



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Minutes
January 14, 2014

Board Members:

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

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

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Laura Accaputo, ZBA Minute Taker

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

Public Hearings:

Mr. Samsel read Case #1-2014 into the record along with a letter of authorization from Laura Swenson permitting Thomas J. Leonard, Esquire, and/or a representative of Welts, White & Fontaine, P.C. to represent her regarding her application to appeal an Administrative Decision. He also read a letter dated 1/14/14 from Thomas J. Leonard, Esquire, asking for a postponement of the case to a date certain - 2/25/14.

Lot 21-G-23A, Case #1-2014

Applicant – Laura Swenson
Owner – Same
Location – 187 Range Road
Zone – Residence A, Cobbetts Pond/Canobie Lake Overlay District

An Application to Appeal an Administrative Decision has been submitted regarding a decision written by Bernard H. Campbell, Esq. in his letter of November 18, 2013 to Thomas J. Leonard, Esq. re: Laura Swenson, 187 Range Road, Windham NH 03087.

- Ms. Prendergast explained this is an on-going enforcement case. The Town has gone before the State of New Hampshire Circuit Court and entered into a stipulation with the applicant where they have agreed to take the structures down and build legal structures by February 1, 2014. If they comply this appeal may become moot.
- The Chair noted there wasn't anyone from the public in attendance to speak on the matter.

Questions/Comments from the Board

- Mr. Tierney stated he was concerned about the process; Attorney Campbell is not an Administrative Officer. The landowner received a notice of violation on May 16, 2012 and they could have appealed at that time; this is an on-going enforcement case and is not appealable to the Board. The appeal of Administrative Decision is invalid and there is no reason to postpone this case.
- The Chair noted that Attorney Campbell, in a letter of response to the applicant, stated the junkyard appeal is untimely but they do have a right to appeal the structure issue which was not determined until November 2013.

- Mr. Scholz also questioned the validity for the same reasons as Mr. Tierney and stated the interpretation of hazardous buildings is a challenge of the Code Enforcement Officer and not the Town Attorney.
- Ms. Prendergast stated she went to Attorney Campbell when she received the appeal and he said it was a proper process for the applicant to go through and she should file it as such.
- Mr. Tierney asked who from the Town gave notice about the hazardous structures. Ms. Prendergast explained that she along with Attorney Campbell, Mike McGuire, and Deputy Chief Martineau met at the site, took pictures, and Attorney Campbell drafted a letter to the applicant as a result of that meeting.
- Mr. Tierney stated the law is clear; it must be an Administrative Officer that gives the notice. He disagrees they can appeal, other than to the courts, unless a Town Official or the Board of Selectmen sent a letter stating the structures were being incorporated in the ongoing enforcement case.
- Mr. Scholz stated the Attorney can provide an opinion and someone from the Town can act on that opinion and provide notice of decision, which the applicant can then appeal.
- The Chair stated he thought Mr. Maguire and/or Ms. Prendergast made the determination and Attorney Campbell drafted the letter on their behalf. Ms. Prendergast agreed and explained initially this was enforcement of the junkyard. When she saw the “structures” she informed the property owner they had to be inspected but she was not allowed to bring anyone on site. She then forwarded the matter to Legal Counsel and they were allowed back on site where the determination was made.
- Mr. Samsel asked shouldn’t the letter have come from Ms. Prendergast or Mr. McGuire and Ms. Prendergast answered at that point she had turned it over to legal.
- Mr. Yennaco asked if Ms. Prendergast or Mr. McGuire had sent the landowner a letter preceding Attorney Campbell’s letter and she replied it goes back to 2012. Mr. Yennaco stated since they aren’t appealing that letter but Attorney Campbell’s letter he believes it is a court issue.
- Mr. Tierney agreed and stated since it is already an enforcement action it cannot be appealed to this Board.
- Mr. Scholz stated the landowner should not be appealing Attorney Campbell’s letter they should be appealing Ms. Prendergast’s letter to the Board of Selectmen with her interpretation of hazardous buildings. Ms. Prendergast stated at that point Attorney Campbell had already taken over the case.
- The Chair asked the Board if it was their will to deny this now or continue since Attorney Campbell has determined that one part of the appeal is still appealable.
- Mr. Yennaco stated he had no problem continuing it and making no determination. Potentially it may be resolved and not come back to the Board.
- Mr. Scholz asked for clarity of the process, regardless of the outcome.
- The Board asked Ms. Prendergast that copies of all enforcement letters and any additional information be included in the packet for the next applicable meeting.

Mr. Samsel made a motion to continue to a date certain - February 25, 2014, the appeal for Lot 21-G-23A, Case #1-2014, as requested by Thomas J. Leonard Esquire, the Attorney representing the owner Laura Swenson, seconded by Mr. Scholz. Motion passed: 4-1-0 with Mr. Tierney in opposition.

Mr. Samsel read Case #2-2014 into the record along with the abutter list and a letter of authorization from the property owners allowing Mr. Maynard to represent them in reference to the variances requested for Lot 16-E-28, Case #2-2014.

Lot 16-E-28, Case #2-2014

Applicant – Benchmark Engineering, Inc.

Owner – Jerome Joaquim & Cathy Underwood

Location – 50 Gaumont Road

Zone – Residence A, Cobbetts Pond/Canobie Lake Overlay District

Variances from the following sections of the Zoning Ordinance are requested to raze the existing home and permit the construction of a new single family home with septic, an expansion and addition to the existing garage, and the addition of a new 6 ft x 12 ft shed:

Sections 401 & 406.2 - to allow an increase in the volume and footprint of the existing non-conforming structures within the required setbacks thereby rendering the structures more non-conforming.

