



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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**Approved Minutes Zoning Board of Adjustment
June 14, 2016
7:30pm @ Community Development Department**

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

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Staff:

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

Meeting called to order at 7:31p.m. by Chairman Samsel.

Chairman Samsel reviewed the process for the public

Chairman Samsel noted that case numbers 16 and 17 were for the same property. He questioned if the board was comfortable hearing them together and the board agreed that would be appropriate.

Lot 25-G-30 & 40, Case # 16-2016

Applicant Joseph Maynard

Owner-Windham Marblehead Properties LLC & South Fork Properties LLC

Location-36 Marblehead Road

Zoning District-Residence A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow each dwelling area to be less than the required 100 ft. by 100 ft. rectangle development box and less than the required 30,000 sq. ft. of contiguous area, and from **Section 603.1.1** of the Windham Zoning Ordinance to allow multiple dwellings per lot, where only one (1) dwelling per lot is allowed.

Lot 25-G-30 & 40 Case # 17-2016

Applicant Joseph Maynard

Owner-Windham Marblehead Properties LLC & South Fork Properties LLC

Location-36 Marblehead Road

Zoning District-Residence A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Sections 601.3, 601.1, 601.4.2, 601.4.5** of the Windham Zoning Ordinance to allow the reduction of the WWPD to 25 ft. in the area of units 1 & 2.

Ms. Skinner read Case #16-2016 and Case #17-2016 and abutters list into the record.

44
45 Mr. Joe Maynard presented the application. The property is actually two lots that they are merging.
46 It is a project that has been in process since 2015. Originally it was 25 – 55+ age restricted units.
47 The project was not well received by abutters so they worked towards a reasonable request. They
48 have settled on eight condominium units accessed from a 14’ private roadway. There will be a
49 cistern and each unit will have sprinklers.

50
51 They were before the board because two units along Stonybrook Road are within the WWPD. In
52 order to develop the road there would be a WWPD impact. The second aspect deals with the side
53 gradient where they have dredge and fills proposed. The side gradient will be a culvert. They had a
54 wetland scientist, Nancy Rendell, review the project and she provided a letter with her findings
55 (Exhibit A). She felt that keeping the impacts to one location would help the overall water quality
56 on the site.

57
58 Mr. Maynard read the five criteria into the record.

59
60 Mr. Partington questioned the sections of the ordinance he was requesting relief from. He noted for
61 section 601.3 they generally ask for certain uses. Mr. Maynard felt it was better to set a distance
62 since it would give him more flexibility without having to come back to the board. He was looking
63 for a reduced WWPD on the sides of the units to be 20’ instead of 100’ so they could fit septic
64 systems and yards. Mr. Partington questioned why he needed that relief. Mr. Maynard noted it was
65 because houses will be constructed there which is not an allowed use.

66
67 Mr. Partington questioned why he would ask for relief from 601.4, which is the general purpose of
68 the ordinance. Mr. Maynard noted the purpose of the ordinance is a buffer to protect the wetlands
69 and he felt it was better to be safe and ask for relief from that section.

70
71 Mr. Partington clarified that sections 601.4.2 and 601.4.5 were requests to get the calculation
72 changed. Mr. Maynard indicated that was correct, but only in the areas of buildings one and two.
73 Mr. Partington questioned if the relief would actually be for 200’. Mr. Maynard noted it could
74 potentially be that, and the final calculations would be clearly indicated on the final plat that will be
75 recorded at the registry. He would also reference in the notes, the variance if it was granted.

76
77 Mr. Partington questioned if the original 55+ proposal would have required a WWPD variance. Mr.
78 Maynard noted it would because the road comes in and across the wetlands in the same location.

79
80 Mr. Scholz noted that for 601.1 and 601.3 they typically receive requests for a specific use and
81 questioned if he was asking for a blanket relief. Mr. Maynard noted he was but was open to some
82 form of other restrictions.

83
84 *Mr. Morgan Hollis, Attorney*

85 Mr. Hollis noted that his role in the application was in regard to the variance dealing with lot size,
86 area and frontage. This zone requires frontage for each lot. This project is essentially one lot with
87 eight condo units on it; each will have defined common areas. The approximate footprints will be
88 40’x80’. The condo units will have no frontage because the access will be a private driveway with
89 each unit having their own smaller driveways. It will start as 20-22’ wide and will then narrow to
90 14’ wide. The final design is still up to the planning board.

