



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes February 27, 2007

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

Seat Alternates

Mr. Samsel appointed Mr. Tierney to replace Mr. Pellegrini.

Mr. Murray explained that after speaking with Mr. Turner he would recuse himself from Case #10-2007.

Lot 14-B-5000, Case #10-2007

Applicant – Michael Farris

Owner – Michael Farris

Location – 17 Mammoth Road

Zone – Neighborhood Business

An Appeal of an Administrative Decision is requested from Section(s) 100, 401, 501, 503, 609.4.1.7 & 609.5.1 of the Zoning Ordinance. The applicant is appealing Mr. Turner's decision of September 6, 2006 to stop the use of a portion of the site of the landscaping business.

Mr. Tierney read the case into the record. Mr. Turner, Director of Planning & Development explained that an officer of a condo association had not been identified in the list of abutters. According to RSA 672:3 ... in the case of an abutting property being under a condominium or other collective form of ownership the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXXIII. Attorney Solomon, representing the owner, requested a continuance because this case has been turned over to Town counsel. Attorney Solomon said that he would correct the list of abutters if it needs correcting. Mr. Turner said that



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he had no objection to a continuance. Mr. Tierney motioned and Mrs. Fallon seconded the motion to continue Case #10-2007 to the March 27, 2007 meeting. Motion passed 4-0.

Mr. Samsel appointed Mr. Murray to replace Mr. Gustafson for the balance of this meeting.

Lot #24-G-127, Case #11-2007

Applicant – J.M. Gray & Associates

Owner – Adrienne M. Goyette

Location – 9 Princeton Road

Zone – Residential A

An Appeal of an Administrative Decision is requested from Section(s) 602.1.8 of the Zoning Ordinance. The applicant is appealing the administrative Officer's decision dated 12/19/06.

Mr. Tierney read the case into the record and a letter from Attorney Campbell regarding *Notice for Hearing* that was marked as Exhibit A. Mr. Jeff Gray representing the owner submitted a plot plan and photographs of existing conditions. The Goyettes purchased the property less than one year ago. The property was surveyed in November & December 2006. There are three sheds on the property. There are wetland impacts and a Dredge & Fill application has been filed with the state. Mr. Gray read the October 25, 2006 letter addressed to Adrienne Goyette from Mr. Turner, Director of Planning & Development, into the record. Mr. Samsel marked the letter as Exhibit B. Mr. Gray submitted a tax map of the 3.2 acre lot. Mr. Gray said that Mr. Turner misinterpreted Section 602.1.8 of the Windham Zoning Ordinance in his October 25, 2006 letter. Part of the property is located in the Aquifer Protection District and part of the property is in the Wetland Protection District. Currently there are four goats and one duck on the property. Mr. Gray explained that these are Ms. Goyette's pets. At the time Mr. Turner was at the property there were four goats, two sheep and two ducks. The animals are housed in three sheds with wire fencing. Mr. Gray read into the record Mr. Turner's letter dated December 19, 2006 and Section 602.1.8 of the Windham Zoning Ordinance. Mr. Gray said that in a letter dated February 16, 2007, he requested from Mr. Turner, a complete copy of the record that Mr. Turner is required to send to the Board prior to the public hearing per RSA 676:5(1). Mr. Gray said that he did not hear from Mr. Turner but did hear from the secretary who said that Mr. Turner asked her to tell Mr. Gray that the fee was \$20.00. Mr. Gray was surprised because there should only be three or four documents that would be copied for this appeal. Mr. Turner said that he will address the copies in his testimony. There is nothing in the language of the ordinance that prohibits these animals in the Rural District. The interpretation is incorrect. There is nothing listed in Section 602 regarding the keeping of farmyard animals for lots greater than three acres, so it would be presumed that farmyard animals is a permitted use. Mr. Samsel said to be clear we are talking about Rural versus Residential; there is a distinction. Mr. Gray said there are similarities in the Zoning Districts. The Rural District is intended for residences and the Residential A; B & C Districts are also intended for residences. The state law requires that the zoning regulations in



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each district for the same kind of class and buildings shall be uniform. If sheep, cows, horses etc. is an allowed use and not prohibited in a residence district they should be allowed in the Residential A District. There is nothing in the ordinances that specifically prohibits the keeping of a goat or a duck. Mr. Gray discussed the Rancourt v. the City of Manchester case stating that it is similar to Ms. Goyette's case. The Rancourt's were permitted to stable horses on their lot (a variance was granted).

