



ZONING BOARD OF ADJUSTMENT

Draft Minutes

June 9, 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 (at Community Development)

Pam Skinner, Secretary- present

Neelima Gogumalla, regular member- present (at Community Development)

Nick Shea, regular member- present

**Kevin Hughes, alternate- joined the meeting at 8:06pm and left the meeting at 9:14pm
(seated for Mr. Breton for Case #11-2020)**

**(by roll call vote, all members stated they were present and were alone in the room with the
exception of Mr. Breton and Mr. Gogumalla who were both present at Community
Development)**

Staff:

Brian Arsenault- ZBA Administrator/Code Enforcement

Anitra Brodeur- minute taker

Chairman Scholz made the following statement:

*“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, this public body is authorized to meet electronically.*

*Please note that **all votes** that are taken during this meeting shall be done by **roll call vote only**.*

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

Public Hearing

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

(Continued from May 26, 2020)

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 continued case into the record. Mr. Joseph Maynard addressed the Board.
54 Mr. Maynard reviewed the plan and reviewed the concerns the Board had around the cabana in
55 the pool area. Mr. Maynard stated that they went back to the site and conducted several ledge
56 probes on the site. Mr. Maynard stated that he was willing to remove the request to not go before
57 the Planning Board; he is willing to go before Planning Board in the event that a variance is
58 granted by the ZBA this evening. Vice Chair Breton asked why Mr. Maynard would need a
59 special permit if the ZBA granted the request. Chairman Scholz pulled up Section 601.4.8 that
60 require a special permit from the Planning Board. Mr. Maynard stated that the Planning Board
61 does govern usage in the WWPD. Mr. Maynard stated the protection of the wetland is often
62 around best management practices. Vice Chair Breton asked if the exception can be made in the
63 motion; it could. The cabana is now 14 by 16 feet; Mr. Maynard stated that 50 square feet of the
64 cabana structure would be in the WWPD. Mr. Maynard stated that there are underground pipe
65 chambers to help mitigate the pool water.

66
67 Chairman Scholz invited public comment at 7:49pm. There were none.

68
69 **A motion was made by Mr. Breton to go into Deliberative Session at 7:50pm. Seconded by**
70 **Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Gogumalla, Ms.**
71 **Skinner, and Mr. Shea. Vote 5-0. Motion passes.**

72
73 Ms. Gogumalla asked for clarification around Section 601.4.8. Chairman Scholz stated that Mr.
74 Maynard is willing to remove that condition and go before the Planning Board. Chairman Scholz
75 stated that the homeowner was not aware of the WWPD impact on the property when it was
76 purchased. Chairman Scholz stated that the homeowner has come back with an updated plan and
77 the applicant has come back with a proposal that has less of an impact of the WWPD. Chairman
78 Scholz would like to get the Board's opinion about the spirit and intent. Ms. Skinner stated that
79 the lawn has been on the property for a number of years and she does not have an opinion about
80 the spirit and intent criteria at this time. Vice Chair Breton stated that the applicant made the
81 requested revisions along with the improvements to the infiltration. Ms. Gogumalla stated that
82 there is still an impact in the WWPD and that is not allowed under the ordinance; she does not
83 believe it meets the intent of the ordinance. Mr. Shea stated that he gives the homeowner a lot of
84 credit for working with an engineer to use the Board's recommendations. Mr. Shea stated he is
85 comfortable granting a variance with the plan before the Board right now.

86
87 **A motion was made Mr. Shea to grant the variance request Section(s) 601.3 and 601.4.8 to**
88 **allow construction of an in-ground pool, pool apron, patio, cabana and fencing.**
89 **Specifically, from Section(s) 601.3 to allow structures within 60' of the edge of wetland that**
90 **exerts a 100' WWPD setback and to allow the existing yard area to remain at approx. 25'**

91 from the edge of wetland that exerts a 100' WWPD setback, where within the WWPD
92 where such use is not permitted with the plan dated May 30, 2020 and signed and dated by
93 the Chair. Seconded by Vice Chair Breton. Roll call vote: Chairman Scholz, Vice Chair
94 Breton, Ms. Gogumalla, Ms. Skinner, and Mr. Shea.

95
96 **Vote 5-0.**

97 **Motion passes.**

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

99
100 Mr. Kevin Hughes joined the meeting at 8:06pm and was seated for Vice Chair Breton for Case
101 #11-2020 who recused himself.

