



*OLD VALUES - NEW HORIZONS*  
**COMMUNITY DEVELOPMENT**

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**Zoning Board of Adjustment**  
**Draft Minutes**  
**August 23, 2011**

**Board Members**

Tom Murray, Chairman (Excused)  
Heath Partington, Vice-Chair  
Elizabeth Dunn, Member  
Mark Samsel, Member

Dianna Fallon, Member  
Jim Tierney, Alternate  
Mike Scholz, Alternate (Excused)

**Staff**

Tim Corwin, ZBA/Code Enforcement Administrator  
Mimi Kolodziej, Planning Assistant

Vice-Chair Partington was seated for Chairman Murray.

**Call to Order/Attendance**

Vice-Chairman Partington called the meeting to order at 7:30 p.m. and appointed alternate Jim Tierney to be seated for Mr. Murray.

**Lot 14-B-104, Case #29-2011**

Applicant/Owners – Atul and Dipti Sheth  
Location - 8 Clarke Farm 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 a 104 sq. ft. shed to be located 2 ft. from the side lot line shared with 10 Clarke Farm Road where a minimum 30 ft. setback is required.

Ms. Dunn read the case into the record and noted abutter notifications.

The applicants, Atul and Dipti Sheth, of 8 Clarke Farm Rd addressed the Board and presented their justification for placing the above referenced shed where it has already been installed.

- Their backyard runs at an 80 degree slope and this is the only viable location without raising and leveling the land for a small, 104 square foot shed.
- Additionally, their 82 year old mother stores her mobile scooter in the shed and this location provides her easy access.
- They had a lengthy conversation with their abutting neighbor about the shed location prior to its installation and have their permission. Their neighbor's yard has similar slope concerns and they decided to place their shed backing up to the Sheth's shed for the same reasons creating a dedicated shed area for both yards.
- There is no diminishing of home value. They were told it would increase their home value and enhance the cosmetic appeal of house.

- The shed is 41 feet from the neighbor's house; 36 feet from their house; 84 feet from the road; and 2 feet from the side lot line.

Mr. Tierney confirmed the dimensions of the shed and asked why the applicants could not have placed it closer to the driveway. Ms. Sheth replied that snow removal is mounded at the driveway edge and would make it impossible to access during winter months. Mr. Sheth added that he has a side garage entrance for their van, and they need extra allowance at the driveway area.

Mr. Tierney asked about the location of the shed which was not indicated on the drawing.

Ms. Dunn read part of the statute which stated that, "...a condition of hardship arising from the condition of the premises when reasonable accommodations are necessary to allow person(s) with a recognized physical disability to reside in a regular premises." She asked the Sheths if they knew about that. They did not.

**Mr. Samsel motioned to waive the reading of the 5 Variance Criteria. Mr. Tierney seconded. Motion passed: 5-0.**

Vice-Chair Partington opened discussion to the Public. Hearing no comments, he closed the Public discussion.

Mr. Sheth read the supporting facts into the record.

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

#### **Deliberative Session, Case#29-2011**

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

- Mr. Samsel reminded the Sheths and the Public that, in the future, applicants should contact the Town Planning department for information about building requirements before construction.
- Mr. Tierney did not like that a certified plan was not presented and the plan did not indicate where the shed was to be located. He would be open to continuing the application in order to give staff time to go through the file and find a certified plan or to allow the applicant time to draw one in. He felt he could not vote in favor of the request without concrete knowledge.

Mr. Corwin reminded the Board that, in the past, Board requests of a similar nature had been approved.

- Ms. Dunn said she could vote for approval of the application conditioned on the applicant providing an appropriate plan.
- Ms. Fallon agreed

- Mr. Tierney mentioned that it's a relatively new house and there should be, by law, a certified foundation plan in the file. There is nothing in front of the Board that indicates lot lines.
- Mr. Samsel mentioned that in the past, the Board had accepted uncertified drawings.
- Mr. Tierney would be willing to accept any drawing created and signed by the applicant.

Mr. Corwin asked that if a simple drawing is acceptable, perhaps the applicant do it right then.

**Ms. Dunn motioned to grant the variance to permit a 104 sq.ft. shed to be located 2 feet from the side lot line shared with 10 Doiran Rd. contingent upon receiving a drawing of the shed's location relative to the house and signed by the applicant. Mr. Samsel amended the motion to include the showing of lot lines. Mr. Samsel seconded.**

Mr. Partington agreed that the 5 prongs of the variance criteria had been met.

