

**BOARD OF ADJUSTMENT MEETING
JANUARY 14, 2003**

MEMBERS:

Bruce Breton - Chairman
Rob Gustafson - Secretary
Jack Gattinella - Member
Al Souma - Member
Chris Doyle - Member
Tony Pellegrini - Alternate
Dick Drummond - Alternate (Excused)

The Chairman presented a plaque to Mrs. Case in appreciation for the time and dedication spent by Tom Case and the Windham Cable board videotaping the Zoning Board meetings.

The Chairman presented a plaque to the Planning & Development Department Staff in appreciation of their support. Mr. Turner, Director of Planning & Development, accepted the plaque.

Lot #17-C-102C, Case #39-2002

Deborah Cassidy
3 Spring Street

A variance is requested from Sections 702 & 401 of the Zoning Ordinance to permit the installation of three windows, bring entire first floor to code, install a bathroom in the basement, add 4-feet X 5-feet to rear jog to lengthen, remove 1-foot X 6-feet to depth.

Mr. Gattinella read the case into the record. Deborah Cassidy presented her case. Mrs. Cassidy explained that Mr. Sawtelle hired a builder. There was a communication breakdown between Mr. Sawtelle and the Builder. Because of this confusion and the Builder eventually leaving, some construction started without permits. Mrs. Cassidy explained that Mr. Aspinwall made a correction to the submitted plans and the home will be 7.7 feet not 8.7-feet to the property line. Mr. Turner, Director of Planning & Development, said that all work on this property was done without permits. Mr. Turner issued a Cease and Desist order and sent an inspector to the site. The building was secured while the Applicant was waiting for a variance. Mr. Sawtelle was unaware that no permits had been issued. Mr. Turner explained that more information than usual was provided in the public notice so that it would be crystal clear to all what had been done. Mrs. Cassidy said that she would be using a portion of the attic for living space. Mr. Gattinella explained that the Zoning Board of Adjustment only has jurisdiction over increases in volume and setbacks. Mr. Sawtelle of 2 Spring Street spoke in favor of this request. Mr. Jim Howard of 4 Ridgemont Road asked if this is the hearing where an applicant can request changing their property from seasonal to year-round. Mr. Turner explained that the Code Enforcement Officer makes that determination, not the Zoning Board. All requirements of Section 1200 must be met in order for a property to be considered year-round. Mrs. Howard of 1 Spring Street questioned the installation of the foundation and said that Mr. Flanders had told her that the roofline had to be changed for safety. Mrs. Howard provided photos. Mrs. Cassidy submitted photos to the Board. Mr. Gustafson said that he was looking for documentation of the footprint before and after construction. Mr. Sawtelle said that all setbacks have remained the same. Mr. Domenic Tringali, friend of the Applicant, explained that the shed was brought in 1-foot but the square footage and footprint have not changed. Mr. Breton said that the Board will go by the plan in front of them and he marked the plan Exhibit A. The Chairman closed the public portion of this case.

Deliberative Session, Case #39-2002

Mr. Gustafson motioned and Mr. Doyle seconded the motion to grant Case #39-2002 per the plan marked Exhibit A with encroachments not to exceed those shown on the plan marked Exhibit A. Mr. Souma, Mr. Gustafson, Mr. Doyle, Mr. Gattinella and Mr. Breton voted to grant this variance. Request granted 5-0.

Lot #21-K-29, Case #1-2003

Glenn E. Williams

66 Turtle Rock Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the removal of the existing building and rebuild a new structure that encroaches into the side setbacks.

Mr. Gattinella read the case into the record. Mr. Williams presented his case. The existing building is 26' X 34' and the setbacks are the following:

- South Side, 110-Feet
- Front (Water Side), 35-Feet
- West Side, 9-Feet
- East Side, 15-Feet

The proposed building is 28' X 46' and the setbacks will be:

- South Side, 83-Feet
- Front (Water Side), 50-Feet
- West Side, 11-Feet
- East Side, 11-Feet

The proposed building will be centered on the lot. Mr. Gattinella read into the record the following comment from the Conservation Commission. "After review of 66 Turtle Rock Road, the Conservation Commission is supportive of the footprint of the home being set back from the lake and the septic system improvements. Please insure erosion control measures are in place prior to demolition and construction." Mrs. Linowes, a Member of the Conservation Commission and representing the Commission at this meeting, said that there is not a considerable increase in the footprint. Erin Upton of 68 turtle Rock Road spoke in favor of this request. Heidi Devaney of 64 Turtle Rock Road also spoke in favor. The Chairman closed the public portion of this case. Mr. Gustafson motioned and Mr. Doyle seconded the motion to go into Deliberative Session. Passed unanimously.

Deliberative Session, Case #1-2003

Mr. Doyle motioned and Mr. Gustafson seconded the motion to grant Case #1-2003 per the submitted plan. Mr. Souma, Mr. Gustafson, Mr. Gattinella, Mr. Doyle and Mr. Breton voted to grant this variance. Request granted 5-0.

