



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment December 22, 2015

7:30 pm @ Community Development Office
Approved Minutes

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mark Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Excused			

Staff:

Dick Gregory, Code Enforcement Administrator
Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30pm by Chairman Scholz.

Mr. Mazalewski seated for Mr. Breton

**Case # 43-2015, abutter list, and letter of authorization read into the record per Mr. Samsel
Lot 11-C-180, Case # 43-2015**

Applicant – Joseph Maynard/Benchmark Engineering, Inc.

Owner – Dade Realty Trust

Location – 19 Enterprise Drive

Zone – Business Commercial A.

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to construct a new garage.

Section 702, App. A-1 to allow a front setback of 10 ft. where 75 ft. is required

Case # 43-2015 reviewed by applicant Mr. Joseph Maynard/Benchmark Engineering, Inc.
Five variance criteria presented by Mr. Maynard.

Chairman Scholz opened the hearing for public comment.
No public comment.

Motion by Mr. Samsel to enter into deliberation

Second by Mr. Partington

Vote 5-0-0

Motion carries

Mr. Samsel believes the five variance criteria have been met.

Mr. Partington reviewed the five variance criteria and believes they are met.

Chairman Scholz agrees with Mr. Samsel and Mr. Partington.

In consideration of the five variance criteria and testimony presented a motion was made by Mr. Samsel to grant for Case #43-2015 variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to construct a new garage. Section 702, App. A-1 to allow a front setback of 10 ft. where 75 ft. is required as per plan.

Second by Mr. Partington

Vote 5-0-0

Motion carries

Chairman Scholz notified the applicant of a 30 day appeal period.

Mr. Hughes seated for Mr. Breton

Case #45-2015, abutter list, and letter of authorization read into the record per Mr. Samsel Lot 18-L-377, Case #45-2015

Applicant – Joseph Maynard/Benchmark Engineering, Inc.

Owner – Xiang & Cheng Chen

Location – 38 Woodvue Road

Zone- Residence A & Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWP).

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to construct an addition to the existing dwelling.

Section 702, App. A-1 to allow an addition to be 20 ft. from the side lot line where 30 ft. is required

Section 406.2 to expand the footprint from 3,600 sq. ft. to 3,840 sq. ft. and expand the volume from 29,700 cu. ft. to 56,250 cu. ft.

Case #45-2015 reviewed by applicant Mr. Joseph Maynard/Benchmark Engineering, Inc. Five variance criteria presented by Mr. Maynard.

Chairman Scholz opened the hearing for public comment

Ken Carpenter, 40 Woodvue Road

Exhibit A, a typed document by Mr. Carpenter titled: ‘*Objections to Variance by Ken Carpenter 40 Woodvue Rd.*’ was entered into the record per Mr. Carpenter’s request. The content of the document was reviewed by Mr. Carpenter

Exhibit B entered into the record: ‘*Lakewood Estates Windham, New Hampshire Declaration of Covenants, conditions, and restrictions.*’

Mr. Partington asked Mr. Carpenter which abutter’s view will be blocked.

Mr. Carpenter replied all of the abutters are directly or indirectly affected; their view of the lakes and general views are impacted.

Mr. Samsel asked Mr. Carpenter if he objects to the diminished lake view, and is his view diminished by the roof or the deck.

Mr. Carpenter is concerned with his view and concerned about all things considered.

Mr. Samsel inquired about the Exhibit B: who was the developer, and how the covenant is enforced.

Mr. Carpenter does not remember who the developer is and did not have an answer as to the enforceability of the covenant.

Michael Bailey-Gates, 27 Woodvue Road

The spirit and intent of the ordinance will not be met by this proposed plan.

Mr. Bailey-Gates commented he has spent a lot of money into renovating the home.

The plan will decrease the Lakeview of his home and diminish his home value.

The 4 abutters that received letters of notification are opposed to the plan.

Mr. Bailey-Gates has lived in the community a total 60+ years between himself and the 4 abutters.

Home value will substantially be diminished. The assessed value of the home is based on the current lake view.

The proposed garage faces his home and the highlights will shine directly into his home.

