



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Draft Minutes Zoning Board of Adjustment November 22, 2016 7:30pm @ Community Development Department

Mark Samsel, Chairman - present

Mike Mazalewski, Alternate - present

Heath Partington, Vice Chair - present

Kevin Hughes, Alternate - excused

Pam Skinner, Secretary - present

Jay Yennaco, Alternate - excused

Mike Scholz, Member - excused

Bruce Breton, Member - present

Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Andrea Cairns, Minute Taker

Meeting called to order at 7:30p.m. by Chairman Samsel.

Mr. Mazalewski was seated for Mr. Scholz.

Chairman Samsel explained the process for the public.

Lot 17-I-110 Case # 35-2016

Applicant- Joseph Maynard, Benchmark Engineering

Owner-Branden & Cheryl Tsetsilas

Location-29 Walkey Road

Zoning District-Residence A & Cobbetts Pond & Canobie Lake Watershed Protection District

Variance relief is requested from **Section 702, App. A-1** to allow the garage to have a front setback of 9 ft. where 50 ft. is required, a 20 ft. rear setback, where 50 ft. is required, east side setback of 10 ft. where 30 ft. is required, west side setback of 20 ft. where 30 ft. is required, 4,600 sq. ft. lot where 50,000 ft. is required and a frontage of 97 ft. where 175 ft. is required.

Section 200 (definitions) Accessory structure; to allow a free standing garage not to be subordinate to a main structure. **703** to allow an accessory structure (garage) to be on a lot without a main building or use and to be in the front set back. **603.1** to allow an accessory structure (garage) as a permitted use in the Residence A District. **Section 616.6.4.1** to allow a new impervious driveway to be 25 ft. from the surface water, where 75 ft. is required from any surface water or wetland.

Ms. Skinner read the case, abutters list and letter of authorization into the record.

Mr. Maynard presented the application. He noted they were before the board previously but have returned because they needed to add section 603.1 to the application. They also added in section 616.6.4.1 to allow the driveway to be constructed 25' from the pond. He added that they elevated the driveway so that the water would flow into drywells and have a 75' run before the water drains into the pond. They are still at 30% impervious surface.

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Mr. Maynard read the five points into the record.

Mr. Partington noted at the previous meeting they discussed adding two conditions if they were to approve the application: add a deed restriction so that the garage could not be used as a dwelling and removal of the play area drawn on the plans. Mr. Maynard noted the applicant would accept those conditions.

Chairman Samsel opened the hearing to the public. There was no one present in favor of or opposed to the application.

MOTION: Mr. Breton made a motion to go into deliberative.
Ms. Skinner seconded the motion.
No discussion
Vote 5-0
Motion carries

Chairman Samsel read the latter from the Conservation Commission.

Mr. Partington reviewed the five criteria. In his opinion:

1. (contrary to public interest): met the criteria
2. (spirit of the ordinance): met the criteria
3. (substantial justice): met the criteria
4. (value of surrounding properties): met the criteria
5. (hardship): met the criteria

Chairman Samsel concurred.

MOTION: Mr. Partington made a motion to grant variance relief from Section 702, App. A-1 to allow the garage to have a front setback of 9 ft. where 50 ft. is required, a 20 ft. rear setback, where 50 ft. is required, east side setback of 10 ft. where 30 ft. is required, west side setback of 20 ft. where 30 ft. is required, 4,600 sq. ft. lot where 50,000 ft. is required and a frontage of 97 ft. where 175 ft. is required.

Section 200 (definitions) Accessory structure; to allow a free standing garage not to be subordinate to a main structure. 703 to allow an accessory structure (garage) to be on a lot without a main building or use and to be in the front set back. 603.1 to allow an accessory structure (garage) as a permitted use in the Residence A District. Section 616.6.4.1 to allow a new impervious driveway to be 25 ft. from the surface water, where 75 ft. is required from any surface water or wetland per plans submitted with the conditions that a deed restriction be placed on the lot that the garage cannot be used as a dwelling and the play area indicated on the plans to be removed.

Mr. Breton seconded the motion.
Vote 5-0
Motion carries.

Chairman Samsel noted there is a 30-day appeal period.

Lot 17-L-57 Case # 38-2016

92 **Applicant-** Edward N. Herbert Assoc., Inc.
93 **Owner-**Robert & Lisa Drew
94 **Location-**13 Farmer Road
95 **Zoning District-**Residence A and Cobbett's Pond & Canobie Lake Watershed Protection.
96 Variance relief is requested from **Section 702, App. A-1** to allow a new dwelling to be constructed with
97 an 8 ft. side setback on each side, where 30 ft. is required, a 10,200 sq. ft. lot where 50,000 sq. ft. lot is
98 required, and a frontage of 51 ft. where is required. **Section 616.8.1, 616.8.3, 616.8.4.1 & 616.8.4.4** to
99 allow development of this property to be in the 100 ft. buffer zone.

