



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes January 9, 2007

Robert Gustafson – Chairman
Mark Samsel – Vice-Chairman
Tony Pellegini – Secretary
Dianna Fallon – Member
Gail Webster – Member (Excused)
Jim Tierney – Alternate
Al Souma – Alternate
Tom Murray – Alternate

Seat Alternates

The Chairman appointed Al Souma to replace Gail Webster.

Lot # 18-1-1, Case #64-2006 (Continued from December 12, 2006)

Applicant – Mr. William Schroeder & Mr. James Labadini

Owner – Andrew Lane

Location – 2 Woodvue Road

Zone – Residential A

An Appeal of An Administrative Decision is requested concerning the release of a garage permit by Mr. Alfred Turner and issued to Mr. & Mrs. Lane of 2 Woodvue Road.

Mr. Pellegrini read the request into the record. Mr. Samsel asked Mr. Turner to clarify some comments. In the minutes of the original appeal there is a statement that *certified wetland scientists evaluated the area and decided that the place where the Lane's were going to build was dry*. At the December 12th meeting you (Mr. Turner) stated that in 2003 you noticed water was still in the area of the garage and decided it was part of the lake. Mr. Samsel asked why in one observation the area was dry and the next it was wet. Mr. Turner explained that he received complaints when the Lane's dug the hole for the foundation of their garage that it was retaining water. The wetland scientist visited the area again and when the hole was dug water from the road filled the hole but there was no sign of a wetland. The second statement refers to the area beside the garage in the low area. Mr. Turner displayed a map dated 1/9/07 (marked as Exhibit H) and showed the area he was referring to as being next to the garage. Mr. Samsel said that the permit was issued on 11/5/03 but the WWPDP decision was made on 11/17/03. Mr. Samsel asked why the building permit was issued before the determination of the WWPDP. Mr. Turner explained that he makes decisions regarding the zoning ordinance every day, not all of them in writing. In this case Mr. Turner made an interpretation to himself based on the wetland information he received and visits to the site that it was not a WWPDP. It wasn't



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until he was asked at a later date did he write it down. Mr. Turner submitted lake fluctuations from 2005, 2006 and 2007 from the Town of Salem Dam Operator. Mr. Turner went on to explain that the State Shoreland Protection Board uses a pinpoint line above sea level as the reference line. The Town of Windham Zoning Ordinance for the WWPDP uses the average high water mark. Mr. Gustafson read into the record a letter dated 12/19/06 from William Daly, Utilities Manager for the Town of Salem, regarding lake elevations. Mr. Samsel asked why two plans showed different reference line elevations. Mr. Gove of Gove Environmental Services submitted a corrected plan dated 1/9/07 and explained that the original plan had incorrectly showed the reference line at 219.64 and the 1/9/07 plan has been updated to show the reference line at 219.91. Attorney Donovan said that he was being ambushed because they were told that the evidence portion was closed and now they are trying to get Mr. Gove to testify again. Attorney Donovan said what you are seeing here is an attempt to tie the 220.3 elevation, which happens to be adjacent to the garage, to some lake elevations on the submitted data. The inverts in and out are 220.7 and 220.4. The point here is the definition of brook. Attorney Donovan stated his objection to the new evidence. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.

Deliberative Session, Case #64-2006

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant the approval of the Appeal of the Administrative Decision as stated in Case 64 -2006, however, the Board agrees that the high water mark is at the outlet of the culvert at Woodvue and the culvert at West Shore Road and further in support of the definition of a brook or stream, as stated in Section 601.2 in the Windham Zoning Ordinance, that roads, drainage, culverts or other manmade features do not constitute an interruption in the delineation of a brook or stream and therefore the WWPDP starts at that point of the delineation of the high water mark at the culvert discharge at Woodvue. The motion was seconded by Mr. Pellegrini. Motion passed 4-1. Mr. Pellegrini, Mr. Souma, Mr. Samsel and Mr. Gustafson voted for the motion. Mrs. Fallon voted against the motion because she believes that the high water mark starts at the culvert on Woodvue Road and that the high water mark is further down the brook channel..

Lot #19-B-3004 Case #1-2007

Applicant – Gary & Suzan Bennett
Owner – Gary & Suzan Bennett
Location – 142 Castle Hill Road
Zone – Rural

A variance is requested from Section(s) **702 Appendix A-1** of the Zoning ordinance to permit the construction of a 28' X 32' garage with storage above to be 12-feet from the side setback where 30-feet is required.



