



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment **January 23, 2007 Minutes**

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

Seat Alternates

The Chairman appointed Mr. Murray to replace Mrs. Webster and Mr. Tierney to replace Mr. Pellegrini for this meeting.

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, 405.2 & 702 Appendix A-1** of the Zoning Ordinance to permit the razing of the existing buildings and the construction of a single family 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.

Mr. Tierney read the case into the record. Mr. George Fredette explained that this request is identical to the January 9, 2007 presentation. Mr. Samsel motioned and Mr. Murray seconded the motion to waive the reading of the supporting facts. Motion passed unanimously 5-0.

- Existing building setback to the lake is 25'; proposed building setback to the lake would be 62'.
- Existing side yard setbacks are 4' and 8'; proposed side yard setbacks would be 10' and 13'.
- The proposed structure would be in compliance with the Shoreland Protection Act.
- The proposal includes the installation of a new septic system which will be setback further from the lake and the abutters' wells than the existing system.



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- The project will remove an old two-bedroom single family home and replace it with a new two-bedroom home.

Kathy Felson of 6 Viau Road spoke in favor of the request but has issues with the right-of-way. Mr. Tierney read into the record a letter from Richard & Nancy Drummond of 48 Gaumont Road that is in favor of the proposed new home and requested the Town to approve the building with the contingency that their access be through the deeded right-of-way. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.

Deliberative Session, Case #3-2007

Mr. Samsel motioned and Mr. Murray seconded the motion to grant an area variance as requested from Sections 401, 405.2 and 702 Appendix A-1 per plan. Motion passed unanimously 5-0.

Lot #17-C-93, Case #4-2007

Applicant – Benchmark Engineering
Owner – James & Rebecca Thompson
Location – 31 Sawtelle Road
Zone – Residential A

A variance is requested from Section(s) **401, & 702 Appendix A-1**, of the Zoning Ordinance to permit the pre-existing non-conforming use of a structure to be 13-feet from the side setback where 30-feet is required and 12-feet from the front setback where 50-feet is required. The addition will increase the building coverage to 25%. Since this is a corner lot there is no rear yard.

Mr. Tierney read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case.

- The existing driveway will be removed.
- The proposed garage will be 28' X 36'.
- Lot coverage of the .29 acres will be just under 25%.

Mr. Maynard read the supporting facts into the record. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.

Deliberative Session, Case #4-2007

Mr. Samsel motioned and Mrs. Fallon seconded the motion to grant an area variance for Case #4-2007 as requested from Sections 401 and 702 Appendix A-1 as submitted subject to the removal of the existing driveway nearest the lake. Motion passed unanimously 5-0.



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Lot #25-E-401, Case #5-2007

Applicant – Edward N. Herbert Assocs., Inc.

Owner – Alan & Diane Carpenter

Location – 23 Abbott Road

Zone – Residential A

A variance is requested from Section(s) **401, 501 & 702 Appendix A-1, Note 12** of the Zoning Ordinance to permit the construction of a two-bedroom house and garage on an existing nonconforming undersized (0.21 acre) lot on Abbott Road (private road) with no frontage on a town road. The proposed dwelling will be 16-feet from Abbott Road where 50-feet is required, 14.5-feet from the southwesterly side lot line where 30-feet is required, 22-feet from the northeasterly side lot line where 30-feet is required and a deck 43-feet from the shore of Rock Pond where 50-feet is required.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates presented the case and submitted site plans, boundary plans and approved septic design plans for the 9000 square foot lot.

- Proposed 37' X 27' structure with a 12' X 21-1/2' detached garage.
- Proposed structures will not exceed 14% lot coverage.
- 16' setback from the private road where 30' is required.
- Septic design has been approved by the town.

Mr. Tierney read the supporting facts into the record for the applicant. Mr. Tierney questioned granting relief from Section 501. Mr. Tierney said that he is reluctant to give relief from Section 501 because you can then violate any section of the ordinance; 501 is more of an enforcement mechanism. Mr. Zohdi said that if the Board does not feel he needs relief from Section 501 that would be fine by him. Mr. McGuire read Section 501 into the record. Part of Section 501 states "... for any purpose which does not violate any section of this ordinance ...". It was explained that if relief is given from Sections 401 and 702 Appendix A-1 Note 12 the applicant will not be in violation of the ordinance. Mr. McGuire said that he felt it better to include Section #501 in his permit denial so that the applicant would not have to come back before the Board. It was decided that the applicant did not need relief from Section 501. The following residents spoke in opposition to the request:

- Joanie Matthews of 12 Deer Run Road
- Randy Casey of 25 Abbott Road
- Wayne Morris spoke as Vice-President of the Rock Pond Improvement Association and explained that he is concerned about year round use.

Mr. Zohdi explained that the State of New Hampshire has approved this two bedroom house plan. The high water mark is based on a benchmark from the State of New Hampshire. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.



