



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment
Draft Minutes
September 13, 2011

Board Members

Tom Murray-Chairman
Heath Partington-Vice-Chair
Betty Dunn- Secretary
Mark Samsel-Member

Dianna Fallon-Member
Jim Tierney, Alternate, Excused
Mike Scholz-Alternate

Staff

Elizabeth Wood, Town Planner
Tim Corwin, ZBA/Code Enforcement Officer
Mimi Kolodziej, Planning Assistant

Public Hearing - Continued from August 23, 2011

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, and to be located 23.5 ft. from the front lot line where a minimum 50 ft. setback is required.

Ms. Dunn read Case # 30-2011 into the record.

Mr. Corwin reminded the Board that abutters had the opportunity to make their case at the previous meeting and the 5-points had not yet been read into the record.

Mr. Samsel asked the applicant to address both the front and rear setbacks requests.

The applicant, Mr. James L Hines, provided a brief overview of the side deck addition and stated that a related lot merger had now been completed and a copy was provided to the Board. The 5-points were read into the record.

Chairman Murray opened the hearing to the Public. Hearing none, he closed the Public Hearing.

Mr. Samsel motioned to enter deliberative session. Seconded by Mr. Partington. Motion passed: 5-0.

Deliberative Session, Case # 30-2011

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

Mr. Samsel motioned to grant for Case #30-2011, Lot 13-K-33 to grant a variance to permit the 16 ft. by 20 ft. deck to be located 23 ft. from the rear lot line where a minimum 30 ft. setback is required, and to be located 23.5 ft. from the front lot line where a minimum 50 ft. setback is required. Seconded by Mr. Partington. Motion passed: 5-0.

Public Hearings – New Appeals

Lot 25-G-80, Case #34-2011

Applicant/Owner – Charles L. Nickerson

Location – 7 Emerson Road

Zone – Residence District A

A variance is requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a 240 sq. ft. shed to be located 5 ft. from the front lot line where a minimum 50 ft. setback is required, and (b) Section 703 to permit a shed to be located in the front yard where detached accessory buildings are only permitted in the side and rear yard areas in conformance with the minimum yard requirements.

Ms. Dunn read Case #34-2011 into the record.

Mr. Charles Nickerson of 7 Emerson Road clarified that the front and rear of the property are different than the Town plan. He explained that he would like to utilize the back quarter of his lot to place a new shed. The 50 foot requirement would put it up against his house. He is seeking a variance from this requirement. He continued and read the 5-point criteria.

Mr. Murray opened the hearing to the Public. Hearing none, he closed the Public Hearing.

Ms. Dunn motioned to enter deliberative session. Mr. Partington seconded. Motion passed: 5-0

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

Chairman Murray noted a clerical error on the summary sheet. The current 10X20 shed will be replaced by a 12X20 shed.

Mr. Samsel motioned to grant for Case # 34-2011, Lot 25-G-80 a variance from Section 702/appendix A-1 to permit a 240 sq. ft. shed to be located 5 feet from the lot line and from Section 703 to permit a shed to be located in the front where detached accessory buildings are only permitted. Seconded by Ms. Dunn. Motion passed: 5-0.

Lot 2-B-603, Case #35-2011

Applicants/Owners – Steven and Mei Swank

Location – 15 Nottingham Road

Zone – Rural District

A variance is requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a 26 ft. by 40 ft. detached garage to be located 4 ft. from the side lot line shared with 17 Nottingham Road where a minimum 30 ft. setback is required, and (b) Section 703 to permit a detached garage to be located in the front yard where detached accessory buildings are only permitted in the side and rear yard areas in conformance with the minimum yard requirements.

Ms. Dunn read Case #35-2011 Lot 2-B-603 into the record

Mr. Steve Swank explained his intent to place a detached garage in the front area of his house 4 feet from the side lot line shared with 17 Nottingham Rd. His abutting neighbor at 17 Nottingham has no problems with this request. Mr. Swank explained that with 3 children needing cars soon and possibly a boat, he is planning a 3-car garage. Mr. Swank read through the 5-points.

