



COMMUNITY DEVELOPMENT

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ZONING BOARD OF ADJUSTMENT

Approved Minutes

March 26, 2019

7:30 pm @ Community Development Department

Attendance:

Mike Scholz- present
Mark Samsel- present
Pam Skinner- present
Bruce Breton- excused
Dan Clark- present
Neelima Gogumalla, alternate- present (seated for Mr. Breton)
Nick Shea, alternate- present
Kevin Hughes, alternate- excused
Jay Yennaco, alternate- excused

Staff:

Brian Arsenault- ZBA Administrator/Code Enforcement
Anitra Brodeur- minute taker

Election of Officers

A motion was made by Ms. Skinner to nominate Mr. Scholz as Chairman. Seconded by Mr. Clark.

The Board discussed if this vote should be taken with all 5 members. The Board was advised by counsel that the Board could vote with the elected members who were present.

Vote 4-0.

Motion passes.

A motion was made by Ms. Skinner to nominate Mr. Samsel as Vice Chairman. Seconded by Mr. Clark.

Vote 4-0.

Motion passes.

A motion was made by Mr. Clark to nominate Ms. Skinner as Secretary. Seconded by Mr. Samsel.

46 **Vote 4-0.**
47 **Motion passes.**
48

49 **Public Hearing**

50
51 **The Chairman sat Mr. Shea for Mr. Clark who recused himself for Case #02-2019 as the**
52 **case was in Deliberative and continued from a previous meeting.**
53

54 **Case #02-2019: Parcel 25-G-155 (Continued from February 26, 2019)**

55 **Applicant – Edward N. Herbert Associates, Inc.**

56 **Owner – Brandon & Alyson Basso**

57 **Location – 28 Emerson Road**

58 **Zoning District – Residential A and Wetland & Watershed Protection Dist(s). (WWPD)**
59

60 Variance Relief is requested from **Section(s) 601.1.1, 601.3, 702 & Appendix A-1:**
61 **Section(s) 601.1.1 and 601.3** to allow 1,300 sf of the dwelling to be located within the WWPD
62 where development of structures within the WWPD are not allowed and **Sec. 601.3** to allow
63 3,600 sf of associated grading and improvements within the WWPD where such use is not
64 permitted and **Sec. 702 & Appendix A-1** to allow construction of a new single family dwelling
65 with a 2,600 sf pad on a non-conforming lot of record that contains 36,968 +/- sf where 50,000 sf
66 is required with 74.97' of frontage on a private road where 175' is required on a public road in
67 the Residential A District and WWPD.
68

69 Chairman Scholz stated that the Board was in Deliberative Session. There is no deed restriction
70 on the development of the lot but it does need to be merged with the adjoining lot.
71

72 Ms. Gogumalla reviewed the 5 criteria. The application does violate the ordinance as Windham
73 does have restrictions around building in the WWPD. Before the lot was purchased, the applicant
74 was aware that building was not allowed in the WWPD when it was purchased and when the
75 plan was put together. Ms. Gogumalla also spoke to the size of the home in relations to the
76 neighbors' homes. It was a hardship brought on by a piece of property that had a building
77 restriction. Ms. Gogumalla does not see how this variance can be granted for building in the
78 WWPD.
79

80 Mr. Shea stated that he does see that there is potential for substantial run off on the lot. Mr. Shea
81 does see the hardship that the applicant stated. Mr. Shea stated that the Conservation
82 Commission noted that the town may not make that restriction known when the property was
83 purchased. Mr. Shea stated that he is struggling with the first two criteria.
84

85 Chairman Scholz stated that he understands that the applicant did find additional land to attempt
86 to comply with the building codes but it may be too much in relation to numbers 1 and 2.
87 Chairman Scholz is struggling with criteria 1, 2, and 3.
88

89 Vice Chair Samsel stated that he does think it complies with 1-5. Vice Chair Samsel stated that
90 being in the setback is better than being in the WWPD. There is planned mitigation that is also
91 being indicated.

92
93 Ms. Gogumalla stated that she thought that the Board was going to ask the Conservation
94 Commission and the Board of Selectmen about the wetlands and whether or not the applicant
95 was made aware of the restrictions on the lot.

