



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes June 11, 2013

Board Members:

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

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

Staff:

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

Call to Order/Attendance

The Chair called the meeting to order at 7:30 pm, introduced the Board, and explained the meeting process.

The Chair appointed Mr. Mazalewski to sit for Mr. Scholz and Mr. Pellegrini to sit for Mr. Yennaco.

Public Hearings

The Chair announced that the following case would be discussed first.

Lot 14-A-850, Case # 18-2013

Applicant – Edward J. & Linda E. Mucci
Owner – Same
Location – 17 Twin Street
Zone – Rural District

An Application to Appeal an Administrative Decision has been filed against a decision made on April 18, 2013 by Ms. Nancy Prendergast, ZBA/Code Enforcement Administrator. The decision being appealed is that an individual working at the property location is considered an employee rather than an independent contractor which is a violation of their 1989 ZBA Variance approval.

- Mr. Samsel read a letter from William R. Mason Esquire, that the Appeal of an Administrative Decision would like to be withdrawn as the applicant will file a Customary Home Occupation permit. Ms. Prendergast stated she had a letter from the applicant authorizing Attorney Mason can represent him.

Mr. Samsel motioned to accept the withdrawal of case #16-2013 as requested in the hand delivered letter from William R. Mason, Esquire dated June 10, 2013 regarding Lot 14-A-850, 17

Twin Street – Appeal of Administrative Decision, seconded by Mr. Mazalewski. Motion passed 5 - 0.

Mr. Samsel read Case # 17-2013 into the record, the abutters list and a letter of authorizing from Marie Johnson stating Mr. Maynard could represent her.

The Chair stated that when the Board first heard this case there was some discussion about the Fisher v. Dover Case and since then the 5 criteria has changed and the Board will be hearing the case.

Lot 21-U-2, Case # 17-2013

Applicant – Benchmark Engineering Inc.

Owner – Marie Johnson

Location – 11 Lowell Road

Zone – Rural District, Wetland and Watershed Protection District, Flood Plain District

Variations from the following sections of the Zoning Ordinance are requested to allow construction of a new single family dwelling on a vacant nonconforming lot:

601.3 - to allow construction of a single family dwelling, well, septic and associated improvements within the WWPD where it is not a permitted use.

601.4.6 – to allow the septic system within the WWPD and 28 ft from the edge of Collins Brook where 100 ft is required.

702 and Appendix A-1 – to allow a lot area of 37,391 sq. ft. entirely within the WWPD where 50,000 sq. ft minimal lot area with 30,000 sq. ft. of contiguous area outside of the WWPD is required; and to allow a front setback of 20 ft where 50 ft is required.

- Mr. Joe Maynard addressed the Board and he gave an overview of the lot back to 1967. He stated the criteria for building was different back in 1985 to build on this lot when purchased. Since then the flood plain map has been updated and there are quite a few lots in the area that are now in the WWPD. The applicant would like to build a small, modest single family home for her daughter. Mr. Maynard stated Collins Brook does run through the parcel and the entire lot is now WWPD. There are 2 adjacent homes in the WWPD. He is trying to stay close to the road with the project. The septic system will be 28 feet to the brook and will be a closed system. He stated at the previous meeting there was discussion about using the land for agriculture. He spoke to F. Scot Fitzgerald and Mr. Fitzgerald does not think it is a good piece of land for that purpose. Mr. Maynard gave the Chair a letter from Mr. Fitzgerald. The Chair entered the letter as Exhibit A. He also spoke and received a letter from Nancy Rendell, Blue Moon Environmental. She did a field review and read the minutes from Case 5-2013 dated 4/19/13. Mr. Maynard read her letter into the record. The Chair accepted the letter as Exhibit B. Mr. Maynard and Ms. Rendell do not want to cross the brook and moving everything closer to the road is the best solution.

Questions/Comments from the Board

- The Board asked Mr. Maynard if he was clearing trees. Mr. Maynard stated they will have a 20 foot setback from the road and will be clearing to open for visibility for the driveway with improvements with a flood pond and the driveway location.
- Mr. Maynard read the 5 criteria into the record.

- Mr. Maynard submitted 2 letters of support from Ms. Laurie O'Brien, 10 Lowell Rd and Helia Adelino, 8 Lowell Rd.

The Chair opened the hearing to the public at 8:00 pm

- Mr. Bill Johnson of 42 Ministerial Rd. stated he grew up in that neighborhood and where the applicant wants to build has never flooded even when we had the 100 year flood.
- Ms. Marie Johnson of 9 Lowell Rd, the applicant, stated this is the best use of the property and she is putting in a small home for her daughter. She bought it as a buildable lot, it is being taxed as a buildable lot and will have minimal impact. She stated she has more impact from the brook on her own lot than this proposed lot.
- Mr. Doug Yennaco stated someone did change the path of the brook years ago. He has walked the land many times and would like the Board to approve this application.

