



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes September 14, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman (arrived 9:00 PM)
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate (Excused)
John Alosso – Alternate (Absent)
Mike Scholz – Alternate
Salvatore Basile – Alternate (Absent)

Staff

Tim Corwin – ZBA/Code Enforcement Administrator
Patricia Kovolyan – Administrative Assistant

Seat Alternate

The Chairman appointed Mr. Scholz to replace Mr. Murray.

Mrs. Fallon read into the record a statement explaining that Case 41-2010 for 32 Fish Road was withdrawn due to an error in the public notice. The case will be re-noticed and will be heard on September 28, 2010.

Lot #7-A-680, Case #46-2010

Applicant – Heidi Ann Heath
Owner – Heidi Ann Heath
Location – 81 Searles Road
Zone – Rural

An application has been submitted by Heidi Ann Heath for a variance from Section 601.3 of the Windham Zoning Ordinance and Land Use Regulations to permit the construction of a pool within the Wetland & Watershed Protection District. The property is improved with a single family residence.

Mrs. Fallon read into the record a statement requesting a postponement because of a medical emergency. Mrs. Fallon read the case into the record. Mrs. Dunn motioned and Mr. Scholz seconded the motion to continue Case #46-2010 to the September 28, 2010 meeting. **Motion passed 5-0.**



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Lot #16-L-1, Case #42-2010

Applicant – Edward N. Herbert Associates, Inc.

Owner – Cafua Realty Trust

Location – 30 Indian Rock Road

Zone – Village Center District/WWPD

A variance is requested from Section 605.1.3 of the Windham Zoning Ordinance and Land Use Regulations to reconfigure parking and to construct a retaining wall, fence, and menu sign within the Wetland and Watershed Protection District, and from Section 706.6 to permit a freestanding sign within the required setback. The property is operated as a multi-tenant retail/restaurant space.

Mrs. Fallon read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. The purpose of the Village District is conformity and connectivity. Mr. Zohdi showed how the driveways between Dunkin Donuts and the Glynn Plaza would connect. If the connection is made there would be no need to go back onto Route 111 from Dunkin Donuts in order to get to the gas station. Mr. Zohdi showed on the displayed plan the direction of the traffic and explained that the proposed changes would provide for additional queuing space for the drive up window, better traffic flow and more vehicle capacity on the site. The changes will reduce any potential for interference with traffic on Route 111. The changes will not involve any filling of wetlands or diminish the value of the remaining undisturbed land within the WWPD. The menu sign will be moved back 10 feet. The applicant would like the driveway to be bigger to allow for more queuing. One parking space will be gained if a variance is granted. There is a need for a variance for the 20' x 12' fence that would surround the dumpster. The drive thru requires 20' from the edge of the right of way to be a grassy area, at the proposed location there is only 6'. WWPD impact for the existing parking is 1308 square feet, proposed 1296 square feet. The impact for the menu, dumpster and drive thru (a permitted use in the WWPD with a special permit from the Planning Board) is 2933 square feet. There are two drainage areas impacting the WWPD (an allowed use) one impact is 1442 square feet and the other is 3994 square feet.

Mr. Tim Corwin, ZBA/Code Enforcement Officer, explained that relief was not required for a Drive Thru from Section 704.2.7 of the Ordinance.

Mrs. Fallon asked if there was a location outside of the WWPD for the dumpster. Mr. Zohdi said there was not another suitable location for the dumpster that will be on a concrete slab. Any water that may come from the dumpster would go to the bioretention area.

Mrs. Dunn said that although the parking area in the WWPD would be less the amount of pavement in the WWPD has increased significantly. Mr. Zohdi said the amount of increased pavement in the WWPD is a permitted use with a special permit.



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Mr. Scholz said that if the dumpster is kept in its current location no parking space would be lost.

Mr. Zohdi read the supporting facts into the record.

Mrs. Fallon read into the record a letter from the Conservation Commission dated September 8, 2010. The letter stated *At the August 26, 2010 Conservation Commission meeting the members voted unanimously not to oppose the plan presented by Mr. Peter Zohdi of Herbert Associates. The change in plan is essentially the filling of the retaining wall, the bioretention system and the pavement change.*

Mr. H. Glynn, Jr. of 32 Indian Rock Road spoke in support of this request because it would help the traffic flow.

