



ZONING BOARD OF ADJUSTMENT

Approved Minutes

May 24, 2022 – 7:00 @ 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

Mike Scholz, alternate- present via Zoom (was seated for Case #13-2022 only)

Michelle Stith, regular member- excused

Ruth Ellen Post, alternate- excused

Staff:

Alex Mello, Community Development Director

Julie Suech, Planning Technician

Anitra Lincicum, minute taker

Discussion with ZBA Alternate candidates

Chairman Dunn stated that Ms. Nadia Alawa respectfully withdrew herself from being considered as an alternate Zoning Board of Adjustment member.

Case #57-2021 Parcel 18-L-300

Applicant – The Dubai Group

Owner – Angle Wood Pond Realty Trust, Inc.

Location – 55 Range Road (aka 1-3 Sharma Way / Gateway Park)

37 **Zoning District – Professional, Business and Technology, Residential A & WPOD**

38

39 Variance relief is requested from **Section 603.1** to permit 84 two-bedroom residential units arranged in
40 four-unit townhome style buildings in the Residence A District. Also, from **Section 614.2** to permit 16
41 one-bedroom residential units with home occupation possibilities, permitted under **Section 602.1.6** by
42 conditional use permit, arranged in mixed-use buildings that include ground floor commercial space in
43 the Professional Business and Technology District. The project as a whole is proposed to include 100
44 residential units (84 two-bedroom units and 16 one-bedroom units) and 59,700 square feet of commercial
45 space.

46

47 Chairman Dunn stated that Attorney Hollis contacted the town to withdraw this application today. Mr.
48 Karl Dubay also contacted the town to request a withdrawal of the application.

49

50 Vice Chair Shea stated that in fairness to the applicant, one of the times the case was continued was
51 because there was not a full Zoning Board one evening.

52

53 **A motion was made by Vice Chair Shea for Case #57-2021 to accept the withdrawal of the**
54 **application. Seconded by Vice Chair Shea. Vote 3-1. Chairman Dunn is opposed as she does not**
55 **think a withdrawal vote is necessary.**

56

57 Robert Comptois, Ledgewood Road addressed the Board. Mr. Comptois asked if there was any way to
58 communicate this withdrawal to the public prior to the meeting. Chairman Dunn stated that they were
59 notified at 3pm today and there was really no way to communicate that to the public prior to those
60 individuals showing up to the meeting

61

62 **Case # 15-2022 Parcel 11-C-3100**

63 **Applicant – Salvatore Erna**

64 **Owner – Same**

65 **Location – 3 Lancelot Street**

66 **Zoning District – Residential District A**

67

68 Variance Relief is requested from **Section(s) 702, Appendix A-1** construct an attached addition of 75' x
69 34' that includes a new master suite, four (4) stall garage, and fitness room to an existing single-family
70 dwelling. The proposed addition has a twenty-six (26') foot side yard setback and does not meet the 30'
71 side yard setback requirement in the Residential District.

72

73 The applicant asked for a continuance as he was out of the country at this time.

74

75 **A motion was made by Vice Chair Shea to continue Case #15-2022 to June 14th, 2022 at 7pm.**
76 **Seconded by Ms. Gogumalla. Vote 4-0. Motion passes.**

77

78 **Case # 13-2022 Parcel 9-A-825**

79 **Applicant – Benchmark LLC**

80 **Owner – MLC Realty Partnership**

81 **Location – Land off of Kendall Pond Road**

82 **Zoning District – Rural District / WPOD**

83
84 Variance Relief is requested from **Section(s) 601.3, 601.3.8, 601.3.9, 601.4.8.4, 601.4.8.4.1, 702**
85 **Appendix A-1 Footnote 2** to construct a single-family dwelling in an area that is within the one hundred
86 (100') foot setback of the WWPDP where no building shall be located in the WWPDP, and that does not
87 have any road frontage on a Class V Town road. To allow a longer than necessary proposed driveway to
88 be placed the maximum extent from the wetlands. To allow construction of the utility system for the
89 proposed dwelling that is located within the WWPDP. To allow proposed WWPDP signage markers to be
90 placed thirty (30') feet from the front and side of the proposed single-family dwelling.

91
92 Mr. Mike Scholz was seated for Ms. Stith.

