



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes July 24, 2007

Mark Samsel – Chairman
Jim Tierney – Vice-Chairman
Dianna Fallon – Secretary
Gail Webster – Member
John Alosso – Member
Tom Murray – Alternate (Excused)
George Roy – Temporary Alternate
Al Souma – Temporary Alternate

Seat Alternates

Mr. Tierney recused himself from cases 17-2007 and 30-2007. The Chairman appointed Mr. Souma to replace Mr. Tierney.

Lot #18-L-1, Case #17-2007 (Continued from February 27, 2007 April 10, 2007 May 15, 2007 May 29, 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to permit the completion of the construction of a garage authorized by a building permit dated November 5, 2003 but withdrawn as of January 22, 2007.

Mrs. Fallon read the case into the record. The Chairman explained that he planned to recommend that either the case be moved to another evening or ask the applicant to withdraw the case without prejudice. The applicant was not in attendance. Mrs. Dunn provided a procedural suggestion stating that since the applicant was not in attendance the applicant's application is effectively withdrawn. The application could be administratively withdrawn and that wouldn't create any prejudice to hearing it again. Mr. Tierney said that in other towns the applicant is not required to come before the board. The board can take the application on its merits and make a decision. Mrs. Fallon motioned and Mr. Souma seconded the motion to deny without prejudice Case #17-2007. Motion passed 5-0.

Mr. Alosso motioned and Mr. Souma seconded the motion to move Case #30-2007 ahead Case #42-2007. Motion passed 5-0.



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The Chairman explained that Case #64-2006 is pending in court and depending on the result of that request it could alter any decision made on the request for rehearing of the equitable waiver. The Chairman read a portion of RSA 677:3 par. II *Upon the filing of a motion for a rehearing, the board of adjustment, a board of appeals, or the local legislative body shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the board of adjustment, a board of appeals, or the local legislative body may prescribe.* The Chairman recommended that the Board vote to suspend the rehearing request until the court decision is made.

Mrs. Dunn of 5 Woodvue Road said that the question before the Board is whether to make a decision on the rehearing of the grant of the equitable waiver. The Board is holding off on the question of rehearing until the court case appealing the board's previous decision concerning the WWPDP parameters is settled. One of the effects of this is putting the grant of the equitable waiver in suspension if and when it is appealed to the court it cannot (maybe) be considered by the court at the same time. To appeal the Zoning Board's decision to have to have a denial. So it would seem to put it in limbo and open the opportunity for another round.

Mr. Schroeder of 14 Woodvue Road said if you were to deny the rehearing tonight it could possibly be dealt with at the same time in court as what is already there. If the rehearing was granted tonight potentially you could continue the actual rehearing to some later time when the court has made a decision.

Mr. James Tierney, speaking as a citizen, said he believes the request should be heard based on the decision that was made. If the rehearing is granted you can set a time line based on the court hearing.

Attorney Mason said that if you grant a rehearing it is going to stay the proceedings in Superior Court until you hear it. If you deny the rehearing it will be consolidated with what is there presently.

Mr. Alosso withdrew his motion to move Case 30-2007 ahead Case 42-2007.

The Chairman replaced Mr. Souma with Mr. Tierney for Cases 42-2007 and 43-2007.



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Lot #17-M-2, Case #42--2007

Applicant – Marc & Andrea Croteau

Owner – Marc & Andrea Croteau

Location – 11 Armstrong Road

Zone – Residential A

A variance is requested from Section(s) 401, 406.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the construction of an addition 20'6" X 26' on the first floor and 20'6" X 28' on the second floor with a front setback of 36.3' where 50' is required and a rear setback of 13.9' where 30' is required and a side setback of 25.2' where 30' is required.

Mrs. Fallon read the case into the record. Attorney William Mason, representing the owner, presented the case. The applicant is proposing a 20'6" X 26' first floor addition and a 20'6" X 28' second floor addition with a 2' overhang. Lot coverage on this 8200 square foot lot would be 1248 square feet (1640 square feet would be 20% lot coverage). One existing deck will be removed and one deck will remain. Mrs. Fallon said that because the area is so congested it was hard to see what the situation would be for Lot 17-M-37. Attorney Mason said he presented how the proposed addition covers the lot in question. We don't have an engineer go out and certify locations of buildings on other properties. The lot sizes in this community range from 4800 to 8800 square feet. Mr. & Mrs. Croteau advised their neighbors of this request. Attorney Mason read the supporting facts into the record. Mr. Tierney asked if the 13'9" setback reflects the 2-foot cantilever in the rear or is the second floor level going to be reduced to 11'9". Mr. Mike McGuire, Building Inspector, explained that he measures from the wall of the structure of the habitable space. The Board decided that they could amend the request to 11.9" because nothing was misrepresented. Mr. Peter Zohdi of Herbert Associates said that he prepared the plan for Attorney Mason's clients. Mr. Zohdi said he never measures overhang only the foundation. Mr. Tierney explained that this is overhang of a living area not overhang of a roof pitch. Your primary building is standing two feet out. Mr. Tierney also told Mr. Zohdi that he is not the person reviewing the plan he just certifies the foundation and is done. Mr. McGuire explained to Mr. Zohdi that he would measure the footprint and then if there is an overhang he would have to reject it if it is too close if it is part of living space. There was a question regarding a deck and stairs and the owner explained that it is not a deck but a patio. Mr. Robert Lach of 13 Armstrong Road asked how much distance there will be from his retaining wall to where the house is being expanded. Attorney Mason replied that it will be 25'6". Mrs. Webster motioned and Mr. Alosso seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #42-2007

