



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 Approved Minutes – Ver. 1.2 May 27, 2014 at 7:30 PM

Board Members:

Mark Samsel, Chairman – Present
Mike Scholz, Vice-Chairman – Present
Heath Partington, Secretary – Present
Jay Yennaco, Member – Arrived at 8:25pm

Jim Tierney, Member – Excused
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate – Present
Kevin Hughes, Alternate – Present

Staff:

Mark Fougere, Code Enforcement Administrator
Colleen King, ZBA Minute Taker - Alternate

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

Public Hearings

The Chair requested and the Board agreed to the reverse the order of the first two cases.

The Chair sat Mr. Pellegrini for Mr. Yennaco and Mr Mazalewski for Mr. Tierney

Mr. Partington read Case #15-2014 into the record along with the abutter list and the letter of authorization from the owner authorizing Shane Gendron of Edward N. Herbert Assoc. Inc. to represent them in this case.

Lot 21-V-234, Case #15-2014 (Continued from 5/13/14)

Applicant – Edward N. Herbert Assoc. Inc.

Owner – 10 Roulston Road LLC

Location – 21 Fish Road

Zone – Residence A and Cobbetts Pond/Canobie Lake Watershed Protection Overlay District

Variations from the following sections of the Zoning Ordinance are requested to allow the razing and replacement of an existing year-round home.

Section 405.2 – to allow replacement of an existing non-conforming structure with a new structure that is larger in area and/or volume; and **702**.

Appendix A-1 –to allow construction of a new single family home 24 feet from Fish Road (Private Road), 32 feet from Ash Street (Private Road), and 30 feet from ROW where a 50 foot front lot line setback is required.

- Mr. Shane Gendron of Edward Herbert Associates addressed the Board. He explained that the need for the continuance was to show the type of plan and structure, clean up the ROW, access to Ash Street. The applicant agreed to a volume limitation of 1950sf of floor space and will conform to all Building Code and height regulations.

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Questions/Comments from the Board

- The Chair questioned whether the plan had changed from Exhibit A. The applicant responded that it was the same plan.
- Mr Scholz questioned the volume of the house pad. Mr Gendron stated that it would be 1288sf.

The Chair opened the hearing to the public.

- Robert Bracey, 19 Fish Road, stated that he wanted to review the plans which would directly impact his property by an increase in height and volume. He asked for the Board's consideration. The Chair questioned his distance from the Pond. There are 2 lots in front of his house
- Catherine Rondeau, 17 Fish Road questioned when the house became year-round and if the new owners would live there year-round. The new owners did not know. The Chair clarified that new construction is built to code and classified as year-round and that they were not re-hashing the previous meeting.
- Mr. Case, 7 Mt Village Road, discussed the definition of a private road and ROW. If the ROW was wide enough to be considered a private road, then maybe a variance would be necessary. However, in this case, he did not believe that a 10' ROW warrants a variance.
- Mr Gendron stated that the 10' ROW is used as a driveway and based on the determination of Laura Scott, Community Development Director, variance relief was needed. The plans presented here are representative and not exact. The structure would be mostly 1 ½ stories and they will use the grade of the lot to their advantage. All septic and well setbacks will be met. The height of the pipe from the house to the septic needs to be maintained.

The Chair closed the public portion.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Pellegrini.

Motion passed: 5-0.

- Mr Partington stated that looking at the 5 criteria, the essential character of the area will not be changed; the health and safety would be improved; and the hardship is that the property is undersized. Is the significant increase in the value of the surrounding property due to a new structure negated by the height impact? He was concerned that there was no plan submitted.
- Mr. Mazalewski was concerned about the vagueness of the house plans and the height and the possibility of hitting ledge. Any height restriction should be from the foundation.
- Mr. Mark Fougere, Interim ZBA Administrator, advised the Board that the standard is for the height to be measured from the ground.
- Mr Scholz stated that they could always come back to the board for future relief.
- Mr. Pellegrini stated that in most cases, plans are specific.
- Mr Samsel stated while it is best to have the house centered on the lot, they are not in the design business. If a house has a lake view and is 2 -3 lots away from the lake, they are lucky.