96
97 **A motion was made by Vice Chair Samsel for Case #02-2019: Parcel 25-G-155 to grant**
98 **variance relief from Section(s) 601.1.1, 601.3, 702 & Appendix A-1: Section(s) 601.1.1 and**
99 **601.3 to allow 1,300 sf of the dwelling to be located within the WWPD where development**
100 **of structures within the WWPD are not allowed and Sec. 601.3 to allow 3,600 sf of**
101 **associated grading and improvements within the WWPD where such use is not permitted**
102 **and Sec. 702 & Appendix A-1 to allow construction of a new single family dwelling with a**
103 **2,600 sf pad on a non-conforming lot of record that contains 36,968 +/- sf where 50,000 sf is**
104 **required with 74.97' of frontage on a private road where 175' is required on a public road**
105 **in the Residential A District and WWPD. Seconded by Mr. Shea.**

106
107 **Vote 1-4. Motion failed.**

108
109 **A motion was made by Ms. Gogumalla to deny relief for Case #02-2019: Parcel 25-G-155 as**
110 **requested. Seconded by Ms. Skinner.**

111
112 **Vote 4-1.**
113 **Motion passes.**

114 **Mr. Samsel voted no to deny.**

115
116 **All but Vice Chair Samsel voted to deny and cited the following reasons:**
117 **Ms. Skinner- 1 (the variance would be contrary to the public interest), 2 (the spirit of the**
118 **ordinance is not observed) and 3 (substantial justice has not been done)**
119 **Mr. Shea- 1 (the variance would be contrary to the public interest) and 2 (the spirit of the**
120 **ordinance is not observed)**
121 **Mr. Scholz- 1 (the variance would be contrary to the public interest, 2 (the spirit of the**
122 **ordinance is not observed), and 3 (substantial justice has not been done)**
123 **Ms. Gogumalla- 1 (the variance would be contrary to the public interest, 2 (the spirit of the**
124 **ordinance is not observed), 4 (the values of the surrounding properties would be**
125 **diminished), and 5 (literal enforcement of the provisions of the ordinance would result not**
126 **result in unnecessary hardship)**

127
128
129 **The Chairman advised of the 30-day appeal period.**

130
131 **Mr. Clark resumed his seat for Case #01-2019.**

132
133 **Case #01-2019: Parcel 16-R-185C**
134 **Applicant – Thomas Bloch (Morgan Exteriors)**
135 **Owner – Anita L. and John P. Carew**
136 **Location – 10 Third Street**

137 **Zoning District – Residential A; Cobbetts Pond & Canobie Lake Watershed Prot. District(s)**

138

139 Variance relief is requested to allow construction of a screen room with plastic windows and
140 open deck addition to a seasonal residence on a pre-existing non-conforming lot, with two
141 frontages; (First Street and Third Street) from the following Section(s) **406.2, 702 & Appendix**
142 **A-1; Sec. 406.2** to allow an expansion in the volume of the house from 1057 sf to 1225 sf where
143 the ordinance does not allow an addition to result in further non-conformance, **702 & Appendix**
144 **A-1** to allow a lot size of 18,878 sf where a minimum land area of 50,000 sf is required and to
145 allow 79.41’ of roadside frontage, where 175’ is required, to allow the proposed screen room a
146 First Street front setback of 29.3’ where the existing house has 41.2’ and 50’ is required and to
147 allow the existing house a side yard setback of 11.1’ where the proposed screen room has 19.1’
148 and 30’ is required in the Residential-A District and Cobbetts Pond & Canobie Lake Watershed
149 Protection District.

150

151 Ms. Skinner read the case into the record along with the abutters’ list. There is a letter allowing
152 Mr. Bloch to represent the applicant for the case.

153

154 Chairman Scholz reviewed the Zoning Board process for the audience.

155

156 Mr. Thomas Bloch addressed the Board and is representing the applicant. Mr. Bloch stated that
157 he would install a seasonal space for the applicant. Mr. Bloch reviewed the 5 criteria contained in
158 the public packet. Mr. Bloch stated that many of the homes in the area are pre-existing non-
159 conforming lots. Even after a 4-lot merger, the lot still does not have enough space to build the
160 structure without a variance.

