



COMMUNITY DEVELOPMENT
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ZONING BOARD OF ADJUSTMENT

Approved Minutes

January 10, 2023 – 7:00 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department) Live
Broadcast: WCTV Channel 20 – Local Cable TV
Live Stream: <http://www.wctv21.com/>

To access via Zoom: [ZBA Meeting](#)

Meeting number/access code: 865 4393 1593 **Password:** 250013 **To join by phone:** 1 646 876 9923

Attendance:

Chairman Betty Dunn- present

Vice Chair Nick Shea- present

Pam Skinner, Secretary- present

Neelima Gogumalla, regular member- present

Michelle Stith, regular member- present

Mike Scholz, alternate- present

Galen Stearns, alternate- excused

Staff:

Alexander Mello- Community Development Director

Julie Suech- Planning Technician

Anitra Lincicum- minute taker (present via Zoom)

Chairman Dunn recused herself. Vice Chair Shea was seated as the Chairman for the case and then seated Mr. Scholz for Case #36-2022.

[Case #36-2022](#) Parcel 13-A-102 & 13-A-196B

Applicant – Edward N. Herbert Associates, Inc.

Owner – Ramos Real Estate, LLC

Location – 12 Roulston Road/Lamson Road

Zoning District – Limited Industrial District

Variance relief is requested from **Sections 601.3, 606.1, and 702/Appendix A-1** to merge the two pre-existing, non-conforming lots to create one large, less nonconforming lot. Additionally, the applicant is requesting to build a three-unit multi-family dwelling in the Limited Industrial District and locate said structure within the required 100 ft buffer of the WWPD, where such use and placement of structures is prohibited. Also, to permit a thirty (30') ft front setback, where fifty (50') ft is required and to permit a lot size of 39,342 SF for the merged lot, where at least 70,000 SF is required.

This case has been opened previously and continued to this evening.

Mr. Alan Carpenter, the applicant, addressed the Board and provided a history of the lot. Mr. Carpenter stated that he and his wife currently own 10 and 12 Roulston Road. Mr. Carpenter reviewed what was present in the neighborhood currently as well as what was allowed under "light industrial". Mr. Carpenter reviewed why their proposed project made sense in relation to the housing needs of both Windham and New Hampshire. Mr. Carpenter suggested that a smaller building approach was part of the solution to affordable housing as a "transition" property. Acting Chair Shea asked the size of the unit. Mr. Carpenter stated that they would be 35 x 25. Mr. Scholz discussed the exact location of the parcel for clarity. Ms. Gogumalla asked what portion of the building would be in the WWPD. Mr. Carpenter stated that all of it would be.

Mr. Shayne Gendron of Edward N. Herbert and Associates addressed the Board and is representing the applicant. Mr. Gendron stated that the project has been approved for a septic design by the state. Mr. Gendron stated that they are bringing together 2 non-conforming lots to make a more conforming lot. Mr. Gendron stated that the lot is identified as WWPD and there is some water that is backed up on the lot as a result of 2 unmaintained culverts in the area. Mr. Gendron stated that they were trying to keep the structure as far away from the wetland as possible. Mr. Gendron stated that they are trying to infiltrate and treat all of the water on the property. Mr. Gendron stated that the proposal will have 19.7% impervious coverage with 6% building coverage. There will be some fill for the septic system and there will be a full garage under each unit. Each unit will have a 2-car garage. Mr. Gendron also stated that there may also be a farmer's porch on the front of each building as part of the footprint.

The Board discussed the entrance to the lot off of the road, the potential traffic in the area, and whether or not this would be considered a workforce housing project. Mr. Gendron stated that this is not workforce housing; it would be a single owner project and the traffic impact would be minimal. The applicant is looking for the 30-foot setback and building in the WWPD. Mr. Gendron stated that the Conservation Commission has no issues with the plan as presented. Mr. Gendron reviewed the 5 criteria as presented in the public packet. Mr. Gendron stated that the applicant is striving to create a more conforming lot yet the current conditions on the lot create a hardship because of the WWPD. Mr. Gendron stated that this would be a reasonable use for the applicant and without a variance, there is little that can be done.

