



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes April 7, 2010

Board Members

Mark Samsel – Chairman
Dianna Fallon – Vice-Chairman
Tom Murray – Member
Elizabeth Dunn – Member
Heath Partington – Member
Bruce Richardson – Alternate

Staff:

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Lot #11-C- 1000 Case # 10-2010

Applicant – M & P Pizza Inc. DBA Capri Pizza
Owner – Michael Boyle
Location – 33 Indian Rock Rd
Zone – Commercial A

A variance is requested from Section 706.4.5 of the Zoning Ordinance for more than the allowed number of signs.

Mrs. Fallon read the case into the record. Mr. Michael Boyle, owner, presented his case. Mr. Boyle submitted three photos that were marked as Exhibits A thru C and explained the reason for the request was safety concerns. Some customers have been entering through the side entrance from the alley where there are four ovens, running at 550 degrees. One customer entered thru the side entrance carrying an infant. Mr. Boyle presented a list of 308 customer signatures who do not have a problem with the sign over the entrance. The Chairman marked the list as Exhibit D. Mr. Boyle read the supporting five criteria into the record. Mr. Boyle went on to say that the unit occupied by Capri Pizza was originally two separate units that Mr. Boyle combined.

Mr. Tom Case of 70 Mountain Village Road said that the entrance to Capri Pizza is confusing.

Mrs. Dunn motioned and Mr. Murray seconded the motion to go into Deliberative Session.

Motion passed 5-0.



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Deliberative Session, Case #10-2010

Mrs. Dunn reviewed the five criteria. Mr. Murray motioned and Mrs. Dunn seconded the motion to grant a variance from Section 706.4.5 of the Zoning Ordinance for Case #10-2010 as requested with the condition that the sign does not exceed 10% of the allowed square footage as detailed in Exhibit A. **Motion passed 3-2.** Mrs. Fallon and Mr. Samsel voted against the motion because the request did not meet the spirit and intent of the ordinance and the applicant could conform to one sign.

Lot # 21-K-43 Case # 11-2010

Applicant- MHF Design Consultants Inc.

Owner- Robert C. Hannon

Location- 38 Turtle Rock Rd.

Zone- Residential A

A variance is requested from Sections 401, 406.2 & 702 & Appendix A-1 of the Zoning Ordinance to permit construction of a full foundation for the existing structure and convert seasonal dwelling to year round use and for the increase in use and volume of a pre-existing non-conforming structure on a pre-existing non-conforming lot.

Lot # 21-K-43 Case # 12-2010

Applicant- MHF Design Consultants Inc.

Owner- Robert C. Hannon

Location- 38 Turtle Rock Rd.

Zone- Residential A

A variance is requested from Section(s) 1, Subsection 1.6 c (1) of the proposed Cobbetts Pond Watershed Protection Overlay District to permit the installation of a full foundation for the existing structure, conversion of seasonal dwelling to year round use and to allow the existing lot to retain up to 60% of the lot area as existing lawn area where only 10% is allowed under the proposed ordinance.

Mrs. Fallon read both Cases 11-2010 & 12-2010 into the record. Mr. Mark Gross of MHF Design, representing the owner, presented the cases. Mr. Gross displayed a new septic plan that has been submitted to the state and explained that the wood foundation on the existing seasonal home has rotted. There is also a boat house and small garage on the property. There will not be an increase in the footprint on the 17,300 square foot lot that has been in existence since the 1920's. The house will be raised 3 feet and a full basement will be added along with a gravel driveway. Mr. Gross read the supporting five criteria for case 11-2010 into the record.

Mr. Brian Hannon, one of the owners, said his family owned the property for over 20 years, and they were convinced to go this route instead of a razing and rebuilding because of cost. They would like to be able to install a boiler so they do not have to winterize every year.



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Mr. Gross read the supporting five criteria into the record for Case # 12-2010. Mr. Gross explained that on the displayed plan the dark green section depicts the 60% lawn area. Mr. Gross said that if the variance was not granted to maintain the existing lawn they might use mulch. Mr. Gross explained that this is considered a minor application, which means it will be reviewed administratively instead of going to the Planning Board as a major application. When the driveway is built one of the concrete pads will be removed. The state considers concrete pavers pervious but the local ordinance does not. It was suggested that the 60% lawn area be reduced to make the request more conforming.

The Chairman reminded the Board that they do not grant variances for conversions, an applicant must meet the requirements of Section 1200 to convert from seasonal to year round use.

Mrs. Fallon said that the applicant is asking the Board to approve what is already in place without even trying to get to a lower standard regarding the lawn.

