



ZONING BOARD OF ADJUSTMENT

Approved Minutes

March 28, 2023 – 7:00 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department) Live

Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

To access via Zoom: [ZBA Meeting](#)

Meeting number/access code: 865 4393 1593 **Password:** 250013 **To join by phone:** 1 646 876 9923

Attendance:

Chairman Betty Dunn- present

Pam Skinner, Secretary- present

Neelima Gogumalla, regular member- present

Mike Scholz, alternate- present via Zoom and seated for Ms. Stith

Mark Brockmeier, regular member- present

Michelle Stith, regular member- excused

Galen Stearns, alternate- excused

Staff:

Alexander Mello- Community Development Director

Anitra Lincicum- minute taker, present via Zoom

Ms. Nicole Merrill swore in Mr. Brockmeier as a member of the Zoning Board of Adjustment.

A motion was made by Ms. Gogumalla to allow Mr. Scholz to participate in the meeting via Zoom. Seconded by Ms. Skinner. Vote 4-0. Motion passes.

Rehearing Request – [Case #40-2022](#): Parcel 17-M-5, 17 Armstrong Road

Chairman Dunn recused herself and Mr. Scholz was appointed as the Chairman for the Rehearing Request.

Mr. Scholz asked if Mr. Brockmeier was able to familiarize himself with the case. Mr. Brockmeier said he was able to. Mr. Scholz stated that he understood that there had been a lot line adjustment on the property and he did not think this was new information Mr. Scholz stated that the garages, specifically 3 car garages, in the neighborhood was not new information and the Board members are familiar with the neighborhood. The Board discussed the 20-acre lot across the street and they did have knowledge of the area. Mr. Scholz stated that he is comfortable with the fact that the Board discussed the gazebo and the plan to utilize it for storage which the homeowners did not utilize as storage when it was built several years ago.

A motion was made by Ms. Gogumalla for Case #40-2022: Parcel 17-M-5 to deny the request for rehearing as the Board did not find any technical errors made or any new information presented. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz-yes. Vote 4-0. Motion passes.

A motion was made by Ms. Gogumalla to continue the Board elections to the next meeting. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes. Vote 5-0. Motion passes.

**Case #05-2023 Parcel 16-E-12
Applicant – Benchmark, LLC
Owner – Lindsay Sullo
Location – 13 Gaumont Rd
Zoning District – Residential District A/ WPOD**

Variance relief is requested from **Section 602.1.9.3.6** to allow the proposed Accessory Dwelling Unit (ADU) to have a separate driveway, where Windham Zoning Ordinance requires an Accessory Dwelling Unit to share a driveway with the principal building.

Mr. Joseph Maynard of Benchmark LLC addressed the Board and is representing the applicant. Mr. Maynard stated that the septic system is mounded and the location would not allow the driveway to be on the other side of the septic system. Mr. Maynard also discussed site distances on the property. Mr. Maynard does plan to comply with all of the criteria for building in the WPOD because he does not agree with staff's findings that it is not in the WPOD. The building coverage on the lot is 12.9% on a 1.6-acre lot.

After discussion, Mr. Mello stated that the only non-compliant part of the variance request is the driveway. There is nothing in the ordinance that does not allow for the garage or the living space of 950 square feet. Chairman Dunn stated that the visual might be that of a duplex and if she had a visual, it might be easier to see.

Mr. Maynard does not think it will be out of character with the neighborhood. Mr. Maynard stated that the new construction house, porch and garage would be 2,400 square feet. Mr. Scholz asked how much frontage the lot had. Mr. Maynard stated that it was about 200 feet, with the 75-foot setback, it would be more.

Mr. Maynard reviewed the 5 criteria contained in the public packet. Mr. Maynard discussed the access to the ADU and the necessary installation of the proposed driveway. Chairman Dunn asked about the septic system.

Mr. Maynard stated that he believes the currently approved septic system is for a 3-bedroom dwelling. Mr. Maynard stated that the state would like to see that the current system can be supported on the lot and it is not necessary to replace it until it fails. Mr. Maynard discussed the drip line infiltration that would be installed on the lot. Mr. Scholz asked the distance between the two driveways. Mr. Maynard stated the driveways were about 100 feet apart and this was done primarily for line-of-sight distance.

Pauline Fennessey, 15 Gaumont Drive addressed the Board. Ms. Fennessey would like to know where the proposed driveway is in relation to her property line. Ms. Fennessey would like to know about tree cutting on the property and what is allowed.

