



BOARD OF ADJUSTMENT

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

March 22, 2005

Rob Gustafson – Chairman
Chris Doyle – Vice-Chairman
Georges Roy – Secretary
Tony Pellegrini – Member (Excused)
Mark Samsel – Member

Lot #13-D-100 & 120, Case #4-2005 (Continued from February 8, 2005)

Applicant – Richard Messina
Owner – Richard Messina
Location – 43 Rockingham Road/Jones Road
Zone – Business Commercial A

An Appeal of an Administrative Decision is requested from Section 200 Definitions, reference paragraph two of the Planning & Development letter dated December 16, 2004.

- Motels by our ordinance definition do not allow cooking meals in the rooms.
- The State approved Septic Systems are not designed or approved for this type of use.
- Meals can be prepared in a central kitchen but not in the rooms.

Mr. Roy read the case into the record. Mr. Messina presented his case and submitted copies of the ordinance. Mr. Messina read into the record the following definition for Hotel, Inn, Motel, Tourist Court or Lodging House – *A building, or portion thereof, or a group of buildings, on a single lot, intended to be used for the more or less temporary occupancy of more than five individuals who are lodged with or without meals, and in which major provision for cooking may be made in a central kitchen.* Mr. Messina said that it does not state in the ordinance no cooking of meals in the rooms and it does not state that meals cannot be prepared in the rooms. Mr. Messina submitted a letter dated June 6, 2001 from Mr. William Evans the Administrator of Subsurface Systems Bureau of the DES. The Chairman marked the letter as Exhibit A-1. Mr. Messina advised the Board that Mr. Evans got into trouble for writing the submitted letter. The letter is addressed to Anna Barbara Hantz, Esquire and is in regard to an inquiry that was made for motel design criteria for Cabins in Temple, New Hampshire. Mr. Messina went on to say that septic systems are based upon loading. A 100 gallon per day per hotel unit design is typical and is based primarily on the number of beds in the unit and does allow for amenity-type kitchen facilities consisting of a bar sink, apartment sized refrigerator, hot plate, microwave and similar small appliances. Mr. Messina also submitted a copy of an *Approval for Construction Form* from the NHDES for the Temple, New Hampshire property that was marked as Exhibit A-2 by the Chairman. Mr. Gustafson asked the Applicant what precipitated the administrative action. Mr. Messina replied that it has been an issue for a time and Planning has been *nipping* at this for many years. Mr. Messina said that the property was recently inspected and anything that was not



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proper was taken care of immediately. Mr. Samsel asked what were the frequency and results of the inspections. Mr. Messina replied that in 25 years he has had two inspections, one recently and one in 1996 from the Town. There are no violations; once in awhile there is a distraught guest that wants to complain. Recently a guest complained that soapsuds were being pumped through the sump pump. Mr. Messina said that he and his staff have been doing regular inspections for the past three or four months.

