



BOARD OF ADJUSTMENT

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

April 26, 2005

Rob Gustafson – Chairman
Chris Doyle – Vice-Chairman (Absent)
Georges Roy – Secretary
Tony Pellegrini – Member
Mark Samsel – Member

Lot #13-D-100 & 120, Case #13-2005 (Continued from April 12, 2005)

Applicant – Richard Messina

Owner – Richard Messina

Location – 43 Rockingham Road / Jones Road

Zone – Business Commercial A

An Appeal of An Administrative Decision is requested from Section 200 Definitions of the Zoning Ordinance regarding a decision made on January 28, 2005 that:

- Cots are limited to a few days.
- Hot Plates are not allowed.
- Are Toaster Ovens Allowed?

Mr. Roy read the case into the record. Mr. Messina presented his case and advised the Board that he has owned the 60-unit Manor Motel for 26 years. Mr. Messina read the first paragraph of the January 28, 2005 letter he received from Mr. Turner, Director of Planning & Development. The letter states: *The septic system approvals that go back to the 1980's limit the use of each motel unit to one double bed. I interpret this to include the substitution of two single beds for one double bed. The temporary (several days) use of a cot in a motel room in addition to the double or single beds is also allowed. The NH DES may have a different interpretation of this restriction.* Mr. Messina challenged the letter and asked how many days is *several* is it 1 day, 20 days, 75 days. Mr. Messina said that his septic approval allows 100 gallons per day. Per the Town of Windham's instruction, Mr. Messina installed a meter to keep track of loading. Some motel rooms may be empty while other rooms may have one double bed and one cot. The second paragraph of the January 28, 2005 letter states: *The property records for the Manor Motel site go back to the 1960's. The Planning Board minutes for the newer 28-unit motel building on Jones Road clearly indicate that the Planning Board did not approve this building for extended stays or units with kitchens. Your engineer, Eric Mitchell, stated at the April 13, 1984 meeting that the septic system was designed for a motel unit not for efficiency apartments. After a review of the files, I am of the opinion that the 28 units on Jones Road are limited to small food preparation devices that primarily warm or heat prepared foods and beverages such as an electric coffee pot, a microwave oven and an under the counter refrigeration (small). This does not include a hot*



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plate. Mr. Messina submitted copies of Planning Board minutes. Mr. Messina explained that any plans prior to April 11, 1984 do not apply because those plans were withdrawn. Mr. Pellegrini said that if people are living at the motel for months at a time, that in his definition, is not a hotel but an efficiency apartment. Mr. Pellegrini asked if the Fire Department has checked the use of hot plates because they can be dangerous. Mr. Messina replied that the Town of Windham sponsors people to live at the motel and registers their cars.

Mr. Case stated that *long term versus short term* is not the issue. Mr. Case asked if Mr. Turner has ever reviewed the meter readings at Mr. Messina's property.

Mr. Ron Preble, Building Inspector, said that hot plates can produce grease and this could cause a health problem. Mr. Messina said that there are grease cans in every room and grease can also be created in a microwave oven.

The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #13-2005

Mr. Pellegrini motioned and Mr. Samsel seconded the motion that the current use of cots is allowed as long as it meets safety regulations and does not overload the septic system. Passed unanimously 4-0.

Mr. Roy motioned and Mr. Samsel seconded the motion that he is in agreement with the Building Department that hot plates are not allowed per Mr. Turner's letter dated January 28, 2005. Passed unanimously 4-0.

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to move to a new case. Passed unanimously 4-0.

Lot #13-D-120, Case #14-2005 (Continued from April 12, 2005)

Applicant – Richard Messina

Owner – Richard Messina

Location – Jones Road

Zone – Business Commercial A

An Appeal of An administrative Decision is requested concerning NFPA Life Safety Code 101 regarding a decision made on January 24, 2005 that the occupancy load for each unit in the rear two-story building should be two persons per room.

Mr. Roy read the case into the record. Mr. Messina said that he is in agreement with the state and the town Fire Department and David Sullivan, Town Manager, that he can place four people to a room. Mr. Messina also said that Mr. Sullivan advised Mr. Turner and that Mr. Turner was also



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in agreement with four people to a room. Mr. Messina said that he is looking for direction from the town and a response from Attorney Campbell. Mr. Roy motioned and Mr. Samsel seconded the motion to continue Case #14-2005 to the May 24, 2005 meeting. Passed unanimously 4-0.

