



## BOARD OF ADJUSTMENT

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

October 28, 2003

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

### Lot #25-D-130, Case #47-2003

Frank Burgess  
9 Jordan Road

A variance is requested from Sections 401 & 702.4 of the Zoning Ordinance to permit the construction of a three-season room below an existing deck. Pre-existing setback violation, encroachment into setback is 25-feet where 30-feet is required.

Mr. Gustafson read the case and a letter of authorization into the record. Mr. Leeman presented his case. The proposed three-season room would be constructed below the existing deck. The existing deck encroaches approximately 4-feet on the lot line and has been in place for about 30-40 years. A drawing of the proposed addition was submitted by Mr. Leeman and marked as *Exhibit A* and the photographs submitted were marked as *Exhibit B*. The drawing shows the corner of the original house is 29.15 feet from the lot line. Mr. Leeman explained that on September 11, 2003 the builder was given verbal approval by the Building Inspector to dig a hole while the paperwork was being reviewed. On September 15, 2003 the builder was given verbal approval to pour a footing. On September 18, 2003 the builder was told to stop work. Mr. Gustafson read into the record a memo from Building Inspector Jim Tierney to Chairman Breton regarding case 47-2003. The memo states that Mr. Burgess, the builder, was told that he could start digging at his own risk while his application was in review providing he submitted all the information needed for his building permit. A plot plan was not included with the application. Mr. Tierney notified Mr. Leeman about the setback requirements. Mr. Burgess spoke with another Building Inspector, Mr. Prebble, to allow him to install a footing while his application was in review. After learning of that conversation Mr. Tierney sent Inspector Prebble to the site to advise Mr. Burgess not to continue until the plot plan, showing the setbacks, was submitted. Mr. Turner, Director of Planning & Development, advised the Board of his conversation with Mr. Burgess advising him not to pour the footing. Mr. Leeman explained that the proposed addition would not exceed the current footprint. Mr. Leeman read the five supporting facts into the record. Mr. Frank Burgess said that he spoke with Mr. Prebble two or three times and Mr. Prebble did say to go ahead with the digging but did not say that it was at his own risk. Mr. Turner said that there might be other valid reasons for granting this request but the

Page 1 of 5



## BOARD OF ADJUSTMENT

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

fact that a hole has already been dug is not a good reason. Mr. Leeman read into the record two letters of support. The first letter written by Robert Gagnon of 20 Jordan Road was marked as *Exhibit C* and the second letter written by Jean Sweatt of 26-18<sup>th</sup> Street, Lowell, Massachusetts was marked as *Exhibit D*. Mr. Gustafson motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

### *Deliberative Session, Case #47-2003*

Mr. Gustafson said that hardship is not defined as a financial issue. The Board should not take into consideration the previous work done but view it as if this case had come to us before commencement of any work. Mr. Gustafson also said that he sees this as a very small encroachment and it does not even encroach as much as the existing deck into the side lot line. Mr. Gustafson motioned to grant Case #47-2003 per the submitted certified plot plan describing the encroachment and footprint. 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.

### *Lot #17-C-95, 96 & 96A, Case #48-2003*

Neverest Management Co., LLC, Dale C. Smith, Manager  
33A & B Sawtelle Road

A variance is requested from Sections 401 & 702.4 of the Zoning Ordinance to permit the replacement of failed pier foundations under the existing building footprints with concrete foundations. Buildings will be elevated 1-1/2 feet to ensure clearance from grade and enhance crawl space for canoe storage and access to utilities.

Mr. Gustafson read the case into the record. Mr. Dale Smith presented the case. This property is on the Johnson Point peninsula on Cobbetts Pond. The cottages lie within 50-feet of shoreline. Mr. Smith submitted three photos that were marked as *Exhibits A, B and C*. The buildings have been there since before 1922. The rotting logs have created a “fun house” effect on the floors inside the cottages. Granting of this variance would enhance safety by allowing restoration of the foundations and repairing of the floor supports. Mr. Smith read the five supporting facts into the record. Mr. Smith asked if he could request the buildings be raised two-feet rather than the 1-1/2-feet he requested in his application. Mr. Turner explained that the request could be decreased but not increased. The abutters would need to be advised of the increase. Mr. Smith could stay with his original request and if that request was granted he could at least begin work on the property and then submit a new application for the additional 6-inches. Mr. Smith decided to stay with the original request of 1-1/2-feet and submit a new application for the additional 6-inches. Deborah Ladieu, co-owner asked if they needed to repeat the entire procedure. Mr. Turner explained that the abutters must be notified and the request needed to be advertised for another hearing. Mr. Paul Smith another co-owner spoke in favor of this request. Ruth Smith said that these cottages are seasonal not year-round residences. Mr. Roy motioned and Mr. Gustafson seconded the motion to go into Deliberative Session.