The design of the proposed home will not fit in the neighborhood.

Mr. Bailey-Gates echoes Mr. Carpenter's points previously made.

Mr. Samsel clarified that there is no variance proposed for height.

David Riese, 2 Lakewood Road

Proposed changes include a 3 bay garage that does not fit into the neighborhood.

The size of the house will not fit in with the neighboring homes which goes against the covenant.

There are no front loading garages in the neighborhood.

The proposed home will not be similar to the existing homes in the neighborhood.

The values of surrounding properties will be diminished.

The lot is not a special shaped lot requiring a variance from the ordinance, the shape is roughly rectangular and not very narrow.

Mr. Partington asked Mr. Riese to point to his property on the map.

2 emails from abutter Richard Gilbert, 36 Woodvue Road, objecting to the proposed case were read into the record by Mr. Samsel.

Mr. Maynard responded to abutter objections:

- The second floor has a slope on the street side; the owner wants to square the sloping ceiling
- Mr. Maynard does not have any knowledge of the "sump pump outlet pipe" referenced by abutter Mr. Carpenter but will check into it.
- Not asking for variance relief for the deck.
- No request for any dimensional relief.
- There are no changes to the septic design. The septic is functional and working fine. The new septic design on file is for an increase in bedrooms.
- Applicant does not know the height of the existing building.
- The height of the proposed building
- There are not any covenants in place that restrict obstructing neighbour lake views.
- The garage depth is narrow and would like to expand the depth from 30 feet to 35 feet.
- There is a plan to fill in the existing in ground swimming pool.

Chairman Scholz opened the hearing for public rebuttal

Mr. Ken Carpenter

Concerned about the increase in the height.

Concerned about the pipe previously discussed.

Concerned about the size of the Sq. Ft. increase; asking what the exact increase is.

Motion by Mr. Samsel to enter into deliberation

Second by Mr. Hughes

Vote 5-0-0

Motion carries

Mr. Samsel does not see believe that this meets the hardship criteria.

Mr. Partington commented that the applicant is only here about the one extra garage bay.

Mr. Partington reviewed the five variance criteria. The plan does not meet the first criteria: no relief from the watershed is being requested, and the change in character is subjective. With regards to any diminish in property values: the owners to the north are not compelling, the lake view for the owner to the rear will be substantially blocked. With regards to unnecessary hardship and uniqueness of the property: this is not an undersized lot, the issue is the one garage bay; the lot itself is not unique enough. Mr. Partington does not believe the proposed plan meets any of the 5 variance criteria. Chairman Scholz concurs with Mr. Partington. As the plan is presented, it does not meet the five criteria.

In consideration of the five variance criteria and testimony presented a motion was made by Mr. Samsel for Case #45-2015 to deny variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations to construct an addition to the existing dwelling. Section 702, App. A-1 to allow an addition to be 20 ft. from the side lot line where 30 ft. is required Section 406.2 to expand the footprint from 3,600 sq. ft. to 3,840 sq. ft. and expand the volume from 29,700 cu. ft. to 56,250 cu. ft. as per plan.

Second by Ms. Skinner

Vote 5-0-0 The plan as proposed did not meet the 5 variance criteria.

Motion Carries

Chairman Scholz notified the applicant of a 30 day appeal period.

Mr. Mazalewski seated for Mr. Breton.

Case #46-2015 read into the record by Mr. Samsel.

Motion by Partington to waive reading of the abutter list for Case #46-2015 into the record.

Second Mr. Samsel

Vote 5-0-0

Motion carries

Motion by Mr. Samsel to open all Case #46-2015, Case #47-2015, and Case #48-2015 for hearing collectively as the cases are all for the same property.

Second by Ms. Skinner
Vote 5-0-0
Motion carries

Motion by Mr. Samsel to waive reading the abutter list for Case #47-2015 and Case #48-2015 into the record.

Second by Mr. Partington
Vote 5-0-0
Motion carries

Lot 13-C-123, Case # 46-2015

Applicant- Joseph Maynard/Benchmark Engineering, Inc.

