



ZONING BOARD OF ADJUSTMENT

Approved Minutes

May 23, 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 Michelle Stith- present**
- Vice Chair Betty Dunn- present**
- Neelima Gogumalla, regular member- present**
- Mark Brockmeier, regular member- present**
- Pam Skinner, regular member- excused**
- Mike Scholz, alternate member- present**
- Galen Stearns, alternate member- present**

Staff:

- Julie Suech- Planning Technician**
- Anitra Lincicum- minute taker (present via Zoom)**

Mr. Stearns was seated as the alternate for Case #20-2023.

[Case #20-2023](#) Parcel 16-Q-205A
Applicant – Benchmark LLC
Owner – Rhonda Michelson Solomon
Location – 5 Viau Road
Zoning District – Residential District A/ WPOD/ WWPD

On May 19, 2023, the Applicant submitted a request to continue the case to June 13, 2023, due to an error in their requested relief, which the Board shall consider.

The applicant is requesting a variance from **Sections 200, 405.2, 405.3, 405.5, 601.3, 601.4.6, 601.4.8, 601.4.8.4.1, 616.8.1, and 702/Appendix A-1** to allow the replacement of a year-round single-family dwelling with a pre-existing, non-conforming lot, and to rebuild/raze an accessory bunk house.

Zoning Ordinance	Proposal	Requirements
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405.2	Main House: Expansion in area/volume by 832 sf and 16,376 cf. Bunkhouse: Expansion in area/volume by 200 sf and 1,600 cf.	No increase in area and/or volume permitted.
405.3	Main House: The proposed expansion will increase the nonconformity of the structure. (15' side yard setback)	No increase in nonconformity permitted.
405.5 / 702 / Appendix A-1	Main House: Side yard setbacks: 15 feet Pond setback: 25 feet Bunkhouse: Pond setback: 15 feet	A replacement of a non-conforming structure shall whenever possible be made to conform to the required setback requirements. Side yard: 30 feet Pond: 50 feet
601.3	Expansion of structures (main house and bunkhouse) within the WWPD	No permanent structure shall be erected in the WWPD, which has a 200 ft. buffer in this case, per 601.4.5.
601.4.6	To allow existing septic system to remain within the WWPD	Any waste disposal system shall not be located closer than 100 ft to any wetland contiguous to a WWPD or within a WWPD
601.4.8	To allow improvements and development to continue without the requirement of applying to the Planning Board	Special Permit required from the Planning Board.
601.4.8.4.1	To allow WWPD markers to be installed at the limits of the existing yard area.	WWPD markers shall be placed along the WWPD boundary.
616.8.1	To allow existing and proposed improvements to be within the 100 ft buffer to a tributary to the pond.	A 100-foot-wide buffer zone shall be maintained along the edge of any tributary stream discharging into the protected water body along the edge of any wetlands associated with those tributary streams.
Section 200	The lot is on a private road.	A measured parcel of land having fixed boundaries, with the required frontage on a town approved road and conforming to Town Zoning and/or Subdivision Control Regulations.

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40 Ms. Gogumalla read the case into the record. There was an abutters list contained in the public packet.

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42 Mr. Joseph Maynard from Benchmark LLC addressed the Board. There is a structure on the property currently; it
43 is a barn. There is a septic system on the property as well. Mr. Maynard stated that there is a wetland that traverses
44 through the First St. Marina and explained the surrounding wetlands in relation to the marina and the property.

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46 Mr. Maynard then reviewed in detail the setbacks on the property regarding the waterways and setbacks in the
47 area. They are proposing to put the house in this location because it is already a disturbed area and they are trying
48 to keep it as undisturbed as possible. Mr. Maynard discussed keeping the house where it is on the lot as it has good
49 views to the pond and there is less clearing that needs to be done.