Mr. Alan Kachanian of 6 Maple Street spoke in support stating that the plan would alleviate traffic problems.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #42-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Partington said when he looks at the criteria he has a problem with public interest regarding asphalt in the WWPD and the hardship criteria regarding uniqueness because this is a self imposed hardship.

Mr. Scholz said that reducing the 20 foot buffer would diminish the value of the surrounding properties and had significant reservations regarding public interest.

Mrs. Fallon had a problem with further intrusion into the WWPD and conflict with the placement of the dumpster. Mr. Scholz would like to see the dumpster stay in its current location because it is not in the WWPD.

Mrs. Dunn said that the dumpster is a Planning Board issue; the Zoning Board would deal with granting a variance for the fence. Mrs. Dunn said that a driveway is a permitted use in the WWPD with a special permit and then asked if a driveway is different from a queuing area and a drive thru. Mrs. Dunn asked if the Planning Board is allowed to give a special permit for a drive thru. Mrs. Dunn said the Zoning Board will be deciding on whether or not to allow one additional parking space, to allow a fence to be built and to allow the menu sign in the WWPD.



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Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance for Case #42-2010 from Section 601.3 of the Zoning Ordinance to allow the reconfiguration of the parking per the plan presented and to construct a fence surrounding a dumpster with the condition that the Planning Board approve the site shown on the plan and for a menu sign. To grant a variance from Section 706.6 to permit the present freestanding sign to remain in the required setback.
Motion passed 5-0.

Mrs. Dunn reviewed the criteria for the fence, parking and menu sign and said that for those very limited purposes she was willing to grant the variance.

Mr. Partington said that when you look at only the three specific items they meet the criteria.

Mrs. Dunn wanted it in the record that the Board had not been asked to rule on the connectivity issue; it is not within the Zoning Board's jurisdiction. Mrs. Dunn went on to say that it is beneficial to have the connectivity and she hopes that the Planning Board approves it. The project is there and the connectivity would be an improvement.

Lot #13-A-365, Case #43-2010

Applicant – Raymond Chuairy

Owner – Raymond Chuairy

Location – 24 Range Road

Zone – Residence District A

A variance is requested from Section 702 and Appendix A-1 of the Windham Zoning Ordinance and Land Use Regulations to permit the construction of a residence on a lot that does not meet the minimum lot frontage requirement. The property is located to the rear of 24 Range Road and is vacant.

Mrs. Fallon read the case into the record. The owner, Mr. Raymond Chuairy, presented his case. Mr. Chuairy would like to build a 2500 square foot house on the property. He gave a brief history of all the approvals that were granted beginning in 1990. The lot is entirely in the Residential area and can only be accessed from Range Road. Mr. Chuairy would like access from a 30 foot easement that has been previously approved. Mr. Chuairy read the supporting facts into the record.

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



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Deliberative Session, Case #43-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Scholz, Mrs. Fallon and the Chairman said that they did not have any issues with this request.

Mrs. Dunn said this appears to be a landlocked lot which would meet the hardship criteria.

Mr. Partington motioned and Mr. Scholz seconded the motion to grant a variance for Case #43-2020 from Section 702 Appendix A-1 to permit the construction of a residence on a lot that does not meet the minimum lot frontage requirement. **Motion passed 5-0.**

The Chairman appointed Mr. Murray to replace Mr. Scholz for the balance of this meeting.

Lot #17-C-102C, Case #44-2010

Applicant – Deborah Cassidy

Owner – Deborah Cassidy

Location – 23 Spring Street

Zone – Residence District A

A variance is requested from Section 702.2 of the Windham Zoning Ordinance and Land Use Regulations to permit the construction of a 12' high shed within the required sight triangle on a corner lot, and from Section 702 and Appendix A-1 to permit the construction of a shed within the minimum yard setbacks. The property is improved with a single family residence.

