



# BOARD OF ADJUSTMENT

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

April 13, 2004

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

## **Lot #18-L-1, Case #8-2004 (Continued from March 23, 2004)**

Andrew Lane  
2 Woodvue Road

A variance is requested from Section 702-A-1 of the Zoning Ordinance to permit the garage foundation to be moved 8-feet closer to West Shore Road to within 42-feet of the side lot line where 50-feet is required so that the foundation can be further away from a finger of wetland and back filled without the need for a retaining wall.

Mr. Gustafson read the case into the record. Mr. Lane presented his case. Mr. Gustafson asked what the purpose is for the proposed garage. Mr. Lane said storage, a workshop and to store his boats. Mr. Pellegrini asked where the entrance would be. Mr. Lane responded that the entrance would be off of Woodvue. Miss DiFruscia asked if the garage would fit somewhere else on the lot in order to have less impact. Mr. Lane said no because of the location of his septic system. Mr. Lane read the five supporting facts into the record. Robert Russell of 6 Woodvue Road spoke in support of this request. Mr. Tierney, Town of Windham Building Inspector, voiced his concern that the building would be closer to the drainage easement and the view from Woodvue to West Shore being blocked once the garage is built. Mr. Tierney said that the hardship requirement would not be met because the Applicant can downsize the garage. Mr. Tierney never received the actual load capacity of the soil from the Soil Scientist. The proposed garage is 26' X 40' on a 1.829 acre lot. Mrs. Linowes, representing the Conservation Commission, read into the record a letter from Mark West of West Environmental, Inc. Mr. West was hired by the Conservation Commission to conduct a site inspection to determine the presence of wetlands and the shoreline of Canobie Lake. Mr. West reported in his letter that he conducted the inspection on March 31, 2004 with Mr. Al Turner, Code Enforcement Officer for the Town of Windham. The following observations were reported in Mr. West's letter.

- The site has been significantly disturbed and has had most of the trees removed.
- There were areas of fill present and silt fence was in disrepair.
- Soils were not stabilized on the site.
- The surface water of the lake borders the wetland boundary along the western portion of the site in the form of scrub-shrub lacustrine wetland.



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- Evidence of shoreline included water stained leaves and watermarks on trees consistent with the high water mark of the lake.
- There is a finger of non-lacustrine (lake influenced)

Mrs. Linowes submitted four photographs that were marked as Exhibits A, 1 through 4. Mrs. Linowes advised the Board that the Conservation Commission is asking the Zoning Board of Adjustment not to grant a variance for this property. The Shoreland Protection Agency should see the violation. Mr. Gustafson read into the record a letter against this request from Mr. & Mrs. James Ladadini of 1 Woodvue Road. Mr. Lane stated that the drainage easement was approved by the Planning Board for two buildings and that he has been advised by the State that this area is not wetland. The sight line at the intersection of Woodvue and West Shore Roads was discussed and a photo submitted by Mr. Lane was marked as Exhibit B. Mr. Doyle closed the Public Portion of this case. Mr. Gustafson motioned and Mr. Souma seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #8-2004**

Mr. Gustafson motioned to deny Case #8-2004 on the grounds that it does not meet the hardship requirement and the applicant has a building permit. Mr. Pellegrini seconded the motion. Mr. Souma, Miss DiFruscia, Mr. Gustafson, Mr. Pellegrini and Mr. Doyle voted to deny this variance. Motion passed 5-0.

### **Lot #1-C-2303, Case #10-2004 (Continued from March 23, 2004)**

Brian & Lori Ashworth

7 Fern Street

A variance is requested from Section 702-A-1 of the Zoning Ordinance to permit a 24-foot round above ground pool that will stand approximately 12.75 feet from the back property line where 30-feet is required.

Mr. Gustafson read the case into the record. Mr. Ashworth presented his case and submitted an aerial photo of his property that was marked as Exhibit A. The above ground pool will not be in view of the surrounding properties. The closest home is approximately 100 yards away. Mr. Ashworth read the five supporting facts into the record. Mr. Doyle closed the public portion of this case. Mr. Pellegrini motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #10-2004**

Mr. Pellegrini motioned to grant case #10-2004 per the plan submitted. Mr. Gustafson seconded the motion. Mr. Gustafson, Mr. Pellegrini, Miss DiFruscia, Mr. Souma and Mr. Doyle voted to grant this variance. Request granted 5-0.



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### **Lot #18-L-302, Case #11-2004 (Continued from March 23, 2004)**

Vessarios A. Liakas, Trustee  
59 Range Road

A variance is requested from Section 702-A-1 of the Zoning Ordinance to permit the construction of a 17.5 X 17.5 deck with clipped corners and exterior doors from the main building to the deck having a front setback of 29-feet where 50-feet is required.