Mr. Maynard stated that the proposed driveway would be about 200 to 250 feet from the driveway at 15 Gaumont Drive. Mr. Maynard stated that there is a blasting ordinance and there may be some blasting that is necessary but they also are in close proximity to the other house on the lot so they will need to be mindful of that as well as the surrounding lots.

Ms. Fennessey asked if there was a basement in the ADU and she also asked about blasting because that proposed home would likely be as close to her home as the current home on the property.

Mr. Maynard discussed the proximity to the proposed structure to both of the current structures discussed and the potential blasting needs.

The Board was in agreement to enter into deliberative session without opposition.

Ms. Gogumalla discussed the hardship on the lot as it was presented. Ms. Gogumalla stated that there are constraints around the septic and the current dwelling so she does see the hardship. The application looking for access only to the addition. The applicant's request meets all other the zoning requirements and the 5 criteria. Ms. Skinner and Mr. Brockmeier also agree that it meets the 5 criteria.

Mr. Brockmeier stated that he believes it meets the hardship criteria and he does not believe the driveway can be done any other way.

Mr. Scholz asked about off-street parking once again as it is in the ordinance. Mr. Scholz thinks they meet the hardship criteria and all the other criteria. Mr. Scholz stated that he is concerned about the look of a multi-family dwelling in a single-family dwelling neighborhood. Mr. Scholz also mentioned the septic and that is something that cannot be driven over. Chairman Dunn stated that she does have some concerns around the appearance. Chairman Dunn stated that she does find it interesting that the only thing out of the compliance is the driveway.

A motion was made by Ms. Gogumalla for Case 05-2023 to grant variance relief as requested from Section 602.1.9.3.6 to allow the proposed Accessory Dwelling Unit (ADU) to have a separate driveway, where Windham Zoning Ordinance requires an Accessory Dwelling Unit to share a driveway with the principal building as per plan dated January 19, 2023 and signed and dated by the Chair. Seconded by Mr. Scholz. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn-yes.

Vote 5-0.

Motion passes.

The Chair advised of the 30-day appeal period.

Case #06-2023 Parcel 11-A-1657
Applicant – Benchmark, LLC
Owner – Ryan and Raychelly Bartolotta, Etal
Location – 2 Floral St
Zoning District – Rural District/WWPD

Variance relief is requested from **Section(s) 601.3, 601.4.6, 601.4.8, 601.4.8.4.1, 702 / Appendix A-1** to allow the existing home and septic system to remain approximately 70 ft. from the edge of the wetlands. To allow a cabana to be constructed 25 ft from the edge of the wetlands. Additionally, to allow a proposed pool and patio area to be 30 ft from the edge of the wetlands, for a total land area use of 14,000 Sq Ft. Application further seeks relief to allow the WWPD markers to be installed around the perimeter of the proposed improvements, and to allow the proposed pool to be constructed 22 Ft from the rear lot line, where 30 Ft is required, and no work is permitted in the WWPD.

Mr. Joseph Maynard from Benchmark LLC addressed the Board and is representing the applicant. Mr. Maynard stated that there was a small area of wetland but there is no WWPD on the lot according to Mr. Maynard. Mr. Maynard discussed the applicant's efforts around working on the lot prior to finally finding out there was WWPD on the lot. Mr. Maynard stated that he is trying to help the homeowner cleaning up the uses of the lot because the current home is in the WWPD along with the yard and the septic system. Mr. Maynard is not sure how this proposal went through Planning Board several years ago.

Mr. Maynard stated that some of the wetland regulations have changed but the plans were not checked against any older plans. Mr. Maynard does believe there are 12,000 to 15,000 square feet of wetland and there will be no disturbance to the wetlands. Mr. Maynard reviewed the 5 criteria contained in the public packet. Mr. Maynard stated that he did go to the Conservation Commission and ZBA reviewed the comments from this Board about the proposal.

Mr. Maynard stated that the applicant is trying to do the right thing and also move forward with their plans on the property.

Mr. Mello stated that the plans show a poorly drained soil and he does not believe the wetland was fully measured until Mr. Maynard started to look at the property. Mr. Mello stated that staff did look into it and realized that the wetland was then found to be over an acre. Mr. Mello also stated that the wetland does go across several properties in the area.

Mr. Maynard reviewed the 5 criteria contained in the public packet. Once the applicant realized there was WWPD on the lot, the homeowners did the best they could to comply with the setbacks and still move forward with the improvements they would like to make on the lot. Mr. Maynard also stated that the homeowner is planning on establishing substantial plantings on the property as part of the buffer; the applicants will also locate the pool as far away from the wetland as possible.

