



## BOARD OF ADJUSTMENT

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

November 9, 2004

Rob Gustafson – Chairman  
Chris Doyle – Vice-Chairman (Absent)  
Georges Roy – Secretary  
Al Souma – Member  
Tony Pellegrini – Member  
Kara DiFruscia – Alternate (Absent)

### **Lot #25-R-17500, Case #47-2004**

Applicant – SFC Engineering Partnership, Inc.  
Owner – Dale & Susan Higgins  
Location – 38 Fletcher Road  
Zone – Rural

A variance is requested from Sections 501 & 702 of the Zoning Ordinance to permit the construction of a single family dwelling on a lot having no frontage on a town-approved road where 175 feet of frontage is required.

Mr. Roy read the case into the record. Mr. Fredette of SFC Engineering presented the case for the Applicant. A variance was granted for this same request on January 23, 2001. This lot has always had legal access from Marblehead Road. The recently approved development plans for Fletcher Corner Estates provides a viable easement to construct a private way to this lot. There is no opportunity to gain frontage on a town-approved road. The Board of Selectmen granted a waiver to RSA 674:41. Mr. Fredette read the five supporting facts into the record. Mr. Souma said that a plot plan was not submitted with the application. Mr. Tierney, Building Inspector, explained that a site plan was shown to him two days ago. Mr. Souma said that a plot plan is required with the application. Mr. Tierney explained that a site plan was submitted because this is undeveloped land and you wouldn't have a plot plan until something was developed on it. Mr. Tom Case said that he was neither speaking in favor or opposition to the request, he wanted to submit information to the Board. Mr. Case said that Mr. Fredette said that the BOS approved the issuance of a Building Permit. Mr. Case submitted minutes from the November 1, 2004 Board of Selectmen meeting and the Chairman marked the three pages as Exhibit A. Mr. Case read into the record from those minutes the following: *Mr. Hohenberger moved and Mr. Breton seconded to in the event this easement is a private road, allow the issuance of a building permit in accordance with RSA 674:41.* This leaves "up in the air" whether this is a private road or not a private road. An easement is not a private road. Attorney Campbell came up with the theory that an easement is a private road. Mr. Case submitted Regulations of Subdivision of Land Section 674:41 and the Chairman marked the two



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pages as Exhibit B. Attorney Campbell said that the BOS cannot vote to allow a building permit. Mr. Case said that he doesn't think that this is a private road. Mr. Case read into the record from page two the following: *It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraph a,b or c.* The easement does not meet the criteria for a private road. This easement crosses common land which Mr. Case's daughter owns 1/50 of that land. If things were done correctly rights would have been given to cross that common land with the easement. Mr. Case submitted eight pages of Articles of Agreement which the Chairman marked as Exhibit C. Mr. Case read into the record the following: *Section 2.1(a) The Open Space lots shall be held for the use and enjoyment of the lot owners. Use of open space lots is restricted and is intended to remain generally undeveloped. Section 2.1(c) The rights and easements of enjoyment in and to the open space if any shall be subject to the following: Section 2.2 Easements on Plan – The ownership interest in the Open Space Lots and Lots described herein are subject to and with the benefit of the easements and other rights and obligations granted and reserved in this Declaration and also as shown on the plan. Each of the easements shall be deemed to be established upon recording of the plan and shall henceforth be deemed to be covenants running with the land for the use and benefit of the owners and their lots.* Mr. Case said that he questioned whether that easement to the property is for the use and benefit of the owners of the lots. Mr. Case submitted a copy of his daughter's warranty deed and the Chairman marked it as Exhibit D. Nowhere in the deed does it mention anything about this easement. Mr. Case submitted a photograph, marked as Exhibit E that shows the centerline of the right-of-way from Fletcher Road. There is a 15-foot easement but originally there was a 10-foot easement between lots 36 + 38 the other 5-feet is on Mr. Sanford's property. Mr. Roy asked Mr. Case if he is for or against this request. Mr. Case said he thought there should be some clarification in the open space. Mr. Case said that he failed to mention earlier that there should be no vehicular traffic in the open space land. So how do you build a driveway if no vehicular traffic is allowed? Mr. Case went on to say that he feels sorry for the Applicant but this problem can be blamed on shoddy workmanship by people who will remain unnamed. Mr. Case said that he wanted to bring these serious questions out into the public. If the easement was there why wasn't it in the document? Mr. Case said that he wanted the Zoning Board to have this information before making their decision. Mr. Case said that the Selectmen made a decision with no knowledge and without asking the abutters to be present, they probably didn't even know where the right-of-way was and they were probably pushing this off onto the Zoning Board. Mr. Case said in his estimation this is not a private road, but the applicant does have an easement to get to his property, so you can rightly grant him a variance because he does have access, but in order for him to get access he would have to cut down trees, up rooting the common land but according to the covenants it says you can't do that and you can't drive any motorized vehicles over the common land. Mr. Gustafson asked Mr.