## BOARD OF ADJUSTMENT

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

### *Deliberative Session, Case #48-2003*

Mr. Gustafson said that this would be an improvement to the properties with a very small increase in the existing non-conformity. There are no changes in setbacks and no opposition from abutters. Mr. Doyle motioned to grant Case #48-2003 per the plan submitted. Mr. Gustafson seconded the motion. Mr. Roy, Mr. Souma, Mr. Doyle, Mr. Gustafson 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.*

### *Minutes*

Mr. Doyle motioned and Mr. Gustafson seconded the motion to accept the October 14, 2003 minutes as written. Passed unanimously.

### *Deliberative Session, Request for Rehearing Lot #16-P-470, Case #33-2003 (Heard on September 23, 2003)*

Nancy Lincoln – Applicant

Ethel Murphy – Owner

Corner of Ministerial Road & Fourth Street

A variance was requested from Section 702 of the Zoning Ordinance to permit the construction of a two-bedroom year-round home on a .3 acre lot. At the September 23, 2003 Zoning Board meeting this request was granted unanimously.

Mr. Gustafson read into the record the request for a rehearing and a letter from Gerald H. Miller, Land Surveyor, Certified Wetland Scientist and Septic System Designer. Mr. Gustafson also read into the record a letter from Mr. Pearson of B.V. Pearson Associates, Inc. After reviewing the submitted letters that state septic, well and blasting issues the Board stated that these are not zoning issues but are the responsibility of the Building Department. Mr. Doyle motioned to deny the rehearing request for Case #33-3 because no evidence of the Zoning Board making an error and no new evidence pertaining to zoning was submitted. Mr. Roy seconded the motion. Mr. Gustafson, Mr. Souma, Mr. Roy, Mr. Doyle and Mr. Breton voted to deny this rehearing. Request denied 0-5.

### *Deliberative Session – Request for Rehearing Lot #13-B-94 + 95, Case #38-2003 (Heard on September 23, 2003)*

Applicant – Leo & Alfreda Trotochaud

Owner – Wayne & Margaret Allfrey

27 & 28 Harris Road

A variance was 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



## BOARD OF ADJUSTMENT

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

square feet per the submitted plan; 30,000 square feet is required. At the September 23, 2003 Zoning Board meeting this request was granted 3-2.

Mr. Gustafson read into the record the request for a rehearing and a letter submitted by Mr. & Mrs. Trotochaud. After reviewing the submitted information the Board decided that no new evidence was provided. Mr. Roy motioned to deny the rehearing request for Case #38-2003 because no new evidence was submitted. Mr. Souma seconded the motion. Mr. Souma, Mr. Roy, Mr. Doyle, Mr. Gustafson and Mr. Breton voted to deny this rehearing request. Request denied 0-5.

### Other Business

Mr. Gustafson advised the Members that he drafted a letter to Mr. Paul Keller in response to Mr. Keller's letter of October 20, 2003. Mr. Gustafson read his letter into the record. The Members approved Mr. Gustafson's letter. Mr. Gustafson motioned and Mr. Souma seconded the motion to send the letter to Mr. Keller. Passed unanimously.

Mr. Gustafson read into the record a letter from Al Turner regarding the powers of the Conservation Commission. The New Hampshire RSA 36-A:4, *Powers*, outlines the duties and powers of the Conservation Commissions in New Hampshire. Section 601.4.8 of the Windham Zoning Ordinance grants review and comment duties to the Conservation Commission for applications for special permits to alter the terrain in the WWPD. Mr. Souma said that the next time a representative of the Conservation Commission appears before the Zoning Board he will ask that individual what the vote count was regarding the case they are commenting on. Mr. Souma went on to say that he thought the Zoning Board was assuming that all members of the Conservation Commission were in favor of the comments the representative would make at a Zoning Board meeting but it has come to his attention that is not the case. Mr. Gustafson said that Mr. Turner's letter states that the Conservation Commission would review and comment on applications for special permits; not on all cases. Mr. Breton said that the Board of Selectmen would outline for the Conservation Commission what they are required to do. Mr. Souma said that the Zoning Board is not in conflict with the Conservation Commission. Mr. Tom Case said that if someone wants to do something in the WWPD that is not allowed they must get a special permit. If the Zoning Board grants a variance to do something in the WWPD that suddenly makes it legal. The Conservation Commission has no right to review it. If the Zoning Board grants a variance to a certain section of the zoning ordinance what was granted is no longer contrary to zoning, it is legal and there is no reason for a special permit. Mr. Gattinella said that the rebuttal to that statement is the Conservation Commission would not override what is said by the Zoning Board they want to specify that the builder use silt fences etc. during the construction phase.

Mr. Gattinella said that a trailer could go on any lot in Windham as long as the same requirements that apply for a single-family home are met.



## BOARD OF ADJUSTMENT

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

### Mail

- Letter from Al Turner, dated October 16, 2003, regarding powers of the Conservation Commission
- Letter from Paul Keller, dated October 20, 2003, regarding review of decisions made by the Zoning Board.

Mr. Gustafson motioned and Mr. Doyle seconded the motion to adjourn at 9:30 PM.  
Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for November 18, 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.