



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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### Zoning Board of Adjustment Approved Minutes May 13, 2014 at 7:30 pm

#### Board Members:

Mark Samsel, Chairman – Present

Mike Scholz, Vice-Chairman – Present

Heath Partington, Secretary – Present

Jay Yennaco, Member – Excused, arrived at 8:30pm

Jim Tierney, Member – Present

Mike Mazalewski, Alternate – Present

Tony Pellegrini, Alternate – Present

Kevin Hughes, Alternate – Excused

#### Staff:

Laura Scott, Community Development Director

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

The Chair requested and the Board agreed to reorder the agenda and move Case #5-2014 to later in the evening when Attorney Campbell arrives.

The Chair stated Case #16-2014 has been moved to May 27, 2014 due to an error in the posting of the hearing.

The Chair sat Mr. Pellegrini for Mr. Yennaco.

Mr. Partington read Case#14-2014 into the record along with the abutter list.

#### Lot 17-I-120, Case #14-2014

Applicant – Edwin Walkey

Owner – Walkey 2011 Family Trust

Location – 22 Walkey Road

Zone – Residence A, Cobbetts Pond/Canobie Lake Watershed Protection Overlay

Variances from the following sections of the Zoning Ordinance are requested to allow a 670 square foot two-story addition to an existing home.

**Section 406.2** – to allow an increase in the volume and footprint of an existing non-conforming structure thereby resulting in further non-conformance.

**702 and Appendix A-1** –to allow construction of an addition to a single family home 18 feet from a front lot line where 50 feet is required and 18.5 feet from a front lot line where 50 feet is required.

- Mr. Edwin Walkey addressed the Board. He stated this is a request to convert a summer camp into a temporary residence and allow an addition. He explained the amount of impervious surface proposed is less than 20% which makes this a Minor Watershed Application. This was previously approved in 2002 but never exercised and the plans haven't changed. The Chair clarified the variance is for the addition only and that seasonal conversion is approved through a different process.
- The Chair asked for clarification of the request for relief from two front lot lines and Mr. Walkey stated he has frontage on three roads. Ms. Scott explained when you have a corner lot you have two fronts.

- Mr. Walkey then read the five criteria into the record.

The Chair opened the hearing to the public at 7:50pm.

- Lynia Carideo, 26 Walkey Road, asked how close the addition would be to her property and how many stories it would be. She also stated her concern in regards to the right of way if the property is sold.
- Mr. Walkey explained the right of way is owned by the condo complex and stated the elevation will be the same as the existing building and will not be seen from her location.

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

- Mr. Partington stated in consideration of the five criteria he believes the request is consistent with the spirit of the ordinance and will not be contrary to public interest as there will be no change to the character of the area and no health or safety issues. There is benefit to the owner and no negative impact on the public and it will not diminish property values. The uniqueness is the location of the structure and the odd shape of the lot. He believes it is a reasonable plan and meets the five criteria.
- The Board agreed with Mr. Partington that it meets the five criteria.

**Mr. Scholz motioned for Case #14-2014, Lot 17-I-120, to grant relief from Section 406.2 to allow an increase in the volume and footprint of a non-conforming structure thereby resulting in further non-conformance and from Section 702 and Appendix A-1 to allow construction of an addition to a single family home 18 feet from the side lot line where 30 feet is required and 18.5 feet from a front lot line where 50 feet is required in consideration of the five criteria, seconded by Mr. Pellegrini. Motion passed: 5-0.**

The Chair advised of the 30 day appeal period.

The Chair sat Mr. Mazalewski for Mr. Pellegrini for Case #15-2014.

Mr. Partington read Case #15-2014 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 21-V-234, Case #15-2014**

Applicant – Edward N. Herbert Assoc. Inc.

Owner – 10 Roulston Road LLC

Location – 21 Fish Road

Zone – Residence A and Cobbetts Pond/Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow the razing and replacement of an existing year-round home.

**Section 405.2** – to allow replacement of an existing non-conforming structure with a new structure that is larger in area and/or volume.

