



BOARD OF ADJUSTMENT

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

September 27, 2005

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

Seat Alternates

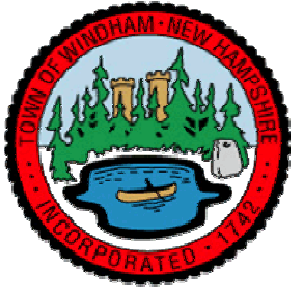
Mr. Gustafson appointed Mr. Souma to replace Mr. Pellegrini and Mr. Murray to replace Mr. Doyle for this meeting.

Lot #14-A-850A, Case #42-2005

Applicant – Lunan Realty
Owner – Rocco DeCarolis Brothers Inc.
Location – 200 Route 111
Zone – Rural

A variance is requested from Section(s) 702 Appendix A-1, 601.4.1 & 601.4.2 of the Zoning Ordinance to permit the construction of a single family home 20-feet from the side lot line where 30-feet is required, 16-feet from the front lot line where 50-feet is required and the house is 45-feet from the wetland at the closest point where 100-feet is required. The property is located at 200 Route 111, Tax Map 14-A-850A in the Rural Zone.

Mr. Roy read the case into the record. Attorney John Michels, representing the Owner, presented the case. This is a unique lot that was part of a large parcel on both sides of Route 111. The southern side was subdivided into lots. The land was condemned by the State in 1960 for the construction of Route 111. At the time the lot was created it was in a rural zone and the lot size was 25,000 square feet, frontage 150 feet, front setback was 35-feet, side setback was 15-feet and there were no wetlands in existence. The Planning Board has no records of land north of Route 111. When subdividing was done there was no discussion of this lot. Since the time this lot was created regulations changed to add a wetland setback and when that happened the lot became unusable. The lot includes flood plains and upland and has conservation land on two sides. The lot is 50-feet from the edge of the pavement. The house has been located on the lot to have the least impact on the wetland area. Site plan approval is required from the Planning Board. There is a 19-foot drop from the top of the foundation down to the water. A variance is need to build within the 50-foot front setback, this plan has 16.4-feet from the property line and would be 66-feet from the road. A variance is needed for the side setback; this plan has a 20.2-foot setback. A variance is needed because the house will be within 100-feet of the edge of the



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wetland and the closest point of the proposed house is 45.2-feet from the wetland. Attorney Michels read the supporting facts into the record. Attorney Michels introduced Jennifer McCourt of McCourt Engineering Associates who addressed the issue of sedimentation. Ms. McCourt submitted pictures of the details that are on the plans. Channel Soxx filled with mulch will be installed and will cause the water to come down the driveway into a circle area and will settle out and flow over. An Eco Berm which will stay forever and treat the water because it is a mulch material will be installed between the house and the wetlands. The septic was taken out of the wetlands buffer. Dr. Finn, Chairman of the Conservation Commission, said that many of the features discussed were not listed on the plan that was reviewed by the Conservation Commission at their September 22, 2005 meeting including the reduction of the driveway from 22-feet to 12-feet. Ms. McCourt advised that all the requested features are listed on the plan. Mr. Gustafson closed the public portion of this case. Mr. Roy motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #42-2005

Mr. Roy motioned and Mr. Samsel seconded the motion to grant Case #42-2005. Motion passed unanimously 5-0.

Lot #19-B-716, Case #43-2005

Applicant – William & Rachel O'Brien

Owner – William & Rachel O'Brien

Location – 17 Glance Road

Zone – Rural

A variance is requested from Section 702 Appendix A-1 of the Zoning Ordinance to permit a deck to be 20-feet from the side setback where 30-feet is required. The property is located at 17 Glance Road, Tax Map 19-B-716 in the Rural Zone.

Mr. Roy read the case into the record. Mr. O'Brien presented his case and read the supporting facts into the record. Mrs. O'Brien of 17 Glance Road and Mr. Gravener (the builder) of 12 Wilkey Road, Sandown, NH spoke in favor of this request. Mr. Gustafson closed the public portion of this case. Mr. Samsel motioned and Mr. Murray seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #43-2005

Mr. Samsel motioned and Mr. Murray seconded the motion to grant Case #43-2005 with the stipulation that a roof not be added and the deck not be enclosed without a further variance. Passed unanimously 5-0.



