



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

3 No. Lowell Road, Windham, New Hampshire 03087

(603) 432-3806 / Fax (603) 432-7362

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**Draft Minutes Zoning Board of Adjustment
November 8, 2016
7:30pm @ Community Development Department**

Mark Samsel, Chairman - excused **Mike Mazalewski, Alternate** - present
Heath Partington, Vice Chair - present **Kevin Hughes, Alternate** - present
Pam Skinner, Secretary - present **Jay Yennaco, Alternate** - excused
Mike Scholz, Member - present
Bruce Breton, Member - excused

Staff:

Dick Gregory, ZBA Code Enforcement Administrator
Andrea Cairns, Minute Taker

Meeting called to order at 7:30p.m. by Mr. Partington.

Mr. Mazalewski was seated for Mr. Breton. Mr. Hughes was seated for Mr. Samsel.

Mr. Partington reviewed 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 150 ft. is required.

Section 200 (definitions) Accessory structure; to allow a free standing garage not to be classified as an accessory structure.

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

Mr. Maynard presented the case. He noted the applicant was requesting to construct a garage on a vacant lot. The lot is a separate lot of record and the applicant owns the abutting lot. The goal is to be allowed to build a garage on the property with the potential that neighbors could acquire the property in the future. To keep the potential for selling the lot, they did not want to do a lot line adjustment and combine the lots.

42 The lot is only 60' deep and because of shoreland setback requirements, a septic system would need
43 to be 75' from the pond. That setback would put the septic system in the middle of the road. In
44 addition, the property does not have enough loading to be able to install a septic system.
45

46 Mr. Partington raised concern over how the application was noticed. They were asking for relief
47 from Section 200 but he felt they also needed to seek relief from Section 603.1. They have not
48 defined what the structure is.
49

50 Mr. Scholz noted there is no definition for the use, if it is not an accessory building, what does it
51 become? Mr. Maynard suggested they could put a restriction on the approval that the structure
52 could not be used as a dwelling.
53

54 Mr. Maynard read the five criteria into the record.
55

56 Ms. Skinner read the letter from the Conservation Commission. They questioned if there would be a
57 new driveway with porous pavement or grass pavers. They would like drainage and stormwater to
58 be captured. Mr. Maynard noted they have to mitigate runoff to meet state requirements, so their
59 proposal is to do underground dry wells to mitigate runoff. The driveway has not been planned yet.
60

61 *John Case*

62 Mr. Case questioned why they could not do a lot line adjustment. Their future plans bother him a
63 little bit. He also questioned why the case was notice as requiring 150' of frontage when 175' was
64 required.
65

66 Mr. Gregory noted the posting was incorrect, 175' is required.
67

68 Mr. Maynard noted in his opinion, it is a reasonable request to put a garage on a lot of that size and
69 to keep it as a separate lot. It is a small lot and it is a good use for that property.
70

71 Mr. Scholz questioned how they would adapt the property to be used by the abutter if it were sold.

72 Mr. Maynard noted the garage doors could be switched to the other side.
73

74 Mr. Mazalewski questioned the play area indicated on the plans. Mr. Maynard noted that would be
75 removed.
76

77 **MOTION: Mr. Scholz made a motion to go into deliberative.**

78 **Mr. Hughes seconded the motion**

79 **No discussion**

80 **Vote 5-0**

81 **Motion carries**
82

83 Mr. Scholz did not believe the error in posting that 150' of frontage is required versus 175' of
84 frontage is an issue because what was posted is actually more stringent.
85

86 Mr. Partington agreed, but did believe that Section 603.1 needed to be addressed. Without having
87 that section, he would have a difficult time defining a variance.
88

89 Mr. Partington reviewed the five criteria. In his opinion it is questionable that it meets criteria one
90 and two: contrary to the public interest and spirit of the ordinance. He added, under section 603.1,
91 an accessory building is permitted, but not allowed as a primary building.

92
93 Mr. Scholz noted that it did not need to be tied to the main building. Mr. Partington added that once
94 you start changing definitions, it becomes confusing. He would prefer they define a new use instead
95 of changing what an accessory structure is.

96
97 Mr. Scholz noted they could grant relief not requiring the building to be subordinate to the main use
98 or located on the same lot as the residence.

99
100 Mr. Hughes noted that legally it is not an accessory building but functionally it is an accessory
101 building. In his opinion, it does fit the character of the neighborhood.

102
103 Mr. Scholz noted he was also struggling with whether it met criteria one and two: contrary to the
104 public interest and spirit of the ordinance.

