



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes July 27, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate
John Alosso – Alternate (Absent)
Mike Scholz – Alternate
Sal Basile – Alternate (Absent)

Staff

Laura Scott – Community Development Director
Patricia Kovolyan – Administrative Assistant

Seat Alternate

The Chairman appointed Mr. Tierney to replace Mr. Murray for this meeting.

Lot #17-G-26 Case #32-2010

Applicant – Windham Coffee Roasters
Owner – The Common Man Restaurants
Location – 84 Range Road
Zone – Gateway

A variance is requested from Section(s) 706.4.2 of the Zoning Ordinance to permit more than the allowed number of signs on the building.

Ms. Laura Scott advised the Board that Case #32-2010 requested a postponement to the August 10, 2010 because the applicant has not been able to get a letter of authorization from the owner.

Mr. Partington motioned and Mr. Tierney seconded the motion to continue Case 32-2010 to the August 10, 2010 meeting. Mr. Partington's motion was amended. Mr. Partington motioned and Mr. Tierney seconded the motion to move Case 32-2010 to the August 10, 2010 meeting.

Motion passed 4-1. Mrs. Dunn said she voted against the motion because it was the wrong procedure.



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Mrs. Dunn motioned and Mrs. Fallon seconded the motion to move case #36-2010 to the second position on the agenda. **Motion passed 5-0.**

Lot #17-L-152 Case #30-2010

Applicant – Herbert Associates
Owner – MHB Development
Location – 12 Horseshoe Road
Zone – Residential A

A variance is requested from Section(s) 616.6(C)(1) & 616.3(a) of the Zoning Ordinance to permit lawn coverage of 32.1% (18,130 square feet) of all dry land where 10% is allowed.

Lot #17-L-150 Case #31-2010

Applicant – Herbert Associates
Owner – MHB Development
Location – 8 Horseshoe Road
Zone – Residential A

A variance is requested from Section(s) 616.6(C) (1) & 616.3(a) of the Zoning Ordinance to permit lawn coverage of 40.7% (22,708 square feet) of all dry land where 10% is allowed.

Lot #17-L-151 Case 33-2010

Applicant – Herbert Associates
Owner – MHB Development
Location – 10 Horseshoe Road
Zone – Residential A

A variance is requested from Section(s) 616.6(C) (1) & 616.3(a) of the Zoning Ordinance to permit lawn coverage of 49.4% (25,027 square feet) of all dry land where 10% is allowed.

Lot #17-L-154 Case 34-2010

Applicant – Herbert Associates
Owner – MHB Development
Location – 16 Horseshoe Road
Zone – Residential A

A variance is requested from Section(s) 616.6(C) (1) & 616.3(a) of the Zoning Ordinance to permit lawn coverage of 49.4% (25,027 square feet) of all dry land where 10% is allowed.

Lot #17-L-153 Case #35-2010

Applicant – Edward N. Herbert Associates Inc.
Owner – MHB Development
Location – 14 Horseshoe Road
Zone – Residential A



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A variance is requested from Section(s) 616.6(C)(1), 616.3(a) of the Zoning Ordinance to permit lawn coverage of 45.6% (32,323 square feet) of all dry land where 10% is allowed.

Mr. Peter Zohdi of Herbert Associates asked to present all five of his cases (30, 31, 33, 34 & 35-2010) simultaneously. The lots are adjacent to each other and have been approved by the Planning Board; the criteria is the same, the only difference is the percentage of lawn coverage.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to open and hear all five cases, 30, 31, 33, 34 & 35. **Motion passed 5-0.**

Mr. Tierney questioned whether the five cases needed to be in front of the Zoning Board. Mr. Tierney explained that the applicant is grandfathered in according to the state statute for any changes in the Zoning Ordinance if the Planning Board has approved the plan. Mr. Zohdi explained that he requested relief from Section 616.3 (a) of the Ordinance so that he would not need to go back to the Planning Board. Mr. Tierney asked Ms. Scott why the lots are not grandfathered for the 4 or 6 year period per the state statute. Ms. Scott explained that the applicant came in for building permits and also applied for the Cobbetts Pond permits and was approved and received their building permits after the ordinance was passed. The applicant changed his mind and wanted to have more lawn. The applicant did not have to be at this meeting, he had approvals for both building permits and Cobbetts Pond. The applicant changed what was approved and applied for more lawn on June 23, 2010 and decided to apply for a variance. Mr. Zohdi said that he agreed with Mr. Tierney that he predates the current zoning.

