



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes June 22, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman
Dianna Fallon – Secretary (Excused)
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate (Excused)
John Alosso – Alternate

Staff

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Seat Alternates

The Chairman appointed Mr. Alosso to replace Mrs. Fallon for this meeting.

Lot # 16-R-182 Case 24-2010

Applicant – Susan Breen
Owner – Susan Breen
Location – 29 First St
Zone – Residential - A

A variance is requested from Section(s) 401, 702 and Appendix A-1, 616.10 (b) and 616.10 (c) of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the installation of a deck in place of a patio and to add additional deck area with storage beneath which will not have the required front and side setbacks and is over the allowed coverage.

| <u>Required</u> | <u>Provided</u> |
|---|----------------------|
| 50' Front | 0' |
| 30' Side | 0' |
| 50,000 Lot Area | 4637 +/- square feet |
| 30% = 1391 sq ft Maximum impervious area coverage | 1498 square feet +/- |

Mr. Murray read the case into the record. Ms. Susan Breen, owner, submitted photos marked as Exhibits A thru D and presented her case. Ms. Breen was advised by her insurance company that she should have a railing installed because of the 6' drop from the deck. Latch doors will be added to the septic tank area for access. The brick from the existing patio will be removed and



BOARD OF ADJUSTMENT

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

those bricks will be used in the storage area. The stairway will be moved back to its original location. Ms. Breen read the supporting facts into the record.

Mr. Dennis Root of 15 Third Street spoke in support of this request.

Mr. Alosso motioned and Mrs. Dunn seconded the motion to go into Deliberative Session.

Motion passed 5-0.

Deliberative Session, Case #24-2010

Mrs. Dunn reviewed the criteria. Mr. Alosso motioned and Mr. Murray seconded the motion to grant a variance for Case 24-2010 from Sections 401, 702 Appendix A-1, 616.10(b) and 616.10(c) of the Zoning Ordinance to permit the installation of a deck in place of a patio and to add additional deck area with storage beneath which will not have the required front and side setback and is over the allowed coverage per the plan submitted. **Motion passed 5-0.**

Lot # 17-L-62A Case # 25-2010

Applicant – Edward Herbert Assoc.

Owner – Joseph & Samantha Faro

Location – 23 Farmer Rd.

Zone – Residential A

A variance is requested from Section(s) 401, 406.2 and 702 and Appendix A-1 of the Town of Windham Zoning Ordinance to raze and reconstruct a two-bedroom dwelling on a pre-existing non-conforming lot.

Mr. Murray read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. Booklets containing site photos, floor plan, color rendering of proposed house etc. were submitted prior to the meeting for the Board Members. Mr. Zohdi showed on the displayed plan the parking area, walking area, existing dock etc. Mr. Zohdi submitted a plan that showed both existing and proposed conditions. The proposed house will be centered on the lot and moved 10' back from the shoreline of Cobbetts Pond. There will be a state-of-the-art septic system. Pavement on the front side will be replaced with porous pavers.

- House – pre-construction impervious area - 1474 square feet.
- House – post construction impervious area – 1196 square feet.
- Accessory Structure – pre-construction impervious area – 607 square feet.
- Accessory Structure – post construction impervious area – 0.
- Walkway – pre-construction impervious area – 161 square feet.
- Walkway – post construction impervious area – 0.
- Stairway – pre-construction impervious area 102 square feet.
- Stairway – post construction impervious area 0.



BOARD OF ADJUSTMENT

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

Elevation of the existing dwelling is approximately 26'; elevation of the proposed dwelling will be 32'.

Mr. Zohdi read the supporting facts into the record.

Mr. Murray read into the record the June 22, 2010 Conservation Commission letter stating that the Commission unanimously passed a motion that they had no objections to the variance request.

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

Deliberative Session, Case 25-2010

Mr. Partington reviewed the criteria. Mr. Murray motioned and Mr. Alosso seconded the motion to approve a variance for Case 25-2010 as requested per the plan submitted. **Motion passed 5-0.**

Lot # 17-L-15 Case # 26-2010

Applicant – Robin Young, President of Northstar Financial Services Inc.

