



# BOARD OF ADJUSTMENT

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

## **Minutes** **January 12, 2010**

### **Board Members:**

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

### **Staff**

Patricia Kovolyan – Administrative Assistant  
Paula Wrenn – Minute Taker

Ms. Fallon motioned and Mr. Murray seconded the motion to move Mr. Maynard's two cases, Case #1-2010 and #2-2010 to be heard first due to his physical condition. Motion passed 5-0.

### **Lot #17-L-85 #1-2010**

Applicant – Benchmark Engineering, Inc.  
Owner – Lawrence & Regina Sarcozy  
Location – 9 Grove St  
Zone – Residential A

A variance is requested from Section(s) 401, 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit the razing and reconstruction of a pre-existing non-conforming structure on a pre-existing non-conforming lot.

Ms. Dunn recused herself from this case.

Ms. Fallon read the case into the record.

Mr. Joe Maynard, Benchmark Engineering, said he would be reading this case under the new RSA674. The property is approximately 13,000 sf in size and currently has an existing seasonal structure on the property. Mr. Maynard said his company had worked on this lot in 1991 and they permitted a septic system. The well is shared by two families. The septic system has seen very little use over the 18 years and appears to be in near new condition. Due to the condition of the septic system, there will be no proposal to reconstruct. The proposal is to raise the existing structure which currently has a basement. As the basement goes into the water table and below the elevation of the lake; the grade of the new dwelling will be at basement level as the existing



## BOARD OF ADJUSTMENT

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

basement will be filled in. The lot is relatively flat. In order to comply with the Shoreland Regulations, there will be ample point values with trees outside the area that they will be cutting for the proposed home. This lot is heavily vegetated. Currently the existing lot has about 25% impervious coverage; and with the new dwelling, there will be 30% impervious coverage which DES does allow. Mr. Maynard believes they will comply with the Town's new CPIA Ordinance. The setback to the neighboring home at the closest corner would be 14 1/2' and would go approximately 24' to the other corner and 47' from Grove St.

Mr. Maynard submitted photos of the property to the Board showing that the abutting properties would not be impacted (Exhibit A). He provided letters of support from Brian & Kerry Gallant and James & Kathleen Bull abutting property owners

Mr. Murray asked what the maximum height of the structure would be. Mr. Maynard said the zoning is 35' in height. Mr. Maynard said that it will probably be around 30' +.

Mr. Maynard read the supporting facts into the record.

Mr. Larry Sarcozy of 9 Grove Street spoke and said he would like to change his cottage to year-round. He stated that there are two letters from his abutters supporting this project.

Mr. Tierney asked what the setbacks were. Mr. Maynard reviewed the setbacks. He said as long as they don't propose to move the new dwelling any closer to the lake than the original structure that they will be in compliance with Shoreland Regulations.

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

### **Deliberative Session, Case 1-2010**

Mr. Tierney said he had some concern with the size of the structure and is comfortable with the setback encroachment. He said if Shoreland has issues with the size of the structure, the structure can be reduced. Mr. Samsel concurs with Mr. Tierney. Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #1-2010 from Section(s) 401 & 702 Appendix A-1 to permit the razing and reconstruction as per the plans submitted. Motion approved 5-0.



## BOARD OF ADJUSTMENT

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

### **Lot #16-F-4 #2-2010**

Applicant – Benchmark Engineering, Inc.

Owner – James Frazier

Location – 24 Ash St

Zone – Residential A

A variance is requested from Section(s) 401, 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit the razing and reconstruction of a pre-existing non-conforming structure on a pre-existing non-conforming lot and to expand above an existing detached garage.

Ms. Fallon read the case into the record.

Mr. Joseph Maynard of Benchmark Engineering said the property is approximately 20,500 sf in size and is located at the end of Ash Street. The property has an existing 1-story dwelling which sits approximately 17' from the pond. There are some concrete patios associated with the property and a wall along the pond. The property also has a large screened room very close to the lake. Mr. Frazier permitted a new state approved septic system in 2003. This system has been installed but yet to be hooked up. The proposal is to raise the existing dwelling deck, screen house and pump house and construct a new dwelling with an attached garage. They will use the grade that is there to blend the house into the slope. Because of the slope of the property and the existing level area that is in the lower area, they will redevelop in the same footprint. This property has 42% impervious surface. In order to meet Shoreland Regulations, the existing screen room that is about 7-8' from the pond will be raised and replaced with vegetation. The gravel driveway at the top of the property will also be removed. This will reduce the total impervious surface to 33%. The home still uses the existing septic system which is located on the side of the screen house. This will be abandoned or be used for an infiltration system. The new septic system will be hooked up and used. The existing garage will have the pitch of the roof changed to accommodate a bonus room. Mr. Maynard submitted to the Board photos of the property showing the existing screen house and the slope of the lot (Exhibit A).

