



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes August 28, 2007

Mark Samsel – Chairman
Jim Tierney – Vice-Chairman
Dianna Fallon – Secretary
Gail Webster – Member
John Alosso – Member (Absent)
Tom Murray – Alternate
Bruce Flanders – Alternate

Lot #16-P-550 & 580, Case #44-2007

Applicant – Benchmark Engineering
Owner – Jane Marie Murray
Location – Third Street/Fourth Street
Zone – Residential A

A variance is requested from Section 401 & 702 appendix A-1 of the Zoning Ordinance to permit the construction of a new dwelling on a non-conforming lot with side setbacks of 20' (left), 18' (right) and 8' (one corner) where 30' is required. The house will face Third Street.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case. Two lots 16-P-550 & 16-P-580 (60 X 200 & 20 X 100) will be merged in order to make this application possible. The septic system will be toward the 4th Street side of the property. Concerns regarding drainage were raised by abutters so the lot has been reworked to create swales on each side of the property and construct a catch basin type structure to catch runoff and keep it out towards the natural flow of water toward 3rd Street. There will be a shared well. Mr. Maynard read the supporting facts into the record.

Mr. Joseph Marquebreuk of Third Street spoke in support of this request. Mr. Marquebreuk explained that he has worked with Mr. Maynard in regard to the drainage concerns.

Mr. Francis Leonard of 7 Third Street spoke against this request and voiced his concerns regarding water flow.

Mr. Maynard showed on the displayed map the area where the water puddles on Mr. Leonard's property and explained that there was no outlet for the water. A catch basin will be installed giving the water an outlet. Mr. Maynard said that he will be going before the Board of Selectmen for a waiver from 674:41, building on a private road.



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Mr. Tierney motioned and Mr. Flanders seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #44-2007

Mrs. Fallon motioned and Mr. Flanders seconded the motion to grant an area variance for Case 44-2007 from Sections 401 & 702 Appendix A-1 per the revised plan submitted and dated 5/31/07. Motion passed 5-0.

Lot #11-C-1100, Case #45-2007

Applicant – Benchmark Engineering

Owner – The Commons @ Windham, WC

Location – 25 Indian Rock Road

Zone – Commercial A

A variance is requested from Section(s) 601.4.6, of the Zoning Ordinance to permit the replacement and enlargement of a septic system within the Wetland & Watershed Protection District. The leach field to be 50' from the edge of the wetland where 100' is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case. Mr. Maynard explained that there are two septic systems on this property. One was installed in the late 1970's and one was installed in 1986. The Planning Board was aware back in the 1990's when this property came before them for renovation review that the septic systems were within the WWPD. At this time there seems to be a problem with one of the fields. The perk rate is not the same as it was in 1986. There is an issue that the sewer loading is not the required size for the uses in the building. The field is not a vegetated area; it is wide open. Mr. Maynard submitted photos that were marked as Exhibits A thru D. There is no other location available outside the WWPD suitable for the field. This is a replacement system designed in accordance with the current NHDES and local ordinances. The State of New Hampshire allows a septic system to be 50-feet from a wetland; the Town of Windham requires 100-feet. Mr. Maynard read the supporting facts into the record. The system was designed for 531 gallons of water per day; the uses that are in the building require 700 gallons per day. The state governs the amount of gallons per day needed for the intended use of the building. A special permit is required from the Planning Board. You can not replace a commercial use system in kind. You must reapply to the state and show the current uses. A map of the Septic System Plan dated January 7, 2007 was marked as Exhibit E and the Plot and Sewerage Plan dated September 10, 1987 was marked as Exhibit F.

Mr. Tierney motioned and Mrs. Webster seconded the motion to go into Deliberative Session. Motion passed 5-0.



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Deliberative Session, Case #45-2007

Mr. Flanders motioned to grant an area variance from Section 601.4.6 for Case #45-2007. Motion passed 5-0.