Lot #13-D-100 & 120, Case #15-2005 (Continued from April 12, 2005)

Applicant – Richard Messina

Owner – Richard Messina

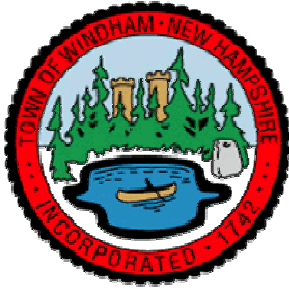
Location – 43 Route 28 & Jones Road

Zone – Business Commercial A

An Appeal of an Administrative Decision concerning a decision made on February 10, 2005 regarding the size of the motel rooms, use of cots and small appliances.

Mr. Roy read the case into the record. Mr. Messina referred to Mr. Turner's letter dated February 10, 2005 regarding the size of the motel rooms, use of cots and small appliances. Mr. Messina discussed the five statements (listed below along with Mr. Messina's comments) made in the February 10, 2005 letter.

- Statement #1 – Hot Plates and toaster ovens would not be allowed because of the site plan approval history of the motel and the approved use, which did not include cooking facilities.
- Comment #1 – The site plan approval history does not disallow hot plates and toaster ovens. The approved use does not disallow cooking facilities. The design that was approved includes a specific area that has a counter with cabinets above and below, with space and electric outlets for small kitchen appliances as found in many motels throughout the nation.
- Statement #2 - The property file also indicates that the stovetops installed in the older units did not have permits and were installed with the knowledge that the Planning Board did not want kitchens in the units or efficiency apartments.
- Comment #2 – Advise how the approval process in 1987-1988 indicating no kitchens or efficiencies applies to stovetops installed in the original motel units in 1979?
- Statement #3 – The Fire Inspector has indicated that the size of the motel rooms would only allow the room to be occupied by two individuals at any given time.
- Comment #3 – The building was approved without this or any other stipulation. Additional requirements cannot be added later.
- Statement #4 – The property file indicated that stovetops installed in the older units did not have permits and were installed with the knowledge that the Planning Board did not want kitchens in the units or efficiency apartments. This does not apply to the cottages or stand alone units. This does apply to the single-family house converted to a duplex.



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- Comment #4 – An approved house is not subject to the February 10, 2005 decision.
- Statement #5 – Water was flowing out of two of your newer septic systems.
- Comment #5 – This is false; water was flowing out of only one.

Mr. Messina said that he would not address statement #3 because it will be heard on another appeal.

Mr. Tom Case said that the Board should make a distinction between cooking and having a kitchen and that the Planning Board never said *no cooking*.

Mr. Charles Jaynes asked what constitutes a hot plate; is a crock-pot a hot plate; is a deep fryer a hot plate. Mr. Jaynes went on to say to the Board that they should decide what they are talking about when they say hot plate.

The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #15-2005

Mr. Samsel motioned and Mr. Roy seconded the motion to uphold the decision of the Administrative Officer in reference to statement #1 regarding hotplates and toaster ovens. Passed unanimously 4-0.

Statement #3 was set aside because this point will be heard at the May 24, 2005 meeting under Case #14-2005.

Statements 2, 4 and 5 are disagreements on facts not an administrative decision. Mr. Pellegrini motioned and Mr. Samsel seconded the motion that an administrative decision was not made on Statements 2, 4 and 5 so there is nothing to appeal. Passed unanimously 4-0.

Mr. Roy motioned and Mr. Samsel seconded the motion to grant a five-minute recess. Passed unanimously 4-0.

Lot #14-B-508, Case #18-2005

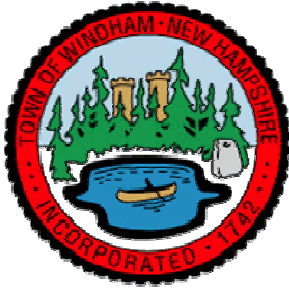
Applicant – Daniel P. McCarthy

Owner – Daniel P. McCarthy

Location – 6 Highland Road

Zone – Rural

A variance is requested from Section 702 Appendix A-1 of the Zoning Ordinance to permit a shed to be 22-feet from the rear lot line where 30-feet is required.



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Mr. Roy read the case into the record. Mr. McCarthy presented his case. Due to a 10-foot slope and the terrain the 12' X 16' shed would not be very visible. The shed will be used for the storage of lawn and garden tools, toys and bikes. Mr. McCarthy read the supporting facts into the record. The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #18-2005

Mr. Roy motioned and Mr. Pellegrini seconded the motion to grant Case # 18-2005. Passed unanimously 4-0.

