

**BOARD OF ADJUSTMENT MEETING**  
**NOVEMBER 12, 2002**

**MEMBERS:**

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

**Lot #21-K-27, Case #32-2002**

Erin Upton  
68 Turtle Rock Road

A variance is requested from Sections 405.2 & 1200.1.3 of the Zoning Ordinance to permit the removal of an existing structure and to rebuild on a new foundation, increasing the area or volume and to permit a change from seasonal to year-round use on a non-conforming lot.

Mr. Gattinella read the case into the record. Erin Upton presented her case. The property has an approved 3-bedroom septic design. The existing building will be removed. The proposed structure will be centered on the property. The left side setback will be 30-feet, the right side will be 34-feet and the setback from the water will be 64-feet. The proposed dwelling will be 2000 square feet. Mrs. Upton read the five supporting facts into the record. Mr. Richard Coakley, an abutter, spoke in support of this request. The Chairman closed the public portion of this case.

**Deliberative Session Case #32-2002**

Mr. Doyle motioned to grant a variance from Section 405.2 for Case #32-2002 per the submitted plan. Mr. Gustafson seconded the motion. Mr. Souma, Mr. Gustafson, Mr. Doyle, Mr. Gattinella and Mr. Breton voted to grant this variance. Request granted 5-0.

**Lot #22-L-81, Case #34-2002**

Tom Murray  
29 West Shore Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the demolition of an existing structure and the construction of a new garage.

Mr. Gattinella read the case into the record. Attorney Peter Bronstein, representing the Applicant, presented the case. The Applicant would be removing the existing deteriorating structure and would replace it with a more desirable structure to serve the same purpose. The proposed garage will be 50-feet from the road. The lot is already paved and the current use of the parcel of land would not change. Attorney Bronstein advised the Board that the majority of residents on West Shore Road have their parking and garages on the opposite side of the road from their dwellings. Attorney Bronstein provided photos of other garages in the area. Attorney Bronstein read the five supporting facts into the record. Debbie Drake, an abutter, asked if the lot had been surveyed. Mr. Murray replied that the lot has been surveyed and showed Mrs. Drake, on the map displayed, the location of the boundary markers. The Chairman closed the public portion of this case.

## **Deliberative Session, Case #34-2002**

Mr. Gustafson motioned to grant Case #34-2002 per the plot plan marked Exhibit A. Mr. Doyle seconded the motion. Mr. Souma, Mr. Gustafson, Mr. Doyle, Mr. Gattinella and Mr. Breton voted to grant this variance. Request granted 5-0.

## **Lot #3-B-600, Case #35-2002**

Brian Harvey (H&B Homes)  
179 Rockingham Road

A variance is requested from Sections 611.4 & 611.5.4 of the Zoning Ordinance to permit the portion of the property currently zoned as Neighborhood Business District to be utilized in the density and open space calculations for the rural portion of the land.

Mr. Gattinella read the case into the record. Attorney Peter Bronstein, representing the Applicant, presented the case. Originally this area (27 acres) was a rural zone; it was recently re-zoned as the Neighborhood Business District. Mr. Harvey has a conceptual plan to subdivide the parcel into 40 lots. Mr. Harvey would like to use the portion of land that is in the Neighborhood Business District as open space in the density calculations. Most of the 27 acres in the Neighborhood Business District is either wetland or WWPD and would remain open space. Mr. Gustafson asked how much of the 27 acres is buildable. Mr. Joseph Maynard of Benchmark Engineering said that if this were a "stand alone" piece of property maybe 3 lots would be buildable. Attorney Bronstein read the five supporting facts into the record. Mr. Ronald Meade, an abutter, spoke against this request. Lisa Linowes advised the Board that the Conservation Commission appointed her to give additional information. Mrs. Linowes asked that the Board deny without prejudice in order to give the Conservation Commission an opportunity to see more detail. The Conservation Commission is concerned that the plans are not complete. Mr. Gattinella said that he would attempt to clarify. The Applicant is not here asking for a number of lots, he is here asking to use that landmass in his calculations. The Zoning Board of Adjustment does not require road profiles. All that information that the Conservation Commission is looking for they would never get here. Mrs. Linowes said that if the variance is granted the Zoning Board would effectively be taking some of the other very pristine open space off the table and creating something that the Conservation Commission can't work with to protect because of granting the Applicant the space to do this. The Conservation Commission requests that the Zoning Board slow down and wait till more information comes to the Conservation Commission. Kim Hamel, an abutter, asked if H&B Homes is not going to build on the land why is there a need for a variance. Mr. Flanders, Building Inspector, explained that the Applicant is going to use the soils and slopes to calculate the amount of lots. Kim Hamel informed the Board that her notice for this meeting was sent to her former address. Mr. Gattinella asked Ms. Hamel if she wanted to continue with the hearing of this case of if she wanted to be notified at her correct address. Ms. Hamel said that she would like to continue with the case at this meeting. Mr. Harvey pointed out on the displayed map the areas that are to be kept as open space. Mr. Guerrera, an abutter, spoke in opposition to this request. Attorney Bronstein said that there are a few things the Zoning Board should know.

