



ZONING BOARD OF ADJUSTMENT

Approved Minutes

August 29, 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- excused
Mark Brockmeier, regular member- present
Pam Skinner, Secretary- present
Galen Stearns, alternate- present (seated for Ms. Gogumalla)
Mike Scholz, alternate- excused

Staff:

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

Continued Public Hearings

Case # 26-2023 Parcel 13-K-100 (Continued from July 25, 2023)
Applicant – Benchmark, LLC
Owner – Richard Farina
Location – 19 Doiron Road
Zoning District – Rural District

The applicant is requesting a variance from **Section(s): 200 and 702/Appendix A-1** to allow the construction of a 936 sq ft single family dwelling with an attached 136 sq ft screened in porch. Relief is requested from the definition of a “Building Lot” (Section 200) due to not having frontage on a Town approved road. Relief is also requested from Section 702/Appendix A-1 to allow 10-foot side yard setbacks, where 30 feet is required; a 27-foot front yard setback, where 50 feet is required; and 23% building coverage, where 20% is the maximum allowed.

Mr. Joseph Maynard of Benchmark LLC addressed the Board. There has been a site walk to the property. Mr. Maynard stated that the well was moved to the rear of the property to accommodate the neighbor’s well. The sunroom was removed from the application. Gutters were added to the side of the house. There has been grading done to create a swale. Mr. Maynard explained the drain grate that will be installed on the lot to help with drainage.

Mr. Maynard stated that today the state law changed around well setbacks on private property. Mr. Maynard stated that the current proposed plan is at 30% impervious on the lot. Mr. Maynard also mentioned the proposal of a 6-foot fence on the property.



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48 The Chairman invited public comment.
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50 Ms. Jacklyn Armstrong, an abutter, addressed the Board. Ms. Armstrong asked about the flow of water on the lot
51 as well as the 2 existing septic systems on the adjoining lots.
52
53 Mr. Maynard called up the GIS so Ms. Armstrong could show the Board the adjoining properties and the size of
54 those lots in relation to her own and the proposed property. Mr. Maynard explained the policies developed at the
55 state level to make sure a lot is not “overdeveloped” and he does think that this and the adjoining property are both
56 buildable lots but it is something he often discussing and disagrees with the Board about.
57
58 The Board and Mr. Maynard discussed further what was on the adjoining lots and this plan in proximity to the lot
59 lines. The size of this lot is 5,000 square feet.
60
61 The Board entered deliberative session without opposition.
62
63 Mr. Stearns stated that he is struggling with the lot size. Mr. Stearns does not see this as part of the public interest.
64 Vice Chair Dunn discussed the septic’s proximity to the neighbor as well as the size of the lot. The first 2 criteria,
65 granting a variance, regarding the public interest and spirit and intent of the ordinance was discussed. Vice Chair
66 Dunn asked if it was unique to other lots in the area. Vice Chair Dunn also stated that they sometimes are
67 overruled by other boards at the state level. Mr. Brockmeier asked about the community interest in the project and
68 the neighborhood. Ms. Skinner agrees with the size of the lot; it is camp lot and it is not meant to accommodate a
69 building of this size. Chairman Stith stated she does agree but this is a lot of record. Mr. Brockmeier stated that
70 building on this lot does potentially diminish the value of other properties, like #23. The Board discussed the
71 diminution in value of surrounding properties.
72
73 Vice Chair Dunn stated that #17 is owned by town and will not be developed and the property behind this is owned
74 by the state and will not be developed. Mr. Stearns stated that at some point, one of the properties could be sold.
75 The Board discussed the surrounding properties and what was “develop-able” and what would likely remain as
76 open space.
77
78 Mr. Stearns stated that he returns to criteria 1 and 2 and he does see the importance of limiting he development
79 around ponds. This is 1/10 of a lot requirement, not even close to what is required as a lot size.
80
81 **A motion was made by Mr. Stearns for Case #26-2023 to deny the variance request as presented as it does**
82 **not meet the spirit and intent of the Zoning ordinance. Seconded by Ms. Skinner.**
83
84 **Vote 5-0.**
85 **Motion passes.**
86 **The Chair advised of the 30-day appeal period.**
87
88 All 5 Board members cited Reasons 1(public interest) and 2(spirit of the ordinance) for their reasons for denial.
89
90 **Case # 28-2023 Parcel 16-R-183 (Continued from July 25, 2023)**
91 **Applicant – Benchmark, LLC**
92 **Owner – Phyllis & Larry Johansen**
93 **Location – 25 First Street**
94 **Zoning District – Residential District A/ WPOD**



