



## BOARD OF ADJUSTMENT

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

September 9, 2003

Bruce Breton – Chairman  
Chris Doyle – Vice-Chairman  
Rob Gustafson – Secretary  
Al Souma – Member  
Georges Roy – Member  
Kara DiFruscia – Alternate (Excused)  
Tony Pellegrini – Alternate (Absent)

**Lot #20-E-135, Case #34-2003 (Continued from August 26, 2003)**

Karl Dubay for Pesando NH Prop. Trust  
Off Bear Hill Road

A variance is requested from Section 702, Appendix A-1 of the Zoning Ordinance to permit the subdivision of one lot to two lots and build two houses with conservation easements, no frontage on a town approved road, via shared driveway over existing town right-of-way fronting the parcel connecting to Bear Hill Road.

Mr. Gustafson read the case into the record and also read a letter from Mr. Dubay requesting a continuance. Mr. Gustafson motioned to continue Case #34-2003 to the October 14, 2003 meeting. Mr. Doyle seconded the motion. Passed unanimously.

**Lot #8-B-4400, Case #30-2003**

Pineapple Realty Trust (Windham Animal Hospital)  
8 Libbey Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the construction of an addition to the hospital 25-feet from the front lot line where 50-feet is required.

Mr. Gustafson read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented the case. On May 14, 2002 the Applicant was granted a variance (ZBA Case #15-2002) for the same plan being presented at this meeting. A variance is valid for one year therefore the variance that was granted in May of 2002 is expired. Mr. Gustafson motioned and Mr. Doyle seconded the motion to waive the reading of the five supporting facts. Passed unanimously. Mr. Gustafson motioned and Mr. Doyle seconded the motion to close the public portion of this case. Passed unanimously.

**Deliberative Session, Case #30-2003**

Mr. Gustafson motioned to grant Case #30-2003. Mr. Roy seconded the motion. Mr. Roy, Mr. Souma, Mr. Doyle, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.



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### Lot #13-K-42, Case #35-2003

Scott & Jane Goldstein  
38 Doiron Road

A variance is requested from Section 702 of the Zoning Ordinance to permit encroachment into the side setback 18-feet where 30-feet is required and encroachment into the front setback 37-feet where 50-feet is required. The addition is 36-feet from the Shoreland setback where 50-feet is required.

Mr. Gustafson read the case into the record. Mr. Goldstein presented his case. When the home was purchased it was a two-bedroom without closets. Mr. Goldstein removed one wall to make the two bedrooms into one bedroom. This addition will not have a foundation it will be on pilings and will not be going closer to the water. Mr. Goldstein read the five supporting facts into the record. Mr. Bruce Anderson, Chairman of the Conservation Commission said that the Commission would like to see the shoreline protected from erosion during construction. Mr. Goldstein said that he would not be removing any trees or shrubs. Mr. Gustafson motioned and Mr. Roy seconded the motion to close the public portion of this case. Passed unanimously.

### Deliberative Session, Case #35-2003

Mr. Gustafson motioned to grant Case #35-2003 per plan submitted and subject to the condition best practices are used for preserving the integrity of the shoreline. Mr. Roy seconded the motion. Mr. Souma, Mr. Doyle, Mr. Roy, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

### Lot #13-B-94 & 95, Case #38-2003

Skyline Industries for Wayne & Margaret Allfrey  
26 & 28 Harris Road

A variance is requested from Section 702, Appendix A-1 of the Zoning Ordinance. Inadequate lot size, ordinance requires a minimum of 50,000 square feet depending on soils and slopes; 26 Harris Road has 31,320 square feet and 28 Harris Road has 36,386 square feet. 28 Harris Road has inadequate contiguous upland, consisting of 27,200 square feet per the submitted plan; 30,000 square feet is required.

Mr. Gustafson read the case into the record. Valerie Tobin of Skyline Industries presented the case for the applicant. Ms. Tobin gave a brief history of the property . Jeanie Davy in 1960 hired Robert Thorndike to subdivide the subject parcels from her existing parcel located to the north west of these lots. The parcels were subsequently subdivided and became lots and are shown on the assessors map. This was prior to subdivision rules and regulations. In 1998 Jeannie Davy sold the two parcels with the land in between to Berthier Lavoie. The deed was drawn up with deeding the land between the two parcels even though the land was never part of the original lots, thus creating an illegal subdivision. Lavoie apparently had no idea that her deed was an illegal conveyance. On September 7, 2001 Berthier Lavoie sold the parcels with the land



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between (same legal description) to Wayne and Margaret Allfrey. Upon the Allfrey's hiring Skyline Industries to construct a home it was learned that the subdivision was illegal. Skyline Industries has been working toward correcting this error. The deed included a metes and bounds description and stated "all the land in-between". Mr. Flanders discovered that this was an illegal subdivision. Mr. Turner and Mr. Flanders suggested all this information be presented to the ZBA. Wetlands mapping has been done. Mr. Bruce Anderson, Chairman of the Conservation Commission spoke in favor of this request and asked that silt fencing be placed along the back of the property during construction. Alfrida Trotochaud and Richard Russell spoke against this request. Mr. Gustafson motioned and Mr. Doyle seconded the motion to close the public portion of this case. Passed unanimously. Mr. Gustafson motioned and Mr. Roy seconded the motion to return to public session. Passed unanimously.

