

**BOARD OF ADJUSTMENT MEETING
APRIL 9, 2002**

MEMBERS:

Bruce Breton - Chairman
Rob Gustafson - Vice-Chairman
Robert O'Loughlin - Secretary
Al Souma - Member
Chris Doyle - Member
Jack Gattinella - Alternate
Tony Pellegrini - Alternate
Dick Drummond - Alternate (Excused)

Lot #3-B-271, Case #1-2002

A.Peta & H. DiPietro
17 Bissell Camp Road

A variance is requested from Section 702 of the Zoning Ordinance to permit a residential dwelling on a lot that has no frontage on a town approved road but by right-of-way has access from an adjacent parcel that does have frontage on a town approved road. An Appeal from an Administrative Decision under RSA 674:41 is requested regarding the decision of the Administrative Officer that there is no approved access to a town approved Class V Road.

Mr. O'Loughlin read the case into the record. Attorney Kramer representing the Applicant presented the case. Mr. Peta, the owner, was granted a Deeded Easement Right-of-Way from an abutting property with frontage on Bissell Camp Road for his driveway and utility purposes. Mr. Peta would like to build a single family dwelling on a dirt road that was closed at a point because of non-use. Margaret Cristler stated that this is a Class VI Road that comes under the Governing Body's (Selectman) jurisdiction. Mr. Flanders said that it is not likely that the Class VI Road could be used. Attorney Kramer said that the easement is 20 feet wide and approximately 220-250 feet long. Attorney Kramer read both the five supporting facts for the variance and the four supporting facts for the Appeal from an Administrative Decision into the record. The Chairman closed the public portion of this case.

Lot #14-A-925, Case #8-2002

Kenneth & Paul Bergeron
32 Mammoth Road

A variance is requested from Section 610.4.1.14 of the Zoning Ordinance to permit the construction of Elderly Housing on a minimum of four acres of useable land that is not contiguous.

Lot #14-A-930, Case #9-2002

Kenneth & Paul Bergeron
32 Mammoth Road

A variance is requested from Sections 610.4.1.14, 604.1 and 610.4.1.17 of the Zoning Ordinance to permit the construction of Elderly Housing Units in the Neighborhood Business District, which exceeds the number of Elderly Housing Units permitted and to have them constructed on a minimum of four acres of useable land that is not contiguous.

Mr. Doyle motioned to combine Case 8-2002 & 9-2002. Mr. O'Loughlin seconded the motion. Passed

unanimously.

Mr. O'Loughlin read both cases into the record. Attorney Mason, representing the Applicants, presented the case. Lot #14-A-930 has 5.2 acres and Lot #14-A-925 has 9.2 acres. This area is zoned Neighborhood Business. The proposed construction would be residential in character and would be compatible with surrounding properties. It would provide affordable Elderly Housing in Windham. The parcel presently consists of 14.46 acres that contain significant areas of useable land that will support the proposed development. Given that the parcel can support the proposed development, meeting all health and safety requirements, there is no fair and substantial relationship between the general purpose of the Zoning Ordinance and the requirement that the four acres be contiguous. The proposed request allows the Applicant to utilize the property in a manner consistent with the regulations of the Town of Windham while at the same time recognizes the uniqueness of the proposed lot which contains significant portions of useable property. The proposed use of Lot #14-A-930 would not diminish the surrounding property values because the construction of Elderly Housing is a residential use and the developed properties which abut this lot are residential. The proposed use should not result in a decrease in the value of surrounding properties. However, a commercial development on this lot, as permitted by the Zoning Ordinance, could result in a decrease in the value of the surrounding properties. The Zoning Ordinance as applied to this property interferes with the owners' reasonable use of the property, considering the unique setting of the property in its environment. This property is currently zoned Neighborhood Business, there is very little that can be constructed on this property consistent with that zoning, given the location of the property. The abutting properties, which have been developed, are residential. Attorney Mason read the five supporting facts for each case into the record. Mr. Alan Doak of 8 Cobblestone Road said that there is not enough acreage for this project. Mr. Tom Case said that this is probably the best use for this lot. Carol Doak, John Salinas and Bill Irwin spoke in favor of this project. Roger Hohenberger, Wayne Morris, Joe Curran and Jim Finn spoke against this project. The Chairman closed the public portion of this case.

MINUTES

Mr. Doyle motioned to accept the March 26, 2002 minutes. Mr. Gustafson seconded the motion. Passed unanimously.

DELIBERATIVE SESSION

Lot #3-B-271, Case #1-2002

Mr. Gustafson motioned to deny without prejudice Case #1-2002. Mr. Souma seconded the motion. Mr. O'Loughlin, Mr. Breton, Mr. Gustafson and Mr. Souma voted to deny without prejudice. Mr. Doyle voted not to deny without prejudice. The Board voted four to one to deny without prejudice.

Lot #14-A-925, Case #8-2002

Mr. Doyle motioned to grant Case #8-2002. Mr. Gustafson seconded the motion. Mr. Souma, Mr. Gustafson, Mr. Breton, Mr. Doyle and Mr. O'Loughlin voted to grant this request. Passed unanimously.

Lot #14-A-930, Case #9-2002

Mr. Gustafson motioned to deny Case #9-2002 for the variance from Section 604.1, it does not meet the requirements for hardship, this lot can be used for its intended use, the other sections then also do not need to be considered since it doesn't pass the use variance. Mr. O'Loughlin seconded the motion. Mr. Souma, Mr. Gustafson, Mr. Breton, Mr. Doyle and Mr. O'Loughlin voted to deny this request. Denied unanimously.

MAIL

1. March 2002 Issue of *Town & City*

2. State Planning News

Mr. Doyle motioned to adjourn at 10:10PM. Mr. O'Loughlin seconded the motion. Passed unanimously.

The next meeting of the Zoning Board of Adjustment will be on April 23, 2002 at 7:30 PM in the meeting room at the Planning & Development Office.

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