161

162 Ms. Skinner read the corrected abutters’ list into the record.

163

164 Ms. Gogumalla asked if the new deck was facing 1st St; the applicant stated that it is.

165

166 Discussion was open up to the public.

167

168 Mr. Dennis Root addressed the Board. Mr. Root stated that the whole neighbourhood does have
169 similar space issues and he would like to speak in favour of the request.

170

171 Mr. Bloch addressed the Board once again after discussion to the public was closed.

172

173 Ms. Skinner read the letter from the Conservation Commission who has no issues with the
174 application at this time.

175

176 **A motion was made by Vice Chair Samsel to go into Deliberative Session. Seconded by Ms.**
177 **Skinner. Vote 5-0. Motion passes.**

178

179 Ms. Gogumalla stated that she does believe the application meets the five criteria and that the
180 five points are met. Chairman Scholz reviewed the five criteria.

181

182 **A motion was made by Vice Chair Samsel for Case #01-2019: Parcel 16-R-185C to grant**
183 **variance relief as requested to allow construction of a screen room with plastic windows**
184 **and open deck addition to a seasonal residence on a pre-existing non-conforming lot, with**
185 **two frontages; (First Street and Third Street) from the following Section(s) 406.2, 702 &**
186 **Appendix A-1; Sec. 406.2 to allow an expansion in the volume of the house from 1057 sf to**
187 **1225 sf where the ordinance does not allow an addition to result in further non-**
188 **conformance, 702 & Appendix A-1 to allow a lot size of 18,878 sf where a minimum land**
189 **area of 50,000 sf is required and to allow 79.41' of roadside frontage, where 175' is**
190 **required, to allow the proposed screen room a First Street front setback of 29.3' where the**
191 **existing house has 41.2' and 50' is required and to allow the existing house a side yard**
192 **setback of 11.1' where the proposed screen room has 19.1' and 30' is required in the**
193 **Residential-A District and Cobbetts Pond & Canobie Lake Watershed Protection District**
194 **per plan submitted and signed and dated by the Chairman.**

195
196 **Vote 5-0.**
197 **Motion passes.**

198
199 **There is a 30-day appeal period.**

200
201 **Case #03-2019: Parcel 21-K-40**
202 **Applicant – Jeffrey Moulton (Moulton Engineering, PLLC)**
203 **Owner – Lori & Steven Theriault**
204 **Location – 42 Turtle Rock Road**
205 **Zoning District – Residential A; Cobbetts Pond & Canobie Lake Watershed Prot. District(s)**

206
207 Variance relief is requested to allow construction of a replacement home within the existing
208 house footprint on the existing foundation and replace the existing 30'x20' garage and relocate
209 and construct a 26'x24' garage on a pre-existing non-conforming lot, with two frontages;
210 (Cobbetts Pond and Turtle Rock Rd.) from the following **Section(s) 405.2, 406.2, 702 &**
211 **Appendix A-1; Section(s) 405.2** to allow an increase in volume in the pre-existing non-
212 conforming structure. **Sec. 406.2** to allow an expansion in the volume of the house from 960 sf to
213 2,604 sf where the ordinance does not allow an addition to result in further non-
214 conformance. **Sec. 702 & Appendix A-1** to allow a lot size of 9,757 sf where a minimum land
215 area of 50,000 sf is required and to allow 50' of roadside frontage, where 175' is required. To
216 allow the house/deck a shoreland setback of 44' where 50' is required, to allow a south side yard
217 setback of 11.3' and 30' is required for the existing house footprint. To allow a 46.5' setback
218 from Turtle Rock Rd where 50' is required and to allow the north side yard setback of 3.5' where
219 30' is required for the new garage in the Residential-A District and Cobbetts Pond & Canobie
220 Lake Watershed Protection District.

221
222 Ms. Skinner read the case, the 2 letters of authorization, and the abutters' list into the record.

223
224 Attorney John Cronin addressed the Board. Attorney Cronin stated that this property was before
225 the Board last year. Attorney Cronin stated that there were concerns about the mass of the
226 building at that time. *Morgenstern vs. Rye* was cited by Attorney Cronin. The applicant has
227 finalized the DES approvals and made changes to the plan than the one the Board saw last year.