Mr. Scholz motioned for Case #15-2014, Lot 21-V-234, 21 Fish Road, to allow the razing and replacement of an existing year-round home and grant relief from Section 405.2 – to allow replacement of an existing non-conforming structure with a new structure that is larger in area and/or volume; and Section 702 & Appendix A-1 –to allow construction of a new single family home 24 feet from Fish Road (Private Road), 32 feet from Ash Street (Private Road), and 30 feet from ROW where a 50 foot front lot

line setback is required with a height restriction of 26' and 1950sf as presented, seconded by Mr. Pellegrini.

Mr Scholz clarified that the height is not measured from the top of the foundation.

Mr Scholz amended his previous motion to read '26' from the ground'; seconded by Mr Pellegrini. Motion passed 4 – 1; Mr Partington stated that it was not proven that the property values would not be adversely impacted and voted to deny.

The Chair advised of the 30 day appeal period.

The Chair sat Kevin Hughes for Mr. Tierney and Mr Pellegrini sat in for Mr Yennaco..

Lot 3-B-250, Case #16-2014

Applicant/Owner – Esau & Mildred Stanley
Location – 135 Rockingham Road
Zone – Neighborhood Business District

Variances from the following sections of the Zoning Ordinance are requested to allow a single family home with attached garage, new well and septic:

Section 604.1 - to allow the construction of a Single-Family home where it is not permitted; **702** and **Appendix A-1, Minimal Lot Area by Soil Type** –to allow construction of a single family home with new well and septic where the lot will meet the minimal lot area square footage but will not meet the minimal lot area by soil type.

- Mildred Stanley, owner of 135 Rockingham Road, explained that she lives in Derry, NH and there was a 2006 Variance granted to build a single family dwelling on the property. The Variance was not exercised and expired. Recently the Town of Windham voted to approve a Zoning change on this property and was now in the Neighborhood Village Business District.

The Chair called a 5 minute recess at 8:30pm to review the 2006 Variance case file and the meeting was called back into order at 8:35pm.

Questions/Comments from the Board

- The Chair asked that the 5 criteria for the applications be addressed.
- Mr Partington asked if the applicant, a Derry, NH resident, had been personally notified about her property being rezoned by the Town. She did not remember and she was out of the area for several months.

The Chair opened the hearing to the public and after hearing no comments, closed the hearing to the public.

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

- The Chair discussed being able to build a single family dwelling in Neighborhood Business District. He sat on the 2006 Variance case that was granted and that he is challenged by the zoning.
- Mr. Pellegrini stated that it could be viewed as a 'taking'.
- Mr. Yennaco stated that an empty lot is not considered a taking.

- Mr. Partington reviewed the 5 criteria. The residential character would not change; there would be substantial justice in that a house should be able to be built; the surrounding properties would not be diminished as it is an empty lot now; and the sticking point is the hardship criteria.
- Mr. Scholz stated that the recent re-zoning may mean an unnecessary hardship.

Mr. Partington motioned for Case #16-2-14, Lot 3-B-250, 135 Rockingham Road, to grant relief from Section 604.1 - to allow the construction of a Single-Family home where it is not permitted; 702 and

Appendix A-1, Minimal Lot Area by Soil Type –to allow construction of a single family home with new well and septic where the lot will meet the minimal lot area square footage but will not meet the minimal lot area by soil type seconded by Mr. Hughes. Motion passed 3-2. Mr. Partington did not believe the hardship criteria was met; Mr Scholz did not think the hardship criteria was met.

The Chair advised of the 30 Day appeal period.

The Chair sat Mr Yennaco for Mr Pellegrini.

Mr. Partington read Case # 21-2014 into the record along with the abutter list.

Lot 5-A-199, Case #21-2014

Applicant – Patricia Miller

Owner – Alan R. & Patricia Miller

Location – 55 Londonderry Road

Zone – Rural District

Variance from the following section of the Zoning Ordinance is requested to allow a Customary Home Occupation/Day Care: **Section 602.1.6.7** – to allow a Customary Home Occupation to occupy more than 25% of the normal living area of the dwelling.

