

BOARD OF ADJUSTMENT

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

June 14, 2005

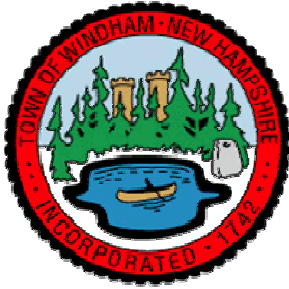
Chris Doyle – Chairman
Rob Gustafson – Vice-Chairman
Tony Pellegrini – Secretary
Georges Roy – Member
Mark Samsel – Member
Al Souma – Alternate
Tom Murray – Alternate

Lot #18-L-303, Case #27-2005

Applicant – Peter Mullett
Owner – Edward & Charlene Estes
Location – 57 Range Road
Zone - Business Commercial A

A variance is requested from Section(s) 702 Appendix A-1, 704.1.8, 704.2.7, 705.1.1, 705.1.4, 405.2, 405.3, 405.5 of the Zoning Ordinance to permit the razing and rebuilding of a structure on a non-conforming lot with 60-foot road frontage where 175-feet is required, 16.9-foot setback on the northwest side where 20-feet is required, 3-foot setback on the east side where 20-feet is required and 48-foot front setback where 50-feet is required. Section 704.2.7, 0-foot setback proposed where 10-feet is required from the side and rear property lines for off-street parking and loading. Section 705.1.1 30% of open space required, less than 30% proposed. Section 705.1.4 a properly landscaped area is required within 25-feet of any building perimeter. Section 405.5 replacement of a non-conforming structure shall wherever possible be made to conform to the required setbacks.

Mr. Pellegrini read the case into the record. Mr. Tierney, representing the Applicant, questioned whether the presentation was based on what was advertised or what was applied for because there is a difference of 12” on the front setback (advertised as 48-feet, requested 47-feet) and a difference of 10.8” on the side setback (advertised as 16.9-feet, requested 16-feet). The setbacks were requested to help fit the foundation on such a tight lot. Mr. Tierney went forward based on what was posted. The proposed building will be designed to blend with the existing neighborhood and will replace a structurally challenged building that is in need of repair. The lot size is 8306-feet. The current footprint is 2125 square feet; proposed footprint 1887 square feet. The total current square footage is 3780; total proposed square footage is 3774. The existing building was built across the lot line which makes the owner limited to repairs or future use of the structure. It is unclear if the abutting property, owned by the State of New Hampshire, will sell a portion of the land to make the lot conforming. Replacing the existing building to meet code requirements will make a safer structure. Mr. Tierney advised the Board that shared parking will be discussed with the Windham Restaurant. The Chairman closed the public portion of this



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case. Mr. Gustafson motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #27-2005

Mr. Gustafson motioned and Mr. Roy seconded the motion to grant Case #27-2005 per the plan submitted. Passed unanimously 5-0.

Lot #20-E-260, Case #28-2005 & Case #28A-2005

Applicant – Monomoy Development LLC

Owner – Monomoy Development LLC

Location – 46 Lowell Road

Zone - Rural

A variance is requested from Section 602.1 of the Zoning Ordinance to permit the property to be developed consistent with the uses permitted in the Commercial A District.

Mr. Pellegrini read Case #28-2005 into the record. Mr. Gustafson motioned and Mr. Roy seconded the motion to hear cases 28-2005 and 28A-2005 together but to motion separately. Passed unanimously 5-0.

Mr. Pellegrini read Case #28A-2005 into the record.

Lot #20-E-260, Case #28A-2005

Applicant – Monomoy Development LLC

Owner – Monomoy Development LLC

Location – 46 Lowell Road

Zone – Rural

A variance is requested from Section 702.5 Appendix A-1 of the Zoning Ordinance to permit a building to be constructed pursuant to the permitted uses in the Commercial A District but constructed on land in the rural district to be set back 50-feet in the front where 75-feet is required and to have a 10-foot buffer where 50-feet is required.

Attorney William Mason presented the cases. The existing house will be razed and a multi-use commercial building built on the 2.5-acre parcel. Attorney Mason provided photos of abutting structures. Parking will be in the rear of the proposed building rather than in front. This plan is subject to site plan and Planning Board approval. Mr. Peter Zohdi presented three letters of support to the Board from the following abutters:

- Mark Widdison of US Water Consultants, owner of the property at 44 Lowell Road.
- E. Haffner Fournier of Fournier Realty Trust, owner of the property at 48 Lowell Road.
- Ronald Cyr owner of the property at 47 & 51 Lowell Road.



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The Chairman marked the letters as Exhibit A, three pages. The proposed building will have the same setback from the front as the buildings on either side that don't meet the Commercial A setbacks. Attorney Mason read the supporting facts for Case 28-2005 and Case 28A-2005 into the record. Mr. James Tierney of 96 Lowell Road spoke in favor of this request. The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #28-2005

Mr. Roy motioned and Mr. Samsel seconded the motion to Grant Case #28-2005. Passed unanimously 5-0.

