



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Approved Minutes March 11, 2014

Board Members:

Heath Partington, Chairman – Present
Jim Tierney, Vice-Chairman – Present
Mark Samsel, Secretary – Present
Jay Yennaco, Member – Present

Mike Scholz, Member – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate – Present
Kevin Hughes, Alternate – Present

Staff:

Laura Scott, Community Development Director
Laura Accaputo, ZBA Minute Taker

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

Public Hearings

Mr. Samsel read Case #5-2014 into the record along with a letter from Thomas Leonard Esquire to Nancy Prendergast dated March 7, 2014 requesting a postponement of the appeal until the request for variance related to the property has been heard.

Lots 17-L-78 and 17-L-78L2, Case #5-2014

Applicant – Thomas J. Leonard Esq.
Owner – Michelle C. Fontaine Revocable Trust
Location – 30 Horseshoe Road
Zone – Residence A and Cobbetts Pond/Canobie Lake Overlay Protection

An Application to Appeal an Administrative Decision has been filed in reference to a letter written on January 9, 2014 by Nancy Prendergast, Town of Windham ZBA/Code Enforcement Administrator, to Joe Maynard of Benchmark Engineering regarding the Town's position that Lots 17-L-78 and 17-L-78L2 are one lot bisected by a roadway where the owner believes they are two lots.

The Chair asked if there was anyone in attendance that wished to speak on the matter and hearing none brought it back to the Board.

Mr. Samsel motioned to postpone Case #5-2014 until March 25, 2014 or thereafter as requested by the Applicant Thomas J. Leonard, Esquire.

Mr. Tierney asked if the motion should be a continuance since the Hearing was opened. The Board agreed.

Mr. Samsel amended his motion to a continuance of Case #5-2014 until March 25, 2014 or thereafter as requested by the Applicant Thomas J. Leonard, Esquire, seconded by Mr. Tierney. Motion passed: 5-0.

Mr. Samsel read Case #6-2014 into the record along with the abutter list and a letter of authorization from the owner authorizing Edward Herbert Associates to represent them in this case.

Lot 11-A-1648, Case #6-2014

Applicant – Edward N. Herbert Assoc. Inc.

Owner – Philip & Nicole Wu

Location – 8 Easy Street

Zone – Rural and Wetland and Watershed Protection District (WWPD)

Variations from the following sections of the Zoning Ordinance are requested to allow a tennis court, fence and shed to be located in an area of the WWPD. The proposed disturbance is 3,015 square feet.

Section 601.3 - to allow a tennis court, fence and shed to be located in the WWPD where it is not a permitted use.

- Mr. Shane Gendron of Herbert Associates distributed a plan to the Board which the Chair accepted as Exhibit A and a letter from Gove Environmental Services dated February 7, 2014 which the Chair accepted as Exhibit B. Mr. Gendron explained this is a five acre parcel and they are requesting to put a fenced in 50 X 100 tennis court and a 10 X 14 shed behind the house. The WWPD behind the house has encroached further onto the property and they had it re-flagged by Gove Environmental. He stated the area in the back right of the property has been manipulated and does not serve as WWPD and Gove Environmental recommended a planting schedule to make it function as a WWPD. Mr. Gendron then read a letter from Luke Hurley of Gove Environmental into the record outlining the planting schedule. This was added to the plan and brought to the Conservation Commission. They are also going to have a half percent grade on the tennis court so runoff will go into the planting area. Any water that makes it to the road will go into the roadside drainage and be treated. The Conservation Commission recommends the plan be noted to show the tennis court will be graded in a way that runoff drains away from the WWPD. The grades work well with the topography of the property and require less than a 2ft cut and fill in either direction. They will also add plants and landscaping around the fence of the tennis court.
- Mr. Samsel asked if the court would be lighted and Mr. Gendron stated there is no proposal for lighting at this time.
- Mr. Gendron then read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked if the shed could be angled so its runoff goes toward the new plantings and Mr. Gendron stated that would not be a problem.
- The Chair asked how far the court would be from the edge of the wetlands and Mr. Gendron replied there is a 40ft buffer.