91

92 They've limited it to one access point, which will be a private driveway, not a town road. The
93 proximity to Rock Pond was a sensitivity point to neighbors. Behind the property, there are a lot of
94 neighbors that want as little development as possible who requested that they preserve some land,
95 which lends itself to a cluster development or condominiums with open space. The neighborhood
96 will have the same character as one with single-family homes. They have tried to space the homes
97 fairly well, any impact from closely spaced lots is limited to the internal site.

98
99 Mr. Hollis believes they meet all five criteria and reviewed his points.

100
101 They obtained an appraisal from J. Chet Rogers. LLC, Commercial Real Estate Appraiser from
102 Hollis, NH. He did an analysis of potential impact of this development to surrounding properties.
103 His report (Exhibit B), shows in his opinion there will be no negative effect on the value of
104 surrounding properties.

105
106 Chairman Samsel opened the hearing to the public.

107
108 *Doug Roberts – 15 Canterbury Road*

109 Mr. Roberts is a direct abutter and believes he will be the most heavily impacted. He has been very
110 involved in the project over the last few years. He applauds all involved for reaching out to the
111 community and coming up with a great solution. They have gone from a very high-density complex
112 to eight units thus resulting in less impact to Rock Pond, the aquifer on Canterbury Road, which is
113 very sensitive, and property values. He would ask the board to consider how far they have come. On
114 behalf of the residents on Canterbury Road, they unanimously support this proposal.

115
116 *Wayne Morris – President of Rock Pond Improvement Association*

117 He has been involved in the project from the beginning. Mr. Morris noted as the process moves
118 forward, they will ask for covenants that could be placed on the project for drainage, and built in
119 controls for fertilizers. When they look at the difference in the two plans, the impacts to WWPD are
120 probably similar for the road. They had discussions on how to minimize the impact. He noted the
121 wetland scientist recommended a 25' no cut buffer. He would hope that would stay as a condition of
122 approval.

123
124 *Mike Fiore – 27 Emerson Road*

125 Mr. Fiore is also part of the Rock Pond Improvement Association. He noted the association was
126 looking for something they could get behind. This revised project is reasonable and something they
127 could support.

128
129 *Bruce Real – 34 Marblehead Road*

130 The residents of Marblehead Road support the development and would like to ask for acceptance of
131 the variance.

132
133 Mr. Maynard added that in general the board has heard from the neighbors and how they have
134 worked hard towards a mutual agreement. They believe it is a very reasonable use.

135
136 Mr. Partington clarified exactly where the 25' no cut buffer would be located. Mr. Maynard noted it
137 would be 25' from the proposed Stonybrook Road to the existing rock wall and run east and west of
138 units one and two.

139

140 Ms. Skinner noted there were two letters from the Conservation Commission. The letter dated
141 5/26/16 stated they had no issues with the plan. The letter dated 6/9/16 had no further comment.

142
143 **MOTION: Mr. Breton made a motion to go into deliberative.**

144 **Mr. Scholz seconded the motion.**

145 **No discussion**

146 **Vote 5-0**

147 **Motion carries**

148

149 Mr. Scholz noted there was no letter from TRC in their packets. Mr. Maynard noted they met that
150 morning; he had asked the chief to send a letter but none had been created yet.

151

152 Chairman Samsel stated he appreciates the work that everyone involved has put into the proposal.
153 He wants to remind everyone that their determination is different from the Planning Board because
154 they have legal points they need to consider.

155

156 **Lot 25-G-30 & 40 Case # 17-2016**

157 Mr. Partington has issues with granting relief for 601.1, 601.4.2 and 601.4.5. He does not believe
158 they meet the criteria for granting the variance for all of those. When he looks at 601.3, they could
159 grant the variance for WWPD, specifically the houses and their driveways.

160

161 Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five
162 criteria for 601.3.

163

164 Mr. Scholz questioned what the impact would be if they didn't grant relief to 601.4.2 and 601.4.5.

165 Mr. Partington noted WWPD could be increased by 100' so they would be granting the use of the
166 structures in WWPD. He believes they should leave the calculations the way they are and allow the
167 structures and driveways.