Owner – TK Range Rd. LLC

Location – 112 Range Rd.

Zone – Rural

A variance is requested from Section(s) 401, 501, 602.1 and 704.2.7 of the Zoning Ordinance to permit a small professional office within the existing historic structure which will be restored and located across the street from the Griffin Park parking lot. The variances are required for the extension of a non-conforming property / structure and setbacks, use and front parking setback for two spaces.

Mr. Murray read the case into the record. Mr. Karl Dubay of the Dubay Group representing the owner, presented the case. The circa 1780 house is on a 1.7 acre lot across from Griffin Park. Mr. Dubay introduced Ms. Robin Young, owner of Northstar Financial Planning.

Ms. Young explained that she has approximately 60 clients with 1 or 2 clients per week coming into the office but most times she meets with them at their home or business. Ms. Young would have three employees. This is a very low impact business that would fit with the feel of the area.

Mr. Dubay explained that the building will be preserved and restored. The trees will remain. The stonewall along the front of the property will be rebuilt. Appropriate historical architectural shingles will be used for the roof. The rear porch will be removed. A brick or pervious paver is proposed for the walkway. There will be a small ADA entrance from the rear of the building. Need to get rid of most of the lawn in order to come into compliance with the 10% criteria stated in the Cobbetts Pond Watershed Protection Ordinance. The existing driveway and garage will be



BOARD OF ADJUSTMENT

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

retained. Mr. Dubay submitted a copy of a new DOT permit and a copy of a septic inspection done by Garside. The property is serviced by Pennichuck Water. A small office uses less water than a typical family home and there would be less loading on the septic. There would be 8 parking spaces required by the ordinance and that includes two ADA spaces. Mr. Dubay met with the Heritage Committee at the site and they had some good suggestions. Cobbetts Pond is about 2000 feet away. Rain gardens are proposed along with bio-retention areas. There is quite a bit of activity at the Griffin Park and there is lighting will be installed. The property has the distinction of being the closest parcel to the activities at the Skate Park there is endless traffic and parking along the entire roadway frontage of this property. The market has shown that there is no reasonable desire to purchase the property and invest extensively on top of that for required improvements and want to live there under these unique conditions and specific circumstances. The adjacent Griffin Park activities, noise, traffic, parking and lighting would impact the property much more as a residence than as the proposed use. Instead of a dilapidated house that has been difficult to sell due to its unique characteristics, the property will be restored and managed with care, thus supporting the surrounding property values. This unique property lends itself to support a small professional office as a more reasonable use than a residential use. Mr. Dubay submitted 3 photos marked as Exhibits A,B & C. There are no wetlands or WWPD on the site. A 3 square foot sign is proposed that would be externally illuminated on a 6' high post.

The Chairman asked Mr. Dubay why he did not request a variance from the parking requirement. Mr. Dubay said there would be 4 spaces used by employees. Ms. Young said it would be nice to have a buffer for a CPA or an estate attorney or family member.

Mrs. Dunn said that she certainly likes preserving a beautiful house like this and it would be nice to say that anything that goes in it makes this worthwhile, but that is not the criteria the Board has to look at. This is asking for a non permitted use but there is permitted use that has been there and could continue to be there. Mrs. Dunn asked Mr. Dubay how he meets the hardship test; does this request meet the spirit and intent of the ordinance.

Mr. Dubay said the reality is when you go to that site you have to go around back because of the noise from Griffin Park. This property is the closest property to Griffin Park and the owner can't get anyone to live there because of the noise and that is a unique characteristic of this property. It is not reasonable to expect someone to pay even a below market value and move their family in there and not go outside because the area is so noisy. It is not a rural setting when there are vehicles surrounding the entire front of the property. A family would have to spend a lot of money to restore this property. There are certain things that need to be done to the property to make it livable and meet code such as a heating system. Mr. Dubay read the supporting facts into the record.

Mr. Charles McMahan of 11 Floral Street, Mr. Jerry Parsons of 21 Duston Road and Carol Pynn of Cobbetts Pond Road spoke in favor of this request.



BOARD OF ADJUSTMENT

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

Mr. Murray read into the record a letter of support from the Conservation Commission.

