



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes August 14, 2012

Board Members:

Mark Samsel, Chairman - Present
Heath Partington, Vice-Chairman - Present
Elizabeth Dunn, Member - Present
Jim Tierney, Member - Excused
Jay Yennaco, Member – Present
Mike Scholz, Alternate – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate - Excused

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Cathy Pinette, ZBA Minute Taker

Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:32 pm, introduced the Board Members and staff, and explained the meeting process.

- The Chairman appointed Mr. Mazalewski to be seated for Mr. Tierney.

Public Hearings

Ms. Dunn read Case #30-2012 into the record and the abutters list.

Lot 17-C-7, Case #30-2012

Applicant –Sean Devaney

Owner –Same

Location – 4 Summer Street

Zone – Residential A District

Variations from the following sections of the Zoning Ordinance are requested to permit the installation/relocation of a shed within the required setbacks: **Section 702** and **Appendix A-1** – to allow 10' +/- side and rear setbacks where 30' is required.

- Mr. Sean Devaney, the owner of 4 Summer Street, addressed the Board. He stated he lives at 64 Lowell Rd, Windham, NH. He would like to relocate a shed. Mr. Devaney read the 5 criteria into the record.

- The Chairman questioned Mr. Devaney if this lot had a history of a permit for the shed as it appeared a permit was issued but no action had been taken. Mr. Devaney stated yes in 2004 there was a permit for a shed. It was on the rear lot line about 3 feet from Johnson field but he had to move the shed to do some drainage work. The shed would now be moving 10 feet from the side and rear setback. The Chairman questioned Mr. Devaney if he knew he needed a variance when he did that. Ms. Prendergast stated it was a code violation regarding the drainage work and it became an enforcement issue and then Mr. Devaney was made aware.
- Ms. Dunn stated she had two letters. One from the Conservation Commission with no comment, and one from Susan Brady, 3 Summer St., an abutter, who had no objection to the application.
- Mr. Partington asked Mr. Devaney where the driveway was. Mr. Devaney pointed it out on the picture the Board had. The Board also had an arial view.
- Ms. Dunn stated the shed was not where it is now on the arial. Mr. Devaney said it is 10 feet off the street and he moved it to do the drainage work and couldn't put it back where it was originally.
- Mr. Devaney stated when he moved the shed it could not go back to where it was, 3 feet off the lot line, due to the drainage. Ms. Dunn referenced the arial map and Mr. Devaney showed the Board where the shed is now and where the drainage is. He stated when he looked at the file in the Community Development Office there was no variance for the shed. The new location would be 10 feet from Johnson's field and 10 feet from the side lot line.

The Chairman entertained a motion to go into deliberate session.

Motion by Mr. Partington to enter deliberate session, seconded by Ms. Dunn. Motion passed 5 – 0.

- The Chairman stated he had no issues with the application. Mr. Scholz and Mr. Yennaco stated they had no issues. Mr. Partington and Ms. Dunn stated the application meets the 5 criteria.

The Chairman entertained a motion.

Mr. Partington motioned to grant Case #30-2012, in consideration of the 5 points, Section 702 and Appendix A-1 – to allow 10' +/- side and rear setbacks where 30' is required for a shed as presented, seconded by Mr. Yennaco. Motion passed 5 – 0.

The Chairman advised all of the 30 day waiting period.

The Chairman stated the Board will do the Rehearing Requests – Case #22-2012 and Case #26-2012 next on the agenda.

- The Chairman appointed Mr. Scholz to sit for Mr. Mazalewski.
- Mr. Yennaco recused himself from Case #22-2012
- The Chairman appointed Mr. Mazalewski to sit for Mr. Yennaco.

The Board heard Case #26-2012 first

- Mr. Yennaco was seated back on the Board.

The Chairman read into the record the Application for a Re-Hearing Request for Case #26-2012 for 18 Fish Rd, Windham NH.

