



OLD VALUES - NEW HORIZONS
COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087
(603) 432-3806 / Fax (603) 432-7362
www.WindhamNewHampshire.com

Zoning Board of Adjustment
Draft Minutes
December 14, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Mike Scholz – Alternate
Jim Tierney – Alternate (Absent)
John Sycamore – Alternate (Absent)
John Alosso – Alternate (Absent)

Staff

Tim Corwin – ZBA/Code Enforcement Administrator

Lot 13-A-196, Case #63-2010

Applicant – Edward N. Herbert Assoc., Inc.
Owner – Abaco Real Estate Enterprises, LLC
Location – 5 Industrial Drive
Zone – Limited Industrial District

A variance is requested from Section 602.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a daycare facility to use a portion of the existing building, where daycare facilities are not permitted in the Limited Industrial District.

The Chairman noted that as a result of an error in the public notice, Case #63-2010 would not be heard. The case will be renoticed in the newspaper and to abutters and will be heard at the next meeting of the Board on January 11, 2011.

Lot 1-C-2550, Case #64-2010

Applicant – Edward N. Herbert Assoc., Inc.
Owner – The Devlin Family Revocable Trust of 1997
Location – Landlocked parcel abutting the rears of 101, 107, 109, 111 and 113 Londonderry Road
Zone – Rural District

Applicant proposes to subdivide the property into two lots, neither having frontage on a street, with access to Londonderry Road via a thirty (30) ft. right-of-way across 101 Londonderry Road, Lot 1-C-1900. Relief is requested from Section 702/Appendix A-1 of the Town of Windham Zoning

Ordinance and Land Use Regulations to permit the subdivision of two lots without any frontage on a street where 175 ft is required.

Ms. Fallon read the case into the record.

Mr. Peter Zohdi of Edward N. Herbert Assoc., Inc., representing the owner, presented the case.

At Mr. Zohdi's request, Ms. Fallon read a letter of support into the record from Mary Devlin, an abutter. Ms. Devlin supports the request. Ms. Fallon also read a memo from Laura Scott, the Community Development Director, detailing the Conservation Commission's conditional support for the proposal. Mr. Zohdi explained that the case had previously been postponed because there was a conflict between the Conservation Commission schedule and the Board meetings.

Mr. Zohdi described the proposal:

- The proposal is to subdivide the 18 acre parcel of land into two buildable lots for single family dwellings, and to transfer 1.248 acres to the front lot owned by Mary Devlin. In return Mary Devlin will grant an accessway across her property to the landlocked parcel, the driveway to serve both lots. There's a WWPD crossing that's in place now.
- The Town's right to use the property for ballfields will expire in March, 2011, and it's Mr. Devlin's desire to give one son one parcel and the other son the other, and the other piece to his sister.
- Foster Pond – the Town has no way to get there; Mr. Devlin agreed to give the Town a 10 ft easement to get to the other side of the pond which will be shown on the final plan.
- Both lots will have a 4 bedroom house.

Ms. Dunn asked about the trails that lead into the field. Mr. Zohdi does not have location of those trails. The easement would be over the existing trail. Mr. Bob Devlin, owner of the property, showed the location of the trail – they're going to move it to the other side of the hill.

Mr. Zohdi read the 5 criteria into the record.

Ms. Fallon asked whether any buffer is proposed for the 30 foot setback. Mr. Zohdi stated that none was proposed at this time.

Ms. Dunn asked how the 30 ft driveway will be constructed. Mr. Zohdi stated that it will be 18 ft. wide, and that the Fire Department has no objection. Mr. Murray asked why not put a road in and get multiple lots? Mr. Zohdi responded that his client just wants the two lots to give to his sons.

Mr. Joe Downey of 109 Londonderry Road spoke in opposition to the proposal. He directly abuts the property and bought his house with the understanding that Mr. Devlin would need 175 ft of frontage, so that he couldn't build there. Mary Devlin doesn't live there, so he's concerned about an absentee landlord. The applicant's pictures don't reflect the conservation land that surrounds the property, and the property should be part of the conservation land. Mr. Downey expressed concern about water runoff and rodents.

