



## COMMUNITY DEVELOPMENT

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### Draft Zoning Board of Adjustment Minutes March 26, 2013

#### Board Members:

Mark Samsel, Chairman – Present  
Heath Partington, Vice-Chairman – Present  
Jim Tierney, Member – Present  
Jay Yennaco, Member – Present

Mike Scholz, Member – Present  
Mike Mazalewski, Alternate – Present  
Tony Pellegrini, Alternate - Present

#### Staff:

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

#### Call to Order/Attendance

Chairman Samsel called the meeting to order at 7:30 pm, introduced the Board Members and staff, and explained the meeting process.

#### Public Hearings

Mr. Scholz read Lot 21-G-600, Case # 4-2013 into the record.

#### **Lot 21-G-600, Case # 4-2013 (continued from 2/26/13 meeting)**

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Janet Balise Revocable Trust

Location – Range Road

Zone – Residence A District

Variances from the following sections of the Zoning Ordinance are requested to permit the construction of a single family home on a pre-existing non-conforming lot:

**Section 702 and Appendix A-1** - to allow zero feet of frontage where 175 feet is required.

- Mr. Shane Gendron of Herbert Associates representing Janet Balise Revocable Trust addressed the Board. He gave an overview of the project incorporation a synopsis of testimony and information from the February 26, 2013 meeting. He stated since the last meeting with the Board he has met with Deputy Chief Martineau who asked that they put in a turnaround and they have done that. The Historic Commission asked for a note on the plan for the historic sign granite post and he has done that. He entered a copy of the tax card for the record stating this land is classified as “PB”, which means potentially buildable and there is access by Range Rd. He did get legal opinion and it was the same as Attorney Campbell's. He stated there was a letter dated March 21<sup>st</sup>, 2013 submitted to the Board stating his company did damage when they did test pits and he disagrees with this letter. He also has a letter from the contractor stating the same.

- Mr. Scholz read the letter from Deputy Chief Martineau into the record which was Exhibit A. He also read the letter from the excavator operator stating there was no damage to the abutter's property which was entered as Exhibit B. He read a letter from Mr. Winifred Carpenter, 233 Range Rd., and giving permission for John Carpenter to speak on his behalf. This was admitted as Exhibit C.

The Chair opened the hearing to the public.

- Mr. John Carpenter, 233 Range Rd., addressed the Board. He questioned if the property card stated there was a right-of-way from Range Road. The Chair stated yes. Mr. Carpenter stated he didn't mention anyone's property being damaged in his letter. He stated he had a statement/letter for the Board. Mr. Scholz read Mr. Carpenter's letter into the record and it was admitted as Exhibit D.

**Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Scholz. Motion passed 5 – 0.**

#### **Board comments**

- The Board cannot grant access where there isn't any was Attorney Campbell's view. There is a completely legal access point. The issue is frontage. Attorney Campbell made it clear it is a civil issue.
- Regarding the five criteria: This case is not contrary to public interest and is in the spirit and intent of the ordinance as it is a single family home and will not change the character of the area, there is significant substantial justice to the owner, it will not diminish the property values in the area, and there is hardship as the property is unique and is landlocked and is reasonable for single-family.

**Mr. Partington motioned to grant in consideration of the five criteria, Lot 21-G-600, Case # 4-2013, the variances from Section 702 and Appendix A-1 of the Zoning Ordinance to allow zero feet of frontage where 175 feet is required.**

The Chair advised all of the 30 day appeal period.

Mr. Scholz read Lot 17-H-10, 17-H-20 & 17-H-25, Case # 9-2013 into the record. He also read a letter from the Conservation Commission saying they are in favor as presented but would like more pervious pavement and also moving the show room 10 feet towards Range Road.

#### **Lot 17-H-10, 17-H-20 & 17-H-25, Case # 9-2013 (continued from 3/12/13 meeting)**

Applicant – The Dubay Group, Inc.

