

# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes April 8, 2008

Mark Samsel – Chairman  
Jim Tierney – Vice-Chairman  
Dianna Fallon – Secretary  
John Alosso – Member  
Tom Murray – Member  
Bruce Richardson – Alternate

### **Lot #14-B-508, Case #26-2008**

Applicant – Laura McCarthy  
Owner – Daniel P. McCarthy  
Location – 6 Highland Road  
Zone – Rural

A Special Exception is requested from Section(s) 602.1.6 & 602.1.6.2.2 of the Zoning Ordinance to permit the operation of a Family Group Child Care Home for a maximum of twelve (12) pre-school age children, as well as five (5) enrolled in a full day school program. Hours of operation would be 6:30 AM to 6:00 PM.

Mrs. Fallon read into the record a letter from Laura McCarthy requesting Case #26-2008 be continued because she did not have sufficient information regarding her septic and water supply. Mrs. McCarthy also stated that she would be asking for a special exception to run a Family Day Care rather than a Group Day Care.

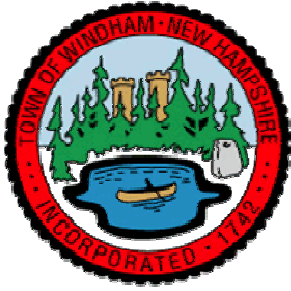
Mr. Murray motioned and Mr. Tierney seconded the motion to continue Case #26-2008 to the May 13, 2008 meeting. Motion passed 5-0.

### **Lot #9-A-400, Case #20-2008 Continued from March 11, 2008**

Applicant – Edward N. Herbert Associates, Inc.  
Owner – Brian Bauchman  
Location – 120 Haverhill Road  
Zone – Rural

A variance is requested from Section(s) 602.1 & 704.4 of the Zoning Ordinance to permit a 50' X 100' building and associated parking and storage areas to be built and used for the existing towing company and a new auto repair company.

The Chairman advised Mr. Joseph Collins if there is one more remark he would be asked to leave.



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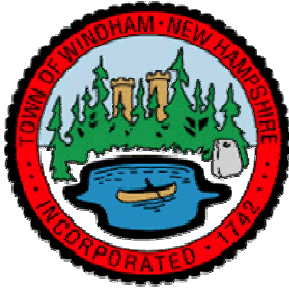
Mrs. Fallon motioned to come out of Deliberative Session. There was no second. Point of Order by Al Turner, Director of Planning & Development, you cannot accept any new evidence if you are in Deliberative Session, cannot use the additional information you requested or any information that has come in since the last meeting and if any of the Board Members read that information, they have to disclose that they read it and cannot use the information during deliberations, otherwise you have to open the meeting to the public. Attorney Cronin said that he respectfully disagrees with Mr. Turner's position. The information submitted was requested by the Board and does not contain any new information and expects the Board to continue in the Deliberative Session. Attorney Steve Clarke, representing some of the abutters, disagreed with Attorney Cronin's statement. If you have information that the public has not had the opportunity to evaluate or hear then you should open the meeting up to the public. Mrs. Fallon motioned to reconsider coming out of Deliberative into Public Session for Case 20-2008, Mr. Tierney seconded the motion. Motion passed 5-0. Mr. Alosso motioned and Mr. Murray seconded the motion to come out of Deliberative Session and go into Public Session. Motion passed 5-0.

In response to the Board's request, Attorney Cronin read into the record a letter dated April 3, 2008 (marked as Exhibit A) from Attorney Cronin to Chairman Samsel. *The case regarding the vehicle repair variance will be heard on April 8, 2008. We understand the public hearing is closed; however, we write to advise that Mr. Bauchman is willing to accept the following conditions to the variance:*

- *Hours of operation for the repair business will be limited to the hours of 8:00 AM to 5:00 PM Monday through Friday.*
- *Hours of operation for the repair business will be limited to the hours of 9:00 AM to 2:00 PM on Saturday.*
- *The repair business will not operate, except for emergencies incidental to the towing services on Sunday.*
- *Although "Inspection Station" status is required for the operation of the repair business, general inspection work will not be solicited and will be limited to repair customers.*
- *All repair work for customers will be limited to one single garage bay.*
- *Vehicles requiring repairs will be limited to the available number of spaces.*

*Mr. Bauchman contends the repair business will be limited by the terms and conditions of the previously granted use variance. In addition, heavy truck repairs represent a small percentage of the repair work with a large percentage of work being related to police and municipal passenger vehicles.*

Mr. Bob Devlin of 98 Londonderry spoke in support of the request.



