OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Approved Minutes Zoning Board of Adjustment
August 23, 2016
7:30pm @ Community Development Department

Mark Samsel, Chairman - present
Heath Partington, Vice Chair - present
Pam Skinner, Secretary - present
Mike Scholz, Member - present
Bruce Breton, Member - excused

Mike Mazalewski, Alternate - present
Kevin Hughes, Alternate - excused
Jim Tierney, Alternate - excused
Jay Yennaco, Alternate - excused

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

Meeting called to order at 7:30p.m. by Chairman Samsel.

Chairman Samsel reviewed the process for the public.

Lot 2-B-300, Case #25-2016 continued from 8-9-2016
Applicant - Ryan Carr/GRD, LLC
Owner – Lionel St. Pierre & Joann Wing
Location – 38 E. Nashua Road
Zoning District – Rural
Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow frontage of 152 ft. for lot A and 90.5 ft. for lot B where 175 ft. is required in this district.

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

Daniel Miller represented the applicant. The owner purchased the property and is proposing to subdivide the lot into two lots. The property was part of a subdivision dating back to 1968 where all the lots had 151' of frontage. That lot was the only exception. There is an existing home on the lot. They do not meet the frontage requirements. They chose to make the size of the frontage for the lot with the existing dwelling closer to the rest of the lots in the neighborhood rather than split the frontage evenly between the two lots.

Mr. Miller noted frontage requirements are in place for emergency vehicle access and to prevent over-crowding. The lots are consistent with other lots in the area. They would be willing to split the frontage evenly if that is what the board wants. They can comfortably get a driveway on the proposed new lot. The public interest would not be affected by the variance, but would allow the owner to make maximum use of their property. The proposal would not affect surrounding property values since it is consistent with the other lots in the neighborhood. The structure can fit on the lot

and will comply with all other requirements. There is a wooded buffer along the side, which would remain. The only trees they would need to remove are along the front for the driveway. In terms of hardship, the lot dates back to 1968, there is not a lot of area to gain additional land to remedy the frontage issue. They could potentially make one lot with conforming frontage, but they wanted to avoid a "flag" lot.

Chairman Samsel noted the packet contained a configuration that presented a "flag" lot. Mr. Miller noted they presented different plans to conservation. He submitted new plans into the record (exhibit A).

Ryan Carr, property owner
Mr. Carr noted they still have to go to the planning board. They have done test pits, but have not done soil mapping yet. They did not want to move forward with soil mapping until they had the variance. Mr. Carr presented a map showing the lots along the road to show the size of abutting properties.

Jay Moltenbrey, 36 E. Nashua Road
Mr. Moltenbrey noted that although the other seven lots do not meet today's requirements, they met the requirements when they were created. The original owner of the property maintained a larger buffer. They are proposing a 90' frontage when 175' is required. Why do they have the requirement if they are not going to follow it? It will impact the value of their property because they will lose the wooded buffer. It would increase the tax rate. He does not believe it meets the five criteria. He would hope they would require that the wooded buffer remain and the driveway would be as close to the proposed lot A as possible.

Chairman Samsel questioned what Mr. Moletnbray's frontage was. Mr. Moltenbray noted it was around 150' but did not know exact frontage. His driveway is just opposite the wooded buffer and his home is close to the proposed lot line.

Marilyn Lanza, 44 E. Nashua Road
Ms. Lanza likes the rural nature of her property. She has lived there for many years. Putting in one more home decreases the value of her property. The town gets more revenue but at the expense of having a rural neighborhood.

Karen Moltenbrey, 36 E. Nashua Road
The applicant is proposing half the requirement for frontage. The lot does get wider towards the back, but not that wide. She is against the project. She does not see how her property value could increase. The proposed dwelling is going to be behind her. She will see the new house.

Mr. Scholz questioned if Ms. Moltenbrey could see the existing dwelling. She noted she could in the fall when there are no leaves on the trees. Ms. Moltenbrey added they would be taking a conforming lot and making two non-conforming lots.

Mr. Miller noted the conceptual plans show the home at 179' back from the front. They proved that they could fit a home on the lot and meet all other requirements. They are not proposing a "flag" lot.

Mr. Carr apologized that the new plans were a surprise. When they went to conservation they decided it was a better configuration. They would be happy to withdraw the application so everyone

would have time to review the materials if needed. Their intention is to not cut the buffer. They would be willing to write it into the plan that they would not disturb the buffer. They provided photos that showed the buffer. There is already an existing opening in the woods, which is where they determined they could put the home and not have to cut any trees. It would maximize the value of the property to have that wooded buffer. They would be happy to have that discussion with the planning board but they would be willing to accept a no cut zone as a condition of approval. They would also be willing to split the lot frontage so each lot would have 123' each.

