



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Approved Minutes April 22, 2014 at 7:30 pm

Board Members:

Mark Samsel, Chairman – Present
Mike Scholz, Vice-Chairman – Present
Heath Partington, Secretary – Present
Jay Yennaco, Member – Present

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

Staff:

Nancy Prendergast, 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.

Public Hearings

Mr. Partington read Case #11-2014 into the record along with the abutter list and letter of authorization from the owner authorizing Edward Herbert Associates to represent them in this case.

Lot 13-C-138, Case #11-2014

Applicant – Edward N. Herbert Assoc. Inc.
Owner – Chad & Heather Chaloux
Location – 19 Stonehedge Road
Zone – Residence A

Variations from the following sections of the Zoning Ordinance are requested to allow the addition of a garage bay and an accessory apartment:

Section 602.1.9.2 – to allow an accessory apartment to be connected to a garage wall as a common wall as opposed to a wall in common with the living space of the primary dwelling.

Section 702 & Appendix A-1 – to allow an addition to be located 21 feet from the side lot line where 30 feet is required.

- Mr. Shane Gendron of Edward Herbert Associates addressed the Board. He explained the request is to add an accessory apartment to the property and a garage bay and interior handicapped ramp. The proposed apartment will meet all requirements except it will connect to a garage wall rather than a main wall as it will be located in the back of the garage to the rear of the property. The home will still maintain the appearance of a single family home. They will also require a variance for setbacks. This proposal satisfies the homeowners need for accessibility for a family member and is also the most practical location for the apartment due to the location of utilities and propane in the back of the house. Mr. Gendron read the five criteria into the record.

The Chair opened the hearing to the public at 7:45pm.

- Mary Ellen Castro addressed the Board. She explained this proposed apartment is for herself and her husband who due to medical issues requires constant care. This will allow them to be close to family so they can continue to receive help and support.
- Kyle Mcinnis, 17 Stonehedge Road, addressed the Board. He stated he is not opposed to the addition but he is concerned it is too close to his home. He believes it will impact his resale value and asks the applicant to provide additional options for the location of the addition. He distributed two pictures showing the proximity of the properties which the Chair accepted as exhibit A and B.
- The Chair asked for clarification of the distance from his garage to the existing building and Mr. Mcinnis explained the distance from his garage to the fence is 40ft and he believes the distance from the fence to the existing building is another 40ft.
- Mr. Mazalewski asked if he would be open to the applicant planting a buffer of mature trees for privacy and Mr. Mcinnis replied these houses are not made for additions of this nature and it would push the limits on something that is too close to begin with. He would like to see other designs first.
- Mr. Partington asked if Mr. Mcinnis required a variance for his addition and he replied no.
- Mr. Gendron stated they would have no problem adding a buffer planting along the lot line and asked the Board to consider the variances separately as it would be impractical to put the addition anywhere else.
- Chad Chaloux, homeowner, stated the existing garage is 30 X 30 and can fit three cars as it sits and is deep enough for the interior handicapped ramp.
- Mr. Partington asked if they could pull the addition over to get closer to the 30ft setback requirement and Mr. Gendron replied they could pull it over to 23ft from the side lot line but would still require a variance.
- Mr. Scholz asked the pitch on the ramp and Mr. Gendron replied he was not sure but it will be ADA compliant.
- Mr. Mcinnis stated he believes the buffer would require 40ft tall trees to be effective and he feels there is no difference between 21ft and 23ft with regards to the setback.
- Mr. Yennaco stated the addition would not be ideal for Mr. Mcinnis even if it met the setback and didn't require a variance and Mr. Mcinnis agreed.

The Chair closed the public portion at 8:00pm.