- The Conservation Commission voted just prior to this meeting to oppose this plan.
- They voted at a meeting to which the Applicant was not invited but at which the Applicant appeared so he had some minimal input.
- The Conservation Commission did not request that the Applicant come and provide information that is readily available from the town files.
- We don't know why the Conservation Commission does not have the Wildlife Study or the soils information. This information has been submitted to the town. The Conservation Commission had a meeting to vote against this plan because they don't have sufficient information that the town already has.
- Mrs. Linowes recused herself from sitting on this plan at the Planning Board because of a perceived or actual conflict of interest. For whatever reason she did not recuse herself from sitting on this plan at the Conservation Commission. Without Mrs. Linowes' vote this evening there

would not have been a quorum on the Conservation Commission so anything the Conservation Commission has to say here tonight is illegal and certainly without merit.

- To say that this plan goes against the Village Neighborhood Concept is incorrect. Windham's Open Space Ordinance is not a Village Concept.

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

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

**Deliberative Session, Case #35-2002**

Mr. Gattinella motioned to deny Case #35-2002 on the basis that there is no hardship based on permitted uses in the Neighborhood Business District. Mr. Gustafson seconded the motion. Mr. Gustafson, Mr. Souma, Mr. Gattinella and Mr. Breton voted to deny this variance. Mr. Doyle voted to grant this variance. Request denied 4-1.

**Lot #16-E-1 & 60, Case #37-2002**

Stephen & Jeanne Miller  
24 Ministerial Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the enclosing of an existing deck. The building will be 19.5-feet from the lot line where 30-feet is required.

Mr. Gattinella read the case into the record. Mr. Miller presented his case. The roofline of the proposed enclosure will be identical to the existing roofline. The Applicant will use the same footprint. Mr. Gattinella motioned to waive the reading of the five supporting facts. Mr. Gustafson seconded the motion. Passed unanimously. The Chairman closed the public portion of this case.

**Deliberative Session, Case #37-2002**

Mr. Doyle motioned to grant Case #37-2002. Mr. Gustafson seconded the motion. Mr. Gattinella, Mr. Doyle, Mr. Gustafson, Mr. Souma and Mr. Breton voted to grant this variance. Request granted 5-0.

**Minutes**

Mr. Doyle motioned to accept the October 22, 2002 minutes as amended. Mr. Gustafson seconded the motion. Passed unanimously.

**Other Business**

The Members had a brief discussion regarding the planning of a Christmas Party.

**Mail**

- Notification from Attorney Campbell regarding the Jodie Moyes vs. Town of Windham court case.
- Notice from the State of NH Rockingham Superior Court regarding Ronald Abdinoor vs. the Town of Windham.

At 10:15 PM Mr. Doyle motioned to go into non-public session to discuss confidential legal matters. Mr. Gustafson seconded the motion. Passed unanimously.

The next meeting of the Zoning Board of Adjustment will be on November 26, 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.