Mr. Peter Rokel of 107 Londonderry spoke in opposition to the application. Mr. Rokel stated that the driveway is directly abutting his property and that it should be constructed in compliance with all applicable Town road standards. Mr. Rokel stated that the development won't directly interfere with the adjacent railroad bed, but that no one will want to use the walk to the pond when they realize they're walking through a back yard. Roads have requirements that must be met – drainage, specs, etc for safety and health, and if these are not complied with it will directly affect his property. Road frontage and lot size is what defines the town. The subdivision regulations state that each lot shall have road frontage. With zero footage, the Board will be ignoring the ordinance and that's not in the public interest. The proposal conflicts with the zoning ordinance because it won't lessen congestion and will lead to increased density in population. Also, the proposal must be within the spirit of the law, but here the property has zero frontage, so in effect the applicant wants the whole requirement thrown out. Substantial justice – this lot has already received special consideration – they completely deforested the lot under the previous owner and never reforested. The value of the surrounding land will be diminished because now there will be a house between him and the conservation land, plus the driveway will run directly along the boundary of his property. Mr. Rokel submitted photos to the Board which were marked by the Chairman as Exhibits A and B.

Mr. Tom Strykowski of 111 Londonderry Road spoke in opposition to the application. He is concerned about the nature trails in the back – people won't use them as they were intended - a house would discourage people from using it and enjoying Fosters Pond – that's what gives it its character. Also concerned about frontage – it's absent here – concerned that if there ever was a fire, it would take time for the Town to respond in that area. Mr. Murray pointed out that the abutters' stance on preferring the hypothetical 6 lot subdivision is contrary to their concern about the trails.

Mr. Downey stated that he's opposed to any building on the lot.

Mr. Zohdi stated that how the driveway will be constructed is within the jurisdiction of the Planning Board, and that they would comply with the Planning Board and Fire Department requirements. Mr. Zohdi disputed the existence of an easement towards the front of the property; no such easement exists and if anyone is using the property without authorization then it constitutes trespassing. Mr. Zohdi noted there is a 30 foot setback applies to the perimeter of the property and that the location of the house will be more than 100 feet from the lot line. The driveway will be located on the lot line, but the driveway will not actually be 30 feet wide; rather there will likely be a 12 foot shoulder.

Mr. Rokel asked why the driveway can't go on the other side. The Chairman stated that Mr. Rokel could bring that up to the Planning Board.

Mr. Murray motioned and Ms. Fallon seconded the motion to go into Deliberative Session. **Motion passed 5-0.**

Deliberative Session, Case 64-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

The Chairman stated that it is important to remember that the New Hampshire Constitution allows for reasonable use of one's property. Here, there is a buildable lot surrounded by other lots with

homes on them. It's not unreasonable to conclude that a reasonable use of the property is for a home.

Ms. Dunn considered the hardship criteria; the question is not what the Board would prefer – but whether or not it meets the ordinance, the hardship requirement. You can have a 6 lot subdivision that meets the requirements. The Chairman stated the applicant doesn't have the frontage on Londonderry Road. Ms. Dunn replied that he could build the road just like any other parcel in town that needs to be developed. Mr. Murray stated that if you don't have frontage, you have a hardship and that's why you can file for a variance. The Chairman stated that the Board is not here to talk about what we would like, it's about what's in front of us.

Ms. Fallon noted that the plan is environmentally sound – everything is out of the wetland, generously away from the trail easement suggested by the Conservation Commission – they were pleased with the access to allow people to continue to use Fosters Pond. Ms. Fallon wondered why the neighbors would want the 6 lot subdivision instead of what was proposed. The plan was well thought out and not contrary to public interest. The Chairman noted if there is a motion to grant, it should reference the conservation easement.

Mr. Murray motioned and Ms. Fallon seconded the motion to grant Case 64-2010 as requested per plan to address the easement. Motion granted 4-1. Mrs. Dunn voted against the motion because the request did not meet the hardship requirement.

Lot 13-A-100, Case #65-2010

Applicant – Edward N. Herbert Assoc., Inc.

