



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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**Zoning Board of Adjustment  
Community Development Department  
Approved Minutes  
February 10, 2015**

**Board Members:**

Mark Samsel, Chairman – Excused  
Mike Scholz, Vice-Chairman – Present  
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  
Colleen King, Interim ZBA Minute Taker

The Vice-Chair called the meeting to order at 7:30pm, introduced the Board and Staff, and explained that with only 4 ZBA members present, all applicants will have the opportunity to continue their cases and be heard by a full 5 member board. The Vice-Chair stated that for an affirmative vote, there needs to be 3 vote majority.

The Vice-Chair sat Mr. Mazalewski for Mr. Yennaco.

**Public Hearing**

**Case # 45-2014 Lot 24-F-646,**

**Applicant** – Scott Cabana/Karen Carberry

**Location** – 23 Ryan Farm Road; Zone – Rural

Variance from the following sections of the Zoning Ordinance is requested to allow construction of a new in-ground pool:

**Section 702, Appendix A-1 & 703** to allow the pool to be 19.5 ft from the rear lot line where 30 ft is required.

Mr. Partington read **Case #45-2014** and the list of abutters into the record.

This case was continued from December 23, 2014 meeting to allow the applicant time to present more accurate and detailed plans.

The applicant was running late so the Vice-Chair stated that they would proceed to the next case and hear Case #45-2015 later in this meeting.

**Case # 2-2015, Lot 21-H-16C**

**Applicant** – William & Linda Flockton

**Location** – 2 Cheryl Road

**Zone** – Residential A, Cobbetts Pond and Canobie Lake Watershed Protection District

An Equitable Waiver is requested from Section 702, Appendix A-1 & 703 of the Zoning Ordinance to permit an existing shed to remain 3 ft. from the side lot line and 2ft. from the rear lot line, where 10 ft. is required.

Mr Partington read **Case #2-2015** and the list of abutters into the record.

The Vice-Chair explained that with 4 board members present, there needs to be a 3 vote majority and asked the applicant if they wanted to proceed with their hearing tonight or continue to another meeting. The applicant requested to proceed with a 4 member board.

The applicant, Mr. Bill Flockton, 2 Cheryl Rd explained that the shed has been on the property and taxed by the Town since 1979. He showed pictures of the shed in its current condition and offered 2 notarized statements from abutters stating that they remember the shed being there for many years. The shed is neat, has a low profile roof, and has existed for over 10+ years. He also stated that his house is only 600sf and he needs this shed for storage.

The Vice-Chair asked the applicant to read his Equitable Waiver application.

Mr Flockton stated that the shed was there when he purchased the property in 2007 and on the 1979 tax card, the shed was described as an outbuilding.

The Vice-Chair asked if the Board has any questions for the applicant.

Mr Tierney inquired about the building code at that time. Mr Gregory stated that no permit is currently required for a shed of this size.

Mr Partington wanted to confirm that the shed had been in existence for over 10+ years. The applicant presented the 1979 Tax Card.

The Vice- Chair opened the hearing for public comment.

Mrs. Deluca, 4 Cheryl Road spoke in opposition, stating that her primary concern was safety and the combustible items which may be stored in the shed, such as lawn mowers. If something catches on fire, her house is very close.

The applicant stated that the shed stores his summer furniture, lawn mower, bike and tool cabinet. He does not store hazardous material or chemicals.

Mr Tierney reminded the board members that this is an Equitable Waiver hearing and the approval criteria is different from a Variance.

The Vice-Chair requested a motion to go into deliberative session.

**Motion by Mr Partington**

**2<sup>nd</sup> by Mr Tierney**

**Vote 4-0**

**Motion Carries**

**Questions/Comments from the Board**

Mr Partington reviewed the Equitable Waiver criteria stating that the shed has been there longer than 10 years. He is not compelled by the safety concerns raised.

Mr Tierney stated that with the other items now on the property, relocation would be prohibited. It is a small lot.

Mr Mazalewski stated that the proof of shed's existence since 1979 and the written testimony outweighs the removal of the shed.

The Vice-Chair saw no compelling diminution of property values as it has been there since 1979. The cost of the correction does not outweigh the public benefit.