Mr. Tierney is uncomfortable with the shed being 2 feet from the side lot line. There could have been more of a buffer.

**Motion passed: 4-1. Mr. Tierney denied the motion because it fails to meet prong #2.**

**Lot 13-K-33, Case #30-2011**

Applicant – Norma L. Hines

Owners – James A. and Norma L. Hines

Location – 25 Doiron 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 a 16 ft. by 20 ft. deck to be located 23 ft. from the rear lot line where a minimum 30 ft. setback is required.

Ms. Dunn read the case into the record and noted abutter notifications.

Applicant, Ms. Norma Hines of 25 Doiron Rd. introduced her son, Clayton, and authorized him to speak on her behalf. Mr. Hines explained his mother's intention to construct a 16X20 foot deck on the largest area of the lot at the side of the house which would be located 23 feet from the lot line where 30 feet is allowed.

- It is common within this lake community of small lots for variances to be granted. Previous variances for the house construction have been granted.
- The deck will increase the value of the house and add street appeal. The neighborhood's property values will increase.
- It is the only place to entertain with a view of the lake. The front porch is currently closer to the street than the deck will be.

Mr. Tierney, referring to the plot plan, asked how far in the front of the house will the deck be located. Applicant declared 4ft back. The rear lot line will be 6.7 ft from the rear of the house. Applicant informed the Board that a lot consolidation/merger with an abutting lot is in process. This second parcel will increase the rear lot line. Mr. Tierney is concerned that the front encroachment has not been called out and would like the record clarified.

Mr. Partington clarified that the 23 feet from the rear lot line assumes the lot merger has occurred.

Mr. Corwin said that the Board can always act on what is before them. If they did that, then the applicant would need to submit another application for the front yard setback.

Mr. Tierney asked if the application can be continued for a reposting.

Mr. Corwin acknowledged that it can.

The Board discussed the best way to move forward on the merits of the application.

Mr. Corwin asked the Board to consider the application now and hear the front lot line variance at the next meeting.

Mr. Partington was concerned about the seating of a different Board.

Mr. Tierney would allow the case to move forward to hear from abutters, and he would entertain a motion to continue and re-notify abutters. No public was present.

Mr. Partington needs to have a full variance request in front of the Board and abutters need to be re-noticed. The Case can be continued to the next meeting, September 13, and placed first on the agenda. Abutters will be re-notified.

**Mr. Tierney motioned to continue Case #30-2011 to the September 13 meeting. Seconded by Mr. Samsel. Motion passed: 5-0.**

**Lots 3-B-270 & 3-B-272, Case #31-2011**

Applicant – Jamieson Construction Corp.

Owner – Wayne A. Paris

Location – 37 & 39 Flat Rock Road

Zone – Rural District

Applicant proposes a lot line adjustment between Lot 3-B-270 and Lot 3-B-272. A variance is requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations, “Minimum Lot Area By Soil Type”, to permit proposed Lot 3-B-270 to contain a +/- 25,388 s.f. contiguous area where a minimum 30,000 sq. ft. contiguous area is required; (b) Section 702/Appendix A-1, “Minimum Lot Area By Soil Type”, to permit proposed Lot 3-B-270 to contain a minimum 10,000 square feet rectangular area with a minimum dimension of 80 ft. where a minimum dimension of 100 ft. is required; (c) Section 702/Appendix A-1, “Minimum Lot Area By Soil Type”, to permit the minimum 10,000 square feet rectangular area required for Lot 3-B-272 to be located within a contiguous area containing +/- 26,537 sq. ft. where the rectangular area must be located within the required 30,000 square ft. of contiguous area; and (d) to allow disturbance within the Wetland and Watershed Protection District, at a distance no less than 77 ft. from the nearest wetland.

Ms. Dunn read the case into the record and noted abutter notifications.

Mr. Matt Hamor of Hancock Associates, speaking on behalf of Jamieson Construction, delineated on his wall map the wetland line, pond, stonewalls and existing lot lines to confirm that lots are sized by soils. He presented his justifications for requesting the lot line adjustment.