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

- Mr. Partington stated he believes substantial justice is met for both variances. He is unsure that the property is unique. He thinks it is a reasonable plan and hardship is met for the front part of the garage. It is a judgment call whether moving 9 feet closer and having a larger structure closer changes the character and diminishes the property value of the abutters' home.
- Mr. Tierney stated he believes it meets the spirit and intent and he does not like to grant a variance on definitions. He believes the key issue is the setback issue and the building could be setback 3 ft which would limit it to a 24ft setback. He also thinks the design will benefit the neighbor as the building will act as a buffer for the properties.
- Mr. Scholz stated he does not believe the value of surrounding properties will be diminished and agrees the building provides a buffer. He is fine with limiting the setback to 24ft.

- Mr. Samsel believes the five points have been met. He is fine with the suggestion to reduce the relief required on the setback.

Mr. Partington motioned for Case #11-2014, Lot 13-C-138, 19 Stonehedge Road, to grant relief from Section 602.1.9.2 to allow an accessory apartment to be connected to a garage wall as a common wall; and Section 702 & Appendix A-1 to allow an addition to be located 23ft from the side lot line where 30ft is required, seconded by Mr. Tierney. Motion passed 5-0.

The Board discussed whether or not to add a condition for a buffer and decided not to add the condition.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #12-2014 into the record along with the abutter list and letter of authorization from the owner authorizing Mark Gross of MHF Design Consultants to represent them in this case.

Lot 13-K-37A, Case #12-2014

Applicant – MHF Design Consultants, Inc.

Owner – Salem Radiology RE & Equipment Co.

Location – Cole Road/8 Doiron

Zone – Rural, Aquifer Protection, Floodplain and Wetland and Watershed Protection District (WWPD)

Variations from the following sections of the Zoning Ordinance are requested to allow for the construction of a 4 bedroom single family residence within the 100 foot WWPD buffer and within the Aquifer Protection District. The proposed disturbance is approximately 10,000 square feet.

601.3 – to allow a single family home with deck, well and a portion of septic within the WWPD where it is not an allowed use;

601.4.6 – to allow a portion of the septic system within the WWPD where it is currently not allowed;

609.4.1.3 – to allow a septic system and leach field within the Aquifer Protection District where disposal or storage of leachable wastes are prohibited.

702 & Appendix A-1 “Minimal Lot Area by Soil Type”:- to allow a contiguous lot area of 15,738 sq. ft. outside of the wetland and WWPD where 30,000 sq. ft. is required; and to allow a principle structure within the WWPD where it is required to be located within a minimum area of 10,000 sq. ft. outside of the WWPD.

- Mark Gross of MHF Design Consultants addressed the Board. He explained this project was submitted to the Zoning Board in 2006 and variances were granted but the project was stalled in the process of obtaining the final condition of the Watershed Special Permit. Some of the variances are no longer needed due to ordinance changes. This is a 5.9 acre parcel and only 4/10th of an acre will be developed on the parcel, the remaining property will be put in a Conservation Easement. The proposal has not changed and is for a single family house with a driveway and septic system. The parcel is not buildable without variances due to the setback requirements. To mitigate impact the roof will drain into an underground infiltration system and there will be an infiltration trench around the driveway to capture runoff and infiltrate it into the ground. The septic is outside of the WWPD. He then read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked if there has been a change in the wetland since the 2006 application and Mr. Gross replied he had it re-flagged and the line hasn't changed.

- Mr. Partington asked if the conditions from 2006 would be the same now and Mr. Gross explained the suggestions then were regarding the use of pesticides and fertilizers. Mr. Partington then read a comment from the Conservation Commission into the record stating they would like to see restrictions on the use of pesticides and fertilizers on this lot (i.e. natural products).
- Mr. Scholz asked about another area on the property outside of the WWPD for this project and Mr. Gross explained it is very small.

The Chair opened the hearing to the public at 8:28pm.