Mrs. Fallon read the case into the record. Case #44-2010 was advertised with an incorrect address. The correct address is 3 Spring Street. Mr. Corwin read from page 5 of the Bylaws ... *notice shall include the name of the applicant, description of the property, action desired by the applicant, description of the Zoning Ordinance concerned, the type of appeal being made and the time and place of the hearing.* Nothing is mentioned about an address. After a brief discussion the Board decided to continue this case. Mrs. Dunn motioned and Mr. Murray seconded the motion to continue Case #44-2010 to the September 28, 2010 meeting for the purpose of reposting. **Motion passed 5-0.**

Lot #21-K-18, Case #45-2010

Applicant – Susan & Charles Dalton

Owner – Susan & Charles Dalton

Location – 82 Turtle Rock Road

Zone – Residential A



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An application has been submitted by Susan T. and Charles F. Dalton for a variance from Section 702 and Appendix A-1 of the Windham Zoning Ordinance and Land Use Regulations to permit the subdivision of a lot not meeting the minimum required lot area. The property is improved with a single family residence.

Mrs. Fallon read the case into the record. Susan Dalton, co-owner, presented the case. Mrs. Dalton would like to subdivide the 3.195 acre parcel into two lots as requested and granted on October 27, 2009 by the Zoning Board. In a report by Tim Corwin, he states that the Zoning Board granted the street frontage variance request, however, nothing is mentioned in the Notice of Decision or the minutes about the lot size variance. Upon review of the Planning Board application for subdivision approval, Town Staff discovered the deficient Notice of Decision and determined that the lot size variance was not granted. The applicant was informed that they would need to submit a new application to the Zoning Board for a variance to permit the undersized Parcel A.

Mr. Murray said that he was on the Board when this request was approved and in the original posting it stated that the lower lot met the current zoning. Mr. Murray's concern is if there is a current easement on the property. Mrs. Dalton said there is an easement and it is on file at the Registry of Deeds. Mr. Murray asked if there was a copy in the Building File. Mr. Corwin did find a deed that makes reference to the easement. Mr. Murray said that the deed does not have language depicting an easement.

Mr. Samsel asked what the difference is between the request that was granted in 2009 and the request that was in front of him. Mr. Corwin said that the Notice of Decision for Case 39-2009 did not address the remaining lot. Mr. Samsel & Mr. Murray disagreed with Mr. Corwin's statement. Mr. Murray said that this is the same plan that was in front of the Board a year ago. Mr. Corwin said that the original request specifically asked for a variance to allow an undersized lot. It was staff's determination that the notice of decision did not address the specific request for an undersized lot. The pond lot does not meet minimum lot size requirements. Mr. Murray said that he strongly disagreed with that determination. When the variance was granted the Board members knew what they were creating in regard to a nonconforming lot.

Mrs. Dunn said that in the future it would be helpful if the notice would state what the lot does have in comparison to what is required.

Mr. Samsel said there is no difference between the notice of a year ago and the current notice in front of the Board.

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



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Deliberative Session, Case #45-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Murray and the Chairman said that they did not have any issue with this request.

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case 45-2010 as requested, seeking a variance from Section 702 Appendix A-1 per plan submitted as Exhibit C and the condition that the private way, Parcel A, as it exists today on Turtle Rock Road be preserved. **Motion passed 5-0.**

Approval of Minutes

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the July 27, 2010 minutes. **Motion passed 5-0.**

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the August 4, 2010 minutes. **Motion passed 5-0.**

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the August 10, 2010 minutes as amended. **Motion passed 4-0-1.** Mr. Murray abstained.

Mr. Partington motioned and Mrs. Dunn seconded the motion to approve the August 24, 2010 minutes. **Motion passed 5-0.**
August 24, 2010

Miscellaneous Board Business

The Board decided to schedule a meeting for September 21, 2010 at 7:00 PM to discuss bylaws.

Adjournment

Mr. Partington motioned and Mrs. Fallon seconded the motion to adjourn. **Motion passed unanimously.**

The next meeting of the Zoning Board of Adjustment is scheduled for September 21, 2010 at 7:30 PM in the Community Development Department.

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