Owner – Naults Honda for Karen L. Heller 1997 Trust (Lot 17-H-10 & Lot 17-H-20) & Common Man for Alex Ray Windham LLC (Lot 17-H-25)

Location – 60 Range Road, 64 Range Road, 70 Range Road

Zone – Gateway Commercial District, WWPDP, Cobbetts Pond and Canobie Lake Watershed Protection Overlay District

Variances are requested from the following sections of the Zoning Ordinance in association with a Common Man historic building relocation/re-use and Nault's site expansion:

For Lots 17-H-10 & 17-H-20 (proposed to be merged):

**601.3** - to allow a portion of a new building expansion, associated septic systems, parking and other site improvements within the WWPD where it is not a permitted use.

**601.4.6** – to allow 2 septic systems within the WWPD at 0 ft and 80 ft respectively from the edge of wetland to be filled where 100 ft is required.

**616.9.1** – to allow septic systems within the required 50 ft and 75 ft setback to a wetland that will be filled.

**616.10.1** – to allow new impervious driveways within 75 ft of a wetland.

For Lot 17-H-25:

**706.8** - to allow a 0 ft front setback for a free-standing sign where 5 ft is required.

**601.3** - to allow a relocated historic building, associated septic system, parking and other site improvements within the WWPD where it is not a permitted use.

**601.4.6** – to allow 1 septic system within the WWPD and 50 ft from the edge of wetland where 100 feet is required.

- Mr. Dubay of the Dubai Group addressed the Board. He spoke about the plan and showed the plan to the Board and the audience on the TV. He gave a synopsis of his previous testimony from the February 26th meeting. He stated they will still need several variances. They have the Historic Commission and Conservation Commission's blessings. Ms. Prendergast re-notified the abutters and the hearing notice was revised to reflect what variances go with which lots. Mr. Dubay went through each variance for each lot and showed the Board on the TV.

#### **Questions/ comments from the Board**

- Was there any reason the Common Man building could not go closer to the parking area and be moved away from the wetland? Mr. Dubay stated no, it was sloping, it is a walk out basement, aesthetics, they wanted green room and didn't want to put the building up against the parking spaces.
- The Board questioned if Mr. Dubay had stated at the last meeting that he would condition the approval on DOT filling in the wetlands and tonight his proposal did not reflect that. Mr. Dubay stated there would be a small piece that DOT would not be filling in and it was very vague on their plans. He stated he might have to get a permit if the DOT feathers their fill short and he is willing to do that.
- The Board asked what happens to the existing septic systems. Mr. Dubay stated Nault's will be removed completely, improved and rebuilt.
- The Board questioned how much closer to Range Road will the new sign be than the existing sign for Woof Wood. Mr. Dubay stated 1 to 2 feet closer to the road.
- The Board questioned Mr. Dubay about the existing propane tanks at Nault's. Mr. Dubay stated the tanks would be relocated, possibly underground.
- The Board questioned Mr. Dubay regarding the Conservation Commission's comments regarding pervious surfaces. Mr. Dubay stated the display area will be moved and they have added pervious pavers to that area on the side of the building.

The hearing was open to the public at 8:30 PM, hearing no comments the public portion was closed.

- Attorney John Cronin addressed the Board. He spoke about the project and the special conditions because of the new Route 111A. He briefly addressed previous comments from past meetings about usage and stated this was not a use issue. Attorney Cronin summarized the five criteria as they were rather lengthy and the document is on file at the Community Development Department.
- The Board asked what type of septic system the applicant was proposing. Mr. Dubay stated it was an Enviroseptic which has presby mazes in the tanks.
- Mr. Alex Ray of the Common Man stated when the State made his lot 2-1/2 acres from 5 acres they put the presby system in and it works much better on less acreage.

**Mr. Yennaco motioned to go into Deliberative Session, seconded by Mr. Partington. Motion passed 5 – 0.**

#### **Board comments**

- The presentation was clear as the Board had requested at previous meetings and given the uniqueness and what is occurring with this parcel it is a very well thought out plan and protects the WWPD.
- This does not change the character of the area, the applicant is mitigating any issues with the WWPD, it meets the spirit and intent, removing the septic system in the area is good, the historic building move will be good, it will not diminish property values as it will actually help property values, and the hardship is due to the fact that the wetlands are there and DOT is filling them in.
- The Board discussed conditions including merging of the two lots, removal of the septic system, pervious surfaces, filling of the wetlands, and not filling some parking spaces until needed as the Conservation Commission requested all as presented to the Board.
- Attorney Cronin stated as a point of information it would be a lot deed merger and they're fine with documentation to say that.