Mrs. Fallon read all five cases into the record.

Mr. Shane Gendron of Herbert Associates presented the five cases. Mr. Gendron showed on the displayed plan the percentages and square footage of lawn area being requested. All other sections of the Cobbetts Pond Ordinance will be met.

- Case 30-2010, 32.1%, 18,130 square feet
- Case 31-2010, 40.7%, 22,708 square feet
- Case 33-2010, 49.4%, 25,027 square feet
- Case 34-2010, 40.6%, 33,179 square feet
- Case 35-2010, 45.6%, 32,323 square feet

Mr. Gendron said that the amounts of lawn coverage requested is similar to what other homes in Windham have for lawn coverage. Mr. Gendron read the supporting facts into the record.

Mr. Tierney asked if there would be landscaping. Mr. Chris Spanos of MHB Development, said that there will be shrubbery in the front of the lots.



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Megan Ridlon of 6 Horseshoe Road spoke in opposition to this request.

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

Motion passed 5-0.

Deliberative Session, Case #30-2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Sections 616.(C)(1) and 616.3(a) to permit lawn coverage of 32.1% per plan with the condition that there be plantings 6 feet on center along the northeast line following the contour of the land for the purpose of addressing runoff. **Motion passed 3-2.** Mr. Tierney and Mr. Partington voted against the motion because it is contrary to the public interest and did not meet the hardship criteria.

Deliberative Session, Case 31, 2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Sections 616.6(C)(1) and 616.3(a) to permit lawn coverage of 40.7% per plan with the condition that there be plantings 6 feet on center along the northeast line following the contour of the land for the purpose of addressing runoff. **Motion passed 3-2.** Mr. Tierney and Mr. Partington voted against the motion because it is contrary to the public interest and did not meet the hardship criteria.

Deliberative Session, Case 33-2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Sections 616.6(C)(1) and 616.3(a) to permit lawn coverage of 49.4% per plan with the condition that there be plantings 6 feet on center along the northeast line following the contour of the land for the purpose of addressing runoff. **Motion passed 3-2.** Mr. Tierney and Mr. Partington voted against the motion because it is contrary to the public interest and did not meet the hardship criteria.

Deliberative Session, Case 34-2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Sections 616.6(C)(1) and 616.3(a) to permit lawn coverage greater than 10% but less than 40% of all dry land per the line drawn on the plan submitted as Exhibit A with the condition that there be plantings 6 feet on center along the northeast line following the contour of the land for the purpose of addressing runoff. **Motion passed 3-2.** Mr. Tierney and Mr. Partington voted against the motion because it is contrary to the public interest and did not meet the hardship criteria.

Deliberative Session, Case 35-2010

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Sections 616.6(C)(1) and 616.3(a) to permit lawn coverage of 45.6% per plan with the condition that there be plantings 6 feet on center along the northeast line following the contour of the land for the purpose of addressing runoff. **Motion passed 3-2.** Mr. Tierney and Mr. Partington voted against the motion because it is contrary to the public interest and did not meet the hardship criteria.



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Mr. Tierney said that the Town is not applying the Cobbetts Pond Ordinance correctly; the process is backwards.

Mr. Samsel said that lawn coverage has been discussed for two hours and we have nothing to prove benefit or detriment; we're guessing, the entire ordinance is guessing.

The Chairman mentioned that Mr. Murray is in attendance but Mr. Tierney will stay on the Board for the balance of the meeting.

Lot #11-C-1120 Case #36-2010

Applicant – Stephen Chau

Owner – Windham Presbyterian Church c/o Jim Stuart

Location – 1 Church Road

Zone – Historic

A variance is requested from Section(s) 710 of the Zoning Ordinance to permit the installation of a 4-foot fence within 60-feet of the front lot line where 3-feet is required.

Mrs. Fallon read the case into the record.

