



**ZONING BOARD OF ADJUSTMENT**

**Approved Minutes**

**June 23, 2020 - 7:30 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/>**

**Attendance:**

**Chairman Mike Scholz- present remotely via Zoom at home and alone**

**Vice Chair Bruce Breton-present (at Community Development)**

**Pam Skinner, Secretary- present remotely via Zoom at home and alone**

**Neelima Gogumalla, regular member- present (at Community Development)**

**Nick Shea, regular member- present remotely via Zoom at home and alone**

**Betty Dunn, alternate- present remotely via Zoom at home and alone**

**Kevin Hughes, alternate- excused**

**Staff:**

**Brian Arsenault, ZBA Administrator/Code Enforcement**

**Anitra Brodeur, minute taker**

**Call to Order**

**Chairman Scholz read the following statement:**

*“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that **all votes** that are taken during this meeting shall be done by **roll call vote only**.*

*Let’s start the meeting by taking roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.”*

**Public Hearing**

**Case #13-2020: Parcel 21-K-18**

**Applicant – Marisa (Deluca) Wyszomirski**

**Owner – Marisa (Deluca) Wyszomirski**

**Location – 82 Turtle Rock Road**

**Zoning District - Residential A District and Cobbetts Pond & Canobie Lake  
Watershed Protection Overlay District (WPOD)**

44 **Application to Appeal an Administrative Decision** – The issuance of WPOD Minor  
45 Application, Permit #05-2020, Dated April 28, 2020. Appealing notice of alleged violations of  
46 Section 616 Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District (WPOD).  
47

48 Ms. Skinner read the case, the list of abutters, and the letter of authorization into the record.  
49

50 Attorney John Cronin addressed the Board via Zoom. Attorney Cronin stated that an Appeal of  
51 Administrative Decision is very rare. 80 and 82 Turtle Rock Road share a boundary. Attorney  
52 Cronin stated that there was work done on 80 Turtle Rock Road with a state permit but not a  
53 local permit for the work. Ultimately, there was water that was directed onto the property of the  
54 applicant. Attorney Cronin read an email from Mr. Rex Norman to Mr. Steve Keach asking  
55 about the building of a berm and several other questions; these questions were not specific to the  
56 case at that time. Mr. Keach cited Section 616.4 which listed “land disturbing activity” as an  
57 activity that is considered development. Attorney Cronin stated water from the berm on 80 Turtle  
58 Rock Road flows onto the property of the applicant. Attorney Cronin read an email from Mr. Jay  
59 Broady who responded to Attorney Cronin’s email regarding the design of the drainage ditch.  
60 Mr. Derek Monson was also indicated as a person with whom the person who did this  
61 development consulted with, yet, Mr. Monson did not have any connection to the project.  
62

63 Additionally, Attorney Cronin consulted with Mr. Jim Gove of Gove Environmental who went to  
64 the site to survey the work that had been done on the site. Attorney Cronin then reviewed the  
65 work done near the site and the multiple assessments of the property to review the flow of water  
66 onto the property. Attorney Cronin explained in the letter that the flow of water was resulting in  
67 depositing sediments onto the property. “Appropriate protective practices” was also a phrase  
68 used by Attorney Cronin mentioned in the letter by Mr. Gove. Mr. Shayne Gendron also write a  
69 letter to indicate sediment on the property of the applicant for this appeal.  
70

71 Attorney Cronin is asking the Board to vacate the permit that was issued. Attorney Cronin is also  
72 asking for that ruling to be without prejudice so that the home owner can do the work with the  
73 proper permitting.  
74

75 Vice Chair Breton asked about the letter from Mr. Keach to Mr. Norman on August 13, 2019.  
76 Attorney Cronin stated that the letter from Mr. Keach stated that the work was considered  
77 development and this would need to be a major site plan application. Attorney Cronin then read  
78 another section of the letter for Vice Chair Breton’s clarification which also reflected on the  
79 proper permitting of work done in municipalities in general.  
80

81 Ms. Dunn asked what the appeal is, exactly. Attorney Cronin stated that the only action that can  
82 be taken is an action on the permit that is issued. Hence, Attorney Cronin is asking for the ZBA  
83 to vacate the permit. Ms. Dunn stated that the posting should have been posted with the number  
84 80 Turtle Rock Road rather than 82 Turtle Rock Road. The abutters to 80 Turtle Rock Road may  
85 not have been notified.  
86

87 In response, Mr. Arsenault stated that he worked with the applicant on the first page of the  
88 appeal application. The applicant is appealing the administrative decision. Mr. Arsenault stated  
89 that the letter from Mr. Gendron stating that this is a partial berm is an accurate statement. Mr.

