



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes October 12, 2010

Board Members

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

Staff

Tim Corwin – ZBA/Code Enforcement Administrator
Patricia Kovolyan – Administrative Assistant

Lot #21-V-230B, Case #41-2010, 32 Fish Road

Clarification of Motions made at the September 28, 2010 Zoning Board Meeting.

Chairman Samsel requested the discussion of the motion made for Case #41-2010 be moved to the end of the agenda and that Case #48-2010 be heard first.

Lot 1-C-2550, Case #49-2010

Applicant – Edward N. Herbert Assoc., Inc.
Owner – The Devlin Family Revocable Trust of 1997
Zone – Rural District
Applicant proposes to subdivide the property into two lots, neither having frontage on a street. Relief is requested from Section 702/Appendix A-1 to permit the subdivision of two lots without any frontage on a street where 175 ft is required.

Mr. Shane Gedron of Edward N. Herbert Associates, Inc. asked that Case #49-2010 be postponed and placed on the November 9, 2010 agenda. The reason for the request to postpone was to discuss the proposal at the October 14, 2010 Conservation Commission meeting to get their comments before meeting with the Zoning Board.



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Mrs. Dunn mentioned that she had significant issues with this request because it was the second time the applicant asked for a postponement. This is the second time that abutters have been led to believe that the case would be heard.

Mr. Gedron apologized for the short notice. He stated that they did try to get the notice out 24 hours in advance but there were clerical errors. It was not the applicant's intention for abutters to come out and waste their time.

Mrs. Fallon said that she doesn't know how the abutters will know when the next hearing of this case will take place. There needs to be some notification to the public advising them when the case will be heard.

Mr. Tim Corwin, ZBA/Code Enforcement Administrator, said the case will be listed on the agenda that is posted the Thursday before a meeting.

Mrs. Dunn said that this is a tremendous inconvenience to the abutters therefore she motioned that the case be denied without prejudice. Mr. Partington seconded the motion.

Mr. Partington said that this was the second time that the request for a postponement of this case was requested within 24 hours of the scheduled meeting.

Chairman Samsel said that he was concerned about what the Board would be accomplishing. The burden of proof is on the applicant, not the abutters, whether they are for or against.

Mr. Gedron said they would not have a problem with paying for a reposting of the case in the newspaper.

Mrs. Fallon would like a line item on the hearing notice stating when a case has been postponed or continued. Right now the public notices and agendas do not match. If someone goes on to the website to look at the agenda sometimes the agenda is not on the website, the public notice and agenda should match.

Mr. Partington said that if you announce at the meeting a date certain to hear the postponed case the bases are covered and there is no need to repost.

Mrs. Dunn withdrew her motion.

Mrs. Dunn motioned and Mr. Partington seconded the motion to open the case (#49-2010).

Motion passed 4-0.



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Mrs. Fallon read Case #49-2010 into the record.

Based on the applicant's representation that the applicant is not ready to proceed tonight and wishes a postponement for the second time, based on that representation, Mrs. Dunn moved and Mr. Partington seconded the motion to deny without prejudice. **Motion passed 4-0.**

Lot 17-C-102C, Case #44-2010

Applicant – Deborah Cassidy

Owner – Deborah Cassidy

Location – 3 Spring Street

Zone – Residence District A

A variance is requested from (i) Section 702/Appendix A-1 to permit the construction of a shed to be located within the minimum front yard setbacks along Cross Street and Spring Street where a minimum 50 ft. setback is required, and 14 ft. from the side lot line where a minimum 30 ft. setback is required; and (ii) Section 703 to permit the construction of a shed within the front yard where accessory structures are permitted in side and rear yards only.

Mrs. Fallon read the case into the record. Mr. Dominic Tringale, representing the owner, submitted nine photos marked as Exhibit A and presented the case for the 12' X 8' shed.

- Shed will allow organization of yard tools.
- Small lot therefore no other location for the shed.
- Shed Elevation is 12'.

Mr. Tringale read the supporting facts into the record.

Mr. Corwin brought it to the Board's attention that relief is needed from two sections of the Ordinance. Section 702 Appendix A-1 to permit the shed to be located in the front setbacks and Section 703 to permit accessory structures in the side and rear yard.

Mrs. Fallon motioned and Mr. Partington seconded the motion to go into Deliberative Session. **Motion passed 4-0.**

Deliberative Session, Case 44-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Partington said that the shed is not a visual obstruction for line of sight; the rock and tree and other shrubbery are the obstructions.

