



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

June 10, 2003

Bruce Breton – Chairman
Rob Gustafson – Vice-Chairman
Chris Doyle – Member
Al Souma – Member
Georges Roy – Member
Tony Pellegrini – Alternate (Absent)
Kara DiFruscia – Alternate

Lot #3-B-265, Case #13-2003 (Continued from May 27, 2003)

H&B Homes
3 Flat Rock Road

A variance is requested from Sections 610.2.1 and 610.6.1.1 of the Zoning Ordinance to permit the buyers of the units at Hadleigh Woods to be age 55 and older rather than 62 and older.

Mr. Roy read the case into the record. Mr. Gustafson provided information the Board would be relying upon from their meeting with Attorney Campbell regarding the Elderly Housing Ordinance #610. Attorney Campbell agrees that the town's current Zoning Ordinance with its exceptions (Section 610.6.1.1) is contrary to State and Federal regulations. State and Federal requirements supercede the town of Windham's requirements. Because of the operation of Section 610.9.2 under *Interpretation* in light of that to bring the Ordinance into compliance it would be most appropriate to interpret the ordinance by deleting or ignoring the offending exceptions under 610.6.1.1 which would in effect require complete occupancy by persons age 62 or older. The variance request should be reviewed by this interpretation of the ordinance. Attorney Bronstein, representing the Applicant said that with respect to this project now complying there are outstanding Purchase & Sale Agreements with couples one of who is over 62 and one of who is not because the Applicant relied on the amendment to the Zoning Ordinance. In order to comply with a Section of the Federal Law concerning Housing for Older Persons the only one that the Applicant can come into compliance with is the over 55 section. Requiring that 100% of the people be over 55 is more restrictive in some respects than the Ordinance as presently written because the Applicant could sell to one person 62 and one person 22. The Applicant does not want to have that type of development; he would like everyone to be over 55. Chairman Breton made Attorney Campbell's legal opinion available to the Public. The Chairman said that it would be fair and in the spirit of good will to give Attorney Bronstein the opportunity to review Attorney Campbell's letter. Mr. Gustafson said that Attorney Bronstein was given the crux of the legal opinion. Mr. Gustafson said that he didn't see how making this communication public would further the discussion. Mr. Doyle motioned to continue Case #13-2003 till after the last case on the agenda was heard in order to give Attorney Bronstein time to review Attorney Campbell's letter. Mr. Souma seconded the motion. Passed unanimously.



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Lot #17-J-124, Case #21-2003

Leon Cornell
7 Bell Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the construction of 24' X 24' garage that does not meet the 30' side setback requirement.

Mr. Roy read the case into the record. Mr. Cornell presented his case. Because of the configuration of the lot the required setbacks cannot be met. The neighborhood is very mixed in its construction and the parcels of property are quite irregularly shaped. At least two of the abutting properties have outbuildings that are used for storage or other purposes and those buildings are also of irregular construction. The proposed two stall garage will be fully finished and match in all aspects the design and finish of the house. Mr. Cornell furnished photographs of the two outbuildings and of his house and of the site for the proposed garage. Mr. Cornell read the five supporting facts into the record. Mr. Alain Guepy of 9 Bell Road spoke in favor of this request. The Chairman closed the public portion of this case. Mr. Gustafson motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

Deliberative Session, Case #21-2003

Mr. Doyle motioned to grant Case #21-2003. Mr. Roy seconded the motion. Mr. Roy, Mr. Souma, Mr. Doyle, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

Mr. Case asked the Board to try to be more specific. Use numbers when talking about encroaching a lot line.

Lot #8-B-4602, Case #22-2003

Joseph & Maureen Raboin
7 Goodhue Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the installation of an in-ground pool 20-feet from the side lot line where 30-feet is required.

Mr. Roy read the case into the record. Attorney Bronstein, representing the Applicant, presented the case. Attorney Bronstein explained that because of the shape of the lot, location of the septic system and leach field and topography of the lot this is the only location a pool can be reasonably situated. Although the proposed pool would be 20-feet from the lot line it would not be within 60-feet of any structure. The five supporting facts were read into the record. Mr. Ronald Smith of 9 Goodhue Road spoke in favor of this request. Mr. Gustafson motioned and Mr. Roy seconded the motion to close the public portion of this case. Mr. Gustafson motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.



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Deliberative Session, Case #22-2003

Mr. Gustafson motioned to grant Case #22-2003 per the plan submitted. The pool is to encroach no more than 10-feet to the side lot line; that is leaving at least a 20-foot side setback. Mr. Roy seconded the motion. Mr. Doyle, Mr. Gustafson, Mr. Souma, Mr. Roy and Mr. Breton voted to grant this variance. Request granted 5-0.

