



COMMUNITY DEVELOPMENT

3 N Lowell Road, Windham, NH 03087
(603) 432-3806 / www.WindhamNH.gov

ZONING BOARD OF ADJUSTMENT

Approved Minutes

June 13, 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 Teams: [Click here to join the meeting](#)
Meeting ID: 210 221 889 388 **Password:** 2YGui7

Attendance:

- Chairman Michelle Stith- present**
- Vice Chair Betty Dunn- present**
- Neelima Gogumalla, regular member- present**
- Mark Brockmeier, regular member- present**
- Pam Skinner, regular member- present**
- Galen Stearns, alternate- present**
- Mike Scholz, alternate- excused**

Staff:

- Julie Suech- Planning Technician**
- George Frangomihalos- Code Enforcement Administrator**
- Anitra Lincicum- minute taker (present via Teams)**

Case #18-2023 Parcel 22-L-81 & 22-L-83
Applicant – Benchmark LLC
Owner – Thomas J Jr & Lynn Murray
Location – 27-29 W. Shore Rd
Zoning District – Residential District A/ WPOD

The applicant is requesting a variance from **Sections 406.2, 702 / Appendix A-1, 703, 616.6.4.2** to allow the construction of an addition to the existing dwelling on 22-L-81 (29 W. Shore Rd), which is a pre-existing non-conforming lot with two frontages. The new plan incorporates 22-L-83 (27 W. Shore Rd), which will be voluntarily merged with 29 W. Shore Rd upon receiving all local and state approvals. Upon the merger, the owner would want to expand the single-family dwelling on 29 W. Shore Rd to allow the expansion in the area and/or volume of the house from 1,800 sf to 4,065 sf in area and from 32,400 cu/ft to 82,078 cu/ft in volume.

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39 To allow the lot size of 24,820 sf where a minimum lot size of 50,000 sf is required with 130 ft of frontage, where
40 175 ft is required. To allow the new addition of the single-family dwelling to have a front yard setback from W.
41 Shore Rd of approximately 16 ft from the ROW where 50 ft is required. The existing SFD has an 8 ft easterly side
42 yard setback, where 30 ft is required, and a Canobie Lake shoreline setback of 32 ft, where 50 ft is required. The
43 proposed swimming pool would also be placed 35 ft from Canobie Lake, where 50 ft is required and within the
44 front setback. Under the Windham Zoning Ordinance, a pool or Accessory Building may not be in the front yard.
45 The proposed addition will have a 31 ft setback from Canobie Lake, where 50 ft is required, a garage with a front
46 setback of 20 ft, and a subsurface utility vault with a 16 ft front yard setback, both of which would require a 50 ft
47 ROW setback. The proposal would result in a 46% impervious lot coverage, where a maximum of 30% is
48 permitted in the Residential District A and Cobbetts Pond and Canobie Lake Watershed Protection District. A
49 previous variance was granted (Case # 34-2019) for the above proposal, which is now expired.

50
51 **A motion was made by Vice Chair Dunn to allow the applicant to withdraw Case #18-2023.**
52 **Seconded by Ms. Skinner. Vote 5-0. Motion passes.**

53
54 **Case # 12-2023 Parcel 22-L-81 & 22-L-83**

55 **Applicant – Benchmark, LLC**

56 **Owner – Thomas J Jr & Lynn Murray**

57 **Location – 27-29 West Shore Road**

58 **Zoning District – Residential District A / WPOD**

59 ****Previously heard on April 11, 2023***

60 The applicant is requesting a variance from **Section(s) 406.2, 702/ Appendix A-1, and 703** to construct an
61 addition to the existing single-family dwelling (22-L-81), on a pre-existing, non-conforming lot. The addition to
62 the SFD would expand the area from 2,462 sf to 3,052 sf and the area from 44,316 cu/ft to 50,300 cu/ft in volume
63 and be 30 feet from the front lot line and 33 feet from the pond, where such addition increases the non-conforming
64 nature of the property. To construct an inground pool 22 ft from the side lot line, where 30 ft is required; 33 ft from
65 the pond where 50 ft is required; and 28 ft from the front lot line, where such are prohibited within the front yard.
66 To construct a greenhouse 10 ft from the front lot line, where such are prohibited within the front yard. To
67 construct a shed 18 ft from the front lot line, where such are prohibited within the front yard; and 15 ft from the
68 side property line, where 30 ft is required.

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70 Ms. Skinner read the case into the record. This was a continued case.