- The applicant's request addressed 6 points/comments. The Chairman stated on a request for a rehearing the Board's decision is based on if there is new information, the information was not available, or there was a technical error.
 1. Septic System
The Board discussed the applicant's comments on the septic system.
Ms. Dunn stated there may be new information but this was not a material fact to the decision.
Mr. Scholz agreed with Ms. Dunn and stated he remembers the applicant stating it was a three bedroom.
The Chairman, Mr. Partington and Mr. Yennaco agreed with Ms. Dunn and Mr. Scholz.
 2. Comments by the abutter
The Board discussed the applicant's comments on the abutter's comments.
Mr. Partington stated this was not a determining factor in the decision
Mr. Scholz stated no new information or a technical error.
The Chairman, Mr. Yennaco and Ms. Dunn agree with Mr. Partington and Mr. Scholz.
 3. Comments on the levels of the proposed home.
The Board discussed the applicant's comments on the levels of the proposed home.
Mr. Scholz stated there is no new information or technical error.
Ms. Dunn agreed with Mr. Scholz and stated she drove to the area and looked at the neighboring homes.
Mr. Partington stated it was asked and answered at the original hearing and the height of the structure was 27 – 28 feet tall.
 4. Comments on the Spirit of the Ordinance.
The Board discussed the applicant's comments on the Spirit of the Ordinance.
Ms. Dunn stated there was no new information.
The Chairman, Ms. Scholz, Mr. Yennaco and Mr. Partington agreed.
 5. Comments on the diminution of property values.
The Board discussed the applicant's comments on the diminution of property values.
Mr. Scholz and Ms. Dunn stated there is no new information or technical error.
The Chairman, Mr. Yennaco and Mr. Partington agreed.
 6. Comments on pictures submitted by an abutter, Susan Freshman.
The Board discussed the applicant's comments on pictures submitted by an abutter, Susan Freshman.
The Chairman stated that several pictures were presented.
Ms. Dunn stated that photos cannot misrepresent what is proposed
The Chairman stated photos would come from the applicant.

The Board agreed that there was no new information or technical error.

The Chairman entertained a motion.

Ms. Dunn motioned to deny a request for a rehearing for Case #26-2012 for 18 Fish Rd, Windham NH, seconded by Mr. Scholz. Motion denied 5 – 0.

Rehearing Request – Case #22-2012, Cafua Management, LLC, 43 Range Rd.

- Mr. Yennaco recused himself from Case #22-2012
- The Chairman appointed Mr. Mazalewski to sit for Mr. Yennaco.
- The Chairman stated the Board was waiting for legal advice from the Town's Attorney on this case. Ms. Prendergast stated she handed it to the Chair prior to the meeting. There were two legal confidential memos that the Board received from Attorney Campbell for this case.
- Mr. Scholz stated the Board did not hear it originally, the appeal of the decision, because the Board did not have jurisdiction
- Ms. Dunn stated there was the original request that the Board denied, then they had a request for another rehearing that is presently in Court. Then they had a request for an Appeal of an Administrative Decision which the Board denied, and now have an Appeal of an Administrative Decision to discuss that denial.
- Mr. Partington stated the applicant's application was whether we would discuss the merits.
- The Chairman asked the Board if they wanted to vote on the application for an Appeal of an Administrative Decision.
- Mr. Partington stated that courts generally mandate local remedies first and it should be heard. Mr. Scholz agreed and stated they should keep in mind why they didn't hear the original decision.
- The Chairman stated there were 20 points/comments in the applicant's application.
- Ms. Dunn questioned if there was any new information or a technical error in denying the hearing on the Administrative Appeal.
- The Chairman stated it appears more technical in nature that the Board should have heard it and Attorney Cronin supporting that argument.
- Mr. Scholz and Mr. Partington agreed with the Chairman.
- The Chairman read Number 6 and that stated the Board should have heard the case. Number 8 & 9 deals with procedural denials and successive variance proposals, and number 9 deals with successive variance proposals. Number 11 would indicate a technical error. Mr. Partington stated Number 10 tries to argue a technical error also. The Chairman agrees with Mr. Partington. Ms.

Dunn stated it is essentially materially the same substantive matter. Mr. Shultz agreed with Ms. Dunn.

- Mr. Partington stated they had significant discussions about this at the original hearing regarding the variance which was never appealed.
- The Chairman polled the Board and asked if they made a technical error or if there was any new information that would have an impact to rehear.
 - Chairman Samsel - No
 - Mr. Scholz – No
 - Mr. Partington - No
 - Mr. Mazalewski – No
 - Ms. Dunn – No. She stated some of the statements made in the rehearing request about what had been said she would disagree with.

The Chairman entertained a motion.

Mr. Scholz motioned to deny a Request for a Rehearing for Case #22-2012 due to the fact there was no new information and no technical error, seconded by Mr. Partington. Motion denied 5 – 0.

- Mr. Yennaco was seated back on the board.

Zoning Board of Adjustment Rules of Procedure (By-Laws)

A public hearing is to be held in accordance with NH RSA 676.1 *Method of Adopting Rules of Procedure* to amend the Zoning Board of Adjustment By-Laws to reformat in a numerical sequence; to amend paragraphs 2.2 and 2.3 to include language regarding Board representation for official business; and to add paragraph 5.9 regarding ZBA representation in legal proceedings.

