



BOARD OF ADJUSTMENT

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

January 11, 2005

Rob Gustafson – Chairman
Chris Doyle – Vice-Chairman
Georges Roy – Secretary
Al Souma – Member
Tony Pellegrini – Member

Mr. Pellegrini motioned, and Mr. Souma seconded to move case #03-2005 from third to first. Passed unanimously 5-0.

Lot #22-L-47, Case #3-2005

Applicant – Barbara Devine
Owner – Barbara Devine
Location – 59 West Shore Road
Zone – Residential A

An Area Variance is requested from Sections 702, 401, 403 & 1200.1.3 of the Zoning Ordinance to permit the construction of a single-family home encroaching on setbacks and increase in volume and area on a non-conforming lot and to convert to year-round use.

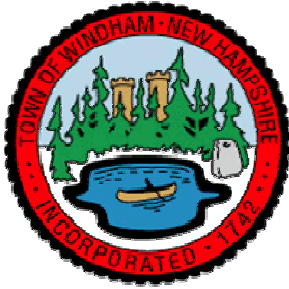
Mr. Roy read the case into the record. Ms. Devine requested that the case be continued to the next meeting. Mr. Pellegrini motioned and Mr. Souma seconded to continue case # 03-2005 until January 25, 2005 at 7:30 pm. Passed unanimously 5-0.

Lot #14-A-925 & 930, Case #01-2005

Applicant – Herbert & Associates
Owner – K.P. Bergeron Development LLC
Location – 28 & 34 Mammoth Road
Zone – Neighborhood Business District

A Use Variance is requested from Section 604 of the Zoning Ordinance to permit an Adult Housing Community in the Neighborhood Business District. An area variance is requested concerning section 610.4.1 of the Zoning Ordinance to permit the construction of an elderly housing community on lots less than 4 acres of net tract area.

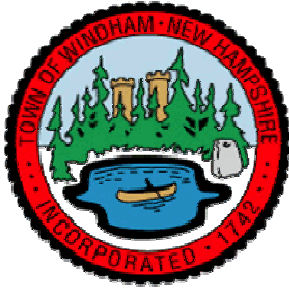
Mr. Roy read the case into the record. Attorney Mason, representing the applicant explained the proposal stating that they would be combining the two lots (14-A-925 and 14-A-930) to create 14.5 acres of land of which about 8.5 would be high and dry and to construct elderly housing on the combined parcel. They are in front of the board to renew the variance they were granted in July of 2001 and March of 2002. Mr. Mason presented the updated plans for the Adult Housing Community, and explained that this plan has a



BOARD OF ADJUSTMENT

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

reduced number of units, that the cap on the elderly housing units hasn't increased since 2002. The rate of growth has allowed for more of these communities according to the percentage allowed. Research was done on the soil in the area, and it was determined that the soils would be able to support the housing units. Mr. Chairman asked where the access would be for the upper units. Attorney Mason explained that the access would be from Cobblestone Rd. Attorney Mason then went through the five points for the use and area variance. First, he believes that there will be no decrease of property value. The area is residential in nature, and so a residential type community would fit in better and have a smaller impact than a business that may come in because it is a Neighborhood Business District. Second Attorney Mason stated that this use of the land is not contrary to public interest because it provides housing for older people in the community. Third, he stated that this would not interfere with the reasonable use of the land because again, the surrounding area with the exception of Waterhouse Country Store is residential. It does not make any sense to create a business in that setting. Next, it will not injure public or private rights of others because it is adding to the residential feel of the area; it will blend in aesthetically to the surrounding properties. Lastly, this is consistent with the spirit of the ordinance because the variance if granted would meet all of the requirements of the town, such as health safety and building codes. If this were granted it would allow the applicant to have reasonable use of the property in a manner that provided housing for a group of citizens where there is demand. Mr. Pellegrini asked Attorney Mason where the parking would be for the top portion of the proposed buildings, and how that would affect the runoff going into the wetlands. The Attorney responded that it would be in front of the buildings, and that the drainage would be treated and it would be drainage neutral. The water would be treated before it reached the WWPD. The Chairman asked if anyone would like to speak in favor of the request, there was no one. The Chairman then asked for those who wanted to speak against the case. First to speak was Allan Doak of 8 Cobblestone Rd. Mr. Doak wanted to make clear that this property already went in front of the Planning Board to rezone and was denied. He feels that this application is basically asking for a rezoning, and so should not be granted because it was already denied. He states that this is an overlay district, and so the Planning Board has jurisdiction over this decision. Last, he feels that the property value will be diminished due to this community. Next to speak was Patrick Kusior of 1 Cobblestone Rd. He stated that according to 674.33 section four says that all special exceptions should be in harmony with the general purpose or intent of the zoning ordinance and with the general or specific rules contained within that ordinance. He feels it is not. He feels that it will degrade property values. This is a very young community with many children, and he feels that because of solar glare, children playing will be in danger from elderly or other people. He feels that this shows a violation of public or private rights of others. Bill Irvin of 5 Cobblestone Rd. was the next to speak in opposition. He felt that the property will be devalued, but there is no documentation so no one can really say one way or another. He also has a sincere concern for traffic flow. Attorney Mason rebutted the arguments. He stated that residential uses will be better in this area than business uses. Many of the other issues will be dealt with when the case is in front of the Planning Board. Attorney Mason



BOARD OF ADJUSTMENT

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

believes that this area is not suited for business development; none of the Neighborhood Business Districts have been developed as originally envisioned. This area has been zoned as Neighborhood Business District for quite a few years, and there haven't been any businesses to come in, it is time to make good use of the land. Mr. Doyle made a motion, and Mr. Roy seconded to move to deliberative session. Passed unanimously 5-0.