168

169 Mr. Scholz felt that 601.1 was not needed and they didn't meet the criteria for that but did meet the
170 criteria for 601.3. Mr. Breton and Ms. Skinner agreed.

171

172 Members discussed whether they should simply state that relief from 601.1, 601.4.2 and 601.4.5
173 was not needed or if it should be included in a motion.

174

175 Attorney Morris made a point of order.

176

177 **MOTION: Mr. Breton made a motion to go back into public session for point of order.**

178 **Mr. Scholz seconded the motion.**

179 **No discussion**

180 **Vote 5-0**

181 **Motion carries**

182

183 Attorney Morris requested to withdraw the application for points 601.1, 601.4.2 601.4.5.

184

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

186 **Mr. Scholz seconded the motion.**

187 **No discussion**

188 **Vote 5-0**
189 **Motion carries**
190
191 **MOTION: Mr. Breton made a motion to accept Attorney Morris' withdrawal for points**
192 **601.1, 601.4.2 601.4.5**
193 **Ms. Skinner seconded the motion.**
194
195 *Discussion: Mr. Partington and Mr. Scholz believed it would be highly unusual for them to accept a*
196 *withdrawal after going into deliberative and would not vote in favor. Chairman Samsel agreed.*
197
198 **Mr. Breton withdrew his motion and suggested they deny without prejudice.**
199
200 **MOTION: Mr. Scholz made a motion to deny without prejudice the variance from Sections**
201 **601.1, 601.4.2, 601.4.5 of the Windham Zoning Ordinance.**
202 **Mr. Breton seconded the motion.**
203 **No discussion**
204 **Vote 4-1. Mr. Partington against.**
205 **Motion carries**
206
207 **MOTION: Mr. Breton made a motion to approve the variance request from Section 601.3 of**
208 **the Windham Zoning Ordinance conditional upon a 25' no cut buffer between the proposed**
209 **Stonybrook Road to the existing rock wall and run east and west of the two homes.**
210 **Mr. Scholz seconded the motion.**
211
212 *Discussion: Mr. Scholz noted the two houses and the driveways are in the relief, but he doesn't*
213 *believe the yards were covered.*
214
215 **Mr. Breton withdrew his motion.**
216
217 **MOTION: Mr. Partington made a motion to approve the variance request from Section 601.3**
218 **of the Windham Zoning Ordinance for the two homes and the two associated driveways with**
219 **the conditional that a 25' no cut buffer be maintained between the proposed road and the**
220 **stone wall to the south and run east and west of the two homes as presented.**
221 **Mr. Breton seconded the motion.**
222 **No discussion**
223 **Vote 5-0**
224 **Motion carries.**
225
226 Chairman Samsel reminded the applicant there is a 30-day appeal period.
227
228 **Lot 25-G-30 & 40, Case # 16-2016**
229 Chairman Samsel noted it is very rare to get such strong support from neighbors in crafting positive
230 changes He thanks everyone who has participated. He believes the five points have been met.
231
232 Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five
233 criteria.
234

235 Mr. Scholz requested that the number of units be referenced in the approval. He agreed the five
236 criteria had been met. Mr. Breton and Ms. Skinner agreed.

237
238 **MOTION: Mr. Scholz made a motion to approve the variance request from Section 603.1.1 of**
239 **the Windham Zoning Ordinance to allow 8 dwelling units on a single lot in a condominium**
240 **form of ownership.**

241 **Mr. Breton seconded the motion.**

242 **No discussion**

243 **Vote 5-0**

244 **Motion carries**

245

246 Chairman Samsel reminded the applicant there is a 30-day appeal period.

247

248 **Lot 17-M-38, Case # 18-2016**

249 **Applicant-Joseph Maynard**

250 **Owner-Judy Denardo**

251 **Location-8 York Road**

252 **Zoning District-Residence A and Cobbett's Pond and Canobie Watershed Protection District**
253 Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance, to
254 allow a dwelling to be constructed on a lot with 7,500 sq. ft. where a minimum 50,000 sq. ft. is
255 required, frontage of 78 ft., where 175 ft. is required, 25 ft. front setback, where 50 ft. is required, a
256 9 ft. east setback where 30 ft. is required and a 16 ft. west side setback, where 30 ft. is required.