Mr. Al Turner, Director of Planning & Development advised the Board that the Hotel Motel definition has been the same since 1980. The first *stop work order* that was issued to the Manor Motel was issued by the Building Inspector in 1980 for work that was being done without permits. The State Fire Marshall was called in 1996 and he wrote 16 pages of violations. Planning Board approvals for this site go back to 1982. In 1982 Mr. Messina presented a 51 unit efficiency plan to the Planning Board. Mr. Turner read from the Planning Board minutes that state *the motel units will fall into the multi-family category with the living area, kitchen and bedroom being separate rooms and the land is not zoned for multi-family. Mr. Messina stated that he rents only to transient cliental, but the Board felt that the units might be used for extended stays, thereby putting a strain on the septic system. Mr. Messina asked what the main issue was and Board told him that is was the kitchens...* In 1983 Mr. Messina discussed with the Planning Board a 48-unit one-bedroom plan and instead of full kitchens Pullman sinks would be installed thereby eliminating possible lengthy stays. The Planning Board did not allow the use of Pullman sinks. Mr. Turner provided more history advising that on April 13, 1984 Mr. Mitchell stated at the Planning Board meeting that the loading factors on the units are approximately 100 gallons per day per unit which is based on one unit; therefore, the loading factor of 100 gallons is not reasonable. Mr. Mitchell further stated that the 100 gallons per day is for a motel not an efficiency unit and a stricter requirement is needed for an efficiency apartment at a factor of 225 gallons per unit per day. At the September 19, 1984 Planning Board meeting Mr. Messina presented a plan that did not include any efficiency units. At the November 28, 1984 meeting the Planning Board voted to approve motel not efficiency units. Mr. Turner explained that he looked at all these approvals and saw that the Planning Board was concerned about cooking facilities and kitchens in the units and how they would be occupied. Mr. Turner submitted photos taken during inspections. There is a history of premature septic system failure. The systems failed in 1980, 1995, 2000 and 2004 and they keep failing because the units are overloaded, too many people in one room, and cooking. In 2004 Mr. Turner was advised by the Windham Fire Department that they had been answering calls at this property and felt that the rooms were in very poor and shape and maybe not habitable. Based on the urgency of the Fire Department Mr. Turner did an inspection and advised Mr. Messina that for months bathrooms and sinks had not been working. Since then Mr. Messina has straightened out all of these problems, taken out oversized refrigerators, hotplates etc. and has been very cooperative. Mr. Turner advised that his January 28, 2005 letter to Mr. Messina was a clarification of the December 16, 2005 letter. The January 28, 2005 letter states *After a review of the files, I am of the opinion that the 28 motel units on Jones Road are limited to small food preparation devices that primarily warm or heat prepared foods and beverages such as an electric coffee pot, microwave ovens and under-the-*



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counter refrigerators (small). This does not include hot plates. Mr. Turner said that he sent another letter of clarification to Mr. Messina on February 10, 2005. Mr. Turner submitted a copy of a newspaper article regarding the Planning Board's concerns that there not be efficiency apartments at that site. Mr. Turner submitted the 1980 Zoning Ordinance motel definition and the Chairman marked it as Exhibit B. Mr. Turner said that Mr. Messina and his manager should be commended on the job they have done cleaning up the rooms. Mr. Turner said that he based his decision on a review of the file, septic failures, Planning Board approvals and the motel definition in the Zoning Ordinance.

Mr. Tom Case said that efficiency apartments are not allowed in that zone; it may be that the motel units are being used as efficiencies but this has been happening for 20 years and all of a sudden it is a problem. If the septic systems are failing there is too much use.

Mr. Messina said that a lot of what Mr. Turner talked about is included in Mr. Messina's next two cases. Mr. Messina went on to say that Mr. Turner's testimony had zero to do with his case and should be struck from the record. Mr. Turner avoided what the appeal is about. Since the Board allowed Mr. Turner to speak about things that have nothing to do with the case Mr. Messina decided to go thru every point one at a time. Mr. Messina said that Mr. Turner spoke about a 1980 renovation of kitchens. Mr. Messina asked if that had anything to do with the Board's interpretation of what a motel is. Mr. Messina asked for a copy of the 1980 violation that Mr. Turner mentioned during his testimony. The Chairman said that he thought the Board was looking at the cooking facility issue not whether this is a motel. Mr. Messina replied that he is looking at the definition of a motel stating that cooking is not allowed. Mr. Turner explained that he brought up the history because during Mr. Messina's testimony he said that he had never had a violation. Mr. Messina said that he never said that he never had a violation but that he never had any safety or health problems. So some of the things Mr. Turner said were false. Mr. Turner's testimony regarding efficiencies and kitchens has nothing to do with the approval Mr. Messina received from the Planning Board in 1984 for motel units. Mr. Messina said that Mr. Turner was allowed by the Board to discredit the motel and bring up old maintenance problems and Mr. Messina said that he would go thru every point made by Mr. Turner. Mr. Messina said that Mr. Turner's testimony should be struck from the record. Mr. Messina said that he has no record of sinks and bathrooms not working for months. Mr. Messina said that the Town of Windham has been flooding his septic system for years. Water runs off the road and floods the septic system and the buildings. Mr. Messina said that he has written letters regarding the flooding to the Town of Windham. Mr. Messina said that he would not accept a four-man board for his other three cases and would like them continued to the next meeting. The Chairman closed the public portion of this case. Mr. Doyle motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously 4-0.