71
72 Vice Chair Dunn would like to address the issue of whether or not she and Mr. Stearns should be recused
73 from the case. This issue was presented by Attorney LeFebre when the case was presented previously.
74 Vice Chair Dunn stated that the statutes and case law require that any recusal request should be brought
75 up as soon as possible, hence, it should have been brought up when the case was first presented. Also, it
76 is for a board member to decide if he or she should recuse him or herself from a case. Vice Chair Dunn
77 stated that Mr. Murray and his counsel has filed a complaint with the attorney general's office and she is
78 one of persons the complaint has been filed against. Vice Chair Dunn stated that through the years, there
79 have been other residents who have been upset at her choices and decisions as a public official. Vice
80 Chair Dunn does not think it is necessary to recuse herself. She is open to a motion that she should recuse
81 herself if a board member would like to make that motion.

82
83 Mr. Stearns agrees with Vice Chair Dunn and he believes he will be able to serve on the case. All the other Board
84 members were in agreement with this decision.

85
86
87 Mr. Joseph Maynard of Benchmark LLC addressed the Board. Mr. Maynard stated that the Board wanted to take a

88 look at the property before making a decision and a previous request has been granted on this lot.
89
90 Once the lots are merged, Mr. Maynard stated that they are still under the State Shoreland maximum of 30%
91 coverage on the lot. Mr. Maynard reviewed that they have 168 feet of linear frontage which the State allows for
92 1230 square feet of accessory structure. Mr. Maynard stated that they are under the 1230 square feet at just over
93 1000 square feet. Mr. Maynard stated that porous material is required of the applicant. Mr. Maynard explained
94 both the fence and the retaining walls along with the “vaults” that sit underground under the greenhouse. The shed
95 across the street sits approximately 5 feet higher than the road. The variance request includes: the pool, the
96 greenhouse, the shed, and the addition.
97
98 Ms. Gogumalla asked about the merging of the lots. Mr. Maynard stated that 3 lots would be merged. Mr. Tom
99 Murray, the applicant, addressed the Board to state he voluntarily merged 2 of the lots in 2007. (Mr. Murray was
100 referencing a previous merger across the street.) The totality of the land actually once comprised 4 lots that would
101 be merged. Mr. Maynard stated that the previous State Shoreland application is still valid but the wetlands permit
102 is expired and they will need to renew that.
103
104 Mr. Maynard stated that the building coverage is 16.5% of the lot. The height of the greenhouse is about an 8-foot
105 ceiling height and then another 6 feet to the top of the structure. Vice Chair Dunn asked what about this lot makes
106 it any different than any other lot on the street. Mr. Maynard stated that the pool will end up in the natural grade so
107 the terrain is unique to this property. Mr. Maynard stated that there is a lower tier on the total lot. The lot on the
108 pond side sits lower. Vice Chair Dunn stated that she sees this as a congested piece of road and the applicant is
109 asking for a pool to be 10 feet from the property line. Mr. Maynard does not agree that it is congested.
110
111 Mr. Tom Murray addressed the Board to explain the parking situation in the surrounding area and where the
112 vehicles might be located on the road or on other properties. Mr. Maynard and Mr. Murray discussed that the
113 location of the greenhouse and that it was a safety measure for his son.
114
115 Mr. Murray stated that the road is approximately 22 feet wide. Mr. Maynard discussed the porous pavers and
116 porous grout that is now available. The well is located behind the existing garage according to Mr. Maynard. Mr.
117 Maynard and Vice Chair Dunn discussed the pool and the greenhouse.
118
119 Mr. Maynard stated that a pool is an amenity for a home. Vice Chair Dunn stated that it is a proposed pool on a
120 camp lot. There are no other pools on similar lots in the neighborhood. Mr. Maynard stated that the applicant bought
121 the property next door in order to make room for these amenities. Mr. Maynard again explained the frontage.
122
123 Mr. Brockmeier stated that he was struggling with the height and location of the greenhouse. Mr. Murray stated
124 that the original plan had a 3-car garage which was approved and he does not plan on building that. Mr. Maynard
125 stated that the height of the garage that was approved several years ago was 35 feet tall and there is much less on
126 this plan.
127
128 Chairman Stith invited public comment at this time. There was none.
129
130 Mr. Maynard stated that drip line infiltration works better than a dry well to handle the drainage. Mr. Maynard and
131 the Board discussed the benefits of drip line infiltration. Mr. Maynard stated that the applicant is taking down a
132 few pine trees.
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134 Mr. Maynard then explained the State Shoreland vegetation required “grid process” and trees are added to a lot
135 when needed by an applicant.
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137 The Board entered deliberative session without opposition at 8:17 pm.

