



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Zoning Board of Adjustment
Draft Minutes
September 27, 2011

Board Members

Tom Murray –Chairman
Heath Partington – Vice Chairman
Dianna Fallon – Member
Elizabeth Dunn – Member
Mark Samsel – Member
Jim Tierney – Alternate
Mike Scholz – Alternate (Excused)

Staff

Tim Corwin – ZBA/Code Enforcement Administrator

Case #41-2011, Lot # 19-B-2018

Applicant/Owners – Peter Bozzi and Marie Minerva-Bozzi
Location – 11 Lancaster Road
Zone – Rural District

Ms. Dunn read the notices into the record.

The applicant requests a variance from Section 702, Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a pool and hardscape area to be located 5 ft. from the side lot line shared with 9 Lancaster Road, where a minimum 30 ft. setback is required.

Ms. Bozzi presented the case. The septic system is located behind the right side of the house. The pool would go on the left side of the rear of the house.

Ms. Bozzi said that after filing this application, they had had a survey done and now could say that the pool could be built at least 10 feet from the line. They do not have a written plan from the surveyors, but the area has been flagged.

They want the pool and hardscape to stay away from the septic system.

Their neighbor had concerns about the amount of tree cutting.

The lot line in that area has a sharp angle. This angle makes it impossible to place the pool and hardscape near the house while staying outside the setbacks.

There may be a need for a retaining wall due to the slope in the area.

They have submitted a schematic showing the pool design.

Mr. Samsel said he was uncomfortable with the level of documentation submitted. He wished to postpone the case until there were more specific drawings. The board and Mr. Corwin had a discussion of whether the hardscaping around the pool should be considered a structure for the purposes of the ordinance.

Ms. Bozzi said that after the survey, they think the edge of the pool will be 15 to 20 feet from the lot line. The landscaping will go up the slope. They may have to make the pool smaller, depending on what they find as they go forward. The abutters' house is 150 to 200 feet away, and there is a field of woods between them, even after removing trees for the pool.

Ms Dunn noted that the lot was almost 8 acres, and the problem with locating the pool was that the lot line takes a sharp angle where the pool would be located.

The board further discussed whether the hardscape around the pool had to meet the setback.

Mr. Murray noted that there were dimensions shown on the sketch submitted.

Mr. Tierney noted that even the exact location was not known at this time, the variance, if granted, would require that any portion of the pool would be at least 20 feet from the lot line.

Ms. Bozzi addressed each of the five criteria for grant of the variance.

Mr. Murray opened the matter to the public. No public input.

Mr. Bozzi noted that with the septic system behind the house and the existing slopes, in order to keep the pool behind the house and away from the septic system, it was impossible to construct the pool outside of the proscribed setbacks.

Ms. Dunn moved, and Mr. Partington seconded, a motion to go into the Deliberative Session. **Motion passed 5-0.**

Deliberative Session, Case 41-2011

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

Mr. Partington reviewed each of the five criteria and said the request met the criteria, particularly in light of the shape of the lot.

Ms. Dunn agreed.

Mr. Samsel had no comment.

Mr. Murray wished to have any motion be clear about that any part of the pool must be 20 foot from lot line, even if moved up or down the along the lot line.

There was further discussion of what level of documentation was needed to approve a plan.

Motion by Ms. Fallon to grant a variance from Section 702, Appendix A-1, to permit the edge of the pool to be located 20 feet from any point along the side lot line shared with 9 Lancaster Road.

Ms. Dunn requested an amendment to add the wording that the pool must be located to the rear of the house. Ms. Fallon agreed. Ms. Dunn seconded the amended motion.

Roll call vote on the motion:

- Mr. Partington- Grant
- Mr. Samsel- Abstain

- Ms. Dunn- Grant
- Ms. Fallon- Grant
- Mr. Murray – Grant

Motion carried, 4-0-1.

Ms. Bozzi asked for clarification of the amendment requiring the pool to be to the rear of the house. The board explained that meant that the pool simply had to be behind the house.