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Lot #9-A-2250, Case #44-2005

Applicant – David Pardoen

Owner – David Pardoen

Location – 29 Kendall Pond Road

Zone – Rural

A special exception is requested from Section 602.1.6 of the Zoning Ordinance to permit a commercial kitchen in the home to produce chicken pie.

Mr. Roy read the case into the record. Mr. Pardoen explained that he would produce 80 pies per week from a commercial kitchen in a 528 square foot section of his basement. A grease trap and a three-compartment stainless steel sink will be installed. There will not be exterior signs, no exterior renovations will be made and the product will be delivered to the customer. The supplies will not be delivered; Mr. Pardoen will pick them up. There will be state inspections. No excess noise will be generated and would operate mid to late afternoon. Mr. Roy read into the record a letter of opposition from Mr. Thomas J. Troy, Jr. of 1 Magnolia Road. Mr. Gustafson closed the public portion of this case. Mr. Roy motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #44-2005

The Members discussed deliveries, smell, noise, hours and days of operation. Mr. Samsel motioned and Mr. Murray seconded the motion to grant the Special Exception for Case #44-2005 with the stipulation hours of operation will be between 7:00 AM and 9:00 PM Monday thru Friday plus Saturday. Mr. Samsel withdrew his motion and made a new motion adding completion of the Customary Home Occupation form stipulations that were stated for the record will be submitted as part of the condition. Motion was not seconded. Mr. Samsel withdrew his second motion. Mr. Samsel motioned and Mr. Roy seconded the motion to grant the Special Exception with the stipulation of hours 7:00 AM – 9:00 PM Monday thru Friday plus Saturday as well in completion of the Customary Home Occupation Form stipulations that were stated for the record will be submitted as part of the condition. Passed unanimously 5-0.

Lot #1-A-207, Case #32-2005 Request for Rehearing (Originally heard on 8/23/05)

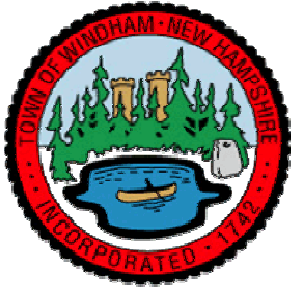
Applicant – Mary Berce

Owner – Mary Berce

Location – 7 Grandview Road

Zone – Rural

The Applicant requests a rehearing of the decision made by the Zoning Board on August 23 2005. Since the denial was based on the definition of Customary Home Occupation and not on the frequency of deliveries and the definition of excessive traffic, a new aggrievement was created. There was no opportunity for Ms. Berce to be heard on this issue as it was never raised during the open hearing. Under Dziana, Trustee of the Malt House Exchange Realty Trust v. City



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of Portsmouth, 140 N.H. 542 (1995), where a board's decision on rehearing creates a new aggrievement, RSA 677:3 requires the aggrieved party to file a new motion for rehearing based on the new issues raised in order to allow the board to correct its errors.

Mr. Gustafson suggested that the rehearing request be continued to the next meeting so that the Members who heard the original case will be present to hear the rehearing request. Mr. Roy motioned and Mr. Souma seconded the motion to continue the rehearing request for Case #32-2005 to the next meeting (10/11/05). Passed unanimously 5-0.

Approval of Minutes

Mr. Roy motioned and Mr. Souma seconded the motion to approve the minutes from the September 13, 2005 meeting at the next meeting (10/11/05). Passed unanimously 5-0.

Other Business

The Members discussed the September 12, 2005 letter from Attorney Campbell regarding Schroeder vs. Town of Windham.

Mail

- September 2005 Issue of Town & City

Mr. Roy motioned and Mr. Samsel seconded the motion to adjourn at 9:31 PM. Passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for October 11, 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.