Mr Maynard read the supporting facts into the record.

Mr. Tierney asked if the existing garage can be moved (presently 27' from setback). Mr. Maynard said sliding the house over impacts the front entrance, staircase and the doorway/entrance way.

Mr. Maynard said the pump house will also be removed. He said the house blends into the topography quite nicely. The intent is to keep the second garage and remove some of the dated structures by the waterfront.



## BOARD OF ADJUSTMENT

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

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

### **Deliberative Session, Case 2-2010**

Mr. Tierney said he believes that if they positioned the house differently they probably could have met the 30' setback. He was looking for an improvement in the side setback. Mr. Alosso and Ms. Fallon do not have a problem with the location of the existing garage or with the 27' setback. Ms. Fallon said she likes the size of the house for the lot. Mr. Murray said there are improvements being made with the removal of the screen house. Motion made by Mr. Alosso and seconded by Ms. Fallon to grant a variance for Case #2-2010 Lot #16-F-4 from Section(s) 401, 406.2 & 702 Appendix A-1 of the Zoning Ordinance to permit the razing and reconstruction of a pre-existing non-conforming structure on a pre-existing non-conforming lot as submitted. Motion passed 4-1. Mr. Tierney denied as it does not meet spirit and intent.

### **Lot #17-L-78, Case #23-2009 (Continued from July 14, August 11, September 22, and October 27 and December 8, 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.

Ms. Fallon read the case into the record.

Mr. Peter Zohdi of Edward N. Herbert Associates provided booklets to the board. He reviewed the booklet with the Board. The booklet contained the ZBA Notice of Decision, Opinion of the Building Inspector for Denial, copy of the Area Variance application, supporting document with the five criteria, Permission Letter from Ms. Tokanel authorizing Mr. Zohdi to represent her, List of Abutters, Section 702 Appendix A-1 of Zoning Ordinance, Deed from Rockingham County Registry of Deeds, Assessor's Sheet, pictures of the house, Certified Location of Foundation done by ENH, Septic Design, Certified Location of Foundation done by others, Building Permits and other documents.

Mr. Zohdi said in 2005 Ms. Tokanel applied for a variance to add a deck. Over the years, the regulations have changed and now have to comply with the Shoreland Act. Ms. Tokanel would like to sell the house and has not yet completed her deck as she encountered many difficulties with the Town even though the request was approved. She has now hired ENH to do a Certified Location. Mr. Zohdi said his office can not do a Certified Plan based on the previous approval



## BOARD OF ADJUSTMENT

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

due to all the changes in the Regulations since 2005. He is now working with the Shoreland to get the deck approved and is asking the Board to approve the Plan as submitted. Mr. Zohdi said the Town's approval is subject to the Shoreland Protection approval of the deck. He said nobody has done anything wrong except the rules have changed.

Mr. Tierney asked Mr. Zohdi if the Town's Zoning reflects the shoreline. Mr. Zohdi said yes, the Town does reference in the zoning "to the shoreline". Mr. Tierney asked if the Town references the State regulations. Mr. Zohdi said to the best of his knowledge it does.

Motion by Mr. Tierney to wave the reading of the 5-points and seconded by Mr. Murray. Motion passed 5-0. The booklet was entered into the record as Exhibit A.

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

### **Deliberative Session, Case 23-2009**

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #23-2009 from Section(s) 702 Appendix A-1 as per the plan submitted. Motion passed 5-0.

### **Lot #24-F-193 #44-2009(Continued from October 27 and November 10, and December 8, 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 (Continued from October 27 and November 10, and December 8, 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.

Mr. Zohdi asked the Board if he could present Case #44-2009 and #45-2009 together. The Board agreed but requested two separate motions.



## BOARD OF ADJUSTMENT

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

Ms. Fallon read cases #44-2009 and #45-2009 into the record.

Mr. Peter Zohdi of Edward N. Herbert Associates, requested that the letter from Conservation Commission dated November 24, 2009 be read into the record. Ms. Fallon read the November 24, 2009 letter from the Conservation Commission into the record.

Mr. Zohdi reviewed the regulations from Section 601.4.5. He said his client is complying with the Conservation Commission's request that the slope not be greater than 10%.

Attorney William Mason, representing EJR Jr. Development, said he and Mr. Ryan were on the site walk with the Conservation Commission. He and his client had a discussion with the Board on how to balance the concerns of both. Attorney Mason read the supporting facts into the record.