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51 There is a circular driveway in the area and there is an established yard area. The main house is staying in
52 approximately the same area. Mr. Maynard stated that the septic system is an established system that has only been
53 used seasonally and it does meet the setbacks as well as the number of bedrooms on the property. Also, the well
54 and septic system are about 200 feet apart and the lot is about 4 acres in size.

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Mr. Maynard stated that the bulk of what is being proposed is in the same small pocket of the lot. Mr. Maynard reviewed where the septic and wells were located on the adjoining properties for the Board as well.

Mr. Maynard explained that there is an old bunkhouse on the property. It does not have any plumbing or electricity. There is water and sewage to the garage and there is a bathroom in the garage along with an office. Mr. Maynard stated that it would be possible to make the stipulation that the structure could not be used as living space. Mr. Maynard reviewed why he thought it was suitable to allow the bunkhouse to be rebuilt in the same location. Mr. Maynard stated that the bunkhouse as growing by approximately 200 square feet.

Mr. Maynard explained that the new house is over the existing well. Mr. Maynard stated that another well will be drilled if the testing of the water does not come back of high quality. Mr. Maynard explained where the new well would be drilled right off the driveway so only 2 trees would need to be removed for the project. The new proposed garage is a 2-car garage.

Vice Chair Dunn asked if it might be helpful to go on a site walk of the property. Mr. Maynard stated that he would be using drip line infiltration on the structure; this is a gable end structure.

The garage is 30-40 years old; the bunkhouse and the house are older than that, perhaps 1950's according to Mr. Maynard. The septic system was redesigned in the 1990's by Mr. Maynard. Mr. Maynard reviewed the 5 criteria contained in the public packet.

Mr. Scholz stated that he was concerned about the bunkhouse but he understands the explanation. He understands that the garage is not used as living space and the bunkhouse is used mostly for storage and there is no intention to use this as anything different. Mr. Maynard stated that the bunkhouse is used more as a shed but the applicant did grow up on the property.

Mr. Maynard stated that the bunkhouse will be used for storage and not for living space.

The Board entered deliberative session.

Ms. Gogumalla does not think the requests are contrary to the public interest. The structure is not going to be any closer to the water only the alignment will be changed. Ms. Gogumalla stated that the applicants are keeping the same well and the same septic. It does meet the spirit of the ordinance because they are trying to make improvements. Ms. Gogumalla does see the hardship. Ms. Gogumalla does see that they are trying to be respectful of the restrictions on the lot and she does not have any issues with it. Ms. Gogumalla does recognize the concerns around living space in the garage and the bunkhouse but these are pre-existing structures with no changes and do not affect the variances that are requested.

A motion was made by Ms. Gogumalla for Case #20-2023 to grant the variance relief as requested from Sections 200, 405.2, 405.3, 405.5, 601.3, 601.4.6, 601.4.8, 601.4.8.4.1, 616.8.1, and 702/Appendix A-1 to allow the replacement of a year-round single-family dwelling with a pre-existing, non-conforming lot, and to rebuild/raze an accessory bunk house and that the existing accessory structure will not have any living space in both the bunkhouse and the garage. Seconded by Mr. Brockmeier.

Vote 5-0.

Motion passes.

The Chair advised of the 30-day appeal period.

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Case #18-2023 Parcel 22-L-81 & 22-L-83
Applicant – Benchmark LLC
Owner – Thomas J Jr & Lynn Murray
Location – 27-29 W. Shore Rd
Zoning District – Residential District A/ WPOD

The applicant is requesting a variance from **Sections 406.2, 702 / Appendix A-1, 703, 616.6.4.2** to allow construction of an addition to the existing dwelling on 22-L-81 (29 W. Shore Rd), which is a pre-existing non-conforming lot with two frontages. The new plan incorporates 22-L-83 (27 W. Shore Rd), which will be voluntarily merged with 29 W. Shore Rd upon receiving all local and state approvals. Upon the merger, the owner would want to expand the single-family dwelling on 29 W. Shore Rd to allow the expansion in the area and/or volume of the house from 1,800 sf to 4,065 sf in area and from 32,400 cu/ft to 82,078 cu/ft in volume.