100
101 Ms. Skinner read the case, abutters list and letter of authorization into the record.

102
103 Mr. Gendron presented photos of the site. (Exhibit A)

104
105 Mr. Gendron noted it is an existing lot, and the current owner has owned the property for
106 approximately a year. They would like to tear down the existing home, which is not very
107 substantial. The existing home is located within the 50' butter with 52% of the lot being impervious.
108 They would like to put a bigger home on the lot, but pull it back outside of the 50' butter. They tried
109 to reduce the impervious coverage by eliminating all of the pavement and using a porous driveway
110 surface; a maintenance schedule is on the plans. That will bring the impervious coverage down to
111 almost 50%. They will add gutters to the rooflines and run them into drywells to infiltrate
112 stormwater. They are seeking relief for the side setbacks. There is a pipe for seasonal runoff that
113 exists on 11 Farmer Road, which is adjacent to the property. There needs to be a 100' buffer from
114 that pipe. If they were to meet that 100' setback, it would become an unbuildable lot so they are
115 seeking relief from those sections that apply. They submitted an application to NHDES. Both the
116 town and the state have approved the septic system.

117
118 Mr. Partington clarified the existing setbacks of the home, which are 12' to the side, the shed is 2'
119 and the garage is 1' off the property line. Both the garage and the shed will be removed.

120
121 Mr. Gendron read the five points into the record.

122
123 Chairman Samsel opened the hearing to the public. There was no one present in favor of or opposed
124 to the application.

125
126 **MOTION: Mr. Breton made a motion to go into deliberative.**

127 **Mr. Partington seconded the motion.**

128 **No discussion**

129 **Vote 5-0**

130 **Motion carries**

131
132 Ms. Skinner read the letter from the Conservation Commission. They appreciate the reduction in
133 impervious surfaces and request plans be put in place for maintenance for the porous surfaces.

134
135 Chairman Samsel noted the application was very thoughtful with a high attention to detail. He was
136 happy to see the many improvements between the existing and proposed impervious coverage. He
137 believes the five points were met.

138

139 Mr. Breton and Mr. Mazalewski agreed.

140

141 Mr. Partington reviewed the five criteria. In his opinion:

- 142 1. (contrary to public interest): met the criteria
- 143 2. (spirit of the ordinance): met the criteria
- 144 3. (substantial justice): met the criteria
- 145 4. (value of surrounding properties): met the criteria
- 146 5. (hardship): met the criteria

147

148 **MOTION: Mr. Partington made a motion to grant variance relief from Section 702, App. A-1 to**
149 **allow a new dwelling to be constructed with an 8 ft. side setback on each side, where 30 ft. is**
150 **required, a 10,200 sq. ft. lot where 50,000 sq. ft. lot is required, and a frontage of 51 ft. where is**
151 **required. Section 616.8.1, 616.8.3, 616.8.4.1 & 616.8.4.4 to allow development of this property to**
152 **be in the 100 ft. buffer zone per plans submitted.**

153 **Mr. Breton seconded the motion.**

154 **Vote 5-0**

155 **Motion carries.**

156

157 Chairman Samsel noted there is a 30-day appeal period.

158

159 **Lot 17-L-56 Case # 39-2016**

160 **Applicant-Edward N. Herbert Assoc., Inc.**

161 **Owner-Brian & Lori Turner**

162 **Location-11 Farmer Road**

163 **Zoning District-Residence A & Cobbett's Pond and Canobie Lake Watershed Protection**

164 Variance relief is requested from **Section 702, App. A-1** to allow the new dwelling to have, a 7ft. side
165 setback on both sides, where 30 ft. is required, a 10,500 sq. ft. lot where 50,000 is required and a
166 frontage of 50 ft. where 175 ft. is required. **Section 616.8.1, 616.8.3, 616.8.4.1 & 616.8.4.4** to
167 allow development of this property to be in the 100 ft. buffer zone. **Section 616.9.1** to allow a septic
168 system to be 23 ft. from Hydric B soil, where a 50 ft. set back is required.

169

170 Ms. Skinner read case and abutters list into the record.

171

172 Mr. Gendron presented photographs. (Exhibit A)

173

174 Mr. Gendron presented the application. 75% of the existing home is within the buffer. There is an
175 existing ditch line on the property where most of the water sheds. There is a lot of impervious
176 surface that they are trying to reduce. They are using a very advanced septic system. They will also
177 gutter the rooflines add mini drywells and porous pavement with a maintenance plan.