**Mr. Scholz motioned to grant, in consideration of the five criteria, approved a motion for Case # 9-2013 to grant variances from the following sections of the Zoning Ordinance:**

**For Lots 17-H-10 & 17-H-20:**

**601.3 - to allow a portion of a new building expansion, associated septic systems, parking and other site improvements within the WWPD where it is not a permitted use.**

**601.4.6 – to allow 2 septic systems within the WWPD at 0 ft and 80 ft respectively from the edge of wetland to be filled where 100 ft is required.**

**616.9.1 – to allow septic systems within the required 50 ft and 75 ft setback to a wetland that will be filled.**

**616.10.1 – to allow new impervious driveways within 75 ft of a wetland.**

**For Lot 17-H-25:**

**706.8 - to allow a 0 ft front setback for a free-standing sign where 5 ft is required.**

**601.3 - to allow a relocated historic building, associated septic system, parking and other site improvements within the WWPD where it is not a permitted use.**

**601.4.6 – to allow 1 septic system within the WWPD and 50 ft from the edge of wetland where 100 feet is required.**

**Conditioned upon the use of pervious pavers as presented; the filling of the wetlands by NH DOT as presented; the removal of the existing septic system from Lot 17-H-10 as presented; and the merger of Lots 17-H-10 & 17-H-20 as presented, seconded by Mr. Yennaco. Motion passed 5 – 0.**

The Chair advised all of the 30 day appeal.

### **Application for Rehearing Case 5-2013**

Mr. Mazalewski was seated for Mr. Yennaco.

- The consensus of the Board was to move the Application for Rehearing Case 5-2013 to the next meeting.

Mr. Yennaco was seated back on the Board.

### **Board Reorganization**

**Mr. Tierney motioned to elect Mr. Partington as Chair of the ZBA, seconded by Mr. Scholz. Motion passed 5 – 0.**

**Mr. Scholz motioned to elect Mr. Samsel as Vice Chair of the ZBA, seconded by Mr. Tierney. Mr. Samsel respectfully declined. Motion withdrawn.**

**Mr. Scholz motioned to a elect Mr. Samsel as secretary of the ZBA, seconded by Mr. Tierney. Motion passed 5 – 0.**

**Mr. Samsel motioned to elect Mr. Tierney as Vice Chair of the ZBA, seconded by Mr. Scholz. Motion passed 5 – 0.**

### **Review and Approval of Draft Meeting Minutes**

2/26 (revised), 3/12

Minutes were postponed to a future meeting.

### **Old/New Business**

Court Cases: Cafua (Supreme Court TBD), Roberts (Supreme Court 3/7/13), 21<sup>st</sup> Century (Superior Court TBD)

- Ms. Prendergast stated the Roberts case was postponed due to snow and she does not have a new date. 21<sup>st</sup> Century was moved to May 29, 2013.
- Mr. Scholz asked Ms. Prendergast if an item is not available to be put in the packet, if the Board could put it off until the next meeting.

- Vice Chair Tierney asked if the new zoning maps are available. Ms. Prendergast stated they were in process.
- Mr. Samsel stated the Board was down an alternative member. He would like to repost in May. Ms. Prendergast stated she would like to advertise in April. Chair Partington asked that she put it in the beginning of April. There are two alternate positions open and the start date will be put in the advertisement.
- Chair Partington stated that he and Mr. Scholz were sworn into their positions.
- The Chair stated there was a planning and zoning conference on May 11<sup>th</sup>. Members can register themselves and send the invoice to the Town and let Ms. Scott know.
- The Board thanked former Chair Samsel for his time leading the Board.

**Binder Update:** 2013 Zoning Ordinance

**Adjournment**

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

Meeting adjourned at 9:15 pm

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