- There is a wetland tract that divides the two parcels. Instead of doing a complicated crossing across the wetlands, it is more realistic and better suited for the land to change the lot line to preserve wetland and allow development out front.
- He has come to the ZBA to request variances from Town dimensional requirements for creating a new lot.
- One variance is on the requirement to have a 100 X 100 sqft rectangular shape within the buildable area outside of the WWPD. He is proposing is a 125 X 85 sqft shape that would provide the same total coverage and better suit the topography of the lots.
- Also, the lots must be within a 30,000 foot strip of contiguous upland. On lot 270 they would be unable to achieve that requirement.
- The plan has been to the TRC and the Town's soils engineer has confirmed that both lots meet the Town's soils requirements.
- In an effort to protect the WWPD and to provide buildability for both parcels, it would be better for him to propose a lot line adjustment than cut across wetland.
- He has revised his application to show where disturbance would be caused within the WWPD to install the well on lot 272. He submitted a supplemental doc to show the same plan on larger view. He explained these would be permanent disturbances in the wetland buffer zone of 23feet. He designated the two areas that are affected.

Mr. Samsel confirmed the setback would be 50' from Flatrock and asked if Mr. Hamor had considered asking for a front setback variance instead. Mr. Hamor explained that he is attempting to be as conforming as possible to the zoning requirements with his current proposal. He would be able to accommodate pulling back from the wetland and moving closer to the road as well.

Ms. Dunn asked how far into the WWPD buffer zone would he be going. Mr. Hamor responded 23 feet. He suggested a retaining wall to limit disturbance.

Ms. Dunn asked if he has talked with the Conservation Commission. He had not. Mr. Corwin stated that they were part of the TRC meeting and that Staff had not received any comments from them. Although they were not in attendance at the TRC meeting, they did receive that packet.

Mr. Tierney asked what relief is being asked for in terms of WWPD. Mr. Hamor would like approval to work within the disturbance of the WWPD. He is making this request to eliminate crossing the WWPD. On parcel 272 it would be just the well.

Ms. Dunn confirmed that a well is an allowed disturbance in the WWPD. Mr. Corwin clarified that the variance request applies to lot 270 and the WWPD disturbance, not lot 272 and its well.

Ms. Fallon asked if there was a vernal pool vegetative wetland on lot 272. Mr. Hamor said no.

Mr. Tierney asked what the actual square footage of disturbance in Lot 272 is. Mr. Hamor provided a ball-park response of 200 sqft.

Ms. Fallon said she is not comfortable asking for any relief from the WWPD. Mr. Partington agreed.

Mr. Hamor is asking to conduct work within the WWPD as designated by the submitted plan.

Mr. Corwin noted on the Board's memo that no WWPD section has been notified. The Conservation Committee was notified of this application on 6/22. There have been several meetings since then and the Commission has chosen not to address this.

Mr. Partington asked the Board if they felt comfortable moving forward with this application; or did they want to re-notice.

Ms. Fallon and Mr. Samsel agreed that it had not been noticed and this needs to be done.

Mr. Hamor would rather obtain a variance for sections posted and then re-apply for the work in the WWPD in conjunction with procedures of the Planning Board. The project has been reviewed by the TRC; but not the Planning Board.

Mr. Tierney is comfortable moving forward; he is disappointed that the Conservation Committee has not provided any input.

Ms. Dunn suggested granting the first three of the four part variance request which would allow the applicant to proceed to the Planning Board.

The Board discussed the various approaches for gaining approval of this application and the possibility of re-noticing the abutters. The Board noticed that the hearing notice is missing the naming of the WWPD section from which the applicant is seeking relief.

Mr. Hammer suggested continuing or pulling the house in a bit, if the Board wishes. Mr. Partington said it is really an issue of identifying the disturbance and re-noticing the abutters. Ms. Dunn clarified that it is really a matter of naming the WWPD ordinance involved.

Vice-Chair Partington opened the variance request to the Public.

Mr. Joe Maynard of Benchmark Engineering spoke in favor of the application confirmed the Board is feeling uncomfortable with the WWPD section and would like to move forward with a another hearing after abutter notification. Mr. Maynard clarified that the applicant's request is much less a disturbance on the WWPD than building a driveway across the wetland for which he could have obtained a special permit, by right.

Vice-Chair Partington closed the Public session.