178

179 Chairman Samsel asked for clarification on the Hydric B soil requirement. Mr. Gendron noted the
180 septic system would only be 23' to the runoff area and 36' to the septic tank when 50' is required.

181

182 Mr. Mazalewski questioned if they had a construction sequence plan—specifically, would the
183 proposed retaining wall be constructed prior to the foundation. Mr. Gendron noted it would, the
184 entire area would need to be stabilized before putting in footings.

185

186 Chairman Samsel opened the hearing to the public. There was no one present in favor of or opposed
187 to the application.
188

189 Ms. Skinner read the letter from the Conservation Commission. They were pleased to see the
190 reduction in impervious surfaces and requested a maintenance plan for the porous surfaces.
191

192 Mr. Gendron read the five points into the record.
193

194 **MOTION: Mr. Breton made a motion to go into deliberative.**

195 **Mr. Partington seconded the motion.**

196 **No discussion**

197 **Vote 5-0**

198 **Motion carries**
199

200 Chairman Samsel believed the five points were covered. There were good improvements and he
201 was comfortable with the plan.
202

203 Mr. Breton noted the impervious surface was going from 54.6% to 23.3%, which is a significant
204 reduction.
205

206 Mr. Partington reviewed the five criteria. In his opinion:

- 207 1. (Contrary to public interest): met the criteria
- 208 2. (spirit of the ordinance): met the criteria
- 209 3. (substantial justice): met the criteria
- 210 4. (value of surrounding properties): met the criteria
- 211 5. (hardship): met the criteria
212

213 **MOTION: Mr. Partington made a motion to grant variance relief from Section 702, App. A-1 to**
214 **allow the new dwelling to have, a 7ft. side setback on both sides, where 30 ft. is required, a 10,500**
215 **sq. ft. lot where 50,000 is required and a frontage of 50 ft. where 175 ft. is required. Section**
216 **616.8.1, 616.8.3, 616.8.4.1 & 616.8.4.4 to allow development of this property to be in the 100 ft.**
217 **buffer zone. Section 616.9.1 to allow a septic system to be 23 ft. from Hydric B soil, where a 50 ft.**
218 **set back is required per plans submitted with the condition that the building coverage was not to**
219 **exceed 20%.**

220 **Mr. Breton seconded the motion.**

221 **No discussion**

222 **Vote 5-0**

223 **Motion carries**
224

225 Chairman Samsel noted there is a 30-day appeal period.
226

227 **Lot 21-H-16A Case #41-2016**

228 **Applicant**-Anthony Deluca

229 **Owner**-William & Marion Deluca

230 **Location**-4 Cheryl Road

231 **Zoning District**-Residence A & Cobbett's Pond and Canobie Lake Watershed Protection

232 Variance relief is requested from **Section 710.3.1** to allow a 6 ft. high fence in the front yard setback,
233 where 4 ft. high is allowed.

234
235 Ms. Skinner read case, abutters list and letter of authorization into the record.
236

237 Mr. Deluca provided color versions of the photos. (Exhibit A).
238

239 Mr. Deluca presented the application. He noted their front yard is on a hill that slopes down. The
240 home in back of them is about 10' higher than their home. They would like to build a fence, but do
241 not believe a 4' fence would be sufficient in terms of privacy. There was a 6' line of trees that was
242 there which has been taken down. The 6' fence wouldn't change anything but would provide a nicer
243 presentation than the shrubs. He noted the length of the fence would be approximately 95' but only
244 the first 40' cannot be higher than 4'.
245

246 Mr. Partington questioned what he was trying to gain privacy from since their deck is on the
247 opposite side of the home. Mr. Deluca noted they were trying to get privacy from the driveway to
248 cover some jet skis and other things in their yard.
249

250 Mr. Deluca read the five points into the record.
251

252 Mr. Mazalewski questioned if he or the abutter owned the brown fence in the photos. Mr. Deluca
253 noted they did not know for sure, but the abutter did not have a problem with them removing it.
254 That fence was a 6' fence.
255

256 Mr. Partington questioned what the fence would look like. Mr. Deluca noted it would be a standard
257 vinyl white privacy fence.
258

259 Chairman Samsel opened the hearing to the public.
260

261 *Bill Flockton, 2 Cheryl Road*

262 Mr. Flockton provided photographs of his own. (Exhibit B)
263

264 Mr. Flockton has issues with the fence blocking his view and taking away from his property value.
265 The photographs he provided show his view to the water and a pole at the height of the fence to
266 demonstrate the fence would impede his view. He noted when the home was built it took most of
267 his view of the pond and he was there to fight for the last 10%. He noted he does not have a
268 problem with the fence going in the backyard.
269