**702 and Appendix A-1** –to allow construction of a new single family home 24 feet from the front lot line where 50 feet is required and 30 feet from a front lot line where 50 feet is required.

- Mr. Shane Gendron of Edward Herbert Associates addressed the Board. He explained this is an existing year round home. The home has mold issues and a leaking roof and is not livable. The owners would like to build something larger than currently exists and would like to center the house on the lot. It meets all setbacks except front. There is an existing state approved well and septic system. The septic is a clean solution system and the owners will have a full upgrade completed on the system prior to occupancy. There will be 15% impervious coverage once complete which makes this a Minor Watershed Application. Mr. Gendron then read the five criteria into the record.

**Questions/Comments from the Board**

- Mr. Mazalewski asked since the new home is proposed to be 1288 square feet which is the area of the footprint does that mean it will be one story only and Mr. Gendron replied they are asking for a 1288 square ft pad for the home and are not estimating the interior space. Mr. Mazalewski also asked why they aren't asking for relief from Ash Street as the house has three front setbacks that it has to meet and Mr. Gendron replied they don't need relief from the right of way and didn't ask for it as part of the variance. Ms. Scott stated it was put in the Hearing Notice. She also stated to be consistent, since the property is bound on three sides, relief would have to be requested for all three sides. The Chair stated they will proceed with the case as presented and if it is determined that relief is required from Ash St they will have to come back for that.

The Chair opened the hearing to the public at 8:15pm.

- Robert Bracey, 19 Fish Road, stated he is in favor of the project as he believes it will enhance property values and abate the existing nuisance conditions at the property. His concerns are if the height of the property will block his view and for public safety if any changes are made that blocks access to the easement road.
- Christine Fiorello stated she is concerned if the house is slid over it will block her view and could compromise her leach field.
- Catherine Rondeau, 17 Fish Road, agreed with the concerns for public safety and the height of the property.
- Pauline Fiorello, stated if her view is blocked it won't enhance her property value and if development continues around the pond the quality of the water will deteriorate further and you will not be able to use it for swimming.
- Mr. Gendron stated 32 feet to Ash St did not come up when he spoke with Ms. Prendergast and they did speak about averages which can be used to calculate for frontages. He stated this property meets Fish Road standards. He noted the property has a clean solution septic system and you can't do better than that to protect the pond. He stated they are only asking for relief from setback distance at this time.
- Mr. Tierney asked if they would consider a condition limiting the height to 1 ½ stories without adding elevation or a continuance until they can provide some elevations.
- Mr. Carpenter, owner, stated they haven't talked to a builder but to add a second story to the entire house would give them a square footage that the lot, neighborhood, and leach field could not support. They are thinking of a small loft with a shed roof but are waiting for this relief before they begin. He does not feel it would be appropriate for the Board to restrict them as they have rights as property owners. He also noted they are moving the house away from the right of way which will provide greater access.
- Mr. Scholz stated he is struggling with their request for relief from Section 405.2 as they haven't provided anything that shows what the increase in volume will be. Mr. Gendron replied the increase will be approximately 654 feet on pad but as they have stated they do not have a plan as they are waiting to see the outcome tonight before they move forward. Mr. Scholz stated he is still struggling with spirit and intent and public interest since they have no information on volume.
- Mr. Tierney stated there is a statutory requirement that all five points are met.
- Mr. Gendron asked for a recess so he could consult with his client and the Chair granted his request and called a five minute recess to 8:40pm.
- The Chair called the meeting back to order at 8:40pm and Mr. Gendron stated after speaking with his client they will agree to not go up more than a story and a half in the back but ask for a continuance to allow for the correct posting with the right setback relief.
- The Chair accepted the document Mr. Gendron presented as Exhibit A.

**Mr. Scholz motioned to continue Case #15-2014 to May 27, 2014 and re-notice to include setbacks from the front lot line and clarification on volume, seconded by Mr. Tierney. Motion passed: 5-0.**

The Chair sat Mr. Yennaco for Mr. Mazalewski.

