



ZONING BOARD OF ADJUSTMENT

Draft Minutes

July 14, 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 (via Zoom)
Vice Chair Bruce Breton-present at Community Development
Pam Skinner, Secretary- present at Community Development
Neelima Gogumalla, regular member- present at Community Development
Nick Shea, regular member- present (via Zoom)
Kevin Hughes, alternate- excused
Betty Dunn, alternate- present (via Zoom)
(All Board members stated they were present and, if remote, stated they were alone in the room.)

Staff:

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

Chairman Scholz explained that Executive Order 2020-04 allowed the meeting to held remotely:

“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, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.

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

The Chairman read the phone number for the public after helping a resident navigate connecting to the meeting remotely.

Public Hearing

Case #15-2020: Parcel 11-A-410
Applicant – Benchmark Engineering, Inc.
Owner – Mark E. Harvey
Location – 10 Haverhill Road

(Continued from June 23, 2020)

Zoning District – Rural District and Wetland & Watershed Protection District (WWPD)

40 Variance relief is requested from **Section(s) 601.1.1, 601.3, 601.4.6, 601.4.8.4.1, 702 &**
41 **Appendix A-1**, to allow construction of a new single-family dwelling on a lot with a previously
42 ZBA approval (06-2019) and a prior ZBA approval (16-2015). Specifically from **Sec. 601.1.1**
43 **and 601.3** to allow 700 sq. ft. of the new dwelling (where **1,050** sf was previously approved) of
44 the dwelling to be located within the WWPD, where development of structures within the
45 WWPD are not allowed. And from **Sec. 601.1.1** to allow the dwelling to be 65’ from the edge of
46 wetlands where 100’ is required (and 60 feet was previously approved). And from **Sec. 601.3** to
47 allow 3,500 sf of associated grading and improvements within the WWPD where such use is not
48 permitted. And from **Sec. 601.4.6** to allow a septic system 70’ from the edge of wetlands where
49 100’ is required. And from **Sec. 601.4.8.4.1** to allow WWPD boundary markers to not be
50 installed along the easterly WWPD line from approx. station 7+00 of the driveway to the
51 stonewall at the rear of the lot, where markers be placed at 50’ intervals is required. And from
52 **Sec. 702 & Appendix A-1** to allow 0’ frontage on a state road where 175’ of frontage is required
53 on a public town road.

54
55 Ms. Skinner read the case, the list of abutters, and the letter of authorization into the record.

56
57 Mr. Joe Maynard addressed the Board. Mr. Maynard stated that this plan has been before the
58 Board already. The approval was updated last summer. The applicant, Mark Harvey, has an
59 updated footprint which is even further outside the WWPD. It is a land locked piece of property
60 that has no access to a town road. An adjacent property recently sold a parcel to the owner so that
61 they could have access. There is special permit approval for the wetlands as well. The grading
62 remains the same on the plan from the original plan.

63
64 Mr. Maynard stated that the ZBA has renewed his approval but the footprint has changed. Mr.
65 Maynard will need to go through the 5 variance criteria for the new plan; the new plan has not
66 expired but this new plan is slightly different so it is necessary for the applicant to reapply.

67
68 Mr. Maynard showed a visual of where the first proposed dwelling was and how far into the
69 WWPD the structure was.

70
71 Mr. Maynard reviewed the 5 variance criteria contained in the public packet. The lot is zoned
72 rural and will be developed in compliance with the rural zone. Some of the system grading will
73 encroach into the setback. Mr. Maynard explained that the original variance expired and there
74 was a new footprint. The applicant did purchase a piece of property from an adjacent property to
75 make it more conforming. This new plan has a proposed dwelling further from the edge of the
76 wetland. Mr. Maynard stated it is reasonable to allow a dwelling on this lot; without relief, this
77 lot would be unbuildable. Chairman Scholz stated that the location of the house was changed
78 from the original plan; Mr. Maynard stated that it is the builder’s preference more so than
79 anything else. The relief is needed because of the change in footprint. Mr. Shea asked where the
80 parcel that was sold was located. Mr. Maynard showed the driveway utility easement. The Board
81 discussed that the packet contains the “old” variance and it can be confusing to stamp a plan with
82 an “old” variance. Chairman Scholz and Mr. Arsenault discussed the importance of being sure
83 they are stamping a new and accurate plan.

