



ZONING BOARD OF ADJUSTMENT

Approved Minutes

February 11, 2020

7:30 pm @ Community Development Department

Attendance:

Chairman Mike Scholz- present

Vice Chair Mark Samsel- present

Pam Skinner, regular member- excused

Bruce Breton, regular member- excused

Neelima Gogumalla, regular member- present

Kevin Hughes, alternate- present (seated for Mr. Breton)

Nick Shea, alternate- present (seated for Ms. Skinner)

Staff:

Brian Arsenault- Code Enforcement/ ZBA Administrator

Chair Scholz sat Mr. Hughes for Mr. Breton and Mr. Shea for Ms. Skinner

There was a moment of silence for the former Board member Anthony "Tony" Pellegrini who had recently passed away.

Ms. Skinner and Mr. Breton were not in attendance as they were helping at the polls this evening.

Public Hearing

Case #37-2019: Parcel 20-E-121

(Continued from December 10, 2019)

Applicant – Rodrigo and Thayse Mota

Owner – Rodrigo and Thayse Mota

Location – 76 Lowell Road

Zoning District – Rural District

Variance relief is requested from **Section(s) 702 and Appendix A-1** to allow construction a roof over a patio to be added on the front of the house in the Rural District. Specifically from **Sec. 702 & Appendix A-1**: To allow the existing house to have a northeasterly side yard setback of 10.5' where 30' is required and to have 155' of road frontage where 175' is required. For a house with an existing 19.5' front yard setback, to allow the proposed roof to have a front yard setback of 11.5' to Lowell Road, where 50' is required.

Two additional abutters, Peter Middlemass and Murdoch MacKenzie were added to the list of abutters.

Ms. Thayse Mota addressed the Board. Ms. Mota explained that she was before the Board as they, the applicants, were interesting in building a roof in the front of their house. Ms. Mota

45 learned in December that her house is a historic house in a historic district which she learned the
46 last time she was before this Board.

47
48 Mr. Shea read from the Windham Historic District/Heritage Commission meeting minutes from
49 February 6th. 2020. Mr. Shea read the 2 paragraphs from their meeting minutes which included a
50 motion to approve the homeowner’s approved changes to the structure. Ms. Mota stated that she
51 is amenable to using material that is more “artistically styled” as mentioned in their meeting
52 minutes.

53
54 Ms. Gogumalla asked if all the abutters have now been notified; they have.

55
56 **A motion was made by Vice Chair Samsel to go into Deliberative Session. Seconded by Mr.**
57 **Shea. Vote 5-0. Motion passes.**

58
59 Chairman Scholz stated that he believes the property meets the first two criteria along with the
60 substantial justice prong. The home has been on the property for a long time.

61
62 **A motion was made by Vice Chair Samsel for Case #37-2019 to grant relief as requested**
63 **from Section(s) 702 and Appendix A-1 to allow construction a roof over a patio to be added**
64 **on the front of the house in the Rural District. Specifically from Sec. 702 & Appendix A-1:**
65 **To allow the existing house to have a northeasterly side yard setback of 10.5’ where 30’ is**
66 **required and to have 155’ of road frontage where 175’ is required. For a house with an**
67 **existing 19.5’ front yard setback, to allow the proposed roof to have a front yard setback of**
68 **11.5’ to Lowell Road, where 50’ is required, per plan submitted with a date of September**
69 **2019 and signed and dated by the Chair. Seconded by Mr. Hughes.**

70
71 **Vote 5-0.**

72 **Motion passes.**

73 **The Chair advised of the 30-day appeal period.**

74
75 **Case #03-2020: Parcel 13-J-8**

76 **Applicant – Edward N. Herbert Associates, Inc.**

77 **Owner(s) - Allen M. Johnson 2011 Revocable Trust, Allen M. Johnson, Trustee**

78 **Judy C. Johnson 2011 Revocable Trust, Judy C. Johnson, Trustee**

79 **Location – 1 Allen Road**

80 **Zoning District – Rural District**

81
82 Variance relief is requested from Section(s) 702 & Appendix A-1 to allow construction of a
83 single-family dwelling (SFD) on a pre-existing non-conforming lot. Specifically, from Sec. 702
84 & Appendix A-1: To allow a lot size of 15,690 +/- sf where a minimum land area of 50,000 sf is
85 required and to allow 0’ frontage on Allen Road (a private road) where 175’ of frontage is
86 required on a public road, and to allow the SFD a front yard setback of 28’ +/- where 50’ is
87 required and to allow side yard setbacks of 23’ and 26’ where 30’ is required.

