



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

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**Zoning Board of Adjustment  
Draft Minutes  
July 12, 2011**

**Board Members**

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

**Staff**

Tim Corwin – ZBA/Code Enforcement Administrator  
Elizabeth Wood – Community Planner

**Call to Order/Attendance**

**Public Hearings – Continued from 6/28/11**

**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.

Betty Dunn read the case into the record.

Attorney Mason representing Michael Golden said that this arose as an issue in April because staff sent out a code enforcement letter regarding the storage of some items on the property.

He handed out a tax map of the property to the Board members. He stated that in the rear of his property, close to I-93 there are materials stored. Some of the items were stored there, should not have been put there and those were removed. The lot is 1.9 acres and wooded. Currently there exists a storage container. Things not appropriate to residential use have been removed. What has not been removed is an excavator. If you are driving by, you cannot see this excavator. When the leaves fall off the trees, you may be able to see it. It is not visible from Morrison Road or the abutting properties.

The excavator has no business name or phone number on it. Mr. Golden wrote a letter describing how he historically has used the excavator for personal use. Attorney Mason presented the letter to the Board.

Attorney Mason said that his client would like to work with staff to screen the excavator to mitigate any impacts that it might have.

Ms. Dunn asked to see a photo of the excavator.

Ms. Wood said that she had a photo of the excavator and that she could display it on the TV in the conference room.

Mr. Mason said that the neighbors don't have a problem with the excavator.

Mr. Samsel stated that this case is disturbing. Mr. Samsel asked why the Community Planner is doing this code enforcement action instead of Mr. Corwin. Ms. Scott stated that due to staffing levels, some code enforcement actions are directed to Ms. Wood, as is set forth in her job description, which was adopted by the Board of Selectmen.

Mr. Samsel asked if there was a question originally as to whether a company was being run from the sight.

Attorney Mason said that at the beginning there were some obsolete business items that were being stored on the site. These items were removed. Ms. Wood came to the property, inspected it, and assured that they were removed.

Mr. Samsel is wondering why a resident in the rural zone can't collect barrels or tanks on their property.

Ms. Wood said that the maximum size fuel tank on a residential property is 25 gallon. Mr. Golden has a 500 gallon fuel tank.

Mr. Samsel said that he is disturbed at Ms. Wood's letter. She had to go onto the property to prove what is there.

Attorney Campbell said that Ms. Wood had permission.

Mr. Samsel said that is a rural zone. Allowed in a rural zone is farming. I think a farm could have a back hoe or a tractor.

Betty Dunn said that in the most recent letter from Ms. Wood there was mention of fuel tanks. She asked if these tanks were still on the property. Attorney Mason said that if the tanks have to be removed, they will remove them. The tanks are empty right now and you can't see them.

Ms. Dunn said that as she said it as, the original problem was the number and items that were there drew attention to the property. If you start having construction related materials it may seem you are running a business in a rural zone. And now we are down to the tanks and an excavator. According to Mr. Golden's letter it hasn't been used as a business use.

Attorney Mason said that Mr. Golden operates his business in Massachusetts and that over the years he had accumulated things from his business. He said that if Mr. Golden got a deal on gas that he would fill the tanks, but that everything else was removed from the property. If the Board would like some screening, this can be put up as a resolution.

Mr. Partington asked Ms. Wood if the July 4<sup>th</sup> letter from Mr. Golden changed her opinion.

Ms. Wood explained that she did not doubt, based on Mr. Golden's letter that he uses the excavator for personal use; however it is not an item not typically used on a residential property. Allowing Mr. Golden to have an excavator would allow any Rural zoned residence in Town to have an excavator.

Mr. Murray said that the Rural zone is an agriculture zone and it specifically allows for an excavator. I don't believe this issue should be in front of this Board right now.

Mr. Partington said that if he didn't have the July 4<sup>th</sup> letter, he can see how Ms. Wood thought it was an issue that he was storing business material on the site. Heath Partington said that the Rural zone is not for running a business.

Mr. Samsel said that agriculture is a business.

Ms. Dunn said that she can see how someone should be allowed to have an excavator on their lot. We may not like it, but I am not sure how you can prevent it. She thinks that at the beginning there was a valid point made with the items that were on the property that were related to a business use. We agree that the excavator itself is not a violation of the zoning ordinance.

Ms. Fallon said that she is concerned because when she looks at the Rural district, it is predominately single-family residential housing. This lot is not intended for agriculture use.

Mr. Murray said that if the ordinance allows it, it is clearly allowed.

Ms. Fallon asked if a permit was needed to excavate.

Mr. Murray asked if anyone from the public wanted to speak.