257

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

259

260 Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

261

262 Mr. Maynard reviewed the application. The property is across the street from Cobbett's Pond. There
263 is an existing 900 sq. ft. house with detached shed, on site septic, that utilizes a community well.
264 The proposal is to put a new home on the property. They are favoring the east side of the property
265 because of where the ROW is and it allows the new home to look down the driveway and get a
266 better view of the water. They will also install a new septic system and private well. They currently
267 have just over 22% of impervious coverage and are proposing 29.1%.

268

269 Mr. Breton noted it would make the shed more non-conforming. Mr. Maynard stated they would
270 correct that and meet the requirements.

271

272 Mr. Maynard read the five points into the record.

273

274 *Donald Flored – 17 York Road*

275 He thinks it is great. It would be an improvement and would like to see the project move forward.

276

277 Ms. Skinner read a letter from the Conservation Commission, which stated they have no issues with
278 the plan.

279

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

281 **Mr. Scholz seconded the motion.**

282 **No discussion**

283 **Vote 5-0**
284 **Motion carries**

285
286 Chairman Samsel sees it as an improvement and has no issues with the project.

287
288 Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five
289 criteria. Mr. Breton, Mr. Scholz and Ms. Skinner agreed.

290
291 **MOTION: Mr. Partington made a motion to grant the variance from Section 702, App. A-1 of**
292 **the Windham Zoning Ordinance, to allow a dwelling to be constructed on a lot with 7,500 sq.**
293 **ft. where a minimum 50,000 sq. ft. is required, frontage of 78 ft., where 175 ft. is required, 25**
294 **ft. front setback, where 50 ft. is required, a 9 ft. east setback where 30 ft. is required and a 16**
295 **ft. west side setback, where 30 ft. is required, as plans submitted.**

296 **Mr. Breton seconded the motion.**

297 **No discussion**

298 **Vote 5-0**

299 **Motion carries.**

300
301 Chairman Samsel reminded the applicant there is a 30-day appeal period.

302
303 **Five minute recess at 9:12**

304
305 **Lot 11-A-570 & 580, Case # 19-2016**

306 **Applicant**-Joseph Maynard

307 **Owner**-Mesiti Indian Rock Road LLC & Windham Lowell Road Development, LLC

308 **Location**-1 North Lowell Road

309 **Zoning District**-Village Center District

310 Variance relief is requested from **Section 612.2.1** of the Windham Zoning Ordinance to allow
311 single-family dwellings in the Village Center District, which is not allowed.

312
313 Ms. Skinner read the case and abutters list into the record.

314
315 Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

316
317 Mr. Maynard reviewed the proposed project. There are two properties that are being merged into an
318 18.45-acre property. It is directly behind the town hall and accessed through Eastwood Road. There
319 is over 100' of elevation difference between Eastwood and North Lowell Roads. To make a
320 physical connection from North Lowell Road, there would have to be a lot of site work. They
321 reviewed several options for the property including apartment buildings, but the grades of the lot are
322 not suitable for that. The proposed plan is for 37 detached dwelling units. They don't have large
323 footprints so they don't have to level the site to create pads. The proposed lots minimize cuts and
324 fill along the slope. They are choosing not to go multi-family because of amount of site work
325 required. The site would have walking trails and sidewalks; the district requires both.

326
327 Mr. Scholz questioned if there was a future commercial lot. Mr. Maynard noted they are supposed
328 to have a commercial component to the lot in that district, they set aside a small area for that, but
329 there is no way to access it. On the plans they indicated a yellow area where a future roundabout

330 will go. They want to wait and see what will happen with that before they develop the commercial
331 lot.

332

333 Chairman Samsel confirmed the sidewalks would be paved. Mr. Maynard stated they would be.
334 Chairman Samsel questioned how they would control some of the permitted uses that are allowed in
335 that district that may not be appropriate in that kind of development (e.g., funeral home). Mr.
336 Maynard explained that there wouldn't be access from Lowell Road for retail or commercial
337 structures. The access is through a stub off Eastwood Road. Chairman Samsel questioned if the road
338 would be the same if there were apartment buildings instead. Mr. Maynard confirmed it would be
339 the same.

340

341 Mr. Maynard read the five criteria into the record.

342

343 Mr. Scholz questioned if the alternative would be duplexes. Mr. Maynard noted the bigger the unit,
344 the bigger the footprint and the more site work he has to do with the grade; smaller footprint
345 buildings can be stepped as he goes down the hill and disturb less.

