



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes June 12, 2007

Mark Samsel – Chairman
Jim Tierney – Vice-Chairman
Dianna Fallon – Secretary
Gail Webster – Member
John Alosso – Member
Tom Murray – Alternate (Absent)

Lot #24-G-127, Case #34-2007 (Continued from May 8, 2007)

Applicant – J.M. Gray & Associates
Owner – Adrienne M. Goyette
Location – 9 Princeton Street
Zone – Residential A

An appeal of an administrative decision is requested regarding the Administrative Officer's decision by a letter dated March 15, 2007 involving the keeping of pets/animals in the Residential A Zone and the Board's decision of February 27, 2007 involving the keeping of pets/animals in the Residential A zone.

Mrs. Fallon read the case into the record. Mr. Jeff Gray and Attorney John Bisson submitted a packet of information to the Board and presented the case starting with a brief history. Mr. Gray said that he was not sure why he was in front of the Board. At the February 27, 2007 meeting the Board overturned Mr. Turner's decision. Mr. Gray said that he was not sure why his client received the March 15, 2007 letter from Mr. Turner. Mr. Turner did not file for a rehearing of the February 27, 2007 decision. This matter is now final; there was no appeal or request to reconsider the decision of February 27, 2007. Mr. Gray said that although this case was advertised as an appeal he did not feel that he was in front of the Board for an appeal. This matter has already been decided by the Zoning Board on February 27, 2007 pursuant to its statutory power under RSA 674:33 I & II. The Administrative Officer failed to file a motion for a rehearing of the Board's February 27, 2007 decision within 30 days under RSA 677:1 & 677:2. The Board's decision became final as a matter of law of Ms. Goyette keeping pets in the Residential A zone at the expiration of the 30 day period to file a rehearing. This is Mr. Turner's second attempt at the same issues that have already been decided by the Board. Mr. Gray said that he was at the 9 Princeton Street location on June 12, 2007 and the only difference in the



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property from February 2007 was that a stockade fence had been installed in the rear of the property.

Attorney John Bisson said that this issue has been decided by the Zoning Board. The Code Enforcement Officer's refusal to follow the process and come back for a rehearing made the Zoning Board's decision final. According to the Supreme Court the Zoning Board can only reconsider this case if there is a material change of circumstance affecting the decision. Attorney Bisson read into the record a portion of RSA 672:1 III-b *Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;...* Attorney Bisson also read into the record a portion of RSA 672:1 III-d *unreasonable interpretation includes the failure of land use authorities to recognize that agriculture ... are traditional, fundamental and accessory uses of land throughout NH and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;... this means in the Residential District if it doesn't say you can't have agriculture under this RSA it must be permitted.* Attorney Bisson went on to read into the record a portion of RSA:32-a *...whenever agricultural activities are not explicitly addressed with respect to any zoning district or location, they shall be deemed to be permitted ther as either a primary or accessory use...*

In answer to Mr. Samsel's question Mr. Gray replied there are 4 goats and 1 duck on the property. Two sheep and two geese were removed from the property. Mr. Gray said that RSA 21:34-a defines the word *farm* as any land, buildings or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residence of owners, occupants, or employees located on such land... Paragraph II #4 especially applies to Ms. Goyette *the raising and sale of livestock...* Mr. Samsel read a portion of RSA 672:1 III-b *Agriculture make vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire...* and asked Mr. Grey the purpose of the 4 goats and 1 duck does not fall into this statute. Mr. Samsel asked what are these animals going to support the food supply, the economy, the environment or aesthetic features. Attorney Bisson said that a choice did not have to be made. Mr. Tierney said that farms are allowed in the Rural District under 602.1.4 but in the Residential A District under Section 603.1.2 farms are not listed. Mr. Tierney said that on the displayed map behind the applicant everything in white is the Rural District which totals approximately 2/3 of the Town of Windham. At the last hearing the ZBA addressed an improper section number cited to the owner in a letter. The motion made at the February 27, 2007 meeting and the Notice of Decision state that the appeal was granted regarding Section 602.1.8 whereas the incorrect Section of the Zoning Ordinance was cited. Mr. Gray said that they did not appeal the nature of the error they appealed the keeping of the animals. Mr. Samsel said that at the February 27, 2007 meeting the ZBA determined it was an incorrect ordinance. Mr. Turner made the correction with the March 15, 2007 letter.



