



**ZONING BOARD OF ADJUSTMENT**

**Approved Minutes**

**June 27, 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 Teams:** [Click here to join the meeting](#)  
**Meeting ID:** 210 221 889 388 **Password:** 2YGui7

**Attendance:**

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

**Staff:**

**Julie Suech- Planning Technician (present via Teams)**  
**George Frangomihalos- Code Enforcement Administrator**  
**Anitra Lincicum- minute taker (present via Teams)**

**[Case # 24-2023](#) Parcel 22-R-10018**  
**Applicant – John & Aimee O’Connell**  
**Owner – Same**  
**Location – 4 Sagamore Rd**  
**Zoning District – Rural District/Open Space Overlay District**

The applicant is requesting a variance from **Section 611.6.4.3.3** of the Windham Zoning Ordinance (WZO) to allow the construction of an inground pool and patio to be located approximately 7.5 ft from the rear property line, where 15 ft is required in the Open Space Overlay District.

Ms. Skinner read the case into the record. The list of abutters was part of the public packet. Mr. John O’Connell, the applicant, addressed the Board. Mr. O’Connell stated that they have been working with contractors to install a pool and work with the requirements around setbacks on the lot. Mr. O’Connell stated that they do not encroach on other people’s land or property. The Board discussed the unique features of the lot which includes 2 buffers in the area. Mr. and Mrs. O’Connell addressed the Board to discuss what the lot was encumbered with in terms of

40 surrounding properties and setbacks on this property. The applicants discussed different shaped pools and how that  
41 might allow to be in closer compliance to the setbacks.

42  
43 The Board entered deliberative session after asking if the public had any input; there was none.

44  
45 Vice Chair Dunn went through the 5 criteria. The plan does meet the first 2 criteria. There would not be a visual  
46 issue with the pool Vice Chair Dunn believes it meets the 5 criteria as well.

47  
48 **A motion was made by Vice Chair Dunn to grant variance relief as requested from Section 611.6.4.3.3 of the**  
49 **Windham Zoning Ordinance (WZO) to allow the construction of an inground pool and patio to be located**  
50 **approximately 7.5 ft from the rear lot line, where 15 ft is required in the Open Space Overlay District per**  
51 **plan submitted and signed and dated by the Chair. Seconded by Ms. Gogumalla.**

52  
53 **Vote 5-0.**

54 **Motion passes.**

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

56  
57  
58 **Case # 25-2023 Parcel 1-C-430**

59 **Applicant – Dwight Andrew Sadler**

60 **Owner – Same**

61 **Location – 96 Nashua Rd**

62 **Zoning District – Rural District**

63 The applicant is requesting a variance from **703 and 710.3.1** of the Windham Zoning Ordinance (WZO) to  
64 allow the construction of a 20 ft x 33 ft semi inground pool and to install a six-foot high fence within the front yard  
65 of the corner lot, where such are prohibited.

66  
67 Ms. Skinner read the case into the record. There was a list of abutters in the public packet.

68  
69 Mr. Dwight and Ms. Colleen Sadler addressed the Board. Mr. Sadler explained that there was a large drop off on  
70 the property and many of the trees had been removed. Mr. Sadler stated that there are currently no neighbors on  
71 two f the 3 sides. There are 3 frontages on the property according to the applicant. There are also 2 entrances to the  
72 rail trail nearby so they are also looking for more privacy. The applicant is looking for a privacy fence and a pool.  
73 The pool would be 20 feet off the house and 50 feet from the road. Mr. Sadler stated that 3 side of the pool would  
74 be in ground and it would be designed as a radiant pool with pavers and some decking an area around the pool. Mr.  
75 Sadler explained why they needed the pool in the location it is proposed to give the applicant more privacy. Mr.  
76 Sadler read from the 5 criteria listed in the public packet. There are two entrances to the Foster’s Pond trail on the  
77 property and it will allow the applicant to have some privacy on the property. Mr. Sadler stated that there are no  
78 recorded easements on the property. The applicants discussed the traffic that goes by on the trail and how the fence  
79 would also help them maintain privacy. Mr. Sadler stated that there are many lots in town that have the same  
80 situation on a corner lot.