270 Mr. Flockton provided a statement from a Mike Hubbard, a realtor who described some of the
271 impact it would have on his property value. Mr. Flockton noted he would not have an issue with a
272 4' fence.
273

274 Mr. Deluca noted that the photos that were provided by Mr. Flockton were taken in the winter when
275 there was no brush on the trees. He provided photos that were taken from Google Street view that
276 were taken prior to the home being built. In his opinion, Mr. Flockton did not have much of a view
277 of the lake even before the home was built. He is mindful of Mr. Flockton's concerns but does not
278 believe the 6' fence will impede his view anymore than the shrubs and fence that were previously
279 there.
280

281 Chairman Samsel recommended the two discuss what would be an acceptable plan for both of them
282 and come back with specific dimensions of where they want the 4' fence and where they want the
283 6' fence vs. the slope of the property.

284
285 **MOTION: Mr. Breton made a motion to go into deliberative.**

286 **Mr. Partington seconded the motion.**

287 **No discussion**

288 **Vote 5-0**

289 **Motion carries**

290
291 Chairman Samsel noted his concern was that the two have not reached a compromise.

292 He did hear testimony that the fence would diminish value of the abutter. In his opinion, the plan
293 does not meet the five points.

294
295 Mr. Breton noted that if Mr. Deluca did not clear the brush and the old fence, Mr. Flockton would
296 have even less of a view. He does not believe the fence would impede his view anymore than what
297 was there. No matter what he did, he would cause an obstruction.

298
299 Mr. Partington reviewed the five criteria. In his opinion:

- 300 1. (contrary to public interest): met the criteria
301 2. (spirit of the ordinance): did not meet the criteria. He did not believe it would afford any
302 privacy to the home except in the area of the driveway.
303 3. (substantial justice): did not meet the criteria. The gain to the owner seems minor versus the
304 negative to the public.
305 4. (value of surrounding properties): did not meet the criteria. It is clear it would block the
306 view of the lake and they received testimony from the realtor stating it would lower their
307 property value.
308 5. (hardship): met the criteria

309
310 Mr. Mazalewski agrees it changes the character of the neighborhood and diminished surrounding
311 property values.

312
313 **MOTION: Mr. Partington made a motion to deny variance relief from Section 710.3.1 to allow**
314 **a 6 ft. high fence in the front yard setback, where 4 ft. high is allowed.**

315 **Mr. Mazalewski seconded the motion.**

316 **No discussion**

317 **Vote 4-1-0. Mr. Breton against.**

318 **Motion carries**

319
320 The reasons are that it did not meet criteria 2, 3 and 4.

321
322 Chairman Samsel noted there is a 30-day appeal period.

323
324 **Lot 11-A-165 Case #42-2016**

325 **Applicant-** Joseph Maynard, Benchmark Engineering

326 **Owner-**Murry Properties

327 **Location-**4 Ledge Road

328 **Zoning District-Limited Industrial**
329 Variance relief is requested from **Section 702, App. A-1** to allow a 45 ft. x 40 ft. covered area 15 ft.
330 from the side line, where 20 ft. is required and 5 ft. from the rear lot line where 30 ft.is required.

331
332 Ms. Skinner read case, abutters list and letter of authorization into the record.

333
334 Mr. Maynard presented the application. He noted the land is unique in that it sits very high. Pugliese
335 Contracting operates out of the property; they store trailers and outside equipment on the property.
336 In the winter, the snow causes difficulty. They would like to construct a lean-to to cover the
337 equipment. It would be a steel frame shed off the rear of the property. That area is mostly paved and
338 there is a propane fueling station that will end up under the cover. The property is limited because
339 of slopes and lack of usable area.

340
341 Mr. Partington questioned what was located behind the property. Mr. Maynard noted it was a
342 landscaping company and they use the area behind the proposed lean-to as a stockpile area.

343
344 Mr. Mazalewski questioned if the propane fueling station would remain. Mr. Maynard noted it
345 would, they use it to fuel their own equipment.

346
347 Mr. Maynard read the five points into the record.

348
349 Chairman Samsel opened the hearing to the public. There was no one present in favor of or opposed
350 to the application.

351
352 **MOTION: Mr. Breton made a motion to go into deliberative.**

353 **Ms. Skinner seconded the motion.**

354 **No discussion**

355 **Vote 5-0**

356 **Motion carries**

357
358 Chairman Samsel noted he is familiar with the property and there is no other spot on the lot for what
359 is being requested. He believes it meets the five criteria.