To allow the lot size of 24,820 sf where a minimum lot size of 50,000 sf is required with 130 ft of frontage, where 175 ft is required. To allow the new addition of the single-family dwelling to have a front yard setback from W. Shore Rd of approximately 16 ft from the ROW where 50 ft is required. The existing SFD has an 8 ft easterly side yard setback, where 30 ft is required, and a Canobie Lake shoreline setback of 32 ft, where 50 ft is required. The proposed swimming pool would also be placed 35 ft from Canobie Lake, where 50 ft is required and within the front setback. Under the Windham Zoning Ordinance, a pool or Accessory Building may not be in the front yard. The proposed addition will have a 31 ft setback from Canobie Lake, where 50 ft is required, a garage with a front setback of 20 ft, and a subsurface utility vault with a 16 ft front yard setback, both of which would require a 50 ft ROW setback. The proposal would result in a 46% impervious lot coverage, where a maximum of 30% is permitted in the Residential District A and Cobbetts Pond and Canobie Lake Watershed Protection District. A previous variance was granted (Case # 34-2019) for the above proposal, which is now expired.

Attorney David LeFevre addressed the Board. Attorney LeFevre is stated that the applicant is asking for Vice Chair Dunn and Mr. Stearns recuse themselves from the case. A complaint has been filed by the applicant at the state level against these 2 members. Attorney LeFevre cited RSA 500 A 12. Mr. Scholz asked if it was regarding this case. Attorney LeFevre stated that the complaint was about the elections, not this case. Attorney LeFevre stated that even if the members thought they could be indifferent, he would suggest that they recuse themselves.

Mr. Scholz and Attorney LeFevre cited both (f) and II of RSA 500 A 12; this would be for both Case #12-2023 and #18-2023. Vice Chair Dunn stated that it should not disqualify her from listening to the case. Mr. Scholz suggested that the Board members should consult counsel regarding this issue. Attorney LeFevre stated that the applicant would likely want to have the case heard by a full Board instead of 4 members as would be available if the two members were to recuse themselves this evening.

A motion was made by Ms. Gogumalla for Case #12-2023 and Case #18-2023 to continue these cases to June 13, 2023. Seconded by Mr. Brockmeier. Vote 3-0-1. Vice Chair Dunn abstained.

Case # 12-2023 Parcel 22-L-81 & 22-L-83
Applicant – Benchmark, LLC
Owner – Thomas J Jr & Lynn Murray
Location – 27-29 West Shore Road
Zoning District – Residential District A / WPOD

**Previously heard on April 11, 2023*

The applicant is requesting a variance from **Section(s) 406.2, 702/ Appendix A-1, and 703** to construct an addition to the existing single-family dwelling (22-L-81), on a pre-existing, non-conforming lot. The addition to

05_23_2023, Zoning Board of Adjustment, APPROVED

153 the SFD would expand the area from 2,462 sf to 3,052 sf and the area from 44,316 cu/ft to 50,300 cu/ft in volume
154 and be 30 feet from the front lot line and 33 feet from the pond, where such addition increases the non-conforming
155 nature of the property. To construct an inground pool 22 ft from the side lot line, where 30 ft is required; 33 ft from
156 the pond where 50 ft is required; and 28 ft from the front lot line, where such are prohibited within the front yard.
157 To construct a greenhouse 10 ft from the front lot line, where such are prohibited within the front yard. To
158 construct a shed 18 ft from the front lot line, where such are prohibited within the front yard; and 15 ft from the
159 side property line, where 30 ft is required.

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161 Mr. Stearns was seated for Case #19-2023.