346

347 Mr. Scholz questioned how many bedrooms there would be total. Mr. Maynard noted that every
348 time you change something, the calculations change, but approximately half of the homes would be
349 3-bedroom, 2,500 sq. ft. homes.

350

351 Chairman Samsel stated he understood the hardship, but was trying to weigh the purpose of the
352 district; how can the spirit of the ordinance be maintained. Mr. Maynard noted other developers in
353 the district were going with more commercial. They wrote the ordinance without taking into
354 consideration the terrain. The property doesn't have a lot of exposure of Rt. 111, so they don't have
355 a commercial component.

356

357 Chairman Samsel questioned if they would exclude certain uses through a homeowners association.
358 Mr. Maynard confirmed they would.

359

360 Mr. Maynard noted they would subdivide the portion on Rt. 111 to be developed as commercial
361 once they find out what is going to happen with the rotary. They may even give that land to the
362 town to accomplish the road improvements.

363

364 *Travis Wilkens, Eastwood Road*

365 He abuts the property. Mr. Wilkens expressed concerns about the change in character. Eastwood
366 Road currently has six houses on a cul-de-sac and they are proposing opening that up and putting in
367 37 units at the end of their road. The increased traffic and people will change the character of their
368 community. It seems very dense for their neighborhood. He hoped there could be discussion
369 between homeowners and the developer. He also had concerns about the level of resources (e.g.,
370 water) to support the homes.

371

372 Chairman Samsel reminded Mr. Wilkens that the town has an easement of Eastwood Road, which
373 typically means something will happen and it will connect at some point. If they wanted to build
374 apartments or commercial property, they wouldn't need a variance.

375

376 Mr. Breton noted if they were to put in three apartment buildings, they would have to devastate the
377 property; they are trying not to do that.

378
379 Mr. Wilkens stated again that he has concerns with the number of units through his road. It will
380 change the current character. Mr. Samsel reminded him that it could be even denser.

381
382 Mr. Scholz noted the engineer mentioned the soils would support three apartment units with 24
383 units, each having 2 bedrooms. That would be 72 units, supporting 144 bedrooms. This proposal is
384 half the number of units. There is the potential for more traffic volume and more density.

385
386 Mr. Wilkens noted he's looking at it from a ratio perspective and it seems really out of proportion.
387 He was unaware that the potential for the road existed. Chairman Samsel noted unfortunately, it is
388 allowed and they need to understand what they are buying and what's surrounding them.

389
390 *Michael Herst – 3 Eastwood Road*

391 He was in town for the village district vote and throughout all the discussions. His recollection was
392 that there was a horizontal plan that avoided the steep embankment. The connection off Eastwood
393 Road was supposed to be for emergency access for fire and police. The cul-de-sac did exist and the
394 town owned the ROW. They discussed how they would restrict that access with a gate and not
395 channel the village district through that neighborhood.

396
397 Chairman Samsel noted that plans at that time were just conceptual.

398
399 *Mary Bahal – 5 Eastwood Road*

400 She was very active with the village district to get people to vote against it. At that time they wanted
401 to put in commercial restaurants behind her house. They were told the ROW would only be used for
402 emergency vehicles or a walkway. She has always been against the village district and was
403 concerned about commercial going in there. She has concerns about property values, how densely
404 populated it will be and the traffic.

405
406 *Tom Case*

407 When the village center district was first established, they didn't realize what could be happening
408 now. What they had in the original plan was 20% residential, 60% commercial. Each project had to
409 have that ratio of commercial vs. residential but somewhere along the line they decided to remove
410 that ratio.

411
412 *Roger Hohenberger*

413 The town voted not to have single-family homes in this zone. His conception of the district was
414 Newburyport, nice shops with apartments above it. He understands the planning board wanted to
415 change the regulations because it wasn't being developed, but a board of five should not determine
416 what is in the best interest of the town, when the town voted for the village district. This is not in the
417 spirit and intent of the ordinance.

418
419 *Rick Welch*

420 Mr. Welch is helping design the development. They were close to moving forward with the
421 apartments. Their idea was to have a nicer looking property. He understands the concern about
422 increased traffic, but this project is night and day from what they can actually do. They build
423 communities with a lot of open space and create nice communities. They will have streetlights and
424 walking trails; each home will be slightly different. This route is a lot of extra work, but the ultimate
425 result will be much nicer.