360
361 Mr. Partington reviewed the five criteria. In his opinion:

- 362 1. (contrary to public interest): met the criteria
363 2. (spirit of the ordinance): met the criteria
364 3. (substantial justice): met the criteria
365 4. (value of surrounding properties): met the criteria
366 5. (hardship): met the criteria

367
368 **MOTION: Mr. Partington made a motion to grant variance relief from Section 702, App. A-1 to**
369 **allow a 45 ft. x 40 ft. covered area 15 ft. from the side line, where 20 ft. is required and 5 ft. from**
370 **the rear lot line where 30 ft.is required per plans submitted.**

371 **Mr. Breton seconded the motion.**

372 **No discussion**

373 **Vote 5-0**

374 **Motion carries**

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Chairman Samsel noted there is a 30-day appeal period.

The board took a five-minute recess and resumed at 9:30 p.m.

Chairman Samsel reviewed the process.

Lot 11-A-50 Case # 44-2016

Applicant-Butterfield Ridge,LLC

Owner-Meadowcroft Dev.LLC

Location-14 Ledge Rd.

Zoning District-Limited Industrial

A Special Exception is being applied for pursuant to RSA 155-E:4, III for an excavation permit.

Ms. Skinner read case, abutters list and letter of authorization into the record.

Phillip Hastings, Cleveland, Waters , P.A. presented the application. Mr. Hastings noted the parcel is in the limited industrial zone and because of the topography and geological features, the development and use of the site is limited. To use the site, it needs to be excavated. They applied for a permit from the planning board to excavate and restore it in a way that would allow for a terraced industrial park on the site. It would make for a productive use for the land. The planning board deferred the application. Attorney Campbell provided an opinion that because the Windham Zoning Ordinance did not allow for excavation, they did not have jurisdiction to hear the case. Mr. Hastings disagreed with that conclusion and believes it is permitted under several ordinances but will follow the path the town has directed them to. They are invoking State of NH RSA 155-E:4 III, which allows for excavation.

Tom Burns, TFMoran was also present. He noted the site is 45 acres and is presently excavated down to bare ledge. The remainder of the property is shallow ledge with loam over it. There are deeper areas with some wetlands but the majority of the site has ledge within 1’ of the surface. The only way to develop the property is to remove the ledge to make it a buildable parcel. It is unusable in the current state. They are proposing to put a future industrial park on the site, a driveway could be punched onto the site and wrap around a reasonable slope no greater than 8% which meets town standards. The road could be handled as a private drive so they were able to have a slightly higher grade to achieve less of a cut. They will have drainage basins along the road to catch sediment and stormwater runoff to mitigate the increase in runoff from the site. Once the infrastructure was put in they would develop a platform looking over Rt. 111 with a secondary level up above. It came to the planning board as an excavation permit because of the amount of time it will take to get the materials out and an approved site plan could expire before they could make significant progress. Excavation allows for the town and state to have more oversight over the project. The total area of disturbance on the property would be roughly 16 acres, most of which have been previously disturbed (about half the development on the property has already happened).

Chairman Samsel questioned the timeframe and when site plan approval would expire. Mr. Burns noted the site plan approval would require significant progress within 2 years. They are looking at 5+ years. Excavation would have annual approvals with much greater oversight from the town and the state.

422
423 Mr. Partington questioned what the process would be after going to zoning. Mr. Hastings noted the
424 board's jurisdiction is limited to the four criteria set forth in RSA 155E. If the board determines
425 they meet the four criteria, they are entitled to the special exception and they would go to the
426 planning board for an excavation permit. The special exception is a one-time approval and in
427 perpetuity. The town regulations specified the excavation permit is for a one-year term and subject
428 to renewal. That gives the town the opportunity on an annual basis to review the site and monitor
429 different conditions. The planning board is the regulator if it were granted. Mr. Hastings added that
430 it would also fall under the state alteration of terrain permit, so the state would have oversight as
431 well.

432
433 Mr. Hastings reviewed the four criteria.

434
435 Chairman Samsel noted that one of the criteria requires it fall in a non-residential area and
436 questioned what, in his opinion, would constitute non-residential. Mr. Hastings noted that although
437 it abuts a residential zone, it is in a limited industrial zone.

438
439 Mr. Mazalewski questioned how much material would come off site. Mr. Burns noted it would be
440 approximately 365,000 cubic yards of cut and 40,000 cubic yards of fill. The sizeable area of the cut
441 material would establish the platforms. A lot of the material would be reused onsite as fill. Mr.
442 Mazalewski questioned if that was for phase one of the project or the entire proposal. Mr. Burns
443 noted that would be for establishing the roadway and grading the building platforms.

444
445 Mr. Breton noted that the excavation permit would be for the entire lot regardless of phases of
446 building. Mr. Burns agreed it would be for the entire lot.