Chairman Dunn began to discuss the different aspects of the variance requests as presented. Mr. Scholz stated that relief has been granted for mistakes being made by a municipal official. Chairman Dunn asked if there are any other items that can be moved out of the WWPD. Mr. Maynard stated that he does not think so. Mr. Scholz asked if the cabana could be moved to the other side of the pool. Mr. Maynard stated that moving it would be an encroachment in the setback. Mr. Maynard also stated that the grade has also been leveled at the

expense of the current homeowner and moving things around the lot would require further excavation and funds. Mr. Maynard stated that the homeowner was told by staff that they could do it. Also, the cabana is on the pavers and part of the total of the hardscaping.

Chairman Dunn asked if there were any other comments. Mr. Maynard stated that he thought the applicants were doing everything they could to comply with the new information they have been presented with. Mr. Maynard stated that he did put in a request to not have to go before Planning Board and he would not be doing his job if he did not make that request.

Ms. Gogumalla stated that she would like the input of the town's attorney regarding potential errors that might have been made and where the Board might stand in order to make a decision. Mr. Maynard is looking to understand what information this Board might be looking for from the town's attorney. Ms. Gogumalla stated she would like to make sure that a decision from the ZBA is not adding to that mistake.

Ms. Bartolotta, the applicant, stated that both herself and her husband have a background in construction and they felt as if they did everything they could to make sure they were complying with all necessary steps and they were shocked to learn about the WWPD on the lot and she is not sure how discussion with the town's attorney would provide clarity. Ms. Bortolotta also said that they have not spent any time grading the area of the other proposed location for the cabana; the cabana would be custom wood structure with no plumbing.

Mr. Scholz does not think talking with town's counsel will help clarify this situation.

Mr. Mello stated that this is a variance like any other and reaching out to the town's attorney may delay the project even more than 2 weeks and the applicant has done everything they can.

Mr. Paul Gerard, landscaper, addressed the Board. Mr. Gerard stated that any proposal that involves flipping the cabana will be difficult for the overall project because of where the ledge is on the property and it would be very expensive for the applicant.

Chairman Dunn stated that the conditions on the property that already exist, would not be substantial justice for the Board because these things already exist on the lot. Mr. Maynard again mentioned the additional plantings and the drainage on the property. Mr. Maynard also stated that the drainage improvements are enough to mitigate the other proposals that the applicant is asking for, like the pool and the cabana.

Mr. Mello stated that it is within the realm of the Planning Board to be able to review drainage improvements. Mr. Mello stated that he also understands that the homeowners have a plan to mitigate the run off on the property. Mr. Scholz stated that the applicant would be looking for relief from Sections 601.4.8 and 601.4.8.4.1.

Mr. Scholz stated that this is an "after the fact" variance and he is comfortable moving forward with this case without town counsel. Ms. Gogumalla stated that since estoppel was mentioned, she first thought that consulting the town's attorney is appropriate. At this point, she is comfortable moving forward.

Hearing no further comment, the Board entered deliberative session.

Mr. Scholz stated that it is hard for him to not consider that this is already an approved structure by the town. Mr. Scholz stated that the green lines are the setbacks where they are so considering all the factors and he considers the house to be well situated. Mr. Scholz stated that he does think the existing house meets the 5

criteria along with the septic when considering all the factors.

Mr. Scholz thinks the pool pump outside the WWPD is an effort towards compliance. Mr. Scholz stated that if the patio was pulled back a little bit, it probably would not change his opinion of the facts. Mr. Scholz stated that there is a very small area that the homeowner can make reasonable use of the property. Mr. Scholz also recommended the significant proposed plantings by the applicant as part of the project.

Chairman Dunn stated that, after viewing the property, the most detrimental part of the work has already been done because the work has been performed in the wetland. Chairman Dunn understands that other work will be performed if the variance is granted and that will be further disruption to the lot, yet, there are unique conditions to both the lot and the situation.

Ms. Gogumalla sees the land as a hardship. Ms. Skinner stated that it is sad that there was an issue with the wetland and she sees that the homeowners tried to do the work necessary to be as compliant as possible.