Lot #17-J-100A, Case #46-2007

Applicant – Benchmark Engineering
Owner – Roland & Nancy Shrull
Location – 11 Rocky Ridge Road
Zone – Residential A

An Equitable Waiver is requested from Section(s) 702 Appendix A-1 & 702.4, of the Zoning Ordinance to permit a chimney jog to remain 8-feet from the property line and an overhang at the front steps to remain 11-feet from the property line.

Mrs. Fallon recused herself from Case #46-2007. The Chairman appointed Mr. Murray to replace Mrs. Fallon. Mr. Murray read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case. This property received a variance last spring to construct a house 10-feet off of the lot line. Permission was received from the Selectmen to do construction on a private road and inspections were done by the proper officials. A chimney jog was put on during construction. Mr. Maynard said that it was his understanding that cornices, overhangs, chimney jogs, etc. are allowed within the setback. When Mr. Maynard was at the construction site he noticed an overhang that was built above the front steps. The Town Ordinance states *Awnings, eaves, sills, steps, cornices, belt cornices, fences or alls, light poles, mailboxes, driveways, stonewalls, retaining walls, walkways, essential utilities, septic systems, cisterns for emergency water supply and similar features may project into or be permitted within the specified yards*. Mr. Maynard submitted a letter of support from an abutter, Kathleen Needham of 25 Orchard Hill Road, North Andover, Massachusetts and two photos that were marked as Exhibits A & B. Mr. Maynard read the supporting facts into the record.

Mr. Murray read Ms. Needham's letter into the record.

Mr. Tierney asked to see the certified plot plan used for the foundation inspection that shows the jog. Mr. McGuire said that he could not find a certified plot plan or an "as-built in the building file.

These items, the chimney jog and the overhang, were substantially completed last fall and were not noticed until June of this year, therefore, Mr. Maynard was requesting an Equitable Waiver and not a variance.

Mr. Tierney motioned and Mr. Flanders seconded the motion to go into Deliberative Session. Motion passed 5-0.



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Deliberative Session, Case #46-2007

Mr. Murray motioned and Mr. Flanders seconded the motion that an Equitable Waiver is not required from Sections 702 Appendix A-1 & 702.4 to permit a chimney jog to remain at 8-feet because it is an allowed use. Motion passed 4-1. Mr. Tierney voted against the motion because he felt that a chimney jog with a foundation cannot encroach into a setback when not shown on the plan granted by the Zoning Board..

Mr. Murray motioned and Mr. Flanders seconded the motion to deny the request for an Equitable Waiver from Sections 702 appendix A-1 and 702.4 to permit an overhang to remain 11 feet from the property line because there was failure to prove RSA 674:33A Section IB. Mr. Murray withdrew his motion.

Mr. Murray motioned and Mr. Flanders seconded the motion to go into Public Session. Motion passed 5-0.

Mr. Maynard withdrew his application for the overhang.

Mr. Tierney motioned and Mr. Murray seconded the motion to accept Mr. Maynard's withdrawal of the overhang portion of Case 46-2007. Motion passed 5-0.

Lot #3-B-265, Case #52-2007

Applicant – Benchmark Engineering, Inc.

Owner – West Rock Endowment

Location – 183 Rockingham Road

Zone – Residential A

A variance is requested from Section(s) 601, 602.2, 702.5, 704.2.2, 704.2.2.1, 704.2.2.2 & Appendix A-1 of the Zoning Ordinance to permit the expansion of the existing parking area which is currently 30' from the abutting residential zone. Expanded parking area will be approximately 5' from abutting residential property line where 100' is required. Existing parking area to be reconfigured to be 8' from the ROW where 20' is required. A small portion of the parking turn-around grading is to be construction within the WWPD.

The Chairman appointed Mrs. Fallon to replace Mr. Murray.

Mr. Tierney motioned and Mr. Flanders seconded the motion to deny Case #52-2007 without prejudice so that it can be reposted with the correct lot number and zone. Motion passed 5-0.



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Approval of August 21, 2007 Minutes

The minutes were tabled to the September 11, 2007 meeting.

Other Business

None

Mail

None

At 10:05 PM Mr. Tierney motioned and Mr. Flanders seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for September 11, 2007 at 7:30 PM in the Planning & Development office.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.