



BOARD OF ADJUSTMENT

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

September 13, 2005

Chris Doyle – Chairman
Rob Gustafson – Vice-Chairman
Tony Pellegrini – Secretary
Georges Roy – Member
Mark Samsel – Member
Al Souma – Alternate
Tom Murray – Alternate

Lot #20-E-135, Case #35-2005

Applicant – Herbert Associates
Owner – Pesando Prop. Trust
Location – Off Bear Hill Road
Zone – Rural

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the subdivision of one lot into two lots and to build two houses without frontage on a town approved road. The property is located Off Bear Hill Road, Tax Map 20-E-135 in the Rural Zone.

Mr. Pellegrini read the case into the record. Attorney William Mason, representing the Applicant, submitted plans and presented the case. Attorney Mason explained that the property owner, Pesando Properties Trust, sold the property to NYZ Land Holdings LLC on August 31, 2005. This is a 10-acre site off of Bear Hill Road with a 50-foot right-of-way owned by Dean Smith. The elevation at the intersection of Bear Hill Road and the 50-foot right-of-way is approximately 264-feet. If a road was constructed it would yield 3 or 4 lots but cause disturbance to the WWPD area. The requested two-lot subdivision would be accessed by a private driveway. The Conservation Commission was in support of this plan when it was presented two years ago. A cistern was placed in the wrong location by a third party without Mr. Smith's authorization. There is a proposed conservation easement (3.2 acres) to be deeded to the Town of Windham. Mr. Peter Zohdi of Herbert Associates said that the plan presented is the same as the plan that was presented and approved in 2003. Attorney Mason read the supporting facts into the record. The following residents and abutters spoke in opposition to this request mentioning concerns about the cistern, water availability and road frontage:

- Mr. Scott Ellison of 30 Bear Hill Road
- Mr. Mrs. Malcolm Wooff of 28 Bear Hill Road
- Mr. Robert Despirito of 15 Bear Hill Road

Mr. Pellegrini read into the record a letter of opposition from Mr. & Mrs. Paul Keller of 17 Bear Hill Road. Mr. Zohdi said that there would be an up-to-date cistern installed that would be operational in a maximum of 5 days and approved by the Fire Chief. Mr. Zohdi explained that if



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the variance was not granted the property could be subdivided into 4 lots and would not need a variance. The following residents spoke in opposition to this request:

- Mr. Brian McNamara of 19 Bear Hill Road.
- Mr. Malcolm Wooff of 28 Bear Hill Road spoke again.
- Mr. Robert Despirito of 15 Bear Hill Road spoke again.
- Mr. Scott Ellison of 30 Bear Hill Road spoke again.

Selectman Bruce Breton said that this plan was endorsed by the Conservation Commission and granted a variance because it is more beneficial than the 4-lot subdivision. 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 5-0.

Deliberative Session, Case #35-2005

Mr. Gustafson motioned and Mr. Roy seconded the motion to grant Case #35-2005 per the plan submitted with the following requirements:

1. No further subdivision of the two lots depicted and that will be on the plan and recorded.
2. The cistern will be replaced per requirements.
3. There will be a Deed of Right-of-Way to the Town.

Motion passed unanimously 5-0.

Lot #6-C-291, Case #41-2005

Applicant – Albert Grella
Owner – Albert & Gayle Grella
Location – 1 Pine Hill Road
Zone – Rural

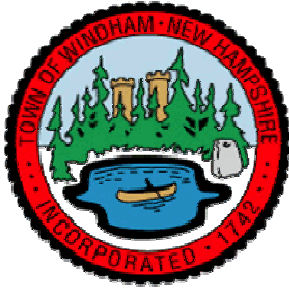
A variance is requested from Section(s) 601.1.1 & 603.1 of the Zoning Ordinance to permit the construction of a 28' X 34' garage in the Wetland & Watershed Protection District. The property is located at 1 Pine Hill Road, Tax Map 6-C-291 in the Rural Zone.

Mr. Pellegrini read the case into the record. Mr. Grella submitted photos and read the supporting facts into the record. Mr. Gustafson motioned and Mr. Samsel seconded the motion to deny without prejudice because of an improper posting (Section #603.1 should have been 601.3). Passed unanimously 5-0.

Mr. Gustafson motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Lot #7-A-1803, Case #33-2005 (Request for Rehearing, Continued from 8/23/05)

Originally heard on 7-26-05
Applicant – Edward N. Herbert Associates, Inc.
Owner – Dennis & Catherine Butterfield



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Location – 38 Morrison Road

Zone – Rural

The Applicant requests a rehearing on the decision made by the Zoning Board on July 26, 2005. Mr. Pellegrini read the request into the record. Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to deny the request for a rehearing based on no finding of new evidence or technical error. Passed unanimously 5-0.

Deliberative Session - Lot #21-K-44, Case #36-2005 (Request for Rehearing, originally heard on 8/23/05)

Mr. Souma replaced Mr. Roy for the rehearing request of Case #36-2005 because Mr. Roy did not hear the original case.

A rehearing is requested by Attorney William Mason for Case #36-2005. The Applicant is prepared to introduce new evidence. Mr. Pellegrini read the case into the record. After reviewing the request Mr. Gustafson motioned and Mr. Pellegrini seconded the motion to deny the request because it was seen as a new case. Passed unanimously 5-0.

Approval of Minutes

Mr. Gustafson motioned and Mr. Samsel seconded the motion to approve the August 23, 2005 minutes as amended. Motion passed 4-0-1. Mr. Roy abstained because he did not attend the August 23, 2005 meeting.

Other Business

The Board read an E-mail from Mr. Andrew Lane and asked that it be forwarded to Attorney Campbell for a response.

Mail

- Notice to order 2005-2006 NH Planning & Land Use Regulation Books. Orders due by September 28, 2005.
- Registration materials for the 2005 NH Office of Energy & Planning Fall Zoning Conference scheduled for November 5, 2005.

Mr. Gustafson motioned and Mr. Samsel seconded the motion to adjourn at 9:14. PM. Passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for September 27, 2005 at 7:30 PM in the Planning & Development office.

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