

**BOARD OF ADJUSTMENT MEETING  
OCTOBER 22, 2002**

**MEMBERS:**

Bruce Breton - Chairman  
Rob Gustafson - Secretary  
Jack Gattinella - Member  
Al Souma - Member  
Chris Doyle - Member  
Tony Pellegrini - Alternate (Absent)  
Dick Drummond - Alternate

**Lot #17-M-43, Case #31-2002**

John Abdinoor  
9 York Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the building of an addition that would enlarge a bedroom and make a walk-in closet. The addition would extend to 5-feet from the lot line. There is an existing retaining wall that would be used as the foundation for the addition.

Mr. Gattinella read the case into the record. Mr. Abdinoor presented his case. The present dwelling has one bedroom and Mr. Abdinoor is in need of more space. This addition will allow Mr. Abdinoor to upgrade his property to be consistent with other larger new homes recently built in his neighborhood. The lot size is 4000 square feet. Allowing the proposed addition will not exceed 20% lot coverage. Mr. Abdinoor read the five supporting facts into the record. Mr. Gattinella read into the record a letter of support from Mr. Donald Dortona, an abutter. The Chairman closed the public portion of this case.

**Deliberative Session Case #31-2002**

Mr. Gustafson motioned to Grant Case #31-2002 per plan on file. Mr. Doyle seconded the motion. Mr. Souma, Mr. Gustafson, Mr. Gattinella, Mr. Doyle and Mr. Breton voted to grant this variance. Request granted 5-0.

Mr. Doyle motioned to go back into public hearing. Mr. Souma seconded the motion.

**Lot #22-L-47, Case #33-2002**

Barbara Devine  
59 West Shore Road

A variance is requested from Sections 702, 401 and 1200.13 of the Zoning Ordinance to permit a single family home encroaching on setbacks and increase in volume and area on a non-conforming lot and to convert to year-round use. Does not conform to Section 700.

Mr. Gattinella read the case into the record. Attorney Peter M. Solomon, representing the Applicant, presented the case. The Applicant seeks a variance for the construction of a single-family home, which will encroach on setbacks and slightly increase in both volume and area from the pre-existing non-conforming property that was torn down in 1993 and to convert to year-round use. The neighborhood is a mix of cottages and single-family homes abutting or near Canobie Lake and as a result of the lake, there has been a trend toward modernization and updating of the homes in the neighborhood. Therefore the relief sought is consistent with the residential uses in the district and will certainly not diminish the property values. The property in question does not currently have a building on it, and the construction of

a modernized single-family year-round home will increase the tax burden on the property and beautify the neighborhood, resulting in increased property values and therefore tax revenues for the community, which is a benefit to the public interest. Because of the size of the lot, together with the fact that it slopes toward the lake and has an irregular shape, significantly restrict the Applicant in terms of use. The only appropriate use of the property is for a single-family residence; indeed, the property is valueless or nearly valueless without a residence situated thereon. Most, if not all of the properties nearby are grand fathered and have had variances, and all, or nearly all, are non-conforming and many are year-round. As a result, the imposition of the zoning restriction in question would be arbitrary, confiscatory or unduly oppressive. The proposed Variances are necessary for the reasonable use of the property. The variances requested would be consistent with other variances previously granted in the Town of Windham. The variance will allow for the construction of a home similar to surrounding homes and would allow a landowner and taxpayer to have the use of her property, which at this time is valueless and useless. A variance is consistent with the reasonable use of the property and with its past usage and with the usage of surrounding properties. The purpose of the Windham Zoning Ordinance is to preserve and promote the health, safety and welfare of the community and to guide future growth and development of the Town and it is designed to consider the suitability for each area for such uses as indicated by existing conditions and trends in population and modes of living requirements. The relief sought is consistent with the use of the property for many years, and of surrounding usages. The spirit of the Ordinance is to enhance properties and not be used as a cudgel to limit reasonable use, or is it designed to be a mechanism for third parties to use the Zoning Ordinance, the Zoning Board and the Town for their own purposes. The total square footage of the proposed building is 1,680. Following is the square footage of homes in the neighborhood.

- Address Square-Footage
- 75 West Shore Road 1748
- 63 West Shore Road 1956
- 57 West Shore Road 1320
- 30 West Shore Road 1913
- 28 West Shore Road 1581
- 32 West Shore Road 1552
- 73 West Shore Road 1438
- 51 West Shore Road 1752

Mr. Bruce Flanders, Windham Building Inspector, said that the average size home in that area is 1647 square feet. All the lots are non-conforming. The front setback for the proposed home is 36.6 feet, rear setback is 30.5, left side is 14.1 feet, right side 15.4 feet. Mr. Flanders also said that the lot coverage would be less than 20%.

Virginia Campiola spoke against this request. Mrs. Campiola was concerned about the height of the proposed dwelling and prepared three exhibits. Mrs. Campiola wanted the home to be situated closer to the lake. Mr. Flanders explained why the house must be situated in the center of the lot.

#### **The Chairman granted a five -minute recess**

#### **The Chairman called the meeting back to order**

Mr. Peter Hyatt, Theresa McGivern and Nadema Gemmell also spoke against this request.

Attorney Solomon said that this Board does not sit in judgment of what this neighborhood should look like. The Chairman closed the public portion of this case.

Mr. Gustafson motioned to go into deliberative session. Mr. Doyle seconded the motion.

### **Deliberative Session, Case #33-2002**

Mr. Gustafson motioned to grant Case #33-2002, Lot #22-L-47 per plot plan and building plans submitted. Mr. Gattinella said that this Board does not have design review authority, the Building is centered as required by the Zoning Ordinance and the square footage is consistent with homes in the area. Mr. Gustafson said that this is non-conforming but is a lot of record. This is a building lot of record and is taxed as such. The lot is not being used for its' intended purpose; there is hardship in that sense. Efforts have been made to conform to our zoning requirements. Restrictions are placed upon its' location and height because of the septic issues. The Applicant should be able to use the property as the surrounding properties. Reasonable use of the property should not be removed from the property owner. Mr. Gattinella, Mr. Doyle, Mr. Gustafson, Mr. Souma and Mr. Breton voted to grant this variance. Request granted 5-0.

### **Minutes**

Mr. Gustafson motioned to accept the September 24, 2002 amended minutes. Mr. Gattinella seconded the motion. Passed unanimously.

Mr. Gustafson motioned and Mr. Souma seconded the motion to accept the October 8, 2002 minutes as written.

### **Other Business**

The Members discussed the cost of processing Zoning Board applications.

### **Mail**

- NH Office of State Planning - Fall Planning Conference scheduled for November 16, 2002.
- October 2002 Issue of *Town and City*.

Mr. Doyle motioned and Mr. Gustafson seconded the motion to adjourn at 10:08 PM.

The next meeting of the Zoning Board of Adjustment will be on November 12, 2002 at 7:30 PM in the Planning & Development Office.

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

