



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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**Zoning Board of Adjustment Approved Minutes
September 9, 2014**

Board Members:

Mark Samsel, Chairman – Arrived at 9pm
Mike Scholz, Vice-Chairman – Present
Heath Partington, Secretary – Present
Jay Yennaco, Member – Present

Jim Tierney, Member – Present
Mike Mazalewski, Alternate – Present
Kevin Hughes, Alternate – Present

Staff:

Dick Gregory, Code Enforcement Administrator
Laura Accaputo, ZBA Minute Taker

Mr. Scholz, Vice Chairman, sat for Mr. Samsel, Chairman who would be arriving late.

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

Public Hearing

Mr. Mazalewski was seated for Mr. Samsel for Case #32-2014

Mr. Partington read Case #32-2014 into the record along with the abutter list.

Lot 21-A-30, Case # 30-2014

Applicant/Owner – John Freeston

Location – 11 Woodland Rd.

Zone – Residence A, Wetland and Watershed Protection District (WWPD)

Variances from the following sections of the Zoning Ordinance are requested to allow a deck on a pre-existing non-conforming lot which is not permitted in the WWPD:

Section 601.3 to allow a deck of approx. 180 sq. ft. and within 70 ft. of the high water mark of Golden Brook.

Section 601.4.8 to allow excavation for the deck without a special permit from the Planning Board.

- Mr. Freeston, applicant, addressed the Board. He explained the request is to replace his existing 3 X 15 pressure treated deck with a 12 X 15 composite deck with 5 footings. He noted the 180 sq. ft measurement includes the stairs. He then read the five criteria into the record.

Mr. Scholz opened the hearing to the public at 7:40pm and hearing none the public portion was closed.

Mr. Partington asked why relief from Section 601.4.8 was being requested and the applicant stated Mr. Gregory suggested it to shorten the process.

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

- Mr. Partington stated regarding Section 601.3 he believes this doesn't change the character of the area; there are no health and safety issues; there will be substantial benefit to the owner and no negative impact to the public; it will not lessen property values in the area; and the uniqueness of the property is the lay of the land and existing structure. He stated he is against granting relief from Section 601.4.8 as it is in the Ordinance and excavation near water goes to the Planning Board.
- Mr. Tierney, Mr. Scholz, and Mr. Mazalewski agreed with Mr. Partington.

Mr. Partington motioned for Case #30-2014, Lot 21-A-30, in consideration of the five criteria, to grant the variance from Section 601.3 to allow a deck of approximately 180 square feet and within 70 feet of the high water mark of Golden Brook, seconded by Mr. Mazalewski. Motion passed: 5-0.

Mr. Scholz advised of the 30 day appeal period.

Mr. Partington motioned for Case #30-2014, Lot 21-A-30, to deny relief from Section 601.4.8 as requested. Motion passed: 4-1-0 with Mr. Yennaco in opposition.

Mr. Partington stated he was opposed to granting this variance because he believes it is contrary to public interest, the spirit and intent of the ordinance is not observed, and it doesn't meet the hardship criteria. Mr. Scholz and Mr. Mazalewski agreed and Mr. Tierney stated his opposition is because the spirit and intent of the ordinance is not observed.

Mr. Scholz advised of the 30 day appeal.

Mr. Scholz sat Mr. Hughes for Mr. Mazalewski.

Mr. Partington read Case #33-2014 into the record along with the abutter list and letter of authorization from Mr. Loureiro, applicant, authorizing Mr. Rosavelio to represent him in this case.

Lot 17-L-22, Case # 33-2014

Applicant/Owner – Manuel Loureiro

Location: 51 Horseshoe Rd.

Zone: Residence A, Cobbett's Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow an addition on a pre-existing non-conforming lot:

Section 702, Appendix A-1 allow a 520 sq. ft. single story addition within 27 ft. from the side lot line where 30 ft. required.

- Mr. Rosavelio addressed the Board. He stated the applicant is out of town and he will try to answer any questions. He explained the applicant wants to put an addition on his house and is 3ft short of the side setback requirement. He then read the five criteria into the record.
- Mr. Scholz stated he was having trouble evaluating at least four of the five criteria and Mr. Tierney also noted there was no plan provided. The Board agreed since there were no abutters in attendance and the applicant was unavailable to answer any questions it would make sense to continue the case. Mr. Gregory was able to provide a copy of the plan and the Board advised the applicant to provide more details for the five criteria.