Owner – State of New Hampshire

Location – 16 Roulston Road

Zone – Residence District A

Applicant proposes to construct a 9,200 s.f. building for commercial use on a residentially zoned property. A variance is requested from (a) Section 603.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a building for commercial use, where commercial uses are not permitted in the Residence District A; (b) Section 603.1.5 to permit overnight parking of commercial vehicles where the overnight parking of only one (1) commercial vehicle is permitted; (c) Section 706.6 to permit signage on the property in conformance with the signage requirements for properties in Commercial Districts A and B; (d) Section 702/Appendix A-1 to permit the construction of a building within 41 ft. of the front lot line, where a minimum 50 ft. setback is required; and (e) relief from Sections 702/Appendix A-1 and 702.5 which require a 50 ft. wide vegetative buffer where a non-residential use is proposed closer than 100 ft. from a residential zoning district.

Ms. Fallon read the case into the record.

Mr. Zohdi of Edward N. Herbert Assoc., Inc., representing the owner, presented the case.

- The property is surrounded on three sides by road and almost surrounded by industrial zoned properties. Previously all the surrounding properties were zoned industrial.
- The property is improved with a house and is abandoned.
- Mr. Zohdi showed pictures of what is being built across the street at 5 Industrial Drive.

- The building will be used for medical offices and hopefully day care.
- The property is owned by NH DOT, but under agreement by Eric Nickerson.

Attorney John Ratigan spoke on behalf of the Applicant. Mr. Ratigan referred to his letter to the Board of November 10, 2010. Mr. Ratigan noted that it is usually difficult to show a hardship. However, the lot at issue here is considerably unsuitable for residential uses as it is surrounded by roads and industrial uses, and is an irregular shape. Mr. Ratigan addressed the 5 criteria and stated that the proposed use will be consistent with the majority of surrounding uses – it's not suitable for a residence anymore. It satisfies the public interest standard and the spirit of ordinance which talks about encouraging the most appropriate use of land. Here, the neighborhood has changed and what's proposed is the most appropriate use – not the narrow residential use. Substantial justice – the public gains nothing by the denial of this variance – the use is more congruent with surrounding uses. If the variance were granted, it would approve only the use as has been submitted on the plan. The proposal will go to the Planning Board for site plan review. The proposal will enhance surrounding property values and be part of a trend in the neighborhood of building medical offices. Mr. Ratigan noted that the hardship must relate to something owing to the land itself – here the property is landlocked by roadways – its an unusual dimension and so unlike any other parcel in the district. There is no fair and substantial relationship between the regulations as applied to this lot.

Ms. Dunn asked why a variance was needed to park commercial vehicles. Mr. Zohdi replied that ambulances and vans with commercial plates may be parked overnight. Ms. Dunn suggested that perhaps the Board could limit the size of vehicle permitted to be parked overnight. With respect to the vegetative buffer variance request, Mr. Zohdi stated that they would provide a minimum 20 feet buffer and that the abutters could have further input at the Planning Board stage.

Ms. Fallon asked why the applicant wouldn't go through the Planning Board for a zoning change. Mr. Zohdi stated that under the agreement Mr. Nickerson has only until January, 2011 to get the variance and to purchase the property. Mr. Zohdi stated that he would accept a condition that the use of the building be limited to office.

Eric Nickerson stated that he has an agreement with the state contingent on getting a variance. He stated that with respect to signage, he was anticipating a colonial design and not internally lit. Mr. Nickerson asked the Board whether they could consider permitting him to include very light manufacturing as part of the use of the building. He was concerned that the use restrictions might ensure that the development fails.

Stephen Crichton of 21 Stonehenge spoke in opposition to the application. He stated that because the parcel is zoned residential and adjacent to residential uses, the proposal is unreasonable, that it will have negative impacts on adjacent residential uses, and the overnight parking and signage will reduce property values. He submitted a petition marked as Exhibit A opposing the development and has an issue with saying that the neighborhood has changed – the neighborhood is not office buildings and hospitals; he wants to maintain integrity of the neighborhood.

Ruth Ellen Post of 15 Stonehenge spoke in opposition to the application. Ms. Post stated that the proposed use is a “moving target” and that she is not sure what the use will be. With respect to the commercial vehicle parking, the application has no information as to the nature of the vehicles that they wish to park. There are 5 variance criteria – applicant doesn't offer a single justification for the

“tag along” variances – no justification for the 50 ft setback – for the buffer – for the parking of unspecified trucks – e.g. - how is removal of the 50 ft buffer essential for the reasonable use of the property? How does removal of buffer not diminish values? The whole purpose of zoning is to protect the neighboring properties. The burden is on the applicants to show it. Regarding the 50 ft setback – how is narrowing the building by 9 feet deny all reasonable use of the property? How does the setback constitute an unreasonable hardship? The commercial vehicle request is overbroad, unjustified, and unwarranted. The applicant is probably hoping the Board will focus exclusively on the use and that it will be bundled together. The Board needs to deny the three tag along variances. Ms. Post suggested that the Board needs to revise their applications.

