



# BOARD OF ADJUSTMENT

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

## **Zoning Board of Adjustment Minutes September 22, 2009**

### **Board Members**

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

### **Staff**

Michael McGuire – Building Inspector  
Patricia Kovolyan – Secretary

### **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.

Mrs. Fallon read the case into the record and a letter from Mr. Peter Zohdi of Herbert Associates requesting a 30 day postponement. Mr. Alosso motioned and Mr. Murray seconded the motion to move Case #23-2009 to the October 27, 2009 meeting. Motion passed 5-0.

### **Lot #16-F-6, Case #32-2009**

Applicant – Jeffrey Gallant  
Owner – Jeffrey & Jennifer Gallant  
Location – 28 Ash Street  
Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the placement of an 8' X 10' storage shed 7-feet from the side setback where 30-feet is required.

Mrs. Fallon read the case into the record. Mr. Jeffrey Gallant, the owner, presented his case. Mr. Gallant explained that the shed would be used for storage and would not obstruct views. Having



## BOARD OF ADJUSTMENT

PO Box 120  
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a storage shed would allow both cars to be parked in the existing garage. Mr. Gallant read the supporting facts into the record.

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

### **Deliberative Session, Case #32-2009**

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #32-2009 to allow the placement of an 8' X 10' storage shed 7-feet from the side setback per the plan submitted. Motion passed 5-0.

### **Lot #16-R-186C, Case #33-2009**

Applicant – Edward N. Herbert Associates, Inc.

Owner – Jarret Minasalli

Location – 1 First Street

Zone – Residential A

A variance is requested from Section(s) 405, 405.2, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit the replacement of a pre-existing non conforming structure, on a pre-existing non-conforming lot of record with an increase in volume and footprint that does not meet the building setbacks. The proposed structure will have a deck that is 5-feet from the easterly lot line where 30-feet is required and another deck that is 9-feet from the westerly lot line where 30-feet is required. The new structure will have a front setback of 18-feet to First Street where 50-feet is required, 30-feet to Ministerial Road where 50-feet is required, 11-feet to the westerly side lot line where 30-feet is required and 12-feet to the easterly side where 30-feet is required. The lot has a total of 156-feet of frontage on Ministerial Road and First Street where 175-feet is required and contains 6,150 square feet where 50,000 square feet is required.

Mrs. Fallon read the case into the record. Mr. Shane Gendron of Herbert Associates, representing the owner, presented the case. Mr. Gendron submitted a booklet containing copies of the application, permit denial, letter of authorization, list of abutters, tax card, building plans, photos, septic plan etc. Mr. Gendron reviewed these items with the Board. This is a non-conforming, undersized lot that was plotted in 1929. In the 1950's three lots were combined to form this one lot. The house has been inhabited year round; currently there are no inhabitants. The owner wants to upgrade the framing of the building, add volume because the ceiling heights are low on the second floor and would like to add a 10' bump out. They will be using the existing foundation. Lot coverage would be 15.6%. Approved well and septic waivers were received on September 21, 2009 from NH DES. Mr. Gendron read the supporting facts into the record. All framing, plumbing and electrical will be new.



## BOARD OF ADJUSTMENT

PO Box 120  
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Mr. Joseph Marquebreuck of 1 Third Street made suggestions regarding the paved parking area on the property.

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

### **Deliberative Session, Case #33-2009**

Mr. Alosso motioned and Mr. Murray seconded the motion to approve an area variance for Case #33-2009 from Sections 405.2, 405.5 and 702 Appendix A-1 per the plan submitted. Motion passed 5-0.

### **Lot #16-D-450, Case #38-2009**

Applicant – Edward N. Herbert Associates Inc.

Owner – Linda L. Brown Rev. Trust

Location – 32 Indian Rock Road

Zone – Village Center District

A variance is requested from Section(s) 601 & 612.2 of the Zoning Ordinance to permit a small retail complex to be constructed with portions of two (2) buildings, a portion of a gasoline pump island and canopy, a portion of the driveway, parking and retaining walls within the WWPD and to allow a gas station within the Village Center District.

