



ZONING BOARD OF ADJUSTMENT

Approved Minutes

May 26, 2020 - 7:30 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/>

Attendance:

Chairman Mike Scholz- present

Vice Chair Bruce Breton-present

Pam Skinner, Secretary- present

Neelima Gogumalla, regular member- present

Nick Shea, regular member- present

Kevin Hughes, alternate- excused

Staff:

Rex Norman- Community Development Director

Brain Arsenaault- ZBA Administrator/ Code Enforcement

Anitra Brodeur- minute taker

Chairman Scholz explained that Executive Order 2020-04 allowed the meeting to held remotely:

***“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.*”**

Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”

There was a roll call vote and all members reported they were alone in the room where they were attending the meeting.

Public Hearing

Case #09-2020: Parcel 11-A-1620

Applicant - Benchmark Engineering, Inc.

Owner - Kyle Segal and Michelle Guilmet

Location - 53 Blossom Road

Zoning District - Rural District and Wetland and Watershed Prot. District (WWPD)

45 Variance relief is requested from **Section(s) 601.3 and 601.4.8** to allow construction of an in-
46 ground pool, pool apron, patio, cabana and fencing. Specifically, from **Section(s) 601.3** to allow
47 structures within 60' of the edge of wetland that exerts a 100' WWPD setback and to allow the
48 existing yard area to remain at approx. 25' from the edge of wetland that exerts a 100' WWPD
49 setback, where within the WWPD where such use is not permitted. And from **Section 601.4.8** to
50 allow this proposal without requiring submission to the Planning Board for a special permit for
51 this proposed work.

52
53 Ms. Skinner read the case, the list of abutters and the letter of authorization into the record. Mr.
54 Arsenault stated there were a few issues with the lot numbers of the abutters. Another set of
55 plans was given as a "clean" copy from the applicant with no writing according to Mr. Arsenault.

56
57 Mr. Joseph Maynard addressed the Board and reviewed the history of the lot. In 2012, there was
58 a subdivision of the lots and WWPD limits were on the property at that time. The applicant
59 purchased the property in 2015. There was a lot line adjustment done in 2019 between the
60 applicant and the neighbor. Mr. Maynard reported that the lot has been before the Planning
61 Board 3 times in the last 20 years. Mr. Maynard stated that the applicant is seeking a variance for
62 a pool to be installed in the WWPD. About 400 square feet of the house is in the WWPD along
63 with the portions of both the yard and the driveway. Mr. Maynard stated that the applicant
64 acquired additional land in order to try to make more room for the pool on the lot. The 2 lines on
65 the plan are both the pool and the pool skirt. Chairman Scholz asked why the cabana could not
66 be put on the other side of the pool. Mr. Breton asked for clarity regarding the WWPD. Mr.
67 Maynard stated that 1670 square feet is the yard impact in the WWPD; 2500 is the impact of the
68 pool and the amenities in the WWPD. The house was built in the late 1980's and the WWPD has
69 existed on the lot since it was built but the WWPD was not recorded until several years ago
70 according to Mr. Maynard. Mr. Maynard stated that that is a forested wetland and that is the
71 reason it is in the WWPD.

72
73 Mr. Maynard stated that putting the cabana on the other side of the pool would mean it would
74 need to be built on ledge and would potentially create more disturbance. The septic system is in
75 the front yard of the property. The Board discussed once again if the cabana could be placed on
76 the other side of the pool to minimize the impact in the WWPD. Mr. Maynard stated that if the
77 cabana were moved to the other side, half of the cabana would be in the WWPD instead of the
78 entire cabana in the WWPD. Chairman Scholz also asked about the fenced-in area and if that
79 could also be minimized. Mr. Maynard stated that the applicant is trying to keep their yard 25
80 feet away from the WWPD.

81
82 Mr. Maynard stated he is willing to put in underground filtration to help mitigate the pool. Mr.
83 Maynard stated that installing some underground chambers would help mitigate the chlorine
84 water from the pool. Vice Chair Breton asked about the comments of the Conservation
85 Commission. The Board discussed how chlorine is sometimes used in wells.

86
87 Mr. Maynard read the 5 criteria contained in the public packet.

88
89 Mr. Shea stated that he believes it was known by the applicant that the WWPD existed on the lot
90 when he purchased the property. Mr. Maynard stated that the applicant bought the house the way

91 it was unaware of the WWPD on the lot. Ms. Gogumalla asked again why the cabana cannot be
92 moved to the other side of the lot as it seems like a reasonable accommodation within the
93 WWPD. The cabana would be 90 feet from the edge of wetland rather than 65 feet from the edge
94 of wetland.