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Case if he believed that the Applicant has legal access to that lot. Mr. Case replied no because except for the plan there is no document that shows the easement; I think it can be worked out with the owners of the common land. Mr. Gustafson asked Mr. Case if they were to prove legal access to that lot are you for or against their gaining access through a variance. Mr. Case replied if they could prove legal access I have no problem with the request; I think he should have use of his land. Barbara Case of 21 Corliss Road said that she is against the request because she does not know if the document is legal there are conflicting documents. Mr. Sanford of 36 Fletcher Road asked if there is access through the end of Corliss Road. Mr. Fredette explained that the Applicant would have to go through wetlands and that is a Planning Board issue. Mr. Sanford questioned sharing a driveway. Mr. Gustafson said that would be between Mr. Sanford and the Applicant. Margaret Case of 21 Corliss said that the Fire Department has been recommending 20-foot driveways, therefore, she didn't understand why the Fire Department would be in favor of a 15-foot driveway. Ms. Case said that she agreed with the previous speakers that the paperwork is shoddy; the Town did not do its job. The Applicant should have done something about this when the plans were before the Planning Board in 2000 or 2001, that is where the error is; he allowed this to drag to 2004. Mr. Fredette explained that the subdivision plan for Fletcher estates was approved in October of 2000 and that was the second time that plan was approved. Mr. Higgins took action and reopened the Planning Board decision because the first plan that was approved had no access to his lot. By Planning Board action they had denied any access. The Planning Board reopened the case and approved the plan and those plans clearly show a driveway easement. Mr. Sanford agreed that the evidence shows that there is an easement and he signed a confirmatory easement deed, marked as Exhibit G. There was no deed issued to the Higgins to cross the open space. We now have a driveway easement, marked as Exhibit F, issued to the Higgins by Mesiti, Thomas, Marblehead Estates, LLC. Mr. Fredette submitted the two documents. Mr. Fredette hoped this would clear up some of the questions raised by Mr. & Mrs. Case. The Fire Department suggests a 20-foot clear way for fire apparatus. The Fire Department is looking for a competent surface to drive a fire truck on, nothing that is soft, and asked for a turn around that would be adequate for a fire truck. Those requests have been accommodated. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #47-2004**

Mr. Roy motioned and Mr. Pellegrini seconded the motion to grant Case #47-2004 per the plan presented. Passed unanimously 4-0.



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### **Lot #3-B-265, Case #51-2004**

Applicant – H&B Homes Corp.

Owner – H&B Homes Corp.

Location – Building 18, Units 42 & 44 Hadleigh Road

Zone – Rural

An equitable waiver is requested from Section 610.6.1.5 of the Zoning Ordinance to permit a deck on Unit #42 to be 46.5 feet from the rear setback where 50 feet is required and a deck on Unit #44 to be 44.5 feet from the rear setback where 50 feet is required.

Mr. Roy read the case into the record. Mr. Maynard of Benchmark Engineering presented the case. Mr. Maynard submitted photos. The Contractor was unaware of the 50-foot setback, it used to be 30-feet. The decks are greater than 40-feet from the property line. Mr. Maynard read the four requirements into the record. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #51-2004**

Mr. Souma motioned and Mr. Roy seconded the motion to grant Case #51-2004. Passed unanimously 4-0.