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Deliberative Session, Case #4-2005

Bullet #1 Motels by our ordinance definition do not allow cooking meals in the rooms.

Mr. Roy motioned and Mr. Samsel seconded the motion to deny the appeal of the first bullet. Mr. Doyle asked Mr. Roy to amend his motion to include the allowed items mentioned in Mr. Turner's letter dated January 28, 2005 and that the Board agrees with the Building Department's view that these items are allowed. Mr. Roy agreed to amend his motion. Mr. Samsel withdrew his second. Mr. Doyle motioned and Mr. Roy seconded the motion to deny the appeal of the administrative decision and also the Board agrees with the statement in the letter from Al Turner, Director of Planning & Development, dated January 28, 2005 to Mr. Richard Messina, P.O. Box 126, Peterborough, NH as stated and outlined. Motion passed 3-1. Mr. Samsel voted against the motion.

Bullet #3 Meals can be prepared in a central kitchen but not in the rooms.

Mr. Samsel motioned and Mr. Roy seconded the motion to deny the appeal. Motion passed 3-1. Mr. Doyle voted against the motion.

Bullet #2 The State approved Septic Systems are not designed or approved for this type of Use.

Mr. Doyle motioned and Mr. Roy seconded the motion to deny the appeal and recommend that the applicant seek relief from the Board of Health. Passed unanimously 4-0.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Lot #14-A-850A, Case #7-2005 (Continued from February 22, 2005)

Applicant – Lunan Realty Inc.

Owner – Rocco DeCarolis Brothers, Inc.

Location – 200 Route 111

Zone - Rural

A variance is requested from Sections 702 Appendix A-1, 601.4.1, 601.4.2 and 601.4.6 of the Zoning Ordinance to permit the construction of a single-family home 35-feet from the front setback where 50-feet is required and 15-feet from the side setback where 30-feet is required.

Mr. Roy read the case into the record. Attorney John R. Michels, representing the Applicant, presented the case. The lot is located between Route 111 and Beaver Brook. At the February 22, 2005 Zoning Board meeting Mr. Gustafson was concerned about the lack of evidence of the history of the lot as to whether it was ever subdivided per subdivision regulations or whether it was a left over parcel from another lot. Attorney Michels said that this was not subdivided as a buildable lot. Attorney Michels read the supporting facts into the record. Attorney Michels advised the Board that after attending the March 10, 2005 Conservation Commission meeting



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changes were made to the original plan. Jennifer McCourt of McCourt Engineering submitted information regarding erosion control measures. Ms. McCourt went through the recommendations made by the Conservation Commission.

- Mr. Rouillard requested that the Zoning Board look at the hardship issue.
- The house has been pulled out of the 150-foot buffer to Beaver Brook but it is still within the 100-foot buffer to the wetlands (45-feet away from the wetland).
- The leach field has been totally pulled out of the WWPD.
- Introduce an eco berm at the proposed tree line.
- Add a couple of channel soxx (one on each side of the house) to absorb concentrated flow and discharge into a sediment cell.
- The driveway will be reduced from 22-feet to 12-feet.
- Minimize salt on the driveway
- Changes to be reflected on plan.

Ms. McCourt reviewed the differences between the original plan and the revised plan. In the original plan submitted to the Zoning Board the front yard setback is 35 feet, side setback is 15 feet, WWPD to brook setback is 135-feet, WWPD to wetland is 22.2-feet. After the meeting with the Conservation Commission the building was pushed forward so that the distance to the front line is 16.4 feet, side setback is 20.2-feet, the distance to Beaver Brook is 159-feet which pushes it out of the Beaver Brook WWPD and the distance to the Wetland WWPD is 45.2-feet. The driveway was narrowed from 22-feet to 12-feet.

Mr. Tom Case said this is a lot of record and a buildable lot of record because it is three times the size you need to build on.

Mr. Jim Tierney, Building Inspector, said that the lot is listed on the tax card as wet development limited and land value is \$6,000.00. In 1985 the Applicant subdivided one portion of the “mother” lot but did not address the lot in question. The Applicant should have asked for the lot to be grandfathered in as a buildable lot when the parcel was subdivided.

