



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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**Zoning Board of Adjustment
Approved Minutes
Community Development Department
October 14, 2014**

Board Members:

Mark Samsel, Chairman – Present

Mike Scholz, Vice-Chairman – Excused

Heath Partington, Secretary – Present

Jay Yennaco, Member – Excused

Jim Tierney, Member – Present

Mike Mazalewski, Alternate – Present

Kevin Hughes, Alternate – Excused

Staff:

Dick Gregory, Code Enforcement Administrator

Laura Accaputo, ZBA Minute Taker

The Chair called the meeting to order at 7:30pm, introduced the Board and Staff, and explained the meeting process. After the Chair called the meeting, it was noted that there were only 4 members present and the option was given to re-schedule.

The Chair sat Mr. Mazalewski for Mr. Yennaco.

Public Hearing

Mr. Partington read Case #35-2014 into the record which was continued from September 23, 2014.

Case # 35-2014, Lot 21-C-80 & 21-C-70, Continued from September 23, 2014

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owners – EB RICH, Inc. & Bernice Kowalski-Richards

Location – 208 & 212 Range Rd.

Zone: Residence A, Cobbetts Pond and Canobie Lake Watershed Protection Overlay District

Variations from the following sections of the Zoning Ordinances are requested to allow a five (5) lot Open Space Subdivision with four (4) lots on a common drive with zero (0) frontage on a public way and one (1) lot to have over 100 ft. maximum frontage on a public way and to waive the Road Standards contained in the Subdivision Regulations:

Section 611.6.2 to waive the Road Standards as detailed in the Sub Division regulations for the common drive.

Section 611.6.3 to two (2) building lots to be 38,500 & 45,000 sq. ft. where 30,000 sq. ft. is the maximum allowed.

Section 611.6.4.3.2 to allow four (4) lots to have zero (0) frontage where 60 to 100 ft. is required and one (1) to have more than the maximum of 100 ft.

- Joe Maynard, Benchmark Engineering, addressed the Board. He explained there are two properties, a ten acre lot with an existing residence and a 5 acre pre existing non conforming stand alone lot. They are proposing to develop a five lot Open Space Subdivision with four lots on a common drive with no frontage on a public road and one lot with over 100ft of frontage on a public road and to allow two of the lots to be over the maximum lot size. They are also requesting a waiver of road standards in the subdivision regulations. He stated this type of subdivision requires you to maintain 66% open space and allows for reduced frontage. Since the proposed subdivision is small they believe the private driveway scenario works best as it will be owned and maintained by the property owners and not the town. He stated the Fire Department is fine with the hammerhead scenario and they will put no parking signs on the shared driveway to address a concern from TRC.

Questions/Comments from the Board

- Mr. Mazalewski asked why the lot without the house has to be larger than 30,000 square feet and Mr. Maynard explained due to grade issues and setbacks the buildable envelope ended up over the requirement.
- Mr. Partington asked why everyone doesn't ask for this and Mr. Maynard stated he has asked for this variance in four other towns and achieved it. He explained the other two options he had for this project were a Conventional Subdivision with the same yield and no open space and 700ft of public road or a Conservation Subdivision with 400ft of public road or cul-de-sac which would require clear cutting for drainage and would be costly for such a small subdivision. He also stated the proposed option requires no cutting or blasting and offers a better buffer.
- Mr. Mazalewski asked how driveway runoff would be managed and Mr. Maynard stated he will have to meet Subdivision Requirements for drainage at Planning Board and believes he has more flexibility managing drainage for the driveway than he would for a road.
- The Chair asked if Lot E had a shared driveway and Mr. Maynard explained there is an existing driveway easement with a neighbour because of site distance issues. The Chair also asked if the driveway would be paved and Mr. Maynard answered it will be paved to NFPA standards.
- Mr. Tierney asked where the cistern would be located and Mr. Maynard answered it is still open for discussion and it has to be within 800ft of the nearest house. Mr. Tierney also asked if an easement will be given to the fire department and Mr. Maynard answered yes.
- Mr. Partington stated if relief is given from 611.6.2 then the Planning Board would still have to waive the road standards.
- Mr. Maynard read the five criteria into the record.
- Mr. Tierney asked for clarification of the TRC report which notes four proposals and Mr. Maynard stated there are only three; conventional, open space, and shared driveway.

