



**ZONING BOARD OF ADJUSTMENT**

**Approved Minutes**

**August 8, 2023 – 6:30 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/>

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, Secretary- present**

**Galen Stearns, alternate- present (seated for Mr. Brockmeier until 7 pm)**

**Mike Scholz, alternate- present**

**Staff:**

**Julie Suech- Planning Technician**

**Anitra Lincicum- minute taker**

**Meeting Minutes to Review and Approve: 05-09-23, 05-23-23, 06-13-23, 06-28-23, 07-11-23 & 07-25-23**

**A motion was made by Ms. Gogumalla to approve the May 9<sup>th</sup> draft minutes as amended. Seconded by Vice Chair Dunn. Vote 5-0. Motion passes. (Mr. Stearns was a voting member.)**

**A motion was made by Vice Chair Dunn to approve the May 23<sup>rd</sup> draft minutes as amended. Seconded by Mr. Stearns. Vote 5-0. Motion passes. (Mr. Stearns was a voting member.)**

**A motion was made by Vice Chair Dunn to approve the June 13<sup>th</sup> draft minutes as amended. Seconded by Ms. Skinner. Vote 5-0. Motion passes. (Mr. Stearns was a voting member)**

Mr. Brockmeier arrived at 7 pm.

**A motion was made by Vice Chair Dunn to approve the June 27<sup>th</sup> draft minutes as amended. Seconded by Ms. Skinner. Vote 5-0. Motion passes. (Mr. Brockmeier was a voting member.)**

**A motion was made by Vice Chair Dunn to approve the July 11<sup>th</sup> draft minutes as amended. Seconded by Ms. Skinner. Vote 4-0-1. Ms. Gogumalla abstained. Motion passes. (Mr. Brockmeier was a voting member.)**

45 A motion was made by Vice Chair Dunn to approve the July 25<sup>th</sup> draft minutes as amended. Seconded by  
46 Ms. Gogumalla. Vote 5-0. Motion passes. (Mr. Brockmeier was a voting member. )  
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48 **Public Hearing to begin at 7:00 pm**

49 **Rehearing on the following:**

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51 **Ms. Gogumalla recused herself for Case #10-2023. Mr. Stearns was seated for Ms. Gogumalla. The Board**  
52 **continued the case from deliberative session so the Board is now in deliberative session.**

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55 **Case #10-2023 Parcel 17-G-6 & 17-G-20**

56 **Applicant – Middlesex Glass Co., Nick Arena**

57 **Owner – 106 Indian Rock Rd LLC & GW Trust, Diana Wolthers, Trustee**

58 **Location – 102 Indian Rock Road and 82 Range Road**

59 **Zoning District – Gateway Commercial District/ WPOD**

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61 Variance relief is requested from **Sections 618.2 and 618.3.10** of the Windham Zoning Ordinance (WZO) to  
62 construct a 48,000 Sq. Ft. building footprint mixed-use commercial building, that would include the assembly of  
63 prefabricated parts. The proposed use is prohibited in the Gateway Commercial District. Furthermore, the WZO  
64 prohibits any single structure within the district to have a building footprint of greater than 40,000 Sq. Ft.

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66 Mr. Brockmeier stated that he appreciated the efforts of the applicant's time to present their information. Mr.  
67 Brockmeier summarized the definition of "discrete manufacturing" after discussing process manufacturing prior to  
68 that definition. Mr. Brockmeier stated that the Board would like a finding of facts around the applicant's definition  
69 of "discrete manufacturing".

70

71 Mr. Brockmeier stated that in the first 2 criteria. When it comes to the health, safety and welfare of the  
72 neighborhood, he does think the nature of the request does disrupt the nature of the district. Mr. Brockmeier stated  
73 that he does think this would disrupt the nature of the nature of the Gateway District. Changing the neighborhood's  
74 character through a new novel use would be significant. Mr. Brockmeier cited Ms. DiFruscia's testimony during  
75 public comment. Mr. Brockmeier also stated that the applicant did not present any testimony from witnesses. Mr.  
76 Brockmeier stated that this would have a negative impact on the neighborhood. Mr. Brockmeier stated that there  
77 are zones in town which will accommodate such a business and building. Mr. Brockmeier cited the letter presented  
78 by a business affiliate of Alex Ray, owner of the abutting property, and stated that the statements in the letter were  
79 not from Mr. Ray directly, would be inadmissible in court and should be disregarded as heresay.