95
96 Mr. Arsenault stated that the WWPD is noted on the original subdivision plan but not on this lot
97 specifically. Mr. Maynard stated it was noted on a plan as a whole that contained several lots.
98

99 Ms. Skinner read the comments of the Conservation Commission. The Conservation
100 Commission is concerned about the impact of the chlorine or salt water in the WWPD. The
101 Conservation Commission is also concerned about the process and not going before the Planning
102 Board as part of the permitting process.
103

104 Mr. Maynard explained why he requested not having to go before the Planning Board. This lot
105 has been before the Planning Board several times in the last few years for different adjustments
106 and they have seen and are familiar with the lot. Mr. Maynard stated that the process with the
107 Planning Board has been that if they do not have a variance, they have him go back and get a
108 variance from the ZBA. The Planning Board has seen the driveway, the pavers, the WWPD and
109 the lot size according to Mr. Maynard. Mr. Maynard sees that this is a minor impact to the lot.
110 Chairman Scholz does appreciate Mr. Maynard's thoughts on the variance.
111

112 Mr. Maynard stated that he is willing to do the underground infiltration as well as moving the
113 cabana on the property.
114

115 Mr. Kyle Segal addressed the Board via Zoom. Mr. Maynard asked the applicant if he is willing
116 to move the cabana to the other side of the lot to accommodate the WWPD. Mr. Segal stated that
117 there is no plumbing in the cabana. Mr. Segal also stated that the cabana would need to be put in
118 quite a bit of ledge on the sloped side. Mr. Segal is willing to move the cabana to the other side
119 of the pool to further accommodate the WWPD.
120

121 Chairman Scholz is looking for guidance from the applicant to see the best way to proceed prior
122 to going into Deliberative Session to help.
123

124 There was a recess at 8:35pm to accommodate a member being disconnected from the meeting.
125 The meeting resumed at 8:45pm.
126

127 Mr. Maynard stated that the infiltration would be in the WWPD and the cabana would be
128 something he would be willing to move to the other side of the pool.
129

130 The Board and Mr. Maynard discussed the best way to proceed through this process with
131 changes to the plan. The Board suggested continuing the plan to a meeting two weeks from now
132 and make changes to the plan as needed.
133

134 **A motion was made by Vice Chair Breton to continue Case #09-2020 to the first case on**
135 **June 9th, 2020. Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton,**
136 **Mr. Shea, Ms. Skinner, and Ms. Gogumalla- yes. Vote 5-0. Motion passes.**
137

138 **Case #10-2020: Parcel 17-C-105A**
139 **Applicant - Benchmark Engineering, Inc.**
140 **Owner – Joseph and Dawn Sapienza**
141 **Location – 10 Cross Street**
142 **Zoning District - Residential A District and Cobbetts Pond & Canobie Lake**
143 **Watershed Protection Overlay District (WPOD)**
144

145 Variance relief is requested from **Section(s) 406.2, 616.6.4.2, 702 and Appendix A-1, 703,**
146 **703.1** to allow construction of a 24' by 24' garage addition onto an existing single-family
147 dwelling (SFD) on a pre-existing non-conforming lot with two frontages (Cross Street, a right of
148 way, and Cobbetts Pond). Specifically, from **Section 406.2:** To allow an expansion in the area
149 and/or volume of the house from 960 sf to 1,536 sf in area and 15,360 cu/ft to 19,968 cu/ft in
150 volume, where the ordinance does not allow an increase in the area and/or volume of the
151 structure. And from **Section 616.6.4.2:** To allow an impervious lot coverage of 36.4% (existing
152 coverage is 32.6%) where only 30% impervious coverage is allowed. And from **Section 702 &**
153 **Appendix A-1:** To allow a lot size of 9,496 sf +/- where a minimum land area of 50,000 sf is
154 required. To allow 0' of frontage on a private road, Cross Street, where 175' of frontage is
155 required on a public road. To allow the SFD a Cross Street front yard setback of 40' +/- from the
156 right of way and a Cobbetts Pond modified front yard setback of 48' (existing), where 50' is
157 required. To allow a westerly side yard setback of 5' +/- (existing), where 30' is required.
158 And from **Section 702 & Appendix A-1:** To allow a shed on the lot to be relocated to a location
159 that will have a Cross Street front yard setback of 3'+/-, where 50' is required and an easterly
160 side yard setback of 3' +/- where 30' is required. And from **Section 703:** To allow the garage
161 addition a front yard setback of 40' +/- from the right of way, where 50' is required and an
162 easterly side yard setback of 3' +/- where 30' is required. And from **Section 703.1:** To allow the
163 shed to be relocated on the lot with a 3' side yard setback, where 10' is required.
164

165 Ms. Skinner read the case into the record.
166

167 Mr. Arsenault stated that he received information from a resident on Sawtelle Road in support of
168 the application.
169

170 Ms. Skinner does not have a list of abutters or a letter of authorization. Chairman Scholz found
171 the letter of authorization online and read it into the record.
172