93
94 **A motion was made by Vice Chair Shea to allow Mr. Scholz to participate remotely. Seconded by**
95 **Ms. Gogumalla. Vote 4-0. Motion passes.**

96
97 Mr. Joseph Maynard from Benchmark LLC addressed the Board. Mr. Maynard reviewed the site walk
98 attended by the Board last week. Mr. Maynard stated that 60CFFs was the flow rate in the area which
99 would require 2-24-inch culverts. Mr. Maynard explained what could be done in the area to
100 accommodate the trees on the adjoining lot being cut.

101
102 Mr. Maynard stated that this was a little over a 3-acre property. Mr. Maynard stated that he is looking to
103 build one house on a 3-acre parcel of land. Mr. Maynard explained that the state of New Hampshire asks
104 an applicant to calculate different storm events; the design presented is for a 50-year storm event. Mr.
105 Maynard explained that he cannot fix the abutters issues because the water sits stagnant on or near the
106 abutters' property. Mr. Maynard stated that there were many factors that would not allow for the changes
107 necessary to improve the neighbors' situation. Mr. Maynard stated that once the culvert is in, he does not
108 think it will exacerbate the neighbor's situation. Chairman Dunn and Mr. Maynard discussed the best
109 location for the septic system on the site. Mr. Maynard stated that the flow-based calculation is 2-24-inch
110 culverts if the Clark Farm property had not been cut. Chairman Dunn asked how much of the water flow
111 problem was based on the cutting of the abutting property. Mr. Maynard stated that the run off co-
112 efficient was raised from about 60 to 70. Mr. Maynard stated that there was a bigger increase in run off
113 when Shamrock went in then when the abutting property was clear cut.

114
115 Ms. Gogumalla asked about the driveway on the rail trail. Mr. Maynard stated that they met with the Rail
116 Trail Committee and they would put stop signs on the rail trail in order to accommodate that crossing on
117 the proposed driveway.

118
119 Mr. Scholz asked if the culverts would improve on the existing situation. Mr. Maynard stated that he
120 thought it would.

121
122 Ms. Skinner read a letter from the residents of 32 Kendall Pond Road. The residents, Kevin and Lucinda
123 Blanchard, stated that the construction would drastically impact their home and quality of life both
124 during and after construction. Mr. Maynard stated, in response to the letter, that he is not diverting the
125 wetland. Mr. Maynard stated that he does not think any action of his would flood the basement of their
126 property. Mr. Maynard stated that he did hire a wetland consultant and the wetland consultant came back
127 with nothing endangered in the area. There was also a heritage inventory done on the property and that

128 did not come up flagged for anything. Mr. Maynard stated that this did go on the town ballot which
129 allowed for this proposed use to be brought forward as a variance request.

130

131 Chairman Dunn invited public comment at this time.

132

133 Mr. Joe Pulaski, 30 Kendall Pond Road addressed the Board. Mr. Pulaski stated that the driveway would
134 be in what is now his backyard. Mr. Pulaski stated that there are deer and bears in the area that would be
135 impacted by the cutting of the trees on the property. Mr. Pulaski stated that he thought this would lower
136 the property values in the area, including his own property. Mr. Pulaski's main concern is the water in the
137 area and an increase in flooding.

138

139 Ms. Christine Pulaski, 30 Kendall Pond Road addressed the Board. Ms. Pulaski is concerned about kids
140 in the back yard and a new driveway in the area and how that might impact safety.

141

142 Mr. Roger Wheeler, 38 Kendall Pond Road addressed the Board. Mr. Wheeler questioned how the water
143 was going to travel. Chairman Dunn stated that this project is not causing the water flow problem; the
144 water flow problem is pre-existing. Mr. Wheeler stated that there were boards that allowed for 30
145 Kendall Pond Road to be built on and that effected the water on his property. Chairman Dunn stated that
146 while they have sympathy for the problem, they do not always have the ability to solve the problem.

147

148 Mr. Wheeler stated that the situation on his lot is not getting any better.

149

150 Mr. Eric Hoverling, 20 Kendall Pond Road addressed the Board. Mr. Hoverling stated what he does not
151 understand is how cutting down trees will not impact his property and the surrounding properties. Mr.
152 Hoverling stated that he is concerned that the culverts will be dropped lower and he does not believe the
153 culverts will slow the water down. Mr. Hoverling stated that it is in their best interest to not make the
154 water situation any worse. Mr. Hoverling said that in 2001, the town stated at that time that they did not
155 have any interest in maintaining the rail trail. Mr. Hoverling has been maintaining the rail trail with the
156 understanding that it would be turned over to the abutters. Mr. Hoverling stated that neither the town nor
157 the state expressed any interest in maintaining the rail trail.