Lot #21-K-24, Case #2-2003

Denis Tremblay & Katrina Foss

74 Turtle Rock Road

An Appeal From An Administrative Decision RSA 674:41 regarding section 702.2 of the Zoning Ordinance to grant a waiver to allow access to Lot 21-K-24 over Turtle Rock Road which is not a Class V or better road.

Mr. Gattinella read the case into the record. Mr. Gattinella read into the record a letter from Attorney Mason requesting that this case be continued to the January 28, 2003 meeting. Mr. Gustafson motioned

and Mr. Doyle seconded the motion to continue Case #2-2003 to the January 28, 2003 meeting. Mr. Doyle, Mr. Gattinella, Mr. Souma, Mr. Gustafson and Mr. Breton voted to continue to the January 28, 2003 meeting. Passed 5-0.

Lot #21-K-24, Case #2A-2003

Denis Tremblay & Katrina Foss
74 Turtle Rock Road

A variance is requested from Sections 702 & 401 of the Zoning Ordinance to permit the replacement of an existing three-bedroom seasonal cottage with a three-bedroom year-round home and to replace an existing shed with a two-car garage.

Mr. Gattinella read the case into the record. Attorney Mason's letter from Case #2-2003 also applies to this case. Mr. Gustafson motioned and Mr. Doyle seconded the motion to continue Case #2A-2003 to the January 28, 2003 meeting. Mr. Souma, Mr. Gustafson, Mr. Doyle and Mr. Breton voted to continue this case to the January 28, 2003 meeting. Mr. Gattinella voted not to continue to the January 28, 2003 meeting because this request is different than the Appeal From n Administrative Decision RSA 674:41 in Case 2-2003. Passed 4-1.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Lot #19-B-734, Case 3-2003

Robert P. Bessette
2 Mary Street

An Equitable Waiver is requested concerning Section 702 of the Zoning Ordinance to permit the existing shed to remain where it has been located for 25 years.

Mr. Gattinella read the case into the record. Mr. Bessette presented his case and provided photos. When Mr. Bessette purchased his home in 1989 he was not notified that the shed was not in compliance. Mr. Bessette learned that the shed was not in compliance when he refinanced his mortgage in May of 2001. The shed is located on a concrete slab and has been standing for approximately 25 years in the same location. There appears to be no other area of the yard that the shed could be placed. Mr. Bessette read the supporting facts into the record. The Chairman closed the public portion of this case. Mr. Gustafson motioned and Mr. Doyle seconded the motion to go into deliberative session.

Deliberative Session, Case #3-2003

Mr. Gustafson motioned and Mr. Doyle seconded the motion to grant the equitable waiver. Mr. Gattinella, Mr. Doyle, Mr. Gustafson, Mr. Souma and Mr. Breton voted to grant this request. Request granted 5-0.

Lot #3-B-600, Case #4-2003

Brian Harvey
179 Rockingham Road

A variance is requested from Sections 611.4 and 611.5.4 of the Zoning Ordinance to permit a portion of the property south of the proposed new road, currently zoned as Neighborhood Business District to be utilized in the density and open space calculations for the rural portion of the land.

Mr. Gattinella read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case. There is a total of 78 acres in this parcel, 27-28 acres are in the Neighborhood Business District and the balance will be a residential subdivision. The Applicant would like to utilize the land south of the proposed road (proposed road is in the Neighborhood Business District), which is not a buildable lot

(approximately 4-acres) in the density and open space calculations for the rural portion of the land. This would allow use of an area burdened by wetlands and WWPDP to remain undeveloped. Mr. Maynard read the supporting facts into the record. Mr. Gattinella read into the record a letter from Al Turner, Director of Planning & Development to Mr. Maynard regarding Spruce Pond Estates and the use of Neighborhood Business District land in the density calculations. The letter also states that the Planning Board did not have the detailed soils information that was generated at a later date when they proposed the rezoning of that land from Rural to Neighborhood Business District. Kim Hamel of 191 Rockingham Road spoke in opposition to this request. Lisa Linowes presented a letter to the Board stating that she was representing the Conservation Commission at this meeting. Mrs. Linowes questioned the Sections used in requesting the variance. Neither Section 611.4 nor 611.5.4 appears to have any relevance to the requested variance. Mr. Harvey explained that he used the Sections numbers provided in his denial letter. Mr. Turner explained why the Section numbers that were used in the request are correct. Mrs. Linowes went on to say that in the supporting facts provided by the Applicant, the second fact states that the granting of this variance would not be contrary to the public interest because it would allow open space along Route 28 as recommend by the most recent Town Master Plan. The Applicant does not cite a page and section number of the Master Plan. The section of the Master Plan that references Route 28 recommends consideration of developing parallel service access roads along the currently heavily developed southern section of Route 28. Mrs. Linowes said that the Conservation Commission continues to contend that the public interest would be negatively impacted by permitting land, which has been presented as disturbed marginal wetland to be used as part of the open space calculation. There are a number of uses that can be supported on the property that is located in the Neighborhood Business District including retail, business and professional offices, banks etc. Mrs. Linowes said that supporting fact #4 appears to contradict #3, which states that the land is undevelopable. Permitting the variance will allow untouched, undisturbed lands to be used for development. The Conservation Commission does not understand how the variance would maximize open space. When the Planning Board submitted this zone change to the electorate, it recognized that land along Route 28 was suitable for NBD and not open space. Mr. Maynard said that he relied upon the denial sections provided by Mr. Turner, Director of Planning & Development and Mr. Flanders, Building Inspector. The proposed road is going in the best location for safety and will have the least impact to the area. Mr. Harvey said that the Board could grant a variance for less than 4 acres in case the Planning Board changes the proposed road. Mr. Harvey would be willing to covenant the portion in question.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