105
106 The board agreed that the way the application was posted was problematic.

107
108 **MOTION: Mr. Scholz made a motion to come out of deliberative and back into public session.**

109 **Mr. Hughes seconded the motion.**

110 **No discussion**

111 **Vote 5-0**

112 **Motion carries**

113
114 Mr. Maynard noted he could repost to include Section 603.1. Mr. Partington added they would
115 request that it state it is an accessory structure on it's own, on the lot. Mr. Maynard noted he could
116 come up with a deed restriction to state it needs to be owned by someone that has a primary
117 dwelling in that neighborhood and could only be used as a garage.

118
119 Mr. Scholz questioned if the intent was to simply be allowed to not classify the garage as a primary
120 structure? Mr. Maynard noted their intent was to have it be a garage and always a garage.

121 Mr. Partington noted that his main concern was with how it was posted and suggested they add to
122 the notice "Section 603.1 to allow a garage as the only structure on the lot without being
123 subordinate to a primary dwelling." That makes it clear as to what is actually occurring without
124 redefining definitions.

125
126 Mr. Scholz added he would also like to see proposed language on the deed. He suggested that
127 possible conditions of approval could be: a deed restriction, removal of the play area and any
128 concerns the Conservation Commission had about the driveway.

129
130 Mr. Scholz added they should also change the 150' of frontage required to 175' of frontage
131 required.

132
133 **MOTION: Mr. Scholz made a motion to continue case #35-2016 to November 22, 2016 so it
134 can be reposted to include section 603.1.**

135 **Mr. Hughes seconded the motion.**

136 **No discussion**

137 **Vote 5-0**
138 **Motion carries**

139
140 **Lot 16-D-7 Case # 36-2016**

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

142 **Owner-**The Norma R Lapointe Rev. Trust

143 **Location-**16 North Shore Road

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

145 Variance relief is requested from **Section 702, App. A-1** to allow the deck to have, a 6 ft. rear
146 setback (lake), where 50 ft. is required, a side setback of 20 ft. where 30 ft. is required, a 28,814 sq.
147 ft. lot where 50,000 ft. is required and a frontage of 95 ft. where 150 ft. is required.

148
149 Ms. Skinner read the case and abutters list into the record.

150
151 Mr. Maynard reviewed the application. North Shore Road sits close to the water. There are retaining
152 walls constructed along the road, and the home could not be built further back from the road. There
153 is an existing patio off the home; they are proposing to construct a deck over the patio with the same
154 setbacks as the existing patio. State shoreland regulations allow you to construct a deck 12' out
155 from the face of the structure. There is no way for them to enjoy the patio without having to go
156 downstairs and out through the basement. They want to construct the deck off of the main living
157 floor.

158
159 Mr. Maynard read the five criteria into the record.

160
161 Mr. Mazalewski questioned if there was a variance on file for the existing patio. The argument for
162 the application is based on the patio that already exists and they have no history of the patio. Mr.
163 Maynard noted the home was reconstructed in the 80s, but did not find a variance on file for the
164 patio. He added that he has done several site assessments over the past 20 years and there have not
165 been any changes to the site other than the color of the home. Shoreland regulations did not come
166 into play until 1992, so if it was built prior to that, there would be no permit.

167
168 Ms. Skinner read a letter from the Conservation Commission, which noted they had, no concerns
169 since there was no increase to impervious cover.

170
171 There was no public in attendance.

172
173 **MOTION: Mr. Scholz made a motion to go into deliberative.**

174 **Mr. Hughes seconded the motion**

175 **No discussion**

176 **Vote 5-0**

177 **Motion carries**

178
179 Mr. Partington reviewed the five criteria. In his opinion:
180 1. (contrary to public interest): met the criteria
181 2. (spirit of the ordinance): met the criteria
182 3. (substantial justice): met the criteria
183 4. (value of surrounding properties): met the criteria
184 5. (hardship): met the criteria

185
186 The remaining board members agreed it met the five criteria.
187

188 **MOTION: Mr. Scholz made a motion to grant relief from Section 702, App. A-1 to allow the**
189 **deck to have, a 6 ft. rear setback (lake), where 50 ft. is required, a side setback of 20 ft. where**
190 **30 ft. is required, a 28,814 sq. ft. lot where 50,000 ft. is required and a frontage of 95 ft. where**
191 **175 ft. is required as presented.**

192 **Ms. Skinner seconded the motion.**

193 **No discussion**

194 **Vote 5-0**

195 **Motion carries**

196
197 Mr. Partington noted there is a 30-day appeal period.
198

199 **Lot 16-B-8 Case # 37-2016**

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

201 **Owner-**Scott Obrien

202 **Location-**9 Ash Street

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

204 Variance relief is requested from **Section 702, App. A-1** to allow the dwelling to have, an 18 ft.
205 front setback, where 50 ft. is required, an east side setback of 25 ft. where 30 ft. is required, a west
206 side setback of 12 ft. where 30 ft. is required, a 8,442 sq. ft. lot where 50,000 ft. is required and a
207 frontage of 100 ft. where 150 ft. is required.