Ms. Post asked why the rezoning of the property is not before the Planning Board. Ms. Post noted that the property has been on the market for five months so that the applicant had more than ample opportunity to bring it within the normal zoning review and then it should be put to the voters. The Board is being asked to invent a whole new zone – that's a legislative matter. Ms. Post stated that Roulston Road and she is concerned that trucks coming out will have to go the other way and right by Stonehenge. The application is overbroad and understated.

Ms. Dunn asked whether she should recuse herself in that she is involved with Ms. Post on a different matter. Mr. Zohdi stated that he had no objection to Ms. Dunn sitting on the case.

The Chairman stated that the Board's application has been used for many years and has just recently been updated to address the 5 criteria. There is nothing incorrect about the way that the Board handles applications and there is no issue with the form. If the Board were required to go through 20 sets of criteria, it would never get through any applications. The New Hampshire courts have reprimanded other zoning boards for bifurcating the criteria.

The Chairman noted that the applicant doesn't have to go through the Planning Board; rather, they have an option to seek a variance. The Chairman stated that if granted, the use would be for commercial purposes which is a term used elsewhere in the ordinance. If there were to be a limitation on use, Ms. Post agreed that would help.

Joanne Morrison of 17 Roulston Road spoke in opposition to the application and stated that because Roulston dead ends, the road is more like a driveway than a road and therefore is not a bad situation for the property in terms of a residential use. A variance for a commercial use would be “spot zoning” and noted that although there are limited industrial zones to the north, they are residential uses. The property serves as a buffer currently to the industrial uses to the east. The office building is big for such a small property. The back of the building faces the residential area. So, it alters the character of the neighborhood.

Ashraf Elghamrawi of 3 Roulston Road spoke in opposition to the application. After DOT closed off Roulston Road, it became a quiet street. It used to be very busy and dirty. Little by little the commercial uses are encroaching upon a residential neighborhood. This variance would be a huge step backward. There are a number of vacant office buildings in the area. Why build a new one in a residential property? Keep our children safe. The only traffic on Roulston Road is for the people that live there. The property can be used in strict conformance as a residence today. Mr. Elghamrawi opposes any type of business use because it will add traffic.

Jeff Doucette of 22 Stonehenge spoke in opposition to the application. Children in the neighborhood use the surrounding road to access the rail trail. The development is not safe in that it will increase traffic in this area and present a hazard to the children bicycling to the rail trail.

Lynn Doucette of 22 Stonehenge spoke in opposition to the application and stated that no one is going to want to build homes across the street from the office building. The commercial building will create a domino effect for the rezoning of other properties for commercial. The proposed use is not safe, it will decrease property values, and increase traffic congestion. She stated that just because the residential property is not up to her standards, someone could live there.

Dave Savukinas of 23 Stonehenge Road spoke in opposition to the application and stated that the geography of this property is very different from other surrounding industrial zoned properties.

Shawn Donahue of Stonehenge Road spoke in opposition to the application. He doesn't want to drive out of his property and see a big building. He bought his land knowing that the property was zoned residential. Granting a variance would be a disgrace.

Cara Zollo of 2 Stonehenge Road spoke in opposition to the application and stated that she will be able to see the building and questioned what kind of commercial vehicles will be parked at the property.

Attorney William Mason, representing applicants in Case 67-2010, and Pamela Lundquist, the applicant in Case 68-2010, requested continuances to the next Board meeting. The Chairman stated that Cases 67 and 68 will be opened and continued until 1/11/11.

Carol Macomber of 19 Roulston Road spoke in opposition to the application and stated that she lives on her property and operates an animal hospital. Before she moved in the traffic was awful. The DOT change made it much better/quieter. The residents of Stonehenge always come through to use the Rail Trail. She agrees that the property is conducive to neighborhood business, but it's also possible to just keep it a residence. Ms. Macomber asked why the proposed office building needs a driveway on Roulston. She is concerned about UPS trucks using old Roulston Road and the increase in traffic.