158

159 Mr. Joe Lannon, Ash Street addressed the Board. Mr. Lannon stated that this plan does have minimal
160 impact and he is in favor of the request. Mr. Lannon stated that Mr. Harvey is adding vegetation to his
161 plan and he has been approached by the current owner of Clark Farm and even more trees could be cut
162 under a different proposal. Mr. Lannon stated that his property value could be affected if all the trees are
163 gone as well as the other side of Shamrock.

164

165 Mr. Wayne Morris, 14 Jordan Road addressed the Board. Mr. Morris is also on the Trails Committee and
166 the Conservation Commission. The Trails Committee has always hoped that the rail trail in the area
167 might extend to North Lowell Road eventually. Mr. Morris explained the overall vision for the greenway.
168 The Trails Committee hopes to extend the greenway project in the area. Mr. Morris does not see the
169 driveway as an issue in the overall project. Mr. Morris does not see it as a safety issue. While Mr. Morris
170 stated that the recommendation of the Conservation Commission would be to not cut the trees, it is a non-
171 binding agreement.

172

173 Ms. Gogumalla stated that she is trying to understand how the proposal on this property might impact the
174 residents and the public.

175
176 Mr. Morris stated that he had not been on the Rail Trail in many years and he was surprised at how well
177 it has held up over the years. Mr. Morris stated that it is a safer scenario once the driveway is installed.
178 Mr. Scholz asked if the rail trail was currently public property; it is currently town property. Mr. Morris
179 stated that the safety issue often put forward that people would be passing the rail trail with the interest of
180 harming the homes in the area has not held up over time.

181
182 Mr. Mello stated that the Rail Trail has been identified as part of the Master Plan and is part of that
183 vision.

184
185 Ms. Christine Pulaski, 30 Kendall Pond addressed the Board once again. Ms. Pulaski asked about where
186 the snow removal would be in the area. Ms. Pulaski stated that the Rail Trail could be made walkable
187 again even if the house was not constructed. Ms. Pulaski stated that she moved here to avoid a lot of
188 construction and this would impact the value of her property, particularly in the backyard.

189
190 Mr. Maynard stated that one home on the property is a reasonable use of the property. Mr. Maynard
191 stated that they would be cutting about 2/3 of an acre total on the property. Mr. Maynard stated that a
192 residence has about 10 trips a day and it is not generating a large amount of traffic. Mr. Maynard does
193 not see it as a safety issue. Mr. Scholz asked about the size of the culvert. Mr. Maynard stated that if the
194 town wanted a culvert installed and the developer did not do it, the town would have to do it. Mr.
195 Maynard stated that the culvert would need to be this size because they could not dig into the wetland in
196 order to install the culvert.

197
198 Chairman Dunn asked about snow removal. Mr. Maynard stated that all their snow was going to flow in
199 the direction of the wetland on the lot. Mr. Maynard explained that they needed to go to the heritage site
200 to see if a wildlife study was necessary. The criteria is if there is any "hit" on the database within a mile
201 of this. There were no flags brought in by the wetland scientist.

202
203 Mr. Mello stated that the WWPD special permit with the Planning Board would be the next step. There
204 are 6 findings that are necessary for the applicant. Next, the applicant needs to go to the state and the
205 drainage is scrutinized by the state after the Board of Selectmen signs off on the application as well.
206 Chairman Dunn asked about if they were to grant the variance this evening, Mr. Maynard's calculations
207 will also be reviewed by the state as well. Mr. Mello continued and said that the state will review and
208 make sure there is no increase in expense to the town and to make sure to preserve ground water quality.
209 Mr. Mello stated that the state would also need to see the calculations and reports.

210
211 Chairman Dunn reviewed what is the jurisdiction of this Board at the time of this application.

212
213 Chairman Dunn stated that the Board has now entered deliberative session without opposition.

214
215 Mr. Scholz stated that this is a tough case because there are a lot of abutters already impacted by flooding
216 in the pre-existing conditions. Mr. Scholz stated that he does think that it will improve the current
217 situation. Mr. Scholz does think this will be an improvement to both this property and the abutters. Mr.
218 Scholz does agree with the culvert crossing as presented. Mr. Scholz does think this will meet the 3rd

219 criteria. Mr. Scholz does not think the abutting properties would be diminished as a result of the house on
220 the property. Mr. Scholz stated that he does see this property as unique and it is landlocked. The town did
221 vote to allow the crossing and the property is encumbered by the WWPD. Mr. Scholz stated that the
222 house is as far back as it will go and the property is the special condition.