### **Lot #17-C-96A, Case #52-2004**

Applicant – Dale C. Smith

Owner – Neverest Management Co., LLC

Location – 33 Sawtelle Road

Zone – Residential A

A variance is requested from Sections 401 & 405.2 of the Zoning Ordinance to permit the consolidation of two roof lines into one (present hip roof and lean-to would be combined into one large hip roof) and the enclosure of the existing back porch to enlarge existing bedrooms.

Mr. Roy read the case into the record. Mr. Smith presented the case and submitted a sheet of 6 photos that was marked as Exhibit A. The consolidation of the roof systems will present a more attractive structure in a very visible place on the pond. Mr. Smith would like to enclose the back porch so that he can enlarge the existing bedrooms and move the existing bathroom. The use of the property does not change it will remain a two-bedroom seasonal cottage. Mr. Smith read the five supporting facts into the record. The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously.



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### **Deliberative Session, Case #52-2004**

Mr. Roy motioned and Mr. Souma seconded the motion to grant Case #52-2004. Passed unanimously 4-0.

### **Lot #17-C-96A, Case #53-2004**

Applicant – Dale C. Smith

Owner – Neverest Management Co., LLC

Location – 33 Sawtelle Road

Zone – Residential A

A variance is requested from Section 702 of the Zoning Ordinance to permit the addition of a deck over an existing concrete patio with side walkways to doors and stairs.

Mr. Roy read the case into the record. Mr. Smith presented the case and explained that the deck will improve the waterfront appearance. The proposed deck is meant to reclaim the historic use of the space. State Law Title L, Chapter 483-B:11 states *between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12-feet towards the reference*. Since this proposed porch is 10-feet toward the reference line this request complies with state law. Mr. Smith read the five supporting facts into the record. The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #53-2004**

Mr. Souma motioned and Mr. Pellegrini seconded the motion to grant Case #53-2004 per the submitted drawing. Passed unanimously 4-0.

### **Lot #18-L-3, Case #54-2004**

Applicant – Michelle Russell

Owner – Robert Russell

Location - 6 Woodvue Road

Zone – Residential A

A variance is requested from Section 710 of the Zoning Ordinance to permit a 4-foot fence with 5-foot posts along the front and side yards where a 3-foot fence is allowed.

Mr. Roy read the case into the record. Robert & Michelle Russell submitted two photos that were marked as Exhibit A-1 and A-2 and presented their case. The proposed fence does not create a blind spot or safety hazard and will have no impact to the environment.



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The proposed 4-foot fence still allows for light and air but is tall enough to prevent their children from climbing over it. Mr. Russell read the five supporting facts into the record.

Mr. Roy read into the record a letter of support from Christine Mawby of 7 Woodvue Road. Mr. Roy read into the record a letter of opposition from Ioana Singureanu of 8 Woodvue Road. In the second paragraph of Mr. Singureanu's letter he states that he would like to point out that there are no other fences currently erected in the front or sides of the properties on Woodvue. Mrs. Kovolyan of 3 Woodvue Road advised the Board that she has had a fence in her front yard for the past 29 years. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously.

### **Deliberative Session, Case #54-2004**

Mr. Souma motioned and Mr. Roy seconded the motion to grant Case #54-2004. Passed unanimously 4-0.

### **Approval of October 26, 2004 Minutes**

Mr. Pellegrini motioned to accept the October 26, 2004 minutes as written. Mr. Souma seconded the motion. Passed 3-0-1, Mr. Roy abstained because he did not attend the October 26, 2004 meeting.

### **Other Business**

Mr. Tierney advised the Board of his conversation with Attorney Campbell regarding the fees for both an area and a use variance. Attorney Campbell said that one fee would be sufficient.

Mr. Roy motioned and Mr. Souma seconded the motion to strike the December 28, 2004 meeting. Passed unanimously.

### **Mail**

None

Mr. Pellegrini motioned and Mr. Roy seconded the motion to adjourn at 9:45 PM. Passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for November 30, 2004 at 7:30 PM in the Planning & Development Office.

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