The Chair opened the hearing to the public at 7:53, hearing none the public portion was closed.

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

- Mr. Tierney stated he has no issue and believes the pitching of the court will help keep flow away from the WWPD and the plantings and berm will be beneficial.
- Mr. Scholz stated he has no issue considering the grade change and replanting of the buffer.
- Mr. Samsel stated he believes the five points have been met and the proposed improvement fits the request.
- Mr. Yennaco stated he has no issue with the proposal.
- The Chair stated it is a unique lot and this is the only logical place to put the court. They are also mitigating any issue of runoff and water with plantings and grade. He also read a comment from the Conservation Commission into the record which stated the Commission recommends a note on the plan to show the tennis court will be graded in such a fashion that it drains toward the front property line and not towards WWPD. He noted the applicant does have this on the plan.

Mr. Scholz motioned for Case #6-2014, Lot 11-A-1648, to grant relief from Section 601.3 to allow a tennis court, fence, and shed to be located in the WWPD where it is not a permitted use, per plan marked Exhibit A as submitted, seconded by Mr. Samsel. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Mr. Samsel read Case #7-2014 into the record along with the abutter list.

Lot 21-G-851, Case #7-2014

Applicant – Douglas C. McAllister

Owner – Douglas C. McAllister and Sandra P. McAllister

Location – 12 Candlewood Road

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

Variances from the following sections of the Zoning Ordinance are requested to permit an above ground pool, patio pavers, fence, lawn area and shrubs within the WWPD. The area of disturbance is approximately 2,500 square feet.

Section 601.3 – to allow an above ground pool, patio pavers, fence and lawn to be located in the WWPD where it is not a permitted use.

Section 601.4.8 – to allow relief from submittal of a WWPD Special Permit Application to the Planning Board.

- Mr. Douglas McAllister, owner, addressed the Board. He stated he bought his home in December 2011 and was not informed about WWPD. He is proposing to build an 18 X 32 ft above ground pool on his property and this is the only location available on the lot. He showed the Board a map which highlighted WWPD and non WWPD areas and explained the only area of his property that is not WWPD is where the septic and leach field are located or the front and side lawns which do not meet the criteria for a pool. His entire backyard is WWPD. He then read the five criteria into the record. He then asked to address the Conservation Commission concerns and noted he was not aware that the commission would hear his case until the day before the meeting and was unable to attend. He stated they requested a grading plan however it will be more costly to hire a professional surveyor than for the pool itself. He believes he has shown how he will mitigate the WWPD impact. He stated they questioned the area of disturbance to WWPD relative to his stating it was approximately 2500 sq. ft and he clarified by approximate he meant it could be slightly higher and wont know until excavation begins. He stated they asked for clarification of the size of the pool as the application shows 16 X 32 and the case review notes call for an 18 X 34. He stated he is requesting an 18 X 32 sq. ft. pool. He stated they did not see a landscape plan in the packet only a listing of plantings. He stated he has contracted with a landscaper, Design Works Architecture and Construction. They will work hand in hand with the pool construction to determine how the land will be altered and how they can build the landscape plan in. He then showed a rudimentary drawing he made showing the plantings.

Questions/Comments from the Board

- Mr. Samsel asked for clarification if this is an aboveground pool that will be embedded into the slope does it still constitute an aboveground pool and Ms. Scott replied she believes so as it is mostly above ground. He also asked what material is used and Mr. McAllister explained it is a two inch thick composite between steel frame beams.
- Mr. Pellegrini asked if the liner was plastic and Mr. McAllister answered yes.
- Mr. Samsel asked if a fence was required and Ms. Scott answered it is part of the Building Plan. Mr. Tierney answered a 4ft fence around is required.
- Mr. Tierney asked why he is looking for relief from a WWPD Special Permit Application to the Planning Board and Mr. McAllister explained it is costly.
- Mr. Samsel asked Ms. Scott what the special permit from the Planning Board would constitute and Ms. Scott replied it would require a more detailed plan with a landscaping plan. The abutters would have to be noticed regarding the hearing and it would have to go through TRC and Conservation again.

