



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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**Approved Minutes Zoning Board of Adjustment
October 13, 2015
7:30 pm @ Community Development Office**

Mike Scholz	Chairman	Excused	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mark Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Present			

Staff:

Dick Gregory, Code Enforcement Administrator

Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Partington

Lot 11-A-248, Case # 30-2015, continued from 9-22-2015

Applicant: KRD Builders

Owner: Ed Zabawski

Location: 7 Yorkshire Road

Zone: Rural, Wetland & Watershed Protection District (WWPD)

Variance relief from the following Sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the construction of a 26' x 65' free standing garage.

Section 601.3 to allow a garage to be constructed in the WWPD where none is allowed.

Section 702, App.A-1 to allow the garage to be 10 ft. from the side lot line where, 30 ft. is allowed.

Motion by Mr. Samsel, per request via letter from the applicant, to continue Case #30-2015 to November 10, 2015

Second by Mr. Breton

Vote 4-0-0

Motion Carries

Mr. Mazalewski seated for Mr. Scholz

Case #35-2015 and abutter list read into the record by Mr. Samsel

Lot 2-B-754, Case # 35-2015

Owner/applicant – Frank DeMaria

Location – 29 Nottingham Road

Zone – Rural, Wetland & Watershed Protection District (WWPD)

Approved ZBA minutes October 13, 2015

An Equitable Waiver has been requested from Section 601.3 to allow an existing 26' x22' addition to remain in the WWPD.

Applicant not present for hearing.

Mr. Samsel suggested to move Case #35-2015 to the end of the agenda to allow time for the applicant to arrive.

ZBA members agreed to change the order of the agenda and hear Case #35-2015 last on tonight's agenda to afford the applicant time to arrive.

Mr. Mazalewski seated for Mr. Scholz

Case #36-2015 and abutter list read into the record per Mr. Samsel

Lot 6-A-600, Case # 36-2015

Owner/applicant Matthew McCarthy

Location: 23 East Nashua Road

Zone: Rural District

Section 406.2 to allow an increase in footprint of 154 sq. ft.

Section 702, App. A-1 to allow a farmer's porch to be 31 ft. from the front lot line where 50 ft. is required.

Matthew McCarthy, 23 East Nashua Road presented case to the ZBA.

Mr. Samsel asked applicant (Mr. McCarthy) if he knows the average of the distance of the two abutters from lot line.

Applicant, Mr. McCarthy, does not know average lot line distance of his neighbors.

Mr. McCarthy reviewed the five variance criteria

Mr. Mazalewski asked about the measurements on the plan and if there are survey markers in place on the property. Mr. McCarthy replied survey markers are present on the property.

Chairman opened the hearing to the public

No public comment

Motion by Mr. Samsel to go into deliberation

Second by Ms. Skinner

Vote 5-0-0

Motion Carries

Mr. Samsel believes the five points have been met. The existing home is predating the zoning ordinance. Mr. Samsel believes the porch will be a nice addition to the home and does not see an alternate place for the porch to be placed on the property that is reasonable.

Mr. Breton, Mr. Mazalewski, and Chairman Partington agree with Mr. Samsel.

In consideration of the five variance criteria and testimony presented, a motion was made by Mr. Samsel to grant relief for Case #36-2015 from Section 406.2 to allow an increase in footprint of 154 sq. ft. and Section 702, App. A-1 to allow a farmer's porch to be 31 ft. from the front lot line where 50 ft. is required.

Second by Mr. Breton

Vote 5-0-0

Motion carries

Chairman Partington notified the applicant of a 30 day appeal period.

Mr. Hughes seated for Mr. Scholz

Mr. Samsel read Case #37-2015 and abutter list into the record

Lot 21-H-14, Case #37-2015

Owner/applicant: John G. & Cheryl A. Albert

Location: 19 Lake Shore Road

Zone: Residential A & Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land

Section 406.2 to allow an increase in volume from 35,238 cu. ft. to 81,471 cu. ft. and an increase in footprint from 1,642 sq. ft. to 3,624 sq. ft.

Applicant presented case to the ZBA members. The applicant did not have a Shoreland permit for the plan as presented. The applicant informed the ZBA that he has a meeting scheduled with Shoreland protection on October 22, 2015.

Mr. Samsel clarified the relief being requested by the applicant could possibly change after the upcoming meeting between the applicant, the owners, and Shoreland protection scheduled for October 22.

Applicant confirmed the numbers there could possibly be a change in the plan resulting in a decrease in footprint and volume in the plan.

Mr. Breton clarified with the applicant that the plan is basically doubling the size of the square footage. Applicant confirmed the plan as presented is intending to double the size of the square footage.

Applicant informed the ZBA members that the owner is considering reducing the size of the proposed building based on Shoreland protection input. The applicant responded to an inquiry regarding the odd shape of the building as presented on the plan explaining that the odd shape of the building on the proposal is to meet the building setback requirements.

Mr. Samsel would like to see the floor plans. Mr. Samsel is concerned there may be a change in volume after meeting with Shoreland protection.

Mr. Gregory informed the ZBA members that the applicant cannot go before the Planning Board without the ZBA granting variance relief for Section 406.2.

Applicant requests a continuance with the ZBA after meeting with Shoreland Protection.

Motion by Mr. Breton to continue Case# 37-2015 to November 10, 2015

Second Mr. Hughes

Vote 5-0-0

Motion carries to continue on November 10, 2015

Mr. Mazalewski seated for Mr. Scholz

Case #35-2015 and abutter list read into the record as noted at the beginning of the minutes.

Applicant did not show up for the hearing.

Chairman Partington informed the ZBA members they can't grant an equitable waiver to allow an existing addition to remain in the WWPD.

Mr. Breton does not recall ever hearing a case without the applicant being present and available to answer questions from the ZBA members.

Mr. Samsel agrees with Chairman Partington.

Mr. Breton believes if the ZBA hears the case and makes a decision to deny it, the applicant will request and be granted a rehearing.

Mr. Samsel read from RSA 674.33-A. Mr. Samsel believes, based on RSA 674.33-A, the applicant is not eligible for an equitable waiver. Mr. Samsel, based on RSA 674.33-A, is comfortable making a decision without the presence of the applicant.

Chairman Partington advised Mr. Gregory to notify the applicant that he is not eligible for an equitable waiver and will need to request a variance.

Mr. Breton believes the board should deny without prejudice and the applicant can come back with proper variance requests.

Motion by Mr. Samsel for Case #35-2015, pursuant to RSA 674.33-A: *“the ZBA has the power to grant equitable waivers from physical layout, and mathematical or dimensional requirements imposed by the zoning ordinance (but not use restrictions – sec. Schroeder V. Windham, 158 N.H 187 (2008)) to deny as requested an Equitable Waiver from Section 601.3 to allow an existing 26' x22' addition to remain in the WWPD.*

Second by Mr. Breton

Vote 5-0-0

Motion Carries

Motion by Mr. Samsel to approve the September 22 minutes as amended

Second by Mr. Mazalewski

Vote 5-0-0

Minutes approved as amended

Motion by Mr. Samsel to adjourn

Second by Ms. Mazalewski

Vote 5-0-0

Meeting adjourned at 8:15pm

Minutes submitted by Suzanne Whiteford