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163 Case #19-2023 Parcel 21-Z-264

164 Applicant – Benchmark LLC

165 Owner – Steven J. DeLuca

166 Location – 6 Horne Road

167 Zoning District – Residential District A/ WPOD

168 The applicant is requesting a variance from **Sections 406.2, 702/Appendix A-1** to allow the construction of a new
169 addition and deck to a pre-existing, non-conforming, year-round, single-family dwelling, on a pre-existing, non-
170 conforming lot. To allow the expansion in the area and/or volume of the house from approximately 3,485 sf to
171 4,180 sf in area, and 51,152 cu/ft to 59, 912 cu/ft in volume, which is prohibited under the Windham Zoning
172 Ordinance (WZO).

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174 To allow approximately 400 sf of frontage on a private road, where 175 ft of frontage is required on a Class V
175 Road, and to allow the addition to be 24 ft from the reference line of Cobbetts Pond. Where, under WZO a
176 lakeside and rear yard setback of 50 ft is required. The proposed addition will result in less than 30% impervious
177 area coverage for the lot, which is permitted under the WZO.

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179 Mr. Joseph Maynard from Benchmark LLC addressed the Board. There are gutters and drip line trenching that will
180 be installed as part of the project. Horne Road is a private road according to Mr. Maynard. In 2019, there was 350
181 feet listed as frontage but now it was listed as 422 feet. Mr. Scholz asked about the discrepancy. Mr. Maynard
182 explained that discrepancy and stated that Horne Road is a private road. Mr. Maynard stated that this addition will
183 allow for a staircase that is allowed. Mr. Maynard stated that the total lot is 2.2 acres and about 2 acres are in the
184 watershed. Mr. Maynard stated that the applicant does not have any plans to redo any part of the lot. The pavers are
185 not moving and the Conservation Commission asked if the applicant might consider making the pavers porous
186 pavers. Mr. Maynard stated that the applicant is not interested in doing that at this time.

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188 Mr. Maynard stated that all of the improvements on the property have been made to a structure that was
189 constructed in the 1930's or 1940's. Mr. Maynard stated that there is not a larger drainage area on a portion of the
190 lot.

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192 Mr. Maynard stated he would be waiving the reading of the 5 criteria.

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194 . Chairperson Stith invited public comment. There was none.

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196 Mr. Scholz asked if there was anywhere else they could put the kitchen. There is not according to Mr. Maynard
197 because of the plumbing and the septic and the well. Mr. Maynard showed the plan for how the applicant would be
198 adding on to the second floor. Mr. Maynard reviewed the floor plan as presented.

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200 Vice Chair Dunn stated she believes it meets the 5 criteria considering to the size of the lot. Vice Chair Dunn
201 stated that waiving the terms of ordinance would not be contrary to the public interest. Vice Chair Dunn stated that
202 the shape of the lot is unusual but it does meet the criteria.

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A motion was made by Vice Chair Dunn for Case #19-2023 to grant the variance as requested from Sections 406.2, 702/Appendix A-1 and Section 200 to allow the construction of a new addition and deck to a pre-existing, non-conforming, year-round, single-family dwelling, on a pre-existing, non-conforming lot. To allow the expansion in the area and/or volume of the house from approximately 3,485 sf to 4,180 sf in area, and 51,152 cu/ft to 59, 912 cu/ft in volume, which is prohibited under the Windham Zoning Ordinance (WZO) and to allow approximately 400 sf of frontage on a private road, where 175 ft of frontage is required on a Class V Road, and to allow the addition to be 24 ft from the reference line of Cobbetts Pond. Where, under WZO a lakeside and rear yard setback of 50 ft is required. The proposed addition will result in less than 30% impervious area coverage for the lot, which is permitted under the WZO and conditioned with the delineation on the post development plan. The plan date is March 29, 2023 and submitted by the applicant. Seconded by Ms. Gogumalla.

Vote 5-0.
Motion passes.
The Chair advised of the 30- day appeal period.