Mr. Partington made a motion to continue Case #33-2014 until the September 23, 2014 meeting, seconded by Mr. Tierney. Motion passed: 5-0.

Mr. Scholz sat Mr. Mazalewski for Mr. Hughes.

Mr. Partington read Case #34-2014 into the record along with the abutter list.

Lot 21-K-27, Case # 34-2014

Applicant/Owner - Erin Upton

Location – 68 Turtle Rock Rd.

Zone – Residence A, Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow continued use of a chicken coop on a pre-existing non-conforming lot:

Section 602.1.4 to allow a chicken coop to remain 10 ft. from the property line where 50 ft. is recommended.

Section 602.6.1 to allowed continued construction of a chicken coop without a Minor Watershed Application.

Mr. Partington stated 602 is the wrong section and it should be 616. Mr. Scholz asked Mr. Gregory to check if the posting and abutter notifications were also incorrect and it was discovered they were also incorrect. Mr. Scholz stated per RSA statute it must be reposted.

Mr. Partington made a motion to continue Case #34-2014 until the September 23, 2014 meeting to repost the correct Variance Section of 616.6.1, seconded by Mr. Tierney. Motion passed: 5-0.

Mr. Scholz sat Mr. Hughes for Mr. Mazalewski.

Mr. Partington read Case #35-2014 into the record along with the abutter list and two letters of authorization from each owner authorizing Joseph Maynard to represent them in this case.

Lots 21-C-80 & 21-D -70, Case # 35-2014

Applicant – Joseph Maynard/ Benchmark Engineering

Owners – EB RICH, LLC & Bernice Kowalski-Richards

Location – 208 & 212 Range Road

Zone – Residence A, Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow a five (5) lot Open Space Subdivision with four (4) lots on a common drive with zero frontage on a public way and one (1) lot to have over 100 ft. maximum frontage on a public way and to waive the Road Standards contained in the Subdivision Regulations:

Section 611.6.2 to waive the Road Standards as detailed in the Sub Division regulations for the common drive.

Section 611.6.3 to allow two (2) building lots to be 38,500 & 45,000 sq. ft. where 30,000 sq. ft. is the maximum allowed.

Section 611.6.4.3.2 to allow four (4) lots to have zero (0) frontage where 60 to 100 feet is required and one (1) lot to have more than the maximum of 100 ft.

- Mr. Maynard explained the nature of the request and the Board stated their concern that they did not have any input from TRC or Public Safety.

Mr. Scholz opened the Hearing to the public at 8:40pm.

- Mr. Richards, owner, stated since the lots are owned by him and his wife there is no issue with merging the lots and their goal is to get some value out of the land while leaving wildlife nature undisturbed.
- Mr. Case stated he never heard of two lots with two separate owners applying for one variance. He believes they should merge the lots first and then apply for the variance. He also stated the ZBA cannot grant a waiver from Subdivision Regulations.
- Mr. Maynard stated it is not practical to merge the lots if there is no relief and asked for time to speak with TRC and provide more information to the Board.
- Mr. Partington suggested they check with Town Counsel to see if they waive the ordinance does it get waived from the Subdivision Regulations.

Mr. Partington made a motion to continue Case #35-2014 until the September 23, 2014 meeting for additional information from Police, Fire, and the Road Agent and clarification for relief from Section 611.6.2, seconded by Mr. Tierney. Motion passed 5-0.

Mr. Gregory asked for clarification regarding the question for Legal Counsel and Mr. Partington replied the question is if Section 611.6.2 is waived does it remove it from the subdivision approval process.

Mr. Scholz called a 5 minute recess at 8:55pm and the meeting was called back to order at 9:03pm.

Mr. Samsel arrived at 9:00pm and resumed his role as Chair.

Mr. Partington read Case #36-2014 into the record along with the abutter list and letter of authorization from Robin Young, owner, authorizing Karl Dubay to represent her in this case.

Lot 17-L-15, Case # 36-2014

Applicant – Karl Dubay/The Dubay Group

Owner – Robin Young/Northstar Financial Planning, Inc.