Deliberative Session, Case #28A-2005

Mr. Gustafson motioned and Mr. Samsel seconded the motion to allow the property, if developed according to Commercial A regulations, to be no closer than 50-feet from the front setback and to allow a 10-foot buffer where 50-feet is required. Passed unanimously 5-0.

Lot #1-B-27, Case #29-2005

Applicant – Mark & Sharon Kearney

Owner – Mark & Sharon Kearney

Location – 11 Gertrude Road

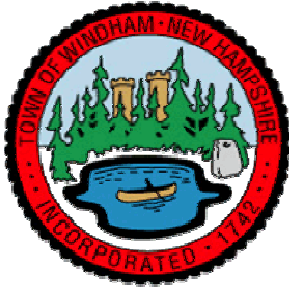
Zone – Rural

An Equitable Waiver is requested concerning Section(s) 702 of the Zoning Ordinance to permit a house built in 1970 to remain 26.4-feet from the side lot line where 30-feet is required.

Mr. Pellegrini read the case into the record. Mr. Kearney presented his case. The house was conforming when built in 1970. In 1974 the town increased the setback to 30-feet. Mr. Kearney has owned the house since 1999. An Equitable Waiver was granted on July 13, 1999 for the deck to remain encroaching into the setback approximately 15-feet. Mr. Tierney explained that the waiver that was granted for the deck would have included any structure from that point back. The violation is not a public or private nuisance and does not diminish the value of other property. The correction would not result in a public benefit which would justify the expense to correct the violation and would be an unfair requirement. The Chairman closed the public portion of this case. Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #29-2005

Mr. Samsel motioned and Mr. Roy seconded the motion to Grant Case #29-2005 as requested. Passed unanimously 5-0.



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Lot #1-B-27, Case #30-2005

Applicant – Mark & Sharon Kearney

Owner – Mark & Sharon Kearney

Location – 11 Gertrude Road

Zone – Rural

A variance is requested from Sections 401 & 702 of the Zoning Ordinance to permit a second-floor addition to an existing non-conforming house.

Mr. Gustafson motioned and Mr. Roy seconded the motion to waive the reading of the abutters for Case #30-2005. Passed unanimously 5-0. Mr. Pellegrini read the case into the record. Mr. Kearney read the supporting facts into the record. Mr. Kearney explained that he would have the same amount of bedrooms but that they would be relocated to the second floor. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #30-2005

Mr. Gustafson motioned and Mr. Samsel seconded the motion to Grant Case #30-2005 per the plan submitted. Passed unanimously 5-0.

Lot #1-A-207, Case #21-2005 (Rehearing Request)

Applicant – Mary Berce

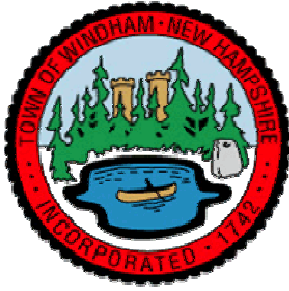
Owner – Mary & Peter Berce

Location – 7 Grandview Road

Zone – Rural

A rehearing is requested on the decision made by the Zoning Board of Adjustment on May 10, 2005.

Mr. Pellegrini read the nine points listed in the re-hearing request and a letter dated May 27, 2005 from Delbert Nunley, Private Fleet Manager at Books are Fun Ltd. into the record. After reviewing the request Mr. Gustafson said that all requirements are met except for noise and traffic. Mr. Pellegrini disagreed. The Board has confirmation from the Trucking Company that the 35-foot truck makes deliveries once a week on Wednesday mornings between 7:00 AM and 10:00 AM. Mr. Gustafson motioned and Mr. Roy seconded the motion to grant the rehearing request for Case #21-2005 because of new evidence regarding frequency of deliveries. Passed 4-0-1. Mr. Samsel did not vote because he did not attend the May 10, 2005 meeting.



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Approval of Minutes

Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to accept the May 24, 2005 minutes. Passed unanimously 5-0. Mr. Samsel requested that instead of writing *Attorney Mason* write the entire name *Attorney William Mason*.

Other Business

Mr. Souma discussed with the Board RSA 673:12 and 673:12-I and the extension of Mr. Doyle's and Mr. Roy's terms. Mr. Pellegrini motioned and Mr. Gustafson seconded the motion to extend Mr. Roy's and Mr. Doyle's terms through March 15, 2006. Passed 4-1. Mr. Samsel voted against the motion.

Mail

None

Mr. Gustafson motioned and Mr. Samsel seconded the motion to adjourn at 9:30 PM. Passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for July 12, 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.