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The following residents spoke in opposition to the request.

- Judith McKenzie of 5 Galway Road submitted her presentation marked as Exhibit B.
- Daphne Kenyon of 11 Faith Road.
- Justin Belair of 13 Galway Road submitted his presentation marked as Exhibit I.
- Attorney Steven Clark of Londonderry, NH.
- Tracey Partington of 17 Galway Road.
- Al Souma of 30 Morrison Road.
- Heath Partington of 17 Galway Road.
- Lew Zachas of 22 Faith Road.
- Gary Curtis of 1 Faith Road
- Marc Sneider of 5 Galway Road submitted his presentation marked as Exhibit G.
- Joe Collins of 9 Galway Road.

Attorney Steven Clark, representing abutters, requested that the Board deny the request for an auto repair business and take back the variance granted at the March 11, 2008 meeting. Attorney Clark submitted a letter and photos that were marked as Exhibits C thru F.

Nineteen (19) residents signed letters of opposition that were submitted and marked as Exhibit H.

Attorney Cronin said that there have been comments that Mr. Bauchman has been breaking rules and laws but there is no finding in that regard. For the record, Attorney Cronin objected to opening the meeting to the Public.

Attorney Clarke said there is a pending preliminary injunction against Mr. Bauchman that has been staid in order to give him time to obtain a zoning change or a variance.

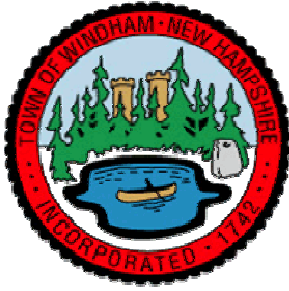
Mr. Alosso motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Motion passed 5-0.

### **Deliberative Session, Case #20-2008**

Mr. Tierney motioned and Mrs. Fallon seconded the motion to deny case #20-2008 from Sections 602.1 & 704.4 of the Zoning Ordinance for the auto repair company and the associated parking and storage areas. Motion passed 5-0.

The following reasons were given for denying the request.

- No unnecessary hardship.
- Public rights of others would be violated.
- Does not interfere with the land owner's use of the property.
- Not consistent with the spirit of the ordinance.



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- Substantial impact on abutting property.
- The natural rise of the grandfathered use is not consistent.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

### **Lot #16-Q-212, Case #22-2008 (Moved from March 25, 2008)**

Applicant – Benchmark Engineering

Owner – John Boss

Location – 10 Viau Road

Zone – Residential A

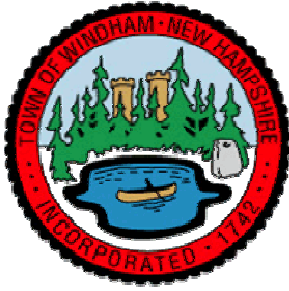
A variance is requested from Section(s) 401, 405.2, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit the existing house and garage to be razed and the reconstruction of a new year-round dwelling on a non-conforming 12,200 square foot lot where 50,000 square feet is required, with street frontage of 105-feet where 175 feet is required and a front setback of 19 feet where 50 feet is required, side setback of 18 feet where 30 feet is required and a rear (lake) setback of 30 feet (to tie course) where 50 feet is required.

There was a discussion on whether Mrs. Fallon should step down. The issue will be addressed during Case #23-2008.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard, representing the owner, presented the case. The size of the dwelling has been reduced, pushed back from the lake and centered on the lot. The setback between the garage and Viau Road has been reduced. There is a state approved septic system in place for five bedrooms and is 10 years old. The applicant will re-apply to the state for year round use. The septic system is 240' from the edge of the lake. Mr. Maynard read the supporting facts into the record. Lot coverage is under 20%. The foot print for the proposed house is 1619 square feet (includes porch). Mr. John Boss, owner of the property, said that living space extends over the garage for the second floor. The height of the proposed house is 28' to the peak. Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.

### **Deliberative Session, Case #22-2008**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance for Case #22-2008 from Sections 401, 405.2, 405.5, & 702 Appendix A-1 of the Zoning Ordinance to permit the existing house and garage to be razed and the reconstruction of a new year-round dwelling on a non-conforming 12,200 square foot lot where 50,000 square feet is required, with street frontage of 105-feet where 175 feet is required and a front setback of 19 feet where 50 feet is required, side setback of 18 feet where 30 feet is required and a rear (lake) setback of 30 feet (to tie course) where 50 feet is required with the stipulation that roof gutters would be installed into some type of holding tank. Motion passed 5-0.