228 10,000 square foot lot. Attorney Cronin stated that there is a structure that has three bedrooms
229 and a garage. The abutter's home is 7.5 feet from the lot line. Attorney Cronin stated that the
230 garage would be brought back 3.5 feet and the setback is 22.3 feet which is double the distance
231 than first proposed. Attorney Cronin stated that the ordinance requires a minimum of 1,000
232 square feet. There is also a 20% building coverage area; this meet the 20% requirement. Attorney
233 Cronin that this plan improves the living area. Attorney Cronin stated that their goal is to retire
234 on this site. Attorney Cronin spoke to the merits of an owner/inhabitant of the structure. Attorney
235 Cronin stated that the DES is happy with both the layout and the septic system.

236
237 Attorney Cronin read the last paragraph from a letter by Eric Smith who is an appraiser and
238 spoke to the idea that building this home would not diminish the property of surrounding homes.
239 There was a second letter from the Parthum family that was submitted as Exhibit A. Attorney
240 Cronin stated that there are special conditions to the width of the property. Attorney Cronin
241 stated that the applicant is interested in investing of the community.

242
243 Attorney Cronin reviewed the changes to the plan: the mass of the building has been broken up,
244 the setback has been changed from 9 feet to 22 feet, architectural detail has been added, DES
245 permits have been completed and are in place, the setback from the front has been improved, and
246 the side setback has also been moved.

247
248 **A motion was made by Vice Chair Samsel that this does past the test and it is substantial**
249 **different than the previous application. Seconded by Mr. Clark.**

250
251 The home was being built on the current and existing foundation. The distance to the lot line, 13
252 feet to the back corner and the back edge of the deck is 11.3.

253
254 The Board discussed the changes to the plan from the previous plan. Mr. Samsel asked what the
255 distance between the house and the garage is.

256
257 Attorney Cronin invited Mr. Moulton up to address the Board. Mr. Moulton stated that it was 15
258 feet between the house and the garage.

259
260 Vice Chair Samsel stated that the approved septic would have needed to be submitted regardless.

261
262 **Vote 5-0. Motion passes.**

263
264 Attorney Cronin read the 5 criteria contained in the public packet.

265
266 Chairman Scholz stated that he had some questions for the engineer, Mr. Moulton. Chairman
267 Scholz asked about the additional plantings based on the Shoreland Protection Area. Sheet 2 of
268 the drawing does have the ground cover that the applicant will add. Chairman Scholz asked
269 about the drywells; there are 2 down by the deck. Mr. Moulton stated that they are sized for the
270 house and the deck. Currently, water goes right off the roof onto the deck. Vice Chair Samsel
271 asked about the building coverage; it is 19%. The impervious coverage is 46%. The square
272 footage of the patio is 15 feet by 15 feet according to Mr. Moulton.

273
274 Ms. Skinner read the letter from the Conservation Commission. The Conservation mentioned
275 native plants as part of the plan as well as the dry wells.
276
277 The Chairman opened public comment.
278 Mr. Joe Maynard addressed the Board. Mr. Maynard would like to point out that the drainage
279 improvement is more than DES has required of them. Additionally, it is a big deal to be able to
280 permit a 3-bedroom home on a pond. Mr. Maynard stated that his first concern that it was a long
281 wall of wood and the new design has a cape style which is shorter than the previous house. Mr.
282 Maynard stated that these are important things for the Board to look at.
283
284 Mr. Phil Delaney addressed the Board. Mr. Delaney stated that he does believe this is going to
285 increase the property value. The movement of the garage will also improve his own view and he
286 is in favour of the request.
287
288 Ms. Lori Theriault addressed the Board. Ms. Theriault stated that her goal is to retire on this
289 property. Ms. Theriault stated that she is looking to have a place for her grandchildren to grow up
290 and to consolidate into one home as they cannot currently live there full time.
291
292 Mr. Rick Beamon addressed the Board. Mr. Beamon read from a prepared statement and stated
293 that the wish list of his own renovation process was changed to comply with the lot more closely.
294 The proposed house is going to be 93 feet long when complete. Mr. Beamon stated that this
295 proposed house is actually larger than the denied variance brought before the board previously.
296 Mr. Beamon stated that the length of the lot is too much for the house. Mr. Beamon stated that
297 finishing the current house would be 2,800 square feet with a finished walk out basement. Mr.
298 Beamon stated that side setbacks are in the zoning ordinance for safety reasons. Mr. Beamon
299 stated that many of the Turtle Rock houses would not be able to be built today due to the current
300 zoning restrictions. Mr. Beamon reviewed the 5 criteria and his opinion and interpretation of
301 each of these. Mr. Beamon stated that the only benefit this will have to the neighbourhood is to
302 improve 2 aging structures on the lot. Mr. Beamon stated that there does not appear to be any
303 existing hardship and there are many lots in the area that are similarly constrained. Mr. Beamon
304 stated that this will impact his and his wife's rights and the use of their property. Mr. Beamon
305 stated that he does believe that this may impact his privacy on his property. Chairman Scholtz
306 entered the letter read as Exhibit B.
307
308 Ms. Gogumalla asked about the size of the home as the portion of the land. Mr. Beamon stated
309 that he was measuring the length of the lot and the length of the house. Mr. Beamon stated the
310 length of the structure is longer than the other houses.
311
312 Mr. Shea asked if Mr. Beamon resided in Lexington or Windham. Mr. Shea asked about the
313 changes on the property; Mr. Beamon's property was altered by previous owners who were his
314 relatives as the property has been in his family for many years.
315
316 Mr. Moulton addressed the Board for rebuttal. Mr. Moulton stated that the applicant tried very
317 hard to comply with the variance requests including the septic, the well and the impact on the

