

1 **ZONING BOARD OF ADJUSTMENT**
2 **Approved Minutes**
3 **September 26, 2023 – 7:00 pm**
4
5

6 **Physical Location:** 3 North Lowell Road (Community Development Department) Live
7 **Broadcast:** WCTV Channel 20 – Local Cable TV
8 **Live Stream:** <http://www.wctv21.com/>
9 **To access via Teams:** [Click here to join the meeting](#) **Meeting ID:** 210 221 889 388 **Password:** 2YGui7
10

11 Attendance:

12 Chairman Michelle Stith- present
13 Vice Chair Betty Dunn- present
14 Pam Skinner, Secretary- present
15 Mark Brockmeier, regular member- present
16 Neelima Gogumalla, regular member- present
17 Galen Stearns, alternate member- present
18 Mike Scholz, alternate- excused
19

20 Staff:

21 Julie Suech, Assistant Planner
22 Anitra Lincicum, minute taker (present via Teams)
23

24 **1. Continued Public Hearings**

25
26 **Case # 32-2023 Parcel 8-B-3000**
27 *(Continued from 08-29-23 & 09-12-23)*
28 *(The Applicant requested a continuance, for which the Board shall consider.)*
29

30 **Applicant / Owner – Rockingham Road Realty Trust**

31 **Location – 10 Libbey Road**

32 **Zoning District – Commercial District A (CDA), Rural District, and WWPD**

33 The applicant is requesting a Variance from **Sections 605.1, Footnote 5b of 301 Notes for Table of**
34 **Requirements (Maximum Multi-Family Residential Density), and 601.3.8** to construct residential units
35 in the CDA, where such use is prohibited in the CDA under the Windham Zoning Ordinance (WZO). The
36 Applicant proposes 72 two-bedroom units, where the maximum permitted density per the WZO would be
37 10 two-bedrooms units. The Applicant also proposes access ways within the WWPD beyond the minimum
38 length and width necessary to provide access to the proposed use.
39
40

41 Attorney Roy Tilsley, representing the applicant, addressed the Board and stated that they went to TRC last month
42 and sat down with staff this week to communicate what relief they would like. Attorney Tilsley stated that the goal
43 is to have a complete set of the plan at the next meeting they will hopefully be continued to.
44

45 Vice Chair Dunn explained that the applicant is asking for a third continuance. She explained that an applicant is
46 requesting a continuance and it may not be granted. Vice Chair Dunn asked if it might be better to withdraw the
47 application and reapply. The applicant stated they were willing to be sure abutters were re-noticed.
48

49 **A motion was made by Vice Chair Dunn to continue the Case #32-2023 to October 24th and that the**
50 **applicant be sure that all abutters are re-noticed of the rehearing request. Seconded by Ms. Skinner. Vote 5-**
51 **0. Motion passes.**

52
53 Case # 35-2023 Parcel 22-L-27
54 (Continued from 09-12-23)

55
56 **Applicant – Meisner Brem Corporation**
57 **Owner – Wen Lei**
58 **Location – 75 W Shore Road**
59 **Zoning District – Residential District A/WPOD**

60 The applicant is requesting a variance from **Sections: 406.2 and 702/Appendix A-1** to allow the 404 sq ft
61 two-story expansion of a pre-existing, non-conforming single-family dwelling from 1,864 sq ft to 2,268 sq
62 ft, on a pre-existing, non-conforming lot, where no such expansion resulting in further non-conformance is
63 permitted. The application is requesting that the addition be 20.6 ft from the front lot line, where 50 ft is
64 required and to be 34.3 ft away from the waterfront setback, where 50 ft is required.

65
66
67 Ms. Skinner read the case into the record. Ms. Skinner read the Conservation Commission comments contained in
68 the public packet. Mr. Kurt Meisner from Meisner Brem Corporation addressed the Board; he is representing the
69 applicant. Mr. Meisner reviewed the changes to the plan which included the porous pavers and the maintenance
70 schedule for the property. Mr. Meisner reviewed the variance relief request and how the proposed building was
71 now oriented on the lot. The dwelling will be a 2 bedroom and 2-bathroom structure. The addition will be
72 additional living space. The Board reviewed the proposed plan of the applicant. Mr. Meisner stated that the
73 Shoreland Permit has been issued by the state. Mr. Meisner stated that they are looking for additional volume, not
74 additional encroachment. Vice Chair Dunn stated that her concern is the additional volume as well as the septic.

75
76 Mr. Meisner reviewed the 5 criteria contained in the public packet. Mr. Meisner reviewed the orientation of the
77 driveway on the lot. Mr. Meisner stated that the current driveway is going to be removed and replaced with the
78 porous pavers.

79
80 The Chair invited public comment.

81
82 Ms. Yen addressed the Board and stated that there is still an existing driveway on the site with the septic off to the
83 side. The current driveway/parking spot may remain; it depends on what happens to the plan once it goes to the
84 Planning Board but she wanted the Board to understand they were correct in what they were seeing.

