



ZONING BOARD OF ADJUSTMENT

Draft Minutes

September 22, 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 (via Zoom)

Vice Chair Bruce Breton- present (at Community Development)

Pam Skinner, Secretary- present (at Community Development)

Neelima Gogumalla, regular member- present (via Zoom)

Nick Shea, regular member- present (via Zoom)

Betty Dunn, alternate- present (via Zoom)

Kevin Hughes, alternate- excused

(attendance taken by roll call vote)

Staff:

Brian Arsenault- ZBA Administrator/ Code Enforcement

Anitra Lincicum- minute taker

Chairman Scholz read 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, the public body is 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.”

Public Hearing

Case #26-2020: Parcel(s) 16-Q-213 & 16-Q-212 & 16-Q-211

Applicant - Benchmark Engineering, Inc.

Owner - D&P Viau RT

Location - 8 Viau Road-16-Q-213 & 10 Viau Road-16-Q-212 & 18 Viau Road-16-Q-211

Zoning District - Residential A District and Cobbetts Pond & Canobie Lake

Watershed Protection Overlay District (WPOD)

Variance Relief is requested from **Section(s) 702 & Appendix A-1**, to allow tax map 16-Q-213 to be reduced in size from 72,800 sf +/- of land area to 52,400 sf +/- with 200’ +/- of frontage on Viau Road (private road). Some land, 16,059 sf +/- and 156’ of frontage on a private road will be

47 added to abutting tax map 16-Q-212. Remaining land 4,309 sf +/- and 0' frontage on a private
48 road will be forming a non-buildable lot to be attached to tax map 16-Q-211, where 50,000 sf of
49 land area and 175' of frontage is required.

50

51 Ms. Skinner read the case, the list of abutters and the letters of authorization into the record. All
52 of the representatives of the respective parcels also had letters of authorization contained in the
53 public packet.

54

55 Mr. Joseph Maynard of Benchmark Engineering addressed the Board and is representing all
56 three applicants. Mr. Maynard stated that in working with staff, it was decided that all three
57 applicants, the applicant giving land and the other two receiving land, should notice all of their
58 respective abutters.

59

60 Mr. Maynard stated that the Boss family's septic system exists on the Viau land and the
61 applicants are looking to clean up the agreements on the property. Additionally, there is another
62 neighbor who would like to add a portion of the lot by deed for the purpose of parking as
63 unbuildable surface; the area is about 52,000 square feet in size total.

64

65 Mr. Maynard explained while sharing his screen via Zoom that the light green portion represents
66 the Boss family lot; the orange portion will be deeded to the Boss family from the Viau family.
67 The yellow portion on the map is the unbuildable space that will be used for parking from the
68 other neighbor. Mr. Maynard stated that he would have no issue with a deed restriction.

69

70 Ms. Dunn asked for clarification. Ms. Dunn stated that there will be two pieces broken out of the
71 existing Viau lot and be given to the respective neighbors. Mr. Maynard stated that both of these
72 statements are true. Ms. Dunn asked if it would affect the access of any of the neighbors further
73 down the road. Mr. Maynard stated that it would not limit their access in any way. Ms. Dunn
74 asked how the determination was made about how to separate the lot. Mr. Maynard stated that
75 they went out to the lot to see how it was being utilized and to make sure the septic was properly
76 located. Mr. Maynard stated that the Viau land had soils that allowed for the use of the property
77 to support a septic system.

78

79 Mr. Maynard read the 5 criteria contained in the public packet. Mr. Maynard stated that granting
80 the variance will allow the owners to clean up variances already in existence. Mr. Maynard
81 stated that this property is unique because the parcel has property that they are able to deed to
82 neighbors for usage. Mr. Maynard stated that the Robitaille property is approximately 9,000
83 square feet and this would add about 4,00 square feet to that parcel.

84

85 Ms. Dunn stated that she does see the value if adding land to Lot 16-Q-212, yet, she does have a
86 hard time seeing a value of adding the piece of property to Lot 16-G-211 due to how far away
87 the lot is from the piece being added and the fact that the owners might not be related. Ms. Dunn
88 asked why the small parcel is within the spirit and intent of the ordinance. Mr. Maynard stated
89 that 16-Q-211 does not have the ability to support itself in the same way as 16-Q-213; the small
90 piece of land will allow for that support according to Mr. Maynard.

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92 Chairman Scholz opened up discussion to the public at 8:14pm.