88
89 Mr. Shea read the case, the list of abutters, and the letter of authorization into the record.

90

91 Mr. Shayne Gendron addressed the Board. Mr. Gendron stated that the Johnson's have owned
92 the property since 1982. Mr. Gendron stated that it is a pre-existing non-conforming lot of
93 record. The lot has no frontage on the existing right of way. Mr. Gendron stated that the plan is
94 to build a home on the property. With a permit this evening, the potential owners would then try
95 to get a Shoreland Protection Permit and septic permit. The owners are seeking to sell the
96 property. The pad would be 1650 square feet which is 10.5% of the building coverage of the total
97 lot. There is an attached garage and a walk out basement in the plan. He stated that the
98 Conservation Commission had no issues with the plan as presented; that Board did ask to have
99 drip edge added to the plan, which was done.

100
101 Mr. Gendron reviewed the 5 points of the variance application contained in the public packet.
102 Chairman Scholz asked if other lots in the area were developed. Mr. Gendron stated that all but
103 one is developed. Chairman Scholz asked about road access. Mr. Gendron stated that there is a
104 driveway on paper to the property but there is no actual road to the property. Vice Chair Samsel
105 asked about the age of the home. The age of the surrounding homes varies. Chairman Scholz also
106 asked about the power lines. Mr. Gendron stated they have spoken with the power company to
107 potentially move the pole. Mr. Shea asked about the building of the home; Mr. Gendron stated
108 the potential new owner would build the home. The home, including the garage, would have a
109 footprint on 1650 square feet.

110
111 Mr. Shea read the letter from the Conservation Commission.

112
113 Chairman Scholz opened up discussion about the property to the public.

114
115 Mr. Frank Incropera addressed the Board. Mr. Incropera stated that they have owned 8 Dow
116 Road since 1983. Mr. Incropera does not wish to cause the owners any hardship. Yet, he and his
117 wife do have an issue with this small lot being built upon. Mr. Incropera stated that he expressed
118 interest in purchasing the property from the owner at some point in their conversations.

119
120 Mr. Everett Lovejoy addressed the Board. Mr. Lovejoy does not have any strong opinions
121 against this. Mr. Lovejoy stated the structure looks very large for the lot. Mr. Lovejoy
122 understands he cannot dictate what happens to the property of others and does not want to stand
123 in the way of this, yet, he does think the structure is quite large. Mr. Lovejoy recently learned
124 that his shed and propane tanks might be on a portion of this property and he understands there
125 may need to be changes on his part as a result of this discovery.

126
127 Mrs. Dorothy Incropera addressed the Board. Mrs. Incropera stated that she does consider the
128 owner to be friends. Mrs. Incropera stated that the area has been a very peaceful place for many
129 years. Mrs. Incropera stated that she has often viewed this smaller lot as part of a larger parcel
130 that was also purchased by the owners. Mrs. Incropera stated that the lot will be sold and
131 excavation will begin. The landscape of the neighbourhood will be changed as a result; Mrs.
132 Incropera does not believe this will be an improvement to the neighbourhood, especially during
133 construction. Mrs. Incropera stated that all the roads in the area are dirt after Witch Hazel Road.

135 Mrs. Debbie Lovejoy addressed the Board. Mrs. Lovejoy asked what guarantees the neighbors
136 have that the property will be completed by a new owner. Her concern is that if the current
137 owners start building the home, the property may not near completion in a timely manner.
138

139 Mr. Gendron addressed the Board. Mr. Gendron stated that the lot is a lot of record. There are
140 properties on the lake that are smaller than this property that have been developed. Mr. Gendron
141 stated that the criteria of the variance must be complied with regardless of who purchases the
142 property. Mr. Gendron stated that there were no substantial conversations with the neighbors
143 about selling the property. Mr. Gendron stated that it is the right of the owner to do what they
144 would like with their property. Chairman Scholz asked about the trees and wildlife. Mr. Gendron
145 stated that the management of the property must comply with a Shoreland Protection Permit. Ms.
146 Gogumalla asked for clarification as to why the owners would want a variance prior to selling.
147 Mr. Gendron stated that having the variance makes the property more marketable.
148

149 Mr. Shea asked about the driveway and where it was located. Mr. Gendron stated that they are
150 trying to keep the driveway in the right of way and they plan is trying to comply with the old
151 plans, one set of plans discussed was from 1952.
152

153 Chairman Scholz asked about any potential mitigation for equipment coming in and out of the
154 property. Mr. Gendron stated that the lot is small and there would only be room for one piece of
155 equipment at a time. Mr. Gendron also mentioned the drip edge added to the plan after meeting
156 with the Conservation Commission. Vice Chair Samsel asked for clarification around the size of
157 the lot in relation to other properties. Mr. Gendron listed several other smaller properties in the
158 area.