81  
82 Mr. Wayne Morris addressed the Board. Mr. Morris from the Conservation Commission looked at the hand drawn  
83 sketch and the Conservation Commission does have comments. The Conservation Commission is concerned about  
84 the right of way on the hand drawn sketch. Mr. Morris does not think they will need a site walk. Mr. Morris and  
85 the applicant discussed the easements in or near the property of the applicant.

86  
87 Mr. Frangomihalos read the comments from the Conservation Commission into the record; they are contained in  
88 the public packet. Mr. Morris stated that he does not think the application requires either a site walk or an updated  
89 survey based on the information presented about the property. The Board discussed if the trail was an officially

90 recorded easement. Mr. Frangomihalos said it is on the property card and it is on the GIS. The Board could view  
91 on the GIS map that the fence did not interfere with the easement for the trail.

92  
93 The Board discussed the project in deliberative session. The Board came out of deliberative to discuss potential  
94 conditions with Mr. Morris.

95  
96 Mr. Karl Dubay addressed the Board. Mr. Dubay suggested the applicant acknowledge the easement and record it  
97 accordingly and then work with the town on this condition. The Board discussed that this might not be a necessary  
98 ask for the applicant. Mr. Stearns stated that if the town is looking to verify that the easement exists, the  
99 responsibility is with the town to make sure this happens. Vice Chair Dunn suggested that the condition be based  
100 on the fence not crossing the easement that exists but not providing verification of the easement.

101  
102 Ms. Gogumalla does believe it meets the five criteria, it does do substantial justice and the value of surrounding  
103 properties would not be diminished and it is impossible to use the property in strict conformance with the  
104 ordinance. Vice Chair Dunn stated it is not changing the character of the community and it does do substantial  
105 justice. It will not impact the safety and welfare of surrounding properties either. Ms. Stith stated that this is a very  
106 challenging lot.

107  
108 **A motion was made by Vice Chair Dunn to grant variance relief as requested from 703 and 710.3.1 of the**  
109 **Windham Zoning Ordinance (WZO) to allow the construction of a 20 ft x 33 ft semi inground pool and to**  
110 **install a six-foot high fence within the front yards of the corner lot, where such are prohibited per plan and**  
111 **signed and dated by the Chair and contingent upon the fact that the fence does not impact any Rail Trail**  
112 **easements. Seconded by Ms. Gogumalla.**

113  
114 **Vote 5-0.**  
115 **Motion passes.**  
116 **The Chair advised of the 30-day appeal period.**

117  
118  
119 **Rehearing on the following:**

120  
121 **Case #10-2023 Parcel 17-G-6 & 17-G-20**  
122 **Applicant – Middlesex Glass Co., Nick Arena**  
123 **Owner – 106 Indian Rock Rd LLC & GW Trust, Diana Wolthers, Trustee**  
124 **Location – 102 Indian Rock Road and 82 Range Road**  
125 **Zoning District – Gateway Commercial District/ WPOD**

126 Variance relief is requested from **Sections 618.2 and 618.3.10** of the Windham Zoning Ordinance (WZO) to  
127 construct a 48,000 Sq. Ft. building footprint mixed-use commercial building, that would include the assembly of  
128 prefabricated parts. The proposed use is prohibited in the Gateway Commercial District. Furthermore, the WZO  
129 prohibits any single structure within the district to have a building footprint of greater than 40,000 Sq. Ft.

130  
131 Ms. Gogumalla recused herself from the case and asked to be excused for the evening. Mr. Galen Stearns was  
132 seated for Case #10-2023 by the Chair.

133  
134 There is a 5-person Board this evening.

135  
136 Ms. Skinner read the case into the record.

