



# BOARD OF ADJUSTMENT

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

## **Zoning Board of Adjustment Draft Minutes June 14, 2011**

### **Board Members**

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

### **Staff**

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

### **Seat Alternates**

The Chairman appointed Mr. Tierney to replace Mrs. Fallon for this meeting.

### **Lot 5-A-2, Case #17-2011**

Applicants/Owners – James and Jean Valenti  
Location – 37 Londonderry Road  
Zone – Rural District

A variance is requested from Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the construction of an 18 ft. by 12 ft. cabana to be located 16 ft. from the rear lot line where a minimum 30 ft. setback is required.

Mrs. Dunn read the case into the record.

The owner, Jean Valenti, presented her case. Mrs. Valenti's yard abuts the seventeenth tee of the Windham Country Club and she would like to place a cabana sixteen feet from the rear property line which will provide privacy from the seventeenth tee. The cabana will not interfere with the golfer's use of the tee. There will not be any impact to the neighbors on either side because the tee is directly behind the Valenti's house. This house is in the unique position of bordering a tee box on a public golf course. Mrs. Valenti read the supporting facts into the record.

**Mr. Samsel motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.**



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### **Deliberative Session 17-2011**

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

The Board Members had no issues with this request and felt that the five criteria were met.

**Mr. Samsel motioned to grant a variance from Section 702 Appendix A-1 as requested per plan submitted.** Mr. Samsel amended his motion. **Mr. Samsel motioned and Mr. Partington seconded the motion to grant a variance from Section 702 Appendix A-1 as requested.**  
**Motion passed 5-0.**

### **Lot 2-A-550, Case #18-2011**

Applicant – Michael Golden

Owners – Michael Golden and Brenda Twombly

Location – 118 North Lowell Road

Zone – Rural District

Application is an Appeal of an Administrative Decision made by the Community Planner regarding zoning interpretation and enforcement at 118 North Lowell Road.

Mrs. Dunn read the case into the record.

Attorney William Mason, representing the owner, presented the case. The owner's residence is on Morrison Road. Some items, such as an excavator and blasting mats are stored at the site. The owner has been storing materials at this site since 1996. These items are kept in the back yard that backs up to Route 93. The items on this property are used periodically for personal use and some accessory uses associated with the owner's business which is conducted primarily in Massachusetts.

The Chairman questioned the information provided to Elizabeth Wood, Windham Community Planner, in Mr. Golden's April 7, 2011 letter regarding the starting of a business in 1996.

Attorney Mason said that letter was intended as an historical reference.

**Mr. Samsel motioned and Mr. Tierney seconded the motion to have a five-minute recess.**  
**Motion passed 5-0.**

**Mr. Samsel motioned and Mr. Tierney seconded the motion to go back into session. Motion passed 5-0.**

Attorney Mason requested a two week continuance.



## BOARD OF ADJUSTMENT

PO Box 120  
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**Mrs. Dunn motioned and Mr. Samsel seconded the motion to continue Case 18-2011 for two weeks (June 28, 2011 meeting). Motion passed 4-1. Mr. Partington abstained.**

### **Lot 13-C-123, Case #19-2011**

Applicant – Benchmark Engineering, Inc.

Owner – The Jarowsky Revocable Trust

Location – 15 Roulston Road

Zone – Rural District

Application is an Appeal of an Administrative Decision made by the Code Enforcement Administrator regarding zoning interpretation and enforcement at 15 Roulston Road.

Mrs. Dunn read the case into the record.

Mr. Tim Corwin advised the Board that the hearing notice is incorrect. The zone was listed as rural and it should have been listed as Residential A. The property has been zoned as Residential A since 1993. Mr. Corwin went on to explain that he determined that the storage of both an unregistered car and an unregistered recreational vehicle on the property violates zoning and the storage of business equipment on the property also violates zoning regulations. There has been commercial use of the property for a construction business that dates back to the 1960's but the storage of commercial vehicles and construction equipment was always an accessory use of the septic installation and service business, which was the primary commercial use of the property. The office for the business is no longer located at 15 Roulston Road but was moved next door to 17 Roulston Road, Mr. Morrison's residence, but the accessory storage use remains on site.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, explained that supplies for the sewer business were stored on the site; 17 Roulston Road is in front of 15 Roulston Road. The business use has always been at 15 Roulston Road. The owner lives at 17 Roulston and uses that address as the business address. This property has historically been utilized by the Jarowsky Family for numerous construction businesses including Thompson Septic Service of Windham. The businesses that operated out of 15 Roulston Road were never abandoned; therefore, the fact the owner of Thompson's Septic lives on an abutting property should not matter since the manner in which 15 Roulston has been utilized has not changed in over 50 years.