Craig Leppanen of 14 Stonehenge Rd spoke in opposition to the application and stated that this was all farmland; there are no woods and the building will be very easy to see. He is also concerned about the lighting.

Phyllis Jarosky of 15 Roulston Road spoke in opposition to the application and expressed concerns regarding the traffic and truck routes. She stated that no one will want to build residential if the property is built as commercial.

Maura Shamon of 10 Stonehenge Rd spoke in opposition to the application and expressed concern with the number of parking spaces which means that the impact on traffic will be significant thereby causing a hazard for the children. Ms. Shamon stated that her property value would decrease.

The Chairman asked about the number of tenants. Mr. Zohdi stated that there would be a maximum of 4 units. The Chairman asked whether the dead end will be removed. Mr. Zohdi responded that it

will stay but they will remove the access onto Roulston Road. The Chairman asked whether traffic would flow from Searles to Roulston. Mr. Zohdi stated that traffic would not flow in that manner. He also stated that they will remove the trash dumpster from the rear of the building.

Ms. Dunn asked about the sign regulations as they are now and as they would be presuming the new sign ordinance passes. Ms. Dunn asked to see a copy of the new regulations. Mr. Scholz asked whether the applicant believed the proposed development would interfere with the surrounding properties' use of the roads. Mr. Ratigan stated that the Planning Board could only approve the plan if it did not interfere. Mr. Scholz asked about the proposed vegetation. Mr. Zohdi stated that it was the current plan was simply a rendering and discussed the vegetation that would grow in that area.

Mr. Ratigan stated that he believes the application is consistent with the variance standards and that the Board can craft conditions that would address the concerns of the abutters. The current use is not an appropriate one. He stated that the variance is for use, and then within that variance they are asking for variances for restrictions that would otherwise apply to an office use.

Ms. Post clarified that she does not represent anyone but herself.

Mr. Corwin stated that dimensional standards for signs in the Commercial District are the same under the proposed ordinance as they are under the current ordinance.

Mr. Murray motioned and Mr. Partington seconded the motion to go into Deliberative Session.

Motion passed 5-0.

The Board adjourned for a 5 minute recess.

Deliberative Session, Case 64-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Ms. Dunn stated that this is a unique property due to roads and proximity to industrial area. Question though is whether proposed building/proposed use meets the criteria in terms of diminution of value, and provides enough protection to nearby residential neighborhood. Is this particular proposal appropriate for that lot?

Mr. Partington stated that he is not sure if the property values will be diminished. There is a fair and substantial relationship between the general provisions of the ordinance and the zone. Mr. Murray stated that the property welcomes itself to this type of development but that the proposal would alter the character of the neighborhood, and therefore doesn't meet the first prong. Mr. Murray discussed the other criteria and stated that even if the uniqueness of the property created hardship, the proposal did not meet the other 4 criteria. Mr. Partington stated that even if the use meets the hardship criteria, the other three variance requests do not.

Ms. Dunn noted that if zoned limited industrial, office would be permitted, and suggested that the Board could limit the building to an office use. Ms. Fallon and Mr. Murray stated that rezoning is the appropriate route. The Chairman agrees with Mr. Murray on the first 4 points, and that 5 is questionable.

Mr. Partington motioned and Mr. Murray seconded the motion to deny a variance for Case 65-2010 from Section 603.1, Section 603.1.5, Section 706.6, Section 702/Appendix A-1, and Section 702.5 as requested. Ms. Dunn asked whether the motion could be crafted to approve the portion of the variance requested related to the use and deny the other portions of the request. Mr. Murray and Mr. Partington stated that they would not feel comfortable bifurcating the request. Motion approved 4-1. The Chairman, Mr. Murray, and Ms. Fallon voted for the motion because the request did not meet the first four variance criteria. Mr. Partington voted for the motion because the request did not meet the spirit of the ordinance or the hardship requirement. Ms. Dunn stated she was opposed to an outright denial of the application.

Lot 17-I-115, Case #66-2010

Applicant – Edward N. Herbert Assoc., Inc.