Ms. Dunn asked if it would be 1-story. Mr. Swank explained affordability might allow him some storage space in the attic area, but not living area. Ms. Dunn would like to limit it to 1 story with storage space above. Mr. Murray had no issue with Mr. Swank using the second level as living space, would rather not put a restriction on it and prefers to approve it as requested. Ms. Fallon thinks the size is appropriate.

Chairman Murray opened the hearing to the Public. Hearing none, he closed the Public Hearing.

Mr. Samsel motioned to enter deliberative session. Ms. Fallon seconded. Motion passed: 5-0

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

Mr. Samsel motioned to grant for Case# 35-2011, Lot 2-B-603 a variance as requested from Section 702/Appendix A-1 to permit a 26X40 foot detached garage to be located 4 feet from the side lot line shared with 17 Nottingham Road and Section 703 to permit a detached garage to be located in the front yard where detached accessory buildings are only permitted. Seconded by Mr. Partington. Motion passed: 5-0.

Lot 16-Q-211A, Case #36-2011

Applicant – Joseph Maynard, Benchmark Engineering Inc.

Owner – Musch Family Trust

Location – 14 Viau Road

Zone – Residence District A

Applicant proposes to raise the roof of the existing non-conforming structure to add additional living space and to construct an attached screen porch on the side. A variance is requested from (a) Section 406.2 to increase the volume and footprint of the non-conforming structure where no such increase is permitted, (b) Section 702/Appendix A-1 to construct an attached screen porch 10 ft. from the side lot line shared with 18 Viau Road where a minimum 30 ft. setback is required, (c) Section 702/Appendix A-1 to permit construction on a lot having an area of 21,000 sq. ft +/- where 50,000 sq. ft. is the minimum required, and (d) Section 702/Appendix A-1 to permit construction on a lot having frontage of 70 ft. on a private street where minimum frontage of 175 ft. on a public street is required.

Ms. Dunn read Case #36-2011, Lot 16-Q-211A into the record.

Mr. Joe Maynard, of Benchmark Engineering, represented the applicant, the Musch Family Trust of 14 Viau Rd. Mr. Maynard reviewed the current proposal, as well as a 2009 previous similar proposal. In 2009 the Board had approved the raising of the roof on the garage and residence, but not the screened porch addition. He would like to renew the roof raising portion of the application and revamp the screened porch addition. He explained that many of the improvements have been downsized from the previous application and many neighboring homes have porches. He read through the 5-points.

Mr. Murray asked whether there is any DES relief from the 50 foot setback? Mr. Maynard responded that no, under the new DES standards, because the disturbance will be less than 1,500 square feet, applicant will be able to file via the permit by notification process.

Ms. Dunn asked how bedrooms the house has. Mr. Maynard responded that there are 3-bedrooms and will remain 3 bedrooms, only they will be larger.

Mr. Maynard confirmed that they will not be installing previously planned dormers.

Ms. Dunn asked whether the roof line height will be changed? Mr. Maynard stated that it will be 12 – 18 inches higher than it now is.

Chairman Murray opened the hearing to the Public.

Dave Robitaille, 18 Viau Road, has no problem with the front work. But he has a problem with the applicant coming another 10 feet closer to his home. He currently looks out into their home, and the applicant is already too close to his property.

Mr. Maynard says the closest corner is about 12 ft. from Mr. Robitaille's home. Mr. Maynard offered his plan of the proposal as Exhibit 1.

Chairman Murray closed the public hearing.

Ms. Fallon motioned to enter deliberative session. Mr. Samsel seconded. Motion passed: 5-0

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

Ms. Dunn expressed concern about the closeness of the porch to the nearest abutter and that the porch may become a 3 season porch in the future. Mr. Partington agreed noting that the area is already congested.

Ms. Fallon stated that the applicant doesn't have any other options for the placement of the porch.

Mr. Murray confirmed from Mr. Maynard that the trees will remain as a buffer.

Mr. Samsel noted they can sit there with or without a porch, and it's consistent with what you see in this area.