85
86 The Board entered deliberative session without opposition.

87
88 Vice Chair Dunn stated that her concerns about the encroachment on the shoreland as well as the height of the
89 building and how this might impact property values. The Board discussed roof run off. Mr. Brockmeier stated he
90 does not have concerns around devaluing properties in the area. Ms. Gogumalla is in agreement with Mr.
91 Brockmeier. Ms. Gogumalla reviewed the 5 criteria and does agree that it meets criteria one and two by use of the
92 porous pavers. Ms. Gogumalla addressed the increase in volume but since it will remain 2 bedrooms. It does meet
93 the substantial just prong with a slight increase in the footprint, will enhance and update the home and increase the
94 value and enjoyment of the property by the owners. She also believes it will not diminish the property values of the
95 surrounding areas but will only improve them despite the hardships of the land and location.

96
97 **A motion was made by Ms. Gogumalla for Case #35-2023 to grant variance relief as requested from**
98 **Sections: 406.2 and 702/Appendix A-1 to allow the 404 sq. ft two-story expansion of a pre-existing, non-**
99 **conforming single-family dwelling from 1,864 sq. ft to 2,268 sq. ft, on a pre-existing, non-conforming lot,**
100 **where no such expansion resulting in further non-conformance is permitted. The application is requesting**
101 **that the addition be 20.6 ft from the front lot line, where 50 ft is required and to be 34.3 ft away from the**
102 **waterfront setback, where 50 ft is required with the conditions that the driveway(s) need to be one driveway**
103 **even though there are 2 curb cuts and that it remains a 2 bedroom and 2-bathroom structure per plan dated**

104 with a revised date of September 13th, 2023 and signed by the Chair. Seconded by Mr. Brockmeier.

105
106 **Vote 5-0.**

107 **Motion passes.**

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

109
110 **2. New Public Hearings**

111
112 **Case # 34-2023 Parcel 24-D-1**

113 **Applicant – Timothy A. Peloquin, LLS**

114 **Owner – 107 Ponemah Rd, LLC (C/O Teresa Benning)**

115 **Location – 10 Rock Pond Road**

116 **Zoning District – Residential District A, WWPD, and WPOD**

117 The applicant is requesting a variance from Section 406.2 and 601.3 to allow construction of an attached
118 741.3 +/- sq ft, one-bedroom ADU no closer than 71' from a delineated wetland, greater than one acre in
119 size, where a 100' buffer is required and where no such expansion resulting in further non-conformance is
120 permitted.

121
122 Ms. Skinner read the case into the record along with the comments from the Conservation Commission.

123
124 Mt. Tim Peloquin addressed the Board and is representing the applicant, Ms. Teresa Benning. Ms. Benning stated
125 that her son owns the property. Mr. Peloquin read the 5 criteria contained in the public packet. Mr. Peloquin
126 explained where the wetland was on the property and also reviewed the comments from the Conservation
127 Commission contained in the public packet. Mr. Peloquin does agree with their comment regarding drip line
128 infiltration. Mr. Peloquin stated that he also agrees that the current septic system will need to be state approved.
129 The current square footage of the house is approximately 1670 square feet. The property currently has a 4-
130 bedroom septic. Mr. Peloquin did not know when the septic was last inspected. The Board discussed the need to
131 accommodate the placement of the ADU and other encumbrances on the lot: municipal water, electrical, other
132 setbacks and the wetland. Mr. Peloquin stated that the edge of the wetland is actually the end of meandering
133 stream; this is delineated as a wetland line on the plan. Mr. Peloquin stated that this is the most practical location to
134 add on to the property.

135
136 Mr. Anthony Benning, 10 Rock Pond Road addressed the Board. Mr. Benning stated that this is now a 3-bedroom,
137 2.5-bathroom house now. The dwelling has lost a bedroom. The septic was just cleaned last week. The septic was
138 intended for a 4-bedroom septic. Ms. Suech stated that this will need to go before the Planning Board for a special
139 permit and the applicant will not be issued a building permit until the septic design is on file.

140
141 Vice Chair Dunn stated that there is a lot of natural vegetation between the house and the wetland and as long as
142 that is not disturbed, this is a reasonable request. Mr. Peloquin explained that there would be one tree removed and
143 the property would move back to its natural grade and that would be a condition.

144
145 The Board entered deliberative session without opposition.

146
147 Vice Chair Dunn believes it meets the 5 criteria and listed the language of each criteria respectively: hardship,
148 general purpose of the ordinance, essential character, substantial justice, literal enforcement and property values.
149 Vice Chair Dunn stated that there are restrictions on putting an ADU in any other area of the lot.