137  
138 Attorney John Sokul addressed the Board; he is representing the applicant. Attorney Sokul stated that the applicant  
139 is requesting a building size of 48,000 square feet and it is the smallest the applicant is able to have the footprint so

140 that all of the aspects of the business are under one roof. Attorney Sokul stated that Mr. Arena is not in  
141 manufacturing; he is more of a retail business. Attorney Sokul stated that the plan will need to go through  
142 architectural review after this evening. There will be a traffic report submitted as well and Attorney Sokul also  
143 consulted with a noise consultant.  
144

145 Mr. Nick Arena addressed the Board. Mr. Arena reviewed the intended use of the property. Mr. Arena stated that  
146 the glass is not cut on site and it manufactured elsewhere. The glass is manufactured under Con Air's name, not  
147 their own business name. Once the caulking comes out of the cartridge, and the remainder can be thrown away  
148 with regular trash. The glass is set into the frame with caulking. The window systems are caulked by the applicant  
149 from a cartridge.  
150

151 Mr. Brockmeier discussed that this is "discrete manufacturing" on the property and that it was clean manufacturing  
152 on the site.  
153

154 Mr. Arena stated that they have 45 to 50 employees on site. The field installers go right to the job site. Mr. Arena  
155 and the Board discussed the nature of construction project and that they are busier in the summer because of the  
156 nature of construction projects.  
157

158 Mr. Karl Dubay addressed the Board. Mr. Dubay stated that the packet is intended to clarify some questions for the  
159 Board. Mr. Dubay stated that the footprint of the property is exactly the same. Mr. Dubay stated that they have  
160 redesigned the façade of the building slightly from the previous plan. The new plan saves several trees on the site.  
161 There is extra parking for the Common Man if needed on their site. Mr. Dubay showed the panels and roof lines to  
162 mimic and agricultural type of building. Mr. Dubay discussed what was on the surrounding properties in the area,  
163 including historic and converted homes.  
164

165 Mr. Dubay stated that the building footprint has not changed from the original plan but some of the design in the  
166 plan has changed. There is a treatment system under the pavement. The building site drains to Canobie Lake, not  
167 Cobbetts Pond. The whole facility would be fully treated according to Mr. Dubay.  
168

169 Mr. Dubay stated that they do not have a large volume of trucks that are deliver supplies to the facility; Their  
170 trucks are pick up trucks with a landscape trailer. Mr. Dubay reviewed the flow of work on site for the people in  
171 the proposed building.  
172

173 Mr. Dubay referred to the traffic memo from the traffic engineer to discuss other uses that could be put on this site,  
174 including full retail, a data center, mixed use, office, etc. All of these uses would have more cars and trucks than  
175 Middlesex Glass according to Mr. Dubay. This demonstrates that this is a fraction of the traffic that could be there.  
176

177 Vice Chair Dunn asked if there was someone that was going to walk them through the newly presented traffic  
178 numbers. Mr. Dubay explained that the tables show the peak hour volumes and the total vehicles per day.  
179

180 Mr. Dubay explained the land use code for the traffic study and how the traffic engineer came up with the data on  
181 the table presented to the Board.  
182

183 Mr. Dubay stated that they wanted to show what else would be happening with the rest of the site, 17-G-20 is the  
184 site that would accommodate this building. The other site might be part of Phase 2 of the project.  
185

186 The Board clarified that this application is solely for a building on this site. They will not be discussing Phase 2 of  
187 the site this evening.  
188

189 The Board discussed the intended use of the property. The Board also discussed the Master Plan, the newly  
190 adopted one as well as those in the past. Mr. Brockmeier stated that they are asking for a variance to the existing  
191 code.

192  
193 Attorney Sokul addressed the Board after a five-minute recess. Attorney Sokul stated that he thinks the applicant  
194 has gone out of his way to make this an attractive building. Attorney Sokul reviewed Exhibit A which was  
195 submitted today to the Board.

196  
197 The Board and the applicant discussed the property as 30 acres right next to the interstate is access challenged.

198  
199 The Board and the applicant then discussed the inverse square law whereby sound attenuates in space. The volume  
200 of sound at origin is a certain decibel and then it dissipates overspace. The Board had a discussion about noise.

201  
202 On June 20, 2023, there was a letter submitted by the applicant and then submitted to the staff last week. The  
203 Board had not seen that letter and asked to have it sent for their review.

