



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Draft Minutes November 8, 2011

Board Members:

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

Staff

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

Seat Alternates

The Chairman appointed Mr. Tierney to replace Mrs. Fallon for Case #46-2011.

Lot 11-A-1418, Case 46-2011 (Continued from 10/25/11)

Applicant – AWAC Realty Trust
Owner – AWAC Realty Trust
Location – 76 Meetinghouse Road
Zone – Rural

The Applicant proposes a twelve lot Open Space Subdivision per Section 611 of the Zoning Ordinance consisting of three workforce housing homes and nine market rate homes on individual lots. A variance is requested from Section 611.6.7.1 to permit 16.25% open space where 65% is required.

Mr. Karl Dubay of the Dubay Group gave his rebuttal to the comments that were given at the October 25, 2011 meeting. Mr. Dubay prepared a few summary bullets that pertain to the five criteria. The Board had questions relating to the fiscal impact study as to where the required numbers come from and how that ties in with a Workforce Housing RSA and the role of the Rockingham Planning Commission. Mr. Dubay submitted a copy of the October 12, 2011 Keach Nordstrom Report that was submitted to the Planning Board. A report from the Fiscal Impact Consultant was submitted demonstrating the need for this project. Three points were summarized in this report.



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1. Based upon the RPC's findings and confirmed by the town's consultant, Keach Nordstrom, presently Windham has a deficit of workforce housing units in their community.
2. The Workforce Housing statute, RSA 674:58 defines *affordable* as *housing with combined rental and utility costs or combined mortgage loan debt services, property taxes and required insurance that do not exceed 30% of a household's gross annual income.*
3. Keach Nordstrom's review of the Economic study agreed with the applicant's approach, methodology, findings and conclusions.

Mr. Dubay went on to report that:

- There will be 12 detached homes on 12 acres.
- 24' wide paved road.
- All state criteria are met.
- Project meets Town requirements for drainage, utilities and setbacks.
- No wetlands will be impacted.
- Complies with the current WFH ordinance on density as verified by the Town Consultant.
- Project will improve Meetinghouse Road drainage.

Mr. Scholz asked how many houses would be allowed if it were not Workforce Housing based on the soil density.

Mr. Dubay said he could go to a site plan with 18 detached homes but he is trying to do the same kind of subdivision as Windham is used to seeing. If this was a standard subdivision, not workforce housing, six homes would be allowed. Most developers find after checking the regulations, that the numbers are upside down and there is no incentive to do an Open Space Development; therefore no development occurs, not even a standard development.

Mr. Scholz asked how much of this request is self imposed hardship when the owner has the ability to change his plan and bring to the Town something that is closer to the 65%. The owner has additional land, identified on the displayed plan, that can be included as part of the open space.

Mr. Dubay said while a house cannot physically be built on the wetlands, shown on the displayed plan, the state gives a lot of credit for State Subdivision 1000 and for the Windham Ordinance for the residual piece of property.



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Mr. Scholz said there is opportunity and it has not been demonstrated that the 65% open space cannot be achieved.

Mr. Dubay said if this Workforce Housing project, that has one acre lots, does not get approved, he couldn't imagine the Board approving anything. It is almost obstructionism; the spirit and intent and state law have been met. It is not the purpose of the ZBA to decide what could have been done. Mr. Dubay read the supporting facts into the record.

The following residents spoke in opposition to this request:

- Laurie Yost of 84 Meetinghouse.
- Stanley Yost of 84 Meetinghouse.
- Nancy Maloof Win of 108 Wildwood Drive, Westwood, Ma. Sister of James Maloof of 82 Meetinghouse.
- Don Clarke of 3 Pilgrim.

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

Deliberative Session, Case 46-2011

The board discussed how the deliberative discussion should take place with regard to this being a workforce housing application. The board agreed that the five variance criteria should be considered in light of the Town of Windham's obligations due to the State of NH workforce housing RSAs.

Mr. Partington indicated that he had a problem with both the public interest and the spirit of the ordinance criteria. He read from section 611.2.2 of the ordinance, one of the objectives of the Open Space Residential Overlay District, "Maintain or decrease existing residential densities allowing the same or fewer homes per development". He believes this clashes with the increased density that a workforce housing application would contain.

Ms. Dunn questioned how any workforce housing project wouldn't have that same conflict with the ordinance. She believes this issue is inherent with workforce housing applications. She continued that this application alleviates many of the issues that can be found in such a project. Ms Dunn said that she believes this density might be best case for workforce housing and that she does not believe that there would be diminution of surrounding property values. She did indicate that she was troubled by the ratio of workforce housing units to market rate units. Ms Dunn said that she believes this project is reasonable because it meets the workforce housing ordinances that had been proposed for town warrant by the planning board.