The Chair opened the hearing to the public at 8pm and hearing none the public portion was closed.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 4-0.

- The Chair stated the proposal is unique and makes sense based on the presentation and the options.

- Mr. Partington stated in looking at the three pieces of relief requested and considering whether it meets the spirit of the ordinance he believes there is a lot of benefit with this plan and the change in character is a benefit with the contiguous open space in the back of the property; he doesn't believe there are any health or safety issues; he believes there is a significant benefit to the owner and no negative impact to the public; he doesn't believe it will diminish property values. He has no issues with the hardship criteria for 611.6.3 and believes the uniqueness is the existing structure and driveway. He is concerned with the hardship criteria for 611.6.2 and 611.6.4.3.2 as this could make sense for every subdivision and not building a road and having no frontage could open up the ordinance.
- Mr. Tierney stated he doesn't have an issue with Section 611.6.4.3.2 since TRC didn't have any safety concerns and he doesn't believe meeting road width is asking too much.
- Mr. Mazalewski stated he believes the proposed plan will have less of an impact to neighbours as the other options with less cost to the town and is in the spirit of conservation development.
- The Chair stated based on Attorney Campbell's response to 611.6.2 that the Planning Board will weigh in on this he is comfortable with the request and believes the cost and layout of the land ties into the hardship criteria. He also agrees this plan is superior to the other options.

Mr. Partington motioned for Case #35-2014, Lot 21-C-80 and Lot 21-C-70, to grant the variance from Section 611.6.2 to waive the Road Standards as detailed in the Subdivision Regulations for the common drive; Section 611.6.3 to allow two building lots to be 38,500 and 45,000 sq. ft. where 30,000 sq. ft. is the maximum allowed; and Section 611.6.4.3.2 to allow four lots to have zero frontage where 60 to 100ft is required and one lot to have more than the maximum of 100ft, per the proposed private driveway plan submitted. He also clarified that the ZBA cannot waive the Road Standards in the Subdivision Regulations as this is the responsibility of the Planning Board. Mr. Mazalewski seconded the motion. Motion passed: 3-1-0 with Mr. Tierney in opposition.

Mr. Tierney stated he was opposed to granting the variance for Section 611.6.2 because he believes the spirit and intent of the ordinance is not observed.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #38-2014 into the record along with the abutter list.

Case # 38-2014, Lot 1-A-94

Applicant/Owner – Joel Garrett

Location – 12 Coventry Rd.

Zone – Rural

Variations from the following section of the Zoning Ordinance is requested to allow the installation of an in-ground pool to be in the required setback.

Section 702, Appendix A-1 to allow the pool to be 7.5 ft. from the side lot line where 30 ft. is required.

- Mr. Joel Garrett, applicant, addressed the Board. He explained he has a 3.63 acre parcel and most of the land is in the front of the house and the backyard slopes off. He is requesting to install an 18 x 36 in-ground pool and stated several pool companies told him this is the only location where a pool can go. He stated the pool will be oval shaped with the stairs on the inside and will be angled in a way that allows for no loss of sight with the closest point 7 ½ feet from the side lot line. He also noted there will be an 8ft high white fence surrounding the pool and the filtration system will be on top of a cement pad.
- Mr. Partington asked how far away the pool will be from the abutting house and Mr. Garrett stated he is guessing 30ft and also noted it is the garage side of the house.
- The Chair noted a 9/25 memo from Conservation requested more information and a subsequent memo from 10/9 stated they had no issues. Mr. Gregory stated he provided them with the information they requested.
- Mr. Garrett read the five criteria into the record.