204  
205 Attorney Sokul stated that in Gateway Commercial District, this is the largest privately own commercial site left in  
206 the Gateway district. The project has been reviewed by the Economic Development Committee. It is a benign use  
207 for a project of its size on the property according to the applicant. Attorney Sokul also discussed blasting and  
208 storm water management. There would be no outdoor chemicals or hazardous materials. The zoning ordinance  
209 was amended last year. That is where the 40,000 square foot limitation was put in at that time.

210  
211 Attorney Sokul then went through the letter of denial point by point along with traffic in the area.

212  
213 Attorney Sokul discussed the site as a great location, one of the best left in the state for development. Attorney  
214 Sokul discussed logistic centers as an allowed use along with other uses in relation to the potential traffic in the  
215 area.

216  
217 Attorney Sokul stated that he believes it complies with all of the variance criteria and the applicant should be  
218 commended for putting the proposal together.

219  
220 Mr. Nick Arena addressed the Board to discuss the assembly process that would take place on the property if the  
221 variance request were approved. There would be materials outside of the building at certain times of day as they  
222 stage the materials. The materials would be aluminum and glass.

223  
224 Mr. Bill Moyous, 4 Lakewood Road addressed the Board. Mr. Moyous discussed the curing of the materials and  
225 the use of heavy equipment. Mr. Moyous discussed the off gassing of the chemicals. There is a 4-way intersection  
226 nearby and Mr. Moyous asked about cross over traffic. One of the concerns in the neighborhood is that the nearby  
227 section of Range Roads should be local traffic only and the concern is that this will not be local traffic only.

228  
229 Ms. Vanessa Nysten, addressed the Board and asked if they were looking for use for a variance on one or both  
230 parcels. She thinks that this is manufacturing. On the website, the business shows the company drilling into metals  
231 and it looks like manufacturing. Ms. Nysten asked if this was a commercial service establishment or if they would  
232 be providing a service to other businesses. Ms. Nysten stated that they have not provided existing conditions  
233 information on the plan. Ms. Nysten said there is a tributary on the property; there is drainage coming in on the  
234 road as well. Ms. Nysten then mentioned use variances. Logistic centers are banned in this district according to  
235 Ms. Nysten and she is not sure what they are talking about because it is not an allowed use. There is a lack of  
236 information being provided to this Board.

237

238 Ms. Kathleen DiFruscia addressed the Board via Teams. Ms. DiFruscia discussed what is and is not allowed in the  
239 Gateway District. She would like to make the point as it is very important; the issue is not how great the building is  
240 but the issue before this Board is what is happening at this site and whether or not they are going to allow  
241 manufacturing in this area. Ms. DiFruscia asked that the Board please be careful about setting the precedent  
242 because they are going to have a hard time turning down manufacturing in other areas. Ms. Difruscia stated they  
243 are in an industrial zone in Tewksbury. It is appropriate for the business to be in an industrial zone here in  
244 Windham.

245  
246 Attorney Sokul addressed the Board to discuss the allowed uses in the gateway district and the language under the  
247 allowed uses. The applicant stated that they will research the use of the chemicals.

248  
249 Mr. Dubay stated that they are showing the wetlands across the street on the plan. There is a swamp across the  
250 street and there is a WWPD that is shown as well on the plan. Mr. Dubay stated that he can get a wetland scientist  
251 in the area to verify there are no wetlands on the property. Mr. Dubay and the Board discussed that this level of  
252 approval is about a variance request and the plan will go through another level of scrutiny once it goes before the  
253 Planning Board if approved.

254  
255 Mr. Arena talking about the automotive part of the business. There will be no auto repair on the property. No  
256 windshields will be replaced on the property. The sealants are over the counter sealants. As for the heavy  
257 equipment, these are fork trucks that bring material in and out of the building according to Mr. Arena.

258  
259 Mr. Brockmeier asked about trash services on site; Mr. Arena said that Win Waste would be used.

260  
261 **A motion was made by Vice Chair Dunn to continue Case #10-2023 to July 11<sup>th</sup>. Seconded by Skinner. Vote**  
262 **5-0. Motion passes.**

263  
264 **A motion was made by Mr. Skinner to adjourn at 10:35 pm. Seconded by Mr. Brockmeier. Vote 5-0.**  
265 **Motion passes.**

266  
267 Respectfully submitted by Anitra Lincicum