**Lot 3-B-250, Case #16-2014**

Applicant – Esau & Mildred Stanley  
Owner – Same  
Location – 135 Rockingham Road  
Zone – Rural District

Variances from the following sections of the Zoning Ordinance are requested to allow a single family home with attached garage, new well and septic:

**702 and Appendix A-1, Minimal Lot Area by Soil Type** –to allow construction of a single family home with new well and septic where the lot will meet the minimal lot area square footage but will not meet the minimal lot area by soil type.

**Case #16-2014 will be moved to May 27, 2014 due to an error in the posting of the hearing.**

Mr. Partington read Case #17-2014 into the record along with the abutter list.

**Lot 21-K-25, Case #17-2014**

Applicant – Walter& Bethanie Scanlan  
Owner – Same  
Location – 72 Turtle Rock Road  
Zone – Residence A and Cobbetts Pond/Canobie Lake Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to permit for the addition of a roof over an existing L-shaped deck:

**Section 702 & Appendix A-1** – to allow a side setback of 24 feet where 30 feet is required; and a waterfront setback of 29 feet where 50 feet is required.

**Section 616.6.1.2** – to allow relief from submittal of a Major Watershed Application and to instead submit a Minor Watershed Application based on the minimal proposed construction.

- Walter Scanlan addressed the Board. He stated he currently has a mechanical awning over the deck and he would like to replace it with a hard awning. It will not cover the entire deck and the size of the deck will not change. They are also going to reduce the size of the breakfast balcony. He then read the five criteria into the record.

The Chair opened the hearing to the public at 9:00pm.

- Richard Coakley, 70 Turtle Rock Road, stated his concern was if his view would be blocked. Mr. Partington asked if the existing deck obstructs his view and Mr. Coakley answered no. Mr. Scholz asked if it would be a problem if the awning was placed in the same location as the existing mechanical awning and Mr. Coakley replied no. Mr. Coakley then distributed some pictures showing the view from his house to the water with the deck and mechanical awning as exists which the Chair accepted as Exhibit A.
- Mr. Scholz asked if the height would be the same as the existing awning and Mr. Scanlan answered yes.

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

- Mr. Partington stated he feels this is a minor change and he doesn't sense it will change the character or diminish property values. The uniqueness is the location of the existing deck.
- Mr. Scholz stated he struggles with the hardship criteria for Section 616.6.1.2 and can go either way with it.
- Mr. Tierney stated the request is to submit a minor application verses major.
- The Chair stated he is in favor of granting relief for both requests.

**Mr. Scholz motioned for Case #17-2014, Lot 21-K-25, to grant relief from Section 702 and Appendix A-1 to allow a side setback of 24 feet where 30 feet is required; and a waterfront setback of 29 feet where 50 feet is**

**required and from Section 616.6.1.2 to allow relief from submittal of a Major Watershed Application and to instead submit a Minor Watershed Application based on the minimal proposed construction, as presented, seconded by Mr. Tierney. Motion passed: 5-0.**

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #5-2014 into the record along with the abutter list.

**Lots 17-L-78 and 17-L-78L2, Case #5-2014**

Applicant – Thomas J. Leonard Esq.

Owner – Michelle C. Fontaine Revocable Trust

Location – 30 Horseshoe Road

Zone – Residence A and Cobbetts Pond/Canobie Lake Overlay Protection

An Application to Appeal an Administrative Decision has been filed in reference to a letter written on January 9, 2014 by Nancy Prendergast, Town of Windham ZBA/Code Enforcement Administrator, to Joe Maynard of Benchmark Engineering regarding the Town's position that Lots 17-L-78 and 17-L-78L2 are one lot bisected by a roadway where the owner believes they are two lots.

The Chair noted that Attorney Campbell will be representing the Community Development Department and not the ZBA in this case.