Mr. Scholz questioned how far the existing garage was from the lot line. Mr. Carr noted it was 11' from the side. Mr. Scholz noted they would also need a variance for the garage because they are creating a new lot and all existing non-conforming structures are not in compliance.

Mr. Partington noted that if they include a no cut condition then they could not cut any trees at all, not just in the buffer. Mr. Carr noted they would like to remove some small brush for cosmetics, but they truly planned not to have to cut any trees.

Mr. Mazalewski noted without doing soil testing they even do not know if it can sustain the three-bedroom home. Mr. Carr noted as you come up the elevation the soils are better, they did do test pits. They believe the soils will sustain the 3-bedroom home. Mr. Carr added given the fact that the new plan was a surprise, they would be willing to come back with something more put together.

Mr. Moltenbrey noted even if the house went in that location it would meet the zoning regulations, but it still does not meet the frontage.

MOTION: Mr. Partington made a motion to go into deliberative.
Ms. Skinner seconded the motion.
No discussion
Vote 5-0
Motion carries

Chairman Samsel noted every case they hear is different and they weight the testimony separately.

Chairman Samsel questioned the non-conformity issue with the garage. Mr. Mazalewski noted they could remove the garage. Mr. Partington noted they could not force someone to remove a structure.

Mr. Partington reviewed the five criteria. In his opinion:

1. (contrary to public interest): meets the criteria
2. (spirit of the ordinance): meets the criteria
3. (substantial justice): in terms of the tax base, the revenue will go up, but if there are two children in the home, the revenue will go down. There is more negative to the public. He does not believe it meets the criteria.
4. (value of surrounding properties): meets the criteria
5. (hardship): it is not a unique situation. There is an existing home on the property and a usable lot. He does not believe it meets the criteria.

Mr. Scholz added that one of the abutters had concerns about the proposed home being right in their backyard and because of that he believes it does not meet criteria 4 – value of surrounding properties. He also agreed it did not meet substantial justice or hardship.

Ms. Skinner agreed they did not meet criteria 3, 4 or 5.

Mr. Mazalewski believed they did not meet criteria 5.

Chairman Samsel believed they did not meet criteria 4 or 5.

MOTION: Mr. Scholz made a motion to deny variance relief from Section 702, App. A-1 of the Windham Zoning Ordinance to allow frontage of 152 ft. for lot A and 90.5 ft. for lot B where 175 ft. is required in this district.
Mr. Partington seconded the motion
No discussion
Vote 5-0
Motion carries

Chairman Samsel noted there is a 30-day appeal period.

<u>Lot 21-A-30, Case #24-2016</u>
Applicant/Owner – John & Lois Freeston
Location – 11 Woodland Road
Zoning District – Residence A, Wetland & Watershed Protection District (WWPD)
Relief is requested from **Section 601.3** to allow a garage/storage shed in the WWPD, which is not a permitted use and **Section 702, App. A-1** to allow a garage/shed to be 44 ft. from the front lot line where 50 ft. is required.

Pam read the case and abutters list into the record.

John Freeston presented the application. He has lived in the home since 1974. The home is in the WWPD but they want to construct a small storage shed/garage. They scaled it back to minimize the impact to the WWPD. It will be parking for an additional vehicle and storage for a snow blower and other tools.

Mr. Partington believed they also need relief from section 703 as well as 702, App. A-1. Mr. Gregory believed because it was going in the front yard, they only needed relief from the front setback.

Chairman Samsel questioned if the abutting homes were closer to the road. Mr. Mazalewski noted they were set further back.

Mr. Freeston noted because of how the lot is configured, excavation and fill would be necessary if they were to move the structure farther back. The proposed location is relatively flat. The base would be crushed stone, with no fittings and there would be no digging.

Mr. Mazalewski added that the plan calls it a shed, but it should be changed to garage.

The board discussed whether the hearing should be postponed and re-noticed to included section 703 and agreed that would be most appropriate.

MOTION: Mr. Scholz made a motion to continue case #24-2016 to the 9/13/16 meeting.
Mr. Mazalewski seconded the motion.
No discussion
Vote 5-0
Motion carries

Review of the 7/26/16 Minutes
MOTION: Mr. Scholz made a motion to approve the 7/26/16 minutes as amended.
Ms. Skinner seconded the motion
No discussion
Vote 4-0-1. Mr. Mazalewski abstained.
Motion carries

Review of the 8/9/16 Minutes
MOTION: Mr. Partington made a motion to approve the 8/9/16 minutes as amended.
Ms. Skinner seconded the motion
No discussion
Vote 5-0
Motion carries

MOTION: Mr. Scholz made a motion to adjourn at 8:48 p.m.
Ms. Skinner seconded the motion.
Vote 5-0-0.
Motion passes.

Submitted by Andrea Cairns