Mr. Murray stated that the use of the proposed porch is not much different from the existing use of that area which is an open air patio. The proposed porch does not make the situation worse, and he does not have an issue.

Mr. Samsel motioned to grant Case#36-2011, Lot 16-Q-211A relief as posted and per plan. Seconded by Ms. Fallon. Motion passed: 4-1. Mr. Partington denied. The spirit of ordinance is not observed.

Mr. Murray asked Mr. Corwin if an approved screened porch became an enclosed porch would it be a code enforcement action: Mr. Corwin said it would be.

Lot 21-H-1, Case #37-2011

Applicant – Joseph Maynard, Benchmark Engineering Inc.

Owner – Kevin Blanchette

Location – 47 Cobbetts Pond Road

Zone – Residence District A

Applicant proposes to raze the existing non-conforming year round dwelling and construct a new year round dwelling in a different location. A variance is requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the proposed dwelling to be located 10 ft.

from the side lot line shared with Lot 21-H-1A where a minimum 30 ft. setback is required, (b) Section 702/Appendix A-1 to permit the proposed dwelling to be located 38 ft. from the Cobbetts Pond shoreland reference line where a minimum 50 ft. setback is required, (c) Section 702/Appendix A-1 to permit construction on a lot having an area of 31,450 sq. ft +/- where 50,000 sq. ft. is the minimum required, (d) Section 702/Appendix A-1 to permit construction on a lot having frontage of 120 ft. on a public street where minimum frontage of 175 ft. is required, and (e) Section 703 to permit a detached garage to be located in the front yard where detached accessory buildings are only permitted in the side and rear yard areas in conformance with the minimum yard requirements.

Ms. Dunn read Case #37-2011 into the record.

Mr. Joe Maynard of Benchmark Engineering representing the owner, Mr. Kevin Blanchette, explained that this is the property the Town had on the ballot to purchase to increase the Town beach frontage. The septic system had been improved in the 90's. The goal is to raze the current seasonal home and build a year-round home pushed back as far as can be done. The large patio will also be razed. The proposal includes the building of a detached garage at the rear of the lot so as not to have to move septic system. The existing 2-bedroom home will remain. The current septic system is approved for a 6 bedroom home and will be shared between the 2 structures. The new structure will have three bedrooms. The applicant also stated that:

- The property has been a 2-condo unit since 1993. It cannot be subdivided into 2 residences.
- The old structure is 40X28; the new structure will be 30X32.

Mr. Murray asked whether the garage is necessary. Mr. Maynard responded that lake dwellers end up with a lot of amenities and they would like to avoid placing it over the septic system. Mr. Murray stated that he liked the betterment but not the plan, specifically the garage.

Applicant: The cost of moving the septic so close to pond makes no sense. They are trying to maintain minimum setbacks.

Mr. Scholz asked if the driveway is paved. The existing driveway is gravel. The applicant's goal is to have it paved.

Ms. Dunn expressed concern that this structure would be an overpowering presence on the beach; Mr. Maynard stated that there is ample vegetation and a fence.

Ms. Dunn expressed concern that the it is not very beach-like to have such a large structure only 10 ft. from the lot line shared with a beach. Mr. Scholz stated it is very close to the beach. Mr. Maynard stated that the structure is an improvement to the lot line on the other side of the lot and there is only 1 window on the beach side. There is substantial amount of current vegetation in that area.

Mr. Scholz asked whether the applicant considered an alternate location on the lot; Mr. Maynard stated that the applicant wants to be close the water, which is the purpose of having a waterfront lot.

Mr. Partington asked how the heights compare between the old to new structures; Mr. Maynard stated that the new structure will be 3-4 feet taller.

Ms. Fallon asked are the rights on the lot different because it is a condo. Mr. Murray stated it is a pre-existing, non-conforming lot and has a vested right to be a condo.

Chairman Murray opened the hearing to public.

Mr. Charles Wingate who has lived on the lake since 1984 said that this spot has deteriorated over years. This design would spread out the buildings and look better to people who drive around the lake.