The Chair opened the hearing to the public at 8:25pm, hearing none the public portion was closed.

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

- Mr. Scholz stated he did not think the five criteria were met for relief from Section 601.4.8. He stated his main concern was around the plan being presented; he would have liked more specific information on the elevations on the plan. In regards to Section 601.3, he does think there is uniqueness to the property and it will do substantial justice in the public's interest.
- Mr. Tierney agreed there is uniqueness with the property and he believes the excavation for an aboveground pool will be minimal therefore he has no problem granting relief from Section 601.3. He thinks the key factor for Section 601.4.8 is the future plantings and their long term growth which he feels needs Planning Board review.
- Mr. Samsel stated he has no issue with granting relief from Section 601.3. Regarding Section 601.4.8 he would recommend conditioning it on a plan being submitted as the applicant has stated he is working on a plan with a landscape professional. Although not stated in the five criteria, he understood through the applicant's testimony why he is looking for relief from this Section and he believes the questions from Conservation have been covered.
- Mr. Yennaco stated he has no problem with granting relief from Section 601.3. He also agrees with Mr. Samsel regarding Section 601.4.8 and stated they have allowed the special permit to be waived in the past. He believes the applicant's testimony regarding the additional 100ft buffer which was added due to the slope gives the lot some additional special characteristics which could potentially allow for the waiver. He also understands why the applicant hasn't yet gotten to the point of a Landscape Plan for a buffer planting and believes it will happen quickly and be done well by the company the applicant is working with. He would be comfortable granting the waiver.
- The Chair stated he agrees the five criteria have been met for Section 601.3; there is uniqueness with the lot and there is no other place to put the pool, also an aboveground pool will cause minimal impact and will not reduce property values. Regarding 601.4.8 he stated the problem is it's in the ordinance and he doesn't believe there is anything unique in the plan that makes it so it doesn't have to go to the Planning Board. He also apologized for the scheduling issues.

Mr. Scholz motioned for Case #7-2014, Lot 21-G-851, to grant relief from Section 601.3 to allow an 18 X 32 ft aboveground pool, patio pavers, fence and lawn to be located in the WWPD where it is not a permitted use, seconded by Mr. Samsel

Mr. Tierney asked if the motion should include the amount of square footage being disturbed as stated in the notice and the Board agreed.

Mr. Scholz amended his motion to include with a disturbance of approximately 2500 square feet. Motion passed: 5-0.

Mr. Scholz motioned for Case #7-2014, Lot 21-G-851, to deny relief from Section 601.4.8, seconded by Mr. Tierney. Motion passed: 3-2-0 with Mr. Yennaco and Mr. Samsel in opposition. The Chair, Mr. Tierney and Mr. Scholz were in agreement they voted to deny relief because the variance is contrary to the public interest, the spirit and intent of the ordinance is not observed, and there is no hardship.

The Chair advised of the 30 day appeal period.

Mr. Samsel read a letter into the record from Joel Desilets, to the Chair, dated March 11, 2014, in support of Case #7-2014.

Review and Approval of Draft Meeting Minutes – 02/25/14

Mr. Scholz made a motion to approve as amended the February 25, 2014 draft minutes, seconded by Mr. Samsel. Motion passed: 4-0-1 with Mr. Yennaco abstaining as he was not at the meeting.

Old/New Business

Mr. Samsel motioned to adjourn the March 11, 2014 Zoning Board of Adjustment Meeting at 8:45pm, seconded by Mr. Scholz. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, Zoning Board of Adjustment Minute Taker.