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Mr. Maynard stated that the Viau family would like to clean up the lots.

A motion was made by Mr. Breton to enter deliberative session at 8:15pm. Seconded by Ms. Skinner. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.

Chairman Scholz reviewed the 5 criteria. Chairman Scholz stated that he understands the value of adding as much property as possible and it does comply with both of the first criteria along with the 5th criteria and he finds it to be a reasonable subdivision.

The Conservation Commission had no quorum for a meeting, and that was discussed by the Board, hence, they had no comment on the variance request.

A motion was made by Ms. Gogumalla for Case #26-2020: Parcel(s) 16-Q-213 & 16-Q-212 & 16-Q-211 to grant relief from Section(s) 702 & Appendix A-1, to allow tax map 16-Q-213 to be reduced in size from 72,800 sf +/- of land area to 52,400 sf +/- with 200' +/- of frontage on Viau Road (private road). Some land, 16,059 sf +/- and 156' of frontage on a private road will be added to abutting tax map 16-Q-212. Remaining land 4,309 sf +/- and 0' frontage on a private road will be forming a non-buildable lot to be attached to tax map 16-Q-211, where 50,000 sf of land area and 175' of frontage is required and the 4,390 square foot lot be conditioned to remain unbuildable per plan submitted with a revised plan date of August 15, 2020 and signed and dated by the Chair. Seconded by Vice Chair Breton.

Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-Yes.

**Vote 5-0.
Motion passes.
The Chair advised of the 30-day appeal period.**

**Case #27-2020: Parcel(s) 1-C-200 & 1-C-210
Applicant - Benchmark Engineering, Inc.
Owner - Tinkham Rev. Trust and Merrill Family Trust
Location - 115 Kendall Pond Road-1-C-210 & 117 Kendall Pond Road-1-C-200
Zoning District - Rural District**

Variance Relief is requested from **Section(s) 702 & Appendix A-1 and 703**, to allow approx. 7,700 sf of land area on tax map 1-C-200 to be added to tax map 1-C-210. Specifically from **Sec. 702 & Appendix A-1** to allow the proposed lot line to be 15' from the existing garage as a side yard setback, where 30' is required. To allow the existing garage a 49' front yard setback from the right of way (Kendall Pond Rd.), where 50' is required. And from **Sec. 703** to allow the existing garage to remain in the front yard, where a detached accessory building may be erected in the rear or side yard area in conformance with the yard requirements of the district.

Ms. Skinner read the case into the record.

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140 **A motion was made by Vice Chair Breton to waive the reading of the abutters list**
141 **contained in the public packet. Seconded by Ms. Gogumalla. Roll call vote: Chairman**
142 **Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-Yes. Vote 5-0.**
143 **Motion passes.**

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145 Ms. Skinner read the two letters of authorization.

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147 Mr. Joseph Maynard from Benchmark Engineering addressed the Board and is representing the
148 applicants. Mr. Maynard explained the close proximity of the garage to the adjoining property.
149 The owners have come to an agreement around the usage of the property and the need for one
150 owner to have access with a setback to a portion of the property. Both parties have agreed to the
151 new lot line and the lean-to would be razed. Mr. Maynard shared several pictures of the property.

152
153 Mr. Maynard read the 5 criteria contained in the public packet. Mr. Maynard stated that the
154 garage appears as if it belongs to the adjoining lot. The proposed use is a reasonable one and has
155 been working on using this lot for some time, allow them to add more area and have safer access
156 to her side yard.

157
158 Chairman Scholz opened discussion to the public at 8:45pm.

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160 **A motion was made by Mr. Breton to enter deliberative session at 8:45pm. Seconded by**
161 **Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms.**
162 **Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.**

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164 Chairman Scholz stated that this does not alter the essential character. This is an existing garage
165 with an existing driveway. Chairman Scholz believes it meets all five criteria. Mr. Shea does
166 agree and this does seem quite straightforward. This will make it more conforming in terms of
167 the lot size according to Chairman Scholz.