The Chair opened the hearing to the public at 8:25pm and hearing none the public portion was closed.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Mazalewski. Motion passed: 4-0.

- Mr. Partington stated he doesn't believe there will be any change in character to the area and there are no health and safety issues; he believes there is a lot of benefit to the owner and knows of no negative to the public; he doesn't believe it will diminish surrounding property values; the uniqueness is the slope of the land and the location of the existing structure and he believes it is a reasonable plan. The Board agreed with Mr. Partington.

Mr. Partington motioned for Case #38-2014, Lot 1-A-94, to grant the variance from Section 702, Appendix A-1, to allow the pool to be 7.5 ft from the side lot line where 30 ft. is required, per plan submitted, seconded by Mr. Tierney. Motion passed: 4-0.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #39-2014, Lot 17-I-111B into the record along with the abutter list and letter of authorization dated 9/12/14 from Vincent Bonanno authorizing Joseph Maynard of Benchmark Engineering to represent him in this case.

Case # 39-2014, Lot 17-I-111B ,

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – Vincent Bonanno & Linda Gormely-Bonanno

Location: 27 Walkey Rd.

Zone: Residence A, Cobbett's Pond and Canobie Lake Watershed Protection Overlay District, Wetland & Watershed Protection District (WWPD).

Variances from the following sections of the Zoning Ordinance are requested to allow a new dwelling on a pre-existing non-conforming lot:

Section 401 to allow the increase in the extent of the non-conforming use & structure where neither is permitted.

Section 405.2 to allow an increase in area and volume of the structure – area from 1,400 sq. ft. to 1752 sq. ft. and volume from 11,200 cu. ft. to 24,424 cu. ft.

Section 405.3 to allow an increase in non-conformity of the structure.

Section 601.3 to erect a permanent building which is not a permitted use.

Section 601.4.6 to allow a waste disposal system in the WWPD which is not permitted.

Section 601.4.8 to allow excavation in the WWPD without a special permit from the Planning Board.

Section 601.4.8.3 to not require plans where plans are required.

Section 601.4.8.4 to not mark the boundaries which is required.

Section 616.6.4.1 to allow a new driveway within 15 ft. of a wetland where 75 ft. is required.

Section 616.8 to allow the entire new development in the buffer zone.

Section 616.9.1 to allow an Effluent Disposal System to be 32 ft. from Hydric-A soil and Hydric-B soil where 75 ft. and 50 ft. respectively are required.

Section 702, Appendix A-1 to allow a dwelling to be constructed on a lot with 88 ft. of frontage where 175 ft. is required, on a 7,345 sq. ft. lot where 50,000 is required, a front setback of 10 ft. where 50 ft. is required, a side setback of 10 ft. where 30 ft. is required, 31.5 ft. from the lake where 50 ft. is required.

- Joe Maynard, Benchmark Engineering, addressed the Board. He stated the unique feature of the lot is the brook that runs down through Lake View Farms and into the wetland behind the house which is at lake elevation and the majority of the property is fully encompassed by WWPD. He noted currently the existing lot has a single family home with a gravel driveway and a septic system in the rear which is in very close proximity to hydric A soils. They are proposing to raze the existing structure and build a new home, new septic system further away from the pond than the existing system, and reconfigure the driveway with parking on one side of the property and will control the runoff into drywells and away from the pond.
- Mr. Tierney asked why they were proposing three stories and Mr. Maynard explained since it is low to the water table they cannot have a basement so the lower level will serve as the garage and storage area. Mr. Tierney asked if the elevation is lower than the road and Mr. Maynard stated the road is flat and the elevation will be roughly even with the road.
- Mr. Partington asked why relief is needed from 616.8 and Mr. Maynard answered you have WWPD on the lot and when the Cobbetts Pond/Canobie Lake Ordinance was written a buffer zone was added to wetlands, streams, and brooks that feed the pond and mimics the WWPD Ordinance. Mr. Partington noted they will need relief from Section 616.8.1 for buffers and from 616.8.4.1 to allow septic tank and drain field but not all of 616.8 as it includes many other things that do not apply to this case.
- Mr. Maynard noted there is a reduction in impervious surface from 71% to 47%.