Mr. Peter Zohdi of Herbert Associates, representing the owner, requested a postponement of Case #38-2009. Mr. Tierney motioned and Mr. Murray seconded the motion to move Case #38-2009 to the October 13, 2009 meeting. Motion passed 5-0.

### **Lot #21-Y-276B, Case #34-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Deb Norcott

Location – 5 Cedar Road

Zone – Residential A

A variance is requested from Section(s) 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit a foundation to be installed under an existing structure along with a 24' X 24' addition on a non-conforming 6,800 square foot lot where 50,000 square feet is required, with 100-feet of frontage where 175-feet is required, a front setback of 1-foot where 50-feet is required, a side setback of 3-feet where 30-feet is required and a rear setback of 12-feet where 30-feet is required and to be converted to year-round use.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard, representing the owner, presented the case. The 30' X 20' existing dwelling predates zoning and sits 1-foot off of Cedar Road. With the proposed 24' X 24' addition the dwelling will have 1188 square feet and lot coverage



## BOARD OF ADJUSTMENT

PO Box 120  
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would be 19.7% including the shed. A 20' X 20' addition would have lot coverage of a little over 17%. A new septic system will be installed and a new well will be drilled. The existing shed is 3.5-feet off of the property line. Mr. Maynard read the supporting facts into the record. Mr. Maynard submitted four tax cards of neighboring properties that were marked as Exhibit A.

Attorney Edward Richards, representing Mr. Pisano owner of 3 Cedar Road and the lot where the community well is located, requested the surveyor set permanent concrete bounds to establish the lines and that the bounds be observed during construction.

The following residents spoke in opposition to this request.

- Mr. Mark Thibault of 7 Silver Road (submitted 12 photos that were marked as Exhibit B)
- Ms. Ann Marie Grant of 5 Silver Road
- Ms. Debbie Delano of 4 Cedar Road (submitted 1990 ZBA decision marked as Exhibit C)
- Mr. Peter Olson of 32 Cobbetts Pond Road
- Mr. Joe Ahearn of 2 Cedar Road
- Mr. David Hicks speaking for his parents, owners of 7 Cedar Road (submitted letter and State of Florida notarized acknowledgement.
- Mr. Ann Grant 6 Cedar Road

Mr. Maynard addressed the concerns of the residents.

- Concrete bounds will be set.
- Will meet with the residents to locate water lines.
- Construction will begin before winter sets in.
- Will not impact any drainage to the area.

Mr. Patrick McHale of 7 Silver Road questioned the size of the septic system.

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

### **Deliberative Session, Case #34-2009**

Mr. Murray motioned and Mr. Alosso seconded the motion to grant an area variance for Case #35-2009 to permit a foundation to be installed under an existing structure along with an addition not to exceed 20' X 20' on a non-conforming 6,800 square foot lot where 50,000 square feet is required, with 100-feet of frontage where 175-feet is required, a front setback of 3-feet for both the existing dwelling and the proposed addition where 50-feet is required, a side setback of 3-feet where 30-feet is required and a side setback of 8-feet where 30-feet is required and to be converted to year-round use, pictures of the roadway to be taken prior to construction, residential sprinkler system to be installed in the addition, bounds to be set on the easterly side lot line.



## BOARD OF ADJUSTMENT

PO Box 120  
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Motion passed 3-2. Mrs. Fallon and Mr. Tierney voted against the motion because they thought that the request was contrary to public interest.

### **Lot #17-L-67 & 66, Case #35-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Louis & Audrey Pereira

Location – 29 Farmer Road

Zone – Residential A

A variance is requested from Section(s) 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit an addition to an existing three-bedroom dwelling including a deck and garage on a non-conforming lot with 102-feet of frontage where 175-feet is required, a front setback of 12-feet where 50-feet is required, a side setback of 25-feet (garage) where 30-feet is required, a shoreland setback of 30-feet (addition) and 20-feet (deck & steps) where 50-feet is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering presented the case for the owner. A variance was granted in 1988 to allow construction of the dwelling. The septic system is 250-feet away from Cobbetts Pond. Mr. Maynard submitted a copy of a 2005 voluntary lot merger that the Chairman marked as Exhibit A and two photos of the existing dwelling that were marked as Exhibit B. Mr. Maynard read the supporting facts into the record.