A motion was made by Mr. Scholz for Case #06-2023 to grant variance relief is requested from Section(s) 601.3, 601.4.6, 601.4.8.4.1, 702 /Appendix A-1 to allow the existing home and septic system to remain approximately 70 ft. from the edge of the wetlands. To allow a cabana to be constructed 25 ft from the edge of the wetlands. Additionally, to allow a proposed pool and patio area to be 30 ft from the edge of the wetlands, for a total land area use of 14,000 Sq Ft. Application further seeks relief to allow the WWPD markers to be installed around the perimeter of the proposed improvements, and to allow the proposed pool to be constructed 22 Ft from the rear lot line, where 30 Ft is required, and no work is permitted in the WWPD. per plan dated January 19 2023 conditioned with the additional drainage measures to mitigate impervious surfaces as presented. Also, with the addition of the substantial planting proposal as presented in the packet. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes.

Vote 5-0.

Motion passes.

The Chair advised of the 30-day appeal period.

Case #07-2023 Parcel 17-L-67
Applicant – Benchmark, LLC
Owner – Louis and Audrey Pereira
Location – 29 Farmer Rd
Zoning District – Rural District / WPOD
READVERTISEMENT

Variance relief is requested from **Section(s) 200 and 702 / Appendix A-1** to allow the property to be subdivided into two lots. The lot is currently bifurcated by Farmer Road, a private road. The existing home would remain on the Westerly portion of the lot, along the pond, with its preexisting setbacks and 102 ft of frontage along the private road, which were previously approved by Variance (Case 35-2009). The lot the existing house will be on is proposed to be approximately 14,000 square feet, where at least 50,000 square feet is required; therefore, will require a Variance. The lot opposite of Farmer Road will be 2 acres, where at least 50,000 square feet is required. However, the lot opposite of Farmer Road will require a Variance to have approximately 140 ft of frontage on a private road, where 175 feet along a public road is required.

Mr. Joseph Maynard addressed the Board and is representing the applicant for Benchmark LLC. Mr. Maynard stated that there is an existing house on the lot. The applicant would like to subdivide the lot for their daughter. Mr. Maynard stated that they did do soils on the lot. The back lot would meet all the setback standards and the “lake lot” as Mr. Maynard and Chairman Dunn are calling it would meet all the requirements.

Chairman Dunn asked if it met all WPOD requirements. Mr. Maynard stated that it does. Chairman Dunn stated that she does not think the ZBA can create a lot that does not meet the requirements as it is over the 30% requirements. The Board contended that the applicant is asking to create 2 lots. Mr. Maynard stated that he would like to ask for a continuance to have it heard at the next meeting. The Board discussed the language around the re-notice request.

A motion was made by Ms. Gogumalla to continue Case #07-2023 to April 11, 2023. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn-yes.

**Vote 5-0.
Motion passes.**

Case #08-2023 Parcel 13-C-12

Applicant – Benchmark, LLC

Owner – Nassar Investment Trust

Location – 11 McIntosh Hollow Rd

Zoning District – Section(s) 601.3, 601.4.6, 601.4.8, 601.4.8.4.1, 702 / Appendix A-1

****READVERTISEMENT****

Variance relief is requested from **Section(s) 601.3, 601.4.6, 601.4.8, 601.4.8.4.1, 702 / Appendix A-1** to allow the construction of a new Single-Family Dwelling (SFD) within 160 ft. of a wetland, where 200 ft. is required. The total approximate disturbance of the WWPDP would be 10,600 sq. ft. for the SFD and yard area, with an additional 5,300 sq. ft. for grading, and drainage improvements, where the Windham Zoning Ordinance prohibits such work within the 200 ft. WWPDP setback. To allow a waste disposal system within the WWPDP, where such is prohibited. To allow the proposal to proceed without obtaining the required Special Permit from the Planning Board. To allow WWPDP signage to be installed along the limits/perimeter of the proposed work, where such is required along the WWPDP boundary. To allow the proposed SFD to be 20 ft. from the side lot line, where 30 ft. is required.

Mr. Joseph Maynard of Benchmark LLC addressed the Board and is representing the applicant.

Mr. Maynard stated that there is a small portion of the lot that is the building envelope. The lot is encumbered by wetland. The driveway would be about 400 feet in length. The proposal would move the house up near the street and have it be about 12 feet below the road instead of 30 feet below the road. Mr. Maynard stated that the proposed drainage measure to help mitigate drainage on the lot. Mr. Maynard stated they are asking for a 20-foot setback to the lot; Mr. Maynard also stated that the building envelope on the adjoining lot is on the other side of that lot. Mr. Maynard stated that the proposal is to put the house in the 100 feet of the WWPDP. Mr. Maynard stated that the septic would be outside the WWPDP. The Board discussed the underground electric line, a utility easement, located on the property. Mr. Maynard showed the location of the well; it is in the WWPDP but it is an allowed use in the WWPDP. The Board discussed the encumbrances on the lot. Mr. Mello presented the comments from the Conservation Commission who would like to see an increase in

plantings on the lot. Mr. Maynard reviewed the swale he created to send the water to the infiltration basin on the lot. Mr. Maynard stated that he is trying to mitigate his impervious coverage in the wetland.