Attorney Mason requested if the Board ruled in favor of this proposal that the comments mentioned in the Conservation Commission's letter be read in as part of the approval.

Ms. Fallon read into the record the names and addresses of letters of support:

- Harry Ayan, 114 Castle Hill Road
- Rockwell DiPietro & Sharon DiPietro (abutter)
- Claire Dowd & John Dowd, Jr., 129 Castle Hill Road
- Henry Carpentino, 78 Heritage Hill Road
- Kevin Niewoehner, 63 Heritage Hill Road

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

### **Deliberative Session, Case #44-2009**

Mr. Tierney is in agreement with the Conservation Commission regarding the installation of the retaining walls. The Board asked that the Revised Proposed Conditions Plan dated August 2009 be marked as Exhibit A. Motion made by Mr. Alosso that we grant a variance for Lot #24-F-193, Case #44-2009 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. In addition to that we should make sure we are complying with the Conservation's Letter dated November 24, 2009 adding that shrubbery be planted to reduce the velocity of any run-off of water. As far as the grade of 10%, that will be achieved as the plan submitted. Mr. Tierney seconded. Motion passed 5-0.



## BOARD OF ADJUSTMENT

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

### **Deliberative Session, Case #45-2009**

Motion made by Mr. Alosso that we grant a variance to Lot #24-F-194 #45-2009 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. In addition to that we should make sure we are complying with the Conservation's Letter dated November 24, 2009 adding that shrubbery be planted to reduce the velocity of any run-off of water. As far as the grade of 10%, that will be achieved by the plan submitted. Mr. Tierney seconded. Motion passed 5-0.

### **Lot #25-F-114 # 48-2009**

Applicant – Rock Pond Improvement Assoc.

Owner – Gary & Dyan Ciccone

Location – 45 Abbott Rd.

Zone – Residential A

A Rehearing is requested regarding the decision made by the Zoning Board of Adjustment on November 10, 2009.

Mr. Samsel read the case into the record. Mr. Samsel para-phrased certain sections of the request for the Board for the rehearing. He said that the request for a rehearing is that it needs to be proved that the Board made a technical error or there is new evidence to be presented.

Ms. Fallon said a letter came in from the Ciccone's attorney today (1/12/10).

Mr. Tierney had questions for Mr. Mike McGuire, Building Inspector, of the process by the Town however, Mr. McGuire was absent.

Mr. Wayne Morris, 14 Jordan Road, President of the Rock Pond Improvement Assoc., for point of order, told the Board that he searched the Planning Board records for the minutes of September 12, 1985 and could not find the information he needed for the November 10<sup>th</sup> meeting. However, he was informed later that the Planning Board minutes were kept over in the Town Clerk's office.

Mr. Gary Ciccone of 45 Abbott Road, he asked that the Board read his attorney's letter into the record.

Mr. Alosso said the Town granted an Area Variance not a seasonal conversion. By granting the Area variance, the client has to comply with the criteria of what was granted. If the septic system is not part of the ZBA's purview, then it needs to go back before the Town.

Ms. Fallon read the motion from the November 10, 2009 meeting.



## BOARD OF ADJUSTMENT

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

Mr. Samsel granted a 10 minute recess. 9:35PM- 9:45PM

Copies of the letter from the Owner's attorney were given to the Board. Mr. Samsel reviewed the Attorney's letter with the Board.

Mr. Murray motioned and Mr. Tierney seconded the motion to grant a rehearing request of Case #48-2009. Request failed 2-3. Denied by Mr. Samsel as this is not the purview of the ZBA and should be under the Code Enforcement Officer/Building Inspector. Denied by Messieurs Murray and Alosso as no technical error was made and no new information as pertained to zoning was provided.

### **Approval of December 8, 2009 Minutes**

Mr. Tierney motioned and Mr. Alosso seconded the motion to approve the December 8, 2009 minutes. Motion passed 5-0.

### **Correspondence**

- Calendar from Pennichuck
- Information for Town Report due January 25th

### **Miscellaneous Board Business**

A meeting with Attorney Campbell with two upcoming court cases and administrative discussion will be held on Thursday, January 21, 2010 at 6:30 PM.

Ms. Laura Scott, Director of Community Development, has requested a public workshop on Thursday, January 21, 2010 at 7:30 PM.

Mr. Tierney motioned and Ms. Fallon seconded the motion to adjourn. Motion passed unanimously at 10:05 PM.

The next meeting of the Zoning Board of Adjustment is scheduled for Tuesday, January 26, 2010 in the Community Development Department.

These minutes are in draft form and are respectfully submitted for approval by Paula Wrenn.