Location – 112 Range Road

Zone – Residence A, Cobbett's Pond and Canobie Lake Watershed Protection Overlay District

Variances from the following sections of the Zoning Ordinance are requested to allow addition to the building of 2,300 sq. ft. and an addition to the parking lot of 4,000 sq. ft. to a pre-existing non-conforming lot:

Section 401 to allow the increase of non-conforming use & structure to continue.

Section 501 to allow the enlargement, occupancy & use this site which is not allowed.

Section 602.1 to allow the office use to continue.

Section 602.2 to allow the structure & parking lot to be within the 100 ft. side and rear property line setbacks from residentially developed area.

Section 702.5, Appendix A-1 footnote #11 to allow this development to be within the 100 ft. property line setback in a residential zoning district.

- Mr. Dubay distributed photos of the property which the Chair accepted as Exhibit A.
- Ms. Young, owner, addressed the Board. She explained she is a resident and business owner in town with six employees. She stated she was granted variances in 2010 to run a professional office in a Residential Zone and has taken great care to restore the property inside and out. She believes her business has less use than a residential property does and would like to add on as her business has grown.
- Mr. Dubay stated most of the variances being requested are administrative with the exception of the setback related issues. He explained Ms. Young is requesting to add on to the back of the house and improve the septic system and expand parking in front of the carriage house. They will create a bio-retention area for the parking area and are not looking for any relief from the Cobbetts Pond and Canobie Lake Watershed Regulations. She has hired an architect to match the existing building by blending roof lines and window ratios and it will be done appropriately. There will be no change to the front of the building and the stone walls and vegetation along Range Road will remain and there will be a drainage treatment area in the back for the additional parking area. They looked at alternatives such as expanding to the right and left of the existing building but the proposed location works best. The expansion will be 32 X 36 ft and wholly contained in the back yard with very little cut to the vegetation. In summary he stated the parking area to the left is setback 92ft from Horseshoe Road instead of the 100ft required; 70ft from the existing vegetation where 100ft is required; 10ft off the right of way to Range Road; there is no increase to the right side setback and the 50ft minimum buffer will remain; the new septic will be 48ft to the back lot line.

Questions/Comments from the Board

- Mr. Partington clarified they were proposing to increase the building size by over 100% and increase parking by 10 spaces for a total of 16 spaces and Mr. Dubay answered yes. Mr. Partington asked if the additional space would be all office space and if the additional parking was for employees or clientele and Mr. Dubay stated the additional space would be all office space and the additional parking would be used for both a few more employees and clientele. Ms. Young clarified they would use the space for 3 additional offices and conference space.
- Mr. Scholz asked the number of clients they see in the office per day and Ms. Young replied a max of two. Mr. Scholz asked why they would need so much additional parking and Ms. Young replied she wanted to have room to grow. Mr. Scholz stated there has been an increase in employees and clientele since their original request in 2010 and noted the concerns then and now for safety with the frequency of customers and increase of traffic.

Mindy Davis, employee, stated it blends well because the use times are different than those of the park. Ms. Young stated her hours are Monday-Friday 9am-5pm and they do not conduct all of their business in the office.

- Mr. Tierney stated since relief from Section 602.1 was already received in 2010 they wouldn't need another variance and would only need a variance from Section 401 and 501. Mr. Dubay stated they included it in case the Board required it. Mr. Dubay also stated they can shrink the parking lot by 9ft and eliminate two of the proposed parking spaces to meet the 100ft setback requirement. He also noted they are widening the driveway entrance to DOT standards of 24ft
- Mr. Yennaco asked the reasoning for the parking lot being so close to the front setback and Mr. Dubay answered to retain the carriage house and maintain the town standard for a 24 ft wide parking aisle while maintaining the strip of trees along the road. Mr. Yennaco also asked what other options they considered before proposing this one and Mr. Dubay answered they looked at putting the addition in between the carriage house and existing building but there were floor plan issues, such as handicapped accessibility, which would have given the property a different look. They looked at replacing the carriage house with a new building but that would have segregated the work teams. They also looked at going to the right but the grade drops one story.
- Mr. Partington asked for clarification of the zoning for this property and Mr. Gregory provided a map that showed it as rural. The Chair stated they have to be sure to include the appropriate Sections in the motion.
- Mr. Scholz asked if the roof line on the proposed building is taller than on the existing building and Mr. Dubay answered yes by a few feet. He also asked if there was a full basement and Mr. Dubay answered yes.
- Mr. Dubay read the five criteria into the record.