447
448 Mr. Glenn Cairns, the property owner, noted the intent of the excavation is to generate material for
449 sale and for use on their projects. It may not be in operation continuously since the need for the
450 materials is sporadic. They do not have a forecast for what volume of material would leave the site.
451 It would likely be several months at a time. Hours of operations would be standard for the town.
452 They are not asking to operate outside the town ordinance.

453
454 Chairman Samsel opened the hearing to anyone in the public that was in favor of the project. There
455 was no one in favor.

456
457 Chairman Samsel opened the hearing to anyone in the public that was opposed to the project. He
458 gave the direct abutters the first opportunity to speak.

459
460 *Robert Wade, 3 Easy Street*

461 Mr. Wade questioned what would be done if the operation were to be abandoned. He noted it would
462 be a nuisance. The last time the site was excavated, his property shook and granite came off the
463 corners of pillars. They have been through it before. In his opinion, his property values would come
464 down.

465
466 Mr. Partington questioned if the original site plan had been abandoned. Mr. Gregory noted it had
467 been and it was a new application.

468

469 *Greg Kindrat – 61 Haverhill Road*
470 They will not be dealing with Mr. Cairns; they will be dealing with the blasting company. Who will
471 be the blasting company? The amount of material to be excavated could result in years of work.

472
473 *Tom Murray*
474 Submitted Exhibit A, which outlined the RSA. He wanted to remind the board the ordinance is a
475 permissive ordinance so you can only engage in uses that are specifically allowed. RSA 155-E:4
476 states that excavations are not permitted in residential areas. It recognizes that residential area and
477 excavations are incompatible uses. He questioned if the board could make a threshold determined
478 whether or not it is a residential area. If the determination is made that it is residential, that case
479 would stop right here.

480
481 *Curtis McGiveney, 13 Easy Street*
482 He opposes the application. The zoning map he presented shows that it is a residential area (Exhibit
483 B). There are 13 residential properties that abut the site. They cannot ignore the history of the
484 property. The applicant states there is no other use, but some of their testimony has been conflicting.
485 Excavation will cause dust and noise. Large heavy-duty trucks will be very close to neighboring
486 properties. If you look at the definition of limited industrial district, running a quarry is not in
487 compliance with the zone.

488
489 There are many studies that link the loss of property values to proximity to gravel pits. As a direct
490 abutter, it would affect his property values.

491
492 From testimony he heard at the planning board, there were people on Yorkshire Road that felt
493 vibrations. Notice should be provided and testimony should be considered from those in a much
494 larger radius. Chairman Samsel noted it was publicly posted.

495
496 The heavy trucks coming in and out, past the school carrying explosives will impact the roads. He
497 thinks a traffic study should be done.

498
499 The history of the property proves that it will cause safety hazards by damaging water, property and
500 enjoyment of life. This excavation will be an extreme nuisance. If they poison the water, what will
501 we do about that? If the residents are forced to litigate their property it is an unfair burden on the
502 residents of this town.

503
504 *Julie Duane, 74 Blossom Road*
505 She has lived there since 2013. Her and her family oppose any kind of special exception. She agrees
506 with everything her neighbor has said. She thinks about logic and rationale. Just because you can,
507 does not mean you should. At the end of the day, Windham is a bedroom community and residents
508 are what make up this community. Trying to use legal language trying to get around a residential
509 area is missing the larger point of the situation. She affirmed her opposition.

510
511 *Joanne Vignos, 4 Meetinghouse Road*
512 She spoke at the planning board meeting. She is a direct abutter. The gravel pit is right next to her
513 property. She has been there 23 years. There is no safe way to excavate this area. It is too close to
514 residences, they know from experience. She has spent \$12,000 in water filtration. She was not the
515 only home that had arsenic, manganese and iron off the charts within 2-3 years of them starting the

516 previous project. 14 years prior, she had no issues. Air quality when you crush stone goes down.
517 When you crush stone, you release silica, which causes cancer and COPD and it travels miles. She
518 had dust in her pool, on her deck. The noise and blasting was ridiculous. It is a different
519 development company, but no one can develop that huge mountain of rock without being a nuisance
520 to the entire area.

521
522 *Nancy Butcher, 59 Haverhill Road*

523 She did experience tainted water with high nitrates. The noise was terrible, sleeping was impossible.
524 There is only a small area of homes effected, but could be expanded to the whole town of
525 Windham. It is a terrible idea the town should not be considering.

526
527 *Chris Pendleton, 10 Meetinghouse Road*

528 He agrees, they are in opposition. If this goes through, they may move. The previous owner did
529 admit to cracks and damage from the previous property. He operated a business several miles from
530 another quarry and had issues with hvac, water, could not keep the store clean and it was only 0.9
531 miles from the gravel pit. The dust would affect everything. He cannot see how the area defined
532 could not include all property values.