150
151 **A motion was made by Vice Chair Dunn for Case #34-2023 to grant variance relief as requested from**
152 **Section 406.2 and 601.3 to allow construction of an attached 741.3 +/- sq. ft, one-bedroom ADU no closer**
153 **than 71' from a delineated wetland, greater than one acre in size, where a 100' buffer is required and where**
154 **no such expansion resulting in further non-conformance is permitted to approve as requested with the**
155 **conditions that the delineation be made by the Planning Board to minimize the maximum area to be**
156 **disturbed during construction and drip edge drainage be added to the plan. Seconded by Ms. Skinner.**

157
158 **Vote 5-0.**

159 **Motion passes.**
160 **The Chair advised of the 30-day appeal period.**

161
162 **Case # 36-2023 Parcel 24-F-5200**
163 **Applicant – Aaron and Samantha Barrett**
164 **Owner – Same**
165 **Location – 140 Lowell Road**
166 **Zoning District – Rural District**

167 The applicant is requesting a variance from Sections 406.2 and 702/Appendix A-1 to allow construction of
168 a 24 ft x 21 ft addition to include a bathroom, bedroom, and walk in closet to be approximately 17 ft from
169 the side yard setback, where 30 ft is required and where no such expansion resulting in further non-
170 conformance is permitted.

171
172 Ms. Skinner read the case into the record. Ms. Skinner also read the comments from the Conservation Commission
173 regarding drainage on the lot. The list of abutters was also in the public packet. The applicants discussed the
174 surrounding properties and where the lot line is between themselves and the abutters. The Board and the applicant
175 discussed a nearby culvert and how that impacted drainage; this was in relation to the Conservation Commission
176 comments. Ms. Suech stated that a member of the Conservation Commission reached out to say they did not have
177 any issues with this plan as presented.

178
179 The owners addressed the Board and are representing themselves. Ms. Samantha Barrett explained that they are
180 looking to add an addition, yet, they do not meet the setback of 30 feet. They setback would be 17 feet. The
181 applicants are looking to add another bedroom and bathroom to the current residence. The lot is both pre-existing
182 and non-conforming.

183
184 Mr. Aaron Barrett read the 5 criteria contained in the public packet. The Board and the applicants discussed the
185 abutter who was in close proximity to the applicant. Ms. Suech checked to make sure the neighbor had been
186 properly noticed.

187
188 The Board entered deliberative session.

189
190 Chairman Stith reviewed the 5 criteria and she does believe it meets the 5 criteria as it is in the spirit of the
191 ordinance since it is a modest expansion of the home and it will not decrease property values. Chairman Stith also
192 cited the unique shape of the lot.

193
194 **A motion Vice Chair Dunn for Case #36-2023 to grant variance relief as requested from Sections 406.2 and**
195 **702/Appendix A-1 to allow construction of a 24 ft x 21 ft addition to include a bathroom, bedroom, and walk**
196 **in closet to be no closer than 17 ft from the side yard setback, where 30 ft is required and where no such**
197 **expansion resulting in further non-conformance is permitted. Seconded by Mr. Brockmeier.**

198
199 **Vote 5-0.**
200 **Motion passes.**
201 **The Chair advised of the 30-day appeal period.**

202
203 **Case # 37-2023 Parcel 8-B-500**
204 **Applicant – TPC Flatrock Owner, LLC-Tyler Palermo**
205 **Owner – Same**
206 **Location – 86 Rockingham Road**
207 **Zoning District – Residential District B, WWPD, and Rt. 28 Access Management Overlay**

208 The applicant is requesting a variance from Section 601.3 to allow a shed for a water meter underground
209 vault at the site entrance, a design change from the previously approved plans that is required by the water
210 utility. The proposed permanent structure is located within the WWPD where no permanent structure shall
211 be constructed.

212
213 Mr. Karl Dubay from the Dubay Group addressed the Board and is representing the applicant. The public water

214 system is juristic by the Salem Water system and the water meter is required. Mr. Dubay stated that the shed is
215 going to match the style of the homes in the area; it will like a small guard shed.
216
217 Mr. Dubay reviewed the 5 criteria contained in the public packet and discussed the best way to proceed regarding
218 variance requests and public utilities.
219
220 Mr. Dubay stated that he does not feel the need to file for an exception. There is a generator and a transformer for
221 the well source as well in this small shed.
222
223 The Board had no questions for the applicant.
224
225 The Board entered deliberative without opposition.
226
227 The Board did not feel the need to further review the 5 criteria.
228
229 **A motion was made by Vice Chair Dunn. For Case #37-2023 to grant the variance from Section 601.3 to**
230 **allow a shed for a water meter underground vault at the site entrance, a design change from the previously**
231 **approved plans that is required by the water utility. The proposed permanent structure is located within the**
232 **WWPD where no permanent structure shall be constructed. Seconded by Mr. Brockmeier.**
233
234 **Vote 5-0.**
235 **Motion passes. 3**
236 **The Chair advised of the 30-day appeal period.**
237
238 The Board discussed the September 12th minutes but did not approve the minutes yet.
239
240 The Board adjourned at 9:08 pm without opposition.
241
242 Respectfully submitted by Ms. Anitra Lincicum