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Letter from Jonathan F. Sycamore expressing concern with the project.

Letter from Tracey Partington expressing concern with the project. Ms. Partington’s letter spoke of support from Rockingham Planning Commission (RPC). Chairman Samsel noted he is a member of RPC and the Southern NH Planning Commission. He doesn’t remember support of the planning commission. They didn’t support it nor oppose it; they were neutral.

Mr. Breton confirmed that Tracey Partington was Mr. Partington’s wife and thought the board should know for transparency. The rest of the board had no issue with that.

Mr. Maynard noted they could do duplexes or apartments; the intent is to allow residential development just in a multi-family building. That doesn’t work on this property.

Sue Mesiti - 7 Ironwood Road

Ms. Mesiti does recall the discussions about the village district and she always expressed concern that Windham is not Newburyport. People leave Boston so they can have trees in their yard, not so they can live above a pizza shop. She has over 30 years of experience as a realtor. They need density in the district to shop and support the businesses. They are fulfilling that density and walkability to the commercial area. She thought what they were doing was wonderful.

Chairman Samsel asked Ms. Mesiti to reflect on the two levels of density—apartments vs. single-family homes. Ms. Mesiti questioned if they would rather have the look of apartments or nice single-family homes to get the density. Isn’t it up to the developer and the other boards to determine what will be the most marketable in our town? If they are denied the variance, they will go back to the duplexes.

Chairman Samsel questioned if the other access points were totally out of the picture. Mr. Maynard noted they would need grading easements if they tried to go through the town hall. Trying to make a connection from Lowell Road would require deeper cuts to weave a road into the grade. They would have to involve the town to make the connection from Lowell Road because it would have to go on the ballot.

Mr. Breton noted the road would be the same with duplexes or apartment buildings.

Mr. Scholz noted that with 74 apartments at 8 trips per day it would be 560 trips. 37 single-family units average 10 trips per day, which is 370 trips—far less.

Mr. Gregory reminded everyone that duplexes are not allowed, just multi-family which are three or more units.

Michael Hearst

They have never had any kind of contact from this group about their proposals. They’ve had no communications about what would or wouldn’t work. The exit road was never considered a primary access road.

Mary Bahal

473 They have never had any communication either. She hopes they have done a traffic study to see
474 how it would impact the road.

475

476 **MOTION: Ms. Skinner made a motion to go into deliberative.**

477 **Mr. Bretton seconded the motion.**

478 **No discussion**

479 **Vote 5-0**

480 **Motion carries**

481

482 Chairman Samsel noted they heard a lot of testimony and history.

483

484 Mr. Partington noted that the abutters should be careful what they wish for. This might be the least
485 offensive plan. They are next to a mixed-use district that allows great density and very few
486 setbacks. Ms. Mesiti made very good points. The village center purpose was to create a walkable
487 center that would enhance the quality of life in the town. Whether we agree with that, the town
488 voted it in.

489

490 Mr. Breton noted that the way the ordinance reads, it has all the components. They can put
491 residential in here; it is just a matter of the type. Is this type less intrusive to the neighborhood? The
492 road is going to be there no matter what they put in there. He's trying not to devastate the land.

493

494 Chairman Samsel questioned how this project enhances the quality of life in town with the mixed-
495 use center. We are weighing in against what could be.

496

497 Ms. Skinner noted they are looking at all the components of the district, but history is supposed to
498 be a component. It was sold to the town that they could save the historic homes that were there, but
499 they are all gone. They are missing a large component of the district.

500

501 Mr. Partington reviewed the five points.

502 Criteria 1, and 2: He believes it is contrary to the public interest and does not uphold the spirit of the
503 ordinance and the essential character of the area. It is not mixed use and not walkable, it doesn't
504 enhance the quality of life in town and goes against the master plan. With big apartment units you
505 could put businesses in there.

506

507 Mr. Scholz agreed. He understands the impact to the property, but doesn't believe they meet the
508 criteria for 1 and 2. He would much rather see this than the alternate plan, but it doesn't meet the
509 spirit of the ordinance.