Mr. Turner, Code Enforcement Office for the Town of Windham, explained that the applicant has been very cooperative in resolving the wetlands issues. The wetlands violations are moving toward compliance and as long as an applicant is working toward compliance the town will continue to work with them. Mr. Turner explained that anytime he is asked for a letter he reviews the entire file and visits the site. When the applicant asked for copies of all pertinent information Mr. Turner used to make his decision Mr. Turner instructed Mrs. Kovolyan to copy the entire file because it is better to have everything rather than leave something out. Mr. Turner said that he told Mrs. Kovolyan to let the applicant know that the cost was \$20.00. Mr. Gray never picked up the copies. Mr. Gray knows exactly what happened; there were e-mails exchanged between Mr. Gray and Mrs. Kovolyan. The reason Mr. Turner became involved in this case is because of neighborhood complaints such as the wetland violations, parking of commercial vehicles on the property and also the animals on the site. The Windham Ordinance defines the animals as farmyard animals not pets and restricts what districts allow farmyard animals. All arguments given such as: *this is a unique setting, this is similar to the Rancourt case, saw nothing detrimental on the property etc.* are all arguments for a variance not for an appeal. Farmyard animals are not allowed in the Residential A District. Section 602.1.8 of the Windham Zoning Ordinance tells you where farmyard animals are allowed and they are allowed in the Rural District if you have 2 acres or more; if not, it is by Special Exception to the Zoning Board of Adjustment. If you want to put farmyard animals in the Residential A District you need a variance. When the citation was written there were four goats, two sheep and two ducks. Mr. Turner said that he was never advised that the amount of animals was reduced. Mr. Tom Case of 70 Mountain Village Road said that he is for the zoning ordinance; it is a permissive ordinance. Mr. Turner made exactly the right decision as the Code Enforcement Officer; he could do nothing else. You must get rid of all the animals to be in compliance. The following abutters spoke in opposition to allowing farm animals in the Residential A Zone:

- George Burnet of 11 Princeton Street
- Peter Streechon of 3 Princeton Street
- Philip Streechon of 7 Princeton Street
- Julie Burron of 26 Simpson Road
- Jim Walsh of 15 Princeton Street
- David Mollica of 19 Princeton Street



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Mr. Gray said that the reason Mrs. Goyette reduced the amount of animals on her property was to comply with groundwater rules. Mr. Gray said that the first gentlemen that got up to speak (Tom Case) said that this is a *presumed use* ordinance. If it doesn't say it is prohibited it is presumed to be used. Mr. Case corrected Mr. Gray's statement. Mr. Case said this is a *permissive ordinance* he did not say that it is a *presumed use* ordinance. Mr. Murray motioned and Mrs. Webster seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #11-2007

Mr. Murray motioned and Mr. Tierney seconded the motion to grant the Appeal of an Administrative Decision regarding Section 602.1.8 whereas the incorrect Section of the Zoning Ordinance was cited. Motion passed 4-1. Mr. Tierney, Mr. Murray, Mrs. Webster and Mr. Samsel voted for the motion. Mrs. Fallon voted against the motion because other cases in the past, when citing rural district for a residential area, the board has referred to Section 602.1.6 for home occupation.

Mr. Samsel granted a five-minute recess.

Mr. Samsel called the meeting back to order.

Lot #17-J-107, Case #12-2007

Applicant – Benchmark Engineering, Inc.

Owner – Eric & Jennifer Meyer

Location – 12 Rocky Ridge 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 an existing dwelling and the construction of a new dwelling on a private road with a front setback of 19-feet where 50-feet is required, a left side setback of 18-feet where 30-feet is required and a right side setback of 15-feet where 30-feet is required.

Mr. Tierney read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. A variance was granted for an addition to the rear of the dwelling. After consulting with builders it was decided that it would be easier to tear down the existing building and rebuild.

- New septic system installed in 2002.
- Lot coverage would be under 20%
- Footprint for the new dwelling is smaller than the existing.
- No additional land is available to make the structure more conforming.



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

Deliberative Session, Case #12-2007

Mr. Tierney motioned and Mr. Murray seconded the motion to grant an area variance for Case #12-2007 from Sections 401, 405.2 and 702 Appendix A-1 per the plan submitted. Motioned passed 5-0.

Lot #23-B-200, Case #13-2007

Applicant – Benchmark Engineering
Owner – Granite Oaks, LLC
Location – 127 Rockingham Road
Zone – Neighborhood Business

A variance is requested from Section(s) 706.6, 706.4.9, 706.4.10.3 & 706.5 of the Zoning Ordinance to permit the installation of a 60 square foot sign where 20 square feet is allowed (6' X 10') and to be no higher than 10' above the parking lot or grade of Route 28. Sign location would be in a swale and would be no higher than 16' where 10' is allowed.