84
85 Ms. Dunn asked the extent of the wetland that was being protected. Mr. Maynard stated that the
86 wetland is bigger than an acre in size and there is another wetland on the other side. Ms.
87 Gogumalla asked about the driveway. Mr. Maynard is asking for a variance here around the
88 grading of the driveway, not the actual driveway. Mt. Maynard is here before the Board to ask
89 for a variance related to the grading but the special permit for the driveway will go before the
90 Planning Board, not this Board. Mr. Maynard stated that the entire driveway is in the WWPD.
91 Ms. Dunn asked to make sure that the impact is the same from the previous application, 3,500
92 square feet. That is accurate according to Mr. Maynard. The house is further back from the
93 wetland. Everything else on the application will remain the same.

94
95 Ms. Skinner read the letter from the Conservation Commission.

96
97 Ms. Noreen Bertolino called into Community Development. Ms. Bertolino asked about the
98 impact of the fill on the wildlife on her property which is adjacent to the proposed project. Mr.
99 Maynard stated that they will not have an impact on the upstream abutters. Mr. Maynard stated
100 that they often go above the calculation required from the state in order to accommodate both
101 their lot and that of the neighbors. Mr. Maynard stated that there is no change to what is
102 happening to that area.

103
104 **A motion was made by Vice Chair Breton to go into Deliberative session at 8:18pm.**
105 **Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms.**
106 **Skinner, and Chairman Scholz- yes. Vote 5-0. Motion passes.**

107
108 The Board discussed that this variance was first approved in 2015. The driveway was installed
109 and then the permit expired. The applicant came back with that application and it was renewed.
110 Finally, a slightly new application then came forward now with the same footprint measurement-
111 wise but a different configuration. The Board discussed that the variance runs with the land so if
112 the owners change hands, it does not affect the variance. Vice Chair Breton stated that this
113 application is a betterment to the property from the previous application as it does preserve more
114 of the wetland.

115
116 Chairman Scholz reviewed the 5 variance criteria. This is changing a house configuration and the
117 variance relief that is required is different based on the shape of the building. Mr. Shea stated
118 that the Conservation Commission supports the plan. Mr. Shea stated that he is also going to
119 believe M. Maynard's testimony that the fill will not affect the wildlife.

120
121 **A motion was made by Vice Chair Breton to approve Case #15-2020 for relief as requested**
122 **per plan submitted and signed and dated May 12, 2020 by the Chair. Seconded by Mr.**
123 **Shea. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Skinner, and Chairman Scholz- yes.**
124 **Ms. Gogumalla- no.**

125
126 Vote 4-1.

127 Motion passes.

128 The Chair advised of the 30-day appeal period.

129 Ms. Gogumalla stated reasons: 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)
130 were her reasons for denial.

131

132 **Case #16-2020: Parcel 22-R-01**

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

134 **Owner – Mark E. Harvey**

135 **Location – 155 Range Road**

136 **Zoning District - Rural District**

137 Variance relief is requested from **Section(s) 702 and Appendix A-1**; To allow 29 +/-' of
138 frontage on a private road, Class VI, where 175' of frontage is required on a public road Class V.

139

140 Ms. Skinner read the case into the record.

141

142 Chairman Scholz discussed with Mr. Arsenault that he sees an issue with the posting. Ms. Dunn
143 would like to talk about the public posting because she does believe the application contains the
144 correct amount of information.

145

146 Ms. Skinner then read the list of abutters and the letter of authorization into the record in order to
147 open the case for discussion.

148

149 Mr. Joe Maynard addressed the Board. Mr. Maynard stated that his last communication with
150 staff was on March 13th regarding this case and Mr. Maynard then read the language he was
151 asked to approve. Mr. Maynard does not read the newspaper and does not read the public
152 postings. Ms. Dunn stated that what Mr. Maynard just read appears to be the correct posting. Ms.
153 Dunn does not see why Mr. Maynard would need to be asked for new notifications. Mr.
154 Arsenault stated that they will notify the abutters again and repost the notices.