Owner- Jarosky Revocable Trust

Location- 15 Roulston Road

Zone- Residence A

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land use Regulations is requested to allow for the proposed sub-division plan.

Section 611.6.4.2 to allow all the lots in a proposed open space sub-division to have 20 ft. front and 15 ft. side setbacks where 50 ft. and 30 ft. are required.

Case #47-2015 read into the record by Mr. Samsel

Lot 13-C-123 & 200, Case # 47-2015

Applicant- Joseph Maynard/Benchmark Engineering, Inc.

Owner-Jarosky Revocable Trust

Location- 15 Roulston Road & Roulston Road

Zone-Residence A

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the plan for the proposed sub-division to go to the Planning Board as is.

Section 611.5.4 to allow this lot to not meet the requirements of this section.

Section 702, App.A-1 to allow this lot to not meet the minimum lot size by soils.

Case #48-2015 and letter of authorization read into the record by Mr. Samsel.

Lot 13-C-123, Case #48-2015

Applicant- Joseph Maynard/Benchmark Engineering Inc.

Owner- Jarosky Revocable Trust

Location-15 Roulston Road

Zone-Residence A

Jarosky Revocable Trust

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow a 5 acre sub-division plan to be submitted.

Section 603.1.1to allow a ten (10) unit apartment building and a single family detached dwelling on this proposed lot where only one single family detached dwelling is allowed per lot.

Section 702, App. A.1 to allow frontage of 238 ft. where 475 ft. is required.

Case #46-2015, Case #47-2015, and Case #48-2015 reviewed by applicant Mr. Joseph Maynard/Benchmark Engineering, Inc. Five variance criteria for each case presented by Mr. Maynard.

Mr. Partington asked the applicant about the single lot next to the proposed homes, Mr. Maynard explained that he wants to move one lot that sits by itself in the woods, and place it with the other 9 houses in the proposal.

Mr. Mazalewski asked what is in the existing structures on the property.

Mr. Maynard explained there are two buildings, the triplex and a residence. Mr. Maynard reviewed the map of the existing buildings.

Mr. Mazalewski stated there is an approved septic design on file with the town for a single family home. There is no documentation available that shows the property is grandfathered for its current use as a multifamily dwelling.

Ms. Skinner commented the buildings on the property have existed as long as she can remember.

Mr. Partington read the following paragraph from Grandfathering': The Law of Non-Conforming Uses & Vested Rights – 2015 Municipal Law Lecture Series, Lecture 1: *In the 2013 case of Bartlett V. City of Manchester, 164 N.H. 634, the Court held that the ZBA must always examine the nonconforming use issue **first** - even if the owner has ignored that and applied for a variance. That's because every variance case implicitly raises the issue of what an owner can do without a variance – that issue being highly relevant to the question of whether unnecessary hardship exists. Lesson: A ZBA in every variance case must first check to see what the status of any nonconforming uses may be.* Mr. Partington agrees with Mr. Mazalewski. Mr. Partington is not comfortable that it is a pre-existing nonconforming property.

Mr. Samsel doesn't understand the grandfathering issue or if there is an existing violation. If there was an issue it would have been brought before the ZBA.

Chairman Scholz commented that Case #48-2015 doesn't mention pre-existing nonconforming.

Ms. Skinner commented that Case #48-2015 sounds like it is referring to a new structure not necessarily a pre-existing nonconforming structure.

Mr. Gregory commented there is a letter in the file stating it is a pre-existing nonconforming structure.

Brief recess while Mr. Gregory located the letter.

Meeting resumed at 9:16pm

Letter dated April 7, 2009 from the Planning and Development Department located in the case file was read into the record by Mr. Samsel.

Mr. Maynard reviewed the five variance criteria for Case #46-2015, Case #47-2015, and Case #48-2015.

Chairman Scholz opened the hearing for public comment

Sean Donahue, 6 Stonehenge Rd.

Mr. Donahue is concerned that when the property is subdivided the Grandfathered nonconforming use is lost when the applicant starts to make parcels; it is a new use.

Mr. Donahue is concerned about a 10 unit apartment building; there isn't an existing 10 unit apartment building currently on the property.