The Chair opened the hearing to the public at 8:40pm.

- Joe Levis, 30 Walkey Road, stated he believes this will be a benefit to the neighbourhood and he supports the request.

- Frank Bellistri, 27 Harvest Road, Vice President of Lake View Farm, stated he believes this will be a wonderful improvement to the neighbourhood and his homeowners association supports the request.
- Mr. Maynard distributed two letters of support from The Clough and Tsetsilas families which the Chair read into the record.

Mr. Tierney motioned to go into Deliberative Session, seconded by Mr. Partington. Motion passed: 4-0.

- Mr. Partington stated as discussed relative to Section 616.8 the relief is from the 100 ft. buffer in 616.8.1 and the septic and drain field use in 616.8.4.1. In consideration of the five criteria, relative to the following Sections 401, 405.2, 405.3, 601.3, 601.4.6, 616.6.4.1, 616.8.1, 616.8.4.1, 616.9.1, and 702, Appendix A-1, he doesn't believe there is a change in character to the area or any health and safety issues; he believes the benefits are the installation of the new septic system further away from the water and the ability to catch more runoff; he believes there is substantial justice to the owner and no negative impact or diminishment of property values; the uniqueness is the size of the lot, existing structure and septic system and variances will be required no matter what you build on the lot. He stated there are many betterments and it is a reasonable plan and a good location for the house. He stated relative to Sections 601.4.8, 601.4.8.3, and 601.4.8.4, these are items required by the Planning Board and in his opinion since there will be a lot of work done on the property they should adhere to these requirements. He does not believe granting relief to these sections meets the spirit of the ordinance or hardship criteria and believes it is contrary to the public interest.
- The Board agreed with Mr. Partington and the Chair noted nobody was in opposition relative to the size and plan design placement.

Mr. Partington motioned for Case #39-2014, Lot 17-I-11B, to grant a variance from Section 401 as requested, Section 405.2 as requested, Section 405.3 as requested, Section 601.3 as requested, Section 601.4.6 as requested, Section 616.6.4.1 as requested, Section 616.8.1 amended from the requested 616.8 and Section 616.8.4.1 amended from the requested 616.8, Section 616.9.1 as requested, and Section 702, Appendix A-1 as requested, per plan submitted, seconded by Mr. Tierney. Motion passed 3-1-0 with Mr. Mazalewski in opposition.

The Chair advised of the 30 day appeal period.

Mr. Mazalewski stated he was opposed to granting a variance for Section 405.2 because he believes the spirit and intent of the ordinance is not observed.

Mr. Tierney motioned for Case #39-2014, Lot 17-I-11B, to deny relief from Section 601.4.8, Section 601.4.8.3, and Section 601.4.8.4, seconded by Mr. Partington. Motion to deny passed: 4-0.

The Chair advised of the 30 day appeal period.

The Board was opposed to granting relief from Sections 601.4.8, 601.4.8.3, and 601.4.8.4 because the spirit and intent of the ordinance is not observed, the variance is contrary to public interest and the hardship criteria was not met .

Mr. Partington read Case #40-2014 into the record along with the abutter list and letter of authorization dated 9/8/14 from David Tokanel authorizing Joseph Maynard of Benchmark Engineering to represent him in this case.

Case # 40-2014, Lot 16-Q-169A,

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owner – David Tokanel

Location – 38 First St.

Zone – Residence A, Cobbetts Pond and Canobie Lake Overlay Protection District

Variances from the sections of the Zoning Ordinance are requested to allow a new dwelling on pre-existing, non-conforming lot:

Section 401 to allow the increase in the extent of a non-conforming use & structure where neither is permitted.