223
224 Ms. Gogumalla stated that she does not agree with Mr. Scholz and the WWPD is a constituency, an
225 entity that the town needs to protect. Ms. Gogumalla does not agree that it is in the spirit and intent of the
226 ordinance and the applicant did not ask for a variance for the drainage and should not be a factor in this
227 decision.

228
229 Vice Chair Shea stated that he did not think that the drainage would be diminished but it would also not
230 necessarily be improved. Vice Chair Shea does agree with Mr. Scholz but he does think it will impact the
231 value of the homes in the area. Chairman Dunn does have concerns about the water flow in the area.

232
233 Chairman Dunn understands that the calculations will be reviewed after this step in the process.
234 Chairman Dunn stated that construction can sometimes improve the value of the property over time
235 without a resident being able to see how it might improve. Chairman Dunn stated that the rail trail will be
236 improved. The passage over the rail trail was on the ballot and it has been approved by the voters. Ms.
237 Gogumalla stated that she did not understand that the vote was giving access to a piece of property that
238 had WWPD on the lot. Chairman Scholz sees this as a reasonable use of the property in a residential
239 neighborhood. Chairman Dunn had stated that a variance is necessary for the property since a reasonable
240 use does require a variance at this time. Chairman Scholz stated that the inference of the driveway is that
241 a home would be constructed on the property. Mr. Scholz stated that he does not see that property values
242 would be diminished as this is a reasonable use of the property and the house is set very far back off of
243 the property line on a 3-acre lot. Mr. Scholz stated that rail trail is a huge attraction for some home
244 owners and he does not believe that property values would be diminished.

245
246 Chairman Scholz does believe it meets the 5 criteria based on the engineer and the testimony that has
247 been heard this evening. The Board discussed if it was possible to place the stipulation for the markers
248 being 30 feet rather than 50 feet. The Board discussed that these are already in the variance request.

249
250 **A motion was made by Mr. Scholz for Case #13-2022 to grant variance relief as requested from**
251 **Section(s) 601.3, 601.3.8, 601.3.9, 601.4.8.4, 601.4.8.4.1, 702 Appendix A-1 Footnote 2 to construct a**
252 **single-family dwelling in an area that is within the one hundred (100') foot setback of the WWPD**
253 **where no building shall be located in the WWPD, and that does not have any road frontage on a**
254 **Class V Town road. To allow a longer than necessary proposed driveway to be placed the**
255 **maximum extent from the wetlands. To allow construction of the utility system for the proposed**
256 **dwelling that is located within the WWPD. To allow proposed WWPD signage markers to be**
257 **placed thirty (30') feet from the front and side of the proposed single-family dwelling per plan**
258 **dated April 14, 2022 incorporating all of the testimony provided in this meeting with the plan**
259 **signed and dated by the Chair. Seconded by Ms. Skinner.**

260
261 **Vote 4-1.**
262 **Ms. Gogumalla opposed stating the reasons for denial as: 1 (public interest), 2 (spirit of the**
263 **ordinance) and 4 (property values)**
264 **Motion passes.**

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

266

267

268 Mr. Scholz excused himself at 8:54pm.

269

270 There was a brief recess at 9pm.

271

272

273 **Case #14-2022 Parcel 20-D-2314**

274 **Applicant – Frederick & Erica Noviello**

275 **Owner – Same**

276 **Location – 46 Burnham Road**

277 **Zoning District – Rural District**

278 Variance Relief is requested from: **Section(s) 702, Appendix A-1; and 703** to construct a detached
279 36’x23’ accessory building adjacent to the pool area. The proposed accessory building has a side yard
280 setback of fifteen feet (15’), which does not meet the required thirty-foot (30’) side yard setback in the
281 Rural District.

282

283 Ms. Skinner read the case into the record. The list of abutters was contained in the public packet. The
284 applicants were representing themselves and were told they could continue the case as there was not a
285 full Board present this evening.