533
534 *Terry Marescia, 6 Meetinghouse Road*

535 She lived through the last project; neighboring uses that have damaged homes, cause health
536 problems, cracked foundations. They do know based on the history of blasting, it will be damaging
537 to health and it will be a nuisance. It is not compatible with neighborhood uses. She also put in a
538 water filtration system.

539
540 *Heidi Allen, 2 Meetinghouse Road*

541 She went through it and does not want to go through it again. Her sister originally owned the land.
542 Respectfully asked it not to go through again.

543
544 *Kassis Khattar, 3 Ridgemont Road*

545 He provided documents on OSHA rules that state silica causes lung cancer, pulmonary disease and
546 kidney disease. The site sits across from two schools. You can see the dust particles. In addition to
547 the health issue he talked about property value. He discussed data that showed the impact of a
548 quarry on surrounding property values. It stated a decrease of 20-30% of home value within ½ mile;
549 ½ mile to a mile a decrease of 20-15%; the impact goes to a 3-mile radius. The property value and
550 depreciation could be up to \$100 million for the town. He could not find a single quarry in the
551 middle of a neighborhood in the entire state. How could we put that in the center of the city? He
552 opposes it altogether.

553
554 *Carl Cotter, 10 Easy Street*

555 They are probably the newest owners and moved there in July. They chose Windham for many
556 reasons and paid a premium to live there. If this was going on at that time, there is no way we would
557 have moved to Windham. The home values will be dramatically impacted. He agrees with all the
558 other points his neighbors have said.

559
560 *Mariagracia Spera, 12 Easy Street*

561 Incredible they are discussing it. She has a dental degree with medical knowledge. Why would the
562 town bring something in that brings pollutants into the water and air, to us, and our children. If you

563 do not live near it, think how you would feel if someone wanted to put a quarry into your
564 neighbourhood.

565
566 *Suman Reddivari, 9 Easy Street*

567 He also just purchased a home in that area. In India they lived near a quarry. He moved his mother,
568 an asthmatic, away from the quarry. His water level and quality is perfect right now. Will they
569 guarantee that it will not affect their water or financially backup their claims? He opposes the
570 project.

571
572 *Beth Robinson, 63 Haverhill Road*

573 She agrees with her neighbors. They have been through it before. How does the town make it right
574 for the residents if it goes through? She reminded them they just denied a 6' fence.

575
576 *Maryanne Phiffer*

577 She believes economic development is great and we need to support business, but that being said,
578 she could not morally support businesses that will destroy health, air quality and quality of life. She
579 does not want to see all of her neighbors destroyed because of that. She does support the businesses,
580 but they need to find a better way to use the property.

581
582 *Steve Van Seters, 2 Sherwood Drive*

583 He has lived here since 1998. He did go through the previous experience. It did impact him
584 significantly. His well produced 5 gal/min with no issues until the blasting began. Then water flow
585 started to go down and he eventually had to drill a new well and ended up with arsenic, which he
586 never had before. It is expensive to install and operate water systems. He is a clear example of
587 someone who was affected at that time. It is difficult to prove, but everyone around him knew there
588 was a correlation.

589
590 *Brandon Conover, 11 Easy Street*

591 They echo other sentiments. They just recently moved in and would not have done that if they
592 knew. There is a lot of inconsistency as to the purpose of the project. They know the risks of the
593 project. There are a lot of unknowns. Weighing out the benefits, it will only benefit one person.
594 They are opposed.

595
596 *Charlie McMahon, 11 Floral Street*

597 He lost his well the last time. Windham does need economic development, but limited industrial by
598 definition is limited. That is not what is being proposed. The manageable risk does not qualify for
599 the board's support. The impact on the water, ambiance, neighborhood, area is not worth it. Humans
600 come first. We are 95% residentially based, that is a quality of life worth defending. Do we
601 maintain that mandate by putting people first? They had to redo their well.

602
603 *Jim Tierney*

604 He noticed in the posting it only referenced RSA 155-E:4, III, but when they look at II, it talks to
605 excavation within 50' of an abutter. They have a lot of disapproving abutters and it is a
606 consideration they have to take. The applicant was talking about zoning area, but it needs to be an
607 area in general. There are about 15-16 residential properties, a few limited industrial and a few
608 neighborhood business lots. They need to consider the quality of wells, hazards to the public
609 welfare and to abutting residents.