102
103 **Case #11-2020: Parcel 12-A-500**

104 **Applicant - New Hampshire Catholic Charities**

105 **Owner – New Hampshire Catholic Charities**

106 **Location – 21 Searles Road**

107 **Zoning District - Rural District and Cobbetts Pond & Canobie Lake**

108 **Watershed Protection Overlay District (WPOD)**

109
110 Variance relief is requested from **Section(s) 706.4 and 706.8** to allow four signs to be installed.
111 Specifically, from **Sec. 706.4 and Sec. 706.8**: To allow a building sign to be erected larger than
112 the dimensions of signs permitted and the entrance sign to be erected larger than the dimensions
113 of signs permitted with no front lot line setback and along Searles Road two retaining wall signs
114 larger than the dimensions of signs permitted with no front lot line setback.

115
116 Ms. Skinner read the case and the letter of authorization into the record.

117
118 **A motion was made by Mr. Shea to waive the reading of the abutters' list. Seconded by Ms.**
119 **Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Gogumalla, Ms. Skinner,**
120 **and Mr. Shea. Vote 5-0. Motion passes.**

121
122 Attorney Muller addressed the Board. Mr. Pomeroy and Mr. Dangora were also in attendance.
123 Attorney Muller stated that signs A and B are allowed by right. Attorney Muller stated they are
124 before the Board for signs C, D, E and F. Mr. Muller stated that signs D, E, and F are proposed
125 signs to be located at the curb cuts to identify where people are to enter the property. None of the
126 signs that are being proposed will be illuminated.

127
128 Attorney Muller reviewed the 5 criteria contained in the public packet. Mr. Muller stated that the
129 signs will help the flow of traffic while visitors are on the property. The signs simply identify the
130 property and this gives an opportunity for the applicant to say what this property is for visitors.
131 Attorney Muller stated that the alternative would be to look at some kind of free standing sign
132 according to Attorney Muller. Attorney Muller stated that the building is about 11,000 square
133 feet and the sign is very small in relation to that square footage of the building. Attorney Muller
134 stated that the public may not be directed to the correct part of the property without the
135 implementation of the signage.

137 Attorney Muller stated that one of the purposes of the signage is to promote local business which
138 is what the signs would do.

139
140 Mr. Shea asked about the residents of the facility. Attorney Muller stated that some of the
141 residents are assisted living and some residents are living in independent units. Mr. Pomeroy
142 addressed the Board. Mr. Pomeroy stated there were 21 independent living units and at the
143 second entrance, there are 32 skilled nursing units. There are also rehab units for residents who
144 may not be staying long term.

145
146 Ms. Gogumalla asked about the free-standing signs as she believes affixing signs D and E to the
147 wall, which is a historic structure, may not be ideal. Attorney Muller stated that they are only
148 allowed one free standing sign from the ordinance. Attorney Muller stated that they are not
149 arguing that this is the only option but they are proposing it as a reasonable option. Attorney
150 Muller also stated that there was a lot of information that needed to fit on the sign and it would
151 not fit on a smaller, free-standing sign. Ms. Gogumalla asked if there was an option where the
152 sign could be near the wall, but not on the wall to preserve the wall.

153
154 Mr. Brandon Currier addressed the Board. Mr. Currier stated that there are already signs on the
155 wall. Once those signs are removed, there will be penetrations and those will be seen once the
156 signs are removed. Mr. Currier stated that the signs would be flush mounted onto the wall and
157 the posts would not be seen. Ms. Gogumalla asked if there was a way to not put any more holes
158 in the wall. Mr. Currier stated that excavation near the wall would be necessary for posts and that
159 would not be ideal for the integrity of the wall either.

160
161 Chairman Scholz asked why the applicant is asking for relief from Section 706.4 if they only
162 need relief from Section 706.4.1. Mr. Arsenault stated that the applicant was aware that he likely
163 only needed relief from Section 706.4.1 but he wanted to be sure he was thorough in his request.
164 The Board and the applicant discussed where the signs are on the wall. Chairman Scholz asked if
165 the ordinance stated there was one sign allowed in the rural district; Mr. Arsenault stated that
166 was correct. Chairman Scholz stated that the specific requests for each sign are part of the
167 submission but are not part of the relief request.

168
169 Chairman Scholz asked if Attorney Muller felt as if he needed to read the comprehensive
170 information in the 5 criteria; he did not.

171
172 Ms. Skinner read the letter from the Conservation Commission; the Board has no issues at this
173 time. Chairman Scholz read the draft minutes from the Historic Commission. The Historic
174 Commission does have an issue with the signs on the wall and would like to see the current signs
175 removed.