Mr. Charles Tomes of 53 Cobbetts Pond Road said that the Beach is only used during the 2-3 summer months, and there is very dense vegetation; the 35' structure is topped by trees. There is no view through the trees. Generally people look out onto the water. He thinks it is an improvement and will not affect the town beach and the people there. He is in favor of the proposed use of the property.

Ms. Patti Carley who owned the old Texaco station property thinks the proposal makes sense and cleans the place up. As a previous town beach user, she never looked over to that property, but out toward the lake.

Mr. Maynard summarized saying:

- The substantial deciduous trees that will remain.
- Beach is open 2 months of the years. While residents will live there 12 months.
- Everything is a betterment. Should improve water quality and safety.
- Pretty sizeable tree population between the property and the beach.

Chairman Murray closed the public hearing.

Mr. Samsel motioned to enter deliberative session. Ms. Dunn seconded. Motion passed: 5-0

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

Ms. Dunn stated that this is a large structure will be detrimental to the town beach and reduce value/enjoyment of the beach. The proposal does not meet the 5 criteria; it does not meet the hardship requirement. The pre-existing, non-conforming structure could be cleaned up and used. This is a highly congested area and this would be an intensification of this congestion.

Chairman Murray asked for a point of clarification from Mr. Maynard do determine what is the current setback of building to be razed. Mr. Maynard confirmed that it is 2feet.

Mr. Partington stated that he doesn't see this as a detriment to the beach. Movement of the buildings will reduce the cluttered look, and there will be a better view of the lake from both structures. His only issue is with the garage out front, that adds to much to the lot.

Mr. Samsel stated that he sees this proposal as a betterment. The focus of the beach goes is down to the water, not to the sides. It is a good project and good proposal. It will make the lot look more "normal" compared to what else is in that area. The Beach is used 2.5 months of the year. The people living in the house are putting themselves closer to lots of noisy beach people. Mr. Samsel noted that there is noone from the town or Board of Selectment here with concerns about the impact of the beach.

Ms. Fallon stated that we cannot penalize property owners because they are next to the town beach. She sees the benefit of pulling the buildings back from water's edge.

Chairman Murray stated that he likes the razing of the existing structure is good and that you're trading a 2ft. setback for a 10ft. setback, and you get the building out of the 50 ft. shoreline protection. Removal of the impervious surface patio is an improvement and a plus. However, it will be put back by the new garage. The property already has 2 primary structures and has an issue with the garage. The existing garage is attached and there is a problem with the location of the septic, but he would rather see attached garage with septic moved and put it past the 150 shoreland reference line.

Mr. Samsel motioned to grant for Case#37-2011, Lot 21-H-1 a variance requested in the application from (a) 702/Appendix A-1 to permit a proposed dwelling to be located 10 ft. from the side lot line where a minimum of 30 ft. is required; from (b) Section 702/Appendix A-1 to permit a dwelling to be located 38 ft. from the Cobbetts Pond shoreline; from (c) Section 702/Appendix A-1 to permit construction on a lot having an area of 31,450 sq. ft. where 50,000 sq. ft. is required; and from (d) Section 702/Appendix A-1 to permit construction on a lot having frontage of 120 ft. on a public street where minimum frontage of 175 ft. is required. Seconded by Ms. Fallon. Motion passed 4-1. Ms. Dunn denied because of diminution of surrounding property value and lack of hardship.

Mr. Samsel motioned to grant for Case#37-2011, Lot 21-H-1 relief from Section 703 to permit a detached garage to be located in the front yard where detached accessory buildings are only permitted in the side and rear yard areas in conformance with the minimum yard requirements. Ms. Dunn Seconded. Motion failed: 3-2. Chairman Murray, Ms. Dunn, and Mr. Partington denied.

Mr. Partington motioned to deny a variance from Section 703 to permit for Case #37-2011 a detached garage in the front yard. Seconded by Ms. Fallon. Motion passed: 3-2. Mr. Samsel and Ms. Fallon denied. The request does not meet the spirit and intent.

Chairman Murray called a 5 minute recess. The Board reconvened at 9:35 pm.