Mr. Partington motioned and Mrs. Fallon seconded the motion to grant a variance for Case #44-2010 from Section 702 Appendix A-1 to permit the construction of a shed to be located within



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the minimum front yard setbacks and Section 703 to permit the construction of a shed within the front yard where accessory structures are permitted in side and rear yards only per the plan submitted.

Mrs. Dunn said the structure is placed in an obvious location in the yard and may cause some diminution of the surrounding property values and does not meet the hardship.

Mr. Partington said the corner is already cluttered and the shed would not make the conditions much worse. Mr. Partington said this request does meet the hardship criteria because it can't be mushed into another spot.

Mrs. Fallon said the shed is not out of character for the neighborhood and looks appropriate when it comes to diminution of property values and it is on a very tight corner lot.

Motion passed 3-1. Mrs. Dunn voted against the motion because it does not meet the hardship criteria and diminution of property values.

Lot 16-R-185, Case #48-2010

Applicant – Eric Grue

Owner – Eric Grue and Robert F. Grue

Location – 15 First Street

Zone – Residence District A

Applicant proposes to raise the roof over portions of an existing non-conforming single family dwelling, construct a deck within the required minimum side yard, erect a timber framed storage roof within the minimum required front yard, and erect a timber framed storage roof over an existing non-conforming concrete pad. Relief is requested from (i) Section 406.2 to increase the volume of a pre-existing non-conforming house where no increase in volume is permitted; (ii) Section 702/Appendix A-1 to permit the construction of a deck within three (3) ft. of the side lot line, where a minimum 30 ft. setback is required; (iii) Section 702/Appendix A-1 to permit the construction of a timber framed storage roof to be located no less than 38 ft. from the front lot line where a minimum 50 ft. setback is required; (iv) Section 703 to permit the construction of a timber framed storage roof within the front yard where accessory structures are permitted in side and rear yards only; and (v) Section 406.2 to increase the volume of an existing concrete pad located one (1) ft. from the front lot line and three (3) feet from the side lot line, where no increase in volume is permitted.

Mrs. Fallon read the case into the record. Mr. Corwin gave a summary of the case. Mr. Eric Grue submitted a plan marked as Exhibit A and six photos marked as Exhibit B and presented the Case.



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- The 12' X 20' timber framed storage roof would allow Mr. Grue an area to store firewood , a generator and a snow blower and will be located no closer then 38 feet to Second Street and no closer than 30 feet to the side property line.
- The second timber framed storage roof would be used to house a boat on an existing 16' X 20' foundation.
- Raising the roof over the front door to match the main building roof line would cover the concrete patio outside the front door. This would allow Mr. Grue to safely correct deficiencies in framing and remedy moisture issues and health concerns.
- Raising the roof over the three season porch would allow Mr. Grue to safely correct deficiencies in framing and snow loading issues and to update the windows.
- Allowing the construction of a 14' X 16' deck would help to secure an emergency second egress.

Mr. Grue read the supporting facts into the record.

Mrs. Dunn said the proposed deck is only 3 feet from the neighbor's lot line and asked if it could be moved. Mr. Grue said this location would provide him a better second egress and already has stairs in that location.

Mr. Dennis Root of 15 Third Street spoke in favor of this request stating that this is a very small camp lot and although the proposed deck is close to the lot line it is not close to any structure.

Mr. Rob Grue, father of the applicant and next door neighbor also spoke in favor of the request.

Mr. Partington motioned and Mrs. Dunn seconded the motion to go into Deliberative Session.
Motion passed 4-0.

Deliberative Session, Case 48-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Partington said that he was struggling with the timber roof proposed 1 foot from First Street and the deck being so close to the lot line. The improvements to the house look nice and the timber roof construction 38 feet from Second Street is appropriately placed.

Mrs. Dunn said she is satisfied with the placement of the deck but has issues creating a structure 1 foot from a road.

Mrs. Fallon said she was satisfied with the proposed additions except for the boat storage in the front.



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Mr. Partington motioned and Mrs. Fallon seconded the motion to grant a variance for Case 48-2010 from Section 406.2 to raise the roof over portions of the existing house; from Section 702 Appendix A-1 to construct a deck within the required minimum side setback and from Sections 702 Appendix A-1 & 703 to erect a timber framed storage roof 38 feet from the front lot line along Second Street and to permit the shed to be located within the front yard per the plan submitted.

Motion passed 3-1

Mr. Partington motioned and Mrs. Dunn seconded the motion to deny the request for a variance from Section 406.2 to construct a storage roof over the concrete pad 1 foot from First Street over the non-conforming pad per the plan submitted. **Motion passed 4-0; request denied.** The request was denied because it did not meet the hardship criteria and because of property values.