- The Chairman stated that there was reformatting in a numerical sequence, amendments to paragraphs 2.2 and 2.3 to include language regarding Board representation for official business, and to add paragraph 5.9 regarding ZBA representation in legal proceedings.
- Mr. Yennaco suggested consistency with Chairman/Chairperson and Vice Chairman/ Viceperson. The Board agreed to use Chair and Vice Chair consistently throughout the document.
- Section 5.9 was added. The Chairman stated it is only a procedural change and a more appropriate person might be needed in Court with the Attorney.
- Ms. Shultz suggested changing the small “v” in line 2 to a capital “V”.
- The Chairman asked Ms. Prendergast if Attorney Campbell would send a letter to the Board if representation in Court is needed.

The Chairman entertained a motion.

Mr. Partington motioned to accept the Revised By-Law changes with numbering, changes to 2.2. and 2.3, accept 5.9, and minor changes to Chair and Vice Chair, seconded by Mr. Scholz. Motion passed 5 – 0.

- The Chairman would like to line up the next items on the Bylaws to address.
- Mr. Partington suggested the “Alternate” section. Ms. Dunn also would like to discuss “Alternate Rotations”.
- Ms. Dunn suggested the “Joint Meetings” section.
- The Board stated that Joint Meetings were discussed. Mr. Scholz volunteered to look at some minutes to see if he could find the discussion.
- The Chairman asked the Board if they would like to have Joint Meetings and Alternate Rotation on the next agenda.
- The Chairman stated there is no information on the alternate rotation, no set roster or procedure. He stated there are many determining factors in who should be seated.
- Mr. Scholz stated he didn’t want alternates just showing up for the meetings they were scheduled to sit on. He stated the Board has discussed this in the past.
- Ms. Dunn stated there is no information what alternates can and cannot do. She had a draft copy. The change was that alternates can change with what the Board has adopted. In the draft it states they cannot vote for bylaws, deliberative and hearings if they are not seated.
- Mr. Scholz read the minutes of Aug, 10, 2010. The minutes regarding alternate rotation and a number of items that should be/could be in the Bylaws.
- The Chairman and Ms. Dunn stated there was no action taken on those items.
- Mr. Yennaco would like to discuss this evening. The Chairman stated he would like Mr. Tierney in attendance but Mr. Scholz is sitting for Mr. Tierney. The Chairman stated they could discuss Alternates.
- The Board discussed old meeting tapes and the availability of them.
- The Chairman stated there are too many variables for the meeting and the Chair should decide who is seated for the case. A roster is an administrative burden.
- Ms. Dunn stated there could be an issue if someone just shows up for something they have an interest in. It leaves the Chairman in a bad position.
- Mr. Yennaco was concerned if there is a rehearing and the alternate was not part of the original hearing and it is someone else’s turn to be seated. He questioned if you appoint the original alternate or the one next on rotation.

- The Chairman stated we need to put the best alternate on the case.
- Mr. Yennaco stated the Board selected the best 3 alternates.
- Mr. Scholz stated that with rotations if one alternate is stronger for that case he can see doing it that way. He is not sure a rotation is the right way to go. He stated there is an option and any member can object.
- Mr. Partington disagreed with all of the above mentioned methods. He stated that leads to bias. The Board is supposed to be unbiased. He stated Mr. Yennaco made a good point on rehearing that you might want the same person.
- Ms. Dunn stated she sees it from both sides for the right reasons. The Chairman stated the Board would not be showing faith in the Chair by saying that.
- The Chairman stated he does not want to go through a roster list of 15 minutes.
- Mr. Yennaco stated the Board had decisions they have to make. If they want to go to rotations they need to spend more time on how that is done. Mr. Partington stated that they did discuss that in 2010. Mr. Scholz suggested something easy to manage.
- Mr. Scholz stated perhaps they could come up with an exclusion for rehearings. He can see both ways.
- The Chairman asked the Board what was more of a priority for the next meeting discussion.
- Mr. Scholz stated alternate rotation. He recommends some changes to that section.
- Mr. Partington suggested putting all three on the agenda Joint Meetings, Alternate Participation and Alternate Rotations.

Review and Approval of Draft Meeting Minutes

- July 24, 2012 Minutes
- Minutes were amended, pages 1 – 5, pages 6 – 10 were missing in the packet. The amendments and pages 6 – 10 will be considered and approved at the next meeting.

Mail

- Attorney emails

Other

- Ms. Prendergast circulated the list of members of the Board for edits if necessary.
- Mr. Scholz would like to know when the next LGC or OEP meeting is. Ms. Prendergast will find that information out and let the Board know.

- Mr. Partington will not attend the Court case in September with Attorney Campbell. Ms. Dunn will attend

Adjournment

The Chairman entertained a motion to adjourn.

Mr. Partington motioned to adjourn, seconded by Mr. Scholz. Motion passed 5 – 0.

Meeting adjourned at 9:00 pm

These minutes are in draft form and respectfully submitted for approval by Cathy Pinette, ZBA Minute Taker.