Mr. Samuel read Mr. Fitzgerald's, Ms. O'Brien's, and Ms. Adelino's letters into the record.

- Mr. Maynard stated they can stabilize the area behind the home near the brook, the septic system is more than adequate for a small 2 bedroom home, and they are going to great efforts to minimize disturbance to the lot. They are willing to do buffering.
- The Board asked Mr. Maynard if he had a state septic design approval. Mr. Maynard stated not yet but he stated there should be no issues. The Board asked Mr. Maynard if he was planning on installing a garbage disposal as he would need a bigger septic. Mr. Maynard stated no.

Mr. Samsel motioned to go into deliberative session, seconded by Mr. Pellegrini. Motion passed 5 – 0.

- Mr. Samsel stated after reviewing the documentation and hearing testimony that given the situation of the lot this application has the least amount of impact on the wetland and is in the best location. The applicant also stated he would perform to best management practices. The date of the lot goes back to the 60's and the current owner's intentions were to build on it someday and it was a buildable lot when purchased. Testimony provided shows that due to the special conditions of the lot this is a reasonable use. It is a unique parcel and cannot be used as an agricultural site. Ms. Rendell's assessment was very helpful.
- The Chair stated his previous concern was due to health and welfare of the public and Ms. Rendell's assessment clarifies that there is no threat.
- Mr. Tierney stated Ms. Rendell's letter was a key factor in her recommendation of a wall or rip rap for the property. The Board discussed making this a condition. The Chair stated Ms. Rendell also recommends plantings near the brook and long term could be reinforcement of the bank.

Mr. Samsel motioned to grant, in consideration of the 5 criteria, the variances as requested from the following Sections of the Town of Windham Zoning Ordinance:

601.3 - to allow construction of a single family dwelling, well, septic and associated improvements within the WWPD where it is not a permitted use; 601.4.6 – to allow the septic system within the WWPD and 28 ft from the edge of Collins Brook where 100 ft is required; and 702 and Appendix A-1 – to allow a lot area of 37,391 sq. ft. entirely within the WWPD where 50,000 sq. ft minimal lot area with 30,000 sq. ft. of contiguous area outside of the WWPD is required, and to allow a front setback of 20 ft where 50 ft is required; With the following conditions: in order to minimize the threat of erosion, to plant native shrubs along the bank and provide stability along the bank at a point starting from the north easterly lot line and extending westerly along the bank and within 100 ft of the property line, seconded by Mr. Tierney. Motion passed 5 – 0.

The Chair advised all of the 30 day appeal period.

Bylaw Discussion regarding Appeals – Current process, acceptance, checklist

- The Chair stated he wanted to make sure the Board was doing everything according to the Bylaws for appeals.
- Mr. Tierney stated the Board is never consistent on handling Appeals of Administrative Decisions. It is important to take the application in and review it beforehand to find out if it is complete. He stated the Board needs both sides of the story. He stated if something is missing the Board can then request it and then schedule the hearing for the next agenda.
- The Board discussed Mr. Tierney's suggestion. It was stated that the Board could add to the bylaws a completed material for submittal list but all cases are different.
- The Chair and Mr. Samsel stated that the applicant should know to come prepared to represent his case. The Chair is concerned with the time frame if the Board reviews beforehand. It was stated the applicant can ask for a continuance if the Board needs more information for the appeal. Ms. Prendergast explained how and what she provides to the Board for appeals. Mr. Samsel stated the bylaws and application for this are sufficient.
- The Board decided not to change the bylaws as to how Appeals of Administrative Decisions are heard at this point in time. The Chair stated we will continue to assign case numbers and agendas when the application comes into the CDO.

Review and Approval of Draft Meeting Minutes

5/28/2013

- Amendments were made to the May 28th minutes and will come back to the Board for final approval.

Old/New Business

- The Chair stated the Zoning Board will keep a list of ordinances that are somewhat unclear for submittal to the Planning Board.

Court Cases: Roberts (Pending), 21st Century (Pending)

- The Chair attended the 21st Century court case on May 29th. He stated most of the discussion was whether or not the Court can step on the bounds of the ZBA decision.
- Ms. Prendergast stated there was no update on the Robert's case

Binder Updates – Tab 4 - ZBA Applications

Adjournment

Mr. Samsel motioned to adjourn, seconded by Mr. Tierney. 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