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### **Lot #16-R-184E, Case #-23-2008 (Moved from March 25, 2008)**

Applicant – Benchmark Engineering

Owner – Sylvain & Steven Lebel

Location – 4 Second Street

Zone – Residential A

A variance is requested from Section(s) 401, 405.2, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit the existing structure to be razed and the reconstruction of a new year-round dwelling on a non-conforming 7,800 square foot lot where 50,000 square feet is required with an 80 foot street frontage where 175 feet is required, 36 foot front setback where 50 feet is required, side setbacks of 10 feet and 24 feet where 30 feet is required and a 20 foot rear setback where 30 feet is required.

After a brief discussion with the Board and Mr. Maynard, Mrs. Fallon stepped down from Case #23-2008 and the Chairman appointed Mr. Richardson.

Mr. Murray read the case into the record. Mr. Tierney questioned the name of the owner. Mr. Sylvain Lebel explained that a Trust was established. Mr. Joseph Maynard, representing the owners, presented the case. The parcel was four separate lots with two separate deeds. The existing dwelling will be razed and the existing shed will remain. A new septic system will be installed. Lot coverage is just over 10%. Mr. Maynard read the supporting facts into the record. Although a “drive under” garage is shown on the plan no garage will be built.

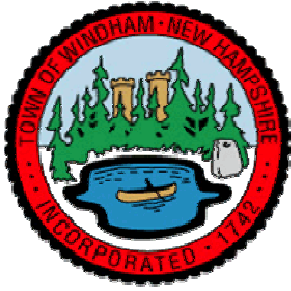
Mr. Dennis Root of 15 Third Street spoke in favor of this request.

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

### **Deliberative Session, Case #23-2008**

Mr. Alosso motioned and Mr. Richardson seconded the motion to approve a variance for Case #23-2008 from Sections 401, 405.2, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit the existing structure to be razed and the reconstruction of a new year-round dwelling on a non-conforming 7,800 square foot lot where 50,000 square feet is required with an 80 foot street frontage where 175 feet is required, 36 foot front setback where 50 feet is required, side setbacks of 10 feet and 24 feet where 30 feet is required and a 20 foot rear setback where 30 feet is required and to maintain the existing shed per the plan dated February 22, 2008. Motion passed 5-0.

The Chairman replaced Mr. Richardson with Mrs. Fallon for the balance of the meeting.



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### **Lot #22-L-39, Case #24-2008**

Applicant – Edward N. Herbert Associates, Inc.

Owner – Dennis & Catherine Butterfield

Location – 65 West Shore Road

Zone – Residential A

A variance is requested from Section(s) 401, 405.2, 405.5 & 702 Appendix A-1, of the Zoning Ordinance to permit an existing dwelling to be razed and replaced with a new dwelling on a pre-existing, non-conforming lot. The proposed two-bedroom dwelling will be 3' from the northerly lot line where 30' is required, 15' from the sideline of West Shore Road where 50' is required, 25' to the shore of Canobie lake where 50' is required. The existing lot has 85.08' of frontage on West Shore Road where 175' is required and contains 10,246 square feet where 50,000 square feet is required.

Mr. Tierney motioned and Mr. Murray seconded the motion to Continue Case #24-2008 to the April 22, 2008 meeting. Motion passed 5-0.

### **Lot #20-E-252, Case #25-2008**

Applicant – Fournier Realty Trust

Owner – Fournier Realty Trust

Location – 48 Lowell Road

Zone – Rural

A variance is requested from Section(s) 401, 602.1 & 609.4.2.4 of the Zoning Ordinance to permit the installation of an additional 30,000 gallon above-ground propane tank.

Mr. Tierney motioned and Mr. Murray seconded the motion to Continue Case #25, 2008 to the April 22, 2008 meeting. Motion passed 5-0.

### **Lot #17-G-26, Case #27-2008**

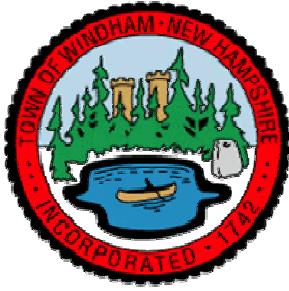
Applicant – The Common Man Restaurant

Owner – Alex Ray

Location – 83-88 Range Road

Zone – Gateway Commercial

A variance is requested from Section(s) 605.3.3.4, 702 Appendix A-1, 704.2.7, 706.4.6, 706.5.17 & 706.6 of the Zoning Ordinance to permit an existing historic building to be 19 feet from the new Route 111A Right-of-Way where 20 feet is required and to allow zero Right-of-Way setbacks for parking and loading where 20 feet is required and to allow 3 freestanding signs on a parcel where 1 sign is permitted and to allow the existing non-conforming wall sign on the silo to remain where it is; the existing silo sign includes an area of 110 square feet and a height of 24 feet where an area of 75 square feet and a height of 15 feet is allowed and to allow the relocation/reconstruction of the existing freestanding restaurant sign from one face to two identical faces to be zero feet from the new Route 111A Right-of-Way where 5 feet is required