Owners – Edwin Walkey, Richard Walkey, Ann Hogan, and Thyra Whitford

Location – 28 Walkey Road

Zone – Residence District A, Cobbetts Pond Watershed Protection Overlay District

Applicant proposes to construct a two bedroom house on an existing undersized, undeveloped lot. Variances are requested from (a) Section 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the construction of a home to be located no less than 10 ft. from the front lot line along Walkey Road where a minimum 50 ft. setback is required, no less than 20 ft. from the side lot line where a minimum 30 ft. setback is required, and no less than 44 ft. from the shoreland reference line where a minimum 50 ft. setback is required; (b) Section 616.8(d)(1) to permit a drain-field 5 feet from the 100 ft. wide buffer zone along the edge of a seasonal tributary stream located to the southwest of the property, and a septic tank 17 feet from the buffer area where septic tanks and drainfields are not permitted within 25 ft. of the 100 ft. buffer; (c) Section 616.10(a) to permit a driveway within 75 ft. of Cobbetts Pond; (d) Section 702/Appendix A-1 to permit construction on a lot having an area of 10,261 sq. ft +/- where 50,000 sq. ft. is the minimum required; and (e) Section 702/Appendix A-1 to permit construction on a lot having frontage on a public street of 0 ft. where minimum frontage of 175 ft. is required.

Ms. Fallon read the case into the record.

Mr. Wesley Aspinwall of Edward N. Herbert Assoc., Inc., representing the owner, presented the case.

- The property is located at the end of Walkey Road.
- There are a number of surrounding lots on which there are cottages and year round houses.
- The property is next to an open beach area that serves all the surrounding lots, including the nearby condominium development.
- The property is undeveloped except that there's an easement for water lines down to Cobbetts Pond. However, more houses have now put wells in. The easement is no longer used.
- Edwin Walkey would like to build a house on the waterfront, which will occupy less than 20% of the building area of the lot and largely comply with the setback from the lake. The patios and decks will jut into the 50 foot setback. The proposal requires relief to build on a private road and within the front and side yard setbacks. The proposed house hugs the street to meet as much as possible the 50 ft shoreland setback.

- The property is encumbered by a negative easement which prevents building on a portion of the lot to protect the views of the lake. The location of the house was designed to comply with the easement requirements.
- No well is proposed for the property. Instead, the plan will either be served by an extension of the Pennichuck Water main that serves the condominium, or by well on an adjacent property.
- Mr. Aspinwall read the supporting facts into the record.

The Chairman asked about the proposed use of the storage area located within the side yard setback. Mr. Aspinwall stated that this was a 12' by 12' area required for the storage of tractors and outboard motors; there is a lot of equipment associated with a lakefront use that requires storage. Mr. Aspinwall stated that there will be full cellar, and a small lawn will be located over the leechbed.

Ms. Fallon asked about the height of the surrounding homes. Mr. Aspinwall stated that most of the surrounding houses are only one story in height. Ms. Dunn also expressed concern regarding the height of the proposed house.

Mr. Edwin Walkey, co-owner of the property, Mr. Joe Levis of 20 Walkey Road, and Mr. Joe Levis, Jr. of 20 Walkey Road spoke in favor of the application. Mr. Levis and Mr. Levis, Jr. submitted letters of support to the Board.

Mr. Murray motioned and Mr. Partington seconded the motion to go into Deliberative Session.

Motion passed 5-0.

Deliberative Session, Case 64-2010

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

The Chairman stated that under the state constitution, property owners are entitled to a reasonable use of their property, and that the attached storage looks better than a detached shed that might more closely comply with the setback requirements. Mr. Murray stated he had no issues with the proposal. Ms. Dunn questioned whether the scope of this project is appropriate and whether it diminishes surrounding property values. Mr. Murray countered that the proposed structure conforms with what is permitted under the ordinance which is 35 feet. Ms. Fallon observed that the proposed structure is much larger than what is in the vicinity. The Chairman noted that people are here in favor of the application and no one's opposed. Mr. Partington is not opposed as long as the house doesn't block the view of the lake.

Mr. Murray motioned and Mr. Partington seconded the motion to grant Case 66-2010 for a variance from Section 702/Appendix A-1, Section 616.8(d)(1), and Section 616.10(a) as requested per plan. Motion granted 3-2. Ms. Dunn voted against the motion because the request would diminish the value of the surrounding properties and Ms. Fallon stated the request would not be in the public interest.