**Motion by Mr Mazalewski for Case #2-2015, Lot 21-H-16C, to grant an Equitable Waiver from Section 702, Appendix A-1 & 703 of the Zoning Ordinance to permit an existing shed to remain 3 ft from the side lot line and 2 ft from the rear lot line, where 10 ft is required.**

**2<sup>nd</sup> by Mr Tierney**

**Vote: 3-1 Mr Partington denied**

**Motion carries.**

**Case # 45-2014, Lot 24-F-646**

**Applicant** – Scott Cabana/ Karen Carberry

**Location** – 23 Ryan Farm Road

**Zone:** Rural

Variance from the following sections of the Zoning Ordinance is requested to allow construction of a new in-ground pool:

**Section 702, Appendix A-1 & 703** to allow the pool to be 19.5 ft from the rear lot line where 30 ft is required.

Mr. Partington read **Case #45-2014, Lot 24-F-646** into the record. This case was continued from December 23, 2014 meeting to allow the applicant time to present more accurate and detailed plans and the list of abutters was read at that meeting.

The Vice-Chair explained that with 4 board members present, there needs to be a 3 vote majority and asked the applicant if they wanted to proceed with their hearing tonight or continue to another meeting. The applicant requested to proceed with a 4 member board.

The applicant, Mr Scott Cabana, addressed the 5 criteria for a Variance to allow construction of a new in-ground pool to be 19.5 ft. from the rear lot line where 30 ft. is required.

The Vice-Chair asked if the board members had any questions.

Mr Tierney explained that this case was continued because the pool company could not answer questions from the board. He was concerned about the location of the propane tank, the well and the generator in relation to the pool.

Mr Cabana showed an iPhone video which he took of the well head and the propane tank location.

The Vice-Chair opened the hearing for public comment.

Mr Steve Voto, 25 Ryan Farm spoke in favor of the applicant and saw no safety or health risks.

The Vice-Chair requested a motion to go into deliberative session.

**Motion by Mr Partington**

**2<sup>nd</sup> by Mr Tierney**

**Vote 4-0**

**Motion Carries**

**Questions/Comments from the Board**

Mr Partington believes that the 5 criteria for a variance are met. The property is unique due to the location of the gas line and the sloping of the property.

Mr Tierney had no comments.

Mr Mazalewski stated that the hardships were clearly explained. The Vice-Chair agreed.

**Motion by Mr Partington for Case #45-2014, Lot 24-F-646, to grant a Variance from Section 702, Appendix A-1 & 703 of the Zoning Ordinance to allow the construction of a new in-ground pool to be 19.5 ft. from the rear lot line where 30 ft. is required, per plan submitted.**

**2<sup>nd</sup> by Mr Tierney**

**Vote: 4-0**

**Motion carries.**

**Case # 3-2015, Lot 11-A-1400 & 11-A-1418**

**Applicant** – Karl Dubay, The Dubay Group, Inc.

**Owner** – Pliskin Family Revocable Trust, Robert & Doris Pliskin Trustees

**Location** – Pilgrim & Chestnut Streets

**Zone:** Rural

A Variance is requested from the following sections of the Zoning Ordinance to allow an open space subdivision:

**Section 611.6.3** to allow two (2) new lots off Chestnut Street to be 40,326 sq. ft. and 71,646 sq. ft. and one (1) lot with an existing house on Pilgrim Road to be 535,126 sq.ft. where 30,000 sq. ft. is the maximum permitted.

**Section 611.6.4.3.1** to all the 35 homes within the subdivision to have a front setback greater than the maximum allowed of 50 ft.

Mr. Partington read **Case #3-2015, Lot 11-A-1400 & 11-A-1418** into the record and asked the board if they were comfortable with not reading the 8 pages of abutters. The list is available for viewing. The board agreed.

The Vice-Chair again explained that with 4 board members present, there needs to be a 3 vote majority and asked the applicant if they wanted to proceed with their hearing tonight or continue to another meeting. The applicant requested to proceed with a 4 member board.

Mr. Karl Dubay of The Dubay Group represented the applicant Mr. Robert Pliskin for his Open Space Subdivision application. Although the Hearing was posted for relief from 2 zoning sections, the applicant is no longer asking for relief from Section 611.6.4.3.1.

This is a new hearing which mirrored the previous case and they worked with the abutters to resolved their concerns with the buffer setbacks, landscaping and lot sizes.