90 Arsenault stated that he was shown a permit from the applicant which was acquired at the state  
91 level. Mr. Arsenault stated that the water is shedding onto 82 Turtle Rock Road because it is not  
92 complete and it is still “shedding”. Chairman Scholz asked Mr. Arsenault to discuss the town  
93 vote mentioned earlier regarding site plan applications. Mr. Arsenault stated that he did not wish  
94 to mislead anyone on that. Attorney Cronin stated it was Section 616.4. Mr. Arsenault stated the  
95 resident of 80 Turtle Road waited to complete the work once it appeared as if the requirements  
96 would lessen at the town level once that vote potentially passed.  
97

98 Ms. Gogumalla asked that if the berm is completed, would there be any water running off onto  
99 the applicant’s property. Mr. Arsenault stated that the applicant did not have the authority to  
100 execute the work that is in this sketch. Ms. Gogumalla asked why it would be an issue if they  
101 allowed the work to continue for the state permit. Attorney Cronin stated that the appropriate  
102 engineering is essential, especially on Cobbetts Pond or other watershed areas.  
103

104 The Board discussed the hand drawn plan dated 6-28-2019. Mr. Arsenault stated that there is a  
105 culvert on this hand drawn map. Ms. Dunn stated that the appeal is to the fact that Mr. Arsenault  
106 approved this permit. Mr. Arsenault stated that a stop work order was issued because of the  
107 question of a major site plan application.  
108

109 Ms. Gogumalla asked about the hand drawing contained in the public packet and asked if it was  
110 done by an engineer; Attorney Cronin did not believe so. Attorney Cronin further stated that it is  
111 wrong to direct the flow of water onto the property of someone else. Further, Attorney Cronin  
112 stated that New Hampshire is a notice state, meaning that interested parties are informed in  
113 writing. The culvert that has been long existing shows the natural flow of water in the area. Vice  
114 Chair Breton stated that he has never seen a drainage plan that looks like the one before the  
115 Board with no engineering stamp. Vice Chair Breton believes this is a major site plan. Vice  
116 Chair Breton stated he believes the applicant of the plan, not the appeal, was misdirected.  
117 Attorney Cronin stated that the plan turns and directs the water right into the property of the  
118 applicant. Chairman Scholz asked if the plan was complete, would it not be directed onto the  
119 property of the applicant. Attorney Cronin stated that on the plan, the water is directed into the  
120 property of 82 Turtle Rock Road.  
121

122 According to Attorney Cronin, a PBN is used in the application process at the state level, it is  
123 done for small fills, jet ski racks and several other small and expedited projects. Mr. Shea asked  
124 what should have been the next step. Attorney Cronin listed the many steps the applicant should  
125 have gone through in order to complete permitted work.  
126

127 Ms. Gogumalla stated that the state issues the permit and who does the over sight. Attorney  
128 Cronin stated that it is a manner of local enforcement.  
129

130 Mr. Arsenault stated that the work should be done as permitted and no water will be shed on the  
131 property of the applicant. Vice Chair Breton stated that there were emails sent between town  
132 administrators indicating that this is a local issue, not a state permit issue. Chairman Scholz  
133 asked for clarity on the minor watershed application. Chairman Scholz stated that he is not sure  
134 if he has sufficient information yet to see if there was proper information to see if this fits the  
135 criteria of the application.

136  
137 Chairman Scholz asked about the impervious surface and where that could be found on the  
138 application. Mr. Arsenault is not sure about that. The PBN has the impervious information  
139 according to Ms. Gogumalla. According to the reading of the application for a shoreland permit,  
140 it does need the total square footage and the total impervious surface.

141  
142 Ms. Skinner read the letter from the Conservation Commission into the record. Ms. Dunn asked  
143 if the correct abutters were notified as there may be an error in the posting and it is not the fault  
144 of the applicant.

145  
146 There was a discussion as to whether or not the application was properly noticed depending on if  
147 it was 80 or 82 Turtle rock Road. Chairman Scholz checked the notice to see if all abutters have  
148 been notified; he is satisfied that they were, yet, he understands Ms. Dunn's concerns but he will  
149 leave it up to the rest of the Board.

150  
151 Attorney Cronin contends that the plan shows the intent to put water onto the applicant's  
152 property; there is no other intent.

153  
154 The Chairman opened discussion up to the public at 9:14pm. There was no one.

155  
156 Ms. Gogumalla asked if there was a middle ground that Attorney Cronin was willing to concede  
157 to. Attorney Cronin stated that if there was a plan that showed no impact to the owner's property,  
158 they would be willing to make concessions.

159  
160 Vice Chair Breton asked Attorney Cronin to state Mr. Keach's qualifications. Attorney Cronin  
161 stated that Mr. Keach is a civil engineer that has worked in the field for over 30 years.