80

81 Mr. Brockmeier stated that the Board does not have any animosity toward the applicant or his business but the  
82 nature of the business does not belong in this zone or this area of town. Substantial justice weighs towards the  
83 public and not the applicant on the 3<sup>rd</sup> criteria according to Mr. Brockmeier.

84

85 Mr. Brockmeier believes this meets the 4<sup>th</sup> criteria.

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87 Regarding the 5<sup>th</sup> criteria, Mr. Brockmeier does not assign any negative weight to the history of movement of the  
88 I-93 corridor; there is reasonable use of the property available within the context of the current ordinance, and the  
89 applicant has not proven that the property has a hardship.

90

91 Vice Chair Dunn wanted to thank Mr. Brockmeier for preparing for the deliberative session this evening. The  
92 popularity or not popularity of the application is not a factor in the decision; it has to do with whether or not the  
93 application meets the 5 criteria. Every application to the ZBA needs a variance, that is the nature of this Board.

94

95 Vice Chair Dunn cited Section 618.1, the purpose of the gateway district is to provide an area of commercial  
96 development including mix use of businesses in proximity to the 93 interchange. Vice Chair Dunn stated that one  
97 of the purposes of this zone is that it could be access from the highway.

98

99 Vice Chair Dunn then discussed the architectural style of New England and the area. Vice Chair Dunn stated that  
100 the building is not of the same nature of other buildings in the area. Yet, this is a large parcel of land that had been  
101 discussed as a commercial place in town as having some kind of potential for a large establishment. Details of  
102 traffic circulation are dealt with at the Planning Board level, not at the ZBA level. This was always envisioned to  
103 be a commercial development; the town has discussed for years about creating revenue for the schools because that  
104 is the biggest expense in the town; the Gateway District was one of the purposes in order to fund those purposes.

105

106 Vice Chair Dunn listed the allowed uses in the Gateway District and she explained that any one of these uses  
107 would actually change the nature of the neighborhood. Vice Chair Dunn explained that the applicant will be  
108 assembling components but none of these materials will be dangerous or flammable. Vice Chair Dunn stated that  
109 these are not the type of materials you think of when you picture manufacturing. Vice Chair Dunn does not think it  
110 unduly and to a marked degree impact the nature of the neighborhood. Vice Chair Dunn stated that the vision for  
111 the Gateway District did not involve big box stores for the sake of minimizing traffic. The large office building is  
112 an allowed use.

113

114 Vice Chair Dunn does think that this building can bedesigned in such a way as to meet the building criteria,  
115 modern buildings that are sensitive to that New England character may be permitted. Vice Chair Dunn stated that  
116 she does think it is possible to honor the nature of the New England architectural tradition, applicants can still be in  
117 the nature of the tradition

118

119 Vice Chair Dunn discussed substantial justice which should be a gain to the general public, not just a wish for the  
120 public but also for the betterment of the public.

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122 The value of the surrounding properties will not be diminished, Vice Chair Dunn stated that leaving all the trees  
123 and woods would be her wish but it is not realistic and it is not the law. Traffic will increase as people do business  
124 in the area and that is indeed good for other businesses. Vice Chair Dunn stated that there will be development  
125 here and it will be on a fairly large scale. Vice Chair Dunn stated that the letter was by someone that could be  
126 impacted in an economic way for the better, yes, there will be environmental stressors. Any time you disrupt a  
127 parcel, there will be changes to a parcel but they have to have faith that the concerns will be addressed, Green Pro  
128 snow removal can be a condition of approval; it is designed to be a commercial property of a scale, are there other  
129 uses that could go here? Yes, there are but Vice Chair Dunn would want to make clear that the variance would be  
130 for this property on this lot only and they are not granting any variance on the second lot and to have a discussion  
131 on whether or not the lots should be joined in the future.