Mr. Gendron stated that the residence is the best use of the property. Mr. Carpenter and Mr. Gendron reviewed the area and where the water currently both sits and flows in the area and in which direction. Acting Chair Shea asked if any trees would need to be cut. Mr. Gendron reviewed the trees that would potentially be cut on the property as part of the proposal. Ms. Gogumalla asked Mr. Carpenter, as someone who is an expert in zoning issues in Windham and someone who drafted zoning ordinances as a member of the Planning Board, to convince me that building into the WWPD and building in a zone that does not allow residential development is appropriate. Mr. Carpenter stated that the lots they are discussing are small remnants for the area which are unique to other properties. Mr. Carpenter also stated the importance of having transitional properties. Mr. Carpenter stated that the 3-2-bedroom plans made more sense for this area when considering other conditions and the needs of the community as a whole.

Mr. Carpenter stated that this project was designed to fit the housing needs for the area presently. Mr. Carpenter also stated the majority of the water that comes from the ground in any suburb goes into lawns; it is not for showers and dishes. Mr. Carpenter explained that the plan includes other vegetation other than grass as part of the landscape plan to minimize the property's use of water. Also, there is a speeding issue on Roulston but there are several potential improvements to the area that may slow down traffic. Mr. Carpenter does hope there is wildlife in the area and they hope it will remain.

Peter Fiedler, 45 Morgan Street, addressed the Board via Zoom. Mr. Fiedler asked for clarity around the location of the front and back of the building. Mr. Carpenter showed Mr. Fiedler and the audience where the property is located and discussed how many trees they would like to keep on the property.

The Board entered deliberative session without opposition.

Mr. Scholz discussed the 5 variance criteria and he does believe this meets the 1st and 2nd criteria. Mr. Scholz continued to say this does meet both as well as the substantial justice and that it would not diminish values of surrounding properties. Acting Chair Sea stated that he appreciates that they went to the state for the septic permit first. The Board discussed that this plan is located as far away from the WWPD as possible. Ms. Gogumalla is always concerned with the impact on the WWPD on any plan. Mr. Scholz stated that this is a concern of his too but he also is not sure what could potentially go on the property. The Board discussed that this could potentially be the best use for the property.

The applicant had submitted material and it was labeled Exhibit A by Vice Chair Shea.

A motion was made by Ms. Scholz to grant variance relief as requested from Sections 601.3, 606.1, and 702/Appendix A-1 to merge the two pre-existing, non-conforming lots to create one large, less nonconforming lot. Additionally, the applicant is requesting to build a three-unit multi-family dwelling in the Limited Industrial District and locate said structure within the required 100 ft buffer of the WWPD, where such use and placement of structures is prohibited. Also, to permit a thirty (30') ft front setback, where fifty (50') ft is required and to permit a lot size of 39,342 SF for the merged lot, where at least 70,000 SF is required with a plan date of November 2022 and incorporating all the testimony presented. Seconded by Ms. Stith.

Vote 5-0.

Motion passes.

The Chair Advised of the 30- day appeal period.

The Chair was seated once again for Case #38-2022.

**[Case #38-2022](#) Parcel 22-L-201
Applicant – Edward N. Herbert Associates, Inc.
Owner – Shawn Ford
Location – 15 Prescott Road
Zoning District – Residential District A / WPOD**

Variance relief is requested from **Sections 702/Appendix A-1** to permit an existing deck that was constructed without a building permit on a pre-existing, non-conforming lot, with a setback of thirty-nine (39) ft, where fifty (50) ft is required in the rear, and side yard setbacks of twenty-nine (29) ft on the left and nineteen (19) ft on the right where thirty (30) ft is required on each side.