The Chair opened the hearing to the public at 10:15pm

- Dave Kivikoski, 4 Horseshoe Road, stated his concern about drainage runoff and property values. He also stated when the leaves are off the trees he will be able to see directly into the office.
- Mindy Davis stated she believes this will add value to the community.
- Mr. Dubay stated the drainage will be directed towards the bio-retention ditch and the roof will have a recharge system. They will work with the abutter and look at supplemental plantings to establish a wall of green.

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

- Mr. Partington stated the goal of a successful business is to grow and that is the problem with granting variances for businesses in residential areas. He stated in looking at the criteria this does not meet the prong for spirit and intent and is contrary to public interest because it is a business use on a rural lot surrounded by rural lots; regarding substantial justice there is more benefit to the owner; values of surrounding properties will not be diminished; the expansion is not reasonable as it will double the size of the property, triple

the amount of parking, and double the employees and clientele and therefore does not meet the hardship criteria.

- Mr. Scholz stated his concerns are the size of the expansion as it was originally supposed to be very low volume and if a variance is granted its full use goes with the land. He stated he understands the rationale of the parking lot placement but has safety concerns and feels prong one is not met from a safety perspective. He does not believe the spirit of the ordinance will be met and is not convinced that surrounding properties will not be diminished. This is a massive expansion and he is not sure where the hardship lies.
- Mr. Yennaco stated he has no concerns with the change in volume or use per week with this business and his only concern is the variance runs with the property. He thinks the placement of the addition is in the best location and the parking lot although excessive, now provides a safer scenario. He feels the hardship is due to the fact that the house does not have much usable space.
- Mr. Tierney stated he agrees with Mr. Yennaco
- Mr. Scholz stated a future use could be more contained with less square footage and a smaller parking lot.
- The Chair stated this is a rural district and 4200 sq. ft for a 1.7 acre piece of land is not a concern and he believes this is the best location for this expansion. He has no issues with the setbacks and does not think there is a safety issue as traffic is not as intense during their office hours. He thinks it would make sense to reduce the parking lot and believes it passes the five points.

Mr. Tierney motioned for Case #36-2014, Lot 17-L-15, in consideration of the five criteria, to grant relief from Section 401 to allow the increase of a non-conforming use & structure where neither is permitted; Section 602.2 to allow the structure & parking lot within the 100ft side and rear property line setbacks from a residentially developed area with the condition that the newly expanded parking area is not to exceed nine spaces; and from Section 702.5 & Appendix A-1 footnote #11 to allow this development to be within the 100ft property line setback in a residential zoning district, as per plan submitted with the exception of the parking area, seconded by Mr. Yennaco. Motion passed 3-2 with Mr. Partington and Mr. Scholz in opposition.

Mr. Partington stated he was opposed to granting the variance because he believes the variance is contrary to the public interest, the spirit of the ordinance is not observed, this is an expansion of a business use in the rural zone surrounded by other residential properties, and it doesn't meet the hardship criteria as this size of a business use expansion in a Rural Zone is unreasonable. Mr. Scholz agreed with Mr. Partington.

The Chair advised of the 30 day appeal period.

Mr. Partington recused himself from the re-hearing request for Case #31-2014

The Chair sat Mr. Mazalewski for Mr. Partington

Re-Hearing request – on the decision by the ZBA on August 12, 2014 Case #31-2014

- The Chair explained an application was received on September 7, 2014 by Richard Messina for a re-hearing of Case #31-2014. The application referenced several points and the Board

had to consider if these points provided new information or proved a technical error was made in their decision. After discussion and consideration of each point the Board determined unanimously that no new information was provided and no technical error was made.

Mr. Scholz motioned to deny the request for re-hearing of Case #31-2014, seconded by Mr. Mazalewski. Motion passed: 5-0.

Review and Approval of Draft Minutes – August 26, 2014

Mr. Scholz motioned to approve the August 26, 2014 ZBA minutes as amended, seconded by Mr. Mazalewski. Motion passed: 5-0.

Mr. Partington motioned to adjourn the September 9, 2014 ZBA meeting at 11:15pm, seconded by Mr. Scholz. Motion passed: 5-0.

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

Copies of all Zoning Board of Adjustment applications and materials are available for review at the Community Development Department; open Monday – Friday, 8 AM – 4 PM.