No one did.

Mr. Murray opened for deliberative discussion.

Ms. Dunn asked about the storage of business materials on the lot.

Ms. Fallon said she is having a problem with a piece of equipment the size of an excavator.

Mr. Murray says that he does not have a problem with the blasting mats, the fuel tanks, or the excavator. If the owner was having a business there would be an issue, but he is not, therefore he has no issue.

**Betty Dunn made a motion to grant the administrative appeal on the two remaining issues in Ms. Wood's June 23rd letter. Mark Samsel seconded. Motion passed 4-1.**

**Lot 9-A-400, Case #16-2011**

Applicant – Marc Sneider

Owner – Brian Bauchman

Location – 120 Haverhill Road

Zone – Rural District

Application is an Appeal of an Administrative Decision made by the Community Development Director regarding zoning interpretation and enforcement at 120 Haverhill Road.

Ms. Dunn read the case into the record. Mr. Partington recused himself from this case.

Mr. Murray said that there is a 4 member board and the applicant can decide whether or not to be heard this evening or not.

Mr. Sneider asked the Board when there would be a full member Board. Are there any planned absences the next meeting?

All Board members present stated that they would be in attendance.

Mr. Sneider and Board agreed to reschedule for July 26th.

**Motion made by Mark Samsel. Seconded by Ms. Fallon. Motion passed 4-1.**

### **Public Hearings**

#### **Lot 24-C-37, Case #23-2011**

Applicant/Owner – Paul A. Kroeter

Location – 10 Sharon Road

Zone – Residence District A

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 a 240 sq. ft. storage shed to be located 5 ft. from the side lot line where a minimum 30 ft. setback is required.

Ms. Dunn read the case into the record.

Mr. Kroeter stated that he wanted to construct a 12 X 20 shed to store lawn equipment. His lot is peculiar because of slopes. The only plausible place to put the shed without having to cut a lot of trees down is in the side yard. There are shrubs there and it would be difficult to see the shed from abutting properties. The reason he does not want to excavate in the back is that even though he could level some land, he would still have to climb a hill to get to the shed. He is not getting any younger and it will be difficult for him to get to the shed.

Ms. Dunn said that she saw a tree stump in the yard and asked if that was the area where the shed would be placed.

Mr. Kroeter said yes.

Ms. Dunn asked about the height of the shed.

Mr. Kroeter said that it will be about 11'. It will be on a cement slab with a pitched roof.

Mr. Kroeter said that he used to have a canvas storage tent but that snow was a problem and his things were getting musty.

Ms. Dunn asked if he had discussed this proposal with the Penizis.

Mr. Penizi said that he is the abutting property owner and has no objection to him building the shed.

Mr. Partington asked Mr. Penizi if he had a shed also.

Mr. Penizi said yes.

**Mr. Samsel made a motion to go into deliberative session. Mr. Partington seconded. Motion passed 5-0.**

Mr. Partington says that the slope and trees make this spot the most logical spot.

**Ms. Dunn made a motion to permit a variance to construct a 240 sq. ft. storage shed to be located 5' from the side property line where 30 ft is required. Seconded by Mr. Samsel. Variance granted 5-0.**

**Lot 17-J-106, Case #24-2011**

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owners – Shawn Thrasher

Location – 10 Rocky Ridge Road

Zone – Residence District A

A variance is requested from (i) Section 406.2 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the installation of a foundation underneath the existing nonconforming single family dwelling where an increase in volume of a nonconforming structure is only permitted on the portion of the structure that is in conformance; (ii) Section 702/Appendix A-1 to permit the construction onto the front of the house of an approximately 34 ft. by 14 ft. deck to be located 15 ft. from the front lot line where a minimum 50 ft. setback is required; (iii) Section 702/Appendix A-1 to permit the construction of a 6 ft. wide access deck to be located 5 ft. from the side lot line where a minimum 30 ft. setback is required; (iv) Section 702/Appendix A-1 to permit the construction onto the rear of the structure of an approximately 8 ft. by 28 ft. addition to be located 10 ft. from the side lot line located on the west side of the property and 9 ft. from side lot line located on the east side of the property where a minimum 30 ft. setback is required for both; and (v) Section 702/Appendix A-1 to permit construction on a lot having an area of 5,600 sq. ft +/- where 50,000 sq. ft. is the minimum required; and (c) Section 702/Appendix A-1 to permit construction on a lot having frontage of 50 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.

Mr. Maynard presented this application. There is limited foundation space below the house that exists now. He handed a piece of paper, Exhibit 1, to the Board with photos of the house. The proposal is to add an 8' addition and a new deck along the frontage of the property. Mr. Maynard described the nature of the property. It is very small and there is not much room for expansion.