Mr. Maynard said that Section 704.4 of the Windham Zoning Ordinance has two subsections; 704.4.1 deals with the outdoor parking of more than one unregistered motor vehicle, but when you read Section 704.4.5.1 recreational vehicles or recreational campers may be kept on the premises. Section 704.4 has two subsections one that deals with unregistered vehicles and one that deals with recreational vehicles.

Mrs. Dunn asked if parking the commercial vehicles at 17 instead of 15 Roulston Road is the basic issue.



## BOARD OF ADJUSTMENT

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Mr. Corwin said that the issue for the Board is what the use was and what the use is now. The business was wholly located at 15 Roulston and once the business moved off site even though the storage remained it became a different use.

The Chairman said in his opinion this is a lawful pre-existing use that is not substantially different and it predates zoning.

**Mr. Samsel motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.**

### **Deliberative Session 19-2011**

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

**Mr. Samsel motioned and Mrs. Dunn seconded the motion to grant the Appeal of an Administrative Decision made by the Code Enforcement Administrator regarding the zoning interpretation and enforcement as written in the May 2, 2011 memo from Mr. Corwin to Mr. Maynard of Benchmark Engineering. Motion passed 5-0.**

### **Lot 16-D-14, Case #20-2011**

Applicant – Benchmark Engineering, Inc.

Owner – Suzan Messina

Location – 25 North Shore Road

Zone – Residence District A

A variance is requested from Section 701/Appendix A-1 to permit the construction of a garage to be located no less than 30 ft. from the front lot line where a minimum 50 ft. setback is required.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Variances were granted by the Zoning Board on July 13, 2010, Case #27-2010. As part of the relief granted the Board approved the construction of a garage to be 30 feet from the front lot line where 50 feet is required. Because of site conditions (ledge) encountered during construction the applicant wishes to adjust the location of the garage by swinging one end of the garage six feet closer to the front lot line. The point of the garage closest to the front lot line will remain in the same location shown on the plans submitted as part of Case 27-2010. Since the approval granted was "per plan" the applicant seeks approval of the variance per the revised plan. The garage is the same size as requested in Case 27-2010.



## BOARD OF ADJUSTMENT

PO Box 120  
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**Mr. Tierney motioned and Mr. Samsel seconded the motion to waive the reading of the five points. Motion passed 5-0.**

### **Deliberative Session 20-2011**

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

Mrs. Dunn reminded the Board that the five criteria were discussed at length at the July 13, 2010 hearing.

**Mrs. Dunn motioned and Mr. Samsel seconded the motion to grant a variance for Case 20-2011 as requested. Motion passed 5-0.**

### **Lot 12-A-537, Case #21-2011**

Applicant – Benchmark Engineering, Inc.

Owners – Estelle & Stephen Savage

Location – 117 Indian Rock Road

Zone – Gateway Commercial District, Wetland and Watershed Protection District, Cobbetts Pond Watershed Protection Overlay District

Applicant proposes to raze an existing single family home damaged by fire and to construct a new home in a new location on the property. Relief is requested from (i) Section 601, the requirements of the Wetland and Watershed Protection District or, in the alternative, Section 601.3 to permit the proposed home to encroach 75 ft. into the Wetland and Watershed Protection District which does not permit the construction of residences; (ii) Section 616.8, the buffer requirements of the Cobbetts Pond Watershed Protection Overlay District; (iii) Section 605.3.2 to permit the home to have an accessory apartment which is not permitted in the Gateway Commercial District; and (iv) Section 702/Appendix A-1 to permit construction on a lot having no frontage on a public street where minimum frontage of 175 ft. is required.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard, representing the owner, presented the case. The property is located behind Citizens Bank. The home was badly damaged by fire. The proposed structure will be attached to the existing garage that was not damaged by the fire. There are a number of sheds on the property. There is no legal frontage on Range Road. The existing impervious coverage is just over 13% and will be at 14% when all is said and done. The Cobbetts Pond Watershed Ordinance states that if you are over 20% impervious coverage you need to come up with drainage measures. The property has been used as residential since the 1960's. Buffer setbacks remain consistent across the lot and limit redevelopment to the area previously disturbed. The proposed dwelling will be less than 1000 square feet larger than the existing dwelling. There will



## BOARD OF ADJUSTMENT

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be a newly permitted septic system installed. Mr. Maynard read the supporting facts into the record.

**Mr. Samsel motioned and Mr. Partington seconded the motion to go into Deliberative Session. Motion passed 5-0.**

### **Deliberative Session 21-2011**

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

Mrs. Dunn said that this unique property meets all five criteria.

The Chairman and Mr. Samsel agreed with Mrs. Dunn.

Mr. Partington said that he is not 100% comfortable granting a variance from Section 616.8 when the Planning Board can reduce that required buffer zone; that should be granted by the Planning Board. Mr. Partington is not entirely comfortable with the increase in size and the move toward the pond.