Mr. Tierney read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted photos of other signs used for commercial buildings along Route 28 and presented the case. The Granite Oaks Office Building is near completion. The current sign ordinance for neighborhood business allows 20 square feet maximum for a sign, the height restriction is 10-feet. The applicant would like to build a 60 square foot sign. The intent is to have a piece of carved granite for the sign with colored letters cut into the granite. The height requirement states that the sign can be no more than 10-feet from the grade you are at. Because their sign will be mounted in the swale area and Route 28 is approximately 4-5 feet higher in that area they would like their sign to be no higher than 10-feet from the median grade. After discussing the Sections requested it was decided that a variance would only be needed from Section #706.6. Mr. Maynard read the supporting facts into the record. Mr. Samsel marked the following as exhibits:

- Exhibit A – Grading & Utilities Map.
- Exhibit B – Drawing of proposed sign
- Exhibit C – 4 Photos on one page.
- Exhibit D – 4 Photos on one page.
- Exhibit E – 4 Photos on one page.

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



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Deliberative Session, Case #13-2007

Mr. Murray motioned and Mrs. Webster seconded the motion to grant Case #13-2007 regarding Section 706.6 per the Exhibits submitted. Motioned denied 2-3. Mr. Murray and Mr. Tierney voted for the motion. Mrs. Webster voted against the motion because of the 40 square foot difference. Mrs. Fallon voted against the motion because of the 60 square foot dimension. Mr. Samsel voted against the motion because the request exceeds the ordinance and the applicant did not prove hardship.

Mr. Tierney motioned and Mrs. Fallon seconded the motion to move to Case #15-2007 per the applicant's request. Motion passed 5-0.

Lot #17-L-60, Case #15-2007

Applicant – Edward N Herbert Associates

Owner – William & Kathleen Deluca

Location – 19 Farmer Road

Zone – Residential A

A variance is requested from Sections 401, 405.2, 405.3, 405.5, 406.2, 501, 702 Appendix A-1, 1200.4, & 1201.1.3 of the Zoning Ordinance to permit the razing of an existing seasonal home and the replacement of a larger year round single family dwelling on a lot with a front setback of 13-feet where 50-feet is required and a 10.5-foot westerly side setback where 30-feet is required and an easterly side setback of 11-feet where 30-feet is required on a 49,314 square foot lot where 50,000 square feet is required.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. Mr. Zohdi reminded the board that this parcel came before the board requesting a variance for a multi-family dwelling. The board was not in favor of that request and now they are requesting a variance for a single family dwelling. After discussing the Sections requested it was decided that only Sections 401, 405.2, 405.3, 405.5 and 702 Appendix A-1 would require a variance. The request is basically the same as presented in June 2006. Mr. Tierney read the supporting facts into the record for Mr. Zohdi. Mr. Samsel closed the public portion of this case. Mr. Murray motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #15-2007

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant an area variance from Sections 401, 405.2, 405.3, 405.5 and 702 Appendix A-1 per the plan submitted. Motion passed 5-0.



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Lot #17-L-91C, Case #16-2007

Applicant – Edward N Herbert Associates

Owner – 29 Sawyer Road Realty Trust, William R. Mason, Trustee

Location – 29 Sawyer Road

Zone – Residential A

A variance is requested from Sections 401, 405.2, 702 Appendix A-1, 1200.4, & 1201.1.3 of the Zoning Ordinance to permit an existing seasonal single family house to be replaced with a larger year round house on an undersized lot with a front setback of 10-feet where 50-feet is required and an easterly side setback of 10-feet where 30-feet is required and a westerly side setback of 24-feet where 30-feet is required and 42 feet from Cobbetts Pond with a lot coverage of 28.4%.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. Mr. Tierney read into the record a letter dated February 27, 2007 from the Conservation Commission. *The Conservation Commission reviewed Case #16-2007 at their February 8, 2007 meeting. The Commission has two issues with this case. The proposed dwelling has a lot coverage of 28.4% which substantially exceeds the maximum 20% lot coverage. Also, the proposed dwelling is within the 50-foot Shoreline Protection setback. The Commission recommends that the house be sized appropriately for the lot.* Mr. Zohdi explained that the lot coverage is 24% and is in compliance with Shoreland Protection. There is a state approved septic system. After discussing the Sections requested it was decided that only Sections 401, 405.2 and 702 Appendix A-1 would require a variance. Mr. Tierney read the supporting facts into the record for the applicant. The following spoke in favor of the request:

- Dennis Senibaldi of Partridge Road.
- Charlie McMahon of Fourth Street.
- Phil LoChiatto of Faith Road.

