



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes October 27, 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

The Chairman suggested that residents limit their testimony to five minutes or longer if requested by the Board. Mr. Alosso motioned and Mr. Tierney seconded the motion to limit testimony to five minutes with the option to suspend the rule. Motion passed 5-0.

Lot #17-L-78, Case #23-2009 (Continued from July 14, 2009 & September 22, 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 dated October 27, 2009 from Mr. Peter Zohdi, Vice-President of Edward N. Herbert Associates, Inc. requesting a postponement of Case #23-2009 to the December 8, 2009 meeting, because their client is still in the process of obtaining a Shoreland permit. Mr. Alosso motioned and Mr. Murray seconded the motion to continue Case #23-2009 to the December 8, 2009 meeting. Motion passed 5-0.

Lot #21-K-18 #39-2009

Applicant – Susan & Charles Dalton
Owner – Susan & Charles Dalton



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Location – 82 Turtle Rock Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the subdivision of a 3.195 acre lot with street frontage of 150-feet for lot “A” where 175-feet is required and 150-feet for lot “B” where 175-feet required.

Mrs. Susan Dalton presented her case and submitted the following exhibits.

- Exhibit A – Area Map
- Exhibit B – Property Map
- Exhibit C – Proposed Subdivision Plan
- Exhibit D – 5 Photos
- Exhibit E – Signatures of six abutters that are in support of this request

Mrs. Dalton showed on the displayed plan the upper lot that faces Range Road and the lower lot with the existing dwelling on the pond. Between the existing home and the upper lot is Turtle Rock Road. The lake front lot would be 1.38 acres and the lot fronting Range Road would be 1.82 acres. The Range Road lot was subdivided years ago when 150 feet of frontage was allowed. The Range Road lot will have the same frontage or greater than adjacent lots. Any new construction would take place over 700 feet away from the lake. The property has a steep slope from Range Road to the lake which separates the upper lot from the lake shore lot. The lake shore lot is steep from Turtle Rock Road to the existing single family home and is not geriatric friendly. The applicant tried to purchase adjacent property but adjacent property owners would have to reduce their required lot frontage or lot area.

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

Deliberative Session, Case #39-2009

Mr. Alosso motioned and Mrs. Fallon seconded the motion to grant a variance for Case #39-2009 from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the subdivision of a 3.195 acre lot with street frontage of 150-feet for lot “A” where 175-feet is required and 150-feet for lot “B” where 175-feet required.

Mr. Alosso amended his motion. Mr. Alosso motioned and Mrs. Fallon seconded the motion to grant a variance for Case #39-2009 from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the subdivision of a 3.195 acre lot with street frontage of 150-feet on a private road for lot “A” where 175-feet is required and 150-feet for lot “B” where 175-feet required. Motion passed 4-1. Mr. Tierney voted against the motion because it failed the hardship criteria.



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Lot #24-F-193 #44-2009

Applicant – Edward N. Herbert Associates, Inc.

Owner – EJR Jr. Development, LLC

Location – 67 Heritage Hill Road

Zone – Rural

A variance is requested from Section(s) 601.4.5 of the Zoning Ordinance to permit a portion of the pool, retaining wall and associated fill to be placed in an area which would otherwise be within an extended portion of the WWPD and not permitted.

Lot #24-F-194 #45-2009

Applicant – Edward N. Herbert Associates, Inc.

Owner – EJR Jr. Development, LLC

Location – 71 Heritage Hill Road

Zone – Rural

A variance is requested from Section(s) 601.4.5 of the Zoning Ordinance to permit a portion of the pool, retaining wall and associated fill to be placed in an area which would otherwise be within an extended portion of the WWPD and not permitted.

Attorney William Mason requested Cases 44-2009 & 45-2009 be continued to the next meeting. Mr. Alosso motioned and Mr. Murray seconded the motion to continue Cases 44-2009 and 45-2009 to the November 10, 2009 meeting. Motion passed 5-0.

Lot #16-E-50, Case #40-2009

Applicant – Benchmark Engineering, Inc.