The Chairman said the intent is to do a restoration; a concern is that there is no actual promise that could happen if this business went “belly up”. If this economy doesn’t turn around there will be no wealth to manage; what guarantee is there that this restoration would continue.

Mr. Dubay said in the site plan approval process there is a set of plans filed. The plan could be approved and never be built, there is bonding etc. The building cannot be occupied until the restoration is complete. A certificate of occupancy is required for the use and is not issued until the work is complete. There is a matter of trust and a matter of a site plan of record on file and there are checks and balances to be sure the project is done right.

The Chairman said the submitted plans are specific as to what will happen, so if the motion states *per plan* the Board would be covered.

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

Deliberative Session, Case 26-2010

Mrs. Dunn reviewed the criteria. Mr. Murray motioned and Mr. Alosso seconded the motion to approve a variance for Case 26-2010 as requested per the plan submitted. **Motion passed 3-2.** Mrs. Dunn voted against the motion because the request did not meet the spirit and intent of the ordinance, hardship was not met and this is in effect rezoning the property. Mr. Partington voted against the motion because the request did not meet the spirit of the ordinance and conflicts with the basic zoning objectives of the ordinance.

At Mrs. Dunn’s request Mr. Dubay agreed to print the slides from his presentation and give a CD to Mrs. Kovolyan.

Approval of May 25, 2010 & June 8, 2010 Minutes

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the May 25, 2010 minutes. **Motion passed 4-0-1.** Mr. Alosso abstained.

Mr. Partington motioned and Mr. Murray seconded the motion to approve the June 8, 2010 minutes. **Motion passed 4-0-1.** Mr. Alosso abstained.



BOARD OF ADJUSTMENT

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

Miscellaneous Board Business

Mr. Mike Scholz - Applicant Alternate Position

Mr. Mike Scholz of 17 Balmorra Road a three year Windham resident explained why he is interested in being an alternate member of the Zoning Board. He enjoys volunteering, has been in the Marine Corps and at his job as a network security and forensic analysis administrator he looks at and analyzes data and applies rules and procedures fairly within the confines of the criteria.

Mrs. Dunn asked to discuss the appointment of an alternate in non-public session at the next Zoning Board meeting. The Chairman said that he would get a clarification from David Sullivan regarding non-public sessions.

Mrs. Dunn asked Mr. Scholz if he was prepared for the pressure of being on the Board. Mr. Scholz said he deals with pressure in his daily job such as terminating employees. He would not make a decision without having all the data. Mrs. Dunn said that the Members are not allowed to base their decisions on personal preference or criteria outside of that which is set by statute and sometimes that is difficult when your own personal judgment is different compared to the criteria. Mr. Scholz agreed with Mrs. Dunn and said at his job there have been instances where people he has worked with are part of an active investigation. Mr. Scholz said he does not discuss the investigation with that person or give any favoritism.

Mrs. Dunn said for future discussion one of things she is concerned about is that there is not a lot of record of why the Members voted the way they did. Mrs. Dunn asked that the Board adopt a practice that has a more broad description of deliberations. The Chairman said some of this is style; his impression is that the minutes have been more detailed. Bring up any concerns during the approval of minutes. Mrs. Dunn said she would like to see more emphasis on the Deliberative Session. The Chairman asked that a dialogue regarding the minutes be taken up at the July 13, 2010 meeting while discussing the by-laws.

Mrs. Dunn said anyone interested can check Roberts Rules to see what is and is not allowed in a point of information. This Board has used it (point of information) at times in situations where it should not have been. The Chairman said the Board is not bound by Roberts Rules. Mrs. Dunn said then don't call it that; let's say we are opening it up for public testimony. Mr. Murray said in Deliberations the Board rehashes the testimony and after hearing other opinions he might need one specific piece of information but does not feel comfortable opening the discussion up to the public again.



BOARD OF ADJUSTMENT

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

Correspondence

- Spring 2010 Issue of Habitat for Humanity News.
- June 2010 Issue of NH Town and City.

Mr. Alosso motioned and Mr. Partington seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for July 13, 2010 at 7:30 PM in the Community Development Department.

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