168
169 **A motion was made by Vice Chair Breton for Case #27-2020: Parcel(s) 1-C-200 & 1-C-210**
170 **to grant relief from Section(s) 702 & Appendix A-1 and 703, to allow approx. 7,700 sf of**
171 **land area on tax map 1-C-200 to be added to tax map 1-C-210. Specifically from Sec. 702 &**
172 **Appendix A-1 to allow the proposed lot line to be 15' from the existing garage as a side**
173 **yard setback, where 30' is required. To allow the existing garage a 49' front yard setback**
174 **from the right of way (Kendall Pond Rd.), where 50' is required. And from Sec. 703 to**
175 **allow the existing garage to remain in the front yard, where a detached accessory building**
176 **may be erected in the rear or side yard area in conformance with the yard requirements of**
177 **the district per plan dated August 6, 2020 and signed and dated by the Chair. Seconded by**
178 **Mr. Shea.**

179
180 **Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr.**
181 **Shea-Yes.**

182 **Vote 5-0.**

183 **Motion passes.**

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

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Case #28-2020: Parcel 17-L-78 and 17-L-78AL-1
Applicant - Benchmark Engineering, Inc.
Owner - Brett and Larissa Nigro
Location - 28 Horseshoe Road
Zoning District - Residential A District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)

Variance Relief is requested from **Section(s) 406.2, 702 & Appendix A-1**, to allow construction of a screen room addition to the existing year-round single-family dwelling (SFD). Specifically from **Sec. 406.2** to expand the volume of the SFD from 2,725 sf to 2,917 sf in area and from 59,550 cu/ft to 61,086 cu/ft in volume, where the ordinance does not allow an increase in the area and/or volume of the structure. And from **Sec. 702 & Appendix A-1** to allow the addition a 15' side yard setback, where 30' is required.

Ms. Skinner read the case into the record.

Chairman Scholz asked how this case was different than the case that was heard recently. Mr. Joseph Maynard from Benchmark Engineering stated that this application has an open screened porch on piers with no foundation. Mr. Maynard stated that the porch would be slightly larger so the stove chimney could be attached to the house and it is a structural decision. The original variance was for 12 by 12. The last application is a full foundation and it was totally enclosed and this is just an open porch on piers according to Mr. Maynard.

A motion was made by Mr. Shea to enter deliberative session to determine if the variance application was materially different. Seconded by Vice Chair Breton. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.

Chairman Scholz does see that this application is in line with the original variance that was granted and submitted previously.

The Board has jurisdiction to hear this case because it is material different from the prior case Breton. Seconded by Mr. Shea. Roll call vote. Vote 5-0. Motion passes.

A motion was made by Vice Chair Breton to come out of deliberative session. Seconded by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.

Ms. Skinner then read the abutters list and the letter of authorization.

Mr. Joe Maynard addressed the Board. There are other variances for other areas of the property. The backwall ended and they wanted to be able to tie that wall back into the house and the 12 by 12 screen room made sense to be able to accomplish that goal. 16.7% is the current lot coverage and it would go to 22% which is below the maximum 30%. The abutter has no issues with what they are proposing. This property was developed prior to the Cobbetts Pond watershed. Drip line

231 infiltration is also being added to infiltrate the water into the ground. There is a small 4 by 6 deck
232 currently which will remain.

233
234 Mr. Maynard read the 5 criteria contained in the public packet. There is a small deck on the
235 property (mentioned above) which is almost unusable. This would be an allowed use in this
236 district and the plan has DES approval and Shoreland Protection approval. This is a pre-existing
237 lot of record. The architecture of the building will match the existing building. The neighbor is in
238 support of the plan and it will add a screen room to the existing home allowing this part of the
239 home to be more usable.

240
241 Ms. Dunn stated that this is listed as a screen room and when she looks at the plan, she does not
242 see floor to ceiling screen but an added room to the property. Mr. Maynard stated that he sees
243 panels that lock in place and enclose for the screen section of the porch. Mr. Maynard stated that
244 there was some architectural limitation from the builder but it looks more enclosed than it should
245 be. Mr. Arsenaault stated that there is screen door and screened windows. Ms. Dunn stated that
246 the Board is being presented with two different things. The porch is a panel system. Ms. Dunn
247 stated that there would be no plumbing or heating going into the system and it does specify 3
248 season right in the brochure and wished for Mr. Maynard to confirm those facts which he did.

249
250 Vice Chair Breton asked if this was different than the original plan in terms of size. Mr. Maynard
251 stated that it was slightly larger to wrap around the chimney.

252
253 Chairman Scholz opened public comment at 9:19pm.

254
255 Mr. Shea asked about a potential fire hazard with the close proximity. Mr. Maynard stated that it
256 would not be a concern.