Owner – Dave Blake

Location – 5 Gaumont Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the construction of an addition and a garage 22 feet from the setback where 30 feet is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented the case. Mr. Maynard showed on the displayed plan that this is one of the largest lots in the area. The location of the existing house effects the placement of the proposed addition. The closest corner of the addition would be 22-feet to the lot line. Generally side setbacks are 10' to 15' on many of the neighboring lots. Mr. Maynard read the supporting facts into the record. The overall size of the proposed garage would be 38.7-feet X 28-feet. Mr. Maynard gave reasons why the garage could not be constructed in another location on the site. There is an existing two-car garage that would be blocked and if constructed on the other side of the house the connection to the house (breezeway) would be lost.



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Mrs. Fallon read into the record a letter from Sandra Morrissey of 28 Ministerial Road stating her concerns regarding blasting.

Mr. Maynard consulted with the owner and said that they would try to the work with a hammer instead of blasting.

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

Deliberative Session, Case #40-2009

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant a variance for Case #40-2009 as requested. Motion denied 3-2. Mr. Samsel, Mr. Tierney and Mr. Alosso voted against the motion because it failed to meet the hardship criteria.

Lot #21-V-252, Case #41-2009

Applicant – Benchmark Engineering, Inc.

Owner – Yaffee Family Trust

Location – 10 Fish Road

Zone – Residential A

A variance is requested from Sections 401, 405.2, 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit the reconstruction of a dwelling destroyed by fire with a side setback of 1.5 feet where 30-feet is required, rear setback of 20-feet where 30-feet is required, lake setback of 17-feet where 50-feet is required on a 0.09 acre lot where 50,000 square feet is required with 0-foot street frontage where 175-feet is required. The new structure will have expanded volume.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted two photos that were marked as Exhibits A & B and presented the case. The existing structure was damaged by fire and sat just over the property line. The proposal is to rebuild and slide the structure over 18” at the closest corner. The property is burdened by an access easement. There is an existing concrete apron at the water’s edge that will be slid laterally. The applicant received a Shoreline Waiver for the foundation. The proposed roof line will be a 12 pitch to create a loft area. The footprint will remain the same. The property is seasonal. Mr. Maynard read the supporting facts into the record.

Mr. David Freshman part owner of B&S Trust voiced his concerns regarding the setbacks because of roof runoff and asked for the height of the house.

Mr. Maynard said that the setback at the front would be 6+1/2 –feet from the lot line and 18-feet from the lot line in the rear. The applicant would agree to guttering one side to capture runoff and the height would be 22-feet to the ridge.



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

Deliberative Session, Case #41-2009

Mr. Murray motioned and Mr. Alosso seconded the motion to grant Case #41-2009 as presented with the stipulation that gutters be installed on the southerly side of the structure. Motion passed 4-1. Mr. Tierney voted against the motion because of public interest.

Lot #25-C-11E, Case #42-2009

Applicant – Benchmark Engineering, Inc.

Owner – Charles & Charlotte Reed

Location – 42 Jordan Road

Zone – Residential A

A variance is requested from Section(s) 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the conversion of the existing structure from seasonal to year round use on a lot having 7400 square feet where 50,000 square feet is required with street frontage of 82-feet where 175-foot is required with a front setback of 39-feet where 50-feet is required, side setback of 12-feet where 30-feet is required and a rear (shoreline) setback of 28-feet where 50-feet is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, submitted a letter of support from Mr. Neil Feugill of 44 Jordan Road and presented the case. This property is on Rock Pond on the Jordan Road (private road) side of the pond. The property has an approval from the state for a concrete chamber septic system that will be further away from the pond and above the water table. The existing lot is approximately 7400 square feet with 82 feet of frontage on Jordan Road. Mr. Maynard read the supporting facts into the record.

Mr. Charles Reed advised the Board that neighbors on both sides of his property have received variances.

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

Deliberative Session, Case #42-2009

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #42-2009 from Section(s) 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the conversion of the existing structure from seasonal to year round use. Motion granted 5-0.