Ms. Skinner read the case into the record. There was an abutters list and the reading of that was waived by the Board.

There was also a letter from the Conservation Commission and a letter of authorization by the applicant.

Mr. Shayne Gendron of Edward N. Herbert addressed the Board and is representing the applicant. Mr. Gendron stated that they surveyed the property for the applicant and they saw that there was a patio on the property. Removing the patio would allow for the removal of impervious surface to make the lot have a more conforming percentage of coverage. Mr. Gendron stated that everything existed on the property except for the porch when the applicant purchased the property. The Board reviewed the existing conditions on the property. Mr. Gendron stated that the applicant is willing to add vegetation which will show a betterment on the property.

Mr. Gendron reviewed the 5 variance criteria contained in the public packet. Mr. Gendron stated that that the homeowner was contacted by code enforcement.

Ms. Jeannine Mason, 7 Prescott Road addressed the Board. Ms. Mason stated that the boat launch has been on the property for at least 10 years and she has been using the boat ramp for many years. Ms. Mason is in the support of the project.

Mr. Brian McCarthy, 11 Prescott Road addressed the Board. Mr. McCarthy stated that the ramp has been on the property for at least 10 years and the work done on the property has enhanced both this property and the surrounding properties.

Ms. Pam McCarthy, 11 Prescott Road addressed the Board. Ms. McCarthy stated that she is in support of the project as it does enhance the property and she is in support of the project and she does think the porch enhances the property and “finishes the house”.

Mr. Scholz stated that he did drive by and see that this is on an undersized lot. Mr. Scholz stated that the applicant could have done nothing to help improve the specific property but this applicant is willing to make improvements to the property.

The Board entered deliberative session without opposition.

Ms. Stith stated that she could barely see the deck from the road. Chairman Dunn stated that she appreciates the reduction in impervious surface but the intensity in the area is still very high. The overall cumulative effect in the area should be important in the Board’s consideration. Yet, she does think with the improvement, it does meet the 5 criteria.

A motion was made by Ms. Stith to grant variance relief as requested from Sections 702/Appendix A-1 to permit an existing deck that was constructed without a building permit on a pre-existing, non-conforming lot, with a setback of thirty-nine (39) ft, where fifty (50) ft is required in the rear, and side yard setbacks of twenty-nine (29) ft on the left and nineteen (19) ft on the right where thirty (30) ft is required on each side with a plan date of September 2022. Seconded by Ms. Skinner.

Vote 5-0.

Motion passes.

The Chair advised of the 30-day appeal period.

Chairman Dunn recused herself from the case. Vice Chair Shea seated Mr. Scholz for Chairman Dunn.

[Case #40-2022](#)

Parcel 17-M-5

Applicant – Kenneth Walsh
Owner – Maria Giakoumakis
Location – 17 Armstrong
Zoning District- Residential District A / WPOD

Variance relief is requested from **Sections 406.2, and 702 / Appendix A-1** to construct an addition on a pre-existing, non-conforming lot of 416 sq ft, with a front setback of thirty-one (31') ft, where fifty (50') ft is required. A right-side yard setback of five (5') ft, where thirty (30') ft, is required. To allow fifteen (15%) percent in expansion of the area from 3,655 SF to 4,285 SF, and in volume from 31,145 CF, to 36,600 CF.

Vice Chair Shea stated that the case was continued to this evening from December because there was a 4 member Board at that time; this evening, there is a 5-member Board.

Mr. Ken Walsh addressed the Board. There is a letter of authorization for the case and the case was read into the record previously. Mr. Walsh stated that the previously approved gazebo on the property did not have storage. Mr. Walsh stated that the applicant would like more room for storage on the lot. Mr. Walsh also stated that everything possible has been done in regards to porous pavement and storm water management. Mr. Walsh stated the the lot coverage is under the required 20%.