Lot #24-A-21, Case #19-2005

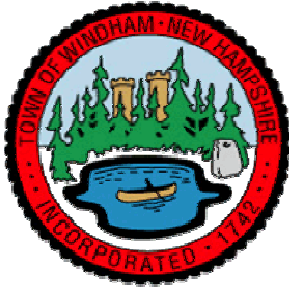
Applicant – Ronald Coish
Owner – Colin & Claire Walker
Location – 8 Rock Pond Road
Zone – Residential A

A variance is requested from Sections 601.1.1 & 601.3 of the Zoning Ordinance to permit the construction of a single-family home and landscaping; approximately 1600 square feet of the proposed house would be in the WWPD and approximately 7200 square feet of yard area would be in the WWPD, total impact 8800 square feet.

Mr. Roy read the case into the record. Mr. Coish, representing the Applicant, presented the case. This lot is in a subdivision that was approved by the Planning Board in 1962. The proposed home can meet all of the 1962 zoning requirements as all other lots in the subdivision. The current zoning regulations require a WWPD to protect the brooks and wetlands. The septic system will be located outside the WWPD. A portion of the house and the backyard will be located within the WWPD. Mr. Coish said that although they can meet all other regulations there is a concern regarding water quality. What has previously been done regarding the water must have been done correctly because Mr. Coish has never heard of any problems with the water quality. Mr. Jim Gove of Gove Environmental engineered the lot and there will be a minimum amount of cutting and filling. Mr. Coish read the supporting facts into the record.

Mr. Tom Case said that a lot vests once the subdivision is complete. The WWPD regulations do not apply; if they did then all other rules would apply. Mr. Case asked the Board to add a condition to their motion stating that the Applicant does not need to go to the Planning Board for a special permit.

Mr. Jim Finn, Chairman of the Conservation Commission, said that water quality is an issue. The Conservation Commission is always concerned about the WWPD. Once you start to give too much away you have other problems. Mr. Finn asked how much of the actual house is in the WWPD. Mr. Coish answered that approximately 1600 square feet of the house would be in the WWPD, 7200 square feet of the yard area would be in the WWPD with a total impact of 8800



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square feet. Mr. Finn asked that the impact to the WWPD be minimized as much as possible and that the Zoning Board not bypass the Planning Board.

The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #19-2005

Mr. Pellegrini motioned and Mr. Roy seconded the motion to grant Case #19-2005 based on the plan outlined and to minimize the impact to the WWPD where possible. Passed unanimously 4-0.

Lot #13-D-100+120, Case #4-2005 (Continued from April 12, 2005, Originally Heard on March 22, 2005)

Applicant – Richard Messina

Owner – Richard Messina

Location – 43 Route 28, Jones Road

Zone – Business Commercial A

A re-hearing is requested on the decision made by the Zoning Board of Adjustment on March 22, 2005.

Mr. Roy motioned and Mr. Samsel seconded the motion to continue the re-hearing request for Case #4-2005 to the May 24, 2005 meeting. Motion passed 3-0-1. Mr. Pellegrini abstained because he was not at the March 22, 2005 meeting.

Approval of March 22, 2005 and April 12, 2005 Minutes

Mr. Samsel motioned and Mr. Roy seconded the motion to approve the March 22, 2005 minutes as amended. Motion passed 3-0-1. Mr. Pellegrini abstained.

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to approve the April 12, 2005 minutes as written. Motion passed 3-0-1. Mr. Roy abstained because he did not attend the April 12, 2005 meeting.

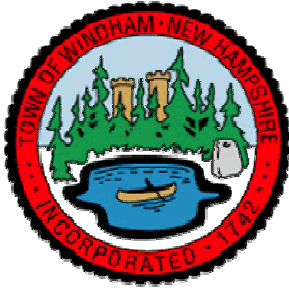
Other Business

The Chairman asked that Mr. Doyle be contacted to see if he can attend the May 24, 2005 meeting.

The Chairman asked that Mr. Tom Murray, Jr. be invited to the May 10, 2005 meeting for an interview for an alternate position to the Zoning Board of Adjustment.

Mail

- Letter from Thomas Murray, Jr. dated April 14, 2005 requesting to be an alternate member of the ZBA.



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- Memo dated April 21, 2005 from David Sullivan regarding Meeting Requirements.

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to adjourn at 10:32 PM. Passed unanimously 4-0.

The next meeting of the Zoning Board of Adjustment is scheduled for May 10, 2005 at 7:30 PM in the Planning & Development Office.

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