Mr. Stephen Chau, Eagle Scout Candidate from Troop 266, presented the case. Mr. Chau said that this is a corner lot having frontage on two sides. A scalloped white vinyl fence will be used to border a 32' X 48' play area for children 3-8 years of age. Fence height will vary from 4' to 4'3". The Historic Commission is in support of the request and Mrs. Dunn read into the record a portion of the September 9, 2009 Historic District minutes submitted by Mr. Chau. ...*Motion by C. Webber with a 2nd by B. Talbott to agree to a 4 ft vinyl picket, free standing, curved or Gothic style fence without caps. Pending ZBA variance approval. Motion approved 5-0.*

Kristi St. Laurent of 32 Range Road spoke in favor of this request on behalf of the church.

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

Motion passed 5-0.

Deliberative Session 36-2010

Mrs. Fallon motioned and Mr. Tierney seconded the motion to grant a variance for Case 36-2010 from Section 710 of the Ordinance to permit the installation of 32' X 48', 4-foot fence within 60-feet of the front lot line per plan. **Motion passed 5-0.**



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Lot #17-L-15 Case #37-2010

Applicant – Robin Young
Owner – TK Range Road, LLC
Location – 112 Range Road
Zone – Rural

A variance is requested from Section 602.2 & 702.5 of the Zoning Ordinance to reduce the 100-foot and 50-foot screening buffers/setbacks in certain areas to allow the pre-existing portions of the historic building, yard and septic system to remain.

Mrs. Fallon read the case into the record.

Attorney Peter Bronstein, representing the owner, presented the case. This circa 1780 structure on 1.7 acres directly across from Griffin Park was granted variances on June 22, 2010. Buffer zones were not considered in that application. Because this is a commercial use the applicant is subject to both the 100' and 50' buffer zones.

Attorney Bronstein showed on the displayed the areas that don't comply with the buffer zone. The purpose of the buffer zones are visual screening and noise reduction.

Visual screening is met by:

- A heavily wooded area along the boundary of the subject lot
- Closest residential structure is 170 feet +/- from 112 Range Road
- Other abutting residential structures are 990 feet +/- Sawyer Road and 270 feet +/- Range Road
- Existing wooded buffer to remain in place

Noise reduction is met by:

- Business day use will lead to less noise nights/weekends than residential use
- No commercial truck traffic to site
- Minimal number of clients visiting
- Minimal number of people working on a regular basis
- No outside uses which would disturb neighbors

Attorney Bronstein read the supporting facts into the record.

Mr. Ron Hero of 115 Range Road spoke against this request.

Mrs. Susan Messetti spoke in favor of the request.

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

*******Motion passed 5-0.**



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Deliberative Session Case 37-2010

Mrs. Fallon motioned and Mr. Tierney seconded the motion to grant a variance for Case 37-2010 from Sections 602.2 and 702.5 to allow the pre-existing portions of the historic building, yard and septic system to remain in the 50' and 100' foot buffers. **Motion passed 5-0.** The Chairman stated that there are 3 Exhibits.

Approval of July 13, 2010 Minutes

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to approve the July 13, 2010 minutes as amended. **Motion passed 6-0.**

Miscellaneous Board Business

Expiration of Variance

Mrs. Dunn motioned and Mr. Partington seconded the motion to make public Attorney Campbell's letter of July 26, 2010 regarding expiration of variances. **Motion passed 5-0.**

The Board discussed Attorney Campbell's letter as it applied to Mr. Joseph Maynard's request regarding Cases 18 & 19-2009, Abbott Road.

Joint Meetings

Mrs. Dunn motioned and Mr. Partington seconded the motion to make public Attorney Campbell's letter of July 26, 2010 regarding joint meetings. **Motion passed 5-0.**

The Board discussed procedure and Ms. Scott mentioned how the meeting will be run and explained the setup.

Mr. Case questioned the reason for having a joint meeting. It was explained that there is a septic system in failure and having a joint meeting would speed up the process.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion that the Zoning Board of Adjustment and the Planning Board will have a joint meeting on August 4, 2010 regarding Windham Meadows as requested in a letter from Mr. Peter Zohdi of Herbert Associates and Windham Meadows will be listed first on the agenda. **Motion passed 5-0.**

Correspondence

- July/August issue of *NH Town and City*
- July 26, 2010 Letter from Attorney Campbell regarding Expiration of Variance
- July 26, 2010 Letter from Attorney Campbell regarding Joint Meetings



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

The next meeting of the Zoning Board of Adjustment is scheduled for August 5, 2010 at 7:00 PM in the Community Development Department. **Motion passed 5-0.**

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.