132

133 Mr. Stearns stated that this is the least invasive type of use of the property, can see that other uses that are allowed  
134 could be more detrimental to the property, this is a use that is not allowed by the ordinance but he sees it as a better  
135 use than what could potentially go here. Mr. Stearns stated that he thinks they can put protections in place; he does  
136 think it is a better use than what is allowed.

137

138 Chairman Stith wanted to thank the Board and the public for their patience in the process. Regarding criteria 1 and  
139 2, how the feel of the neighborhood might change, she started to think of conditions that might change her  
140 opinion. Chairman Stith thinks if the conditions were set around pre-fabricated parts only, this could be a less  
141 detrimental use than others. Also a no cut buffer of native vegetation along Range Road, any outdoor storage  
142 should be screened from public view, the deed restriction on the other parcel, any changes coming before this

143 Board, and a condition of no hazardous materials on site were all suggested conditions discussed. Chairman Stith  
144 would like to see the agricultural style that the applicant spoke about.

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148 Mr. Brockmeier stated that it could be used for other uses. Criteria 5A: the applicant must establish that this is  
149 unique to the properties that distinguishes it from other properties in the area. Under Criteria 5B, the applicant  
150 would need to prove there is no other reasonable use of the property under the zoning ordinance.

151

152 The Board discussed this in relation to the idea of “with conditions” when it comes to granting the variance  
153 request.

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155 Chairman Stith stated that with conditions, they can meet the concerns of both parties. Chairman Stith stated that  
156 there are no hazardous materials, Mr. Brockmeier is concerned about the character of the neighborhood. The Board  
157 discussed the applicant’s willingness to meet with the HD/HC in regards to Design Review. Mr. Brockmeier does  
158 not see that the variance request meets hardship or substantial justice.

159

160 The Board discussed regulations changing in reference to the Master Plan.

161

162 The Board then went back to discuss the definition of discreet manufacturing and discussed what the Board was  
163 being asked to approve or deny. Mr. Brockmeier would like the Board to define manufacturing for the sake of  
164 defining what is allowed on this site. Vice Chair Dunn read from the denial of use in order to define what is and is  
165 not allowed in the Gateway Commercial District. The Board discussed needing to look at the proposed use in order  
166 to look at the applicant’s request and the allowed uses in the district. Ms. Skinner is fine with the hardship criteria  
167 in relation to the conditions.

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169 **A motion was made by Vice Chair Dunn for Case #10-2023 to grant variance relief as requested from**  
170 **Sections 618.2 and 618.3.10 of the Windham Zoning Ordinance (WZO) to construct up to a 48,000 Sq. Ft.**  
171 **building footprint of a commercial building, that would only allow the assembly of prefabricated parts,**  
172 **specifically glass and extruded aluminum with the following conditions:**

173

174 **- a no cut buffer of native vegetation along Range Road (maximize the natural visual buffer between Range**  
175 **Road and the development).**

176 **-any outdoor storage shall be screened from public ways and abutting properties**

177 **-the implementation of green snow pro removal as required in the WPOD**

178 **-the variance request only applies to Lot 17-G-20**

179 **-any change on the lot line will come back to the Board (ZBA)**

180 **-full cooperation with the Design Review Committee and HD/HC**

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182 **Seconded by Mr. Stearns.**

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

185

186 Mr. Brockmeier opposed as it fails on criteria 1 and 2 regarding a change in use, 3 regarding substantial justice and  
187 5 hardship. Mr. Brockmeier says for him the variance application fails.