Mr. Gustafson read the case into the record. Attorney Peter Bronstein, representing the Applicant Mr. Liakas, presented the case. The primary use for the proposed deck is for overflow from the restaurant. Attorney Bronstein submitted a color computer generated drawing of the restaurant and the proposed deck. The shape of the lot, location of the existing improvements and internal layout of the restaurant dictate that the proposed deck location is the only reasonable location. Currently the front setback is 38-feet. Mr. Gustafson asked if this request comes under site plan review. Mr. Tierney replied yes, this request must go before the Planning Board. Attorney Bronstein read the five supporting facts into the record. Mr. Gustafson read into the record a letter from the Windham Historic District/Heritage Commission. The letter states that the Park/Dinsmore House was inventoried by the NH Department of Historic Resources during the Route 111-bypass study. It was found potentially to be eligible for listing on the National Register of Historic Places largely due to its architecture. The building is also on the Town of Windham's Historic Resource List. The Commission is concerned that the proposed project will significantly impact the building by removing a window and the granite lintel that forms an integral part of the architecture. The Commission fears that an addition to the front of the building would compromise its exterior resulting in a degradation of its historic value. Attorney Bronstein said that few historic parts as possible would be disturbed. Mr. Doyle closed the public portion of this case. Mr. Pellegrini motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #11-2004**

Mr. Gustafson motioned to grant Case #11-2004 per plan submitted. Mr. Pellegrini seconded the motion. Miss DiFruscia, Mr. Souma, Mr. Pellegrini, Mr. Gustafson and Mr. Doyle voted to grant this variance. Request granted 5-0.

### **Lot #21-G-860, Case #9-2004**

Robie Properties  
11 Candlewood Road

A variance is requested from Section 702-A-1 of the Zoning Ordinance to permit the building of a 12' X 14" deck 24.6 feet from the rear setback where 30-feet is required.

Mr. Gustafson read the case into the record. Mr. Jeff Hadden, representing the owner Robie Properties, presented the case. Demographics of the property limit the footprint of



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the house to its present location. Without this deck the backyard becomes cramped and difficult to use efficiently. Mr. Hadden read the five supporting facts into the record. Mr. Gustafson read into the record a letter from Robert & Evelyn Buckley of 24 Bramley Hill Road that states the subject property is directly behind their house on Bramley Hill Road. During the times of the year when there is no foliage on the trees privacy is very limited. The Buckley's letter requests privacy shrubbery of no less than 5-feet be required in order to separate the two properties. Mrs. Linowes of 20 Bramley Hill Road said that it is very apparent that the house on Candlewood is in the Buckley's backyard. Mr. Doyle closed the Public Portion of this case. Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #9-2004**

Miss DiFruscia motioned to grant Case #9-2004 as written. Mr. Pellegrini seconded the motion. Mr. Gustafson, Mr. Pellegrini, Mr. Souma, Miss DiFruscia and Mr. Doyle voted to grant this variance. Request granted 5-0.

### **Lot #13-C-139, Case #12-2004**

Kyle & Sue McInnis  
17 Stonehedge Road

A variance is requested from Section 702-A-1 of the Zoning Ordinance to permit the building of a 16' X 32' addition that will encroach 2-feet beyond the 30-foot requirement.

Mr. Gustafson read the case into the record Mr. Bowen withdrew Case #12-2004. The application will be presented after a permit denial is issued that includes the WWPD.

### **Lot #6-C-303, Case #14-2004**

Sharon & Larry Roth  
8 Jackman Ridge Road

A variance is requested from Sections 601-3 & 601.4.8 of the Zoning Ordinance to permit the building of a liner pool that encroaches 7-feet into the WWPD and a patio, fencing and additional landscaping.

Mr. Gustafson read the case into the record. Mr. Roth presented his case. A large portion of this 2.97-acre lot is WWPD. From the back of the house to the WWPD is approximately 60-70 feet; therefore, this is the only area that can be used for a pool. Mrs. Linowes, representing the Conservation Commission, read into the record their comments. The Conservation Commission does not support the granting of this variance. It appears that there are other options such as rotating the pool, installing a different size or shape pool. The full impact can not be understood because no grading is shown. Mrs. Linowes, speaking for herself not as a representative of the Conservation Commission, said that this is a huge high value wetland area. Mrs. Linowes commented on #5 of the *Supporting Facts Section* of the application that states *the use is not contrary to the spirit of the ordinance*. The applicant is requesting a variance from the WWPD Ordinance which is directly contrary to the spirit of the ordinance. Mr. Jack Gattinella stated that he



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has a problem with the way people interpret the WWPD Ordinance. He suggested that the permitted uses in the WWPD be reviewed. Mr. Roth said that he intends to use a non-backwash system. Mr. Doyle closed the Public Portion of this case. Mr. Pellegrini motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #14-2004**

Mr. Pellegrini motioned to grant Case #14-2004 as submitted, encroachment not to exceed the 7-feet specified and no backwash into the WWPD. Mr. Gustafson seconded the motion. Miss DiFruscia, Mr. Souma, Mr. Pellegrini, Mr. Gustafson and Mr. Doyle voted to grant this variance. Request granted 5-0.

**Mr. Doyle granted a five-minute recess.**

**Mr. Doyle called the meeting back to order.**

### **Minutes**

Miss DiFruscia motioned to accept the March 23, 2004 minutes as written. Mr. Gustafson seconded the motion. Mr. Souma, Mr. Gustafson, Miss DiFruscia and Mr. Doyle voted for the motion. Mr. Pellegrini abstained because he did not attend the March 23, 2004 meeting. Passed 4-0-1

### **Other Business**

Mr. Doyle will write a memo to David Sullivan, Town Manager, regarding the number of members and alternates needed for the Zoning Board of Adjustment.

### **Mail**

- Memo from David Sullivan dated April 12, 2004 regarding upcoming board appointments
- Confidential legal communication from Attorney Campbell regarding 27 First Street

Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to adjourn at 10:20 PM. Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for April 27, 2004 at 7:30 PM in the Planning & Development Office.

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