- General Berge, 14 Doiron Road, stated they all live on nonconforming lots and have to live with Planning and Zoning Regulations. He believes there is no hardship, it is owned by a company that is going to build a house and flip it not live there. He stated the lot floods and has many animals living there. He also stated concerns for the lake if there is a septic failure.
- Mr. Samsel explained constitutionally the owner has the right to do what they can with the lot. The ZBA is here to provide relief to allow that to happen otherwise you could have a land taking. He also noted there are no guarantees with septic but the designs are approved by the state.
- Ron Preble, 15 Cole Road, asked if the condition to not use fertilizer or pesticides would be followed up on. He feels common sense should be used. Mr. Partington asked if anything makes sense to be built on this lot and Mr. Preble said no because it is a swamp.
- Bill Mender, 36 Doiron Road, stated he is opposed to the proposal. He feels the lot will flood and the septic will be compromised and leach into the lake.
- Mr. Gross stated there are natural fertilizers they can use and if it is a condition people will follow it. They are only developing .4 acres and there will no usage on over 5 acres of the property. He also stated the elevation of the wetland is about 166ft and the basement floor of the proposed house will be at 175ft so flooding is not a concern. He noted there is a 12-15ft rise from the road to the wetland.

The Chair closed the public portion at 8:40pm.

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

- Mr. Partington stated they have a constitutional right to do something with this land. It comes down to whether this is a reasonable proposal for the lot based on the five criteria. The lot is unique due to WWPD and there is a hardship. He does not believe the proposal will diminish property values and it will not change the character of the area. He believes this is fairly reasonable for a lot this size.
- Mr. Tierney stated this was approved previously and with no changes in the lot legally it is still binding.
- Mr. Scholz stated there is no other location on the lot for the house and they are addressing drainage issues into the wetlands. The state has purview over the septic system to ensure it is conforming. His other concern regarding the elevation of the basement in relation to the wetland has been answered and the basement level will be high enough to not flood. He believes it should be conditioned on the filing of the Conservation Easement and restricted to the use of natural products for fertilizer and pesticides.
- Mr. Yennaco and Mr. Samsel both agree with all of the comments made by the Board.

Mr. Scholz motioned for Case #12-2014, Lot 13-K-37A, Cole Road/ 8 Doiron Road, in consideration of the 5 criteria, to grant relief from Section 601.3 – to allow a single family home with deck, well

and a portion of septic within the WWPD where it is not an allowed use; Section 601.4.6 – to allow a portion of the septic system within the WWPD where it is currently not allowed; Section 609.4.1.3 – to allow a septic system and leach field within the Aquifer Protection District where disposal or storage of leachable wastes are prohibited; and Section 702 & Appendix A-1 “Minimal Lot Area by Soil Type”:- to allow a contiguous lot area of 15,738 sq. ft. outside of the wetland and WWPD where 30,000 sq. ft. is required; and to allow a principle structure within the WWPD where it is required to be located within a minimum area of 10,000 sq. ft. outside of the WWPD; per plan submitted and conditioned upon the successful filing of a Conservation Easement, pesticides and fertilizer use be restricted to organic or natural products, and a Driveway Easement for 4 Cole Road (Lot 13-L-31) be provided, seconded by Mr. Partington. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #13-2014 into the record along with the abutter list and a letter of authorization from the owner authorizing Edward Herbert Associates to represent them in this case.

Lot 21-K-102, Case #13-2014

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Rawley Family Trust

Location – 146 Range Road

Zone – Residence A, Wetland and Watershed Protection District (WWPD), and Cobbetts Pond/Canobie Lake Protection Overlay

Variances from the following sections of the Zoning Ordinance are requested to permit a 3 lot subdivision with 2 new impervious driveways.

Section 616.6.4.1 – to permit two new impervious driveways to be constructed that will be closer than 75’ to a wetland where no new impervious driveways are allowed within 75’ of surface water or wetland area.