- Attorney Thomas J Leonard on behalf of Mr. and Mrs. Fontaine addressed the Board. He stated a variance was requested for a garage on a parcel of land across the street on Horseshoe Road in December and two separate lots were indicated. The Zoning Administrator, Ms. Prendergast, decided the application was inappropriate because they indicated two separate lots and the town treated it as one parcel bisected by a road and indicated in support of that position a letter from the Town Assessor dated August 14, 2012. She explained their remedy as land owners was to make an application to the Board of Selectmen for Lot Restoration. It is their position this is an incorrect legal proposition, this is not an involuntary merger and her action of merging them is illegal under the statute.
- Attorney Leonard distributed a handout which included Chapter 674 Local Land Use Planning and Regulatory Powers and Chapter 676 Administrative and Enforcement Procedures, a copy of the current owners Purchase and Sales Agreement, two property tax bills from 2011, two tax cards dated 7/5/12, a deed, a letter from Rex Norman Town Assessor dated 8/14/12, a letter of deficiency from the State of NH DES dated 4/30/07, a letter of Restoration Plan Approval from the State of NH DES dated 11/29/10, a letter from Laura Scott Community Development Director dated 4/23/12, a letter from Nancy Prendergast Code Enforcement Administrator dated 1/9/14, and a copy of the Plot Plan dated July 2009 which the Chair accepted as Exhibit A.
- Attorney Leonard cited Section 674:39a states no merger can happen without the consent of the owner and the owner did not consent to this action made by the Town Assessor or the Zoning Administrator therefore the municipal action is not authorized and is in violation of the statute. The notice received by the owner provided no opportunity for a hearing or discussion. He also stated Section 676:5 states the Zoning Administrator can only make decisions involving construction, interpretation or application of the terms of the ordinance and Stated the Zoning Board is only authorized to review decisions made by the Zoning Administrator if the decision fits this description per Section 674:33.
- Attorney Leonard stated Section 674:39aa specifically says in matters of involuntary merger a landowner has the right to unmerge it through the Selectmen and only if merged prior to September 18, 2010. This merger occurred in 2012. There is no authority for an involuntary merger after this date and no authority for review of an involuntary merger by the Zoning Board. There is no ordinance in the Town of Windham that merges substandard lots it has to be an affirmative municipal action.
- Attorney Leonard stated while they do not believe this should be reviewed in this way he will present the facts in the matter to show that this was not a voluntary merger. The Purchase and Sale Agreement

identifies the property as two parcels, there are two separate tax bills for each parcel and the tax map and tax card from the Town Assessor show two separate and distinct cards for this parcel.