176
177 Mr. Arsenault and Chairman Scholz discussed that the address is 21 Searles Road, not 29 Searles
178 Road in the Historic Commission minutes.

179
180 Ms. Wendy Williams called in via Zoom to clarify that in the Historic Commission minutes, the
181 address should be written as 21 Searles Road. Ms. Williams stated that there are signs all along
182 the wall in the area, not just the signs that are being applied for. Ms. Williams stated that the

183 Historic Commission is not in favor of having the signs erected on the wall. Ms. Williams stated
184 that the wall is a historic asset, not a retaining wall.

185
186 Ms. Carol Pynn called in via telephone and addressed the Board. Ms. Pynn stated that Ms.
187 Williams' statement are very true and the historic aspects of that wall should be taken seriously.
188 Ms. Pynn does not see any reason whatsoever that the signs would need to be affixed to the wall.
189 The Historic Commission does also see the value of repairing the wall by a skilled stone mason.
190 Ms. Pynn mentioned the sign at McCauley Commons as a model for what might be done at 21
191 Searles Road. Mr. Shea asked where McCauley Commons is located; Ms. Pynn believes it is
192 about 39 Searles Road, about a ¼ mile up the road. Ms. Pynn would also like to know the
193 material that will be used for the signs. Ms. Pynn is speaking as Vice Chair of the Historic
194 District Heritage Commission.

195
196 Ms. Gogumalla asked if the applicant has seen the sign at McCauley Commons. Attorney Muller
197 stated that this is the first he has heard of the opposition to the plan from the Historic
198 Commission. The applicant would like to request a continuance to further research the concerns
199 of the Historic Commission.

200
201 Chairman Scholz asked Mr. Arsenault about the next available time for the applicant. Mr.
202 Arsenault stated that he wanted to apologize that the Historic Commission notes were not
203 forwarded to the applicant. Mr. Shea stated that a portion of the wall was removed about a year
204 ago and there was a lot of concerns that the wall might be removed over time. Mr. Shea
205 appreciates that the applicant is looking for the continuance.

206
207 Mr. Harry Dangora addressed the Board; Mr. Dangora is the project manager for Catholic
208 Charities. Mr. Dangora stated that the removal of the wall was an approved project from the
209 Planning Board. The members of ZBA stated that the wall removal was actually not part of this
210 project.

211
212 **A motion was made by Ms. Gogumalla to continue Case #11-2020 to July 28th, 2020.**
213 **Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms.**
214 **Gogumalla, Ms. Skinner, and Mr. Shea. Vote 5-0. Motion passes.**

215
216 Mr. Hughes left the meeting at 9:14pm.

217
218 **Case #12-2020: Parcel 5-A-1005**
219 **Applicant – Edward N. Herbert Associates, Inc.**
220 **Owner – Christopher & Lindsay Baker**
221 **Location – 5 Chestnut Road**
222 **Zoning District - Rural District and Wetland and Watershed Prot. District (WWPD)**

223
224 Variance relief is requested from **Section(s) 601.3, 702 and App. A-1 and 703**: Specifically,
225 from **Sec. 601.3**: To allow 300 sf of an existing tennis court to remain in the WWPD, where
226 within the WWPD such use is not permitted. And from **Sec(s) 702 and App. A-1 and 703** to
227 allow a proposed detached garage that is not a dwelling unit to be located 5' from the side yard
228 setback, where 30' is required.

229
230 Chairman Scholz read the case into the record. Ms. Skinner read the list of abutters into the
231 record. The applicants allowed Mr. Gendron to represent them in the matter. Mr. Gendron stated
232 that there was a letter of authorization as well as letters from abutters in support of the project
233 that are also part of the case file.
234

235 Mr. Shayne Gendron addressed the Board. Mr. Gendron stated that 2.5 acres of the property are
236 encumbered by the WWPD. There is a drainage easement on the property as well. Mr. Gendron
237 stated that the homeowner is looking for additional space on the property. Mr. Gendron stated
238 that the existing tennis court is in the WWPD; the applicant has owned the property for about a
239 year and it was resurfaced in 2012. The variance request was made for the tennis court as part of
240 the garage application.
241

242 Mr. Gendron reviewed the 5 criteria contained in the public packet. Mr. Gendron stated that there
243 is fairly good screening from the closest property based on both vegetation and a grade change.
244 Mr. Gendron reviewed the 5 criteria contained in the public packet.
245

246 The Board and the applicant discussed the living space over the garage. The applicant, Mr. Chris
247 Baker who addressed the Board via Zoom, stated that he understands that the use of the building
248 would be for vehicles and storage and not living space.
249

