



# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes August 11, 2009

### Board Members

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

### Staff

Patricia Kovolyan, Secretary

The Chairman appointed Mr. Richardson to sit in place of Mrs. Fallon for this meeting

### Lot #17-L-78, Case #23-2009 (Continued from July 14, 2009)

Applicant – Edward N. Herbert Associates, Inc.

Owner – Alexandra Tokanel

Location – 30 Horseshoe Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the completion of a deck that was started without the benefit of a permit and constructed in violation of the November 2005 Zoning Board approval.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates requested Case #23-2009 be postponed for another 30 days because representatives from the New Hampshire Department of Environmental Services, Wetlands Bureau, and Mr. James Gove of Gove Environmental were scheduled to meet with the owner on August 12, 2009 at 9:00 AM.

Mr. Alosso motioned and Mr. Tierney seconded the motion to continue Case #23-2009 to the September 22, 2009 meeting. Motion passed 5-0.

### Lot #20-E-252, Case #26-2009

Applicant – Edward N. Herbert Associates, Inc.

Owner – Fournier Realty Trust, Haffner Fournier, Trustee

Location – 48 Lowell Road

Zone – Neighborhood Business



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A variance is requested from Section(s) 604 of the Zoning Ordinance to permit the addition of two 30,000 gallon above ground propane storage tanks to an existing fuel, oil and propane storage facility.

Mr. Tierney read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, went through the booklet he submitted and presented the case. The owner would like to add two propane storage tanks parallel to the existing tank. The zoning of the area was changed from rural to neighborhood business. Mr. Zohdi explained that although he believes this is a permitted use for the neighborhood business zone, Mr. McGuire the Building Inspector and Ms. Scott the Director of Economic Development advised that this request needs a variance. Mr. Zohdi read into the record the requirements for the Neighborhood Business zone from the Windham Zoning Ordinance. *The Neighborhood Business District is intended primarily for business which provides goods and services for the residents of the area. Retail store or service establishment, the principle activity of which shall be the offering of goods or services at retail within the building, for supply of the normal shopping needs of and for consumption by the residents of the area. Store sign lights must be off after 10:00 PM and store must close at 11:00 PM...* At the time no one objected to the change to Neighborhood Business. The Planning Board suggested the hours of operation would be 6:00 AM to 6:00 PM Monday through Saturday. The owner does not anticipate any increase in traffic.

The Chairman asked if there is underground storage capability. Mr. Shawn Thrasher, Contractor/Installer from Quality Gas Service explained this area would not be appropriate for below ground storage tanks because it is very wet.

Mr. Zohdi read the supporting facts into the record and a letter from Ms. Scott dated June 16, 2009 advising Mr. Zohdi to apply for a variance. There would not be a change in the use of the facility.

Mr. Tierney asked if the property is in the Aquifer Protection District. Mr. Zohdi said that this property is in the Aquifer Protection District. Mr. Tierney advised the Board that the applicant did not request relief from the Aquifer Protection District. Mr. Zohdi said that he would need to get a ruling from the administrator to see if the same requirements apply to both an underground and above ground tank.

The following residents spoke in opposition to this request:

- Ron Cyr owner of 47, 51, 53 & 59 Lowell Road.
- Todd Spencer of 50 Lowell Road.



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Mr. Tierney read into the record the following three letters of opposition:

- R. W. Cyr of 59 Lowell Road.
- Mr. Joseph Ricard rents the 47 Lowell Road property.
- Alfred Larochelle rents the 51 Lowell Road property.

Attorney William Mason said that across the road is a parcel that is industrially zoned. Attorney Mason asked the Board to consider that one of the reasons there may be the amount of tractor trailer truck traffic is because there is not sufficient capacity in order to service the neighborhood. The additional capacity would eliminate the need to fill one tank three or four times a week in order to service the consumers. In creating the capacity it would cut down on the amount of eighteen wheelers that need to fill one tank. The garage on the site is currently storing all the hazardous materials for the Windham Fire Department. The garage could be used as a retail store used to re-fill propane tanks if the Board thought that would be more in line with Neighborhood Business. Mr. Mason suggested that the Board do a site walk of the property. Upgrades and cleansing has been done to this property.

Mr. David Fournier, Vice-President of Haffner's Oil Company, said that 95% of their propane business is in New Hampshire. Their total customer base is under 2000 for propane. There are two small service trucks that carry 2800 gallons. All of the delivery vehicles are equipped with gps that will show the times they visited the site during the past 95 days. Mr. Fournier said that he would review the information to be sure that the trucks were not visiting the site during unauthorized hours.

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

### **Deliberative Session, Case #26-2009**

Mr. Murray motioned and Mr. Tierney seconded the motion to deny Case #26-2009 as requested. Mr. Richardson and Mr. Alosso voted against the motion. Mr. Murray, Mr. Tierney and Mr. Samsel voted for the motion. Request denied. Motion passed 3-2. Mr. Murray said that hardship was not proven.

The Chairman granted a five-minute break.

The Chairman called the meeting back to order.

### **Lot #17-L-89D, Case #27-2009**

Applicant – Edward N. Herbert Associates, Inc.  
Owner – Robert & Carolyn Perrault  
Location – 20 Horseshoe Road  
Zone – Residential A



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A variance is requested from Section(s) 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit the reconstruction of the front porch with a 4-foot addition and peaked roof, as well as the construction of a 12-foot addition to the back of an existing house on a pre-existing non-conforming 17,051 square foot lot, street frontage of 42.93-feet where 175-feet is required and side setbacks of 4-feet and 1.9 feet where 30 feet is required.

Mr. Tierney read the case into the record. Mr. Wes Aspinwall of Herbert Associates, representing the applicant, submitted a booklet and presented the case. The existing seasonal cottage was built in the 1950's on four tenths of an acre. The proposed peak would be slightly lower than the existing peaked roof. The owner would like to add a 4-foot addition to the street side of the dwelling. A small existing encroachment will be removed.

The following abutters spoke in support of this request:

- Robert Heinz of 25 Howard Street, Lawrence, Ma.
- Jim Rhodes of 225 Main Street, Salem, NH
- Mr. Coalcardy of 6 Grove Street, Windham, NH

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

### **Deliberative Session, Case #27-2009**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance for Case #27-2009 from Sections 406.2 & 702 Appendix A-1 of the Zoning Ordinance per the plan submitted with side setbacks of 4-feet and 1.9-feet. Motion passed 5-0.

### **Minutes**

Mr. Alosso motioned and Mr. Tierney motioned to review the July 28, 2009 and the July 29, 2009 minutes at the August 25, 2009 Zoning Board meeting. Motion passed 5-0.

### **Mail**

- August 3, 2009 Letter from Attorney Campbell regarding Sneider vs. Town of Windham, Bauchman Towing.
- August 4, 2009 Letter from Mr. Zohdi to Mr. Chicklis regarding 2 Wilson Road.
- August 10, 2009 Letter from Attorney Campbell to Mr. Samsel regarding Statutory Change in Hardship Standard for Variances.
- Notice from NHOEP regarding the October 17, 2009 Planning & Zoning Conference in Lincoln, NH.
- Notice from NHLGC regarding the 34<sup>th</sup> annual Municipal Law Lecture Series schedule.



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Mr. Alosso motioned and Mr. Tierney seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for August 25, 2009 at 7:30 PM in the Planning & Development office.

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