Lot 17-J-122, Case #51-2010

Applicant – Benchmark Engineering, Inc.

Owner – Branden & Cheryl Tsetsilas

Location – 2 Fox Street

Zone – Residence District A

A variance is requested from (i) Section 702/Appendix A-1 to install a carport to be located no less than 19 ft. from the front lot line along Fox Street where a minimum 50 ft. setback is required, and 22 ft. from the front lot line along Bell Road where a minimum 50 ft. setback is required; and (ii) from Section 703 to permit the construction of a carport within the front yard where accessory structures are permitted in side and rear yards only.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner requested Case 51-2010 be continued to the October 26, 2010 meeting. Mr. Maynard would like to proceed with a full board.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to continue Case 51-2010 to the October 26, 2010 meeting. **Motion passed 4-0.**

Lot 17-J-137, Case #52-2010

Applicant – Benchmark Engineering, Inc.

Owner – Frank & Frances Morse

Location – 15 Gardner Road

Zone – Residence District A

Applicant proposes to construct a garage expansion within the minimum required side and front yards, construct an expansion of a non-conforming house, and construct a deck within the minimum required rear yard. Relief is requested from (i) Section 702/Appendix A-1 to permit the expansion of a garage to be located no less than 22 ft. from the front lot line where a minimum 50 ft. setback is required, and no less than 14 ft. from the side lot line where a



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minimum 30 ft. setback is required; (ii) Section 406.2 to permit a 150 sq. ft. expansion of the non-conforming house where no expansion is permitted, and from Section 702/Appendix A-1 to permit the construction of the house expansion at a distance of 38 ft. from the shoreland reference line where a minimum 50 ft. setback is required; (iii) Section 406.2 to permit a 60 sq. ft. deck to be constructed onto the existing non-conforming house and from Section 702/Appendix A-1 to permit the porch to be located no less than 15 feet from the rear lot line where a minimum 30 ft. setback is required; (iv) Section 616.6(c)(1) to permit 38% grass coverage where only 10% is permitted; and (v) Section 702/Appendix A-1 to permit construction on a lot having an area of 27,470 sq. ft where 50,000 sq. ft. is the minimum required, and on a lot not having frontage on a public street where minimum frontage of 175 ft is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner requested Case 52-2010 be continued to the October 26, 2010 meeting. Mr. Maynard would like to proceed with a full board.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to continue Case 52-2010 to the October 26, 2010 meeting. **Motion passed 4-0.**

Lot 17-1-113A, Case #53-2010

Applicant – Benchmark Engineering, Inc.

Owner – Joseph Levis, Jr.

Location – 20 Walkey Road

Zone – Residence District A

Applicant proposes to remove an existing non-conforming house on an undersized lot and construct a new home on the lot to be located within all minimum required yards and partially within the Wetland and Watershed Protection District. Relief is requested from (i) Section 405.2 and 405.3 to permit the replacement of a pre-existing non-conforming structure having an area of 792 sq. ft. with a new structure having an area of 1,132 sq. ft. where no such increase is permitted; (ii) Section 601.3 to permit the construction of a house to extend 25 ft. into the Wetland and Watershed Protection District; (iii) Section 616.6(c)(1) to permit 50% lawn where 10% is permitted; (iv) Section 702/Appendix A-1 to permit the construction of a house to be located no less than 20 ft. from the front lot line where a minimum 50 ft. setback is required, no less than 20 ft. from the other front lot line where a minimum 50 ft. setback is required, no less than 18 ft. from the side lot line where a minimum 30 ft. setback is required, and no less than 10 ft. from the other side lot line where a minimum 30 ft. setback is required; (v) Section 702/Appendix A-1 to permit construction on a lot having an area of 6,634 sq. ft where 50,000 sq. ft. is the minimum required; (vi) Section 702/Appendix A-1 to permit construction on a lot not having frontage on a public street where minimum frontage of 175 ft. is required; and (vii) Section 702/Appendix A-1 to permit building coverage of 23% where 20% is permitted.



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Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner requested Case 53-2010 be continued to the October 26, 2010 meeting. Mr. Maynard would like to proceed with a full board.

Mr. Partington motioned and Mrs. Fallon seconded the motion to continue Case 53-2010 to the October 26, 2010 meeting. **Motion passed 4-0.**

Approval of Minutes

The September 21, 2010 and September 28, 2010 minutes will be reviewed at the October 26, 2010 meeting.