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Lot #16-Q-211A #43-2009

Applicant – Benchmark Engineering, Inc.

Owner – Musch Family Trust

Location – 14 Viau Road

Zone – Residential A

A variance is requested from Section(s) 401, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit a screened porch to the side of the existing structure, raise a portion of the roof to extend the second floor of the existing structure, raise the roof of the garage for a bonus room and convert the property from seasonal to year round use with a side setback of 4.5-feet (screened porch) and 15-feet (garage) where 30-feet is required, a front setback of 34-feet where 50-feet is required on a 21,000 square foot lot where 50,000 square feet is required with 70-feet of frontage where 175-feet is required.

Mrs. Fallon read the case into the record. Mr. Joseph Maynard of Benchmark Engineering, representing the owner, presented three photos that were marked as Exhibits A, B & C and presented the case. The existing cottage with garage is on Cobbetts Pond. The structure has a roof deck. The owners would like to remove the deck, raise that portion of the roof and make a second level. The owners are also proposing to raise the roof on the garage and create a bonus room. Put a screened porch on the northerly side of the home, extend out 10-feet and a length of 31-feet which would be 4+1/2-feet to the lot line. Portions of the concrete apron will be removed. Mr. Maynard read the supporting facts into the record.

Mr. John Boss of 10 Viau Road spoke in support of this request.

Mr. Robitaille of 18 Viau Road spoke in opposition to this request.

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

Deliberative Session, Case 43-2009

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance for Case #43-2009 from Sections 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the raising of a portion of the roof to extend the second floor of the existing structure with no further increase in the footprint, raise the roof of the garage for a bonus room and convert the property from seasonal to year round use. Motion passed 5-0.



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Lot #21-Y-276B, Case #34-2009 Request for Rehearing

Applicant – Lakewood Association

Owner – Deb Norcott

Location – 5 Cedar Road

Zone – Residential A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on September 22, 2009.

After reviewing the request for a rehearing, the Board determined that there was no new evidence and no error was made. Mr. Alosso motioned and Mr. Murray seconded the motion to deny the request for a rehearing of Case #34-2009. Motion passed 5-0; request denied.

Minutes

The amended October 13, 2009 minutes will be reviewed at the November 10, 2009 meeting.

Other Business

Elizabeth Dunn – Request to be an Alternate ZBA Member

Chairman Samsel interviewed Mrs. Dunn. Mrs. Dunn was asked what she would bring to the Board. Mrs. Dunn said that in the mid-1980's she served on the Zoning Board and on the Board of Selectmen and the Planning Board as the Selectmen's representative. Mrs. Dunn thinks she can be of assistance in procedures and substance because she practiced municipal law.

Chairman Samsel asked Mrs. Dunn what she thought were the strengths of the Zoning Board. Mrs. Dunn replied that the Board Members are prepared and work well together.

Chairman Samsel asked if there are areas where the Board could improve. Mrs. Dunn replied that sometimes the Board gets tangled up in procedure and there are times the Board should come out of Deliberative Session and continue a case if they feel there is a need for more information.

The Board is concerned that objectivity be given to all cases even the 2 Woodvue Road case and cases similar to the Woodvue Road case. Mrs. Dunn said that she would recuse herself from the 2 Woodvue Road case but she would speak as a member of the public.



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- State of NH Rockingham Superior Court Carole Center, Edmund Hoell v. Town of Windham Zoning Board of Adjustment.
- Memo from Laura Scott to James Armstrong regarding tree removal over town owned rail trail, lots 1-C-2307 & 1-C-2308, 2A Fern Street and 4 Fern Street. Violation 400-feet of damage.
- October 2009 Issue of *NH Town & City*.

Mr. Alosso motioned and Mrs. Fallon seconded the motion to go into Non-Public Session per RSA 91-A:3. Motion passed unanimously on a roll call vote.

The next meeting of the Zoning Board of Adjustment is scheduled for November 10, 2009 at 7:30 PM in the Community Development Department.

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