208
209 Ms. Skinner read the case and abutters list into the record.
210

211 Mr. Maynard presented the application. He noted the property has an existing home on it with septic
212 and a drilled well. The property surrounding the lot is owned by Mr. Bumstead and was merged to
213 create one lot. Mr. Bumstead's home is relatively close to the lot line, so they are looking to change
214 the angle of the home to achieve greater separation and a better view of the pond. They will relocate
215 the well and septic and both will meet required setbacks. They will be at 13.3% impervious
216 coverage, which is well below the limit. The 250' required shoreland setback covers half the lot.
217 They will install drip line trench infiltration off the back of the home to meet state requirements.
218

219 Mr. Maynard read the five criteria into the record.
220

221 Ms. Skinner read letters from abutters Bumstead, Cyr, and Coish who are all in support of the
222 project.
223

224 Ms. Skinner also read a letter from the Conservation Commission. They questioned if the plan was
225 to decrease impervious coverage and could that plan include the new driveway. Mr. Maynard noted
226 he presented a reduction in impervious coverage and a drainage improvement plan that was required
227 by the state.
228

229 There was no public in attendance.
230

231 **MOTION: Mr. Scholz made a motion to go into deliberative.**

232 **Mr. Hughes seconded the motion**

233 **No discussion**

234 **Vote 5-0**

235 **Motion carries**

236

237 Mr. Scholz reviewed the five criteria. In his opinion:

238 1. (contrary to public interest): met the criteria

239 2. (spirit of the ordinance): met the criteria

240 3. (substantial justice): met the criteria

241 4. (value of surrounding properties): met the criteria

242 5. (hardship): met the criteria

243

244 The board agreed the application met all five criteria.

245

246 **MOTION: Mr. Scholz made a motion to grant relief from Section 702, App. A-1 to allow the**
247 **dwelling to have, an 18 ft. front setback, where 50 ft. is required, an east side setback of 25 ft.**
248 **where 30 ft. is required, a west side setback of 12 ft. where 30 ft. is required, a 8,442 sq. ft. lot**
249 **where 50,000 sq. ft. is required and a frontage of 100 ft. where 175 ft. is required as presented.**

250 **Mr. Hughes seconded the motion.**

251 **No discussion**

252 **Vote 5-0**

253 **Motion carries**

254

255 Mr. Partington noted there is a 30-day appeal period.

256

257 **Review of the 10/25/16 Minutes**

258 **MOTION: Mr. Scholz made a motion to approve the 10/25/16 minutes as amended.**

259 **Mr. Hughes seconded the motion.**

260 **No discussion**

261 **Vote 5-0**

262 **Motion carries**

263

264 **8/9/16 Minutes**

265 **MOTION: Mr. Scholz made a motion to reconsider the 8/9/16 minutes.**

266 **Ms. Skinner seconded the motion.**

267 **No discussion**

268 **Vote 3-0-2. Mr. Mazalewski and Mr. Hughes abstained.**

269

270 **MOTION: Mr. Scholz made a motion to approve the 8/9/16 minutes as amended.**

271 **Motion carries**

272 **Ms. Skinner seconded the motion.**

273 **No discussion**

274 **Vote 5-0.**

275 **Motion carries**

276

277 **Other Business**

278 Mr. Partington noted that the December 8th case is for a cell tower. He mentioned it because there
279 is a lot of federal law and it would be a good idea to review that ahead of time.

280

281 Mr. Scholz questioned if Mr. Gregory contacted Attorney Campbell regarding changes to Notices of
282 Decision. Mr. Gregory had not done that but will.

283
284 The board discussed what information the notice of decision should contain. The board agreed it
285 should include what was posted as well as what was granted or denied. All motions should be
286 included.

287
288 **MOTION: Ms. Skinner made a motion to adjourn.**

289 **Ms. Mazalewski seconded the motion.**

290 **Vote 5-0.**

291 **Motion passes.**

292
293 **Submitted by Andrea Cairns**

DRAFT