



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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**Zoning Board of Adjustment Draft Minutes
December 10, 2013**

Board Members:

Heath Partington, Chairman – Present
Jim Tierney, Vice-Chairman – Present
Mark Samsel, Secretary – Present
Jay Yennaco, Member – Excused

Mike Scholz, Member – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate - Present

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Laura Accaputo, ZBA Minute Taker

The Chair called the meeting to order at 7:30 pm, introduced the Board and Staff, and explained the meeting process.

The Chair seated Mr. Pellegrini for Mr. Yennaco for Case #37-2013.

Mr. Samsel read Case #37-2013 into the record along with the list of abutters and a letter of authorization from Michael and Mary Ryan permitting Edward N. Herbert Associates to represent them in reference to the variance required for Lot 6-A-820, Case #37-2013.

Lot 6-A-820, Case #37-2013

Applicant – Edward N. Herbert Assoc. Inc.
Owner – Michael E. & Mary E. Ryan Living Trust
Location – 23 Bedros Street
Zone – Rural, Wetland and Watershed Protection District (WWPD)

Variations from the following sections of the Zoning Ordinance are requested to allow a swimming pool, pool house, patio, retaining walls, water feature and associated grading within the WWPD with a proposed WWPD disturbance of 4,500 square feet:

Section 601.3 – to permit a pool, pool house, patio, retaining walls, water feature and associated grading in the WWPD where it is currently not an allowed use.

- Mr. Shane Gendron of Edward N. Herbert Associates addressed the Board. He explained the request is to allow a pool in the WWPD which if approved will require a special permit. He presented an existing conditions plan sheet which located the tree line, line of boulders, septic (front), well (rear), play set, and shed. He advised the applicants to hire a wetland scientist as the wetlands had encroached since the original plot plans; Gove Environmental located the edge of the wetlands as they exist today. He then read a letter from Gove Environmental with recommendations for buffer plantings to offset the loss of WWPD buffer by the pool and patio. They have incorporated these recommendations in the plans and added a buffer of 15 feet, with an additional 4500 square feet of replanting. Mr. Gendron also noted the installation of the pool and patio would not require any tree cutting as it would be placed in an all lawn area; the play set will be removed and the shed will be moved out of the WWPD. He read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked about the size of the wetland and Mr. Gendron answered it is a good size and he doesn't know why it's gotten bigger. He also said they will add a retaining wall to drop the grade quickly.
- The Chair asked about the type of pool and maintenance such as flushing and chemicals. Mr. Gendron explained the type of pool has not yet been determined but the filtration will be non-backwash. There will also be a small pool house to hide the filter.
- The Chair asked about the size of the proposed patio. Mr. Gendron answered approximately 1700 sq. ft.
- The Chair questioned the letter from Gove Environmental specifically inquiring about the statement of no runoff from the patio. He asked if the plantings were going to mitigate that.
- Mr. Gendron answered the statement referred to additional runoff of pollutants. He stated the patio will create additional runoff but it will not get through the proposed mulch berm. He believes with the proposed plantings and mulch berm conditions will be better than currently exists.
- Mr. Tierney also noted the patio will be level not sloping.
- The Chair asked if the Conservation Commission had any comments regarding this request. Ms. Prendergast replied they hadn't had a chance to look at it yet due to the holiday.

The Chair opened the hearing to the public at 7:50pm. Hearing none the public portion was closed.

Mr. Samsel motioned to go into Deliberative Session, seconded by Mr. Pellegrini. Motion passed 5-0.

- Mr. Samsel stated he believed the five criteria were met and there will be improvement to the site.
- Mr. Tierney agrees with Mr. Samsel.
- Mr. Scholz agrees it meets criteria and there are improvements to the site with the plan.
- The Chair stated the trees will help with any issues caused by the pool and the unique factor is the amount of WWPD on the property and the location of the house.

Mr. Scholz made a motion for Case #37-2013 Lot 6-A-820 to grant the variance from Section 601.3 to permit a pool, pool house, patio, retaining walls, water feature and associated grading in the WWPD where it is currently not an allowed use conditioned minimally on the inclusion of a buffer plan as presented, seconded by Mr. Tierney.