Lot 13-A-196, Case #63-2010

Mrs. Fallon read the case into the record. The Board discussed whether the case should be opened and agreed that because of the defect in the public notice, the Board did not need to open the case. Rather, the Board took note that the case was defectively noticed and will be heard at the next meeting of the Board on January 11, 2011.

Lot 21-Z-264, Case #67-2010

Applicant – William R. Mason, Esquire

Owners – Leslie Crook

Location – 6 Horne Road

Zone – Residence District A, Cobbetts Pond Watershed Protection Overlay District

Applicant proposes to subdivide an existing lot into two lots, neither having frontage on a public street, and one lot not having the minimum required area. Variances are requested from Sections 401 and 702/Appendix A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the subdivision of a parcel of land into two lots where (a) both lots will have frontage on a public street of 0 ft. where minimum frontage of 175 ft. is required; and (b) one lot will have an area of 35,109 sq. ft +/- where 50,000 sq. ft. is the minimum required.

Mrs. Fallon read the case into the record. Mrs. Fallon motioned and Mr. Murray seconded the motion to continue Case 67-2010 to the January 11, 2011 meeting. **Motion passed 5-0.**

Lot 19-B-912, Case # 68-2010

Applicant/Owners – Robert and Pamela Lundquist

Location – 2 Winter Street

Zone – Rural District

The property is used as a residence and as an Alpaca farm. Applicants periodically operate a retail/gift shop within the residence, selling miscellaneous consumer products related to the Alpaca farm use. A variance is requested from (a) Section 602.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit a retail store use where commercial uses are not permitted in the Rural District; and (b) Section 706 to permit a 3.5 ft. x 2 ft. temporary sign advertising the retail/gift shop operation to be displayed on the property on days that the retail/gift shop operates, where temporary signs for commercial uses are not permitted in the Rural District.

Mrs. Fallon read the case into the record. The Chairman motioned and Ms. Fallon seconded the motion to continue Case 68-2010 to the January 11, 2011 meeting. **Motion passed 5-0.**

Approval of Minutes

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the October 12, 2010 minutes. **Motion passed 4-0**, with Mr. Murray abstaining.

Mr. Partington noted a typographical error on page 5 of the November 23, 2010 minutes. Mr. Partington motioned and Mrs. Dunn seconded the motion to approve the November 23, 2010 minutes, as amended. **Motion passed 4-0**, with Ms. Fallon abstaining.

ByLaw Amendments

The following was accomplished regarding changes to bylaws.

1. Site Observation/Site Walk Rules – The Chairman motioned and Ms. Fallon seconded the motion to adopt the Site Observation/Site Walk rules. **Motion passed 5-0.**

2. Amendments to By-laws – The Chairman motioned and Ms. Fallon seconded the motion to accept the second reading of the Amendments to By-Laws rules with amendments. **Motion passed 5-0.** Mr. Partington motioned and Mr. Murray seconded the motion to adopt the Amendments to By-Laws rules with amendments. **Motion passed 5-0.**

3. Meeting Procedure – Mr. Partington motioned and Ms. Dunn seconded the motion to accept the second reading of Meeting Procedure rules with amendments. **Motion passed 5-0.** Ms. Fallon motioned and Mr. Murray seconded the motion to adopt the Meeting Procedure rules with amendments. **Motion passed 5-0.**

4. Applicant Withdrawal, Applicant Continuance and Board Initiated Meeting Changes – The Chairman noted that an abbreviated Board agenda was placed in the Windham Independent one week prior to the meeting to address the Board’s desire to place the agenda in the newspaper. The abbreviated agenda is free. The Board agreed to change references in Mr. Partington’s draft from “agenda” to “hearing notice”. The Board discussed whether requests for withdrawals should be noted on the abbreviated agenda, and whether cases that require postponement due to errors in the public notice need to be opened and continued. The Board agreed that such cases need not be acted upon by the Board.

Mr. Murray motioned and Mrs. Fallon seconded the motion to accept the first reading of the Applicant Withdrawal, Applicant Continuance and Board Initiated Meeting Changes rules with amendments. **Motion passed 5-0.**

Adjournment

Ms. Dunn motioned and Mr. Partington seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for January 11, 2011 at 7:30 PM in the Community Development Department.

These minutes are in draft form and are submitted for approval by Tim Corwin.