



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes August 13, 2013

Board Members:

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

Mike Scholz, Member – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate - Present

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Cathy Pinette, ZBA Minute Taker

Call to Order/Attendance

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

The Chair appointed Mr. Pellegrini to sit for Mr. Yennaco.

Public Hearings

Lot 6-C-1037, Case # 23-2013

Applicant – Daniel Molinari
Owner – Same
Location – 2 County Road
Zone – Rural

Variances from the following sections of the Zoning Ordinance are requested to allow the construction of a 44' x 8' farmer's porch to be added to the front of the existing single family home:

Section 702 and Appendix A-1: to allow a 44' x 8' farmer's porch to be constructed 41 feet from the front lot line where 50 feet is required and 18 feet from the side lot line where 30 feet is required.

Secretary Samsel read Case # 23-2013 into the record along with a list of the abutters.

- Mr. Daniel Molinari of 2 County Road addressed the Board. He stated he would like to add a farmer's porch to his existing house. When the house was built in 1972 there were no zoning laws and the house could have had a porch. The porch will be primarily out of public view and will be aesthetically pleasing. The house is set on an angle on the lot. He read the 5 criteria into the record. The Board had pictures of the proposed porch in their packets and were also shown on the wall Board by the applicant.

Questions/Comments from the Board

- Will there be stairs coming off the front middle of the porch. Mr. Molinari stated yes. Mr. Molinari showed the Board on the GIS his house, the location of the proposed porch and the neighbor's property. The Board asked Mr. Molinari what the distance was to the neighbor's house. Mr. Molinari showed that on the plan.
- The Board discussed the 18 feet from the side lot line where 30 feet is required. It appeared that it would encroach about 50 feet due to the angle of the current house but the Board did not have an updated plan, only a septic plan. Mr. Molinari stated he met with Ms. Prendergast and Mike McGuire, Building Inspector, and they scaled out the plan and there is only a 2 foot encroachment. Because of the angle of the house there could be an encroachment he stated. The Board discussed this and stated when construction begins it will determine the size and moving the porch a bit will be an option if necessary. Ms. Prendergast stated they scaled in the drawing from the plot plan.

The Chair opened the hearing to the public at 7:45 pm.

- Ms. Gina Despres, 4 County Rd., stated she had no objections and the porch would enhance the house. She stated there are a lot of bushes between her property and the applicants.

The public portion was closed at 7:47 pm.

Secretary Samsel motioned to go into deliberative session, seconded by Mr. Scholz. Motion passed 5 – 0.

- Secretary Samsel stated the application meets the 5 criteria and he has no issues with the plan. If it turns out the applicant needs more relief he will need to come back to the Board. Vice Chair Tierney stated it is a reasonable expansion due to the angle of the house. The Chair stated it meets the 5 criteria as it is not contrary to public interest, it is in the spirit of the ordinance, it would do substantial justice, the value of the surrounding properties would not be diminished and there is hardship because the existing structure is uniquely situated on the lot.

Secretary Samsel stated he had a letter from the Conservation Commission stating they had no comment.

Mr. Scholz motion to grant Case # 23-2013, in consideration of the 5 criteria, variances from the following sections of the Zoning Ordinance to allow the construction of a 44' x 8' farmer's porch to be added to the front of the existing single family home: Section 702 and Appendix A-1: to allow a 44' x 8' farmer's porch to be constructed 41 feet from the front lot line where 50 feet is required and 18 feet from the side lot line where 30 feet is required, seconded by Secretary Samsel. Motion passed 5 – 0.

The Chair advised all of the 30 day appeal period.

By-Laws Discussion

- The Chair stated Ms. Prendergast had made some redline changes to the By-Laws and he would like the Board to look at them further so this item will be postponed to a later date.

Administrative Appeals

- Mr. Scholz stated he would like the Board to discuss procedures for acceptance of administrative appeals. There is a checklist of items that must be addressed as part of the application in order for the Board to accept and open a case. He also questioned if the Board needed specific/additional requirements for different types of cases such as appeals and how to improve that. Vice Chair Tierney stated the law is not crystal clear. The applicant needs to have everything he needs before coming to the Board. They cannot say they just do not like the decision. They need facts to back it up. If they are appealing the Code Enforcement Officer's decision it is not the CEO's place to advise them on what they need. Mr. Scholz suggested the applicant provide the reason and the necessary backup. The Chair stated the RSA's are pretty clear and the applicant has the burden of proof. Secretary Samsel stated the Board has a pretty clear checklist and he is not inclined to do any more but maybe add another sentence. Mr. Mazalewski stated he would like to have a checklist that states the applicant needs to have the house and lot number on the property for acceptance for a case. A sentence on the application for site addresses being on the house per the Statutes could be added. Ms. Prendergast stated sometimes applications come before other Boards in other towns and the Board reviews the application before the hearing. She does receive the applications ahead of time and the Board could look at them before the scheduled hearing. Vice Chair Tierney also stated this.

Abutters Appeal of Administrative Decisions

- The Chair stated there is no clarity when an abutter gets to appeal an administrative decision. Secretary Samsel stated the law states a reasonable time period. Our timeline is 30 days which would be 30 days from the date of decision. The Chair gave an example of a case if an abutter thinks the applicant needs more relief than they have asked for and the Board had a discussion on this scenario. Vice Chair Tierney stated the abutter can call the Community Development Office and discuss with them. If they disagree with the Office's explanation they can get it in writing and appeal that. The Board discussed how abutters and the applicant were notified and the timeframes. The Board stated that the decision becomes effective the day after the hearing as they meet at night. Ms. Prendergast stated she had 5 days to post the notice of decision and mail then out. The Board consensus was that people need to be proactive if they don't agree with a decision. The Board discussed various scenarios for this. Ms. Prendergast will update the forms, add the sentence about having the house numbers posted and advise the applicant on having the house number visible. She will bring it back to the Board for review.

Review and Approval of Draft Meeting Minutes

July 23, 2013

Amendments were made to the July 23 minutes.

Secretary Samsel motioned to approve the amended minutes of July 23, 2013, seconded by Mr. Scholz. Motion passed 5 – 0.

Old/New Business

Court Cases: Roberts (Motion to Reconsider filed with the State Supreme Court by Roberts)

- The Chair stated the Board has all the details on this case and there was a Motion to Reconsider filed with the State Supreme Court.

Section 906; proposed zoning changes from PB (re: Senate Bill 50)

- The Chair stated he wrote a letter to the Planning Board as a Windham resident his thoughts on the new language change for Senate Bill 50. He stated he wrote this letter as a resident, not the Chair of the ZBA and clearly indicated this in his letter.
- Mr. Samsel questioned the language change and Ms. Prendergast explained how the Senate Bill does not want the permit to expire before the applicant goes before the Planning Board. The Board had a discussion on the intent of the Bill. Mr. Scholz stated it would be great if we could make our Ordinance clearer for Townspeople but the Board has to use the RSA language.

Binder Update: Tab 1 – Member List, Tab 12 – “I Recuse Myself” news article

- The Chair stated there are no cases for the August 27th meeting and that meeting will be cancelled. The next meeting of the ZBA will be September 10th.

Adjournment

Secretary Samsel motioned to adjourn, seconded by Mr. Scholz. Motion passed 5 – 0.

Meeting adjourned at 8:25 pm.

These minutes are in draft form and respectfully submitted for approval by Cathy Pinette, ZBA Minute Taker