The Chairman granted a 7 minute recess.

The Chairman called the meeting back to order.

Lot 13-A-31, Case #54-2010

Applicant – Howard Shafman

Owner – D J R Realty, LLC

Location – 33 Rockingham Road

Zone – Business Commercial District A

A variance is requested from Section 704.2.5 to park vehicles for sale on unpaved areas where off-street parking is required to be paved to specifications prepared by the Planning Board with the advice of the Town Engineer.

Mrs. Fallon read the case into the record. Mr. Corwin gave background information. Mr. Howard Shafman explained that he would like to revise a site plan to increase parking from 26 to 57 vehicles and add ten employees. No oil changes will be done on the site and no other chemicals will be used. Cars parked in the front of the property are ready to be sold; cars parked in the rear are waiting for repairs. There are fences in the front and back. This is not a completely graveled lot, mostly hard packed dirt. There is some asphalt in the front of the building.

Mr. Corwin stated that based on his September site visit it is not clear exactly which of the proposed spots are paved or not. Mr. Shafman displayed his plan and showed areas that are paved and areas that are unpaved.

Mr. Partington asked if relief was required from Section 704.2.11 of the Zoning Ordinance. Mr. Corwin replied that no landscaping is required.

Mr. Shafman read the supporting facts into the record.



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Mr. Tom Case of Mountain Village Road questioned the amount of cars parked on unpaved areas. If cars are not allowed to be there why are they there and if they are allowed why is Mr. Shafman asking for a variance. This is a very small lot and allowing more cars in the back is overkill for that small site.

Mr. Partington motioned and Mrs. Fallon seconded the motion to go into Deliberative Session.
Motion passed 4-0.

Deliberative Session, Case #54-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mr. Partington said there is nothing unique about this property.

Mrs. Dunn said it is unclear how this can be done procedurally. The Zoning Board does have some limited ability to consider the financial hardship of developing a lot, it is not an absolute.

Mrs. Fallon said the Applicant has reasonable use of the property.

Mrs. Fallon motioned and Mrs. Dunn seconded the motion to grant a variance from Section 704.2.5 to park up to 48 vehicles on unpaved areas where off street parking is required to be paved to specifications by the Planning Board.

Motion failed 2-2; request denied.

Mrs. Dunn and Mr. Partington voted against the motion because the hardship was not met.

Mrs. Fallon motioned to grant a variance from Section 704.2.5 to park up to 48 vehicles on unpaved areas as marked on the Planning Board site plan dated 12/22/05 and labeled as Exhibit A for the use that is currently requested. **No Second, motion failed, request denied.**

Lot #21-V-230B, Case #41-2010, 32 Fish Road

Clarification of Motions made at the September 28, 2010 Zoning Board Meeting.

Mr. Corwin read his October 7, 2010 memo into the record. In preparing the Notice of Decision, it was not clear exactly what the Board approved and what was denied. The motions made at the September 28, 2010 meeting did not appear to address the porch except with respect to the denial of Section 616.10(b). In Mr. Corwin's memo he gave the Board some options of how to word a motion depending upon whether they intended to grant the House Variance and the Porch Variance and deny the Planning Board Variance or if they intended to grant the House Variance, deny the Porch Variance and deny the Planning Board Variance. It seemed as if the Board decided to deny the Porch Variance without prejudice because the Board believed it was the purview of the



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Planning Board to determine whether the Applicant can deviate from the requirements of the Cobbetts Pond Ordinance. Mr. Corwin explained that he needed to understand what the Board intended to approve and deny before sending a Notice of Decision.

Mr. Partington and Mrs. Fallon agreed that the second set of variances listed in Mr. Corwin's memo is what was intended by Mr. Murray's motion.

Mr. Corwin said it would be clear in drafting the Notice of Decision if the Board decided to follow the second set of bullet points listed in the memo. The issue is the relief relating to the porch. Perhaps the idea was to deny without prejudice, get some of the other required approvals other than Planning Board and get work done that the Zoning Board was interested in seeing.

Mrs. Dunn said that Mr. Corwin is not looking for a change in the Board's vote but for clarification of the Board's intent so that the notice can be properly worded.

Chairman Samsel said the Board's intent was that the Applicant could proceed with what was granted and when he chooses he could come back to the Zoning Board.

Adjournment

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

A Workshop Meeting is scheduled for October 19, 2010 at 7:00 PM in the Community Development Department to discuss bylaws.

The next regular meeting of the Zoning Board of Adjustment is scheduled for October 26, 2010 at 7:30 PM in the Community Development Department.

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