Mr. Murray said that he would like to see some mitigation. The applicant has moved the septic system further away from the pond and will be installing a gravel driveway.

The applicant said they could also have the under drain for the driveway go into the dry well and the owner would be willing to go from 60% to 50% lawn coverage.

Mrs. Dunn asked if this is a situation when the Board could and should continue this case to a later date to allow the applicant to come back to the Board with additional information about mitigation. Mr. Murray said he is not comfortable with continuing the case; he would put a condition on the motion.

The Board continued to discuss the percentage of lawn coverage and NHDES requirements with Mr. Gross.

Mr. Tom Case of 70 Mountain Village Road said the ordinance that was passed was created as a Cobbetts Pond Overlay Ordinance. It did not state in the warrant to amend the zoning. There should have been a motion to insert this ordinance. What is the Zoning Board's authority over this ordinance? Mr. Case went on to say that he advised the Planning Department about the numbering of this ordinance, but has not heard back from Ms. Scott. The Planning Board voted that they would allow staff to review minor requests but the ordinance says the Planning Board will have total authority over review and approval of anything in the ordinance, therefore, as far as Mr. Case is concerned, staff can not approve the applications, it must be done by the Planning Board. The entire procedure is totally discombobulated.

Mr. James Tierney of 96 Lowell Road said the Board has to take the same approach to this application as NHDES. The ordinance clearly states that this is for development and this lot has already been developed. The applicant is re-establishing what he already has. The applicant



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meets the intent of the ordinance because he is not adding lawn, he is not going from 50% to 60% he is going from 60% to 60%, lawn coverage is staying the same. There is no change to the site conditions.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #11-2010

Mrs. Dunn reviewed the five criteria. Mr. Murray motioned and Mrs. Dunn seconded the motion to grant a variance for Case #11-2010 from Sections 401, 406.2 & 702 Appendix A-1 of the Zoning Ordinance as requested. **Motion passed 5-0.**

Deliberative Session, Case #12-2010

Mrs. Dunn reviewed the five criteria. Mrs. Dunn motioned to continue Case 12-2010 and request in writing from staff about what further review this will have and further want to open it up to further testimony to allow the applicant to present additional details or proposal for lowering the percentage of requested lawn area and other mitigation techniques. No second received for this motion.

Mr. Murray motioned to grant a variance for Case # 12-2010 from Section 616.6 (c)(1) to retain up to 45% of the existing lawn area. Mr. Murray amended his motion to 30% of the existing lawn area and Mrs. Fallon seconded the motion. **Motion passed 4-1.** Mr. Partington voted against the motion because it did not meet the spirit of the ordinance.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Approval of February 9 & 23, 2010 and March 4, 9,& 23, 2010 Minutes

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to accept the February 9, 2010 minutes. **Motion passed 4-0-1.** Mr. Partington abstained.

The Chairman will submit revised minutes for February 23, 2010.

Mrs. Dunn motioned and Mr. Murray seconded the motion to accept the March 9, 2010 minutes as amended. **Motion passed 4-0-1.** Mr. Partington abstained.

The March 23, 2010 minutes will be reviewed at the April 13, 2010 meeting.

Correspondence



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- March 30, 2010 Letter from Jim Tierney requesting an alternate position to the Zoning Board. Mrs. Fallon read Mr. Tierney's letter into the record.
- Copy of email from Laura Scott to Bryan McDade regarding the ZBA acknowledging correspondence. Mr. Samsel said that Mr. McDade's email may be addressed at the beginning of the April 20, 2010 meeting.

It was suggested that the Zoning Board submit a letter to the paper requesting residents to apply for the open alternate positions. Mrs. Dunn will submit a letter to be sent to the newspaper.

Mrs. Dunn motioned and Mr. Murray seconded the motion to appoint Mr. Alosso and Mr. Tierney as alternates. **Motion passed 5-0.**

It was suggested that the Zoning Board recruit additional alternates by putting a notice in the paper and on the website and all letters should be addressed to the Chairman.

Election of Officers

Mr. Murray nominated Mrs. Fallon as Secretary. Mrs. Dunn seconded the nomination. Passed 5-0.

Mr. Murray nominated Mr. Samsel as Chairman. Mrs. Fallon seconded the nomination. Passed 5-0.

Mrs. Fallon nominated Mr. Murray as Vice-Chairman. Mrs. Dunn seconded the nomination. Passed 5-0.

Mrs. Dunn motioned and Mr. Murray seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for **April 13, 2010 at 7:30 PM** in the Community Development Department.