Case #42-2011, Lot # 8-B-1

Applicant- Greg’s Auto Village of Windham

Owner – ADRS Realty, LLC

Location – 68 Rockingham Road

Zone – Commercial District A/Wetland and Watershed Protection District

Ms. Dunn read the notices into the record.

The applicant proposes to reconfigure its parking lot and provide additional parking space. A variance is requested from (a) Section 601.3 to permit an approximately 1,100 sq. ft. parking area in the WWPD, where parking is not a permitted use in the WWPD; and (b) Section 704.3.2 to provide one handicap parking space where two are required.

Mr. Greg Peters presented his application. He had been there for more than four years, and Al Turner had specified how many cars he could have. The plot plan showed a “display area” but did not show parking places.

Ms. Dunn asked if Mr. Peters had authorization to present the request. Mr. Peters provided a letter from Steven Cyr authorizing Mr. Peters to present plans to the Planning Board.

Mr. Peters said that Ms. Wood had informed him that he did not have approval for all the cars located on the lot. He did not know he was in violation.

Ms. Fallon noted that the entire lot was in the WWPD, and the Conservation Commission had not had the opportunity to comment on the plan. The board agreed to go forward with the hearing but delay a decision until the Conservation Commission had reviewed the plan.

Mr. Corwin pointed out that most of the proposed parking areas were already paved, and a few close to the road are presently gravel and dirt.

Mr. Peters said that the employee parking areas were presently paved. The previously approved plan allowed parking for 10 cars, plus an unspecified number of cars in the “display area.”

Mr. Corwin noted that the posting of the variance did not specify that some of the proposed reconfigured parking would be in the WWPD. The variance request should be reposted.

Mr. Peters said that none of the proposed parking would be in the State’s right-of-way.

Mr. Tierney noted that the dimensions of the proposed parking were not to scale, and that the dimensions indicated exceeded the space provided.

Mr. Peters said that car dealerships had been on that spot for about 20 years, and he had seen cars parked in the same areas while the property was under previous owners. He is not asking to pave any additional areas.

Mr. Tierney noted additional problems with the calculation of the dimensions of the parking areas.

Mr. Murray opened the matter to the public. Ms. Eileen DiOrio, an abutter, asked for clarifications on where the proposed parking places would be, particularly the spaces near the right-of-way.

The board discussed the procedure for reposting and continuing the case.

Mr. Peters said that the dimensions of the spaces for display of cars would be different from the dimensions for cars that are for customers coming and out.

Ms. Dunn made a motion to continue the case to October 25, 2011, and repost the case to include the parking in the WWPDP, and to allow for input from the Conservation Commission. Seconded by Ms. Fallon. Motion carried, 5-0.

Case 33-2011, Lot 18-L- 400, Request for Rehearing.

The board discussed who should act on the request for rehearing since Mr. Murray was not present for the original decision. Mr. Tierney had been present but had not been seated on this case. The board agreed to have the regular members act on the application.

Ms. Dunn read the case application information into the record.

Mr. Murray began review of the petition, paragraph by paragraph. Mr. Murray stated that the board would be reviewing the petition to see if (1) there was new information or (2) if the board made a technical error. The board discussed various issues raised in the petition.

As to Paragraph 17, where the petition alleged that the board had said “it is not their purview to vary the terms of the ordinance regarding use”, Ms. Dunn said that she wanted to note that this did not accurately reflect what had been said at the hearing. What had been said was that the proposal was not within the spirit and intent of the ordinance.

Mr. Samsel said that petition paragraphs 17 to 23 went to the heart of the matter. Mr. Samsel said he didn't know if his comments were being made with respect or no respect to the board. Mr. Samsel said we look for new information, or seeing if the board made a technical error. He said that in this case there should be a third criteria, namely to see if there was “stupidity on the part of the board.” Mr. Samsel stated his belief that the alleged statement had indeed been made, that the board made a technical error, and that the case would be overturned on appeal. He said that at the previous hearing, “dumb things had been said.”

Mr. Partington disagreed with Mr. Samsel's statement and noted that what had been said was it was not within the purview of the board to change the ordinance.