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Mr. Samsel indicated he agreed with many of Ms. Dunn's thoughts. He mentioned that looking at our ordinance you could consider the extreme of 55+ housing in this space which would contain more density than this proposal. Mr. Samsel believes this project sets a high bar for future workforce housing applications. He expressed that he was not entirely comfortable with the ratio between market rate homes and workforce housing rate homes but that it was not this board's job to determine economic viability.

Mr. Tierney also agreed with Ms. Dunn. He indicated that perhaps a half acre of space could be added to the open space for this project without hitting issues with the land itself. Mr. Tierney believes this project is reasonable.

Mr. Murray disagrees with the use of the RPC calculations as they use the HUD district for calculations which is representative of other communities and not specific to Windham. Mr. Murray believes that Windham already has enough workforce housing units and in addition offers a realistic and reasonable opportunity for workforce housing in its current ordinance. Although he does see some positives to this project he doesn't think it meets any of the five criteria.

Mr. Partington believes this project meets three out of the five criteria. He said that although the substantial justice criterion is close due to the ratio of market rate homes to workforce housing rate homes, it is met. Mr. Partington indicated that he believes that property values will not be diminished and that the project is reasonable.

Mr. Samsel motioned and Mrs. Dunn seconded the motion to grant a variance as requested from Section 611.6.7.1 of the Zoning Ordinance to permit 16.25% open space where 65% is required to allow a 12 lot open space subdivision consisting of 3 workforce homes and 9 market value homes on individual lots. Motion passed 3-2. Mr. Murray and Mr. Partington voted against the request because it did not meet spirit and intent. This is an open space subdivision with very little open space.

The Chairman granted a five minute recess.

The Chairman called the meeting back to order.

The Chairman replaced Mr. Tierney with Mr. Scholz for the balance of this meeting.



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Lot #13-C-122, Case 47-2011

Applicant – Benchmark Engineering, Inc.

Owner – John & Joanne Morrison

Location – 17 Roulston Road

Zone – Limited Industrial

A variance is requested from Section 702 Appendix A-1 to permit a garage to be 30 feet from the side and rear lot lines where 50 feet is required because the property abuts a residential zone and

where a vegetative buffer or earthen berm 50 feet wide must be provided if a non-residential building is proposed closer than 100 feet from a residential zone.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- Abutting property was previously zoned limited industrial and is currently utilized in this manner.
- A 20' setback would be allowed if the abutting property was still zoned Limited Industrial.
- The location of the building will provide a buffer to the abutting property if it is ever developed.
- The proposed setback is consistent with the residential building setbacks.
- The current use is residential in nature.
- Other locations on the lot would require additional land clearing.
- The variance would allow the proposed structure to be installed within an existing cleared area on the subject property.
- Existing buildings on the abutting lot are approximately 40 feet away.
- The proposed garage will be constructed in a location similar to what is required for residential properties.
- Mr. Maynard read the supporting facts into the record.

Mr. Maynard read the supporting facts into the record.

The board discussed whether or not a variance could be granted for a potential future use with respect to Appendix A-1 Note #9 of the ordinance.

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

Deliberative Session, Case 47-2011



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Mr. Partington addressed the 5 criteria with regard to Appendix A-1 Note #6. He believes that portion of the application meets all five criteria.

Mrs. Dunn agreed that all criteria are met for Appendix A-1 Note #6.

Mr. Samsel motioned and Mr. Partington seconded the motion to grant a variance for Case 47-2011 as requested from Section 702 Appendix A-1 to allow the construction of a 40' X 60' garage 30 feet from the side and rear lot lines where 50 feet is required where the property abuts a residential district and where a 50 foot vegetative buffer or earthen berm must be provided if a non residential building is closer than 100 feet to a residential zone per the plan submitted. Motion passed 3-2. Mrs. Dunn and Mr. Partington voted against the motion because Note 9 does not apply to this situation; therefore a variance cannot be granted.

Lot #24-F-4005, Case 48-2011

Applicant – Benchmark Engineering, Inc.

Owner – Bernard & Cheryl Thompson

Location – 11 Wilson Road

Zone – Rural & WWPD

A variance is requested from Section 601.3 to permit the construction of a covered walkway and a detached 30' X 26' garage in the WWPD, approximately 58 feet from the wetland where permanent buildings are not permitted from Section 601.4.8 which requires a Special Permit from the Planning Board and Section 703 to permit the accessory structure to be located in the front yard where accessory structures are not permitted.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case.