- Attorney Leonard then distributed a three page handout showing a screen shot of the two lots for the tax map of Windham, an image from the website, and a recorded plan at the Rockingham County Registry of Deeds indicating two separate parcels with two separate tax map numbers signed by the Planning Board. The Chair accepted the handout as Exhibit B.
- Attorney Leonard stated at every juncture prior to the closing Mr. and Mrs. Fontaine were assured these were two separate lots, including by the Tax Assessor and the Settlement Agent. The deed showed two separate tax maps and lot numbers. They accomplished their due diligence.
- Attorney Leonard stated after the decision by the Zoning Administrator they did more research and found the road was deeded to the town in the 1940's. The deed reference is Book 1057 page 345 (at the Rockingham County Registry of Deeds) and is a deed of several people to the town for purposes of being a public road. They also found a letter from the State of NH DES which refers to the lots separate of each other and a code violation by the town which refers to the lots separately.
- Attorney Leonard stated there are no physical improvements on the second parcel that indicate it is intended to be part of the first parcel and there has never been an action taken to suggest there was any intention to abandon the lot line. Mr. Tierney stated the lot line goes across the road and Attorney Leonard stated it used to until it was deeded for a public road. Mr. Tierney stated the landowners sold the right of way to the town and Attorney Leonard stated it is a public road and the effect of that is two parcels. Mr. Tierney stated the prior owner reconstructed the house showing the lot line and the deed and plan show one lot. Attorney Leonard stated all that shows is the property they own and doesn't specify one lot or two. The Chair stated it totals the two lots together and Attorney Leonard agreed but stated you can have two parcels that remain separate in common ownership. Mr. Scholz stated you made a point that when the road got deeded to the town it created two lots and asked where it states that in 674:54 III a and Attorney Leonard stated that is a 1996 law and this was already two lots prior to that. Attorney Leonard also noted the Town's Zoning Ordinance defines a lot as one with specific boundaries and that is what you have here, two parcels with very specific boundaries. Mr. Tierney disagreed and stated the boundary is defined as going across the road and Attorney Leonard stated that is the towns land and cannot be included in the description, it has to be a separate parcel.
- The Chair asked what precipitated the letter from the Town Assessor dated 8/14/12 identifying the property as one parcel and Attorney Leonard answered there was no action on the part of the Fontaine's and it was perhaps a municipal action but not the result of any request on their part.
- Mr. Scholz asked if there was any evidence of prior permitting and Attorney Leonard stated the letters from NH DES are similar and recognizes the property as two lots. Mr. Scholz stated in the case of Keene v Meredith three things needed to be met, the history of separate assessments, separate descriptions in a deed, and prior permitting. Attorney Leonard stated it didn't say they had to be met they were considerations and the circumstances were they were two parcels separated by a road. The court indicated that when they are taxed as separate lots and identified on the tax map as separate lots with separate lot identification numbers and they are two individual parcels of land separated by a road they are two lots.
- Mr. Partington asked if there was any response to the 2012 letter from the Town Assessor and Mr. Leonard replied there was not because the Fontaines had just purchased the property and thought the notice was to consolidate the tax bills. The letter doesn't indicate there was a process.
- Attorney Campbell, on behalf of the Code Enforcement Administrator, addressed the Board. He distributed a packet of the deeds in question which the Chair accepted as Exhibit B. He stated the legal description of the property is that the property runs across the road and the first deed in the packet contains the historic description. The road was taken in 1946 but the assertion this created two lots is not true. He distributed a septic plan for the lot from 1974 that shows one parcel and includes the total acreage. Older tax maps prior to 1985 show this parcel as only one lot. In 1984 there was a plan for subdivision which shows the parcel at issue and does not associate a separate lot number. The reason in 1985 this land now has a number on it is because the Assessor's Office at that time had assigned separate numbers to old right of ways, private roads, and parcels. However subdivision approval was required at this time to create a separate lot and the

number was assigned without the benefit of a subdivision. He then distributed a two page handout from the NHMA Handbook, pages 126 and 127, which confirms the creation of Horseshoe Road back in 1946 would not have automatically created a lot line. He stated the septic plan calculations from 1974 and the tax maps from their origin until 1985 show this was considered one parcel. In summary, there was no subdivision approval yet a number was assigned to the land across the street, and he agrees this is how it has been carried on the Assessors Map from 1985 until the error was discovered in 2012 and the Assessor moved to correct the error. He agrees that the applicant did not have to appeal the Tax Assessors letter because it was not an interpretation based on the Zoning Ordinance; it was a letter to correct an error that had been discovered. This lot could not have been approved without Planning Board approval and variances in 1985. Ms. Prendergast's determination of whether or not this is a lot is a zoning determination and therefore is rightfully before the ZBA. He stated it is not an involuntary merger because it never was two lots and he does not believe that correcting the error in 2012 makes this an involuntary merger. The key exhibit is the septic plan which demonstrates in an intangible way that this was in fact one parcel. He believes Ms. Prendergast made the correct determination and asks the Board to uphold her decision and reaffirm this is one lot for the purposes of permitting and building.