Vice-Chair Partington suggested requesting a continuance and re-notification of abutters.

Ms. Dunn again suggested accepting requests 1-3 and letting the applicant move on to the Planning Board.

Mr. Tierney agreed and suggested voting on what's in front of the Board without the WWPD section.

Vice-Chair Partington would not like to split the variance request in two. He prefers continuing it as is or seeking approval of the first 3 variance requests and dropping the WWPD section. The applicant agreed to withdraw the WWPD variance request.

The applicant addressed the 5 points of the Variance Request.

Mr. Tierney mentioned that on lot 272, the applicant shows a 20 ft wide driveway easement. Mr. Hamor explained that it will be extinguished once the construction is completed.

Mr. Tierney noted that on lot 270, the pond goes the full width of the lot cutting access to the rear portion of lot from future owners. He asked the applicant to put in an access easement about 15 feet wide to allow passage around the pond. Mr. Hamor agreed.

Mr. Tierney would like to do this as a condition of approval so the owner does not have to swim across the pond to get to the back of his lot. Mr. Hammer agreed.

Mr. Hamor read the supporting facts into the record.

**Mr. Samsel motioned to enter into Deliberative Session. Seconded by Ms. Dunn. Motion passed: 5-0.**

**Deliberative Session, Case #31-2011**

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

- Ms. Dunn thinks that it meets the spirit and intent of the ordinance. The benefit of not disturbing and crossing the WWPD is significant. It also meets the other criteria, providing the Board ensures the easement.
- Ms. Fallon agrees.
- Mr. Samsel, Mr. Tierney and Vice-chair Partington are comfortable with the request.

**Mr. Tierney motioned to grant Case #31-2011 a variance from**

- **Section 702, Appendix A-1 of the zoning ordinance the minimum lot area by soil type to permit proposed lot 3-D-270 to contain 25,388 sqft of contiguous area where a minimum of 30,000 sqft contiguous area is required;**
- **Section 702, Appendix A-1 minimum lot area by soil type to permit the proposed Lot 3-D-270 to contain a minimum of 10,000 sqft rectangular area with a minimum dimension of 80 feet where the minimum dimension of 100 feet is required;**
- **Section 702, Appendix A-1 minimum lot area by soil type to permit the minimum 10,000 sqft rectangular area required for Lot 3-D-272 to be located within a**

**contiguous area containing 26, 537 sqft where the rectangular area must be located within the required 30,000 sqft of contiguous area.**

**And to include an easement over Lot 272 for passage of future owners of Lot 270 to have access to the rear portion of the lot. Seconded by Mr. Samsel. Motion passed: 5-0.**

**Lot 16-Q-172, Case #32-2011**

Applicant – Joseph Maynard, Benchmark Engineering Inc.

Owner – Julia Boghosian Sister Trust

Location – 30 First Street

Zone – Residence District A

Applicant proposes to raze the existing non-conforming seasonal dwelling and construct a 24 ft. by 40 ft. year round dwelling with foundation, new septic and well. A variance is requested from (a) Section 405.2 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the replacement of a pre-existing non-conforming structure with a structure that is larger in area and volume where no such increase is permitted; (b) Section 405.3 to permit the replacement of a pre-existing non-conforming structure with a structure that increases the non-conformity of the side yard setback where no such increase is permitted; (c) Section 616.10.1 to permit the driveway to be located approximately 60 ft. from Cobbett's Pond where impervious driveways are prohibited within 75 feet of any surface water; (d) Section 702/Appendix A-1 to permit the dwelling to be located 12 ft. from the side lot line shared with Lot 16-Q-173 where a minimum 30 ft. setback is required; (e) Section 702/Appendix A-1 to permit construction on a lot having an area of 6,700 sq. ft +/- where 50,000 sq. ft. is the minimum required; and (f) Section 702/Appendix A-1 to permit construction on a lot having frontage of 60 ft. on a private street where minimum frontage of 175 ft. on a public street is required.

Ms. Dunn read the case into the record and declared the abutters notified.