Lot 17-M-40, Case #38-2011

Applicant – Joseph Maynard, Benchmark Engineering Inc.

Owner – Charles & Vera Wingate

Location – 15 York Road

Zone – Residence District A

Applicant proposes to raze the existing non-conforming year round dwelling and construct a new year round dwelling. 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 front, rear, and side yard setbacks where no such increase is permitted, (c) Section 702/Appendix A-1 to permit the proposed dwelling to be located 16 ft. from the side lot line shared with Lot 17-M-41 where a minimum 30 ft. setback is required, (d) Section 702/Appendix A-1 to permit the proposed dwelling to be located 12 ft. from the Cobbetts Pond shoreland reference line and rear lot line where a minimum 50 ft. setback and 30 ft. setback respectively is required, (e) Section 702/Appendix A-1 to permit the proposed dwelling to be located 16 ft. from the front lot line where a minimum 50 ft. setback is required, (f) Section 702/Appendix A-1 to permit 25% building coverage where a maximum of 20% is permitted, (g) Section 702/Appendix A-1 to permit construction on a lot having an area of 10,370 sq. ft +/- where 50,000 sq. ft. is the minimum required, and (h) Section 702/Appendix A-1 to permit construction on a lot having frontage of 100 ft. on a public street where minimum frontage of 175 ft. is required.

Ms. Dunn read Case #38-2011 into the record.

Mr. Joe Maynard of Benchmark Engineering, representing Charles and Vera Wingate, owners of property on York Road explained the proposal to raze the current house, move it back, and replace the septic and paved areas:

- This is a year round dwelling with an older 1970's septic system which sits 60 ft. from the water.
- The existing large shed will be removed.
- There will be an improved 3-bedroom septic within the 75 ft. required setback. The current 3-bedroom septic sits within the 75 ft. setback.

- There is an existing paved boat ramp driveway to the water which will be redone in a permeable product.
- Will continue the permeable product along base of garage to be attached to home. All paved surfaces will be a permeable product.
- There will be a small decrease in the amount of impervious surface.
- The new structure is about the same size as the previous proposal. The stockade fence will remain.

Mr. Maynard offered a picture of the applicant's property from the residence across the street. Exhibit 1.

- Existing home is 12 ft. off the lot line; the new structure will increase to 16 ft.

Mr. Murray asked if there is 25% building coverage. Mr. Murray that the structure coverage is 19.7%; the deck is another 4.9% bringing it up to just about 25%.

Mr. Murray asked whether there will be drainage measures. Mr. Maynard stated that there will be catch basins in the yard which will pitch towards the dry wells near the water. The permeable product will capture surface runoff.

Mr. Maynard confirmed that the shed will be removed.

Ms. Dunn asked what will the ridge line on the present house be compared to the new house? After pulling the house up the hill, a 6 ft. basement will be added at the lower end of the house. This will add maybe a 2-3 ft. to the ridge line; however, the turn of the house will diminish the view for the neighbor across the street.

Currently, the neighbor across the street has no view. By purposely turning the house, their view is improved.

Mr. Maynard introduced Exhibit 2 which is a current picture of the current house.

Mr. Maynard stated that the size of the house is not out of character with other homes in area.

Mr. Maynard introduced Exhibit 3 which is a photo of another local property and the size of the home.

Chairman Murray opened the hearing to the public. Hearing none, he closed the public hearing.

Mr. Maynard stated that a majority of the York Road abutters and neighbors have sent letters in support. No opposition has been expressed.

Mr. Samsel motioned to enter deliberative session. Ms. Dunn seconded. Motion passed: 5-0

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

Ms. Dunn expressed concern about the imposing size of the house on a small lot in a congested area. Look at how many variances are required. The number of variances required to do it indicates how much a stretch it is.

Mr. Samsel stated that his first concern with the 25% coverage, but he's ok with the 19.7% coverage for the structure. As far as the size, Mr. Samsel noted that there were no neighbors present that had any issues with this. He is fine with the request as proposed, and noted that the driveway is betterment.