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Ms. Gogumalla thinks it meets the 5 criteria. Ms. Gogumalla stated that it is not contrary to the public interest as the applicant is merging 3 lots into one and is putting accessory structures on it. It is an improvement of what exists on the property presently. Ms. Gogumalla does not think it effects the health, safety and welfare of the public as it reduces congestion and make the future lot bigger. Ms. Gogumalla does think the applicant is making the best use of their property. Ms. Gogumalla does not think this will decrease property values, if anything will increase property values. Merging 3 undersized lots into one with one house, one septic, one well and one driveway and less cars is much better option than the possibility of having 3 potential buildable lots. Ms. Gogumalla does feels that the applicant has made an effort to make the lot more compliant to town ordinances while still maximizing its usability. Ms. Skinner and Mr. Brockmeier agree that this proposal meets the 5 criteria.

Vice Chair Dunn does not think some of the structures meet the 5 criteria, specifically; the pool and the greenhouse. Vice Chair Dunn sees that the applicant has reasonable use of the property and that the addition to the house would meet the variance criteria. Vice Chair Dunn stated the plan as presented would increase congestion in this area. Vice Chair Dunn read from Section 100 of the Zoning Ordinance. Vice Chair Dunn mentioned the visual congestion in the area and that even with the merger of the lots, the lot is undersized. Ms. Gogumalla stated that this application would lessen the congestion as the accessory structures are part of one lot not 3 or 4 lots.

A motion was made by Ms. Gogumalla to grant variance relief from Section(s) 406.2, 702/ Appendix A-1, and 703 to construct an addition to the existing single-family dwelling (22-L-81), on a pre-existing, non-conforming lot. The addition to the SFD would expand the area from 2,462 sf to 3,052 sf and the area from 44,316 cu/ft to 50,300 cu/ft in volume and be 30 feet from the front lot line and 33 feet from the pond, where such addition increases the non-conforming nature of the property. To construct an inground pool 22 ft from the side lot line, where 30 ft is required; 33 ft from the pond where 50 ft is required; and 28 ft from the front lot line, where such are prohibited within the front yard. To construct a greenhouse 10 ft from the front lot line, where such are prohibited within the front yard. To construct a shed 18 ft from the front lot line, where such are prohibited within the front yard; and 15 ft from the side property line, where 30 ft is required.

Mr. Brockmeier stated that the shed is in the front yard and Section 703 discusses the height of the shed.

Mr. Frangomihalos discussed the setbacks and the height and the fact that it would need to meet all of standards around that.

The Board began amending the motion before it was seconded.

The motion was withdrawn by Ms. Gogumalla. Seconded by Ms. Skinner.

A motion made again after discussion.

A motion was made by Ms. Gogumalla to grant variance relief from Section(s) 406.2, 702/ Appendix A-1, and 703 to construct an addition to the existing single-family dwelling (22-L-81), on a pre-existing, non-conforming lot. The addition to the SFD would expand the area from 2,462 sf to 3,052 sf and the area from 44,316 cu/ft to 50,300 cu/ft in volume and be 30 feet from the front lot line and 33 feet from the pond, where such addition increases the non-conforming nature of the property. To construct an inground pool 22 ft from the side lot line, where 30 ft is required; 33 ft from the pond where 50 ft is required; and 28 ft from the front lot line, where such are prohibited within the front yard. To construct a greenhouse 10 ft from the front lot line, where such are prohibited within the front yard. To construct a shed 18 ft from the front lot line, where such are prohibited within the front yard; and 15 ft from the side property line, where 30 ft is required with the condition that the 3 lots be merged. (Lots 22-L-82 and Lot 22-L-83) including the 2 lots

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188 across the street into one lot and with the condition that the pool backwash be both located outside of the 50
189 ft setback and treated by use of a septic infiltrator. Seconded by Ms. Skinner.

191 **Vote 4-1. Motion passes.**

192 **Vice Chair Dunn opposed, On criteria 1,2, and 5**

193 Vice Chair Dunn stated that the variance will result in a substantial change in the character of the neighborhood
194 and she does not think the applicant has demonstrated a hardship related to construction of the pool and
195 greenhouse. The lot is different but it does not meet the hardship criteria. The hardship has to be relevant to the
196 parcel and it would lead to congestion in the area according to Vice Chair Dunn.

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

200 **Case #15-2023 Parcel 9-A-904**
201 **Applicant – Michael L DeBruyckere**
202 **Owner – DeBruyckere 2009 Family Trust**
203 **Location – 4 Balmorra Rd**
204 **Zoning District – Rural District / WWPD**

206 The applicant is requesting a variance from **Section 603.1** to allow the construction of a 28 ft. x 40 ft. detached
207 one-story accessory building, within the WWPD where permanent structures are prohibited. The Applicant intends
208 to use it as a garage for the storage of automobiles, yard equipment, and lawn furniture.

