



# BOARD OF ADJUSTMENT

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

October 14, 2003

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

**Lot #20-E-135, Case #34-2003 (Continued from September 9, 2003)**

Karl Dubay

On Right of Way between 19 & 23 Bear Hill Road

A variance is requested from Section 702, Appendix A-1 of the Zoning Ordinance to permit the subdivision of one lot to two lots and build two houses with conservation easements, no frontage on a town approved road, shared driveway over existing town right of way fronting the parcel connecting to Bear Hill Road.

Mr. Gustafson read the case into the record. Mr. Dubay of MHF Design Consultants presented the case. This variance would allow the proposed lot to be subdivided into two lots with two houses on the property. A 50-foot easement would be given to the town to better access the Gage Land. There would be a buffer easement for the abutters. Trees to the property line would not be cleared. Mr. Dubay advised the Board that he has been waiting for information from Attorney Campbell since Attorney Mason stated that Mr. Dean Smith owns the easement. Mr. Breton said that Al Turner, Director of Planning & Development, told him that Mr. Smith is the owner not the Town of Windham. Mr. Dubay is looking for proof of ownership. The recorded subdivision plan shows two rights-of-way and Mr. Smith may be the fee simple owner. Mr. Dubay said that town staff told him that the right-of-way is not accepted until the road is accepted. Mr. Dubay also said that he finds it unfair and unreasonable not to have the town attorney's opinion on this. Mr. Dubay respectfully requested to withdraw his application without prejudice. Mr. Breton said that all three times Mr. Dubay met with town staff he was told that Mr. Smith is the owner of the right-of-way. Mr. Dubay stated that he is withdrawing the application because the town can benefit from town counsel's opinion; he would like to provide more information on the project and also would like to meet with the abutters. Mr. Gustafson motioned to accept the withdrawal of Case #34-2203 without prejudice. Mr. Doyle seconded the motion. Passed unanimously 5-0.



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### Lot #13-K-33, Case #44-2003

Norma Hines  
25 Doiron Road

A variance is requested from Section 401 of the Zoning Ordinance to permit a 1980.5 square foot modular home on a pre-existing non-conforming lot.

Mr. Gustafson read the case into the record. Mr. Rick Livingstone of RCK Modular Home Systems, Inc. presented the case for the owner Norma Hines. Mr. Livingstone provided photos of the existing property. The proposed plan will cover less of the lot than the existing plan. The existing setbacks are 2.5 feet in the rear, 10.8 feet on the right side and 13.5 feet in the front. The proposed setbacks would be 8.5 feet in the rear, 20.8 feet on the right side and 13.5 feet in the front. 13.5-feet is the front setback without the 5-6-foot proposed front porch. Mr. Gustafson asked the applicant if the owner would be willing to move the proposed house further back on the lot in order to have less intrusion into the front setback. Mr. Livingstone asked Mrs. Hines and she was agreeable to the relocation. Mr. Livingstone read the five supporting facts into the record. Mr. William Kane, an abutter, voiced his concerns regarding the leach field. Mr. Kane was told that the new leach field would be further away from Mr. Kane's property. Mr. Gustafson motioned and Mr. Doyle seconded the motion to go into Deliberative Session. Passed unanimously.

### Deliberative Session, Case #44-2003

Mr. Gustafson motioned to grant Case #44-2003 per plan submitted except to clarify the setbacks. Front setback to be no less than 13.5 feet, side setback (north side) no less than 20.8 feet and the rear setback no less than 2.5 feet. Mr. Roy seconded the motion. Mr. Gustafson, Mr. Doyle, Mr. Souma, Mr. Roy and Mr. Breton voted to grant this variance. Request granted 5-0.

### Lot #21-H-12, Case #45-2003

Julie Carrozzella  
15 Lake Shore Road

A variance is requested from Sections 401 & 702 of the Zoning Ordinance to permit the raising of a cottage and the installation of a new foundation and deck.

Mr. Gustafson read the case into the record. Attorney Mason, representing the owner provided a certified plot plan, marked as Exhibit A, copy of the assessors card, marked as Exhibit B and a septic plan marked as Exhibit C. Attorney Mason explained that the pilings are shifting and settling causing buckling of the house. Contractor, Donald Bielinski, also provided information for this request. The proposed 12' X 20' deck may be 15' X 20'. The deck will be replacing the existing concrete patio. The footprint of the deck will equal the footprint of the patio. The sill elevation will be 6-feet higher. Attorney Mason read the five supporting facts into the record. Mr. Gustafson read three letters of support into the record. The letters were from Mr. & Mrs. Wallace, 19 Lake Shore Road, Mr. & Mrs. Hulme of 14 Lake Shore Road and Mr. & Mrs. Moe of 12 Lake Shore Road.