The deck will be on top of a paved surface. The home itself is over 21% coverage of the lot and the additional 8' addition off the back, because a portion of it is roofed, only adds an additional volume of 1% which brings it up to 22% building coverage.

Ms. Dunn asked about the shared septic system. Where would it be?

Mr. Maynard said that there is a small septic system behind the house and a holding tank underneath the driveway. The neighbor has a large holding tank. A big chamber would be added to the neighbor's tank and that both tanks would be pumped to a new clean solution system behind Mr. Thrasher's house.

Ms. Fallon asked if the retaining wall would be repaired?

Mr. Maynard said yes.

Ms. Fallon asked about parking on the property. Would the deck beams interfere with the parking?

Mr. Maynard said that the intention is to have 2 posts and 1 steel beam so that Mr. Thrasher can still park in the same general area.

Ms. Dunn asked about the deck in the back.

Mr. Maynard said that the last 8 feet of deck are so that stairs can be added without taking living space out of the home.

Ms. Dunn asked if it would remain a 2-bedroom house.

Mr. Maynard said that this property would always remain a 2-bedroom property.

Mr. Murray opened for public discussion.

Mr. Maynard presented Mr. Murray with letters from every single abutter. There were 7 letters, Exhibit 2.

Ms. Dunn asked about the shed.

Mr. Maynard said it isn't really a shed. It Rubbermaid.

Mr. Corwin said that it technically the shed does need to meet setbacks.

**Ms. Fallon made a waiver to discuss the five points. Seconded by Mr. Partington. Approved 5-0.**

Ms. Dunn says that she was originally concerned about the height of the deck but it is only going to be 2 or 3 feet. Being that it is only going to be 3' she does not think it will change the character.

Mr. Samsel and Mr. Partington and Ms. Fallon and Mr. Murray say they are fine with the proposal.

**Mr. Samsel made a motion to grant the variance as presented. Seconded by Ms. Fallon.**

Ms. Dunn asked if this could be contingent upon the new septic system.

Mr. Samsel asked if they could continue without the new septic system.

**Ms. Dunn made a motion to come out of deliberative session. Seconded by Mr. Partington. Motion passed 5-0.**

Mr. Maynard said that he did the exact same design on a different property. If he was denied the septic system, the state would still allow for the expansion.

**Ms. Dunn made a motion to back into deliberative session. Seconded by Ms. Fallon. Motion Passed 5-0.**

**Ms. Dunn made a motion amend the motion to approve the variance with the improved septic system as amended on the plan. Seconded by Ms. Fallon. Motion Passed 5-0.**

**Lot 14-B-4501, Case #25-2011**

Applicant/Owner – Corrado Brancato

Location – 54 West Shore Road

Zone – Residence District A

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 a 140 sq. ft. storage shed to be located on the rear lot line where a minimum 30 ft. setback is required.

***NOTE: Case #25-2011 will NOT be heard at the 7/12/11 ZBA meeting because the Applicant has amended his variance request. The case will be renoticed for the 7/26/11 ZBA meeting in the newspaper and to abutters.***

Ms. Dunn read the Note into the record.

Mr. Partington asked if this was a continuance request.

Mr. Corwin said that the applicant changed their request after the application was submitted.

Ms. Dunn stated that this was an issue as to whether this was a continuance or a new application.

The Board revisited this topic at 9:15pm.

Mr. Murray said that this case will be reposed properly so that the Board can hear it. The bylaws do not cover this point.

Mr. Murray said the applicant would have to repay the fees if the application was withdrawn. The Board has the right to do the right thing.

Mr. Samsel said that there is no question as to whether this needs to be posted.

Mr. Corwin said that the add was already sent to the paper with the same Case# but with an accurate legal description.

Ms. Dunn said that it wouldn't be the same case. It is a new case.

Mr. Corwin said that applicants that wish to withdraw their request may do so. The applicant did not wish to withdraw, he did not know that what he wanted to do required a change in the hearing notice. The other issue, is the case of staff errors. Those need to come to the Board.

Ms. Dunn said that it is interesting that due to this provision in the bylaws, we haven't had last minute requests.

Mr. Murray says that there has not been alot of time to really reflect their effect.

Ms. Dunn said that the easiest way to clean this up now is to withdraw the application and have them come back.

Mr. Partington said, then they would have to pay another fee.

Mr. Corwin said this is not fair. The applicant acted on the basis of the information that he gave them and he did not tell them that they would have to pay an additional \$100. They paid the additional legal fee and abutters fee.

Ms. Dunn asked if it would be more appropriate to continue this application. We are not continuing it though.