250 The Chairman asked if the public had any comments for the request. There were none.
251

252 Ms. Skinner read the Conservation Commission letter into the record. The letter stated that the
253 garage is as far from the wetlands as possible and they appreciated the inclusion of the
254 information about the wetlands.
255

256 Chairman Scholz read the 4 letters of support into the record. Mr. Shea asked if the applicant
257 would be coming back before the Board for any other variance requests. Mr. Gendron stated he
258 did not think they would have any other requests.
259

260 **A motion was made by Vice Chair Breton to enter Deliberative Session at 9:40pm.**
261 **Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms.**
262 **Gogumalla, Ms. Skinner, and Mr. Shea. Vote 5-0. Motion passes.**
263

264 Vice Chair Breton asked if the relief was for the entire tennis court. Chairman Scholz stated it
265 was for the section of the court that was in the WWPD. The Board discussed that the relief meets
266 the first two criteria and all of the abutters are in support of the project. Chairman Scholz also
267 believes it meets the hardship criteria. The Board discussed that this is really the only location
268 where the garage can be placed on the property.
269

270 **A motion was made by Ms. Gogumalla for Case #12-202 for variance relief as requested**
271 **from Section(s) 601.3, 702 and App. A-1 and 703: Specifically, from Sec. 601.3: To allow**
272 **300 sf of an existing tennis court to remain in the WWPD, where within the WWPD such**
273 **use is not permitted. And from Sec(s) 702 and App. A-1 and 703 to allow a proposed**
274 **detached garage that is not a dwelling unit to be located 5' from the side yard setback,**

275 where 30' is required per plan dated May 2020 and signed and dated by the Chair.
276 Including the 8-page plan set dated April 3, 2020. Seconded by Mr. Shea. Roll call vote:
277 Chairman Scholz, Vice Chair Breton, Ms. Gogumalla, Ms. Skinner, and Mr. Shea.
278

279 **Vote 5-0.**

280 **Motion passes.**

281 **The Chair advised of the 30-day appeal period.**
282

283 Mr. Shea wished to thank The Bakers, the applicants, for kind things they have done for the
284 Windham community.
285

286 **Public Meeting**

287

288 **A motion was made by Ms. Gogumalla to appoint Ms. Betty Dunn to a 3-year term as**
289 **alternate member of the Zoning Board of Adjustment ending in 2023. Seconded by Vice**
290 **Chair Breton. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Gogumalla, Ms.**
291 **Skinner, and Mr. Shea. Vote 5-0. Motion passes.**
292

293 Chairman Scholz stated he will reach out to the other 2 alternates who had applied to the Board
294 as well. The Board discussed the use and role of alternates in these meetings and if it made sense
295 to give them opportunities to hear cases.
296

297 **Meeting Minutes-Review and Approve:** May 12th and May 26th 2020.
298

299 **A motion was made by Vice Chair Breton to approve the May 12th minutes as amended.**
300 **Seconded by Ms. Gogumalla. Roll call vote: Ms. Skinner, Ms. Gogumalla, Chairman**
301 **Scholz, Mr. Shea- yes. Vice Chair Breton-abstained. Vote 4-1. Motion passes.**
302

303 The Board, at the suggestion of Mr. Shea, discussed the best way to address an assessment as to
304 how the Board is doing and to get feedback about the performance of the Board. Vice Chair
305 Breton suggested it be added to "New Business". The Board discussed that they need to meet in
306 public and they cannot discuss cases prior to hearing a case. Vice Chair Breton stated that he
307 does agree and he explained that they were able to go look at properties in the past with the ZBA
308 Administrator. The Board continued to discuss the importance of making improvements to their
309 service to the public.
310

311 Vice Chair Breton stated that there used to be a review of all the cases and how many of them
312 were granted and denied. Mr. Arsenault stated that this is provided at the end of the year but he
313 will provide it to the Board more frequently.
314

315 **A motion was made by Ms. Gogumalla to approve the May 26th draft minutes as amended.**
316 **Seconded by Vice Chair Breton. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms.**
317 **Gogumalla, Ms. Skinner, and Mr. Shea. Vote 5-0. Motion passes.**
318

319 **A motion was made by Mr. Shea to adjourn 10:25pm. Seconded by Vice Chair Breton. Roll**
320 **call vote: Chairman Scholz, Vice Chair Breton, Ms. Gogumalla, Ms. Skinner, and Mr.**
321 **Shea. Vote 5-0. Motion passes.**

322
323 Respectfully submitted by Anitra Brodeur

Draft