Vice Chair Shea labeled a letter from Erin and David Rogers as Exhibit A and it was read into the record by Ms. Skinner.

Mr. Walsh submitted an updated letter of authorization to the Board dated January 10, 0223.

Mr. Walsh stated that he believes it is highly unlikely the properties will change hands based on past history.

Ms. Stith asked about the permeable pavers. Mr. Walsh stated that the applicant bought a special grout to help keep the pavers clean.

Mr. Walsh discussed the terracing and dry wells on the site.

The Board discussed the number of garages on this property currently; They also discussed this in relation to the surrounding properties. The footprint of the garage is 416 square feet. The garage bay would be added to the existing property. Mr. Walsh stated that there will also be storage for the garage.

Mr. Walsh stated that the garage would have 2 stories and it would expand the footprint of a room upstairs as well as add one bay. The addition would increase the square footage of the house by 15% according to Mr. Walsh.

The Board discussed the gazebo on the property as well as the allowance for sheds on properties.

Mr. Walsh read the 5 variance criteria contained in the public packet.

The Conservation Commission letter stated that they have no issues with the plan as presented.

The Board invited public comment; there was none.

The Board entered deliberative session without opposition. Ms. Stith stated that they were introducing a 3-car garage to the property on a road where there are no other 3 car garages. Mr. Scholz is struggling with how this meets the 5 criteria. Mr. Scholz does not think this meets criteria 1, 2, and 5.

Mr. Scholz stated that it is not just a garage. It is an addition for more purposes than just a garage. There are also other elements to the addition and there are other storage requests that have already been granted on the property according to Mr. Scholz. Additionally, the house will no longer be centered on the lot but will be even closer to the lot line. Mr. Scholz discussed that this is a plan to also increase not just the garage space but both the living space and the storage space attached to the house. Ms. Gogumalla mentioned some of the other features on the property and potential cumulative effect of such features on the lot.

Mr. Scholz stated that it is not just garage space. It is increasing: living space, garage space and parking space on the lot. Acting Chair Shea stated that the Conservation Commission has no issues with the plan as presented.

A motion was made by Mr. Scholz to deny variance relief as presented per plan dated December 2, 2022. Seconded by Ms. Stith.

Vote 5-0.

Motion passes.

Reasons:

Acting Chair Shea, do not see the hardship to grant the variance, 5 (hardship)

Ms. Skinner 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)

Mr. Scholz: 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)

Ms. Gogumalla: 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)

**Ms. Stith: 1 (public interest), 2 (spirit of the ordinance) because the character of the neighborhood is no or 1 car garage homes 5 (hardship) home already has a 2-car garage and prior variance for storage in the gazebo
There is a 30-day appeal period.**

Mr. Scholz and Ms. Gogumalla were excused at 9:15 pm.

Meeting Minutes to Review and Approve: 11-22-22 (Site Walk), 12-13-22 & 12-27-22

A motion was made by Ms. Stith to approve the November 22, 2022 site walk minutes as amended. Seconded by Ms. Skinner. Vote 3-0-1. Vice Chair Shea abstained. Motion passes.

A motion was made by Vice Chair Shea to approve the December 13th draft minutes as amended. Seconded by Ms. Stith. Vote 4-0. Motion passes.

A motion was made by Vice Chair Shea to approve the December 27th draft minutes as amended. Seconded by Ms. Skinner. Vote 4-0. Motion passes.

Discussion about Zoom and Public Comment on Applications

The Board had a brief discussion about public comment, both in person and via Zoom, when discussing an application that will be continued; this is specific to a case where the facts of the case has not yet been presented by the applicant but the Board does hear public testimony. Mr. Mello stated that the applicant must often prove the need to continue the case; that is not automatic.

A motion was made by Ms. Skinner to adjourn at 9:15 pm. Seconded by Vice Chair Shea. Vote 4-0. Motion passes.

Respectfully submitted by Anitra Lincicum