Deliberative Session, Case #01-2005

Mr. Pellegrini motioned, and Mr. Roy seconded to grand or deny the use variance for lots 14-A-925 & 930. Mr. Doyle, Mr. Souma and Mr. Pellegrini voted to grant the use variance. Mr. Gustafson and Mr. Roy voted to deny. Variance granted, 3-2.

Mr. Pellegrini motioned and Mr. Roy seconded to grant or deny the area variance subject to the requirements of the Planning Board. All members voted to grant the variance. Passed unanimously 5-0.

Lot #18-L-1, Case #2-2005

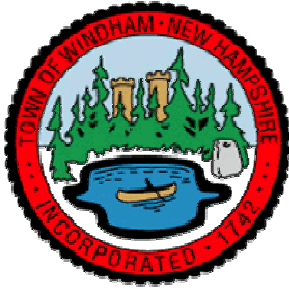
Applicant – James Labadini & William Schroeder

Location – 2 Woodvue Road

Zone – Residential A

An Appeal of an Administrative Decision is requested regarding the November 24, 2004 decision by Al Turner, Code Enforcement Officer regarding the issuance of a building permit for a garage at 2 Woodvue Road.

Mr. Roy read the case into the record. Mr. Tierney explained that Mr. Schroeder's name is not on the public notice because he is not a direct abutter. Mr. Al Turner spoke recommending that a letter from Attorney Campbell regarding the timeliness of the application be read before opening the case. Ms. Lisa Linowes of 20 Bramley Hill Rd. made a point of order regarding procedure about the letter from the Attorney. Attorney Stephanie Burnham representing the Lane's explained that the letter from Attorney Campbell was in response to her letter to Mr. Turner. She felt she would be able to field any questions regarding either of the letters. The applicant, William Schroeder of 14 Woodvue Rd. spoke first. Mr. Schroeder read onto record his presentation, which was entered as an exhibit. Please see **Exhibit A**, 12 pages. Mr. Schroeder put emphasis on the debate regarding the status of the property; WWPD or Shoreland Protection Area. The second applicant, Mr. James Labadini of 1 Woodvue Rd. spoke next. Mr. Labadini expressed concern about flooding on his property, and the health of one of few tributaries that feeds Canobie Lake. The spring previously mentioned runs very close to the construction. Erosion is a large concern. Mr. Labadini entered nine photographs of the construction site over time as **Exhibit B**. The Chairman reminded the applicants that they were hearing an appeal of an administrative decision, not the actual case. Lisa Linowes made a point of order regarding the activity at the site. To her knowledge all work must stop during an appeal of administrative decision. Mr. Wilder of 2 Birchwood Rd. spoke in favor of the appeal. He began with the discrepancy regarding the WWPD area versus

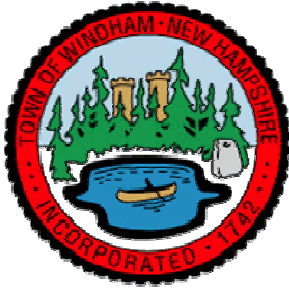


BOARD OF ADJUSTMENT

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

the Shoreland Protection Area. He read from a letter written in July that was addressed to the Lane's from Mr. Al Turner requesting that a surveyor determine where the lake reference line is. Next he read from a letter to Mr. Turner from Nobis Engineering dated in October. He then talked about the DES decision that is included in the file. Mr. Wilder read from a letter Mr. Turner wrote to the Lanes saying that he could still not release the building permit because the Lanes had not displayed how they were going to construct the garage without impacting the wetlands. Mr. Wilder highlighted the issue of the reference line. He explained that no one intended there be a gap in the protection of wetlands, the Heron Cove case set the precedent that any stream that comes into the lake must be protected and this one is not an exception. Mr. Wilder entered two pictures to the record called **Exhibits C1 and C2**. Mr. Wilder requested two things be done, get a surveyed reference line and get the state's opinion on the normal high water line for Canobie Lake. Next, Adam Letizio of 5 Woodvue Rd. spoke for his father. He read from **Exhibit D**. Mr. Turner brought up a point of order declaring that an abutter's property must touch the one in question and must show detriment to property in their testimony to be considered an abutter. He wants to be sure that those that are testifying are allowed to do so. Mr. Pellegrini expressed concern that the case was being heard as an actual case, and not an appeal. Ms. Linowes expressed her feelings that because this is a water issue, it affects everyone in the area with wetlands on their property, and all those present should be allowed to testify. Ms. Linowes then read a letter from Alison Gourley at DES dated July 21. The email from Ms. Gourley was submitted as **Exhibit E**. Mr. Letizio gave a point of order, making it clear that he is an abutter to the property.