173 The list of abutters was also read into the record by Chairman Scholz.
174

175 Mr. Maynard stated that the person who wrote the letter is not a direct abutter; there is sliver of
176 land between the applicant and the person who wrote the letter. Mr. Maynard explained that
177 there are two easements that run across two lots nearby. Mr. Arsenault stated that perhaps Mr.
178 Maynard can explain if an abutter is informed of the right to pass and repass over the property.
179

180 Mr. Arsenault stated that there were concerns as to whether or not the applicant had access to
181 Cross Street as the only access appears to be on Sawtelle Road. The Board and Mr. Arsenault
182 discussed how the potential easements apply to this Board's purview. Chairman Scholz stated
183 that their address is Cross St., not Sawtelle Road. Vice Chair Breton stated that there is an
184 intersection where the two streets meet.

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The Board discussed the prescriptive easement that Mr. Maynard describes. The Board is in agreement that they can proceed with the case even based on the unique road issues.

The existing building coverage is 11.9% and the building has a newer septic system and it is located under the driveway that exits now. There are a few previous variances that exist now, one for a shed and one for an addition. The driveway consists of a paved and a brick area. There are no trees on this lot in the primary setback and there is no form of drainage for the site as it exists today.

Mr. Maynard stated they are seeking to build a garage and relocate the shed to another part of the lot. Mr. Maynard also reviewed the lot coverage as well as the tree coverage on the lot necessary for the 25 points each per grid. In order to meet state guidelines, plantings have to be proposed and installed. There will be 60 trees installed on this lot. The point system is based on shade and canopies and varied growth for the wildlife. The pavers are also part of the impervious coverage surfaces. There is no storage above the garage and the applicant would like to keep the shed if possible.

Mr. Maynard read the 5 criteria contained in the public packet. There is no other location on the lot for either the shed or the garage and the setback being requested are much like the lots on the pond in existence today. There are a number of restrictions on the lot that make it challenging to develop. Mr. Maynard also stated that the setbacks are an improvement from the setbacks as they are today.

Chairman Scholz asked about the tree being removed on the lot. Mr. Maynard stated that it is being removed to accommodate the shed.

Ms. Skinner read the letter from the Conservation Commission. The Conservation Commission would like more information about the septic system, more impervious surface as well as native plantings.

Vice Chair Breton asked about the septic system. Mr. Maynard stated he would need to dig it up to find the exact location. The septic system was originally installed in 1984 and it is state approved. Mr. Maynard stated that they will be using silt fencing for erosion control because they are not modifying the lot at this time.

Mr. Arsenault asked about the waivers of the septic system. Mr. Maynard stated that there are no waivers to the septic system. Vice Chair Breton mentioned that there are no bedrooms being added to the building, just a garage so there will be no additional bedrooms added to the needs of the household. Mr. Maynard sees this as an improvement for a small lot.

A motion was made by Vice Chair Breton to go into Deliberative Session at 9:56pm. Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Mr. Shea, Ms. Skinner, and Ms. Gogumalla- yes. Vote 5-0. Motion passes.

230 Vice Chair Breton stated that the improvements with the plantings are an improvement to the lot.
231 Mr. Shea sees this as an improvement to the lot.

232
233 Chairman Scholz does agree that it meets the 5 criteria particularly the pavers, the 10-year storm
234 event and the plantings are an improvement to pond life. Chairman Scholz mentioned the idea
235 about what is special about this lot that is different from others related to the hardship criteria.
236 The hardship criteria is about the special conditions on the lot itself that is different from the
237 other lots in the area. The Board discussed the special conditions on this lot in relation to this
238 application and other lots in the area. The Board discussed the fact that the applicant was
239 applying for the garage but the applicant was also making significant improvements to the
240 plantings on the lot as well. Vice Chair Breton stated that this was a balancing act. Vice Chair
241 Breton stated that the garage is impervious surface that cars can be parked on.

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243 **A motion was made by Mr. Shea to approve Case #10-2020 as requested at 10 Cross Street**
244 **per plan dated December 24, 2019 and signed and dated by the Chair. Seconded by Vice**
245 **Chair Breton. Roll call vote: Chairman Scholz, Vice Chair Breton, Mr. Shea, and Ms.**
246 **Skinner- yes. Ms. Gogumalla- no.**

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248 **Vote 4-1.**
249 **Motion passes.**

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251 **The Chair advised of the 30-day appeal period.**
252 **Ms. Gogumalla cited criteria 1 and 2 for her vote.**

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254 **A motion was made by Vice Chair Breton to adjourn at 10:28pm. Seconded by Mr. Shea.**
255 **Roll call vote: Chairman Scholz, Vice Chair Breton, Mr. Shea, Ms. Skinner, and Ms.**
256 **Gogumalla- yes. Vote 5-0. Motion passes.**

257
258 Respectfully submitted by Anitra Brodeur