



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

**Approved Zoning Board of Adjustment Minutes
February 11, 2014**

Board Members:

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

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

Staff:

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

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

The Chair sat Mr. Pellegrini for Mr. Samsel.

Public Hearings:

Mr. Scholz read Case #3-2014 into the record along with the abutter list and a letter of authorization from the owner allowing Mr. Maynard of Benchmark Engineering to represent them in this case.

Lot 21-F-42 & 21-F-43, Case #3-2014

Applicant – Benchmark Engineering, Inc.

Owner – Hyrize Holdings, LLC

Location – 163 & 165 Range Road

Zone – Rural District, Cobbetts Pond/Canobie Lake Overlay District

A variance is requested from the following sections of the Zoning Ordinance:

702 and Appendix A-1, Minimal Lot Area by Soil Type –to allow a Lot Line Adjustment for Lots 21-F-42 & 21-F-43 where both lots will meet the minimal lot area square footage and frontage but will not meet the minimal lot area by soil type.

- Mr. Maynard of Benchmark Engineering addressed the Board. He explained this property is a two lot parcel. The lots were created prior to zoning and do not meet the towns lot size by soils. They are requesting a lot line adjustment where both lots will meet the frontage requirements. There will remain only two lots after the adjustment. He explained one of the lots has an existing house and the other is vacant. The lot line adjustment will give the vacant lot frontage on Langdon Rd and bring both lots into compliance for frontage. He stated each lot can easily support a minimum of 4 bedrooms by State Loading Calculations.

Questions/Comments from the Board

- Mr. Tierney asked how many wells were on the property and Mr. Maynard answered three and pointed them out on the map. He explained one is in use and he was told by the owner it has substantial water. Mr. Tierney asked about the well on the proposed new lot and Mr. Maynard explained they don't know much about that well but under the town's criteria to obtain a building permit, the well will have to be drilled to ensure it meets the standards of yield and water quality.
- Mr. Mazalewski asked if the owner tried applying for a driveway on the current vacant lot for Range Road, as it is a state road. Mr. Maynard replied it is not preferable due to the steep slope of the property and the steep grade of Range Road; however he believes the state would allow one if they applied for it.
- Mr. Maynard read the five criteria into the record.
- Ms. Prendergast clarified for the record that according to Rex Norman, Tax Assessor the new lot will be identified as Lot 21-F-43 with an address of 165 Range Road and the existing house is Lot 21-F-42 with an address of 163 Range Road.
- Mr. Mazalewski asked how the leach field for the existing house being on the new lot will affect septic loading for the new lot and Mr. Maynard explained it is an easement area and for now it is functioning properly and is outside of the build-able area for the new lot. Mr. Mazalewski asked if there are any problems with the septic system and Mr. Maynard replied it has been inspected and there are no issues with it.

The Chair opened the hearing to the public at 7:55pm.

- Christine Surette, 3 Langdon Road, asked for clarification of the location of the Watershed District.
- Mr. Scholz read a letter into the record from Mr. Halloran in opposition of this request. The Chair accepted the letter as Exhibit A.
- Jason Rogers, 2 Weston Road, stated his concern with additional wells in the area due to the lack of water. He also stated the back area of the proposed lot is very wet and asked about its affects on the proposed new lot. He also stated he did not believe the criterion of hardship was met.
- Mr. Tierney explained since the lot is already a non-conforming lot, the variance is for soils only.
- The Chair explained the applicant has presented the steep grade of Range Road and the location relative to Cobbetts Pond Watershed as his hardship criteria. He also stated since there are two lots of record they would still have to put in a well even if they leave the lots as they are.
- Fred Halloran, 4 Langdon Road, presented a map showing the additional well on his property which was not shown on the applicants map. He noted this well is 45ft from the proposed house and even with two wells for his house he does not have enough water. He also believes putting an additional house in this area will have negative impacts on the intersection.
- Bill Callaway, 4 Weston Road, stated his concern they would create a third lot on the property in the future.
- Ms. Prendergast stated the plans have gone before TRC and the Highway Department recommended a swale or pipe be installed under the proposed driveway as to not interfere with existing drainage on Langdon Road.
- Mr. Maynard addressed the following concerns and questions from the abutters: Regarding the change to the Cobbetts Pond Watershed line he explained a detailed on-ground survey done by Meridian Land Survey identified where the break in the Watershed was on the property and also identified the water is draining into a swamp that is not part of the Cobbetts Pond Watershed District. He noted even with the adjustment they are still going a step further to include drainage for the proposed project. He also explained the water and run-off from the proposed lot will drain toward Langdon Road and they are creating a detention pond to drain away from the abutting