The Chairman closed the public portion of this case. Mr. Doyle motioned and Mr. Gustafson seconded the motion to go into Deliberative Session.

Deliberative Session, Case #4-2003

Mr. Gustafson motioned to grant a variance for Case #4-2003 from Section 611.4 only for the change in the term residential and Section 611.5.4 only in so much as the Neighborhood Business District portion is hashed on the plan south of the proposed road and not to exceed 4 acres is included in the calculations but otherwise abide by all other density calculations and abide by covenant requirements in the ordinance and the hash marked area shall be set aside as permanent open space. Mr. Doyle seconded the motion. Mr. Gattinella, Mr. Gustafson and Mr. Doyle voted to grant this variance. Mr. Breton and Mr. Souma voted to deny this variance. Request granted 3-2.

The Chairman appointed Mr. Pellegrini to replace Mr. Doyle for the balance of this meeting.

Lot #17-J-175, Case #5-2003

James & Jody Ward

4 Gardner Road

An Appeal from an Administrative Decision RSA 674:41 is requested concerning Section 702 of the Zoning Ordinance to permit the building of a single-family home on a lot that does not have frontage on a town approved road.

Mr. Gattinella read the case into the record. Mr. Ward presented his case. The building lot (1.6 acres) will be useless without granting this appeal. There is adequate road frontage on Gardner Road, which leads out to Route 111. This lot is at the beginning of Gardner Road on which many other homes are located. Mr. Ward read the supporting facts into the record. Mr. Turner said that according to the *New Hampshire Planning and Land Use Regulations (2002-2003 Edition)* the Applicant must provide proof that Gardner Road will be maintained. Mr. Gustafson said that the ZBA has not required proof from an Applicant regarding road maintenance. RSA 674:41 Paragraph I-d-3 states that "*prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought*". A lengthy discussion followed regarding RSA 674:41 and the fact that the Board was not aware of the requirement of providing proof since they did not receive the most recent NH Planning & Land Use Regulations Book. Mr. Ward explained that he was never told to provide proof regarding maintenance of the road. Mrs. Ward said that this road is maintained and that evidence will be provided to the Building Department. The Chairman closed the public portion of this meeting. Mr. Gattinella motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously.

Deliberative Session, Case #5-2003

Mr. Gattinella said that he would like to go on record that he is upset that these books (*NH Planning & Land Use Regulations 2002-2003 Edition*) have been available since December 2002 and the Zoning Board did not get copies. Mr. Gustafson said that as far as the proof is concerned he isn't worried about that because under this RSA I-d-3 the Applicant will be required to record in the County Registry of Deeds the evidence that the notice of limits on municipal responsibilities and liability has been recorded. This is not a new private road, it is a well-used road and this will be the first house on the road therefore Mr. Gustafson said he does not have a problem with this request. Mr. Gustafson motioned and Mr. Gattinella seconded the motion to grant Case 5-2003 An Appeal from an Administrative Decision 674:41, issue the building permit subject to providing the proof required in RSA 674:41 Paragraph I-d-3. Mr. Gattinella, Mr. Gustafson, Mr. Souma, Mr. Pellegrini and Mr. Breton voted to grant this request. Request granted 5-0.

Lot #17-J-175, Case #5A-2003

James & Jody Ward

4 Gardner Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the building of a single-family home on a lot that does not have frontage on a town approved road.

Mr. Gattinella read the case into the record. Mr. Gattinella motioned and Mr. Gustafson seconded the motion to waive the reading by the Applicant of the five supporting facts. Passed unanimously. The Chairman closed the public portion of this case. Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously.

Deliberative Session, Case #5A-2003

Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to grant Case #5A-2003. Mr. Pellegrini, Mr. Gattinella, Mr. Souma, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

Minutes

Mr. Gustafson motioned to approve the November 26, 2002 minutes as written. Mr. Gattinella seconded

the motion. Passed unanimously.

Mr. Gustafson motioned and Mr. Gattinella seconded the motion to adjourn at 12:00 AM. Passed unanimously.

The next meeting of the Zoning Board of Adjustment will be on January 28, 2003 at 7:30 PM at the Planning & Development Office.

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