- Mr. Shane Gendron of Edward Herbert Associates addressed the Board. He distributed an updated site plan and a handout from DES which lists efficiency comparisons for best management in filtering practices, in which bioretention systems come out slightly on top of porous pavement. He noted porous pavement has worked well in commercial or condo settings since it requires maintenance but it is hard to put a covenant for maintenance on single family homes. They are proposing to use a bioretention swale with a normal paved driveway instead of porous pavement. The detention ponds have wetland species plantings, mulch, and gravel which cleans the water. They can hold a few feet of water during heavy rains which is then filtered and released into the wetland clean. He believes it is better than porous pavement which doesn’t work without maintenance. Bioretention swales can be easily cleaned with a rake and require maintenance of the filter, but they are robust. He then read the five criteria into the record. The Chair accepted the site plan as Exhibit A and the DES handout as Exhibit B.

Questions/Comments from the Board

- Mr. Scholz asked if the swale would go along the entire length of the driveway and Mr. Gendron replied it will end at the wetland crossings.
- Mr. Tierney stated this is just language within the ordinance and not a restriction. The Planning Board needs to work on the language of the zoning restriction.

The Chair opened the hearing to the public at 9:06pm.

- Kurt Lawlor Jones, 150 Range Road, stated there are many wells in the area that do not produce water. His well works and he is concerned if there is contamination he will not be able to drill a functioning well in this neighborhood. He prefers the most protected surface be used for the driveway.
- Dorothy Richter, 140 Range Road, stated the swales should be engineered and perc tests done for the design of them. She asked if this design had perc testing that document there is sufficient permeability of the soils and these swales would work. She also noted Mr. Gendron stated the bio swales will require periodic maintenance and if the variance is granted it should be conditioned on requiring maintenance.
- The Chair asked Ms. Prendergast if maintenance of porous pavement is required in the ordinance and Ms. Prendergast replied it is not.
- Gene Simmons, 140 Range Road, asked Mr. Gendron for clarification of a line on the plan that was not explained in the legend. He also questioned why perc tests weren't done on both sides of the driveway.
- Mr. Gendron stated the property is downstream and will not have much impact on Mr. Lawlor's well. He stated the swales will function without maintenance but not as properly. He also described the tests done for the design of the swale and noted this plan will go through an Engineering Review during the Planning Board process and all of these concerns should be brought up then. This proposal will also be less disruptive to the wetlands.
- Mr. Scholz asked what happens when pervious pavement isn't maintained and Mr. Gendron replied it turns into impervious pavement. Mr. Scholz asked how much of the driveway would be porous pavement and Mr. Gendron replied approximately 400ft.
- Brad Katz, 153 Range Road, asked if they will be notified of the Planning Board Meeting and Ms. Prendergast answered yes.

The Chair closed the public portion at 9:25pm.

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

- Mr. Partington stated the DES document stating the swale will do a better job of removing pollutants and runoff gives them the answer to most of the criteria. The only question is hardship criteria and what is unique about the property.
- Mr. Yennaco stated he has seen porous pavement fail and without proper maintenance it does not work. The swales work more efficiently over time and are more natural. Since you can't guarantee maintenance will be done the swales will work better in the long run.
- Mr. Tierney stated they don't have come before the Board if they are using pervious pavement and therefore will have no maintenance requirements which means you'll have no protection.
- Mr. Scholz thinks this is a unique situation where something more costly is more likely to fail and be less beneficial than something less expensive and easier to maintain.
- Mr. Samsel agrees with the comments made and encouraged the residents to attend the additional discussions with the engineers and Gove Environmental.

Mr. Scholz motioned for Case #13-2014, Lot 21-K-102, 146 Range Road, to grant relief from Section 616.6.4.1 – to permit two new impervious driveways to be constructed that will be closer than 75 ft to a wetland where no new impervious driveways are allowed within 75 ft of surface

water or wetland area conditioned on the planting schedule as presented and regular maintenance of the bio-retention swale system, seconded by Mr. Partington. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

The Chair took a 10 minute recess at 9:35pm and called the meeting back to order at 9:45pm.