- WWPD on both sides of the lot.
- A portion of the proposed garage to be constructed over the existing driveway.
- Additional plantings are proposed to restore WWPD areas that are currently maintained as lawn.
- Mr. Maynard read the supporting facts into the record.

The following abutters spoke in favor or asked questions or had general comments.



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- Pamela Endyke of 9 Wilson Road asked about the buffer area.
- Bernard Endyke of 9 Wilson Road asked if the flow would further affect his lot and would like to see evidence that it would not be worse.

Mr. Maynard said the plantings and the restoration would add vegetation and would improve absorption.

A letter of support, dated August 11, 2011 from Dr. James Finn, Chairman of the Conservation Commission stated that he and Ms. Ferrisi attended a site walk on July 21, 2011 to review the site where the proposed garage and covered walkway are proposed. At the July 28, 2011 meeting the Conservation Members discussed the remediation that will be done by planting a wall of trees and allowing the area behind the trees to return to natural conditions.

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

Deliberative Session, Case 48-2011

Mr. Partington indicated he was fighting with whether the project is reasonable and because the project is in the WWPD. He said that he doesn't think a variance should be granted for 601.4.8 as that is something the planning board should be handling and there is no hardship.

Mr. Scholz responded that the amount of time to get planning board approval when considering the applicant's timeframe for the start of this project could qualify as a hardship.

Mrs. Dunn addressed the five criteria for the variance from section 703. She said that the accessory structure meets the spirit and intent of the ordinance as it is connected and to the side of the main building. Mrs. Dunn believes the project is reasonable and does not diminish property values.

Mrs. Dunn addressed the variance from section 601.3. She said that the project does not diminish property values. Mrs. Dunn indicated that this property is unique in that the existing structures were built with regard to the WWPD.

Mr. Samsel said that he does not have an issue with this proposal. He doesn't believe that the number of garage bays is relevant. Mr. Samsel believes that when you consider the allowed secondary option of a driveway travelling from the front of the property to the rear, this project is better for the WWPD. He expressed that the proposed mitigations make things better.



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Mr. Scholz indicated that the impact of putting a driveway in to get to a structure in the back of the house would cause more harm to the WWPD and cause a financial hardship for the owner.

Mr. Murray believes that a project meeting the ordinance requirements could be presented but that would cause more issues within the WWPD including more impervious surface area and greater impact to the neighboring property. He believes that the plantings worked out with the conservation commission cause a betterment. Mr. Murray addressed the five criteria; he believes this project meets them.

Mrs. Dunn motioned and Mr. Scholz seconded the motion to grant a variance for Case 48-2011 from Section 601.3 of the Zoning Ordinance to permit the construction of an accessory structure in the WWPD 58 feet from the wetland and from Section 703 to permit the proposed accessory structures to be located in the front yard where detached accessory structures are not allowed. Motion passed 5-0. Mrs. Dunn stated that her motion did not include Section B of the variance request.

Mrs. Dunn motioned and Mr. Partington seconded the motion to deny as requested a variance from Section 601.4.8. Motion failed 2-3. Mr. Samsel, Mr. Scholz and Mr. Murray voted against the motion. Mrs. Dunn and Mr. Partington voted for the motion.

Mr. Scholz motioned and Mr. Samsel seconded the motion to grant a variance as requested from Section 601.4.8. Motion passed 3-2. Mr. Samsel, Mr. Scholz and Mr. Murray voted for the motion. Mrs. Dunn and Mr. Partington voted against the motion.

Lot #16-P-198F, Case 49-2011

Applicant – Benchmark Engineering, Inc.

Owner – Stephen & Ava Beaudet

Location – 1 Second Street

Zone – Residential A & CPWD

A variance is requested from Section 703 to permit a shed to be located in the front yard where detached accessory structures are not permitted and from Section 616.10.2 to increase the impervious coverage from 35% to 40% where 30% is allowed and where lots that exceed 30% area redevelopment must decrease the percentage of impervious area and from Section 616.10.3 which requires an erosion control plan for any use that will render impervious coverage more than 20% and from Section 702 Appendix A-1 to permit the shed to be located in the front yard 2 feet from the front lot line where 50 feet is required and 4 feet from the side lot line where 30 feet is required and to allow construction on a lot having an area of 1800 square feet where



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50,000 is required and to permit construction on a lot having 60' and 50' on private streets where 175 ' is required on a public street.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering representing the owner presented the case.