318 property in terms of how a car approached the structure to get into the garage.

319
320 Mr. Clark asked about the spiral staircase and Vice Chair Samsel asked about the layout over the
321 garage. Mr. Moulton clarified the lay out of the property.

322
323 Attorney Cronin addressed the Board once again to clarify the variances before the Board are on
324 this lot, not on the next lot.

325
326 Mr. Beamon stated that the numbers where he got his percentages were from the town assessor's
327 office. Mr. Beamon stated that they did not extend the footprint of the house but the garage is
328 attached to the footprint of the house. Mr. Beamon stated that the current set up does not bother
329 them but the application almost appears as if it is a house behind a house and would impact their
330 privacy.

331
332 Mr. Joe Maynard addressed the Board. Mr. Maynard stated that the existing garage does
333 essentially sit on the property line. Hence, a new garage would need to be moved. The applicant
334 was trying to keep the garage as far away from Mr. Beamon's property as possible. Mr. Maynard
335 stated that the applicant is trying to keep their construction as far away from Mr. Beamon's
336 property while trying to address the needs of the space.

337
338 **A motion was made by Vice Chair Samsel to go into Deliberative Session. Seconded by Ms.**
339 **Skinner. Vote 5-0. Motion passes.**

340
341 Mr. Samsel stated that the breezeway does expand the footprint and elongate the house. There are
342 improvements to the lot as well such as the septic, yet, he is not in favour of the request due to
343 the spirit of the ordinance and the hardship. Mr. Samsel is not in favour as it does not meet points
344 2 and 5.

345
346 Ms. Gogumalla stated the house seems to be quite a large unit and she does have the same issues
347 along with 2 and 5 as well as 1.

348
349 Chairman Scholz stated that care has been taken by the applicant to comply with as many
350 requests as possible. Chairman Scholz spoke to the privacy impact and there is also a very long
351 structure with a breezeway; he does not think it meets the first two criteria. Chairman Scholz
352 stated that there are setback issues all around and he does not believe this application meets it.
353 Chairman Scholz spoke to the space over the garage and it does not seem to be a structure that
354 meets the five criteria.

355
356 Ms. Gogumalla stated that the improvements to the structure are significant and the applicant is
357 to be commended.

358
359 **A motion was made by Vice Chair Samsel for Case #03-2019: Parcel 21-K-40 to deny**
360 **variance relief as requested to allow construction of a replacement home within the existing**
361 **house footprint on the existing foundation and replace the existing 30'x20'garage and**
362 **relocate and construct a 26'x24'garage on a pre-existing non-conforming lot, with two**