The board completed a review of the remainder of the petition.

Mr. Partington made a motion to deny the rehearing request since there was no new information and no technical error. Seconded by Ms. Fallon.

- Mr. Partington- Yes
- Mr. Samsel – No
- Ms. Dunn- Yes
- Ms. Fallon- Yes.
- Mr. Murray- Abstain

Motion to deny carried, 3-1-1.

Other Business

The board agreed to approve minutes before discussing other items on the agenda.

Minutes

Mr. Samsel made a motion to approve the minutes of July 26, 2011. These minutes had been revised by Mr. Partington based on the board's input at the previous meeting. Since they had been revised extensively, there was no need to specify who wrote the drafts of these minutes. Motion seconded by Ms. Dunn. Approved unanimously.

Action on the minutes of August 23, 2011, was postponed until an updated version is provided.

The board gave extensive input for changes to be made to the minutes of September 13, 2011.

Budget Memo

The board received a memo from Laura Scott asking if the board wished to have a 2012 budget item for separate legal counsel for the ZBA, and if so, to provide an amount to be proposed to the upcoming annual budget. This number is needed before October 5.

The board had a lengthy discussion on the present process for contacting the town's attorney and the board's need for direct access to the board's attorney under most circumstances. The board discussed concerns that if questions to the attorney have to go through the Community Development Administrator or the Town Administrator, a complete picture may not be conveyed. Since the ZBA is a quasi-judicial board, it needs direct access to legal advice. This is particularly true if the legal question relates to an appeal of an administrator's decision. At times the ZBA chair has simply called the LGC attorneys.

The board agreed to ask the Dave Sullivan or Dana Call what amount of legal fees that had been spent on ZBA cases over the last three years, and ask for a line item for that amount. The board does not request separate counsel. The board would also like to know the average cost of a court appeal of a ZBA case.

Mr. Tierney stated that the fees for ZBA applications should be increased.

Public Hearing – By-Laws Amendment

The text of the proposed amendment to the “Appeals” section of the By-Laws is as follows:

“8. The Board may affirm, hear and decide appeals where it has been alleged that there is an error in any order, requirement, decision, or determination by an administrative official or reverse such order, requirement, decision, or determination, in whole or in part, or may modify the same; and hear and render determinations on any question relative to the meaning of the text of the Ordinance and the terms of the Zoning Ordinance within 30 days of said decision.”

There are additional changes that will be proposed, but some of them will be formatting changes, but this amendment, drafted by Mr. Tierney, was most urgently needed.

Ms. Dunn asked if this amendment would address the situation where the ZBA, during a hearing on an application, becomes aware of a need for an additional variance that is not presently under consideration.

Mr. Tierney said that this amendment was needed to put a specified time limit for an appeal of an administrative hearing. There has to be finality to a decision.

Mr. Samsel proposed that this amendment should be put in a separate section of the By-Laws.

Mr. Corwin said that the By-Laws need to be amended to conform with actual practice. At this time, an applicant does not need an actual permit denial before coming to the ZBA.

Mr. Murray suggested that Mr. Tierney draft a new amendment, perhaps combining or removing some of the paragraphs of the Appeals section.

Ms. Dunn asked about the time limit for an interested party who wants to appeal an administrative decision in the situations where the interested party would not have any way of knowing that an administrative decision had been made. Mr. Tierney said that the time limit would start when the interested party got an adverse decision from the official. The board had an extensive discussion of various possible scenerios. There is a need for finality of an administrative decision.

Mr. Tierney will work on a revision of the Appeals section.

Mail

-*Town and City Magazine*

-Letter from the Canobie Lake Protective Association inviting board members to attend a presentation of a study that defines and describes the watershed of Canobie Lake.

Adjournment

Mrs. Fallon made a motion to adjourn. It was seconded by Mr. Samsel. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for October 11, 2011 at 7:30 PM in the Community Development Office.

These minutes are in draft form and are respectfully submitted for approval by Elizabeth Dunn.