Mr. Partington wondered how big you can go on these small lots, but is leaning towards improving the variance. The house to the right is similarly sized and the proposed structure will change character of the area. The applicant did a good job of protecting site lines and a noble attempt to keep site blockage good.

Ms. Fallon noted that the new septic and dry well is a plus. Ms. Fallon expressed concern for the small cottage behind this large structure. But the imposing nature is not as noticeable from the street. The stockade fence is higher.

Chairman noted the benefits of the project: clean solution system, driveway, drywell, structure is not overstated in comparison to many neighbors. The benefits outweigh improvements.

Motion by Mr. Samsel to grant for Case #38-2011, Lot 17-M-40 the variances requested in the posting (a) through (h) in matching with the application Sections 1 through 8 as per plan submitted. Mr. Partington seconded. Motion passed: 5-0.

Chairman Murray recused himself at 10:05 pm and appointed Mr. Partington to replace him as Chairman. Mr. Scholz was appointed to sit for Mr Partington.

Lot 11-A-150, Case #39-2011

Applicant – R L Bellia Properties, LLC

Owners – Ronald & Deborah St. Jean

Location – 5 Ledge Road

Zone – Limited Industrial District

Applicant proposes to locate a police equipment supply business within the existing 3,217 sq. ft. building. A variance is requested from Section 606.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit 600 sq. ft. of the lower level of the building to be used as a showroom/retail shop where retail sales and sales rooms are not a permitted use in the Limited Industrial District.

Mr. Dunn read Case #39-2011 into the record.

Mr. David Jordan of MH Design from Salem, NH represented the applicant, Mr. Bellia.

- Since submitting the application, Mr. Bellia has purchased the property.
- He is seeking a change-of-use variance on 5 Ledge Road. A unique property feature is its access from Ledge Road and Route 111.
- Most of this business, Granite State Police Supply, is Internet sales, which is allowed in the Limited Industrial District.
- The portion of the building facing Route 111 would be a retail showroom space. It would be an opportunity for law enforcement officers to come in and be sized for and tailored body amour. There would not be much in and out retail sales.
- The retail space represents a small portion of the business.
- No changes are proposed to the exterior of the building aside from some simple cosmetics.
- After the applicant submitted the proposal, Mr. Bellia decided to increase visibility to Route 111 by performing some tree clearing and making visible the access to the driveway.
- This business is geared toward a very specific user group.
- The 5-criteria were read.

Mr. Jordan introduced photos of the exterior of the building which were marked Exhibits A-D.

Ms. Fallon asked whether the applicant is asking for 600 sq.ft. because that is the shape of the lower level. Mr. Jordan replied yes.

Mr. Corwin confirmed that if this variance is approved, it will need a site plan approval from Planning Board, and site design issues would be dealt with at that time.

Mr. Scholz asked whether regular civilians will be allowed to shop in this business? Mr. Raymond Bellia stated that the public are welcome to come in, but they cannot purchase 95-98% of the products by law. Federal law does not allow certain civilians to purchase body armor. Body armor purchasers must have written notice from the Police Department.

Mr. Partington opened the hearing to the public. Hearing none, he closed the public hearing.

Ms. Fallon asked whether the applicant would be willing to keep the 500 sq. ft. showroom to keep it in compliance with the “building materials” provision in the Zoning Ordinance. Mr. Jordan stated that the lower level is already 600 sq ft. which connects through to the basement. Not allowing that 100 sq.ft. would restrict use of that section of the building.

Ms. Dunn noted that the basement has a rest room and stairwell which brings the actual area close to the 500 sq ft.

Mr. Samsel motioned to enter deliberative session. Mr. Scholz seconded. Motion passed: 5-0

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

Ms. Dunn stated that this use is well within the spirit and intent of the ordinance, does not diminish the value of the surrounding properties and meets the other criteria. Ms. Dunn did express concern for granting a variance which will run with the land. But because it’s only 600 sq ft it will probably not become a use that is incompatible in the industrial zone. Mr. Samsel said you’d likely see the property rezoned before that happens. Mr. Scholz stated he believes the request meets the 5 criteria. Mr. Partington questioned why 500 sq. ft. is allowed in the zone for retail sales associated with other uses but not this one.