Mr. Murray said that they could be opened and continued.

Mr. Corwin said that the hearing notice is changing.

Mr. Partington said there is no difference between this case and the golf course case.

Ms. Dunn said that it is important to do the right thing right now and not set a precedent.

Mr. Corwin said that in the future this should be written into the bylaws.

Mr. Partington said that there is no way that the Board can waive the fee. Only the Select Board can do that.

Mr. Corwin asked if the Board could waive the bylaw provision to waive the withdraw provision and reschedule.

Mr. Murray believes that the Board can do that. Mr. Murray agreed.

**Mr. Murray made a motion to waive the bylaw provision. Seconded by Mr. Samsel. Motion passed 4-1.**

Mr. Corwin said that in the future, perhaps the application should state that if there are any changes, the applicant will have to withdraw and repay the fee.

**Ms. Dunn made a motion to move this item to the end of the agenda. Mr. Samsel seconded. Motion passed 5-0.**

**Lot 17-J-119, Case #26-2011**

Applicant – Joseph Maynard, Benchmark Engineering, Inc.

Owners – Richard and Maria Duke

Location – 5 Fox Road

Zone – Residence District A

A variance is requested from Section 1200.1.3 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the conversion of a existing seasonal dwelling to a full time year-round dwelling on a lot that is nonconforming with respect to minimum frontage requirements, minimum front and side yard setbacks, and minimum lot size area where such conversion is permitted only where the lot conforms to the dimensional requirements of Section 700 of the Zoning Ordinance.

Ms. Dunn Read the case and abutters into the record.

Mr. Maynard presented this application. This application is in the protective shoreline area. The Duke family would like to convert their home to year-around status. This is the only lot left on the street that is seasonal. There will be no expansion of the building the footprint.

Ms. Fallon asked what the square footage of the house was. Does it meet the minimum?

Mr. Maynard said that it is 600 sq. ft.

Mr. Murray said that this is a nonconforming use and a nonconforming dwelling.

Ms. Dunn said that it is a preexisting nonconforming use as a seasonal dwelling. In order to be converted it must meet the building code, but it doesn't address the size.

Mr. Maynard said if he was expanding he would have to bring it to at least 1000 sq. ft. But they are not expanding.

Mr. Murray asked what the Mr. Corwin if he would agree that the minimum square footage for the building did not pertain since this was a preexisting non-conforming structure.

Mr. Corwin agreed with Mr. Murray.

**Ms. Dunn made a motion to waive the requirements to read the five point criteria. Mr. Partington seconded. Motion passed 5-0.**

**Motion by Ms. Dunn to go into deliberative session. Mr. Partington seconded. Motion passed 5-0.**

Mr. Partington described how this application would meet the five point criteria.

Ms. Dunn said that what is being asked for is not a major change to the vicinity.

Ms. Fallon said that this brings it up to current safety standards and that is good.

**Mr. Samsel made a motion to approve the variance as presented. Seconded by Mr. Partington. Motion passed 5-0.**

#### **Review and Approval of 6/14/11 and 6/28/11 Draft Meeting Minutes**

Ms. Dunn had suggestions for the 6/14/11 minutes.

Ms. Dunn made a motion to approve the 6/14/11 minutes. Mr. Partington seconded. Motion passed 3-0. Ms. Fallon abstained.

Mr. Samsel asked if it were possible to postpone the 6/28/11 minutes to the 7/26/11 meeting.

#### **Member Binder Updates**

- **Tab 11 – Cases of Municipal Significance**
- **Tab 12 – Article on local government service**

#### **Discussion Items**

Mr. Murray said that there was an email regarding how the Board votes on motions. If the intent is to deny a motion, a motion should be made to deny. Not make a motion to approve, if the intention is to deny.

Ms. Dunn said that before a decision is made she would like an opportunity to research this more. She has heard different opinions in the past.

Mr. Tom Case said that if you want to deny something you should not make a motion to grant it. It does not make a lot of sense. Mr. Case said he researched other Towns to see how they make motions.

Mr. Murray said that he appreciated Mr. Case's input.

Mr. Samsel asked if this has ever been an issue for the Board.

Mr. Murray said no. A good attorney will always argue intent.

Mr. Murray moved to other business. He sent out a guidebook for NH Houses. If anyone wants a hard copy he volunteered to make one.

Ms. Fallon said that she would like a hard copy.

### **Adjournment**

**Ms. Dunn made a motion to Adjourn. Seconded by Mr. Samsel. Motion passed 5-0.**

**The Meeting was adjourned at 9:47pm.**

### **Next Meeting:**

**July 26, 2011 at 7:30 PM**