property. In regards to the wells he stated he is aware of the problems in the area however since two lots exist they will have to drill another well regardless. He stated the soils are suitable for septic systems. He also noted he does not believe the addition of one lot on Langdon Road will create any considerable traffic concerns.

- The Chair asked for clarification regarding the TRC recommendation for a culvert under the driveway and Mr. Maynard explained it was to collect the water from the driveway and prevent it from pooling onto the road.
- Mr. Halloran stated there was an issue with the sprinkler system running out of water during landscaping of the property.

The Chair closed the public portion at 8:25pm.

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

- The Chair stated he does not think this will alter the character of the area or threaten public health, safety and welfare. He thinks the proposed new driveway location is safer than it would be on Range Road due to grade and sight line issues. His concern is the Board of Selectmen decided not to unmerge these lots and now we would be separating them anyway. He does believe there are benefits to the applicant and is borderline on whether it will negatively impact the public. He is hearing there is a well problem in the area but there will be an additional well either way. He does not believe the values of surrounding properties will be diminished unless there is a water issue. He feels what is unique about the property is the steep grade down to Range Road and noted the proposed location for the new home will be built further out of the Cobbetts Pond Watershed Area.
- Mr. Scholz stated he believes it is better for public safety to move the lot off of Range Road due to the steep elevation. He also thinks the runoff appears to be better with the new lot lines. He understands the concerns about the wells but does not think surrounding properties would be diminished. The steep slope meets the special conditions criteria. He also agrees with adding the swale piping under the driveway.
- Mr. Tierney stated he thinks the new lot lines create a larger lot that meets the spirit and intent of frontage requirements.
- Mr. Pellegrini stated he believes having the driveway on Range Road would impact the drainage issues more.
- Mr. Yennaco stated he agrees with the Board Members and the betterment of moving the lot lines however he has a tough time with the public interest aspect of it.

Mr. Tierney motioned to grant Case #3-2014 Lot 21-F-42 and 21-F-43, Section 702 Appendix A-1, for minimal lot area by soil type, per plan submitted, seconded by Mr. Scholz

Mr. Scholz stated he does share Mr. Yennaco's concerns but he does think it meets the spirit and intent of the ordinance and the application meets the five criteria.

The Chair stated the issue is any change ends up being a variable however he does think this meets the State's five criteria.

The Chair went back to the motion. Motion passed: 4-1 with Mr. Yennaco in opposition.

The Chair advised of the 30 day appeal period.

Review and Approval of Draft Meeting Minutes – 01/14/14

Mr. Yennaco motioned to approve the draft minutes of January 14, 2014 as amended, seconded by Mr. Scholz. Motion passed: 5-0.

Mr. Scholz asked if we received follow-up on the process issue from last month's case regarding whether the attorneys decision was appeal-able. Ms. Prendergast stated she did forward the question and had not yet heard back. Mr. Scholz requested we get clarification before the next meeting. The Chair stated he would send a general question to the LGC asking who can write the letter of determination.

Binder Updates – Tab 1 – Member List, Tab 11 – New Hampshire Law Updates; “Conditions Imposed by Local Land use Boards Now Subject to Heightened Scrutiny”, Tab 12 – Miscellaneous Items; “2013 Report of Southern New Hampshire Planning Commission.”

Old/New Business

Mr. Mazalewski noted the Salem Zoning Board gives each member a form to fill out after they vote on a case to keep with the file. Mr. Tierney stated there was some discussion about it a few years back. The Chair recommended they bring it up after the election as a by-law issue.

Mr. Tierney motioned to adjourn the February 11, 2014 Zoning Board of Adjustment Meeting at 8:45pm, seconded by Mr. Scholz. Motion passed: 5-0.

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