The Pliskin family is proposing that their 11 acre lot on Pilgrim Road with the family homestead will not have any further development and needs a variance because it is oversized. The 2 lots off the Chestnut Street cul-de-sac will each have a 3000+ sf home and in order to establish a protected buffer with the sloping grade of the lots, the lots need to be 40,326 sf and 71,646 sf.

At the request of the Vice-Chair, the applicant addressed the 5 criteria as it is a new case.

Mr Dubay stated that granting these variances would be more in the public interest and there would be no infrastructure added or needed. The 2 lots off Chestnut meet the Open Space requirements and their lot sizes are unique geometric shapes. The applicant worked with abutters to demonstrate substantial justice and resolve their concerns. This proposal would increase the property values and the larger lots would allow for the homes to be properly placed on the lots.

The Vice-Chair opened the hearing for public comment.

Attorney Jed Callen represented the abutter and after working with the applicant, they now fully support this application and believe that this plan is much better. He believes that the board now has adequate information to grant this variance and there is no opposition this proposal. Attorney Callen reminded the ZBA that they cannot redesign the plans before them.

The Vice-Chair closed the hearing for public comment.

The ViceChair requested a motion to go into deliberative session.

**Motion by Mr Partington**

**2<sup>nd</sup> by Mr Tierney**

**Vote 4-0**

**Motion Carries**

Mr Partington stated that he voted against this proposal the last time and that the 2 lots on Chestnut Street looked more like traditional lots and not part of an Open Space Subdivision. He did not believe the hardship criteria was met.

Mr Tierney did not have a problem with the 2 lots on Chestnut Street and believed that they needed more usable land for the homes on those two lots. He looked at this development as a whole.

Mr Mazalewski thought the testimony was reasonable and that the proposal was an intelligent plan.

The Vice-Chair stated that the lots on Chestnut appeared to be more traditional lots, that the hardship issue was not addressed and based on the boards' comments, it appears that there may be a tie vote.

The Vice-Chair polled the board to consider moving this hearing to the next meeting on March 10.

Mr Partington thought it would be prudent to have a 5 member board

Mr Tierney stated that if a motion is made with a 2-2 vote, it did not fail but also did not pass.

Mr Mazalewski stated that if there are not 3 affirmative votes, then the motion does not pass, regardless of a 2-2 tie vote.

**Motion by Mr Tierney for Case #3-2015, Lot 11-A-1400 & 11-A-1418, to grant a Variance from Section 611.6.3 of the Zoning Ordinance to allow two (2) new lots off Chestnut Street to be 40,326 sf and 71,646 sf and maintain one (1) lot with the existing house on Pilgrim Road to be 535,126 sf where 30,000 sf is the maximum required, per plan submitted.**

**2nd by Mr. Mazalewski**

**Vote: Mr. Tierney & Mr. Mazalewski – Approved**

**Vice-Chair & Mr Partington - Deny**

**Tie Vote 2-2**

**Motion Denied.**

The Chair stated that this decision can be appealed within 30 days.

**Case # 4-2015, Lot 19-B-912**

**Owner – Robert, Pamela & Wendy Lundquist/ Snow Pond Farm LLC**

**Location – 2 Winter Street**

**Zone: Rural**

This is an Appeal of Administrative Decision made on December 22, 2014, by Dick Gregory, ZBA/Code Enforcement Administrator. The decision being appealed is that the applicant/owner was in violation of Sections 706.5.1, 706.5.1.5, and 706.6.1 of the Zoning Ordinance. This appeal is based on the claim that selective enforcement has taken place.

Mr. Partington read **Case #4-2015, Lot 19-B-912** and the abutters into the record.

The Vice- Chair again explained that with 4 board members present, there needs to be a 3 vote majority and asked the applicant if they wanted to proceed with their hearing tonight or continue to another meeting. The applicant requested to proceed with a 4 member board.

Ms Wendy Lundquist/ Snow Pond Farm LLC, the applicant stated that when they started the farm, she contacted Laura Scott, Community Development Department about putting directional signs in the State ROW. Ms Lundquist stated that Ms Scott verbally told them that they could put their signs up in the State ROW at their own risk. Ms Lundquist believes that they were given permission by Ms Scott by saying it was at their own risk and other town employees have given them permission for their signs. Ms. Lundquist could not remember the names of the other town employees.

The Vice-Chair stated that if someone is knowingly allowed to break the law, the law is still broken.