Section 405.2 to allow an increase in the area and volume of the structure - area from 1,350 sq. ft. to 1,470 sq. ft. and volume from 10,400 cu. ft. to 19,120 cu. ft.

Section 405.3 to allow an increase in non-conformity of the structure.

Section 616.6.4.1 to allow a new driveway within 65 ft. where 75 ft. is required.

Section 702, Appendix A-1 to allow a structure to be constructed with 20 ft. of frontage where 175 ft. is required on a public road, to allow a side yard setback of 1 ft. and 3 ft. where 30 ft. is required, to allow the front setback to be 30 ft. where 50 ft. is required, to allow the rear setback to be 20 ft. where 30 ft. is required.

- Joe Maynard, Benchmark Engineering, addressed the Board. He stated the lot is 4,151 sq. ft with an existing year round single family home which is partially over the lot line and 15ft from the pond and 7 ½ ft from the lot to the north. They are proposing to better the lot by razing the existing home and constructing a new home which will be 5 feet further away from the pond and no longer on the neighbouring lot. They will also install a new septic system. The existing house is 40ft off the First Street ROW and the proposed location will bring it 30ft from the ROW, with a 3ft setback to the north side lot line and a 1ft setback to the south lot line. There is a small reduction in impervious surface from 59.4% to 57.4% and they will install a small drywell.
- Mr. Tierney asked if the existing home has a garage and Mr. Maynard answered no.
- The Chair asked the total building coverage and Mr. Maynard replied he does roof overhang and not square footage and he wasn't sure.
- Mr. Mazalewski noted the rear setback requirement should be 50ft since it is on a lake and Mr. Maynard agreed but also noted there is a section in zoning that allows you to take the average setback of homes in the neighbourhood. Mr. Mazalewski also asked about the removal of the trees and Mr. Maynard stated they are giant pines and any excavation will undermine the roots so they have to come down but they will re-plant to meet State Regulations.
- Mr. Maynard read the five criteria into the record.

The Chair opened the hearing to the public at 9:10pm.

- Ken Swenson, 36 First Street, stated the existing structure is not sound and is unappealing and he will be happy to see a new home on the lot.
- Jay Tokanel, 40 First Street, stated anything will be an improvement and he supports the request.
- Susie Swenson, 36 First Street, stated she will be happy to see a new home and the removal of the large pine trees will make it safer.

The Chair closed the public portion at 9:12pm.

Mr. Partington read a letter from Conservation Commission dated 9/25/14 into the record stating they had no concerns.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 4-0.

- Mr. Partington stated some of the benefits are the lessening of the impervious surface area, drainage improvements, new septic system, the house will be entirely on its own lot and be a better looking structure. There is no change in character or health and safety issues; substantial justice is the benefit to the owner and no negative impact to the public or diminished property values. The hardship/uniqueness is the undersized lot and existing structure close to the pond and falling off the lot and he believes it is a reasonable plan. The Board agreed this is a big improvement for the pond.

Mr. Tierney motioned for Case #40-2014, Lot 16-Q-169A, to grant relief from Section 401, 405.2, 405.3, Section 616.4.1 and Section 702, Appendix A-1, per plan submitted, seconded by Mr. Mazalewski. Motion passed: 4-0.

The Chair advised of the 30 day appeal period.

Review and Approval of Draft Minutes – September 24, 2014

Mr. Partington motioned to approve the September 24, 2014 draft minutes as amended, seconded by Mr. Tierney. Motion passed: 3-0-1 with Mr. Mazalewski abstaining.

Mr. Gregory announced the next ZBA meeting has been cancelled since there were no cases.

Mr. Tierney motioned to adjourn the September 24, 2014 ZBA Meeting at 9:20pm, seconded by Mr. Mazalewski. Motion passed: 4-0.

These minutes are in draft form and respectfully submitted for your approval by Laura Accaputo, ZBA Minute Taker.