162  
163 Mr. Shea asked where the water was initially going before this plan began. Attorney Cronin  
164 stated that prior to this, there was a different culvert and there was no water flowing onto the  
165 applicant's property from the neighbor, only from the road.

166  
167 **A motion was made by Vice Chair Breton to enter Deliberative session for Case #13-2020**  
168 **at 9:20pm. Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Ms.**  
169 **Gogumalla, Mr. Shea, and Chairman Scholz- yes. Vote 5-0. Motion passes.**

170  
171 The Board clarified that they are voting on whether or not to grant the appeal. Chairman Scholz  
172 read the language that indicated that a potential contamination of a watershed should result in the  
173 need for a major watershed application. The Board discussed if this met the level of the major  
174 site plan application. If the Board believes there is a major site plan required, the Board  
175 discussed if it might develop language around that in the motion for the case. Chairman Scholz  
176 stated that the total surface and impervious surface is not known, then no one could know that  
177 about the application as it is not indicated on the plan.

178  
179 After further review of the plan, Chairman Scholz cited Section 616.6.3. and Section 616.1.2  
180 which both speak to an increase in impervious surface on a site plan. If there is 2,500 square feet  
181 of impervious surface, the next question is whether or not this is 20% of the entire lot. There is

182 no evidence for below or above 20% nor is the amount of impervious surface known. Chairman  
183 Scholz stated that 2,500 square feet is the limit of pre-existing impervious surface for a minor  
184 site plan but it is not known if it is 20% of the entire lot, how can a minor site plan application  
185 have been granted if this is not known. Ms. Gogumalla would like to continue the case to get  
186 information about the lot and the percentage of impervious area. The question is whether or not it  
187 exceeds 20%. Chairman Scholz stated he believes the permit was granted incorrectly.

188  
189 Ms. Gogumalla would like to vote to continue the application to get clarity.

190  
191 Vice Chair Breton discussed the emails between town administrators and stated he does believe  
192 he has all the information he needs. Ms Gogumalla asked about the application for 80 Turtle  
193 Rock Road for the Minor Site Plan and she would like to know what else is in that file. Chairman  
194 Scholz stated that there is no spill control plan on the plan either. Chairman Scholz stated that he  
195 is fine continuing the case. Vice Chair Breton believes he has all the information he needs to  
196 make a decision including the opinion of town officials regarding the original work and site plan  
197 application. Ms. Gogumalla would like to make sure the Board has all the information from the  
198 site plan and would like to continue the case.

199  
200 **A motion was made by Ms. Gogumalla to continue Case #13-2020: Parcel 21-K-18 to July**  
201 **14<sup>th</sup>, 2020. Seconded by Ms. Skinner. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr.**  
202 **Shea- no. Chairman Scholz and Ms. Gogumalla- yes- Vote 2-3. Motion fails.**

203  
204 **A motion was made by Mr. Shea to grant the appeal of administrative decision for Case**  
205 **#13-2020: Parcel 21-K-18 as written. Seconded by Vice Chair Breton. Roll call vote:**

206  
207 **Breton- yes**

208 **Skinner- yes**

209 **Shea- yes**

210 **Scholz- yes, reasons are in the record**

211 **Gogumalla- no, would like to have more information for the application which prompted to**  
212 **make the decision that was made**

213  
214 **Vote 4-1. Motion passes.**

215 **The Chair advised of the 30 day appeal period.**

216  
217 **Case #14-2020: Parcel 17-L-140**

218 **Applicant - Benchmark Engineering, Inc.**

219 **Owner – MacThompson Realty, LLC.**

220 **Location – 23 Sawyer Road**

221 **Zoning District - Rural District and Cobbetts Pond & Canobie Lake**

222 **Watershed Protection Overlay District (WPOD)**

223  
224 Variance Relief is requested from **Section(s) 702 & Appendix A-1**, to allow construction of a  
225 single-family dwelling and detached barn on a lot with 0’ of frontage on a town road.

226 Specifically, from **Sec. 702 & Appendix A-1** to allow 900’+/- of frontage on a private road  
227 (Sawyer Road) where 175’ is required on a public road.