There will be an impact to property values; he will have high density properties abutting his standard subdivision.

Mr. Donahue is concerned about the water and septic usage and resources with additional houses drawing from water sources in close proximity.

Craig Leppanen, 14 Stonehedge Rd.

One of the original homeowners in the subdivision since 1988.

Mr. Leppanen didn't know the existing property was an apartment building.

The plan seems like a way to get an inconsistent property usage into a legitimate use.

46-2015 all lots in the open subdivision to be approved.

Mr. Leppanen is concerned about school crowding.

Mr. Leppanen commented that the water pressure dropped when Medicus was put in; he is concerned he will lose more water pressure when the proposed dense houses are put in.

Mr. Leppanen was told the zoning was resident A behind him.

Mr. Leppanen does not believe the plan meets the hardship criteria.

Christopher Burke, 16 Stonehedge Rd.

Echo's the above abutters' concerns.

Mr. Burke is concerned about the character of the neighborhood.

Mr. Burkes gave Chairman Scholz photograph that is an aerial view of the neighborhood; the photograph was entered into the record as exhibit A.

Mr. Burkes is concerned the lighting will increase coming from the high density housing.

Mr. Burke would like the plan to conform to the existing zoning laws

Mr. Burke is supportive of a standard development, residential A, and would like to see existing uses going away.

Spencer Joyner, 18 Stonehenge Rd

Mr. Joyner is in favour of developing the land, not in support of any grandfathered use of an apartment building.

Mr. Joyner would like the apartment building be demolished and have a standard subdivision put in place.

Mr. Joyner is against an apartment complex.

Mr. Joyner Echo's the previous abutters regarding all their concerns.

Mr. Joyner is concerned about water issues.

There has been decreased water since Medicus went in.

Mr. Joyner is concerned about the run off implication from the grade of the land.

Mr. Joyner believes the variance language is very ambiguous.

Mr. Joyner would like to see due diligence in clarifying if the pre-existing use is legal.

Mr. Samsel stated the pre-existing use is legal.

Spencer Joyner

The 10 unit apartment variance is rejected and a standard subdivision gets developed. Runoff from the existing proposed apartment building will run off to his property.

Attorney representing El-Hefni Educational Foundation

Asking about the vegetative buffer, would like more details

Tom Case, 70 Mountain Village Rd

Mr. Case asked where the existing 10 apartments are coming from, it doesn't exist now. The owner had seasonal workers; they didn't live in apartments, they lived in rooms in the main house. Mr. Case asked if anyone has actually seen that there are 6 apartments in the house. Mr. Case explained that over the years when the farm went out, the rooms were rented out. Mr. Case doesn't understand how the ZBA can allow a 10 unit apartment building to remain; he don't see an existing 10 unit apartment building.

Mr. Case commented that in residence A district an open space yield plan is an allowable use. It's not actually high density housing. They are same amount of units that can be put in as a standard subdivision. The developer can transfer the open space to the conservation commission. The conservation commission would own the space.

Mr. Case requested the frontage to be explained.

Mr. Case's final comment was that apartments are not allowed in residence A

Applicant, Mr. Maynard

Mr. Maynard commented he is looking to bring the property into conformity while maintaining some nonconformity. Mr Maynard is not getting more lots than if it was done as a standard subdivision. A conventional subdivision would put the apartments on 5 acre lots.

The concerns about wells and drainage are in the Planning Board jurisdiction.

Mr. Mazalewski and Mr. Samsel commented that what is on the existing property and what is written on his variance request are not the same.

Mr. Mazalewski referred to the document in the case file from Laura Scott, dated 2009 that says any proposed change or expansion of use would also be required to meet the current building and life safety codes.

Chairman Scholz commented there is nothing to indicate there are existing 10 unit apartments.

Mr. Mazalewski commented the zoning doesn't apply for residence A so Mr. Gregory went to residence B for reference. Mr. Mazalewski believes if Mr. Gregory is applying the frontage standard from residence B the side setbacks from Residence B should also be applied.

Mr. Gregory agreed with Mr. Mazalewski.