Mr. Tom Case said that at the time this was not considered part of the Twin Street Subdivision; it existed by itself. This is a lot of record because you have a record, the tax card.

The Chairman closed the public portion of this case. Mr. Doyle motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #7-2005

Mr. Roy motioned and Mr. Doyle seconded the motion to grant the original plan submitted. Mr. Samsel, Mr. Doyle and Mr. Gustafson voted to deny the motion. Mr. Roy voted to grant the motion. Motion denied 1-3. The request was denied because the proposed plan encroached into the WWPD more than the revised plan that was shown.



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Lot #13-D-40, Case #9-2005

Applicant – Chester & Phyllis Jarosky
Owner – Chester & Phyllis Jarosky
Location – 5 Harris Road
Zone – Rural

An Appeal of an Administrative Decision is requested concerning Section 601 of the Zoning Ordinance regarding the denial of a special permit by the Windham Planning Board.

Mr. Roy read the case into the record. After Mr. Gustafson read a portion of Attorney Campbell's letter dated March 21, 2005 into the record Mr. Roy motioned and Mr. Samsel seconded the motion not to hear Case #9-2005. Passed unanimously 4-0.

Lot #16-R-183, Case #10-2005

Applicant – Stephen Pink
Owner – Stephen Pink
Location – 25 First Street
Zone – Residential A

A variance is requested from Section 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a 25' X 12' deck, the addition of a door to access the deck and change a window to a door.

Mr. Roy read the case into the record. Mr. Stephen Pink submitted photos and presented his case. Mr. Pink explained that there is only one entrance to their house and the addition of the deck would add a second entrance. Mr. Pink would like a second entrance for safety reasons. Mr. Pink does not have legal access to the property; he has a verbal right-of-way from a neighbor on Second Street. Mr. Pink would add a stairway that would give him access to his driveway from First Street. Mr. Pink read the supporting facts into the record. Mr. Roy read into the record a portion of a letter from Mr. Brian Parow of 23 First Street. Mr. Parow stated in his letter that he wanted to be assured that the property line be verified by a licensed surveyor, that there is no obstruction of his view and that at no time would the deck would be enclosed. Mr. Parow also requested an assurance that the well that was installed in June or July of 2003 is not on his property. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Roy seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #10-2005

Mr. Roy motioned and Mr. Samsel seconded the motion to grant Case 10-2005. Passed unanimously 4-0.

Lot #17-J-70, Case #11-2005

Applicant – DVMD Holdings Inc.
Owner - DVMD Holdings Inc.
Location – 90 Indian Rock Road



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Zone – Business Commercial District B

A variance is requested from Section 605.2.1 of the Zoning Ordinance to permit residential condominiums in the Business Commercial District B.

Lot #17-J-70, Case #12-2005

Applicant – DVMD Holdings Inc.

Owner – DVMD Holdings Inc

Location – 90 Indian Rock Road

Zone – Business Commercial District B

A variance is requested from Section 601 of the Zoning Ordinance to permit the removal of an existing office building and septic system within the WWPD and allow the reconstruction of a new residential building with minor grading in the general location of the existing building.

Mr. Doyle motioned and Mr. Samsel seconded the motion to hear Cases 11-2005 and 12-2005 together but to be decided separately. Mr. Roy read the case into the record. Mr. Joe Maynard of Benchmark Engineering presented the case for the Applicant. Mr. Maynard reminded the Board that variances had been granted for both cases back in 2003. Although substantial engineering has been done the variances must be renewed because more than a year has past since the variances were granted. Mr. Maynard advised the Board that he has been granted all other permits needed for this project. Attorney Prolman presented a package containing Notices of Decision and Minutes from the 2003 Zoning Board meetings. Attorney Prolman read the five supporting facts into the record. Marilyn Bailey of the Heron Cove Association spoke in favor of this request. The Chairman closed the public portion of this case. Mr. Roy motioned and Mr. Doyle seconded the motion to go into Deliberative Session. Passed unanimously 4-0.