The Chair stated the timing between the Conservation Commission and Zoning Board Hearings has to be fixed so that Conservation has a chance to look at a case prior to the Zoning Board Hearing. Ms. Prendergast agreed and stated after speaking with the Chair of the Conservation Commission they are looking at rescheduling the days and weeks they meet in order to coincide with the Zoning Board Hearings.

With no further discussion, the motion passed 5-0.

The Chair advised of the 30 day appeal period.

The Chair sat Mr. Mazalewski for Mr. Yennaco for Case #38-2013.

Mr. Samsel read Case #38-2013 into the record along with the abutter list.

Lot 20-D-4006 Case #38-2013

Applicant – David and Valerie Merchant

Owner – Same

Location – 18 Burnham Road

Zone – Rural

Variations from the following sections of the Zoning Ordinance are requested to allow for a 12 ft x 20 ft shed to be constructed within the required setbacks:

Sections 702 & Appendix A-1 – to permit a 12 ft x 20 ft shed to be located 10 feet from the side lot line where 30 feet is required.

- Mr. David Merchant, 18 Burnham Road, addressed the Board. He stated he was requesting approval to build a shed in this location as it provides easy access from his driveway, it will look right aesthetically, and there are no changes in grade at this location. He also stated there is a propane tank in the back yard which creates an obstacle with putting the shed there. He hired Herbert and Associates to determine where the lot lines were. He also stated he spoke with his neighbor on the side where the shed would be and they support his request. He read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked for clarification of the intended location for the shed. Mr. Merchant replied ten feet from the side lot line.
- Mr. Mazalewski asked if Herbert and Associates did a survey and if they did a drawing. Mr. Merchant replied they did a survey and put stakes every ten feet in the area where the shed will be, they did not do a drawing.
- Mr. Tierney asked if the shed would be pre-built and Mr. Merchant replied yes.
- The Chair asked how tall the shed would be and Mr. Merchant replied 12 feet and it will look like the main house in terms of siding and coloring.

The Chair opened the hearing to the public at 8:10pm. Mr. Samsel read a letter in support of the request from an abutter, Mr. Stephen Graham. The Chair closed the public portion at 8:11pm.

The Chair accepted five photos presented by Mr. Merchant as Exhibit A.

Mr. Samsel motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed 5-0.

- Mr. Mazalewski asked if the Section (702) he was seeking relief from was correct and wondered if it should be Section 703. Mr. Scholz stated he was thinking that as well and read Section 703.1. Ms. Prendergast clarified that relief from Section 702 was correct.

- Mr. Samsel stated he had no problem with the request.
- Mr. Tierney stated he had no issues with the request.
- Mr. Scholz stated he believed the five criteria were met and the hardship was with the grading of the property.
- The Chair stated he believed the driveway was unique.
- Mr. Mazalewski stated he felt it was reasonable and one larger shed would look better than two sheds.

Mr. Tierney motioned for Case #38-2013, Lot 20-D-4006 to grant the variance from Sections 702 & Appendix A-1 to permit a 12 ft x 20 ft shed to be located 10 feet from the side lot line where 30 feet is required, seconded by Mr. Samsel. Motion passed 5-0.

Mr. Tierney commented this was not as plan submitted.

The Chair advised of the 30 day appeal period.

Mr. Samsel read Request for Re-Hearing – Case #27-2013 into the record.

Request for Re-Hearing – Case #27-2013, Lot 21-G-600, off of Range Road

The Chair explained for re-hearing requests the Board remains in Deliberative Session and there is no public input. He explained the application would be read point by point and the Board would comment whether it was new information or technical error.

1. Point one statement only.
2. Property does not qualify for a building permit under State Law.
 - The Board discussed the information provided and does not believe this provides new information or proves technical error.
3. Abutters Brad Balise and Carpenter family have a reasonable expectation for the Windham ZBA to adhere to state law.
 - The Board believes this is a statement and does not provide new information or prove technical error.
4. Windham ZBA subverted the properly qualified town employee who correctly denied building permit, as well as the BOS and Tax Assessor who correctly advised the applicant that driveway shown on site plan is not on town property or a town road issue. The ZBA continued the original meeting from 10/8/13 on the basis we would hear from the Building Inspector and Town Counsel, which never happened.
 - Mr. Samsel noted they did talk to Town Counsel and the ZBA is making decisions contrary to the actions of employees or ordinances. Mr. Mazalewski stated after speaking with Town Counsel they did not feel it necessary to speak with the Building Inspector. The Chair noted the denial of the Building Permit was not being questioned by the applicant. The Board does not believe this provides new information or proves technical error.
5. ZBA members stressed to landowners the property in question is on/off Range Road. The town property card also relates this property to Range Road; the applicants own appeal for a building permit lists the property as on/off Range Road. In turn the ZBA then on one hand granted a