Mr. Joe Maynard of Benchmark Engineering has a letter of authorization from Elizabeth Catarino to represent the Julia Boghosian Sister Trust in this case. Mr. Maynard presented the application:

- It is an existing approved building-not occupied, but kept in livable condition.
- The house sits about 25 feet from the water.
- The owners propose to raise the structure, push it back 4 ft., and build a new structure 24 X 40 sqft.
- The new proposal is to put sliders on the water side of the house and add a crosswall that will raise the grade. They will need steps on the water side.
- Shoreland regulations do not allow you to go closer to the water. So the intent is to move the house closer to the street to allow for the risers.
- The existing well is to be abandoned, and a new well will be built near the water meeting state requirements for septic systems.
- The new structure will have a new roof line with a 3-4 ft higher ridge line.

Mr. Tierney asked whether it would still be a single story dwelling. Mr. Maynard confirmed that it will be.

The Board clarified the deck landing and grading.



Ms. Dunn asked about the height of the house and expressed concern about it obstructing the view of the house across street. Mr. Maynard described the large vegetation and huge deciduous trees that currently serve as buffers between the new house and its neighbor across the street. Although the roof line will increase by 3-4 feet, the turning of the house peak will minimize the obstruction. Ms. Dunn was concerned that the minimum lake view would decrease the value of the neighborhood. Mr. Maynard thinks that there may be a better view than before; 2 large birch trees will need to be removed in order to excavate. He has met casually with the neighbor who lives across the street and he/she expressed no concerns about the water view.

Ms. Fallon is concerned about paving the now gravel driveway. Mr. Maynard explained that the septic system will be under the driveway due to the smallness of the lot; and so paving is preferred.

Ms. Dunn asked about run off. Mr. Maynard explained that although pavement causes faster run-off, gravel creates sedimentation run off. Ms. Dunn is concerned that the grade is very steep and the run off might be extreme. Mr. Maynard agreed that there is a 75 ft drop, but there is not a huge upland area running through the lot.

Mr. Tierney asked how tall the retaining wall is. Mr. Maynard said it is about 7 feet and has recently been rebuilt.

Mr. Maynard addressed the five variance criteria.

Vice-chair Partington open discussion to the public.

Mr. Tim Sullivan, speaking on behalf of his parents, abutters Jim and Marion Sullivan, said that they are pleased to see improvements on this property. Over the past 5-7 years he has requested other neighboring properties to improve their septic systems. Anything done to improve the property presents no problems and improves the neighborhood.

Mr. Maynard, addressing the old well currently on the property, said that it has been detrimental to local properties including the Sullivan's. With the applicant's moving their well toward the water, it will result in an asset. As properties develop and meet new regulations, betterment results.

Mr. Tierney confirmed that the actual size of the house is 24 X 40 sq. ft.

Mr. Tierney asked Mr. Corwin whether there has to be a landing on the front that has that been taken into consideration. Mr. Corwin stated that ordinance 702.1 excludes that from the setback requirements.

Mr. Maynard read the supporting facts into the record.

**Mr. Samsel motioned to enter Deliberative Session. Mr. Tierney seconded. Motion passed: 5-0.**

### **Deliberative Session, Case #32-2011**

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

- Mr. Samsel is fine with the request as presented which shows betterment.
- Mr. Tierney agrees.
- Ms. Dunn agreed and stated that the scope of the application is reasonable, but is concerned with the height of the roof line. If the Board accepts the application, she would like to add a condition that the roof line be no more than 4 ft. high.
- Vice-chair Partington is fine with the application especially with the improved well/septic and overall betterment of the lot and area.

Mr. Samsel is not in favor of the height restriction offered by Ms. Dunn. The building height meets the ordinance regulations and he is not comfortable altering that. Ms. Dunn clarified that height is not the question, but devaluation of surrounding properties. Mr. Tierney is comfortable with the roof line as proposed. Ms. Fallon is fine with that, too.

**Mr. Samsel motioned for Case #30-2011 to support the applicant's request to propose to raze the existing, non-conforming seasonal dwelling and construct a 24 X 40 sqft year round dwelling with foundation and septic and well. To grant, per the posting:**

- A. Section 405.2**
- B. Section 405.3**
- C. Section 616.10.1**
- D. Section 702/Appendix A-1**
- E. Section 702/Appendix A-1**
- F. Section 702/Appendix A-1**

**with the height of the new dwelling to be no more than 4 feet higher than the existing dwelling. Ms. Fallon seconded. Motion passed: 5-0.**

### **Lot 18-L-400, Case #33-2011**

Applicant – Edward N. Herbert Associates Inc.