363 frontages; (Cobbetts Pond and Turtle Rock Rd.) from the following Section(s) 405.2, 406.2,
364 702 & Appendix A-1; Section(s) 405.2 to allow an increase in volume in the pre-existing
365 non-conforming structure. Sec. 406.2 to allow an expansion in the volume of the house from
366 960 sf to 2,604 sf where the ordinance does not allow an addition to result in further non-
367 conformance. Sec. 702 & Appendix A-1 to allow a lot size of 9,757 sf where a minimum
368 land area of 50,000 sf is required and to allow 50' of roadside frontage, where 175' is
369 required. To allow the house/deck a shoreland setback of 44' where 50' is required, to
370 allow a south side yard setback of 11.3' and 30' is required for the existing house footprint.
371 To allow a 46.5' setback from Turtle Rock Rd where 50' is required and to allow the north
372 side yard setback of 3.5' where 30' is required for the new garage in the Residential-A
373 District and Cobbetts Pond & Canobie Lake Watershed Protection District per plan
374 submitted and signed and dated by the Chairman. Seconded by Ms. Gogumalla.

375
376 **Vote 5-0.**
377 **Motion passes.**

378
379 **The reasons for denial was because one or more Board member(s) believed the following**
380 **criteria were not proven: The variance will not be contrary to the public interest, the spirit**
381 **of the ordinance is observed, substantial justice is done, and literal enforcement of the**
382 **provisions of the ordinance would result in an unnecessary hardship.**

383
384 **The Chairman advised of the 30-day appeal period.**

385
386 **Case #04-2019: Parcel 16-D-201 (Withdrawal Requested by Applicant on March 14, 2019)**
387 **Applicant – Edward N. Herbert Associates, Inc.**
388 **Owner – Indian Rock Development, LLC**
389 **Location – 10 Enterprise Drive**
390 **Zoning District – Residential A District, Rural District, Wetland & Watershed Protection**
391 **District and Cobbetts Pond & Canobie Lake Watershed Protection District.**

392
393 Variance relief is requested to develop a five-lot subdivision for new single-family dwellings
394 from the following **Section(s) 702 & Appendix A-1**

395
396 The Board does not have a copy of the request to withdraw the application.

397
398 Ms. Skinner read the case into the record and the request to withdraw the application. Ms.
399 Skinner read a letter from the applicant which allowed Edward and Herbert and Associates to
400 represent them.

401
402 Chairman Scholz stated that staff is not allowed to have something pulled from the agenda.
403 Chairman Scholz invited anyone to speak about the request.

404
405 **A motion was made by Ms. Gogumalla for Case #04-2019 to accept the withdrawal.**
406 **Seconded by Vice Chair Samsel.**

407
408 **Vote 5-0.**

409 **Motion passes.**

410

411 **Public Meeting**

412

413 **Meeting Minutes-Review and Approve** –January 22, 2019 and February 26, 2019

414

415 Approval of the minutes will be continued to the next meeting.

416

417 **Legislative/Staff Updates**

418

419 There is a training for Board members on June 8th; it is an all-day training and staff can get you
420 registered for the day.

421

422 Confidential communication- Chairman Scholz stated that he does not believe there is a reason to
423 keep this communication confidential regarding 28 Emerson Road.

424

425 **A motion was made by Vice Chair Samsel to make the letter regarding 28 Emerson Road**
426 **public. Seconded by Ms. Skinner. Vote 5-0. Motion passes.**

427

428 The Board discussed an increasing volume of cases and the potential need for additional
429 meetings. The Board may need to meet more regularly in order to make sure these cases are
430 heard in a timely manner. The Board discussed talking with Attorney Campbell. The Board
431 discussed continuing cases does not often end up well. There are too many risks with continuing.
432 The risk is having someone reach out to a Board member, having to rehash certain points. The
433 Board also does not want to make decisions late at night.

434 Mr. Arsenault asked about the procedure regarding minutes. The procedure is that the draft
435 minutes are distributed to the Board and the edits are done in public after the meeting.

436 Mr. Samsel asked Mr. Arsenault to make copies of the case entitled the Board of Windham vs.
437 the Zoning Board of Adjustment. Mr. Samsel encouraged them to read the content.

438 The Board and Mr. Arsenault discussed binders, the official handbook for the Board, copies of
439 the new ordinance, and the recently updated applications which will all be available to the Board
440 in the binders.

441 Mr. Shea wished to welcome Mr. Clark to the Board and thank Mr. Partington for his service.

442 **A motion was made by Vice Chair Samsel to adjourn at 9:55pm. Seconded by Ms. Skinner.**
443 **Vote 5-0. Motion passes.**

444 Respectfully submitted by Anitra Brodeur