610
611 *Greg Kindrat, 61 Haverhill Road*
612 They have been there 16 years. He looked at the scale of the project and the amount of shots
613 required to remove 95,000 cubic yards of material. They used 75 tons of blasting agents. There was
614 water encountered in over 80% of the boreholes. They cannot guarantee 100% combustion, which
615 leaves some of the blasting agent in the ground, which can leach, into the water. They had a plume
616 of nitrates, manganese, iron and sediment in their well. They spent a significant amount of money to
617 deal with the amount of nitrates. They had an appraisal done by Russo and Associates and in his
618 report, he estimated their property value would be diminished by over 75%. He opposes it. They
619 could find other recreational uses for the land.

620
621 Chairman Samsel questioned if the site was abandoned. Mr. Cairns noted it was and the prior use
622 was granted through site plan approval so it expired. The previous project involved a 90' cut into
623 the ledge to put in a road. They are not coming anywhere near that kind of cut. It is a less invasive
624 project.

625
626 Chairman Samsel asked if they could address the residents concerns. Mr. Hastings noted those
627 issues would be dealt with on the planning board level and were not the purview of the zoning
628 board.

629
630 Mr. Breton noted that the owner on record is the same as the previous project. Mr. Hastings noted
631 the owner is the same, but other than that there is no connection between Mr. Cairns, Butterfield
632 and the prior owner. They are filing a separate application and it should stand on it's own merits.

633
634 Mr. Cairns noted they already started studies for on-site mitigation. The previous blasting company
635 was not working with best management practices; they are no longer in business. They do not have
636 a blasting company yet, but they will take a completely different approach and are doing what they
637 can to avoid those problems by managing the size of the blasting. They have already hired experts
638 to develop blast plans. They are taking those steps now so they do not re-create those problems. The
639 town is better off if it is a productive piece of property.

640
641 Mr. Burns noted the RSA states they need to be 50' from a disapproving abutter, they are looking at
642 blasting well over 100' from the property line.

643
644 *Tom Murray*
645 His concerns are also about the quantity of water. He heats his 8,000 sq. ft. warehouse with
646 geothermal. His system is operating efficiently. With the amount of blasting required, it could affect
647 the aquifer and quantity of water on his property.

648
649 He powers that building with solar power. The dust that is generated is also a concern.

650
651 He asks board to decline the application and to make a threshold determination of whether it is a
652 residential area.

653
654 Mr. Hastings noted that if the zoning board made a determination that the site, which is zoned
655 limited industrial, is actually residential; they are effectively rezoning the property, which is not
656 within their authority to do. That needs to be done at a town meeting.

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MOTION: Mr. Breton made a motion to go into deliberative.

Mr. Partington seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel questioned if they should consider whether it is a non-residential area and if that was within the purview of the board. Mr. Partington noted, in his opinion, it is a non-residential area as it pertains to Windham zoning.

Mr. Mazalewski disagreed. He felt the applicant stated it was an “area” when determining diminished property values, not a “zone.” Mr. Breton agreed. Chairman Samsel agreed “area” was a broader view. That being said, they could vote upon finding that it is residential which would eliminate their ability to rule on criteria A-D.

Mr. Partington raised concern over not having access to correspondence from town council. Mr. Gregory noted the attorney only addressed whether the planning board had jurisdiction, which he deemed they did not.

The board reviewed the criteria:

- A. Will not cause diminished values or change in character of the neighborhood: We had testimony that proved the prior excavation did cause that. Mr. Partington noted it is the exact same lot and historical information with input from the abutters shows it did decrease property values, decreased water quality, air quality and quality of life. You have to prove this project is going to be different and why; they do not have that. Chairman Samsel agreed, they had the opportunity to provide best management practices and mitigation plans. Mr. Breton and Ms. Skinner agreed. Mr. Mazalewski was not basing it on what has happened in the past, but does believe it would cause diminished property values. Did not meet the criteria: 5-0
- B. Roads: The board agreed it would not cause increased impact to the roads. Met the criteria.
- C. Nuisance or health and safety issues: the board agreed it would create a nuisance. It has been proven in the past that it would cause health, financial and mental hazards. Did not meet the criteria: 5-0
- D. Complies with other criteria set out in applicable local ordinances: There are none, all agreed it meets this criteria: 5-0

This request has failed on criteria A and C.

MOTION: Mr. Breton made a motion to deny a Special Exception pursuant to RSA 155-E:4, III for an excavation permit.

Ms. Skinner seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel noted there is a 30-day appeal period.

704
705 **MOTION: Ms. Skinner made a motion to adjourn at 12:04 a.m.**
706 **Mr. Bruce seconded the motion.**
707 **Vote 5-0.**
708 **Motion passes.**
709
710 **Submitted by Andrea Cairns**

DRAFT