Rehearing Request: ZBA Case #9-2014, 30 Horseshoe Road (Lot 17-L-78 & 17-L-78L2)

- The Chair explained the process for the rehearing and stated in order for a rehearing to be granted, the Board must determine if there was a technical error made or new evidence presented. The Chair then read the statements contained in the request for rehearing dated April 16, 2014 from Thomas J Leonard on behalf of the applicant Michelle C. Fontaine, Trustee of the Michelle C. Fontaine Revocable Trust. After each statement the Board discussed whether they believed it proved a technical error was made or new evidence was presented. The Board found that one of the statements warranted further consideration and determined the others did not prove technical error or provide new evidence.
- The Board discussed and gave consideration to the following statement: In making its decision, the Zoning Board of Adjustment used the incorrect standard to determine unnecessary hardship. Special conditions relating to the property requires the applicant demonstrate that the property is unique in its surroundings and that no fair and substantial relationship exists between the purposes of the ordinance and the application to the property. Here the geometric impact of buffers when combined with the physical impact of a road bisecting the property, demonstrate that the property is unique in its surroundings. No other property is bisected by the public road in the same manner to the same degree. No other property is impacted by the buffer areas for Cobbetts Pond and wetland supporting Cobbetts Pond. Here the proposed project is a reasonable one because it is a permitted use under the Town's applicable zoning ordinance. If the use is permitted, and a variance for setbacks and infringement on a buffer may not be denied may not be denied so long as the purposes of the zoning ordinance were accomplished. Vigeant v. Town of Hudson 151 N.H. 747 (2005). There was no credible evidence to support a conclusion that the project would injure Cobbetts Pond or the wetlands. Rather, there was credible and uncontroverted evidence that there would be no injury to the wetlands or Cobbetts Pond.
- The Board discussed whether a technical error was made relative to the denial of the variance and the reason stated in the motion of a potential threat to Cobbetts Pond; they agreed there was evidence presented to support the potential threat to the wetlands next to the garage. Some felt the connection was made since the wetlands feed into Cobbetts Pond. It was also noted there was discussion relative to the size of the building and if it were scaled to a more reasonable size there would be less of an impact. The question was asked if the decision was made based on the size of the structure and its runoff into Cobbetts Pond or the encroaching wetland and they agreed they were concerned with the runoff into the wetlands. Mr. Partington explained he gave this reason in the motion because he felt the burden of proof was not met and the testimony did not result in his thinking the 5 criteria were met or that there would be no damage to these areas. The Chair noted it may be asked considering the professional mitigation that was presented how you could conclude there will be an impact and Mr. Partington replied the other testimony and pictures they received put it into question since they didn't match up. The Board agreed this is within their right and how all of their decisions are made.

Mr. Partington motioned to deny the request for rehearing of ZBA Case #9-2014, on the basis that no new information was presented and no technical error was made, seconded by Mr. Scholz. Motion passed: 5-0.

Review and Approval of Draft Meeting Minutes – 03/25/14

Mr. Partington made a motion to approve the March 25, 2014 ZBA minutes as amended, seconded by Mr. Tierney. Motion passed: 5-0.

Old/New Business: Town IT Presentation/Advisement, Strawberry Festival call for Volunteers – Grill area

The Chair advised the Board on some IT updates including new PDF features created for maps which allow you to turn off and on several layers of data; OneDrive Cloud Computing to reduce paperwork; and the availability of town emails for Board members. After some discussion the Board has opted to seek the opinion of Attorney Campbell before deciding on using town email.

The Chair also asked any Board member interested in volunteering to work the grill area for the Strawberry Festival to email him.

Binder Updates: Table of Contents, Tab 1 – Member List, Tab 3 – 2014 Zoning Ordinance

Mr. Partington motioned to adjourn the April 22, 2014 Zoning Board of Adjustment Meeting at 10:40pm, seconded by Mr. Tierney. Motion passed: 5-0.

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