Mr. Maynard stated that the 5 criteria are contained in the public packet.

The Board entered deliberative session without opposition.

Mr. Scholz stated he believes it meets the first 2 criteria as it is not contrary to public interest. Mr. Scholz stated that having a house in the back of the lot is not in the interest of the public. Mr. Scholz believes it meets the substantial justice prong and the value of surrounding properties will not be diminished and he believes it meets all 5 criteria. Chairman Dunn is in agreement.

A motion was made by Mr. Scholz for Case #08-2023 to grant variance relief as requested from Section(s) 601.3, 601.4.6, 601.4.8.4.1, 702 /Appendix A-1 to allow the construction of a new Single-Family Dwelling (SFD) within 160 ft. of a wetland, where 200 ft. is required. The total approximate disturbance of the WWPD would be 10,600 sq. ft. for the SFD and yard area, with an additional 5,300 sq. ft. for grading, and drainage improvements, where the Windham Zoning Ordinance prohibits such work within the 200 ft. WWPD setback. To allow a waste disposal system within the WWPD, where such is prohibited. To allow WWPD signage to be installed along the limits/perimeter of the proposed work, where such is required along the WWPD boundary. To allow the proposed SFD to be 20 ft. from the side lot line, where 30 ft. is required per plan submitted and dated January 19, 2023. Seconded by Ms. Gogumalla. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes.

Vote 5-0.

Motion passes.

The Chair advised of the 30-day appeal period.

Prior to the motion, the Board discussed the best way to dispose of Section 601.4.8 in the original application request.

Mr. Maynard withdrew his request for Section 601.4.8 for both cases: Case #06-2-23 and Case #08-2023.

A motion was made by Mr. Brockmeier to allow new business to be conducted after 10pm. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes.

Vote 5-0.

Motion passes.

**Case #09-2023 Parcel 7-B-34
Applicant – Andrew Marino
Owner – Same
Location – 6 Orchard Blossom Rd
Zoning District – Rural District**

Variance relief is requested from **Section(s) 710.1, 710.3.1** to allow a 6 ft fence in the front yard to remain standing, which is prohibited under the Windham Zoning Ordinance.

Mr. Andrew Marino, 6 Orchard Blossom Road, addressed the Board. Chairman Dunn stated that she understands that the applicant is looking for a temporary fence but the fence will not remain for a long period of time. Mr. Marino stated that the fence will be taken down once the construction on the lot is completed. Mr. Marino stated that the fence has been there for 9.5 years. Mr. Marino stated that the fence was put up for the safety of the kids in the yard.

Mr. Mello stated that they could possibly put a time limit on the variance and say that the variance expires after a certain amount of time.

Mr. Scholz does not think the Board can grant a temporary variance. Mr. Marino stated that in talking with the neighbors, they wished to shield the neighbors from the construction on the lot. Mr. Scholz stated that enforcement is not what the Zoning Board does. Mr. Marino stated that it does not impede the neighbors or any line of site.

Chairman Dunn stated that the best way to proceed might be consult with town counsel for the best way to proceed.

Mr. Dos Santos, the abutter and former owner of the parcel, addressed the Board. Mr. Dos Santos stated that while they are doing construction, did not want to have to impede on the neighbor's lawn.

A motion was made by Mr. Brockmeyer to continue Case #09-2023 to April 11th, 2023 to the first case of the evening. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes.

Vote 5-0.

Motion passes.

Case #11-2023 Parcel 17-L-45
Applicant – Kiara Mooney
Owner – Kevin Penta & Kiara Mooney
Location – 134 Range Rd
Zoning District – Residential District A

This case was not heard due to not being properly advertised. Staff requested a continuance due to a noticing error and will be readvertised for 04-11-23.

Variance relief is requested from **Section 200** from the definitions of “dwelling: single family” and “dwelling unit” to allow the transient occupancy of small families or couples who wish to visit the “carriage house” on the property.

A motion was made by Ms. Gogumalla to adjourn at 10:32pm. Seconded by Ms. Skinner. Roll call vote: Ms. Gogumalla, Ms. Skinner, Mr. Brockmeier, Mr. Scholz, Chairman Dunn- yes.

Vote 5-0.

Motion passes.

Respectfully submitted by Anitra Lincicum