Lot #3-B-265, Case #13-2003

After having the time to review Attorney Campbell's letter regarding the Elderly Housing Ordinance, Attorney Bronstein said that he agreed with the opinion but unfortunately it is written in a vacuum and if we were in a vacuum it would be fine applying the advice given in the letter. The difficulty in applying this advice now is that both the Applicant and the town of Windham have some exposure. There are presently contracts pending where people have agreed to purchase homes at Hadleigh Woods and have agreed to sell their existing homes by couples one of who is 62 and older and the other under the age of 62 as per the existing ordinance. That leaves us with the alternatives that this project be wide open with no age restrictions which is not what we are seeking or have 100% of the people be over the age of 55 at the time of purchase. During the Planning Board approval process the Applicant had to show the significant facilities available such as transportation for shopping or medical care. Mrs. Linowes said that she is concerned that if we do not abide by the strict interpretation of the law if a woman 45 and older came to Mr. Harvey and requested to purchase a unit before the 80% is achieved then Mr. Harvey would be discriminating if he did not sell to that person. Attorney Bronstein said that Mrs. Linowes is incorrect. The Federal Statute says *at least 80%* need to be over the age of 55. Mr. Gustafson asked Attorney Bronstein if the basis of his argument is that the Applicant has entered into contracts with people who do not abide by the 62 and over interpretation. Attorney Bronstein replied yes and there are between 5 and 10 contracts. Mr. Gustafson said that he can see interpreting the ordinance as 62 and older but how does he look at hardship in this case. Does the detrimental reliance constitute the hardship, or is that to be addressed in a different forum? Miss DiFruscia, Zoning Board Alternate, said that hardship would be relative to those Applicants who are 62 and older because that is the strict interpretation. Mr. Roy read into the record a letter of support from Mrs. Marie Fisichella of 59 Nashua Road. Mr. Gustafson asked to review the five supporting facts with the Applicant. Mr. Doyle motioned and Mr. Souma seconded the motion to close the public portion of this case. Mr. Doyle motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

Deliberative Session, Case #13-2003

Mr. Doyle motioned to grant Case #13-2003 to allow the occupancy of age 55 and older at 100% and to send this case back to the Planning Board for review of State and Federal Regulations in regard to the Fair Housing Act. Mr. Souma seconded the motion. Mr. Doyle, Mr. Souma and Mr. Breton voted to grant this request. Mr. Roy and Mr. Gustafson voted to deny this request. Request granted 3-2.

The Chairman granted a five-minute recess.



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The Chairman called the meeting back to order.

Minutes

Mr. Doyle motioned and Mr. Gustafson seconded the motion to approve the May 27, 2003 minutes as amended. Passed unanimously.

Other Business

Election of Officers

Mr. Doyle nominated Mr. Breton for Chairman. Mr. Roy seconded the nomination. The Members had a discussion regarding Selectmen being Officers on the Zoning Board. Mr. Doyle, Mr. Roy and Mr. Breton voted for Mr. Breton. Mr. Gustafson and Mr. Souma voted against. Mr. Breton elected 3-2.

Mr. Roy nominated Mr. Doyle for Vice-Chairman. Mr. Breton seconded the nomination. Mr. Breton, Mr. Doyle and Mr. Roy voted for Mr. Doyle. Mr. Gustafson voted against and Mr. Souma abstained. Mr. Doyle elected 3-1-1.

Mr. Breton nominated Mr. Gustafson for Secretary. Mr. Roy seconded the nomination. Nomination was unopposed.

Election Results – Bruce Breton, Chairman
Chris Doyle, Vice-Chairman
Rob Gustafson, Secretary

The Members discussed a memo that was to be sent to the Board of Selectmen. At the May 27, 2003 ZBA meeting Mr. Gustafson asked why he had not received an answer from the Selectmen regarding Mr. Doyle's motion made March 25, 2003 stating that he would bring up Zoning Board issues for discussion at the next BOS meeting. At the May 27, 2003 meeting the Board voted 3-0-2 to send a memo to the BOS. The memo was never sent. Mrs. Kovolyan said that she had sent two E-mails to the Chairman asking who would be writing the memo. Mr. Breton said that he would bring up for discussion at the next BOS meeting the concerns of the ZBA and ask the BOS to send a letter to the ZBA. Mr. Souma would like to bring a letter from the ZBA to the BOS along with him when he speaks to the BOS. Mr. Breton said that he would draft a letter to the BOS.

Mail

Memo from Bruce Flanders, Building Inspector regarding ZBA fees.

The Members would like to know how Mr. Flanders came to the conclusion to raise the application fee to \$60.00. The Board would like Mr. Flanders to review one year of ZBA cases to determine cost.



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Mr. Doyle motioned to adjourn at 10:00 PM. Mr. Roy seconded the motion. Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for June 24, 2003 at 7:30 PM in the Planning & Development Office.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.