Sections 702 and Appendix A-1; - to allow a lot area of 10,381 sq ft where 50,000 sq ft is required; to allow frontage of 60 ft where 175 ft is required; to allow side setbacks of 16 ft and 10 ft where 30 ft is required for the garage expansion and addition; to allow side setbacks of 2 ft and 9 ft for the home where 30 ft is required; to allow a side setback of 4.5 ft for the deck stairs where 30 ft is required; to allow side setbacks of 15 ft and 20 ft for the shed where 30 ft is required; and to allow a lake setback of 45 ft for the house where 50 ft is required.

Section 616.8 – to allow relief from the buffer requirements of the Cobbetts Pond/ Canobie Lake Watershed Protection Overlay District.

- Mr. Joseph Maynard of Benchmark Engineering addressed the Board. He stated they do not need relief from Section 616.8 and this was requested in error. He then described the home, its location on the lot, setbacks, and an additional garage structure. He stated the home is rotting from below and was built too low to the water table. The new home will be roughly the same size footprint and be pushed further back with a deck. It will keep roughly the same setback to the southerly lot line and 9ft from the northerly lot line which will center the structure between the residences on either side. He also stated they want to break out the front of the existing garage, add depth to it, and raise the roof to add storage space and a woodworking shop above the garage. They would also like to add a small utility shed. The grade will be level. The lot currently has a large gravel area where they will put a septic system in the future if necessary and a new septic tank. Presently the lot has just over 36.2% impervious coverage and they will reduce that down to 35.6%, the existing building coverage is 15% and after construction it will be 19%. The garage setbacks will remain the same and the shed will be adjacent to the garage. He read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked if they were limited to how far back they could have gone since they were only 5ft away from the required setback and Mr. Maynard explained they staggered it so they wouldn't lose visibility of the water.
- The Chair asked if any view would be blocked due to the additional height and Mr. Maynard answered no and stated he had letters from abutters supporting the proposal.
- The Chair asked about frontage relative to corner lots and private roads and asked how it was determined private roads count as frontage and Mr. Maynard explained how determinations were made in the past; he also stated there isn't a private road issue when there is a house already developed on the lot. Ms. Prendergast noted the Planning Board is trying to clear this issue up.

The Chair opened the hearing to the public at 8:10pm. Hearing none the public portion was closed.

- Mr. Samsel read the three letters of support into the record along with a letter from the Conservation Commission stating they had no concerns.

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

- The Board agreed the applicant met the five criteria and the proposal will bring nice improvements to the property.

Mr. Scholz motioned for Case #2-2014, Lot 16-E-28, to grant relief from Sections 401 & 406.2 to allow an increase in the volume and footprint of the existing non-conforming structures within the required setbacks thereby rendering the structures more non-conforming and Sections 702 and Appendix A-1; - to allow a lot area of 10,381 sq ft where 50,000 sq ft is required; to allow frontage of 60 ft where 175 ft is required; to allow side setbacks of 16 ft and 10 ft where 30 ft is required for the garage expansion and addition; to allow side setbacks of 2 ft and 9 ft for the home where 30 ft is required; to allow a side setback of 4.5 ft for the deck

stairs where 30 ft is required; to allow side setbacks of 15 ft and 20 ft for the shed where 30 ft is required; and to allow a lake setback of 45 ft for the house where 50 ft is required, seconded by Mr. Samsel.

Mr. Tierney asked about the setback of 30ft for the deck on the water side and Ms. Prendergast explained according to the Zoning Ordinance the building meets the rear setback of 50ft and the deck is not considered a building so it has a rear setback of 30ft which it meets.

Mr. Scholz amended his motion to include per plan submitted, seconded by Mr. Samsel. Motion Passed: 5-0.

The Chair advised of the 30 day appeal period.

Mr. Scholz motioned for Case #2-2014, Lot 16-E-28, that relief from Section 616.8 is not required, seconded by Mr. Samsel.

Mr. Tierney asked if the motion can be changed to include “deny without prejudice” in case the applicant wanted to come back if needed due to Section 616.8. Since the vote was not final Mr. Scholz withdrew his motion.

Mr. Tierney motioned for Case #2-2014, Lot 16-E-28, to deny Section 616.8 without prejudice, due to comments made by the applicant stating it was not needed, seconded by Mr. Samsel. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Interview – Alternate Position

The Board interviewed Mr. Kevin Hughes, 6 Butternut Road, Windham NH for an Alternate Position on the Windham Zoning Board of Adjustment. Mr. Hughes gave a brief summary of his background and experience.

Mr. Samsel motioned to approve Kevin Hughes of Windham, New Hampshire to an alternate position for the Windham Zoning Board of Adjustment, term ending May 31, 2015, seconded by Mr. Scholz. Motion passed: 5-0.

Review and Approval of Draft Meeting Minutes – 12/10/13

Mr. Samsel motioned to approve the draft minutes of December 10, 2013 as amended, seconded by Mr. Scholz. Motion passed: 4-0-1 with Mr. Yennaco abstaining.

Binder Updates – Tab 2 – ZBA 2014 Meeting Application Deadline Schedule

Mr. Samsel motioned to adjourn the January 14, 2014 Zoning Board of Adjustment Meeting at 8:35pm, seconded by Mr. Scholz. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, ZBA Minute Taker.