159
160 Mr. Incropera addressed the Board once again to state that he has expressed interest in the
161 property over the years. Mr. Incropera asked about the septic tank. Chairman Scholz stated that
162 the septic tank might not have been permitted yet.
163

164 Mrs. Incropera asked if this property will be sold with the other properties in the area. Chairman
165 Scholz stated that this is a single lot and the other properties are not in question.
166

167 Mr. Scott Lemay addressed the Board. Mr. Lemay states that he spends considerable time
168 maintaining and plowing the road. Mr. Lemay stated he does have some concerns around getting
169 equipment on to the road as he had to do it himself about 20 years ago to build his home.
170

171 Mr. Gendron addressed the Board once again to discuss the septic permitting process in relation
172 to the wells in the area. Mr. Gendron stated that the future owner may be the ones to acquire the
173 permit. Mr. Gendron stated that he only has knowledge of this property, not other properties in
174 the area. Mr. Gendron and Mr. Arsenault then reviewed the permitting process for those wishing
175 to build on water for the sake of understanding the timeline of the permitting process.
176

177 **A motion was made by Vice Chair Samsel to go into Deliberative Session. Seconded by Mr.**
178 **Shea. Vote 5-0. Motion passes.**
179

180 Ms. Gogumalla asked Mr. Shea if a variance request like this makes a lot more marketable to a
181 potential owner; he believes it does.

182
183 Chairman Scholz does believe the application meets the first two criteria. Chairman Scholz
184 stated that this is a residential neighborhood for homes and there is mitigation to roof run-off on
185 the plan.

186
187 Chairman Scholz then moved to substantial justice; The lot is pre-existing and the lot existed
188 long before there were zoning regulations in the town this would allow the owner to develop
189 their property.

190
191 Vice Chair Samsel is in agreement that the property meets the five points. As far as verbal
192 agreements go, there is still an opportunity to do so between the neighbors. Vice Chair Samsel
193 stated adding a condition around the state permitting process.

194
195 Ms. Gogumalla asked if constructing a larger home in relation to other homes in the area would
196 potential diminish the property values of others. The Board discussed the interpretation of this
197 point. Chairman Scholz does not believe it will diminish other properties but stated that is open
198 to interpretation.

199
200 The five variance criteria was also met.

201
202 The Board discuss the maintenance of the road and the usage of the road during the construction
203 process, yet, stipulating anything is out of this Board's jurisdiction.

204
205 **A motion was made by Vice Chair Samsel to grant relief as requested for Case #03-2020**
206 **from Section(s) 702 & Appendix A-1 to allow construction of a single-family dwelling**
207 **(SFD) on a pre-existing non-conforming lot. Specifically, from Sec. 702 & Appendix A-**
208 **1: To allow a lot size of 15,690 +/- sf where a minimum land area of 50,000 sf is required**
209 **and to allow 0' frontage on Allen Road (a private road) where 175' of frontage is required**
210 **on a public road, and to allow the SFD a front yard setback of 28' +/- where 50' is required**
211 **and to allow side yard setbacks of 23' and 26' where 30' is required per plan submitted**
212 **February 6, 2020 that was signed and dated by the Chair. Seconded by Mr. Hughes.**

213
214 **Vote 5-0.**
215 **Motion passes.**
216 **The Chair advised of the 30-day appeal period.**

217
218 **Public Meeting**

219
220 **Meeting Minutes-Review and Approve:** Nov. 26th Dec. 10th 2019, Jan. 14th 2020.

221
222 **A motion was made by Mr. Shea to approve the December 10th draft minutes as amended.**
223 **Seconded by Vice Chair Samsel. Vote 4-0-1. Mr. Hughes abstained. Motion passes.**

224

225 **A motion was made Mr. Shea to approve the January 14th draft minutes as amended.**
226 **Seconded by Ms. Gogumalla. Vote 3-0-2. Mr. Hughes and Chairman Scholz abstained.**
227 **Motion passes.**

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229 **A motion was made by Mr. Shea to adjourn at 8:50pm. Seconded by Vice Chair Samsel.**
230

231 **Respectfully submitted by Anitra Brodeur**

Approved