Owner – Mashop Development, LLC

Location – 49 Range Road

Zone – Professional, Business, and Technology District

Applicant proposes to use a portion of the existing building (Suite 105) for a hair salon and spa. A variance is requested from (a) Section 614.2.13 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the hair salon and spa to serve the general public where only barbershop services primarily for occupants or users thereof within an office or industrial building are permitted; and (b) Section 614.2.10 to permit the hair salon and spa to sell merchandise that is manufactured off-site where only retail sales of merchandise manufactured on-site is permitted.

Ms. Dunn read the case into the record and stated the abutters notified.

Mr. Peter Zohdi of Herbert Associates, on behalf of Mashop Development, described the location as:

- Being located in the PBT zone covering 24,000 sq ft and being built in the late 1970's.
- It has been given a facelift and the applicant would like to relocate her hairdressing and spa business to Suite 105.
- The applicant is requesting a variance on this segment of the building to move her salon and spa with a small 250 sq ft retail sales space.

Mr. Tierney asked if Mr. Zohdi had ever considered filing an appeal of administrative decision. Mr. Zohdi stated he had considered it and decided not to.

Mr. Zohdi deferred to Attorney Cronin of Cronin and Bisson to address the five Variance Criteria.

Vice-Chair Partington stated that he had difficulty with the hardship prong. He asked Mr. Cronin what is unique about this property. Mr. Cronin responded that every piece of real estate is unique; that the variance should be looked at globally.

Mr. Tierney does not think a variance is needed but will consider it under 614.2.13. He does not see how retail sales come into play. Under the building code under "business uses" a barber shop/hair salon is a permitted use. Mr. Tierney disagrees with the Town and stated that 614.2.10 was written for a manufacturing building which may want to do retail sales; but relief from 614.2.13, which allows similar accessory services, would allow the applicant her small retail service. Another issue he takes with the ordinance is that it states an industrial building is not allowed in the PBT.

Attorney Cronin has a technical and legal question with 614.2.13 that he thought the Board did not want to go in to at this point, with the issue at hand being pretty straight forward. Under "rules of construction" it is unclear whether the "similar accessory services" refers to the word immediately preceding it or all the preceding stated uses.

Mr. Tierney does not think a variance is needed in this case and does not see how retail sales for a manufacturing building comes into play in this case. He thinks 614.2.13 is referring to a manufacture or assembly-line type use; for example, if one wanted to manufacture computers and then sell them, one would be limited to 33%. The sales the applicant does on her hair care products is not what will make her business successful.

Attorney Cronin stated there would be minimal, bookshelf area in the front of the store.

Mr. Tierney wondered that if he opened up a gym, would he not be able to sell T-shirts, smoothies, etc. Attorney Cronin agreed. Mr. Tierney said that the PB&T District has had difficulty finding tenants meeting these criteria. This application is a business service permitted under 614.2.1. He takes into consideration many aspects of the building code and thinks the State under its RSA's would look at this business as a business occupancy. He thinks the Town's ordinance is lacking.

Attorney Cronin thinks that a hair salon is probably considered a professional service by the people in the industry and ranks with lawyers and accountants and other certified professionals.

Vice-Chair Partington asked if anyone from the Public would like to speak in favor of the request.

Mr. Ralph Valentine of 18 Telo Rd. supports the variance as someone who is trying to find tenants for the building. With many local and new retail businesses, it fits with the neighborhood. There are several drive-thrus and eateries in the area and this is a quiet business. It will drive more patrons to the local businesses and thinks it is a variance the Town should approve.

Mr. Partington asked if anyone would like to speak against the application. Hearing none, he closed the public session.

Ms. Fallon asked Mr. Zohdi if this parcel was part of the rezoning that occurred along with the next door parcel. Mr. Zohdi said it was part of the Delahuntys, golf course, and this parcel's re-zoning.

Mr. Corwin read the supporting facts into the record.