Mr. Alosso motioned and Mr. Tierney seconded the motion to grant an area variance for Lot 17-M-2, Case #42-2007 from Section 401, 406.2 & 702 Appendix A-1 with the following changes: right rear corner setback to be 11.9' and the left rear corner setback to be 18' due to the overhang. All other dimensions should be as the plan submitted from Edward N. Herbert



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Associates marked as Exhibit 42-2007 and dated June 2007. Motion passed 4-1. Mrs. Fallon said she voted against the motion because without an aerial view and how congested the area is she does not feel comfortable that 11.9' is enough distance from the existing house on lot 17-M-37.

Lot #25-E-401, Case #43-2007

Applicant – Edward N. Herbert Associates Inc.

Owner – Alan & Diane Carpenter

Location – 23 Abbott Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1, of the Zoning Ordinance to permit the modification of a variance granted on January 23, 2007, Case #5-2007, to allow the front side of the dwelling to be 15.41-feet from Abbott Road rather than 16-feet and to allow the foundation size to be 28' X 38' rather than 27' X 37'. No garage will be built.

Mrs. Fallon read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owners, submitted photos that the Chairman marked as exhibits A thru E and a plot plan that was marked as Exhibit F. Mr. Zohdi explained that he received a variance for the front setback to be 16' from the property line. A mistake was made when the foundation was installed and the closest point to the front property line is 15.41'. The approved plan was for a 27' X 37' dwelling and the owners would like to change the size to 28' X 38'. This does not change the percentage of lot coverage. The original plan showed a garage but no garage will be built but there will be a storage building under the deck. Mr. Zohdi read the supporting facts into the record. Mr. Alosso motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #43-2007

Mrs. Fallon motioned and Mr. Alosso seconded the motion to approve an area variance from Section 702 Appendix A-1 for Case #43-2007 as redesigned per the plan submitted and dated 6/28/07. Motion passed 5-0.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Mrs. Fallon read into the record a letter from Bruce Flanders of Flat Rock Road requesting an alternate position on the Zoning Board. In Mr. Flanders' letter he explains that he has over 18 years experience as the Building Inspector, Health Officer and Zoning Code Enforcement Official for the Town of Windham. Mr. Flanders introduced himself and said that he is temporarily living on Flat Rock Road and is in the process of buying property on Ministerial



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Road. The Chairman explained that the Members would discuss Mr. Flanders appointment during Closed Session.

Mr. Tierney recused himself and the Chairman appointed Mr. Souma for Case #30-2007.

Mr. Alosso motioned and Mr. Souma seconded the motion to go into Deliberative Session. Motion passed 5-0.

Lot #18-L-1, Case #30-2007 Request for Rehearing

Applicant – William Schroeder & Al Letizio, Jr.

Owner – A&C Revocable Trust

Location – 2 Woodvue Road

Zone – Residential A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on May 29, 2007.

The Chairman replaced Mrs. Webster with Mr. Roy.

After the Board reviewed all eight points submitted in the rehearing request Mr. Alosso motioned to deny the request for rehearing of Case 30-2007 for Lot 18-L-1 because no new data or technical error was found in the 8 points submitted by the applicant's attorney in the form of a letter dated June 26, 2007. Mr. Alosso, Mr. Roy, Mrs. Webster and Mr. Samsel voted for the motion. Mrs. Fallon voted against the motion because she felt there was a technical error regarding public nuisance in point 5.3. Motion passed 4-1.

Mr. Alosso motioned and Mr. Roy seconded the motion to go into Public Session.

Approval of Minutes

Mr. Souma motioned and Mr. Roy seconded the motion to approve the May 29, 2007 minutes. Motion passed 5-0.

The Chairman appointed Mr. Tierney to replace Mr. Roy.

Mr. Alosso mentioned that he was not late for the June 26, 2007 meeting as listed in the minutes. Mr. Souma motioned and Mr. Tierney seconded the motion to approve the June 26, 2007 minutes. Motion passed 5-0.



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Mail

- ❖ Copy of July 19, 2007 letter from Al Turner to Mr. Zohdi regarding Sawyer Road.
- ❖ Copy of July 9, 2007 letter from Al Turner to Dr. Finn regarding 9 Princeton Street.
- ❖ Notice of OEP 2007 Fall Conference scheduled for October 13, 2007.
- ❖ Dubois & King regarding flood plain issues
- ❖ Survey from Cliff Sinnott of RPC regarding Regional Planning Commission Services.
- ❖ Nomination form from LGCV for Municipal Volunteer awards.

Mr. Tierney motioned and Mr. Alosso seconded the motion to go into Non-Public Session per RSA 91-A:3 to discuss personalities. Motion passed 5-0 on a roll call vote.

Mr. Alosso motioned and Mrs. Fallon seconded the motion to go into Public Session. Motion passed 5-0.

Mr. Alosso motioned and Mr. Tierney seconded the motion to cancel the August 14, 2007 meeting and move it to August 21, 2007. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for August 21, 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.