When the Vice-Chair asked Mr Gregory for his input, Mr Gregory referenced the letter from Attorney Campbell, stating that off-site signs are not allowed. Even if the signs are in the State ROW, the Town can regulate them by way of Zoning Ordinance 706.5.1.5.

Mr Tierney stated that only town employees with jurisdiction over signs could give them permission and that if the Code Enforcement Administrator does not drive around town looking for violations.

The Vice-Chair opened the hearing for public comment. Hearing none, the Vice-Chair closed the hearing for public comment.

The Vice-Chair requested a motion to go into deliberative session.

**Motion by Mr Partington**

**2<sup>nd</sup> by Mr Tierney**

**Vote 4-0**

**Motion Carries**

Mr Partington stated that local regulations can be tighter than State regulations and their responsibility is to read the ordinance.

The Vice-Chair stated that Mr. Gregory did his job and properly read the ordinance.

**Motion by Mr Tierney for Case #4-2015, Lot 19-B-912, to uphold the decision of the Code Enforcement Administrator and to deny the Appeal of Administrative Decision.**

**2<sup>nd</sup> by Mr. Partington**

**Vote: 4-0**

**Motion Carried.**

**The Chair stated that Mr Gregory's letter stands and the applicant's next course of action would be to go to court.**

**Case # 5-2015, Lot 19-B-912**

**Owner** – Robert, Pamela & Wendy Lundquist/ Snow Pond Farm LLC

**Location** – 2 Winter Street

**Zone:** Rural

This is an Appeal of Administrative Decision made on December 31, 2014, by Dick Gregory, ZBA/Code Enforcement Administrator. The decision being appealed is that the applicant/owner was in violation of Sections 706.5.1.5 of the Zoning Ordinance. This appeal is based on the claim that verbal approval was provided for the placement of the sign and that the sign has been up for eight years.

Mr. Partington read **Case #5-2015, Lot 19-B-912** in to the record and waived reading the list of abutters.

The Vice-Chair again explained that with 4 board members present, there needs to be a 3 vote majority and asked the applicant if they wanted to proceed with their hearing tonight or continue to another meeting. The applicant requested to proceed with a 4 member board.

Ms Wendy Lundquist stated that she was first notified of their sign violation in the fall of 2013 when she received a letter from Nancy Prendergast, the former ZBA/Code Administrator. Ms Lundquist never heard from Ms. Prendergast again. These are agricultural signs which have been up for 8 years and should be allowed.

The Vice-Chair asked Mr Gregory for his input on this case.

Mr Gregory stated that off-site signs are not allowed and signs on town street poles become a Selectmen's issue. Mr Gregory referenced Attorney Campbell's letter.

The Vice-Chair stated that if someone is knowingly allowed to break the law, the law is still broken.

The Vice-Chair opened the hearing for public comment.

Betty Dunn, Woodvue Road, spoke in favor of the applicant, stating that agricultural signs are not the same as commercial business signs and these type of off-site signs should not be an issue. The Zoning Board has room to interpret

Mr Tierney stated that the Planning Board presents ordinances which the voters approve and sometimes these ordinance changes are not always favorable towards business.

The Vice-Chair closed the hearing for public comment.

The Vice-Chair requested a motion to go into deliberative session.

**Motion by Mr Tierney**

**2<sup>nd</sup> by Mr Mazalewski**

**Vote 4-0**

**Motion Carries**



Mr Partington stated that it is not up the ZBA to change Zoning Ordinance.

Mr Tierney suggested that the enforcement letter should add the 706.5.5 ordinance and if the appeal is lost, the applicant can go to Court.

**Motion by Mr Tierney for Case #5-2015, Lot 19-B-912, to uphold the decision of the Code Enforcement Administrator, to deny the Appeal of Administrative Decision with an addition to Mr Gregory's letter to reference Zoning Ordinance 706.5.5.**

**2nd by Mr. Mazalewski**

**Vote: 4-0**

**Motion Carried.**

**Review and Approval of Draft Minutes of January 13, 2015**

Deferred until March 10, 2015

There are no cases on February 24, 2015.

The next ZBA meeting is scheduled for March 10, 2015

Motion by Mr Partington to adjourn the February 10, 2015 Zoning Board meeting.

2<sup>nd</sup> by Mr. Tierney

Vote: 4-0

Meeting Adjourned at 11:20pm