building permit based on a provision in the law for islands, hunting cabins, and agricultural outposts having no relation to town roads and at the exact same time approved a site plan showing a year round home with a driveway across a 3rd and 4th parties private property, still eventually connecting to Simpson Road, and on another hand the permit was granted on the basis that relations to public streets is not required. Why would your discussion include fire truck access and the road agent looking into our private property if there is no relation to public roads? Copy of RSA 674:41 attached.

- The Board read 674:41. The Chair stated his vote was due to this section and the relation to roads. He believes there are two interpretations of the section; first whether it is connected to existing or proposed streets and second a general relation to roads. Although he disagreed with the Board he does see the other as a reasonable end to come to. The Board does not believe this provides new information or proves technical error.
6. The letter from the Building Inspector's denial of building permit specifically notes the applicant must show proof of meeting the requirements of the law to obtain a building permit through the appeal process. This was not addressed by the Board or Applicant at the hearing.
 - The Board read the letter from Mr. McGuire. Mr. Tierney stated the reason the appeal came to the ZBA and not the BOS was it was deemed not a road. The Board does not believe this provides new information or proves technical error.
 7. Also not addressed by the Board at the hearing was the fact that utilities cannot by law be sent across road discontinuance. Copy of RSA 231:46 attached.
 - The Board read the attached document which was from page 67 of A Hard Road to Follow "Utility Easements Preserved". Mr. Scholz stated the issue of utilities did come up and was decided not to be within the purview of the Board. Mr. Tierney noted what was submitted refers to municipal utilities not private utilities. The Chair stated most of the RSA's submitted were regarding public utilities and in this case public use of that way has been stopped. With a private easement you can pass utilities. The Board does not believe this provides new information or proves technical error.
 8. This land parcel has a legal access as shown on Planning Board Town maps and in landowner deeds at 229/227 Range Road.
 - The Chair stated this is evidence we talked about most. The end result is there may be several legal accesses but the property owner has the right to choose which legal access they use, not the abutters. The Board does not believe this provides new information or proves technical error.
 9. The Engineering Firm Herbert and Associates is boldly and illegally representing abutters' lot lines at Public Hearings. Copy of RSA 637:3 and 637:4 attached.
 - The Chair stated the Board is well aware of the difference of opinion of who owns or has access to the easement. The Board does not believe this provides new information or proves technical error.
 10. Lot 21-G-600 is deeded to the highway that runs north and south perpendicular to the road they are trying to access from which is a different road, which runs east and west.
 - Mr. Samsel stated this goes back to an earlier item speaking of different options and legal accesses and this is one of them. The opinion of whether this is legal or not and if we did not adequately consider the facts is up to another court to determine. Mr. Scholz stated there was a lot of testimony and he carefully considered all of it. Certain aspects of what was presented by those in opposition that were not within the purview of this Board can be taken up in other

venues. He believes he did a fair job of correctly ruling on this case. The Board does not believe this provides new information or proves technical error.

Mr. Samsel acknowledged a letter received on December 10th which was a confidential communication between the Board and the Town Attorney which he concurs with.

Mr. Samsel motioned to deny the request for re-hearing as presented to this Board for Case #27-2013, Lot 21-G-600, off of Range Road, in consideration of the Boards review that there were no technical errors or new information presented as part of the appeal, seconded by Mr. Mazalewski. Motion passed 5-0.

Review and Approval of Draft Meeting Minutes – 11/26/13

Mr. Samsel motioned to approve the draft minutes of November 26, 2013 as amended, seconded by Mr. Scholz. Motion passed 5-0.

Old/New Business

The Chair asked Ms. Prendergast about alternates and she answered she had one person she was waiting to hear back from.

Ms. Prendergast submitted a list of the 2014 meeting dates.

Mr. Samsel motioned to adjourn, seconded by Mr. Scholz. Motion passed 5-0. Meeting adjourned at 8:50pm.

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