510

511 Mr. Breton is weighing what they want the residential component to look like. He does not believe
512 it will enhance the area and doesn't want to see the land devastated. It is less intrusive and a much
513 better fit. Community-wise, this is a better way to get the residential component.

514

515 Chairman Samsel noted it is a challenge because everyone's vision for the district is different. It is
516 not contrary to the public interest because it follows the purpose of the district. Any project will
517 impact the neighborhood.

518

519 Ms. Skinner agrees with Mr. Partington.

520

521 Criteria 3: Substantial justice
522 Mr. Partington and Mr. Scholz did not believe it met substantial justice. Mr. Breton felt it did meet
523 substantial justice. Chairman Samsel was on the fence.

524
525 Criteria 4: Values not diminished
526 Mr. Breton felt any other type of residential structure would devalue abutter's properties. Mr.
527 Scholz did not believe this has been met because he does not see any evidence that values would be
528 diminished. Chairman Samsel did not believe it would diminish the value. Mr. Partington did not
529 believe the homes would diminish the values, but the traffic might. Ms. Skinner felt the amount of
530 traffic could diminish property values.

531
532 Criteria 5: Hardship
533 Mr. Partington felt it did meet this. Mr. Scholz felt it met this criteria because of the topography and
534 felt it is reasonable because it's a lot less density vs. what could be there. Mr. Breton and Ms.
535 Skinner agree.

536
537 **MOTION: Mr. Scholz made a motion to deny relief from Section 612.2.1 of the Windham**
538 **Zoning Ordinance to allow single-family dwellings in the Village Center District, which is not**
539 **allowed as requested.**

540 **Mr. Partington seconded the motion**

541 **No discussion**

542 **Vote 4-1**

543 **Motion carries**

544
545 Chairman Samsel noted it was 3 that they didn't meet.

546 Mr. Scholz noted it was 1-4 that they did not meet.

547 Mr. Partington noted it was 1-4 that they did not meet.

548
549 Mr. Breton asked to be excused because of the lateness of the meeting. The Chairman sat Mr.
550 Mazalewski for Mr. Breton.

551
552 **Lot 17-J-142, Case # 20-2016**

553 **Applicant**-Joseph Maynard

554 **Owner**-Shawn & Ashley Thrasher

555 **Location**-19 Gardner Road

556 **Zoning District**-Residence A, Cobbett's Pond & Canobie Lake Watershed Protection

557 Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to
558 allow a dwelling to be constructed on a 9,000 sq. ft. lot where the minimum lot size is 50,000 sq. ft.,
559 74 ft. frontage where 175 ft. is required, 10 ft. front setback, where 50 ft. is required, 15 ft. west side
560 setback where 30 ft. is required, 18 ft. east side setback where 30 ft. is required, 24 ft. lake setback
561 where 50 ft. is required.

562
563 Ms. Skinner read the case and abutters list into the record.

564
565 Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

566
567 Mr. Maynard reviewed the project. It is an existing single-family home that is 23' from the edge of
568 Cobbett's pond. A large chunk of the site has impervious coverage. There is a large concrete patio

569 next to the house, driveway, and lots of other paved and gravel surfaces. There is a big utility pole
570 at the corner. The wanted to move the home back further but they cannot move the utility pole
571 anywhere else. The new house is up against the 10' setback; the face of the house is 33' from the
572 water. The deck will be 24.5' from the water. The large concrete patio will be gone and a small
573 patio will be constructed. Gardner Road is a private road. The small lot abutting is a community
574 beach, not a building lot. A new septic system and well will be installed. The well sits under the
575 driveway in order for separation from the septic and the septic will be under the patio. They will
576 need to plant 80 or 90 trees to meet shoreland protection standards. To comply with shoreland
577 protection there will be an area that will be planted as undisturbed. They will end up with 47%
578 impervious coverage, which is a small reduction. It will meet all Cobbett's Pond requirements.

579
580 Chairman Samsel opened the hearing to the public.

581
582 Letter from Ken and Kelly Martineau, an abutter, expressed concern their view will be obstructed.
583 Mr. Maynard submitted photos showing that there are a number of trees that obscure any view he
584 has of the water. He has a filtered view from the corner of his house to the beach area.

585
586 Mr. Maynard read the five points into the record.