Mr. Tierney said that he had a problem with the deck being relocated closer to the pond.

**Mr. Samsel motioned to grant Case 21-2011 as stated as requested in the application. Mr. Samsel withdrew his motion. Mr. Samsel motioned and Mrs. Dunn seconded the motion to grant a variance for Case 21-2011 to raze an existing single family home damaged by fire and to construct a new home in a new location on the property. Relief is requested from (I) Section 601, the requirements of the Wetland and Watershed Protection District to permit the proposed home to encroach 75 ft. into the Wetland and Watershed Protection District which does not permit the construction of residences; (ii) Section 616.8, the buffer requirements of the Cobbetts Pond Watershed Protection Overlay District; (iii) Section 605.3.2 to permit the home to have an accessory apartment which is not permitted in the Gateway Commercial District; and (iv) Section 702/Appendix A-1 to permit construction on a lot having no frontage on a public street where minimum frontage of 175 ft. is required. Motion passed 4-1.** Mr. Partington voted against the motion because it did not meet the spirit of the Cobbetts Pond (616.8) or WWPD (601.3) ordinances.





## BOARD OF ADJUSTMENT

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### **Lot 14-B-4501, Case #22-2011**

Applicant – Benchmark Engineering, Inc.

Owner – Carl J. Decotis Revocable Trust

Location – 15 Castle Hill Road

Zone – Rural District

A variance is requested from Section 602.1 and 602.1.2 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the construction of a two family dwelling where two family dwellings are not permitted in the Rural District.

Mrs. Dunn read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. The owner wishes to construct a two-family dwelling on a 1.24 acre parcel that has 381 feet of

frontage on Castle Hill Road. The proposed residence will appear to be a single family dwelling. Current zoning only allows two family dwellings in the Residential B Zone. The owner has owned this property since the mid-1970's. The proposed home will be of similar size and construction to many of the homes that currently exist along Castle Hill Road. Mr. Maynard read the supporting facts into the record.

The following residents spoke in opposition to the request.

- Kristen Gleason of 17 Castle Hill Road.
- Kim Ferris of 19 Castle Hill Road.
- Stacey Folco of 22 Castle Hill Road.
- Robert Gray of 16 Castle Hill Road.

Mr. Maynard said that the owners kept this lot for themselves and it has always been their intention to retire there. Mr. Maynard displayed a septic design dated May of 2002. At that time a four bedroom home was proposed for the lot. The proposed house would have been centered on the lot. The plan showed that the 150 foot site distance requirement would have been met for at least one driveway in that location. Mr. Maynard explained that a seven bedroom dwelling could be built in this location and the applicant would agree to the restriction of a two and three bedroom duplex.

Mrs. Gleason and Mrs. Ferris spoke again in opposition to the request.

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



## BOARD OF ADJUSTMENT

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### Deliberative Session 22-2011

The Board entered the Deliberative Session based on testimony provided and the five criteria as set forth in the Applicant's Variance Application.

Mr. Partington said he did not see how a variance could be granted for this request. None of the criteria were met.

Mr. Samsel said he agreed with Mr. Partington and the hardship criteria was not met.

Mrs. Dunn said that this request did not meet any of the five criteria.

Mr. Tierney said he agreed with Mrs. Dunn and two driveways would be a safety hazard.

The Chairman agreed that none of the five criteria were met.

**Mr. Tierney motioned and Mr. Samsel seconded the motion to grant a variance for Case 22-2011 from Sections 602.1 and 602.1.2 to permit the construction of a two family dwelling where two family dwellings are not permitted. Motion denied 5-0.** The Board voted against the motion because the request did not meet any of the five criteria.

### Approval of April 26, May 10, and May 24, 2011 Minutes

**Mr. Samsel motioned and Mr. Partington seconded the motion to approve the April 26, 2011 minutes as amended. Motion passed 4-0-1.** Mr. Tierney abstained.

**Mr. Samsel motioned and Mr. Partington seconded the motion to approve the May 10, 2011 minutes as amended. Motion passed 5-0.**

**Mrs. Dunn motioned and Mr. Tierney seconded the motion to approve the May 24, 2011 minutes. Motion passed 5-0.**

### Other Business

Mr. Tierney suggested that the Application for an Administrative Appeal and the application for a Rehearing be added to Page 5 of the By-laws. Mr. Tierney will craft the wording and send it by email to Mr. Corwin.





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Language will be drafted to amend the by-laws to address alternate participation.

The Chairman will draft a letter to the Chairman of the Planning Board regarding the zoning maps.

**Mrs. Dunn motioned and Mr. Partington seconded the motion to adjourn. Motion passed unanimously.**

The next meeting of the Zoning Board of Adjustment is scheduled for June 28, 2011 at 7:30 PM in the Community Development Office.

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