286

287 Ms. Erica Noviello addressed the Board. Staff projected the plan onto the screen for the audience to view
288 and the Noviello’s provided a paper copy for the Board as well. The Noviello’s explained that where the
289 pool is is the flattest part of their property and the location of the accessory building would be close to
290 the pool and 15 and 20 feet from the lot line. Ms. Noviello stated that they would install additional
291 shrubbery as well. The Noviello’s stated that the accessory building would go up to the existing patio.
292 Ms. Noviello also mentioned some drainage challenges they have where the land slopes down.

293

294 Chairman Dunn asked what would be constructed on the adjoining property. The Noviello’s showed the
295 tree line that separated their property and the neighbor’s house.

296

297 Mr. Tony Martin, 44 Burnham Road addressed the Board. Mr. Martin stated that he has the same type of
298 water issues that the Noviello’s do regarding lack of drainage in certain areas of his yard. Mr. Martin also
299 mentioned the recent blasting in the area. Mr. Martin stated that the stakes indicate the property lines in
300 the area.

301

302 The Board discussed the blasting in the area and whether or not the abutter had been notified with the
303 variance request.

304

305 Ms. Noviello stated they were homeowners trying to make use of their property by making
306 improvements; it would be a structure that would not likely be seen from street level and would not likely
307 be seen from the potential new home on the abutting property. Ms. Noviello also stated that the proposed
308 location of the structure is flat ground and would be conducive to an accessory structure.

309

310 The picture of the proposed accessory building was labeled as Exhibit A by the Chairman. Chairman
311 Dunn asked the applicant if the accessory structure would be used as living space; it would not.

312
313 The Chairman invited public comment at this time.

314
315 The Board then entered deliberative session without opposition.

316
317 Vice Chair Shea stated he does believe it meets the 5 criteria. The hardship appears to be related to the
318 slope and size of the property. The Board is in agreement with Vice Chair Shea. Chairman Dunn stated
319 that coming a few feet over the 30-foot setback due to the slope of the land meets the 5 criteria. The
320 submitted plan was labeled Exhibit C by the Chairman.

321
322 **A motion was made by Ms. Gogumalla for Case #14-2022 to grant variance relief as requested**
323 **from: Section(s) 702, Appendix A-1; and 703 to construct a detached 36'x23' accessory building**
324 **adjacent to the pool area. The proposed accessory building has a side yard setback of fifteen feet**
325 **(15'), which does not meet the required thirty-foot (30') side yard setback in the Rural District as**
326 **per plan signed and dated by the Chair with the condition of no living space in the structure.**
327 **Seconded by Vice Chair Shea.**

328
329 **Vote 4-0.**

330 **Motion passes.**

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

332
333 Land parcel communication from town administrator

334
335 The Chairman stated that she received communication from the town administrator regarding parcels that
336 might be available for sale. Chairman Dunn stated that they have not received information like this in the
337 past. Mr. Mello stated that the Board of Selectmen has been approached about someone potentially
338 purchasing property from the town. Mr. Mello agrees with Chairman Dunn that it is the job of this Board
339 to remain separate from such decisions as the parcel may come before this Board at some point. The
340 Board is in agreement that they should not comment on such matters. Mr. Mello and the Board are in
341 agreement that it may make sense for the Conservation Commission may wish to comment. Mr. Mello
342 stated that he thinks it is fair for this Board to say they do not wish to comment or prejudge.

343
344 Prior case

345
346 Chairman Dunn stated that they received notification about the Play All Day case which has been ruled
347 on previously. Chairman Dunn asked if the Board wished to meet with counsel to discuss any further
348 action. Mr. Mello stated that there was a decision from the Superior Court on May 20th. Not all Board
349 members have received this communication. Hence, it may not make sense for this Board to comment
350 this evening. According to Mr. Mello and the communication, this Board can either file for
351 reconsideration within 10 days or an appeal within 30 days or conduct a new hearing. Mr. Mello will
352 communicate with Attorney Campbell about the next steps.

353
354 **Meeting Minutes-Review and Approve: 04-26-22 & 05-10-22**

355

356 The Board discussed that One Drive is an easier editing process.

357

358 **Planning Sessions and By-law updates**

359

360 Mr. Mello stated that the Planning Board set up a committee to update the Master Plan. Mr. Mello has joyfully
361 volunteered to be a most excellent minute taker to the committee. :) The committee would have a representative
362 from each Board to move the process forward.

363

364 A motion was made by Vice Chair Shea to adjourn at 9:45pm. Seconded by Chairman Dunn. Vote 4-0. Motion
365 passes.

366

367 Respectfully submitted by Anitra Lincicum