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

### **Deliberative Session, Case #35-2009**

Mr. Murray motioned and Mr. Alosso seconded the motion to grant an area variance for Case #35-2009 as requested. Motion passed 5-0.

### **Lot # 17-J-300, Case #36-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Paul & Ann Masterson

Location – 11 Beech Street

Zone – Residential A

A variance is requested from Section(s) 402 & 603.1.1 of the Zoning Ordinance to permit the razing and reconstruction of an existing non-conforming second residential structure on a non-conforming lot.



## BOARD OF ADJUSTMENT

PO Box 120  
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### **Lot # 17-J-300, Case #37-2009**

Applicant – Benchmark Engineering, Inc.

Owner – Paul & Ann Masterson

Location – 11 Beech Street

Zone – Residential A

A variance is requested from Section(s) 402 & 702 Appendix A-1 of the Zoning Ordinance to permit the razing and reconstruction of an existing non-conforming second residential structure on a non-conforming lot without the required street frontage and lot area.

Mrs. Fallon read both Case #36-2009 & #37-2009 into the record. Mr. Joseph Maynard of Benchmark Engineering presented the cases for the owner. This property is on Cobbetts Pond. A new home, garage and septic system were constructed in 2005. An existing bunk house that contains a small kitchen, bathroom and shower and meets the setbacks is on the property. The owner would like to raze the bunk house and reconstruct it in similar architecture to the main house. Mr. Maynard submitted a photo of the main house. The bunk house would be constructed on the same footprint and tied into the new septic system. A shoreline permit is not required. There would be an increase in volume because of the roof change. Mr. Maynard read the supporting facts into the record.

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

### **Deliberative Session, Case #36-2009**

Mr. Tierney motioned and Mrs. Fallon seconded the motion to deny Case #36-2009 from Sections 402 and 603.1.1 of the Zoning Ordinance. Motion passed 5-0. Request denied because the applicant did not meet the hardship requirement.

### **Deliberative Session, Case #37-2009**

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance from Section 702 Appendix A-1 to permit the razing and reconstruction of an existing non-conforming accessory structure on a non-conforming lot without the required street frontage. Motion passed 5-0.

### **Lot #20-E-252, Case #26-2009 Request for Rehearing**

Applicant – Attorney William R. Mason

Owner – Fournier Realty Trust, Haffner Fournier, Trustee

Location – 48 Lowell Road

Zone – Neighborhood Business

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on August 11, 2009.





## BOARD OF ADJUSTMENT

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Mrs. Fallon recused herself and the Chairman appointed Mr. Richardson for Case #26-2009. The Chairman read into the record Attorney Mason's request for a rehearing. After reviewing the request for a rehearing Mr. Richardson motioned and Mr. Alosso seconded the motion to grant the rehearing based on new information. Mr. Richardson and Mr. Alosso voted for the motion. Mr. Tierney, Mr. Murray and Mr. Samsel voted against the motion because there was no new evidence and no error made by the Zoning Board. Motion denied 2-3.

Mr. Richardson motioned and Mr. Alosso seconded the motion to rehear Case #26-2009 because the Zoning Board's decision restricted reasonable use. Mr. Richardson and Mr. Alosso voted for the motion. Mr. Tierney, Mr. Murray and Mr. Samsel voted against the motion. Motion denied 2-3.

Mr. Tierney motioned and Mr. Murray seconded the motion to deny the rehearing request based on no new information and no technical error. Motion passed 3-2. Mr. Tierney, Mr. Murray and Mr. Samsel voted for the motion; Mr. Alosso and Mr. Richardson voted against the motion.+

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

### Minutes

September 8, 2009 Minutes will be reviewed at the October 13, 2009 meeting.

### Mail

- International Security Conference & Exposition scheduled for October 28, 29, 2009 at Jacob Javits Convention Center, NYC, NY.

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 October 13, 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.