The following spoke in opposition to the request:

- Mary Anderson of Sawyer Road.
- Dave Klemm, representing his mother of Grove Street.

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

Deliberative Session, Case #16-2007

Mrs. Fallon motioned and Mr. Murray seconded the motion to approve Case #16-2007 for an area variance from Sections 401, 405.2 and 702 Appendix A-1 and not to exceed the 20% lot coverage per the plan submitted. Motion passed 5-0.

Mr. Samsel granted a three-minute recess.

Mr. Samsel called the meeting back to order.



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Lot #17-C-99, Case #14-2007

Applicant – Edward N Herbert Associates

Owner – Brian Tedesco

Location – 28 Sawtelle Road

Zone – Residential A

A variance is requested from Sections 401, 405.2, 405.3, 406.2, 501, 702 Appendix A-1, 1200.4 & 1201.1.3 of the Zoning Ordinance to permit the construction of a new year round house to replace an existing seasonal structure on a 5,155 square foot lot with a front setback of 15-feet where 50-feet is required and an easterly side setback of 3.8 feet where 30-feet is required and a westerly side setback of 9.8 feet where 30-feet is required with a lot frontage of 70-feet on a private road and 27.7% lot coverage.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. The existing house is 1136 square feet; the proposed house is 1428 square feet. The existing house covers 22% of the lot; the proposed house would cover 28% of the lot. After discussing the Sections requested it was decided that only Sections 401, 405.2, 405.3 and 702 Appendix A-1 would require a variance. Mr. Tierney read the supporting facts into the record for the applicant. Mr. Samsel closed the public portion of this case. Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #14-2007

Mr. Murray motioned and Mr. Tierney seconded the motion to grant an area variance for Case #14-2007 from Sections 401, 405.2, 405.3 and 702 Appendix A-1 with a 27.7% lot coverage per the plan submitted. Motion passed 4-1. Mr. Tierney, Mr. Murray, Mrs. Webster and Mr. Samsel voted for the motion. Mrs. Fallon voted against the motion and said she would have voted differently if the roof had been taken off the deck.

In response to Mr. Zohdi's letter of February 20, 2007 regarding the extension of approval for one year of Case #61-2005, the Board advised Mr. Zohdi to submit an application requesting relief from Section 906 of the Zoning Ordinance.



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Lot #18-L-1, Case #17-2007

Applicant – Andrew & Christine Lane
Owner – A&C Revocable Trust
Location – 2 Woodvue Road
Zone – Residential A

A variance is requested from Section(s) 601 of the Zoning Ordinance to permit the completion of the construction of a garage authorized by a building permit dated November 5, 2003 but withdrawn as of January 22, 2007.

Mr. Murray motioned and Mrs. Webster seconded the motion to waive the reading of the notice for Case #17-2007. Motion passed 5-0. Mr. Tierney motioned and Mrs. Fallon seconded the motion to continue Case #17-2006 to the April 10, 2007 meeting due to case load and cases that may affect Case #17-2007. Motion passed 5-0.

Lot #18-L-1, Case #18-2007

Applicant – Andrew & Christine Lane
Owner – A&C Revocable Trust
Location – 2 Woodvue Road
Zone – Residential A

An Appeal of an Administrative Decision is requested from Section(s) 601 of the Zoning Ordinance. The applicant is appealing the withdrawal of the building permit due to a misinterpretation of the application of the WWPDP Ordinance and the NH Supreme Court Heron Cove decision.

Mr. Murray motioned and Mrs. Fallon seconded the motion to waive the reading of the notice for Case #18-2007. Motion passed 5-0. Mr. Tierney motioned and Mrs. Webster seconded the motion to continue Case #18-2007 to the March 27, 2007 meeting. Motion passed 5-0.

Other Business

None

Mail

- February 20, 2007 letter from Mr. Zohdi regarding an extension for Case #61-2005.

Approval of January 23, 2007 and February 13, 2007 Minutes

Mr. Murray motioned and Mrs. Fallon seconded the motion to defer the approval of the January 23, 2007 and the February 13, 2007 minutes to the March 13, 2007 meeting. Motion passed 5-0.



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At 12:50 AM, February 28, 2007 Mr. Murray motioned and Mr. Tierney seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for March 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.