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Mr. Al Turner, Director of Planning & Development and Code Enforcement Officer for the Town of Windham disagreed with the statement made by the Applicant that the ZBA has no right to hear this case. Mr. Gray mentions four times in his application one Section number 602.1.8; he was appealing Section 602.1.8. The reason Mr. Turner did not appeal the February 27, 2007 decision because he agreed with the ZBA's decision that the wrong Section number was cited. Mr. Turner explained that he wrote the March 15, 2007 letter as a result of the ZBA's decision and that at the February 27, 2007 meeting he was instructed to cite the correct Section number. Mr. Turner said that the keeping of pets is not an agricultural use. The raising and sale of livestock, the breeding boarding, raising training and selling of equines, the raising and breeding or sale of poultry or game birds etc are agricultural uses. Attorney Campbell wrote a letter to the ZBA Chairman on May 8, 2007 stating that *...it would appear that the prior decision does not preclude the Board from reaching the merits of the current appeal...* and the letter also states *...I would remind the Board of the restriction on farm animals which was upheld in the Town of Windham vs. Howard Alfond case... The State Supreme Court upheld the ruling that the ordinance allows grazing and pasturing animals in the Rural Zone, but not in the Residence A area...* The Chairman marked the five pages of a copy of the Town of Windham vs. Howard and Joanne Alfond as Exhibit A. Mr. Turner stated that the allowed uses are clear in Section 603.1 for the Residential A District.

Mrs. Fallon read into the record a letter of opposition from Mr. & Mrs. Streechon of 7 Princeton Street and Mr. James Walsh of 15 Princeton Street spoke in opposition.

Attorney Bisson spoke stating that there has been no material change and explained that he was protecting Ms. Goyette's rights.

Mr. James Walsh of 15 Princeton Street spoke again in opposition of the request.

Mrs. Fallon asked if the Zoning Board has the right to waive fines. Mr. Turner replied that only the Board of Selectmen, the Town Attorney and Mr. Turner have the right to waive fines.

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

Deliberative Session, Case #34-2007

Mrs. Fallon motioned and Mr. Tierney seconded the motion to deny Case #34-2007 as no error was found in the interpretation of Section 603.1 and in keeping with the letter dated March 15, 2007 and keeping with the Town of Windham vs. Howard Alfond decision. Motion passed 5-0; request denied.

Lot #21-V-4, Case #38-2007

Applicant – Mike & Joleen Millette



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Owner – Mike & Joleen Millette

Location – 4 Ash Street

Zone – Residential A

A variance is requested from Section(s) 406.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the construction of a second-floor addition with a side setback of 22-feet where 30-feet is required.

Mrs. Fallon read the case into the record. Mr. Millette displayed a plot plan, submitted photos that were marked as Exhibits and presented his case. Mr. Scott LaPointe of KAT Construction explained the addition and that the owner will stay within the footprint of the main part of the house. Mr. Millette explained that the deck shown on the plan is existing and read the supporting facts into the record. Mr. James Bull of Blossom Road spoke in support of this request. Mrs. Fallon motioned and Mrs. Webster seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #38-2007

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant an area variance for Case #39-2007 to allow a second floor addition with side setbacks of 22-feet on each side of the structure where 30-feet is required and to include an 8' X 6' balcony deck per the plan submitted. Motion passed 5-0.

Approval of May 22, 2007 Minutes

Mrs. Fallon motioned and Mr. Tierney seconded the motion to approve the May 22, 2007 minutes as submitted. Motion passed 4-0-1. Mrs. Webster abstained; she said she did not attend the May 22, 2007 meeting. Mr. Tierney motioned and Mr. Alosso seconded the motion to reconsider the vote. Motion passed 5-0. Mr. Alosso motioned and Mr. Tierney seconded the motion to accept the May 22, 2007 minutes as submitted. Motion passed 5-0. Mrs. Webster did attend the May 22, 2007 meeting.

Other Business

The Board reviewed the fee changes made to the By-laws.

Mr. Alosso motioned and Mr. Tierney seconded the motion to cancel the July 10, 2007 meeting. Motion passed 5-0.

Mr. Tierney and Mr. Alosso advised the Board that they will be on vacation and will not attend the August 14, 2007 meeting.

The Board will meet with Attorney Campbell at 7:00 PM on June 26, 2007.

Mail



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- Announcement from NH LGC regarding the release of the 2007 Edition of *Knowing the Territory*.
- May 30, 2007 letter from Attorney Michael Donovan regarding the intent of William Schroeder and Al Letizio, Jr. to file a rehearing for the erroneous and unreasonable decision of the Zoning Board to grant an equitable waiver for the garage at 2 Woodvue Road.
- Announcement from RPC regarding the 2007 Planning Board Training Series scheduled for June 25, 2007 at 7:00 PM.
- Announcement from NH LGC regarding the 66th Annual Conference & Exhibition scheduled for November 7 & 8, 2007.
- Summer 2007 news from the Greater Nashua Habitat for Humanity.

At 9:57 PM Mrs. Fallon motioned and Mrs. Webster seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for June 26, 2007 at 7:30 PM in the Planning & Development office.

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