- The Chair asked if the letter from the Assessor was precipitated because he noticed the error and Attorney Campbell suggested it could have been raised by brokers in advance of the closing, since Mr. Norman raised the question to Attorney Campbell in an email in July of 2012.
- Mr. Scholz asked if Attorney Campbell was aware of any situation where two lots are referred to by a single address and he replied he was not.
- Mr. Partington asked if any part of Ms. Prendergast's decision was based on what the Tax Assessor had done and Attorney Campbell replied it is likely she was aware of it as it was referenced in her letter.
- Mr. Yennaco stated in 1985 two lot numbers were created without subdivision approval, the property was sold twice, the house was razed and received permitting, it was sold again and you were emailed prior to the closing questioning the two lots, the property has two tax cards and two lot numbers, and Ms. Prendergast's letter only references the Tax Assessors letter. He asked if he believes the Fontaine's did their due diligence as buyers and if they should have to go back thirty years to see what the prior interpretation is. Attorney Campbell stated he is not saying they didn't do their due diligence, the question before the Board is whether or not Ms. Prendergast's interpretation is correct.
- Attorney Leonard noted the statement of whether there was one lot before 1985 or two lots is a legal conclusion. He does not agree with Attorney Campbell that it was subdivided in 1985 by the plan. He believes the language by the court in the decision for the case of Keene v Meredith "they were taxed as separate lots, they were shown on the tax map and had separate identification numbers" they went on to describe how they were separated by a public road and the court made this conclusory statement, " the plain fact of the matter is that these are indeed individual parcels of land separated by a road treated by the town as separate lots, there is therefore no division of a lot but rather the sale of one of two separate lots" is an important legal conclusion. He also stated the septic plan showing all of the land doesn't mean the owner disregards the lot lines within. He stated the actual letter from Ms. Prendergast refers to the action of the Assessor and she takes the position this was an involuntary merger that can be separated.
- Joe Maynard, Benchmark Engineering, stated DES didn't adopt site loading until the 1980's.

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

- The Chair explained the decision is to determine whether or not Ms. Prendergast made the correct decision in determining this was one lot and not two. He stated there have been challenges as a result of past actions by prior Town Officials that have come to fruition and looking at dates, timing, and intent is how they need to make their determination.
- Mr. Partington stated they are being asked to make a legal determination and that doesn't always line up with what he considers justice. From 1985 to 2012 the number of people that have believed this to be two lots is overwhelming. Looking at the history that led up to the decision in 2012 with the town side being this was an error correction and the applicant side that it was an involuntary merger of two lots made into one. The problem is since the decision was made in 2012 it needed to be appealed then to the courts. Ms.

Prendergast relied on that decision from the Tax Assessor in 2012 determining this is one lot in making her decision and it was the right decision to make.

- Mr. Scholz stated he believes Ms. Prendergast's determination was based on the information she had from the Tax Assessor and was reasonable and correct based on the information she had.
- The Chair asked if the information she had was determined in the right fashion.
- Mr. Yennaco stated he believes her determination should have been based on her own gathering of facts and not the Tax Assessors determination.
- Mr. Scholz stated he doesn't disagree but there is no evidence to support two lots and he thinks the outcome of Ms. Prendergast's decision of a single lot is correct.
- Mr. Tierney stated he agrees with Ms. Prendergast's letter even if she made the determination based on the Tax Assessors letter. The change to one lot was already made in 2014 and her decision is correct at that point. He stated he did not want to continue the case because he had already done his research and looked at the deeds and it is clear the town considered it as one lot. He agrees with the Administrative Decision.
- The Chair stated he would go back to the 84 drawing and there were adjustments made through a Town Official. Ms. Prendergast could have done more due diligence but the determination would have ended up the same way.

**Mr. Tierney made a motion to deny the appeal for Administrative Decision and uphold the letter by the Code Enforcement Administrator for Case #5-2014 dated January 9, 2014, seconded by Mr. Scholz. Motion passed: 4-1-0 with Mr. Yennaco in opposition.**

The Chair called a five minute recess at 11pm and the meeting was called back to order at 11:06pm.

Mr. Partington read Case #18-2014 into the record along with the abutter list and letter of authorization from the owner authorizing Joseph Maynard of Benchmark Engineering to represent them in this case.

**Lot 17-C-105B, Case #18-2014**

Applicant – Benchmark Engineering, Inc.