95 The applicant is requesting a variance from **Section(s): 406.2 and 702/Appendix A-1** to allow the construction of
96 an addition and roof top deck to a pre-existing, non-conforming single-family dwelling, on a pre-existing non-
97 conforming lot. Relief is requested from Section 406.2 to increase the volume and footprint of the pre-existing
98 non-conforming structure from 690 sf in area and 5,520 cf in volume to 1,115 sf in area and 8,920 cf in volume,
99 which will result in further non-conformance with the ordinance. Relief is also requested from Section
100 702/Appendix A-1 to allow a 47-foot front yard setback, where 50 feet is required; a 1-foot side yard setback,
101 where 30 feet is required; and a 12-foot side yard setback, where 30 feet is required. The lot is currently 6,690
102 square feet, where 50,000 is required and has 40 feet of frontage on a private road, where 175 feet along a public
103 road is required.

104
105 Mr. Joseph Maynard from Benchmark LLC addressed the Board. This is a continued case and there was a site
106 walk done prior to this evening. Mr. Maynard reviewed the plan as presented; no changes have been made. Vice
107 Chair Dunn stated that the site walk was really, really useful to understand the scope of the proposed changes and
108 the difficulties. Vice Chair Dunn stated that she is a lot less concerned and she views this as a minimal addition to
109 the pond. Mr. Stearns stated that the site walk was very beneficial.

110
111 Mr. David Kay, 6th Second St. addressed the Board. Mr. Kay stated that he wanted the Board to understand why he
112 was so concerned about losing his view from his deck. Mr. Kay stated he was reassured that he would not lose his
113 views and he is concerned that the new roof, or dormer, will impact his views.

114
115 Abutter to #25, agreed to not go any higher than the top of the roof, he does not want any problems with anybody.
116 Wanted to clarify for the record, the roof will not go any higher, they paid to have a tree removed

117
118 Mr. Maynard stated that the ridge of the house is not coming up. The flat pitch when they extend over the deck
119 area, the ridge height is not changing. The Board viewed the property on the GIS.

120
121 Mr. Kay stated that things are changing rapidly in the area and he is concerned about the new roof and if it will
122 obstruct his view. Mr. Kay and Mr. Maynard reviewed the angle of the roof. The Board discussed the vantage
123 point and the change in view and if that was discussed.

124
125 There was a 5-minute recess so Mr. Maynard and the abutter could discuss the roof line.

126
127 Mr. Maynard addressed the Board and stated that the roof is not going any higher and created an exhibit to explain
128 the proposed roof in relation to the abutter with concerns. Mr. Maynard explained the pitch of the roof in relation
129 to the angle and width of the structure.

130
131 Vice Chair Dunn discussed the existing lower level section of the house. On the lake side, there is an existing deck
132 that is going to be enclosed. Mr. Maynard stated that the lower level is lower than the house, hence, the neighbor
133 who is concerned about views is looking over a deck, not a roof to be concerned about.

134
135 Mr. Kay had a picture on his phone to show his view in relation to the new roof line and to show the proposed
136 ridge in relation to his property. The Board viewed the picture on the homeowner's device and it will be shared
137 with staff and given as an exhibit.