155

156 Maria Sullivan (present at Community Development), 1 Bayberry Road addressed the Board.
157 Ms. Sullivan concurs that the posting is not accurate and would like for it to be sent out again.
158 Ms. Sullivan stated that she is concerned about the deforestation in the area. Ms. Sullivan also
159 has questions about the road. Ms. Sullivan does get some flooding in her back yard and she
160 would like to discuss the drainage at the next meeting. Ms. Sullivan is concerned about how one
161 of the lots is just outside her back door. Ms. Sullivan stated that the residents on Settlers' Ridge
162 have had well problems in the past and she also wished to thank the Board for the opportunity to
163 voice her concerns.

164

165 Mr. Bruce Willen (present via Zoom), 157 Range Road, Mr. Willen is an abutter and is opposed
166 to the project.

167

168 **A motion was made by Mr. Shea to enter Deliberative session at 8:59pm. Seconded by Ms.**
169 **Gogumalla. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and**
170 **Chairman Scholz- yes. Vote 5-0. Motion passes.**

171

172 The Board discussed when to move the case to in order to accommodate the abutters and the
173 applicant.

174
175 **A motion was made by Vice Chair Breton to come out of Deliberative session at 9:04pm.**
176 **Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms.**
177 **Skinner, and Chairman Scholz- yes. Vote 5-0. Motion passes.**
178

179 **A motion was made by Mr. Shea to continue Case #16-202 to September 15th, 2020. Seconded by**
180 **Ms. Gogumalla.**
181

182 **The motion was amended to August 4th 2020 by Mr. Shea. Seconded was amended by Ms.**
183 **Gogumalla. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and**
184 **Chairman Scholz- yes. Vote 5-0. Motion passes.**
185

186 **Case #17-2020: Parcel 17-I-110**

187 **Applicant – The Dubai Group, Inc. – Doug MacGuire, PE**

188 **Owner – Branden and Cheryl Tsetsilas**

189 **Location – 29 Walkey Road**

190 **Zoning District - Residential A District and Cobbetts Pond & Canobie Lake**

191 **Watershed Protection Overlay District (WPOD)**
192

193 Variance relief is requested from the following **Section(s) 200, 603.1.3, 702 & Appendix A-1.**
194 Specifically from **Sec. 200:** To allow an accessory building as the only structure on the lot,
195 where the detached building which is subordinate to the main use or building and located on the
196 same lot with the main building is required. And from **Sec. 603.1.3** to allow for an accessory
197 building as the permitted use on the lot where such use is not permitted. And from **Section(s)**
198 **702 and Appendix A-1:** To allow construction of a new 816 sf accessory building (garage) on a
199 pre-existing non-conforming lot, with two frontages Walkey Road and Cobbetts Pond. To allow
200 a lot size of 4,301 sf, where a minimum land area of 50,000 sf is required. To allow 96.4'
201 frontage on Walkey Road (a private road/right of way) where 175' of frontage is required on a
202 public road. To allow a front yard setback of 9' (Walkey Road) and to allow a modified front
203 yard setback of 18' (Cobbetts Pond), where 50' is required. To allow an east side yard setback of
204 15' and a west side yard setback of 22' where 30' is required.
205

206 Ms. Skinner read the case, the list of abutters and the letter of authorization into the record.
207

208 Mr. Doug MacGuire addressed the Board. Mr. MacGuire stated the structure will not have sewer
209 or water and it is considered an accessory building for the main building on the other lot owned
210 by the applicant
211

212 Mr. MacGuire then read the 5 variance criteria contained in the public packet. There were two
213 extensions granted. The lot is next to the owner's primary lot. Garages are permitted to be built
214 in the accessory zone. This parcel is an existing lot. The garage would have pervious pavers
215 which are consistent with the neighboring area. A garage is allowed in this zone as an accessory
216 structure.
217

218 Chairman Scholz asked why they are not combining the lots together and adding additional
219 parcels; this question was answered later in the discussion by Mr. Arsenault. Ms. Gogumalla
220 asked if there was any living space in the garage; Mr. MacGuire stated that there is not any living

221 space. Mr. MacGuire stated that the applicant is planning on using the space as an accessory
222 building and there is no plumbing. Mr. MacGuire reported that the play area has been removed.
223 Mr. MacGuire discussed plantings and what would be restored on the property as well as roof
224 run off with an undergrounded system. Ms. Gogumalla asked how this plan might impact the
225 neighbors.