Owner – Carole Martin

Location – 45 Sawtelle Road

Zone – Residence A and Cobbetts Pond/Canobie Lake Protection Overlay Districts

Variances from the following sections of the Zoning Ordinance are requested to raze an existing single family home and construct a new single family dwelling with new septic and well.

**Section 405.2** – to allow replacement of an existing non-conforming structure with a new structure that is larger in area and/or volume.

**Section 702 & Appendix A-1** – to allow a lot area of 7,213 square feet where 50,000 square feet is required; to allow 100 feet of frontage where 175 feet is required; to allow side setbacks of 19 feet and 11 feet where 30 feet is required; and a front setback of 10 feet where 50 feet is required.

- Mr. Maynard addressed the Board. He explained there is an existing single family home with a deck toward the lake and a driveway off of Sawtelle Road. The home is currently two feet off of the Sawtelle Road right of way and the lot is encumbered by a large driveway area used by an abutting property through an easement, this makes up for most of the lots impervious coverage which is at about 40%. They are asking to raze the existing house and center it on the property, eliminate the existing driveway and add a new one. They will also install a new drilled well and a new state approved septic system. The house will be staggered so as not to impede anyone's view to the lake. The proposed building coverage will be 18% once complete. Mr. Maynard then read the five criteria into the record.

**Questions/Comments from the Board**

- The Chair asked the proposed height of the property and Mr. Maynard replied it will be 1 ½ story dormered and under the 35ft town requirement.

- Mr. Scholz asked if the impervious coverage will be decreased by 2% and Mr. Maynard answered yes. The Chair opened the hearing to the public at 11:15pm and hearing none the public portion was closed.

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

- The Chair stated he believes this is an improvement with the proposed positioning of the home, decrease in impervious coverage, and new septic.
- Mr. Partington stated he believes the spirit of the ordinance is met as there is no change to the character of the neighborhood and there is a betterment because the house is being pulled off the right of way; he believes substantial justice is met as there is a benefit to the owner and no negative impact to the public, there is no diminishment of property values, and the lot is unique because it is undersized and the house is currently located near the road.
- Mr. Tierney stated it is a good design and a big improvement on the lot.
- Mr. Scholz stated it meets the hardship criteria and he has no issue with it.

**Mr. Scholz motioned for Case #18-2014, Lot 17-C-105B to grant relief from Section 405.2 to allow replacement of an existing non-conforming structure with a new structure that is larger in area and/or volume and Section 702 & Appendix A-1 to allow a lot area of 7,213 square feet where 50,000 square feet is required; to allow 100 feet of frontage where 175 feet is required; to allow side setbacks of 19 feet and 11 feet where 30 feet is required; and a front setback of 10 feet where 50 feet is required as presented, seconded by Mr. Partington. Motion passed: 5-0.**

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #19-2014 into the record along with the abutter list and letter of authorization from the owner authorizing Joseph Maynard of Benchmark Engineering to represent them in this case.

**Lot 25-D-3, Case #19-2014**

Applicant – Benchmark Engineering, Inc.

Owner – George & Nancy Kimball

Location – 27 Rock Pond Road

Zone – Residence A District

Variances from the following sections of the Zoning Ordinance are requested to construct a 22 foot X 36 foot cabana/shed within the required building setbacks:

**Section 702 & Appendix A-1** – to allow a rear setback of 10 feet where 30 feet is required and a front setback of 32 feet where 50 feet is required.

- Mr. Maynard addressed the Board. He explained this came before the Board last fall and since the size of the proposed cabana has changed from 16x24 to 22x36 they are back to ask for a larger size. There is a septic system behind the home and since the soils are very sandy and gravelly this is pushed back to the rear lot line so the footings will not undermine the leach field. He also noted the side setback request is to a paper row owned by the Town of Windham and is at least 30feet which is the current requirement. He distributed a letter of support from a neighbor which the Chair accepted as Exhibit A. Mr. Maynard then read the five criteria into the record.

The Chair opened the hearing to the public at 11:30pm.