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Deliberative Session, Case #5-2007

Mr. Murray motioned and Mr. Samsel seconded the motion to grant an area variance for Case 5-2007 from Sections 401 and 702 Appendix A-1, Note 12 per the plan submitted. Motion passed unanimously 5-0.

The Chairman granted a five-minute recess.

The Chairman called the meeting to order.

Lot #2-A-288, Case #6-2007

Applicant – Bostock & Fitzgerald
Owner – Matthew & Tammy Gazda
Location – 11 Tarbell Road
Zone – Rural

A variance is requested from Section(s) **401, 406.2 & 702 Appendix A-1**, of the Zoning ordinance to permit the construction of a 26' X 34' deck and an 18' X 18' sunroom on the deck to be within 1-foot of the property line (abuts neighborhood open space) where 30-feet is required.

Mr. Tierney read the case into the record. Attorney Seth Bostock presented the case.

- The proposed addition will be part of the existing dwelling and not change the character of the neighborhood.
- The proposed addition will be built on the rear of the home.
- The land to the rear is common land owned by the neighborhood association.

Attorney Bostock read the supporting facts into the record. Mr. Gustafson asked if this property had a previous variance. Mr. McGuire replied that he could not find anything regarding a variance in the building file or any evidence that this dwelling is in an open space development. Mr. Samsel said that he wasn't sure that it was in the public's best interest to have something so close to open space. This could set a precedent of taking advantage of open space. Mr. Tierney read into the record letters of support from:

- Michael & Shawna Colantuone of 16 Tarbell Road.
- Walter & Valerie Blaschuk of 15 Tarbell Road.
- Kartik & Uma Raman of 9 Tarbell Road.

The Chairman closed the public portion of this case. Mr. Samsel motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Motion passed unanimously 5-0.



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Deliberative Session, Case #6-2007

Mr. Tierney motioned and Mr. Murray seconded the motion to grant Case #6-2007 to permit the construction of an 18' X 34' deck with an 18' X 18' sunroom on the deck and to be no closer than 9' to the rear setback and to provide relief from Section 702 Appendix A-1. Motion granted 5-0.

Mr. Tierney recused himself from Case #7-2007.

Lot #18-L-303, Case #7-2007

Applicant – Mullett Custom Homes

Owner – Aragon Investment LLC

Location – 57 Range Road

Zone – Professional Business Technology

An Appeal of an Administrative Decision is requested from Section 405 (allows replacement of a pre-existing non-conforming structure) and Section 503 (there is no change of use or expansion of the structure or land) of the Zoning Ordinance. The applicant is appealing Mr. Turner's letter dated December 8, 2006.

Mr. Murray read the case into the record. Mr. Al Turner, Director of Planning & Development, said that he respects Mr. Jim Tierney and values his knowledge of building and zoning codes but he felt uncomfortable with the situation that would allow a Zoning Board of Adjustment member to sit on the Board one minute and then step down to present a client's case to the Board the next minute. Mr. Turner felt that procedural due process could not be attained in that situation. In Mr. Turner's opinion, this would be a conflict of interest and could affect the rest of the Board to render a neutral decision. Mr. Turner said that he could not ask the Board to vote on this case, but did ask the Board to consider this a serious lapse of protocol for a fair due process and suggested that they seek legal advice on the appropriateness of this situation. Mr. Peter Mullett, of Mullett Custom Homes, advised the Board that he had no problem with the Board continuing this case. Mr. Samsel motioned and Mr. Murray seconded the motion to continue Case #7-2007 to the February 13, 2007 meeting to obtain a legal opinion regarding representation by a Board member. Motion passed 4-0.

Mr. Tierney rejoined the Board.

Approval of January 9, 2007 Minutes

Mr. Samsel motioned and Mrs. Fallon seconded the motion to accept the January 9, 2007 minutes as amended. Motion passed unanimously 5-0.



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Other Business

The members discussed the January 22, 2007 letter sent to Mr. & Mrs. Lane by Mr. Turner.

Mr. Samsel motioned and Mr. Tierney seconded the motion to pay invoice #39169, dated 1/8/07, in the amount of \$102.00 for services of Attorney Loughman to the Zoning Board. Motion passed unanimously 5-0.

Mail

- January 2007 Issue of *Town and City* magazine.
- Invoice #39169 for legal services and expenses \$102.00 from Soule, Leslie, Kidder, Sayward & Loughman.
- NH Office of Energy & Planning 14th Annual Spring Planning & Zoning Conference scheduled for April 28, 2007.
- NH DES Waste Management Division Municipal Officials' Workshop on Auto Salvage Yards scheduled for February 14, 2007 in Keene, February 21, 2007 in Chocorua and February 22, 2007 in Concord.

At 10:40 PM Mr. Samsel motioned and Mrs. Fallon seconded the motion to adjourn. Motion passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for February 13, 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.