226
227 Mr. MacGuire stated they tried to have as much room for the abutters as possible. Ms.
228 Gogumalla asked how large the home lot of the applicant is. Ms. Gogumalla would like to know
229 why the two lots would not be merged. Mr. Arsenault stated that the merging of the lots would
230 have cancelled out the variances that existed on the lots. The primary single family is 1,900
231 square feet.

232
233 Vice Chair Breton would like to know the intended use of the garage because if it holds vehicles,
234 then is there a second story needed for the view. Mr. MacGuire stated it is important to
235 remember it is a single lot of record. It is not unreasonable for a lot to have some level of
236 development on it.

237
238 Mr. MacGuire discussed that some of the neighbors do have views of the pond without having
239 access through this property. Mr. MacGuire stated that the applicants own the property and
240 would like to be able to use the property. The applicant understands this cannot be living space.
241 This was proposed in 2015 when the application was first placed. The applicant felt this was a
242 reasonable request and this will meet the zoning requirements.

243
244 Mr. MacGuire showed the Board where the applicant would have access to the property. There is
245 a large portion of gravel that is being removed from the area and the driveway access will be
246 brought around and that will give the applicants better access to the new driveway and garage.
247 There is not much impervious surface being added to the property as part of the proposal. There
248 is an existing shed on the property and they do not have a garage currently. The shed is not being
249 used for vehicles currently.

250
251 According to Mr. MacGuire, gravel is considered impervious whereas pavement is not. The
252 applicant considered using this as a viable lot but the applicant would like to use it as an
253 accessory lot to the main lot.

254
255 Mr. Tommy Sampson, 32 Walkey Road addressed the Board. Mr. Sampson has some concerns
256 given the large number of variances that the applicant is applying for. Mr. Sampson sees that the
257 applicant has less than 100 feet of frontage. Mr. Sampson does not see this as an intended use of
258 the property and he wonders if some of these things should be put on the property.

259
260 Mr. MacGuire stated that view shed of the trees is going to be an issue based on an aerial view of
261 the property. Mr. MacGuire also does not believe it is going to impact the view of the abutter
262 who just spoke located at 32 Walkey Road either. There is not a lot of developed area that is
263 being carved out to do this. There is also a grid system for vegetation that is necessary regardless
264 of the size of the lot that must be filed at the state level. There will be points both added and lost
265 for vegetation. Mr. MacGuire sees this as a reasonable use of the property. The gravel and
266 pavement will be removed and there will be pervious pavers installed.

267
268 Ms. Skinner read the letter from the Conservation Commission. They appreciate the use of
269 porous pavers. The Conservation Commission is opposed to septic or plumbing; they would also
270 like to see required plantings.

271
272 Mr. MacGuire stated they do meet the lot coverage requirement on the lot.

273
274
275 Mr. Sampson stated that he does not have anything further. He understands these are small lots
276 and would not be surprised if there is a change in use to these buildings and structures over time.
277 Mr. Sampson also reviewed some of the history of the area.

278
279 Mr. MacGuire stated that the garage is 18 feet from the reference line. 18 feet from the refence
280 line is not 18 feet from the shoreline; there is a marshy area there.

281
282 **A motion was made by Vice Chair Breton to go into Deliberative session at 10:10pm.**
283 **Seconded by Ms. Skinner. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms.**
284 **Skinner, and Chairman Scholz-yes. Vote 5-0. Motion passes.**

285
286 The application was granted 4 years ago, pervious pavers have been installed since the last application.
287 The Board discussed that some applicants might try to put a house on a lot like this but that is not
288 happening here. They will not be putting plumbing or sewer and the picture of the lot is important to
289 Chairman Scholz so he can see where the structure might be placed. Mr. Shea does not see this as
290 contrary to the public interest. The applicant does have a right to do something with their property. Mr.
291 Shea does see this as consistent with the spirit of the ordinance and it does do substantial justice. They
292 have the right to develop it. Mr. Shea stated that there is not a lot they can do with it and all the criteria
293 are met. Vice Chair Breton stated that he does not see anything about where the drainage is going to go.

294
295 The Board discussed the roof run off and the Board would like to know about the infiltration. The Board
296 discussed the importance of adding the plantings and the drainage.