- Mr. Partington read a letter (Exhibit A) from Stephen and Patricia Petron of 26 Sharon Road in support of this request into the record.

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

- Mr. Scholz stated he has no issue and it meets the five criteria. It is not contrary to public interest and is consistent with the spirit and intent of the ordinance and will do substantial justice without diminishing property values and meets the hardship criteria.

**Mr. Scholz motioned for Case #19-2014, Lot 25-D-3, to grant relief from Section 702 & Appendix A-1 to allow a rear setback of 10 feet where 30 feet is required and a front setback of 32 feet where 50 feet is required as presented, seconded by Mr. Partington. Motion passed: 5-0.**

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #20-2014 into the record along with the abutter list and letter of authorization from the owner authorizing Joseph Maynard of Benchmark Engineering to represent them in this case.

**Lot 8-A-58, Case #20-2014**

Applicant – Benchmark Engineering, Inc.  
 Owner – Richard & Cori Adams  
 Location – 25 Seavey Road  
 Zone – Rural District

Variances from the following sections of the Zoning Ordinance are requested to raise the roof of the structure for additional living area:

**Section 406.2** – to allow an increase in the volume and footprint of an existing non-conforming structure thereby resulting in further non-conformance.

**Section 702 & Appendix A-1** – to allow a lot area of 6,850 square feet where 50,000 square feet is required; to allow 100 feet of frontage where 175 feet is required; to allow side setback of 23 feet where 30 feet is required; and a front setback of 2 feet where 50 feet is required.

- Mr. Maynard addressed the Board. He explained this property has no basement and limited storage area. They are not asking to expand the existing footprint just to increase the volume. He also noted they just installed a new clean solution septic system. He then read the five criteria into the record.

**Questions/Comments from the Board**

- Mr. Scholz asked since they are not changing the footprint or setbacks why they need relief from Section 702 & Appendix A-1 and Mr. Tierney explained the new level will be in the setback.
- Mr. Mazalewski asked if they will do any foundation work and if there will still be two bedrooms and Mr. Maynard answered no foundation work and they can only have 2 bedrooms because of the loading criteria.

The Chair opened the hearing to the public at 11:45pm and hearing none the public portion was closed.

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

- Mr. Scholz stated he does not think this will be contrary to public interest and meets the spirit and intent of the ordinance. He believes it will do substantial justice and surrounding property values will not be diminished. He believes it meets all five criteria.
- Mr. Partington stated he does not think it meets the criteria of public interest or spirit and intent of the ordinance and is too much house too close to the road.
- The Chair stated he agrees with Mr. Scholz.
- Mr. Tierney stated his concern about going up was whether it would impact an abutting property but since it is down in the valley and under the height limitation he is comfortable with the request.

**Mr. Scholz motioned for Case #20-2014, Lot 8-A-58, to grant relief from Section 406.2 to allow an increase in the volume and footprint of an existing non-conforming structure thereby resulting in further non-conformance and Section 702 & Appendix A-1 to allow a lot area of 6,850 square feet where 50,000 square feet is required; to allow 100 feet of frontage where 175 feet is required; to allow side setback of 23 feet where 30 feet is required; and a front setback of 2 feet where 50 feet is required as presented, seconded by Mr. Yennaco. Motion passed: 4-1 with Mr. Partington in opposition as he believes it is contrary to public interest and the spirit of the ordinance is not observed.**

**Review and Approval of Draft Meeting Minutes – 04/22/14**

**Mr. Partington made a motion to approve the April 22, 2014 ZBA minutes as amended, seconded by Mr. Tierney. Motion passed: 5-0.**

**Old/New Business:**

The Chair informed the Board that Attorney Campbell recommended they use a Town Email address and if they chose to do so they should inform Ms. Scott.

**Binder Updates:** Tab 8 - 2013 ZBA Handbook

**Mr. Tierney made a motion to adjourn the May 13, 2014 Zoning Board of Adjustment Meeting at 11:50pm, seconded by Mr. Scholz. Motion passed: 5-0.**

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