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258 **A motion was made by Vice Chair Breton to enter deliberative session at 9:20pm. Seconded**
259 **by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms.**
260 **Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.**

261
262 **A motion was made by Mr. Shea to come out of deliberative session Seconded by Vice**
263 **Chair Breton. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms.**
264 **Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.**

265
266 Ms. Skinner read the letter from the abutter into the record.

267
268 Conservation had no quorum, hence, there were no comments from the Conservation
269 Commission for this case.

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271 **A motion was made by Vice Chair Breton to enter deliberative session at 9:25pm. Seconded**
272 **by Mr. Shea. Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms.**
273 **Gogumalla, and Mr. Shea-Yes. Vote 5-0. Motion passes.**

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275 The Board discussed that the variance request meets all of the 5 criteria. Chairman Scholz does
276 believe it meets the first 2 criteria and he does not believe that the value of the surrounding

277 properties will not be diminished.

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279 **A motion was made by Ms. Gogumalla for Case #28-202: Parcel 17-L-78 and 17-L-78AL-1**
280 **to grant relief from Section(s) 406.2, 702 & Appendix A-1, to allow construction of a 3-**
281 **season room addition to the existing year-round single-family dwelling (SFD). Specifically**
282 **from Sec. 406.2 to expand the volume of the SFD from 2,725 sf to 2,917 sf in area and from**
283 **59,550 cu/ft to 61,086 cu/ft in volume, where the ordinance does not allow an increase in the**
284 **area and/or volume of the structure. And from Sec. 702 & Appendix A-1 to allow the**
285 **addition a 15' side yard setback, where 30' is required as per plan dated August 25, 2020**
286 **and signed and dated by the Chair.**

287

288 **Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr.**
289 **Shea-Yes.**

290 **Vote 5-0.**

291 **Motion passes.**

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

293

294 Chairman Scholz commented that the drip line infiltration was added to the plan as well.

295

296 **Public Meeting**

297

298 **Request for Rehearing: Case #18-2020 (Parcel 18-L-450) – 1 Delahunty Road**
299 **(NOD on August 4th; Application for Rehearing-Rec'd on Sept. 2, 2020 w/payment deposited)**

300

301 The Board discussed the notification from the applicant. Vice Chair Breton does see the
302 circumstances as materially different. The applicant had the benefit of a full, in person, board
303 when this came before the board and now they have people both via Zoom as well as in the
304 room.

305

306 Chairman Scholz stated that the property itself has gone through some legal battles but when the
307 Chair looks at what the Board is able to do, he would vote to deny the rehearing request. Ms.
308 Gogumalla does not believe there is enough information in the rehearing request. Mr. Shea stated
309 that he does believe there is a case to be reheard and he does see this as a hardship and the
310 hardship does appear to apply after reading the Brant case. Mr. Shea stated that the hardship does
311 not just go with the land but there are other cases where the hardship is not the land.

312

313 Chairman Scholz stated that this is a Fisher v. Dover test, not the hardship criteria. Mr. Shea
314 stated that he does see this as new information. Chairman Scholz stated that the case was denied
315 in 2012 and he does not see how the Brant case was materially different. Vice Chair Breton
316 stated that he does believe that the applicant has more information around the law and he would
317 like to see new evidence that can be provided by the applicant.

318

319 Ms. Gogumalla stated that the applicant should have included the new additional information in
320 the letter that was the request for rehearing. Ms. Gogumalla does not see the merit of giving the
321 applicant the benefit to rehear it. Ms. Skinner stated that she does plan on voting the way she

322 voted before. Chairman Scholz stated that they are looking for a permanent drive thru not related
323 to the pandemic

324

325 **A motion was made by Ms. Gogumalla to deny the rehearing request for Case #18-2020**
326 **(Parcel 18-L-450). Seconded by Ms. Skinner.**

327

328 **Roll call vote:**

329 **Chairman Scholz- yes**

330 **Ms. Gogumalla- yes**

331 **Ms. Skinner- yes**

332 **Mr. Shea- no**

333 **Vice Chair Breton- no**

334 **Vote 3-2.**

335 **Motion passes.**

336

337 **A motion was made by Vice Chair Breton to adjourn at 9:53pm. Seconded by Mr. Shea.**

338 **Roll call vote: Chairman Scholz, Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, and Mr.**

339 **Shea-Yes. Vote 5-0. Motion passes.**

340

341 **Respectfully submitted by Anitra Lincicum**

Draft