15,376 sq. ft. Chairman Scholz confirmed with the applicant that less relief than what was posted is being requested.

Mr. Gendron pointed out on the plot plan the existing structure which has a setback of 30 feet, the existing artesian well, and the proposed septic system. The Septic design has been approved by State of NH. The applicant would like to reuse the existing well. The property is a pre-existing nonconforming property. The applicant is asking for a variance for the Front setback. The proposed building coverage on the property is 7.8%. The proposed impervious area is 16.19%. It will be a minimum Cobbetts Pond watershed application. Applicant reviewed the 5 variance criteria

There were no public comments

Mr. Samsel inquired about the need for relief from Section 501.

Chairman Scholz believes what is being asked for from 702 is appropriate.

Mr. Partington and Chairman Scholz believe if you meet all the criteria and don't violate the ordinance you can build a house without relief from Section 501.

Chairman Scholz agrees the proposal does not need relief granted from Section 501.

Motion by Mr. Samsel to go into deliberation

Second by Mr. Hughes
Vote 5-0-0
Motion carries

Mr. Partington reviewed the 5 variance criteria. The applicants request to keep the existing well is a reasonable request and he believes the proposal meets the 5 variance criteria.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Partington that relief is not needed from Section 501

Second Mr. Samsel
Vote 5-0-0
Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Partington to grant relief for Lot 17-C-26, Case# 27-2015 for Section 702, App. A-1: to allow a dwelling to be constructed on a lot with an area of 14,810 sq. ft. where 50,000 sq. ft. is required, a front setback of 32 ft. where 50 ft. is required and a frontage of 134.92 ft. where 175 ft. is required as requested.

Second Mr. Samsel
Vote 5-0-0
Motion carries

Chairman Scholz advised the applicant of a 30 day appeal period.

Review of draft minutes 7/28/15

Motion by Mr. Partington to pass minutes as amended
Second Mr. Samsel
Vote 5-0-0

Review of draft minutes 7/14/15

Motion by Mr. Partington to pass minutes as amended
Second Mr. Samsel
Vote 5-0-0

Motion by Mr. Samsel to adjourn
Second by Mr. Hughes
Vote 5-0-0
Meeting adjourned 9:33pm

Minutes submitted by Suzanne Whiteford