Mr. Turner then had a chance to rebut. Mr. Turner pointed out paragraph two in **Exhibit A3**. He explained that Mark West of West Environmental Engineering agreed with Mr. Turner about the low wetland area. Mr. Turner never accepted a reference line before he got the one from the DES. Mr. Turner felt that the Heron Case was much different because the topography is different. He said that certified wetland scientists evaluated the area and decided that the place the Lanes were building the garage is dry. Mr. Turner then read a legal opinion from Attorney Burnham that stated the appeal was too late. Attorney Campbell was given that letter and the information in the file so that he may evaluate the situation according to the required time frames, and write a decision on that. Attorney Campbell also feels that the appeal was entered too late, and the board should not hear the case. He wrote a letter to the board expressing that opinion, and Mr. Turner read the letter. The board preliminarily discussed this issue. Betty Dunn of 30 Woodvue Rd. spoke next. She spoke on the topic of timeliness and stated that it is an issue of interpretation. She felt that Attorney Campbell had not been given all of the information to make his decision. Attorney Burnham then spoke saying that the ZBA should decide on the timeliness issue, or hear the rest of the case. She feels that there have been no administrative decisions since July. She then expressed that in Zoning Ordinance 904.2 only violations and determinations that are violations can be appealed. Mr. Turner read the July 14th letter. Mr. Turner spoke on the timeliness issue. Attorney Burnham spoke saying that all of the issues being discussed today had previously been decided by the



BOARD OF ADJUSTMENT

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

ZBA as of April 14, 2004. The case was never decided on because at the time the ZBA did not think that there would ever be an issue. Ms. Dunn spoke next on the timeliness issue. The Chairman looked at the November 24 letter. Mr. Turner stated that his last decision was that this area does not contain a WWPDP was made in November 17 of 2003. This letter was provided to the board as **Exhibit F**. Mr. Turner explained the history of the situation. Mr. Doyle feels that the best thing to do would be to have Attorney Campbell come to the board and verify his letter. Ms. Betty Dunn wanted to make clear that she is not representing anyone at this case, and is not present as an attorney, but as a concerned citizen. The board briefly discussed the timeliness issue. Mr. Pellegrini stated that Attorney Campbell is putting his reputation on the line, and would not do so if he had not fully evaluated the decision first himself. Mr. Andrew Lane spoke next saying that this has been a long and tedious process. The timeliness issue is in place for situations like this, and it should be taken into consideration. Mr. Shroder asked if the November 24th letter was the release of the building permit. Mr. Turner responded that it was. Ms. Linowes claims that Mr. Turner got a map from the DES showing shoreline in November of 2004, and so Mr. Turner could not have made a decision until then. She submitted a two page Wetlands Bureau Complaint from October 22, 2002 as **Exhibit G**. Mr. Turner stated that he made his decision in 2003. Mr. Wilder suggested that if the elevations of the water and the shoreline are found, then an answer will be found. A letter from Arlene Allen of the DES to the property owner (1 page) was entered as **Exhibit H**. Mr. Pellegrini motioned and Mr. Souma seconded to move into deliberative session. Approved 5-0.

Deliberative Session, Case #2-2005

Mr. Doyle motioned and Mr. Roy seconded to accept or not accept the appeal of case #02-2005 in regards to timeliness. Mr. Gustafson voted that the application was timely. Mr. Doyle, Mr. Roy, Mr. Souma, and Mr. Pellegrini voted that the application was not timely. Application not accepted, 4-1.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Mr. Doyle left the meeting.

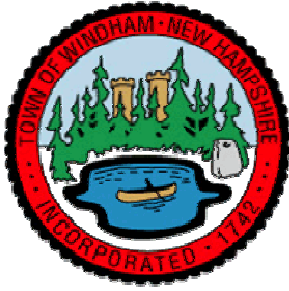
Approval of December 14, 2004 Minutes

Mr. Pellegrini motioned and Mr. Roy seconded the motion to accept the December 14, 2004 minutes as written. Passed unanimously 4-0.

Other Business

Mr. Pellegrini verified that the August 2001 copy of the Zoning Board of Adjustments Handbook is the most recent.

Kara Difrusia officially resigned from the board on Tuesday December 1st, 2004.



BOARD OF ADJUSTMENT

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

The board discussed the December 30th, 2004 letter from David Sullivan regarding alternates.

The board will request that Dave Sullivan sends them the names of potential alternates.

Mr. Pellegrini motioned and Mr. Souma seconded the motion to adjourn at 11:40 PM.
Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for January 25, 2005 at 7:30 PM in the Planning & Development Office.

These minutes are in draft form and are respectfully submitted for approval by Margo Logan.