210 Ms. Skinner read the case into the record. This was a continued case.

212 Mr. DeBruyckere, the applicant, addressed the Board. Mr. DeBruyckere stated that he would like to shift the
213 location of the garage and angle it slightly; it would not work well to have the structure that close to the street. Mr.
214 DeBruyckere stated that they had no idea this line existed. Mr. Stearns appreciated that the applicant was making
215 the effort to be more compliant with the setbacks.

217 Ms. Gogumalla asked about the run off in the area. Mr. DeBruyckere stated he would be doing a perimeter with a
218 French drain. Mr. Frangomihalos said he may need to go to the Planning Board for a special permit after all as the
219 condition on French drains and other drains may be stipulated by Planning Board approval.

221 The Chair invited public comment. There was none.

223 The Board entered deliberative session.

225 Vice Chair Dunn stated that it meets the 5 criteria in that it is not contrary to the public interest as it is a minimum
226 intrusion into the WWPD; it is substantial justice and the property is somewhat unique in that there are substantial
227 wetlands on the property but it does have proper drainage as described by the applicant.

229 **A motion was made by Vice Chair Dunn to grant variance relief from Section 603.1 to allow the**
230 **construction of a 28 ft. x 40 ft. detached one-story accessory building, within the WWPD where permanent**
231 **structures are prohibited. The Applicant intends to use it as a garage for the storage of automobiles, yard**
232 **equipment, and lawn furniture per plan signed by the Chair with the condition there be French drains as**
233 **described by the Planning Board. Seconded by Ms. Skinner.**

235 **Vote 5-0.**

236 **Motion passes.**

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

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Case #17-2023 Parcel 25-R-867
Applicant – Michael Covey
Owner – Michael and Susan Covey
Location – 18 Corliss Rd
Zoning District – Rural District, Open Space, WWPD

The applicant is requesting a variance from **Sections 611.6.4.3.3 and 702 / Appendix A-1** to allow construction of a 24' x 30' accessory building to be used as a garage/ workshop one foot from the side lot line, where a 15 ft. side yard setback is required in the Open Space Residential Overlay District and 30 ft. side yard setback is required in the Rural District.

Ms. Skinner read the case into the record.

The Board reviewed what they recalled about the case as it was continued along with the photos provided by the applicant. The applicant had reviewed the 5 criteria previously. The applicant stated he would be doing drip line infiltration.

The Chair asked if there was any public comment. There was not.

Vice Chair Dunn reviewed the 5 criteria; granting the variance will do substantial justice and the hardship criteria is met.

A motion was made by Vice Chair Dunn variance relief from Sections 611.6.4.3.3 and 702 / Appendix A-1 to allow construction of a 24' x 30' accessory building to be used as a garage/ workshop one foot from the side lot line, where a 15 ft. side yard setback is required in the Open Space Residential Overlay District and 30 ft. side yard setback is required in the Rural District and signed and dated by the Chair. Seconded by Mr. Brockmeier.

Vote 5-0.

Motion passes.

The Chair advised of the 30- day appeal period.

Case # 23-2023 Parcel 19-B-813
Applicant –Derek Iske
Owner – Derek Iske & Jessica Marie Scenna
Location – 24 Glance Rd
Zoning District – Rural District

The applicant is requesting a variance from **Section 710.3.1** to allow the construction of a six (6') fence on a corner lot property, where no fence in the Rural District shall be constructed over (4') in height in the front yard.

Ms. Skinner read the case into the record.

The applicant, Mr. Derek Iske, addressed the Board. Mr. Iske stated that the variance was required for the section of fence that was 6 feet, not the section that was 4 feet. The applicants reviewed where they would locate their fence. The applicant described the greenery that had been added to the property recently along with the approximate location of the fence while viewing the property on google earth.

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288 **A motion was made by Vice Chair Dunn to grant variance relief from Section 710.3.1 to allow the**
289 **construction of a six (6') fence on a corner lot property, where no fence in the Rural District shall be**
290 **constructed over (4') in height in the front yard. Seconded by Ms. Skinner.**

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292 **Vote 5-0.**
293 **Motion passes.**
294 **30-day appeal period.**

295
296 **Meeting Minutes to Review and Approve: 05-09-23**

297
298 **A motion was made by Vice Chair Dunn to approve the June 6th draft as amended. Seconded by Ms.**
299 **Gogumalla. Vote 4-0-1. Ms. Skinner abstained.**

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301 The Board discussed the gathering of site walk minutes and when to seat an alternate.

302
303 **There was a motion to adjourn at 9:38 pm.**

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305 Respectfully submitted by Ms. Anitra Lincicum

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