



# BOARD OF ADJUSTMENT

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

## **Zoning Board of Adjustment Minutes November 10, 2009**

### **Board Members**

Mark Samsel – Chairman  
Jim Tierney – Vice-Chairman  
Dianna Fallon – Secretary  
John Alosso – Member (Excused)  
Tom Murray – Member  
Bruce Richardson – Alternate

### **Staff**

Michael McGuire – Building Inspector  
Patricia Kovolyan – Secretary

### **Seat Alternates**

The Chairman appointed Mr. Richardson to replace Mr. Alosso for this meeting.

### **Lot #24-F-193 #44-2009(Continued from October 27, 2009)**

Applicant – Edward N. Herbert Associates, Inc.  
Owner – EJR Jr. Development, LLC  
Location – 67 Heritage Hill Road  
Zone – Rural

A variance is requested from Section(s) 601.4.5 of the Zoning Ordinance to permit a portion of the pool, retaining wall and associated fill to be placed in an area which would otherwise be within an extended portion of the WWPD and not permitted.

### **Lot #24-F-194 #45-2009 (Continued from October 27, 2009)**

Applicant – Edward N. Herbert Associates, Inc.  
Owner – EJR Jr. Development, LLC  
Location – 71 Heritage Hill Road  
Zone – Rural

A variance is requested from Section(s) 601.4.5 of the Zoning Ordinance to permit a portion of the pool, retaining wall and associated fill to be placed in an area which would otherwise be within an extended portion of the WWPD and not permitted.



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Mrs. Fallon read both Case #44-2009 and Case #45-2009 into the record. Mr. Peter Zohdi of Herbert Associates asked to hear the letter that was submitted by the Conservation Commission. Mrs. Fallon read the letter into the record that states *The Conservation Commission is opposed to granting this variance and suggests the plan be revised to be more in compliance by reducing the size of the pool, moving the pool or changing the orientation of the pool.* Mr. Zohdi did not receive a copy of the letter so he asked for a thirty day continuance in order to have time to go before the Conservation Commission again. Mr. Murray motioned and Mrs. Fallon seconded the motion to continue Cases 44-2009 and 45-2009 to the December 8, 2009 meeting. **Motion passed 5-0.**

Attorney William Mason said that everything was ok at the site walk that was held with the Conservation Commission.

### **Lot #17-J-113 #46-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Matthew & Leanne Gaudio

Location – 16 Rocky Ridge Road

Zone – Residential A

A variance is requested from Section(s) 603.1.3 of the Zoning Ordinance to permit the construction of a garage on a lot with no primary use dwelling.

### **Lot #17-J-113 #46A-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Matthew & Leanne Gaudio

Location – 16 Rocky Ridge Road

Zone – Residential A

A variance is requested from Section(s) 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a garage with 50-feet of street frontage where 175-feet is required on a 4,140 square foot lot where 50,000 square feet is required with a side setback of 10-feet where 30-feet is required and a front setback of 19-feet where 50-feet is required.

Mrs. Fallon read both Case #46-2009 & 46A-2009 into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted a memo (from Rex Norman to Laura Scott) that was given to him by Michael McGuire, Building Inspector. The memo, dated November 9, 2009, states *...16 Rocky Ridge Road has been merged with #21 Rocky Ridge Road, Parcel 17-J-112 and is not separately identified or known as #16 Rocky Ridge Road in the assessing records. The historical file indicates the parcel 17-J-112 includes what is described as 17-J-113 since 1972. The Town treats 17-J-112 and 17-J-113 as one parcel.* Mr. Maynard said that he found nothing showing that the parcels were merged. According to the deeds they are still separate properties. There is a shared septic system. The application is to construct a garage as an accessory structure for the dwelling on the lake side, lot 17-J-112. Mr. Maynard read the



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supporting facts for the use variance into the record. Mr. Maynard submitted two letters of support, one from Jim Harvey of 14 Rocky Ridge Road and one from Steve & Elizabeth Lospennato of 23 Rocky Ridge Road that Mrs. Fallon read into the record. Mr. Maynard read the supporting fact for the area variance into the record.

Mrs. Fallon motioned and Mr. Tierney seconded the motion to go into Deliberative Session.  
**Motion passed 5-0.**

### **Deliberative Session Case #46-2009**

Mr. Murray motioned and Mr. Richardson seconded the motion to grant a Use Variance as requested with the condition that a lot merger be done before a certificate of occupancy is issued.  
**Motion passed 5-0.**

### **Deliberative Session, Case #46A-2009**

Mr. Murray motioned and Mr. Richardson seconded the motion to grant an Area Variance as requested with the condition that a lot merger be done before a certificate of occupancy is issued.  
**Motion passed 5-0.**

### **Lot #14-A-850A #47-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Rocco Decarolis Bros.

Location – 200 Haverhill Road

Zone – Rural Zone

A variance is requested from Section(s) 601.4.1, 601.4.2, 601.4.6 & 702 Appendix A-1 to permit the construction of a single family dwelling 20-feet from the side setback where 30-feet is required, 16 feet from the front setback where 50-feet is required, 45 feet from the edge of the wetland where 100 feet is required. The entire building area is inside the WWPD. This is a renewal of previous variances granted in 2005 and 2007.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Mr. Maynard explained that the variance that was granted expired and this is the same request that was submitted on September 27, 2005 and again on September 25, 2007. Mr. Maynard read the supporting facts into the record. Beaver Brook has Shoreline Protection and Mr. Maynard said that the owner will abide by the same conditions placed on the 2005 variance.

Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session.  
**Motion passed 5-0.**



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### Deliberative Session, Case #47-2009

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance as requested and to abide by the previous variance conditions. **Motion passed 5-0.**

### Lot #25-F-114 Case#48-2009

Applicant – Attorney Peter Bronstein

Owner – Gary & Dyan Ciccone

Location – 45 Abbott Road

Zone – Residential A

A variance is requested from Section(s) 401, 702 Appendix A-1, 1200.1.3 & 1200.1.4 of the Zoning Ordinance to permit the conversion of an existing dwelling from seasonal to year round on an undersized lot of 0.2 acres where 50,000 square feet is required with a front setback of 47 feet where 50 feet is required, a side setback of 10-feet where 30 feet is required and a rear setback of 18-feet where 50-feet is required on a private road.

Mrs. Fallon read the case into the record. Attorney Peter Bronstein, representing the owner, presented the plan. Attorney Bronstein showed on the displayed plan the location of the dwelling and the private road. This is a 739 square foot one floor cottage with a basement built in 1941. Lot coverage is less than 11%. There will be a new septic system across the road. Attorney Bronstein read the supporting facts into the record.

The following residents spoke in support of this request:

- Mr. James Morgan of 1 Lakeshore Road – in favor of putting the septic system across the road.
- Mr. Michael Kennedy of 25 Abbott Road – the upgraded septic system will protect the pond.
- Mr. Scott Cousins 41 Abbott Road – the lake will be protected.

Mrs. Fallon read into the record a letter of support from James & Helen Kennedy of 29 Abbott Road.

The following residents spoke in opposition to the request:

- Mr. Gregg Mann of 43 Abbot Road – asked to see a copy of the 1993 variance. He is concerned about the deck and a portion of the patio being on his property. Mr. Mann is also concerned about runoff.
- Mr. Wayne Morris of 14 Jordan Road, President of the Rock Pond Improvement Association questioned whether Mr. David Furlong and Mr. Bernie Furlong of Smith Road should have been notified as abutters because the lot the septic system would be on abuts the Furlong lot and without the septic system the conversion cannot take place. Mr.



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Morris said that in the October 9, 2007 minutes it states the following (Lot #25-E-500, Case #57-2007):

*Fire Chief Tom McPherson explained that he was not at the meeting to make a recommendation and advised the Board that he had made two trips to Abbott Road and met with the Applicant. Chief McPherson had the following concerns regarding Abbott Road.*

- *Road width.*
- *Steep grade onto Abbott Road from Woodbury Road.*
- *Large Pot holes on Woodbury Road.*
- *No turn around – enter and exit the same way.*
- *There would be a delayed response because hand jacks and portable pumps would need to be used.*
- *There would be preliminary preplanning.*

*Police Chief Gerald Lewis echoed the comments made by Chief McPherson and said that the condition of the road is a significant concern.*

Mr. Morris went on to say that nothing has changed since 2007 and he also has environmental concerns.

Attorney Bronstein said that the patio is no longer on Mr. Mann's property. No modification will be made to the deck. No construction is contemplated. There is nothing in the statutes that states the owner has to notify an abutter to a proposed easement. The owner has done some grading to the road. When Windham went to soils and slopes zoning, which had nothing to do with septic systems, the lots became so large that you can have four septic systems on them.

Mr. Tierney said that the deck should be removed from the abutter property to correct the violation. Mr. Tierney questioned the authority of the 1993 Zoning Board to grant a variance to allow a deck on an abutting property.

Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session.  
**Motion passed 5-0.**

### **Deliberative Session, Case #48-2009**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance for Case #48-2009 from Section(s) 401, 1200.1.3 & 1200.1.4 of the Zoning Ordinance to permit the conversion of an existing dwelling from seasonal to year round with the condition that the deck on the south side of the property be reduced to zero lot line. **Motion passed 4-1.** Mrs. Fallon voted against the motion because it is contrary to public interest.



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### **Lot #18-L-1, Case #17-2009 Request for Rehearing**

Applicant - Attorney Gregory Michael

Owner – Andrew P & Christine J. Lane Revocable Trust

Location – 2 Woodvue Road

Zone - Residential A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on July 28, 2009.

Case #17-2009 will be heard at the December 8, 2009 meeting.

### **Minutes**

Mr. Murray motioned and Mrs. Fallon seconded the motion to accept the October 13, 2009 minutes. **Motion passed 5-0.**

Mrs. Fallon motioned and Mr. Murray seconded the motion to accept the October 27, 2009 minutes. **Motion passed 5-0.**

### **Other Business**

The Chairman advised the Board that the discussion regarding Mrs. Elizabeth Dunn has been moved to the November 24, 2009 meeting.

Mrs. Fallon discussed with the Board the possible reconsideration of its decision on Case #38-2009 relative to the November 5, 2009 Wall Street informational meeting. Mrs. Fallon motioned and Mr. Tierney seconded the motion that the Board reconsider its decision of Case #38-2009 because of new information. **Motion denied 2-3.** Mr. Richardson, Mr. Murray and Mr. Samsel voted against the motion.

### **Mail**

- October 29, 2009 Letter from Attorney Campbell to Laura Scott regarding Heinzl vs. Town of Windham.
- Letter from Attorney Troisi to ZBA regarding Case 39-2009.
- Notice from RPC regarding Workforce Housing Forum scheduled for November 30, 2009.



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Mrs. Fallon motioned and Mr. Murray seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for November 24, 2009 at 7:30 PM in the Community Development Department.

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