*The Chairman granted a five-minute recess.*

*The Chairman called the meeting back to order.*

Mr. Gustafson said that he would like to see evidence to prove or disprove the two-lots of record. Ms. Tobin read into the record a letter from Eric Twarog, former Assistant Planner, to Fran Carney dated January 11, 2002. The letter states that after some additional research by the Planning Board's consulting engineer, Robert Thorndike, it was determined that these lots are in fact legally subdivided. There is a letter that was written to Skyline Industries on February 6, 2003 by Bruce Flanders, Building Inspector, stating that this is an illegal subdivision by deed. Ms. Tobin explained that Mr. Flanders had not seen the deed. Ms. Tobin also addressed a letter dated February 15, 2002 that was written by Attorney Campbell to Ms. Jennie Davy regarding an illegal subdivision. Ms. Tobin explained that Attorney Campbell was referring to the way the deed was conveyed. The way the deed was drafted created an illegal subdivision because they conveyed all of the land in-between. Mr. Case said that these are lot of record. The Applicant can go to the Planning Board for a lot line change. Mr. Roy motioned to continue Case #38-2003 to the September 23, 2003 meeting in order to get input from the Planning Staff and Attorney Campbell. Mr. Gustafson seconded the motion. Passed unanimously.

### Lot #3-A-546, Case #39-2003

Mitchel & Lisa Van Berlo

12 Patridge Road

A variance is requested from Section 601.3 of the Zoning Ordinance to permit the placement of a permanent structure, a 12-foot X 16-foot shed, within the Wetland Watershed Protection District.

Mr. Gustafson read the case into the record. Mr. VanBerlo presented his case. The only permitted location on the property is unsafe due to a gas line that would run directly underneath the structure. The shed would not compromise the wetlands. The area is already clear and level and appears to have been filled with stones and dirt during the



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construction of the house. The requested location is further from the pond and at a higher elevation than the permitted area on the property. Mr. Gustafson read into the record a letter from Fire Chief Messier dated September 3, 2003 regarding the location of the LP gas line on Mr. VanBerlo's property. Mr. VanBerlo read the five supporting facts into the record. Mr. Bruce Anderson, Chairman of the Conservation Commission, spoke in favor of this request and advised the Board that the area in question was, in fact, disturbed during construction. Mr. Anderson requested that good construction practices be observed during the building of the shed. Mr. Dennis Senibaldi, member of the Conservation Commission, also spoke in favor of this request. Mr. Gustafson motioned and Mr. Roy seconded the motion to close the public portion of this case. Passed unanimously.

### **Deliberative Session, Case #39-2003**

Mr. Gustafson motioned to grant Case #39-2003 per the plan submitted. Mr. Souma seconded the motion. Mr. Souma, Mr. Roy, Mr. Doyle, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

### **Lot #2-A-105, Case #40-2003**

Daniel W. Cudak  
12 Beacon Hill Road

A variance is requested from Section 702 of the Zoning Ordinance to permit the construction of a 25-foot X 30-foot garage that is 15.4 feet from the side lot line where 30-feet is required.

Mr. Gustafson read the case into the record. Mr. Cudak presented his case and submitted photos of the property. Mr. Cudak has a two-car garage underneath his home but would like to use the current garage for storage. Mr. Cudak read the five supporting facts into the record. Mr. Salafia spoke against this request stating that Mr. Cudak has 3000 square feet of living space and he does not see a hardship in this case. Susan Alvears also spoke against this request. Mr. Gustafson motioned and Mr. Doyle seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #40-2003**

Mr. Gustafson said that this is a fairly new development and all lots are conforming. Mr. Gustafson motioned to deny Case #40-2003 because it does not satisfy the hardship requirement. Mr. Gustafson, Mr. Roy, Mr. Souma, Mr. Doyle and Mr. Breton voted to deny this variance. Request denied. 0-5

### **Lot #17-J-70, Case #41-2003**

DVMD Holdings, Inc.  
90 Indian Rock Road

A variance is requested from Section 605.2.1 of the Zoning Ordinance to permit residential condominiums in the Business Commercial B District.



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Mr. Gustafson read the case into the record. Attorney Andrew Prolman presented the case. Residential use is in character with the surrounding properties and is a much less intense use than those permitted. The property would be limited to five 3,000 – 4,000 square foot residential condominiums. Mr. Prolman read into the record a letter from the Cobbetts Pond Improvement Association, which states the Board of Directors support a zoning change to the property from Commercial District B to Residential. Residential use of this property offers the best use given its proximity to Cobbetts Pond. Mr. David DeVries, owner, said that the residents do not want to see this as commercial property. Mr. Sweetser of the Cobbetts Pond Improvement Association spoke in favor of this request as did Marilyn Bailey, President of the Heron Cove Association. Mr. Tom Case spoke in favor of this request but also said that this is not the forum to make zoning changes. Zoning is changed at town meetings and if this request is granted you will end up creating non-conforming lots. Mr. Bruce Richardson spoke in favor. Attorney Prolman said that New Hampshire does not distinguish between use and dimensional variances. The Applicant is here for a change of use variance not to re-zone. Mr. Roy motioned and Mr. Gustafson seconded the motion to go into Deliberative Session. Passed unanimously.