Mr. Samsel motioned for Case#39-2011, Lot 11-A-150 to grant the applicant relief as requested from Section 606.1 to permit 600 sq.ft. on the lower level of the building to be used as a showroom/retail shop where retail sales and sales rooms are not a permitted use in the Limited Industrial District. Mr. Scholz seconded. Motion passed: 5-0.

Lot 19-A-300, 66 Mammoth Road, Case #27-2011-Request for Re-hearing.

An application for 10 units of Work Force Housing at 66 Mammoth Road.

The Board members had received an application for a re-hearing

Chairman Murray explained that the criteria is for the Board to examine whether there is any new information that would warrant a re-hearing or to consider if there has been a technical error. Mr. Samsel suggested that the Board first consider whether any new information was presented and then go through the applicant’s “Points of Error”. Ms. Dunn stated she did not see any new information. The Chairman noted that the consensus among the Board members was that there was no information presented. The Board read the Applicant’s “Points of Error” set forth in the Applicant’s supplement to the Re-Hearing Request.

Point of Error 1. Ms. Dunn, Mr. Partington and Chairman Murray agreed that the Board considered the Workforce Housing law.

Point of Error 2. Ms. Dunn stated that this was an overbroad statement. Mr. Samsel stated that the Board felt there was a need. Ms. Dunn said a majority did feel that way, but it doesn't mean that every application should be granted.

Point of Error 3. Ms. Dunn stated that that is not the only criteria that they have to consider. Chairman Murray stated that it's not an accurate statement. The application did not comply with the Zoning Ordinance. The ordinance allows a density bonus, but the proposal did not meet the DES regs. What was proposed does not meet the requirements. There was no technical error made.

Point of Error 4. Mr. Partington stated that they were here for a variance for the number of structures on a lot. Mr. Samsel agrees with the statement but that's consistent with his original vote.

Point of Error 5. Ms. Dunn stated that this is only a statement of opinion.

Point of Error 6. Mr. Samsel stated that the Board does not. Mr. Partington agreed with Ms. Dunn that there has to be some line.

Point of Error 7. Ms. Dunn stated that this was not ignored; they looked at the statutory mandate to provide affordable housing. Mr. Samsel stated that it was discussed.

Point of Error 8. Ms. Dunn stated that that is not the Board's criteria. Mr. Samsel agreed.

Point of Error 9. Ms. Dunn and Chairman Murray strongly disagree; that is not the intent of the Board. The decision was specific to the project. Ms. Fallon expressed offense.

Chairman Murray stated that the Board consensus is that there is no new information, and that no points of error have been made that would warrant a re-hearing.

Ms. Dunn motioned to deny the request for a re-hearing of Case #27-2011, Lot 19-A-300. Ms. Fallon seconded. Motion passed: 5-0.

By-Laws Amendment: Postponed to a future meeting.

Review and Approval of Minutes

- July 12, 2011 Minutes

Mr. Samsel motioned to approve the July 12 minutes as amended. Vice-Chair Partington seconded. Motion passed: 5-0.

- July 26 Minutes - Postponed to a future meeting to consider re-formatting the deliberative vote. Chairman Murray would like the Board to meet on 9/20/11 at 8 pm in the Planning Dept. Mr. Corwin will resend the 7/26 minutes to the Board.

Ms. Dunn recused herself from consideration of the August 9, 2011 minutes.

- August 9, 2011

Mr. Scholz motioned to approve the minutes as amended. Seconded by Ms. Fallon. Motion passed 4-0-1. Ms. Dunn recused herself.

- August 23, 2011 minutes are postponed to a future meeting.

Ms. Dunn motioned to adjourn without discussing the By-Laws Amendment. Mr. Samsel seconded.

Mr. Corwin mentioned 2 applications that he would like to meet with Attorney Campbell and the Board on 10/11 at 6:30

Motion passed: 5-0.

Meeting adjourned at 10:45 pm.

These minutes are respectfully submitted by Mimi Kolodziej.