- Mrs. Patricia Miller, 55 Londonderry Road addressed the board. Her property has an approved accessory apartment and an approved daycare. However, the accessory apartment is no longer being used and Mrs. Miller would like expand her daycare into the space of the accessory apartment, a 750sf area. There will be 9 children with 3 of them after-school. There will be no exterior changes and no signage. There will be a fence.
- The Chair asked the applicant to review the 5 criteria.

The Chair open the hearing to the public and with no comments, close the hearing.

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

- Mr. Scholz asked if the number of children in 2006 was the same as proposed now. It is the same number.
- Mr Partington stated that all criteria and reasons are met.

Mr. Scholz motioned for Case 21-2014, Lot 5-A-199, to grant relief from the Section 602.1.6.7 of the Zoning Ordinance to allow a Customary Home Occupation/Day Care to occupy more than 25% of

the normal living area of the dwelling, not to exceed more than 750sf, as present, seconded by Mr. Partington. Motion passed: 5 -0.

The Chair advised of the 30 day appeal period.

The Chair sat Mr. Mazalewski for Mr Tierney.

Mr. Partington read Case # 22-2014 into the record along with the abutter list.

Lot 24-E-26, Case #22-2014

Applicant/Owner – Brent Dow

Location – 115 Lowell Road

Zone – Residence District A

Variations from the following sections of the Zoning Ordinance are requested to allow the reconstruction of a portion of the home to be built closer than the 30' setback: **Section 702 and Appendix A-1, Minimum Side Yard Setbacks** – to allow the demolition and reconstruction of a portion of an existing single family home 20' from the side lot line, where it is currently 15.7', and where 30' is required.

- Mr. Brent Dow addressed the board. He stated that his house is old, does not meet setbacks and his proposal will be more conforming. The 1770 sf reconstruction includes a 555 sf garage. Mr Dow addressed the 5 criteria from his application.

The Chair open the hearing to the public and hearing no comments, closed the hearing.

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

- Mr. Partington stated that he believes that this proposal meets the criteria.
- Mr Scholz stated that it would improve the situation with the setbacks.

Mr Partington motioned for Case # 22-2014, Lot 24-E-26, to grant relief from Section 702 and Appendix A-1, Minimum Side Yard Setbacks, to allow the reconstruction of a portion of the home to be built closer than the 30' setback and allow the demolition and reconstruction of a portion of an existing single family home 20' from the side lot line, where it is currently 15.7', and where 30' is required, seconded by Mr Scholz. Motion passed 5 - 0.

The Chair advised of the 30 day appeal period.

Review and Approval of Draft Meeting Minutes –The Chair recommended the review of the May 13, 2014 Draft Minutes be tabled until the June 10 meeting.

Old/New Business:

The Chair stated that Mr Pellegrino's term as Alternate expires and asked if Mr Pellegrini would be interested in being re-appointed. Mr Pellegrini declined and stated that he was retiring and the Chair thanked Mr Pellegrini for his dedication and service to the Town. The Chair asked Mr Mazalewski if he was interested in a re-appointment and Mr Mazalewski indicated that he was interested in a 3 year term, ending May 31, 2017. The Chair requested that ZBA staff write a letter of re-appointment for Mr Mazalewski and also post a notice advertising for 1 year or 2 year ZBA Alternates.

Mr. Scholz made a motion to appoint Mr. Mazalewski as an Alternate, with a 3 year term, expiring May 31, 2017. Motion passed 5 – 0.

Mr. Partington stated that the letters to the ZBA should include the reason for the denial for each case. Mr. Scholz agreed that the ZBA relies on these letters for critical information. Mark Fougere, interim Code Enforcement and ZBA Administrator stated that the Community Development Department is currently short-staffed.

Mr. Partington made a motion to adjourn the May 27 Zoning Board of Adjustment Meeting at 9:30pm, seconded by Mr. Yennaco. Motion passed 5-0.

These minutes are in draft form and respectfully submitted for your approval by Colleen King, substitute ZBA Minute Taker.

Next Meeting: June 10, 2014 at 7:30 PM

DRAFT