Mr. Partington doesn't understand what is in the buildings. The variance application is not accurate. Mr. Partington is concerned that there is no way to know what is pre-existing and nonconforming from the application.

Chairman Scholz asked what qualifies as an apartment or a bedroom rental unit. There is no evidence that says what currently exists are defined as apartments.

Mr. Maynard asked the ZBA for guidance in what information he needs to obtain before he returns for a continued hearing.

Chairman Scholz asked if there are any tax records indicating the number of units and if they are apartments. Chairman Scholz believes it is critical to know what exists today, what is not in conformance, what it would take to bring it into conformance, and what would it take to meet current building and life safety codes.

Mr Partington asked how an apartment v. rental unit is defined.

Chairman Scholz believes the right thing to do is continue the hearing.

Motion by Mr. Samsel to continue Case #46-2015, Case #47-2015, and Case #48-2015 to February 9, 2015.

Second Ms. Skinner

Vote 5-0-0

Motion carries

Mr. Hughes seated for Mr. Breton

Case #49-2015, abutter list, and letter of authorization read into the record by Mr. Samsel. Lot 24-F-5207 & 5209, Case # 49-2015

Applicant- Joseph Maynard/Benchmark Engineering, Inc.

Owner-David & Heidi Tokanel and Linda Theriault

Location-7 & 10 Meadow Road

Zone-Rural District

Variance relief from the following sections of the Town of Windham Zoning and Land Use regulations to allow a two (2) lot sub-division to return to a three (3) lot sub-division.

Section 702, App. A-1 to allow to not meet the minimum lot size by soils.

Case #49-2015 reviewed by applicant Mr. Joseph Maynard/Benchmark Engineering, Inc.

Mr. Mazalewski asked Mr. Maynard for clarification that the lot lines are not going back to exactly what they were.

Mr. Maynard replied he intends to jog it 100 feet back from around the house. Mr. Maynard explained the lost size was a 7546 sq. ft. lot and it will remain 7546 sq. ft. when he is finished.

Mr. Partington asked Mr. Maynard when the lot lines get finalize.

Mr. Maynard replied he has to go before the Planning Board.

Chairman Scholz asked the applicant to clarify that the third lot just disappeared.

Mr. Maynard explained the third lot was divided among the other two lots and approved by the Planning Board.

Mr. Maynard reviewed the 5 variance criteria.

Mr. Mazalewski is concerned that the wording in the application is not exactly what is being requested.

Chairman Scholz asked Mr. Gregory if what he has on the agenda is what was noticed.
Mr. Gregory provided a copy of the notice.

Chairman Scholz opened the hearing for public comment.

David Tokanel, 10 Meadow Rd.

Mr. Tokanel reviewed the topography of the land and confirmed that he wants to put the lot lines back together to how they were originally drawn, with one minor exception of the jog.

Motion by Mr. Samsel to enter into deliberation

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

Mr. Partington reviewed the five criteria. The plan as proposed meets criteria #1-4. Mr. Partington does not believe criteria #5 is met.

In consideration of the five variance criteria and testimony presented a motion was made by Mr. Samsel for Case #49-2015 to grant relief from the following sections of the Town of Windham Zoning and Land Use regulations to allow a two (2) lot sub-division to return to a three (3) lot sub-division. Section 702, App. A-1 to allow to not meet the minimum lot size by soils.

Second by Mr. Hughes

Vote 3-2-0 Chairman Scholz and Mr. Partington opposed, they do not believe it meets the hardship criteria.

Motion carries

Chairman Scholz notified applicant of a 30 day appeal period.

November 24, 2015 draft Zoning Board Minutes reviewed.

Motion by Mr. Samsel to approve minutes as amended

Second by Mr. Partington

Vote 4-0-1 Ms. Skinner abstained, she was not here.

Motion carries

Motion by Mr. Samsel to donate old handbooks found in staff closet to the museum

Second by Ms. Skinner

Vote 5-0-0

Motion carries

Motion by Mr. Samsel to adjourn

Second by Ms. Skinner

Vote 5-0-0

Meeting adjourned at 10:59

Meeting Minutes submitted by Suzanne Whiteford, ZBA Minute Taker