**Mr. Samsel motioned to enter Deliberative Session. Seconded by Ms. Dunn. Motion passed: 5-0.**

**Deliberative Session, Case #33-2011**

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

Ms. Dunn said the Board should not worry about the selling of merchandise and deal with whether a hair salon is an allowed use. It is clear that barber shops are allowed if they are accessory to the occupants and users of the building. Ms. Dunn was on the Board when this building was built and this use was specifically not allowed. It becomes essentially a strip mall which the voters have repeatedly denied. It devalues that and neighboring property. Granting a variance for something specifically not allowed under 614.2.13 is not in the spirit and intent of the ordinance. The PBT has a very specific intent.

Mr. Tierney disagreed and said that it does permit a barber shop.

Mr. Samsel said that this ordinance should be tweaked. It is so convoluted as to be embarrassing. This is a hardship on "use" with the ordinance being too restrictive.

Ms. Fallon thinks the word "primary" in 614.2.13 is important. The purpose of having these services is so people do not have to get into their car; it becomes a traffic issue. It would make sense to place a business of this nature if there were 150 people working there, not eight.

The Board discussed the application of the ordinance.

Vice-Chair Partington does not understand the ordinance and thinks this is not a retail use at all; but does not think it is his or the Board's job to change the ordinance if they think it is wrong.

Mr. Samsel referred to the OEP ZBA Handbook and read the definition of "unnecessary hardship" and said that there is a hardship in the way the ordinance is crafted and what relief is being asked for by the applicant.

Vice-Chair Partington noted that the hardship burden cannot arise as a result of the zoning ordinance imposing an equal burden on all property in the district.

**Ms. Dunn motioned to grant the variance requested in Section 614.2.13. Seconded by Mr. Samsel.**

Mr. Tierney said that 614.2.13 permits barber shops, except that it limits the potential scope of the users to the occupants of the building.

Vice-Chair Partington stated that if you want a business to succeed it needs to expand to be successful.

Ms. Dunn said that there are salons/spas that exist within buildings that do not want to grow and they succeed by being subsidized by the business.

Mr. Tierney noted that salons, just at attorneys, need to get licenses.

**The Board voted to deny the motion: 2-3. Mr. Samsel and Mr. Tierney approved. Ms. Dunn, Ms. Fallon, and Vice-Chair Partington denied.**

**Mr. Tierney motioned that 614.2.10 does not apply in this application. Ms. Dunn seconded. Motion passed: 5-0.**

**Ms. Dunn motioned to deny the variance request under 614.2.13. Seconded by Ms. Fallon. Motion passed: 3-1-1. Vice-Chair Partington, Ms. Dunn, and Ms. Fallon agreed. Mr. Tierney abstained. Mr. Samsel disagreed.**

- Ms. Dunn said that she thinks the request is not within the spirit and intent of the ordinance, is contrary to the public interest, diminishes the value of surrounding properties and does not demonstrate unnecessary hardship, no hardship has been
- Ms. Fallon thinks it is not within the spirit and intent of the ordinance.
- Vice-Chair Partington thinks hardship has not been established.

#### **Public Hearing – By-Laws Amendment**

The Board discussed the need and requirements for the appeal of administrative decision.

Mr. Tierney explained that there is nothing in the by-laws for administrative decision.

Ms. Dunn thinks that we have a 30-day period.

Mr. Tierney researched surrounding towns and provided 5 examples. Mr. Tierney is willing to continue to find more suitable language and present it again when more Board members are present.

Vice-chair Partington thinks it needs more discussion and will leave it on the agenda for the next meeting.

**Review and Approval of 7/12/11, 7/26/11, and 8/9/11 Draft Meeting Minutes**

The Board offered edits to the July 12, 2011 minutes and requested that they be re-submitted at the next meeting. Mr. Corwin asked the Board to offer their edits of the July 26, 2011 minutes. The Board declined due to the lateness of the hour.

Mr. Corwin discussed the joint Planning Board / ZBA meeting at 7 p.m. on September 7 to discuss the Spruce Pond Phase I WWPD variance application. The Board members indicated they would be able to attend and discussed the possibility of meeting on 9/7 to discuss minutes and by-laws at the close of the joint PB/ZBA meeting.

Mr. Corwin reminded the Board of the Municipal Law Lectures and asked the members to respond by Wednesday, August 31 if they wanted to attend.

**Mr. Samsel motioned to adjourn. Seconded by Mr. Tierney. Motion passed: 5-0.**

The meeting was adjourned at 11:28 p.m.

These minutes are respectfully submitted by Mimi Kolodziej.