- The lot fronts on two streets.
 - A new holding tank will be installed creating a level area for the proposed shed.
 - The shed will help with storage.
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- The lot size and shape limit placement of the shed.
 - Mr. Maynard read the supporting facts into the record.

Mr. Dennis Root of 15 Third Street spoke in favor of this request.

Mike and Patty Thibodeau of Hooksett, representing their parents who are in Florida, spoke in opposition.

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

Deliberative Session, Case 49-2011

Mrs. Dunn said that she doesn't think she can grant a variance for seven different things on a lot of this size. She believes the overarching purpose of the zoning ordinance is public safety, health and to prevent congestion. Mrs. Dunn indicated she is less concerned with the impervious surfaces as the main structure is already there. She does not believe a stairway that goes right to the lot line with the purpose of a dog area meets the hardship criteria.

Mr. Samsel said that he has concerns with the stairs but not with the shed. He questioned why others believed there is a safety issue when there are propane tanks already close to the road.

Mr. Partington doesn't know how you can grant a variance for the staircase. He said that the proposed shed is too much as there is little room for the doors and the structure would be in front of a window.

Mr. Scholz said that although he has some safety concerns about the shed he has to balance that against the rights of the property owner. He doesn't see other options available to the owner as



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far as the shed is concerned. Mr. Scholz doesn't believe there is compelling reason to grant a variance for the proposed stairway.

Mr. Samsel motioned and Mr. Scholz seconded the motion to grant a variance for Case 49-2011 as requested from (a) Section 703 to permit a shed to located within the front yard (b) Section 616.10.2 to increase imperious coverage from 35% to 40% where imperious coverage may not exceed 30% and where lots that currently exceed 30% re-development must decrease the percentage of impervious area (c) Section 616.10.3 that requires the preparation and submission to the Planning Board of a stormwater management and erosion control plan for any use that will render imperious coverage more than 20% (d) Section 702 Appendix A-1 to permit building coverage of 40% where 20% is permitted (e) Section 702 Appendix A-1 to permit the shed to be located in the front yard along Second Street 2 feet from the front lot line where 50 feet is required and 4 feet from the side lot line where 30 feet is required. Motion passed 3-2. Mr. Partington voted against the motion because the request did not meet the spirit and intent. Mrs. Dunn voted against the motion because the request did not meet any of the five criteria.

Mr. Scholz motioned and Mr. Samsel seconded for Case 49-2011 - the relief from Section 702/Appendix A-1 Notes (f) and (g) from the application are not required for the construction of an 8x8 shed as submitted. Motion passed 4-1. Mrs. Dunn voted against the motion because (f) and (g) do apply.

Mr. Samsel motioned and Mr. Partington seconded for Case 49-2011 to deny the variance as requested to allow the construction of additional steps off an existing porch. Motion passed 5-0.

Approval of August 2, 2011, September 13, 2011, October 11, 2011 and October 25, 2011 Minutes

Mrs. Dunn suggested that the minutes be reviewed at the November 22, 2011 meeting. The Board agreed.

Discussion of 49 Range Road Zoning Board and Planning Board Applications

Lot #18-L-400, Case #33-2011

Applicant – Edward N. Herbert Associates Inc.

Owner – Mashop Development, LLC

Location – 49 Range Road

Zone – Professional, Business, and Technology District

Applicant proposes to use a portion of the existing building (Suite 105) for a hair salon and spa. A variance is requested from (a) Section 614.2.13 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the hair salon and spa to serve the general public where only barbershop services primarily for occupants or users thereof within an office or industrial



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building are permitted; and (b) Section 614.2.10 to permit the hair salon and spa to sell merchandise that is manufactured off-site where only retail sales of merchandise manufactured on-site is permitted.

Mrs. Dunn said that the request for a variance was denied, the request for a rehearing was denied but the plan was approved at a Planning Board meeting.

Mr. Murray said that a different plan was filed with Town Staff. The plan that was approved at the Planning Board was not the same plan that was before the Zoning Board. Mr. Murray suggested that a joint meeting with the Planning Board or the Board of Selectmen could be scheduled.

Mr. Corwin said that the plan was resubmitted as a major application.

The Members also discussed meeting with Attorney Campbell.

Adjournment

Mr. Samsel motioned and Mr. Partington seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for November 22, 2011 at 7:30 PM in the Community Development Department.

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