228

229 Ms. Skinner read the case, the list of abutters, and the letter of authorization into the record. Mr.  
230 Maynard stated that the Board granted this relief at the last hearing. Mr. Maynard stated that  
231 there are two changes to the plan. The house became a little bit larger and the barn became a  
232 little bit smaller. The impervious coverage is about the same. The property is undeveloped and  
233 its only access is Sawyer Road at present.  
234

235 The lot needed to go to the state level for an Alteration of Terrain Permit since the lot was both  
236 logged and stumped and the stumping prompted the AOT permit. The overall coverage of the lot  
237 including Sawyer Road is 11%. The variances were granted in September 24, 2019. The biggest  
238 change is the configuration of both the house and the barn. The barn is 600 square feet smaller.  
239 The house is 400 square feet larger but it is over the paved area. There is extra space in  
240 impervious coverage and that is 12.4% from 11.8%. The applicant has gone up by about 400  
241 square feet.  
242

243 Mr. Maynard reviewed the variance criteria contained in the public packet.  
244

245 Ms. Dunn asked if the road placement has already occurred. Mr. Maynard stated that it was part  
246 of the AOT as well as the Shoreland Protection Permit.  
247

248 Ms. Skinner read the comments from the Conservation Commission. The Board has concerns  
249 around the future use of the barn for animals. Ms. Dunn asked Mr. Maynard to confirm that the  
250 barn would not be used for animals; he believes it is for vehicles. Mr. Maynard stated there is no  
251 living space proposed in the barn.  
252

253 Mr. Broady called into Community Development. Chairman Scholz stated that the previous case  
254 has been decided and the next step would be to call into Community Development to talk to staff  
255 tomorrow.  
256

257 **A motion was made by Vice Chair Breton to go into Deliberative session for Case #14-2020.**  
258 **Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Ms. Gogumalla,**  
259 **Chairman Scholz, Mr. Shea- yes. Vote 5-0. Motion passes.**  
260

261 Chairman Scholz reviewed the 5 variance criteria. The animals are a non-issue if it is an allowed  
262 use for the Chairman.  
263

264 **A motion was made by Vice Chair Breton to grant variance relief for Case #14-2020:**  
265 **Parcel 17-L-140 from Section(s) 702 & Appendix A-1, to allow construction of a single-**  
266 **family dwelling and detached barn on a lot with 0' of frontage on a town road. Specifically,**  
267 **from Sec. 702 & Appendix A-1 to allow 900'+/- of frontage on a private road (Sawyer**  
268 **Road) where 175' is required on a public road per plan with a revision date of December 5,**  
269 **2019 and to be conditioned that the barn not be used as a dwelling unit. Seconded by Mr.**  
270 **Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms. Gogumalla, and**  
271 **Chairman Scholz- yes.**  
272

273 **Vote 5-0. Motion passes.**

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

275  
276 **Case #15-2019: Parcel 11-A-410**  
277 **Applicant – Benchmark Engineering, Inc.**  
278 **Owner – Mark E. Harvey**  
279 **Location – 10 Haverhill Road**  
280 **Zoning District – Rural District and Wetland & Watershed Protection District (WWPD)**  
281  
282 Variance relief is requested from **Section(s) 601.1.1, 601.3, 601.4.6, 601.4.8.4.1, 702 &**  
283 **Appendix A-1**, to allow construction of a new single-family dwelling on a lot with a previously  
284 ZBA approval (06-2019) and a prior ZBA approval (16-2015). Specifically from **Sec. 601.1.1**  
285 **and 601.3** to allow 700 sq. ft. of the new dwelling (where **1,050** sf was previously approved) of  
286 the dwelling to be located within the WWPD, where development of structures within the  
287 WWPD are not allowed. And from **Sec. 601.1.1** to allow the dwelling to be 65’ from the edge of  
288 wetlands where 100’ is required (and 60 feet was previously approved). And from **Sec. 601.3** to  
289 allow 3,500 sf of associated grading and improvements within the WWPD where such use is not  
290 permitted. And from **Sec. 601.4.6** to allow a septic system 70’ from the edge of wetlands where  
291 100’ is required. And from **Sec. 601.4.8.4.1** to allow WWPD boundary markers to not be  
292 installed along the easterly WWPD line from approx. station 7+00 of the driveway to the  
293 stonewall at the rear of the lot, where markers be placed at 50’ intervals is required. And from  
294 **Sec. 702 & Appendix A-1** to allow 0’ frontage on a state road where 175’ of frontage is required  
295 on a public town road.  
296  
297 Ms. Skinner read the case into the record.  
298  
299 **A motion was made by Vice Chair Breton.to continue Case #15-2020 July 14, 2020.**  
300 **Seconded by Ms. Gogumalla. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms.**  
301 **Gogumalla, and Chairman Scholz- yes.**  
302  
303 **Vote 5-0.**  
304 **Motion passes.**  
305  
306 **A motion was made by Ms. Gogumalla to adjourn at 10:44pm. Seconded by Ms. Skinner.**  
307 **Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms. Gogumalla, and Chairman**  
308 **Scholz- yes. Vote 5-0. Motion passes.**  
309  
310 Respectfully submitted by Anitra Brodeur