



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Approved ZBA Minutes
January 26, 2016
7:30 pm @ Community Development Department

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

Staff:

Dick Gregory, ZBA Code Enforcement Administrator
Laura Scott, Director of Community Development
Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Scholz

Mr. Mazalewski seated for Mr. Breton

Mr. Samsel read Case #39-2015 into the record

Lots 17-G-6 & 17-G-20 Case #39-2015 (a request to withdraw this case has been received)

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow more impervious surfaces than allowed.

Section 616.6.4.2 to allow the combined lots to be covered with impervious surfaces of 55.2 % where 30% is allowed.

Mr. Samsel read case #40-2015 into the record

Lots 17-G-6 & 17-G-20 Case #40-2015 (a request to withdraw this case has been received)

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow the occupiable space to be taller than allowed
Section 701.1 to allow the occupiable space of the proposed hotel to be 45 ft. where 35 ft. is allowed.

Mr. Samsel read the following letters into the record:

Letter from Andrew H. Sullivan to David Sullivan, Town Administrator, dated January 13, 2016

Letter from Kevin S. Eriksen, Esq. to Town of Windham ZBA, dated January 13, 2016

Letter from Kevin S. Eriksen, Esq. to Town of Windham ZBA, dated January 13, 2016

Mr. Samsel, similar situation in the past, cell tower request, in this situation we can act in a similar fashion or accept the withdraw.

Mr. Partington Disagree with attorney Campbell, simplifying down as Campbell ignores quasi-judicial, and losing due process for the abutters. Can't reverse what has occurred. Prepared to rule on case, not prepared to rule on case #40.

Ms. Skinner agrees with Mr. Partington.

Mr. Samsel believes the ZBA is here on behalf of the applicant, not the abutters. There is no applicant, the owner has no representation. Mr. Samsel strongly recommends to dispose of this without prejudice or make no action.

Chairman Scholz believes the owner ultimately still has an application in front of the board.

Mr. Mazalewski believes the ZBA should withdraw the cases as requested.

Mr. Partington commented that everyone has been notified there has been a decision to withdraw, that is why no one is here for the meeting.

Mr. Samsel believes that any determination of withdraw should be before the board and not before the public.

Chairman Scholz commented that the ZBA can make a determination on what has been presented or we can consider the withdraw request. Chairman Scholz agrees with Mr. Partington; the ZBA does not have the information requested which was to have an expert review.

A motion was made by Mr. Samsel to accept the withdraw as requested for Case #39-2015.

Second by Mr. Mazalewski

Vote 4-1-0 Mr. Partington opposed

Motion carries

A motion was made by Mr. Samsel to accept the withdraw as requested by for Case #40-2015

Second by Mr. Mazalewski

Vote 4-1-0 Mr. Partington opposed

Motion carries

Laura Scott, Director of Community Development responded to some of the Zoning Board Members previous comments regarding her actions to cancel Mr. Keach's review and consultation with Attorney Campbell. Ms. Scott explained there was a time lapse between the request for review and the date Mr. Keach could do the review due to his scheduled absence of 3 weeks during the holiday. The applicant withdrew his application which meant the money for Mr. Keach's review would not be available as it was to be paid by the applicant. Based on this Ms. Scott notified Mr. Keach to cancel the review. Ms. Scott consulted with Attorney Campbell regarding her decision to cancel Mr. Keach's review.

Chairman Scholz verified the process moving forward is that the chair is notified when the town receives a withdraw request.

Ms. Scott acknowledged Chairman Scholz's request and reiterated this was an extenuating circumstance due to Mr. Keach's limited availability during the holidays.

Mr. Samsel commented that requests and/or questions for Attorney Campbell are to be decided by the ZBA; not from staff on behalf of the ZBA.

Mr. Hughes seated for Case #4-2013

Mr. Samsel read a letter from Diane M. Gorrow from Soule, Leslie, Kidder, Sayward & Loughman to Chairman Scholz dated January 15, 2016 into the record.

Variance renewal request for Case # 4-2013, lot 21-G-600

Mr. Gregory stated this is not a public hearing; it is a public meeting. Mr. Gregory further explained there was not a notice for the case and it is to be treated the same as a rehearing request.

Mr. Partington asked how he is expected to take good cause into consideration without public input. Mr. Partington asked Mr. Gregory to explain the basis for this case being reviewed as a public meeting and not a public hearing.

Mr Samsel commented that this type of request has not come before this board in this fashion.

Mr. Tierney commented that per the ZBA bylaws, RSA 674:33 gives authority to the ZBA to make the decision regarding the case to be heard as a public meeting. Additionally, Mr. Tierney commented that Per Section 906 of the ordinance the Code Enforcement Officer can grant a one-year extension.

Attorney Clark, representing Mr. Clark and Mr. Belise. Attorney Clark spoke in opposition of the ZBA granting further extension.

Mr. Samsel asked Attorney Clark to explain why the owner does not have good cause for an extension.

Attorney Clark explained his interpretation of the ordinance the Code Enforcement Officer can grant an additional one-year extension beyond the two-year extension granted by the legislative body; no further extension can be granted based on the ordinance.

Chairman Scholz agrees with Attorney Clark based on RSA 674:33 I-a

Mr. Samsel believes this case is headed to civil court. There seems to be an unfortunate circumstance in front of us and we can make the determination of what can be done.

Chairman Scholz believes the RSA prescribes the two-year timeline and allows the legislative body in the town to extend an additional year. Regardless of extenuating circumstances the ZBA cannot extend it any further.

Mr. Partington believes good cause is separate from whether or not the ZBA can grant the extension. There is no duration clearly stated in the RSA. The duration is clear in the ordinance. Mr. Partington believes there is a judgement call to be made and it is based on what is considered good cause.

Mr. Samsel believes it is up to the ZBA to decide what is a good cause.

Chairman Scholz believes in this particular case the ordinance is very clear. There is already prescription there. It is covered in 906 of the ordinance.

Mr. Hughes commented that the applicant has already gotten a one-year extension.

Ms. Skinner agrees with Chairman Scholz.

A motion was made by Partington to deny variance renewal request for Case #4-2013, lot #21-G-600 as variances can be extended per Section 906 of the ordinance. In this case the applicant has already been granted a one-year extension under Section 906.

Mr. Samsel suggests relief has been granted once for a total of three years.

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Motion by Mr. Samsel to adjourn

Second by Ms. Skinner

Vote 5-0-0

Meeting adjourned at 9:34pm

Minutes submitted by Suzanne Whiteford, minute taker.