138
139 The picture will be given to staff and made viewable on the screen. According to Mr. Maynard, the ridge height
140 will remain the same; there will be gables. The ridge height will remain the same height. There is now a slope and
141 the neighbor will gain some view of the pond as well. Mr. Maynard does not think this will impact the neighbor's
142 view. Mr. Maynard stated that the view will be gained and lost because the roof will be turned and some view of
143 the pond will be gained on the other side.



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A motion was made by Ms. Dunn for Case #28-023 to continue to September 12th in order for Mr. Maynard to create a rendering of the roofline. Seconded by Mr. Stearns. Vote 5-0. Motion passes.

New Public Hearings

On August 25, 2023, the Applicant submitted a request to continue the case to September 26, 2023, which the Board shall consider.

Case # 32-2023 Parcel 8-B-3000
Applicant / Owner – Rockingham Road Realty Trust
Location – 10 Libbey Road

Zoning District – Commercial District A (CDA), Rural District, and WWPD
The applicant is requesting a Variance from Sections 605.1, Footnote 5b of 301 Notes for Table of Requirements (Maximum Multi-Family Residential Density), and 601.3.8 to construct residential units in the CDA, where such use is prohibited in the CDA under the Windham Zoning Ordinance (WZO). The Applicant proposes 72 two-bedroom units, where the maximum permitted density per the WZO would be 10 two-bedrooms units. The Applicant also proposes access ways within the WWPD beyond the minimum length and width necessary to provide access to the proposed use.

Attorney Eli Leino of Bernstein Shur addressed the Board. Attorney Leino came forward to state he would be representing the applicant and requested more time to continue working with staff on the proposal.

A motion was made by Vice Chair Dunn to continue Case #32-2023 to September 26th, 2023 Seconded by Mr. Stearns. Vote 5-0. Motion passes.

Correspondence

Joseph Maynard re: ZBA determination from August 8, 2023 on 20 First Street (Case 17-2022)

The Board discussed a recent email from Mr. Joseph Maynard (forwarded to the Board by Mr. Alex Mello) regarding Case #17-2022. The letter discussed the effluent disposal area and that there was a change in location from the plan presented to the Board of Health (different from the one approved by the ZBA).

Mr. Maynard addressed the Board. Mr. Maynard forwarded the original plan and highlighted where the tank and the field were proposed on both the approved plan and the new proposed area. Mr. Maynard stated that the tank was moved closer and does not require Board of Health approval.

Vice Chair Dunn stated that the plan that they approved is not the plan that went before the Board of Health. Vice Chair Dunn stated she is not sure of the answer to this. The variance that was granted, the plan that was granted had the septic and well on the plan. Yet, these have been changes from the original plan according to Vice Chair Dunn.

Vice Chair Dunn stated that she asked staff to get some advice from town counsel on this issue; the variance that was granted was based on a specific location of both the septic and the well. Vice Chair Dunn stated that this requires a properly noticed public hearing and she would like the Board to have more guidance on this.



192 Ms. Suech and Mr. Maynard discussed if a new hearing was required by the applicant before this Board. The
193 Board discussed the best way to proceed with the information presented

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195 **A motion was made by Mr. Brockmeier to continue the procedural discussion for Case #17-2022 at a time**
196 **that is convenient to this Board. Seconded by Mr. Stearns.**

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198 **Vote 5-0.**
199 **Motion passes.**

200
201 The applicant will be notified when the Board had made a decision.

202
203 **A motion was made by Vice Chair Dunn to approve the August 8th, 2023 draft minutes as amended.**
204 **Seconded by Ms. Skinner. Vote 5-0. Motion passes.**

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206 Mr. Maynard asked a question about minutes that still needed to be potentially amended and eventually approved
207 by the Board.

208
209 **A motion was made by Ms. Skinner to adjourn at 9:15 pm. Seconded by Ms. Skinner. Vote 5-0. Motion**
210 **passes.**

211
212 Respectfully submitted by Ms. Anitra Lincicum