188

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

190

191 Mr. Scholz was seated for Case #30-2023.

192

193 **Case # 30-2023**            **Parcel 1-B-2000**  
194 **Applicant – Caroline and Christopher Estrella**  
195 **Owner – Caroline and Christopher Estrella**  
196 **Location – 98 Castle Hill Road**  
197 **Zoning District – Rural District**  
198

199 The applicant is requesting a variance from **Section: 702/Appendix A-1** to allow the construction of an attached  
200 three-car garage to be 30 ft from the front property line, where 50 feet is required. The applicant will be removing  
201 a pre-existing, non-conforming garage.  
202

203 Ms. Skinner read the case into the record. The Board waived the reading of the list of abutters.  
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205 Mr. Estrella, the applicant, addressed the Board. Mr. Estrella stated that they need a 3-car garage for handicapped  
206 accessibility. Mr. Estrella stated that many of the lots in the neighborhood have 3 car garages and it is in character  
207 with the rest of the neighborhood.  
208

209 The applicant discussed their use of the property as intended.  
210

211 Mr. Scholz discussed the special conditions of the property.  
212

213 The Board entered deliberative session without opposition.  
214

215 Vice Chair Dunn discussed the unusual configuration of the lot e and that the proposal was in keeping with the  
216 historical nature of the neighborhood, that substantial justice is done, and would not diminish the value of  
217 surrounding properties. It is up high on the property which is a special condition and it does meet all 5 criteria.  
218 Chairman Stith appreciates that an architect tried to preserve the historical nature.  
219

220 **A motion was made by Vice Chair Dunn for Case #30-2023 to grant variance relief as requested from**  
221 **Section: 702/Appendix A-1 to allow the construction of an attached three-car garage to be 30 ft from the**  
222 **front property line, where 50 feet is required,conditioned on the removal of the pre-existing non-conforming**  
223 **garage. Seconded by Ms. Gogumalla.**  
224

225 **Vote 5-0.**

226 **Motion passes.**

227 **The Chair advised of the 30-day appeal period.**  
228  
229

230 **Case # 31-2023**            **Parcel 8-B-2000**  
231 **Applicant – Juana & Moises Cruseta**  
232 **Owner – Same**  
233 **Location – 124 Rockingham Road**  
234 **Zoning District – Rural District**  
235

236 The applicant is requesting a variance from **Section(s): 702/Appendix A-1** to allow the construction of a  
237 12 ft x 16 ft deck approximately 20 ft from the rear\* lot line, where 30 feet is required.  
238

239 *\*The proposed deck will be 20 ft from the side lot line, where 30 feet is required.*  
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241 Ms. Skinner read the case into the record. The Board waived the reading of the list of abutters. And Conservation  
242 had no issues with the plan as presented.

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Ms. Juana Cruseta addressed the Board. The Board and the applicants reviewed the surrounding area to locate where the property was in relation to Rockingham Road and the neighbor's property.

Ms. Cruseta read the 5 criteria contained in the public packet. The variance request would have no effect on the public. The purpose is to enhance the residential character of the character, it would not be changing the nature of the neighborhood or their own home. Ms. Cruseta stated that they would be able to increase the safety for their family and the proposal will raise the property value and enhance the value of surrounding properties.

The Board went into deliberative session.

The Board agreed the requested variance would have minimal impact and that the proposal met the five variance criteria.

**A motion was made by Mr. Brockmeier for Case #31-2023 to grant variance relief as requested from Section(s): 702/Appendix A-1 to allow the construction of a 12 ft x 16 ft deck approximately 20 ft from the rear\* lot line, where 30 feet is required. Seconded by Ms. Skinner.**

**Vote 5-0.**

**Motion passes.**

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

The Board then discussed a memo from Attorney Campbell regarding situations, generally and specific to one case, where if there are changes in the plan that is significant then should a permit be issued. The Board discussed if they see this as a significant change, if that is true, does it warrant a letter or a denial of the building permit or some other action from the Board.

The Board discussed if the change was significant. The entire board is in agreement that the plan in question is significantly different from the one which received the variance from the ZBA in Aug 2022, and **recommended the Community Development Office to not issue a Building Permit.**

The Board discussed how the applicant and Community Development might proceed with this information.

**A motion was made by Vice Chair Dunn to adjourn Dunn at 9:30 pm. Seconded by Ms. Skinner. Vote 5-0. Motion passes.**

Respectfully submitted by Ms. Anitra Lincicum