Deliberative Session, Case #11-2005

Mr. Roy motioned and Mr. Doyle seconded the motion to grant Case #11-2005. Passed unanimously 4-0.

Deliberative Session, Case #12-2005

Mr. Samsel motioned and Mr. Doyle seconded the motion to grant Case #12-2005. Passed unanimously 4-0.

Lot #13-D-100 & 120, Case #13-2005

Applicant – Richard Messina

Owner – Richard Messina

Location – 43 Rockingham Road / Jones Road

Zone – Business Commercial A

An Appeal of An Administrative Decision is requested from Section 200 Definitions of the Zoning Ordinance regarding a decision made on January 28, 2005 that:

- Cots are limited to a few days.
- Hot Plates are not allowed.



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- Are Toaster Ovens Allowed?

Mr. Roy read the case into the record. Mr. Doyle motioned and Mr. Roy seconded the motion to continue Case #13-2005 to the April 12, 2005 meeting. Passed unanimously 4-0.

Lot #13-D-120, Case #14-2005

Applicant – Richard Messina

Owner – Richard Messina

Location – Jones Road

Zone – Business Commercial A

An Appeal of An administrative Decision is requested concerning NFPA Life Safety Code 101 regarding a decision made on January 24, 2005 that the occupancy load for each unit in the rear two-story building shall be two persons per room.

Mr. Roy read the case into the record. Mr. Roy motioned and Mr. Samsel seconded the motion to continue Case #14-2005 to the April 12, 2005 meeting. Passed unanimously 4-0.

Lot #13-D-100 & 120, Case #15-2005

Applicant – Richard Messina

Owner – Richard Messina

Location – 43 Route 28 & Jones Road

Zone – Business Commercial A

An Appeal of an Administrative Decision concerning a decision made on February 10, 2005 regarding the size of the motel rooms, use of cots and small appliances.

Mr. Roy read the case into the record. Mr. Roy motioned and Mr. Samsel seconded the motion to continue Case #15-2005 to the April 12, 2005 meeting. Passed unanimously 4-0.

Lot #9-A-1609, Case #16-2005

Applicant – Mireille Khoury

Owner – Mireille Khoury

Location – 21 Sirod Road

Zone – Rural

An Equitable Waiver is requested concerning Section 702 of the Zoning Ordinance to permit a single-family home to remain 45-feet from the front lot line where 50-feet is required.

Mr. Roy read the case into the record. Ms. Khoury presented her case. This single-family home has been 45-feet from the front lot line since it was built in 1971. The home would have to be demolished or moved to a new foundation to correct the violation. There have never been any complaints regarding the location. The structure has not been altered since it was built in 1971. The Chairman closed the public portion of this case. Mr. Doyle motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 4-0.



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Deliberative Session, Case #16-2005

Mr. Roy motioned and Mr. Doyle seconded the motion to grant Case #16-2005. Passed unanimously 4-0.

Minutes

Mr. Doyle motioned and Mr. Roy seconded the motion to accept the January 25, 2005 and February 22, 2005 Minutes as written. Motion passed 3-0-1. Mr. Samsel abstained because he was recently elected a member to the Zoning Board.

Other Business

The Chairman asked that the secretary find out if a bound copy of the Zoning Board Handbook is available.

Mr. Tierney showed the Board a form used by the Planning Board to record the appointment of alternates. After reviewing the form the Chairman instructed Mr. Tierney to make the appropriate changes.

The Board directed the secretary to advertise in the *Windham Independent* for alternates to the Zoning Board.

Mail

- March 7, 2005 Confidential Letter from Attorney Campbell regarding Jarosky vs. Town of Windham.
- March 16, 2005 Confidential Letter from Attorney Campbell regarding Procedure.
- March 21, 2005 Confidential Letter from Attorney Campbell regarding Jarosky Appeal

Mr. Roy motioned and Mr. Doyle seconded the motion to adjourn at 11:20 PM. Passed unanimously 4-0.

The next meeting of the Zoning Board of Adjustment is scheduled for April 12, 2005 at 7:30 PM in the Planning & Development Office.

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