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Shore Road. Mr. Gustafson also read into the record a letter from Conservation Chairman, Bruce Anderson, advising the Board that Mrs. Linowes would be representing the Conservation Commission for this meeting. Mrs. Linowes stated that the Conservation Commission objects to construction in the Shoreland Protection area. Mr. Gustafson motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously

### **Deliberative Session, Case #45-2003**

Mr. Gustafson motioned to grant Case #45-2003 per the plan submitted. Mr. Doyle seconded the motion. Mr. Roy, Mr. Souma, Mr. Doyle, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

### **Lot #16-O-206, Case #46-2003**

Mark & Ruth Kovacs  
15 Viau Road

A variance is requested from Sections 401 & 702, Appendix A-1, Note 12 of the Zoning Ordinance to permit the razing of the existing house and outbuilding and the construction of a new house and garage.

Mr. Gustafson read the case into the record. Mr. Kovacs submitted 15 pages of information marked Exhibit A. The current building has 1872 square feet of living space and the proposed building will have 2,070 square feet. The proposed structure will have 10% more living space than the existing structure. The living space over the garage constitutes the 10% increase in living space. The living space over the garage does not decrease abutters' unobstructed views of the lake. Trees on both sides of the property screen current and proposed home. Impervious area will be reduced under new construction to improve run-off control. The current house is 14' to 20' from the waterfront. The proposed house is 19' to 21' from the waterfront. The current use of the property, single-family residence with two bedrooms, will be maintained. Mr. Kovacs read the five supporting facts into the record. Mrs. Linowes asked that care be taken during construction. The Conservation Commission objects to construction at the Shoreland Protection area. Mr. Gustafson motioned and Mr. Doyle seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #46-2003**

Mr. Roy motioned to grant Case #46-2003. Mr. Souma seconded the motion. Mr. Gustafson, Mr. Doyle, Mr. Souma, Mr. Roy and Mr. Breton voted to grant this variance. Request granted 5-0.

*The Chairman granted a five-minute recess*

*The Chairman called the meeting back to order.*



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### Lot #16-R-183B, Case #27-2003 Request for Rehearing

Margaret L. Donovan – Applicant

Martin Delaney – Owner

27 First Street

A variance is requested from Section 702 of the Zoning Ordinance to permit the building of a 20' X 27' ground level deck encroaching 8-feet and 6-feet into the side setbacks where 30-feet is required.

Mr. Gustafson read into the record the request by Mrs. Donovan for a rehearing. Along with her request Mrs. Donovan submitted a recent survey of her property as new evidence. In her appeal Mrs. Donovan stated that Mr. Delaney's deck is only 14 feet from her deck and only 25-feet from her house. This limits her privacy and diminishes the value of her property. Mrs. Donovan's request also states that her daughter Lois Trubiano spoke for Mrs. Donovan at the August 26, 2003 meeting and was not given ample opportunity to present her arguments. Mrs. Donovan also claims that Beth McCarthy, Mrs. Donovan's other daughter and Mr. Douglas Marshall were not allowed to complete their arguments in opposition to the variance. Mrs. Donovan's request goes on to say that Mr. Delaney has increased the size of his building. Mrs. Donovan's appeal states that the original notice to abutters and the notice advertised in the *Windham Independent* are incorrect. The notice does not include the stairs and deck stairs currently under construction which are only 4.7 feet from the lot line. Mr. Delaney put up a fence blocking a set of stairs and walkway that Mrs. Donovan has used since 1955 and claims prescriptive easement to. Mr. Doyle stated that during the August 26, 2003 meeting some of the abutters were speaking during the Deliberative Session. Input from the public is not allowed during the Deliberative Session. Mr. Doyle motioned to grant the rehearing of Case #27-2003 because of the new evidence submitted. The certified plot plan does not line up with the original setbacks provided. Mr. Souma seconded the motion. Passed unanimously.

Mr. Gustafson read into the record a request by Mr. Douglas Marshall for a rehearing of Case #27-2003. Mr. Marshall's request states that the Zoning Board failed to make specific findings that the variance requirements were met, particularly with respect to hardship. Mr. Doyle motioned and Mr. Gustafson seconded the motion to deny this request for a rehearing of Case 27-2003. Passed unanimously. The applicant did not provide new evidence.

### Mail

- September 22, 2003 letter from Attorney Campbell regarding Gemmell vs. Town of Windham.
- September 26, 2003 letter from Attorney Campbell regarding Gemmell vs. Town of Windham.
- October 2003 Issue of *Town & City*.



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- October 9, 2003 letter from Al Turner regarding Shed on Lot #3-A-546, 12 Partridge Road.

### Other Business

The Members discussed complaints regarding the Conservation Commission. A memo will be sent to Al Turner and the Board of Selectmen regarding these complaints.

Mr. Gustafson motioned and Mr. Roy seconded the motion to have a Zoning Board of Adjustment meeting on November 18, 2003. Passed unanimously. This will be the only ZBA meeting during the month of November.

Mr. Gustafson motioned and Mr. Roy seconded the motion to adjourn at 11:00 PM. Passed unanimously.