Mr. Scholz was seated for Case #21-2023.
[Case #21-2023](#) Parcel 11-A-1006
Applicant – Ernest & Krystie Dascoli
Owner – Same
Location – 14 Greenway Road
Zoning District – Rural District

The applicant is requesting a variance from **Sections 702/Appendix A-1** to allow the construction of a detached 34x24 sq ft garage to be 0 ft away from the side yard lot line, where 30 feet is required.

Ms. Gogumalla read the case into the record. The Board waived the reading of the list of abutters.

Mr. Ernie Dascoli, the applicant, addressed the Board. Mr. Dascoli stated that they are trying to add space for an office and for additional vehicles and for that area to be separate from the house.

Mr. Dascoli stated that moving this garage was also an option.

Vice Chair Dunn explained that an applicant presents the information and they must show that they can meet the 5 criteria as presented by the applicant. Vice Chair Dunn stated that they have a plan presented to them and then they act on the application. After discussion, the Board advised to have a professional look at it.

The Board advised to have the applicant withdraw the application and come back and look at it. Mr. Scholz stated that the applicant may want to talk to the neighbors to see the best location of the proposed garage. Mr. Dascoli has not had a survey of his property complete.

After discussion, Mr. Dascoli said he will withdraw his application.

A motion was made by Mr. Scholz for Case #21-2023 to approve the withdrawal of the application.
Seconded by Vice Chair Dunn.

Vote 5-0.
Motion passes.

253 Attorney Rob Ancil addressed the Board and stated that there are many locations that a garage can be located on
254 the property. Attorney Ancil stated that the Zoning Board of adjustment is here when you have unique aspects of
255 the property.

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257 Mr. Scholz was seated for Case #22-2023.

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259 Case #22-2023 Parcel 16-Q-186J

260 **Applicant – Ana Fultz-Desouza**

261 **Owner – Richard Desouza & Ana Fultz-Desouza**

262 **Location – 4 First Street**

263 **Zoning District – Residential District A/ WPOD**

264 The applicant is requesting a variance from **Sections 702/Appendix A-1** to allow the construction of a 15 x 16 sq
265 ft deck in the back of the cottage, which will be 15 ft from the northerly lot line, and 7 ft from the southerly lot
266 line, where 30 feet is required.

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268 Ms. Gogumalla read the case into the record. The abutters list was in the public packet.

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270 Ms. Ana Fultz-Desouza, the applicant, addressed the Board. The house is 20 feet wide and the porch/deck will
271 only be 16 feet wide according to the applicant. The back of the house is facing vegetation. Vice Chair Dunn
272 clarified that there are no pillars or a roof on the deck. The applicant said that that was true. Ms. Fultz-Desouza
273 stated that none of the abutting properties would be losing any of their privacy.

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275 Ms. Fultz-Desouza stated that they do have rights to the community beach.

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277 The applicant reviewed the 5 criteria contained in the public packet. They discussed the idea of enjoying the
278 cottage and being able to utilize the deck. The property is not used year-round. The property is listed as seasonal
279 use.

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281 The Board entered deliberative session.

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283 Mr. Scholz stated that the request is not contrary to public interest and meets the first 2 criteria. Mr. Scholz does
284 not think it will diminish property values. The Board discussed that this is a minimal variance.

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286 **A motion was made by Mr. Scholz for Case #22-2023 to grant variance relief as requested from Sections**
287 **702/Appendix A-1 to allow the construction of a 15 x 16 sq ft deck in the back of the cottage, which will be**
288 **15 ft from the northerly lot line, and 7 ft from the southerly lot line, where 30 feet is required per plan set**
289 **and signed and dated by the Chair. Seconded by Vice Chair Dunn.**

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291 **Vote 5-0.**

292 **Motion passes.**

293 **The Chair advised of the 30-day appeal period.**

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295 The Board discussed the draft minutes but did not approve any.

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297 **A motion was made by Ms. Gogumalla to adjourn at 9:20 pm. Seconded by Mr. Stearns. Vote 5-0. Motion**
298 **passes.**

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300 Respectfully submitted by Anitra Lincicum