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and 11 feet in height where 8 feet is required and retain the existing mechanically operated 20 square foot changeable copy sign where none is allowed.

### **Lot #17-G-26, Case #28-2008**

Applicant – The Common Man Restaurant

Owner – Alex Ray

Location – 83-88 Range Road

Zone – Gateway Commercial

A variance is requested from Section(s) 401, 501, 601.3, 601.4.6, of the Zoning Ordinance to permit an increase in the extent of the non-conforming use of the structure and land, and to allow the property to be reconstructed, altered, enlarged, repaired, occupied and utilized for the proposed uses (restaurant, retail sales and office space) indicated on the site plan and to allow new relocated parking and related site structures within the WWPd and to allow the replacement and expansion of the existing waste disposal system located within 70-feet of the wetland contiguous to a WWPd where 100 feet is required.

Mrs. Fallon read both Case 27-2008 and 28-2008 into the record. Mr. Karl Dubay of MHF Design, representing the owner, presented the cases. Mr. Dubay gave a brief overview. There is an historic house on each side of the restaurant that will be converted to offices. Because of the expansion of Route 93 the NH DOT will be taking about half of the existing Common Man Restaurant's property. There is also a small taking of the front of the property. Parking will be moved further away from the wetlands but will still be in the WWPd. Enviro-septic technology will be used. They would like to keep the silo and sign with graphics and the other 11-foot sign including the mechanical section. Signage for the two flanking houses would be 12 square feet and up against the taking of the right-of-way. No large signs would be put on the façade of the houses, possibly pedestrian signs.

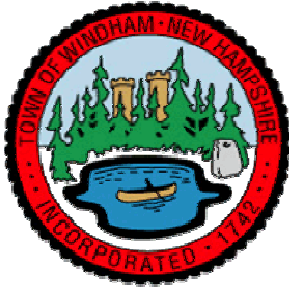
Mr. Alosso motioned and Mr. Murray seconded the motion to go into Deliberative Session. Motion passed 5-0.

### **Deliberative Session, Case #27-2008**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance as requested for Case #27-2008 from Sections 605.3.3.4, 702 Appendix A-1, 704.2.7, 706.4.6, 706.5.17 & 706.6 of the Zoning Ordinance. Motion passed 5-0.

### **Deliberative Session, Case #28-2008**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance as requested for Case #28-2008 from Sections 401, 501, 601.3, & 601.4.6 of the Zoning Ordinance. Motion passed 5-0.



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### Approval of Minutes

Mrs. Fallon motioned and Mr. Murray seconded the motion to approve the March 25, 2008 minutes. Motion passed 5-0.

Mr. Alosso motioned and Mr. Murray seconded the motion to approve the March 11, 2008 minutes. Motion passed 5-0.

### Election of Officers

Mr. Tierney nominated Mr. Samsel as Chairman and Mr. Murray seconded the nomination. Passed 5-0.

Mr. Murray nominated Mr. Tierney as Vice-Chairman and Mrs. Fallon seconded the nomination. Passed 5-0.

Mr. Alosso nominated Mrs. Fallon as Secretary and Mr. Murray seconded the nomination. Passed 5-0.

### Other Business

By-laws will be discussed at the next meeting.

### Mail

- CTAP Local Government Workshop Catalog
- Copy of March 6, 2008 letter from Al Turner to Attorney Campbell regarding Lot 9-A-400.
- Copy of April 1, 2008 letter from David Sullivan to Justin & Kara Belair regarding Lot 9-A-400.
- April 3, 2008 letter from Amy & Todd Spencer regarding Haffners.
- April 8, 2008 letter from Attorney Campbell to Mark Samsel regarding 25 Abbott Road.

Mr. Tierney motioned and Mr. Murray seconded the motion to adjourn. Motion passed unanimously.

The next meeting of the Zoning Board of adjustment is scheduled for April 22, 2008 at 7:30 PM in the Planning & Development Office.

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