### *Deliberative Session, Case #41-2003*

Mr. Doyle motioned to grant Case #41-2003 as presented. Mr. Roy seconded the motion. Mr. Gustafson, Mr. Doyle, Mr. Souma, Mr. Roy and Mr. Breton voted to grant this variance. Request granted 5-0.

*The Chairman granted a five-minute recess.*

*The Chairman called the meeting back to order.*

### *Lot #17-M-1, Case #42-2003*

Richard & Joan Miller  
9 Armstrong Road

A variance is requested from Section 401 of the Zoning Ordinance to permit a 25-foot X 26-foot addition above the existing bedroom, bath and dining room, which will not increase the footprint.

Mr. Gustafson read the case into the record. Attorney Brian Vaughn, representing the Applicant, presented the case. On June 24, 2003 a building permit was issued for a 25' X 26' expansion above the dining area, bedroom and bath. The construction of the exterior of the new structure was substantially complete (90%) when the Applicant received a letter from the Building Inspector, Mr. Ronald Preble, stating that they were in violation of Section 401 of the Zoning Ordinance and their Building Permit #198 was being rescinded. With the addition, the size of the house will be consistent with the surrounding properties. The addition will not increase the footprint. Denial of this variance would cause financial hardship. Workmen and materials have been paid and there are materials ordered that cannot be returned. The Applicant relied on the Building Permit that was issued by the Town of Windham. Attorney Vaughn read the five supporting facts into the

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record. Mr. Bruce Richardson and Mr. Bruce Anderson spoke in favor of this request. The Board received letters of support from Rita Moakley of 2 York Road and Mr. & Mrs. Croteau of 11 Armstrong Road. Mr. Gustafson motioned and Mr. Roy seconded the motion to close the public portion of this case. Passed unanimously.

### Deliberative Session, Case #42-2003

Mr. Gustafson said that this request is in harmony with the surrounding properties. Mr. Gustafson motioned to grant Case #42-2003 to permit the second story addition as framed per plan. Mr. Doyle, Mr. Roy, Mr. Souma, Mr. Gustafson and Mr. Breton voted to grant this variance. Request granted 5-0.

### Lot #6-A-823, Case #43-2003

Kevin & Rebecca Gosson  
25 Bedros Street

A variance is requested from Section 702 of the Zoning Ordinance to permit the installation of a 14-foot X 28-foot in-ground pool 5-feet from the lot line where 30-feet is required.

Mr. Gustafson read the case into the record. Mr. & Mrs. Gosson presented their case and provided photos. The pool will be located behind PVC stockade fence. To place the pool in another area would interfere with the well and septic. Mr. Gosson read the five supporting facts into the record. Mr. Gustafson read a letter of support from Jean Picanson of 87 North Lowell Road. Mr. Doyle motioned and Mr. Roy seconded the motion to close the public portion of this case. Passed unanimously.

### Deliberative Session, Case #43-2003

Mr. Doyle motioned to grant Case #43-2003 as presented. Mr. Gustafson seconded the motion. Mr. Gustafson, Mr. Doyle, Mr. Souma, Mr. Roy and Mr. Breton voted to grant this variance. Request granted 5-0.

### Minutes

Mr. Roy motioned to accept the August 26, 2003 minutes as written. Mr. Gustafson seconded the motion. Passed unanimously.

### Other Business

Mr. Doyle would like the Planning Staff to be aware of incorrect applications. The Board feels that some recent applications for variances should have been applications for an equitable waiver or an appeal from an administrative decision.

Mr. Doyle motioned to reimburse the application fee for Case #42-2003. Mr. Roy seconded the motion. Mr. Doyle withdrew his motion. Mr. Doyle motioned to send a letter to the Board of Selectman strongly urging reimbursement of the application fees for Case #42-2003. Mr. Gustafson seconded the motion. Passed unanimously.



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### Mail

- Confidential Legal Letter from Attorney Campbell dated September 2, 2003.
- September 2003 issue of *Town & City*.
- Memo from May Ann Manoogian of the Office of State Planning regarding the October 25, 2003 Annual Fall Planning Conference at Plymouth State University in Plymouth, NH.
- Notice from Rockingham Planning Commission regarding orders for the *New Hampshire Planning & Land Use Regulations*” book; \$6.50 per book and \$11.00 per book with cd-rom option. Orders with payment must be received before Tuesday, September 23, 2003. If orders and payment are not received in time the publisher charges \$35.00 per book.

Mr. Doyle motioned and Mr. Gustafson seconded the motion to adjourn at 11:00 PM.  
Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for September 23, 2003 at 7:30 PM in the Planning & Development office.

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