587
588 **MOTION: Ms. Skinner made a motion to go into deliberative.**

589 **Mr. Partington seconded the motion.**

590 **No discussion**

591 **Vote 5-0**

592 **Motion carries**

593

594 Chairman Samsel felt it met the five criteria. In regards to the letter from the abutter, he is happy
595 with Mr. Maynard's response and the photos submitted.

596

597 Mr. Partington reviewed the five criteria and stated the plan is reasonable and met all five criteria.

598 Mr. Scholz agreed.

599

600 Mr. Mazalewski noted it would have been nice to see a small reduction in coverage.

601

602 **MOTION: Mr. Scholz made a motion to approve the variance from Section 702, App. A-1 of**
603 **the Windham Zoning Ordinance to allow a dwelling to be constructed on a 9,000 sq. ft. lot**
604 **where the minimum lot size is 50,000 sq. ft., 74 ft. frontage where 175 ft. is required, 10 ft.**
605 **front setback, where 50 ft. is required, 15 ft. west side setback where 30 ft. is required, 18 ft.**
606 **east side setback where 30 ft. is required, 24 ft. lake setback where 50 ft. is required per plan**
607 **submitted.**

608 **Mr. Partington seconded the motion.**

609 **No discussion**

610 **Vote 5-0**

611 **Motion carries**

612

613 Chairman Samsel reminded the applicant there is a 30-day appeal period.

614

615 **Lot 17-J-104, Case # 21-2016**

616 **Applicant-Joseph Maynard**

617 **Owner**-Roberts Family Trust
618 **Location**-15 Rocky Ridge Road
619 **Zoning District**-Residence A and Cobbett's Pond and Canobie Lake Watershed Protection District
620 Variance relief is requested from **Sections 200 & 603.1** of the Windham Zoning Ordinance to allow
621 a garage to be constructed without a dwelling on the lot.
622

623 Ms. Skinner read the case and abutters list into the record.
624

625 Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.
626

627 Mr. Maynard noted an application for the property was before the board last year. The owner would
628 like to build a garage, but is not ready to build the home. The ordinance states they can't have an
629 accessory structure without a primary dwelling. She would have built just enough to make it work,
630 but the garage project turned into a huge project. Variances are good for two years and shoreline
631 permits are only good for five years. She has to act quickly so she doesn't lose the opportunity to
632 build the home close to the water.
633

634 Mr. Partington questioned what prevented him from building the garage. Mr. Maynard noted the
635 permitting process prevents it. A building permit is only good for one year; they are trying to be
636 upfront and realistic. They would prefer to not merge the lot with the abutting property she owns.
637 She is trying to save the lot for one of her children.
638

639 Mr. Maynard read the five points into the record.
640

641 Chairman Samsel opened the hearing to public
642

643 *Mr. Case*

644 He was in favor of the project.
645

646 **MOTION: Ms. Skinner made a motion to go into deliberative.**

647 **Mr. Partington seconded the motion.**

648 **No discussion**

649 **Vote 5-0**

650 **Motion carries**
651

652 Mr. Scholz did not believe it met the spirit of the ordinance. Mr. Partington didn't believe it met the
653 hardship criteria as well.
654

655 The board questioned if they needed to include a variance for section 200 and agreed they would
656 specify "relative to accessory building or use."
657

658 Mr. Partington reviewed the five criteria.
659

660 1., 2. – Mr. Partington and Mr. Scholz did not believe it met spirit of the ordinance.

661 3. They are not aware of any negative impact on the public.

662 4. They do not believe it will diminish property values.

663 5. They do not believe there is any hardship.
664

665 **MOTION: Mr. Scholz made a motion to deny the variance requested from Sections 200 &**
666 **603.1 of the Windham Zoning Ordinance to allow a garage to be constructed without a**
667 **dwelling on the lot.**

668 **Mr. Partington seconded the motion**

669 **No discussion**

670 **Vote 5-0**

671 **Motion carries**

672

673 Mr. Scholz felt it did not meet criteria 1, 2, 5.

674

675 Chairman Samsel reminded the applicant there is a 30-day appeal period.

676

677 **MOTION: Mr. Partington made a motion to adjourn at 12:09 a.m. Mr. Scholz seconded the**
678 **motion.**

679 **Vote 5-0-0.**

680 **Motion passes.**

681

682 **Submitted by Andrea Cairns**