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Mr. Pellegrini read the case into the record. Mr. Gary Bennett presented his case. The proposed garage will be 150-200' from the property line of the abutter (William & Diane Carney of 140 Castle Hill Road) behind Mr. Bennett. The garage could not be built behind Mr. Bennett's house because of slopes and the WWPD, another area would need considerable excavation and building the garage at the top of the driveway would put it in full view of all abutters on Castle Hill Road. Mr. Bennett's goal is to place the garage on a monolithic slab. Mr. Bennett read the supporting facts into the record. Mr. Pellegrini read into the record a letter of support from William and Diane Carney of 140 Castle Hill Road. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.

Deliberative Session, Case #1-2007

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant an area variance for Case #1-2007 as requested from Section 702 Appendix A-1 per plan submitted.
Passed 5-0

Lot # 24-F-5, Case #2-2007

Applicant – Jay Koutavas
Owner – Great Mountain View
Location – 15 Field Road
Zone – Rural

An Appeal of an Administrative Decision made by the Planning Board is requested regarding their interpretation of Sections 601 & 601.4.8 of the Zoning Ordinance when they granted a Special Permit to allow a road in the WWPD.

Mr. Pellegrini read into the record a letter from Attorney Little dated January 8, 2006 (received January 9, 2007) requesting Case #2-2007 be withdrawn. Mr. Pellegrini read the case into the record.

Mr. Pellegrini motioned and Mrs. Fallon seconded the motion to accept the withdrawal of Case #2-2007. Motion passed unanimously 5-0.

Lot #16-E-28, Case #3-2007

Applicant – SFC Engineering Partnership, Inc.
Owner – Nancy Davis & John Botiglieri
Location – 50 Gaumont 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 dwelling on a lot consisting of 10,890 square feet where 50,000 square feet is required and allow side setbacks of 10' & 14' where 30' is required and a front setback of 30' where 50' is required.



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Mr. Pellegrini read the case into the record. Mr. George Fredette of SFC Engineering Partnership, Inc. presented the case for the owners. This proposal provides for a building setback from the lake of 62-feet. The existing structure is setback 25-feet from the lake. This will provide a greater buffer from the lake and additional environmental protection. A new septic system will be installed. The property is small, .25 acres. There is no location on the lot where a structure could be built that would meet all town setbacks. The project will remove an existing two-bedroom single family home and garage and replace it with a new two-bedroom dwelling. Mr. Tierney pointed out that the applicant needs relief from Section 405.2 of the Zoning Ordinance. The applicant was advised to repost the request asking for relief from Section 405.2.

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to deny without prejudice Case #3-2007 and to repost at the town's expense and schedule as early as possible. Motion passed unanimously 5-0.

The Chairman replaced Mr. Souma with Mr. Tierney for the balance of the meeting.

Deliberative Session

Lot #19-A-400, Case #58-2006 Request for Rehearing (Originally heard on 10/24/06 and Continued from December 12, 2006)

Applicant – Eight Mammoth Road LLC

Owner – Ford Family Trust

Location – 70 Mammoth Road

Zone – Rural

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on October 24, 2006.

Mr. Pellegrini read into the record the November 22, 2006 letter from Attorney William Mason requesting a rehearing. After reviewing the five points listed in the request Mr. Samsel motioned and Mr. Tierney seconded the motion to deny the Request for Rehearing originally heard on 10/24/06 and continued from 12/12/06 for Case #58-2006. After reviewing the points presented to be considered no new evidence was submitted and there was no technical error. Motion passed unanimously 5-0.

Approval of December 12, 2006 Minutes

Mrs. Fallon motioned and Mr. Samsel seconded the motion to approve the December 12, 2006 as presented. Motion passed unanimously 5-0.



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Other Business

Mrs. Fallon advised the Board that Al Turner would provide aerial maps for all zoning board cases if it would be helpful. The Board agreed that aerial maps would be helpful.

Mail

- November 28, 2006 letter from Runge Law Office regarding their Municipal Practice Group.
- Copy of December 28, 2006 letter from Attorney Campbell to Al Turner regarding Expiration of Variances.
- Copy of December 29, 2006 letter from Barbara Loughman to Raymond Taylor, Clerk at Rockingham County Superior Court regarding Docket #06-E-0615.
- December 29, 2006 letter from Attorney Pamela Little to Rob Gustafson regarding Great Mount View Subdivision.
- January 8, 2007 letter from Sumner Kalman to Rob Gustafson regarding Great Mountain View Subdivision.
- January 8, 2007 letter from Attorney Campbell to Rob Gustafson regarding Koutavas vs. Town of Windham.
- January 8, 2007 letter from Attorney Pamela Little to Rob Gustafson regarding the withdrawal of Mr. Koutavas' appeal.

At 10:20 PM Mr. Pellegrini motioned and Mr. Samsel seconded the motion to adjourn. Motion passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for January 23, 2007 at 7:30 PM in the Planning & Development Office.

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