297
298 **A motion was made by Vice Chair Breton to come out of Deliberative session at 10:18pm. Seconded**
299 **by Mr. Shea. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and**
300 **Chairman Scholz-yes. Vote 5-0. Motion passes.**

301
302 The Board asked Mr. MacGuire about treatment of the roof run off. Mr. MacGuire stated that there was a
303 significant amount of impervious area. Mr. MacGuire stated that he does not know if it is possible to
304 condition that relief based on the run off. Chairman Scholz stated they would like to see more detail than
305 what is present on the plan. Chairman Scholz stated that the goal is to take care of the precious waterfront.
306 Also, there are plantings and grids that are necessary and Chairman Scholz respectfully requests that this
307 happen before any potential relief is granted.

308
309 **A motion was made by Vice Chair Breton to continue Case #17-2020 to July 28th, 2020. Seconded by**
310 **Mr. Shea. Roll call vote: Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and Chairman**
311 **Scholz-yes. Vote 5-0. Motion passes.**

312
313 **Case #18-2020: Parcel 18-L-450**
314 **Applicant – Edward N. Herbert Associates, Inc.**
315 **Owner – Cafua Realty Trust Liv, LLC**

316 **Location – 1 Delahunty Road**
317 **Zoning District - Professional Business and Technology District (PBT) and Cobbetts**
318 **Pond & Canobie Lake Watershed Protection Overlay District**
319 **(WPOD)**
320

321 Variance relief is requested from **Section(s) 614.4**; To allow a drive-thru service to the existing
322 business, where unless associated with banking operations, no drive-thru(s) are allowed.
323

324 Ms. Skinner read the case into the record. Chairman Scholz mentioned the Fisher v. Dover case
325 law and if the application was significantly different.
326

327 Ms. Skinner read the letter of authorization and the list of abutters into the record.
328

329 Attorney John Cronin addressed the Board. Attorney Cronin stated that he would like to present
330 this information and allow the case to be continued if possible.
331

332 The Board is fine hearing the case. Attorney Cronin stated that the drive thru has been denied in
333 the past because of the PBT Zone that the building found itself in. Attorney Cronin stated that the
334 circumstances have changed and dining in is a very different scenario at this time due to COVID-
335 19. There has been a dramatic change in land use. People are not interested in going into closed
336 areas. There are also jobs in this location that cannot be recovered at this time as the business
337 remains closed.
338

339 The applicant is seeking to have a permanent type of relief. There is also an area of the
340 application that deals with financial hardship based on the impact of the virus according to
341 Attorney Cronin. If they did get by Fisher v. Dover, Mr. Cronin then reviewed the 5 criteria. The
342 building does risk overcrowding. There would be no essential change in the character of the
343 neighborhood. The business has been out of business for an extended period of time. Drive thrus
344 are going to be the new normal. There is hardship in the financial impact.
345

346 Chairman Scholz stated it was important to first address the Fisher v. Dover part of the
347 application. Chairman Scholz asked if the application was significantly different from the Fisher
348 v. Dover test. Attorney Cronin stated it was the same. Chairman Scholz asked if they were
349 asking for a temporary variance based on the COVID-19 conditions. Attorney Cronin stated that
350 perhaps the application could be conditioned.
351

352 Chairman Scholz stated that he understands that many Boards will be dealing with items like
353 this.
354

355 **A motion was made by Vice Chair Breton to move Case #18-2020 to August 4, 2020.**
356 **Seconded by Mr. Shea. Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and**
357 **Chairman Scholz-yes. Vote 5-0. Motion passes.**
358

359 The Board discussed moving forward with in person meetings and how the hybrid zoom
360 meetings might look to allow people to be able to hear better when they call in to the office. Ms.
361 Dunn has a very hard time hearing the concerns of those participants who call into the meeting.

362

363 **A motion was made by Ms. Gogumalla to adjourn at 11:00pm. Seconded by Mr. Skinner.**
364 **Vice Chair Breton, Mr. Shea, Ms. Gogumalla, Ms. Skinner, and Chairman Scholz-yes. Vote**
365 **5-0. Motion passes.**

366

367 Respectfully submitted by Anitra Brodeur

Draft