

BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes October 10, 2006

Robert Gustafson – Chairman
Mark Samsel – Vice-Chairman
Tony Pellegrini – Secretary (late)
Dianna Fallon – Member
Gail Webster – Member
Jim Tierney – Alternate
Tom Murray – Alternate
Al Souma – Alternate

Seat Alternates

The Chairman appointed Mr. Murray to replace Mr. Pellegrini.

Mr. Zohdi of Herbert Associates explained that although Mr. Pellegrini sat on the board for the original hearing of case #33-2006, he did not have a problem having Mr. Murray hear the request for a rehearing of Case #33-2006 in place of Mr. Pellegrini.

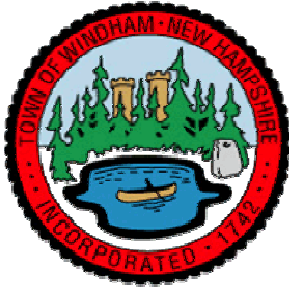
Mr. Samsel motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Lot #17-L-60, Case #33-2006-Request for Rehearing, (Originally heard on 6/27/06 and Continued from August 22, 2006 and September 12, 2006)

Applicant – Herbert Associates
Owner – William & Kathleen Deluca
Location – 19 Farmer Road
Zone – Residential A

A variance is requested from Sections 603.1.1 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a duplex to replace an old existing house on a non-town approved road 10.81–feet from the left rear setback and 11.97–feet from the right rear setback where 30-feet is required.

Mr. Samsel stated that at the last meeting the Board's concern regarding this case was focused on area. The topic of use was discussed at length at the original hearing of this case. Mrs. Fallon said that the Master Plan does offer some guidelines for setbacks and density is an issue for this area per the Master Plan. In the applicant's request, it states that *although the property is zoned for one single-family detached dwelling per lot, the ZBA has granted several variances to allow other owners of lots surrounding Cobbetts Pond to build multiple dwellings on single family lots.* The applicant submitted tax cards for the following lots 17-I-201, 17-J-85, 17-J-70 and 21-H-1.



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Mr. Gustafson explained that Lot 17-I-201, Lakeview Farm, 152 Lowell Road in the Rural zone no variances were granted. Lot #17-J-85, 7 Heron Cove in the Residential A zone, no variances were granted. Lot #17-J-70, 13 Heritage Hill Road in the Business Commercial B zone, a variance was granted on 9/9/03 to allow residential condominiums. Lot #21-H-1, 47 Cobbetts Pond Road in the Residential A zone, a variance was granted on 8/2/93 to allow a one-stall garage, 12' X 12' bedroom and a bathroom. Mr. Gustafson said he did not see an example of same zoning in that area for variances for multi-family dwellings. After reviewing all the submitted information Mr. Gustafson saw nothing that compeled him to rehear this request. Mr. Samsel motioned and Mr. Murray seconded the motion to deny the Request for a Rehearing of Case #33-2006; the requirements for a rehearing were not met. Motion passed unanimously 5-0. Mr. Zohdi asked that each board member give their reason for granting the motion. Mr. Gustafson said that he did not see that there was a finding of technical error or new information that would cause us to rehear this case. Mrs. Fallon said there was no new evidence presented. Mr. Samsel said the way the ordinance reads it should be upheld and there is no hardship. Mrs. Webster said the ordinance states one single family detached dwelling per lot; can't get anymore black and white than that. Mr. Murray said he did not see new information or any technical error made by the board.

The Chairman removed Mr. Murray and appointed Mr. Pellegrini to the board for the balance of this meeting..

Lot # 14-A-1100, Case #47-2006 (Continued from September 12, 2006)

Applicant – New Cingular Wireless PCS, LLC

Owner – Waterhouse Realty Trust, Kevin Waterhouse, Trustee

Location – 18 Mammoth Road

Zone – Neighborhood Business

A variance is requested from Section(s) 701.1.1 of the Zoning Ordinance to permit the construction, operation and maintenance of a wireless telecommunications facility.

Mr. Pellegrini read into the record a letter from Douglas Wilkins of Anderson & Kreiger requesting that Case #47-2006 be withdrawn without prejudice. Mrs. Fallon motioned and Mrs. Webster seconded the motion to deny Case #47-2006 without prejudice. Motion passed unanimously 5-0.

Lot #24-F-5, Case #51-2006

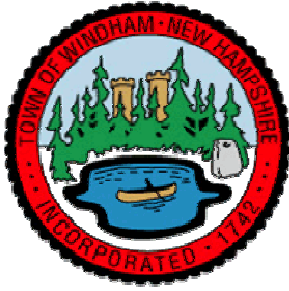
Applicant – Jay Koutavas

Owner – Jay Koutavas

Location – 15 Field Road

Zone – Rural

An Appeal of an Administrative Decision is requested from Section(s) 601.3 of the Zoning Ordinance to permit the use of a road in the WWPD.

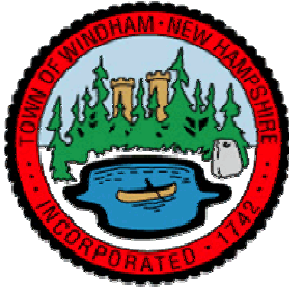


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The Chairman explained that there is correspondence from the Attorney for Great Mountain View Estates and from Attorney Campbell, counsel for the Town of Windham. Mr. Gustafson explained that he would like to deal with whether the board should hear this case based on timeliness. Mr. Turner, Director of Planning & Development, said that no abutters have been notified and no abutters list was submitted. The Chairman asked if Attorney Little had a letter of authorization from Mr. Koutavas. Attorney Pamela Little of Baldwin, Callen and Ransom of 101 North State Street in Concord said she did not. Attorney Little said that Mr. Koutavas filed his appeal on August 31, 2006 a timely filing of the appeal. There was some discussion at that time as to whether an abutters list was required. Mr. Koutavas was told that based on the fact that he was appealing the Planning Board's interpretation of the Zoning Ordinance that he would not need an abutters list because he would have to notify the entire town. Mr. Koutavas heard nothing more until he received a letter from the Planning Department dated September 28, 2006 asking him to provide an abutters list. After receiving that letter Mr. Koutavas contacted Ms. Little's law firm and asked them to follow up on the September 28th letter. Ms. Little contacted Attorney Campbell who suggested that they submit the abutters list and then see if the Zoning Board would take jurisdiction over this case. Mr. Gustafson said that in Section 904 .1 of the Windham Zoning Ordinance it states that *appeals of any decision to issue a permit shall be made within five days of the issuance of same, provided the application for such a permit has been posted at least five days in advance of issuance as provided in local rules of procedure.* In Section 904.2 it states *appeals of decision of the Building Inspector or Code Enforcement Administrator of official findings or determinations of violations of building code or local Land Use Regulations shall be filed for appeal within thirty days of written notice sent by such officials' finding or declaring a notice of violation.* Attorney Little said this particular case has a long history. The Planning Board made a decision which was appealed to Superior Court. The court reviewed the Planning Board process and remanded the entire case back to the Planning Board to look at the environmental impacts, the road issues and wanted more clarification. Mr. Koutavas is appealing not only the recent Planning Board decision but the way the Planning Board interpreted the Zoning Ordinance. Mr. Samsel asked the applicant if he felt there was a zoning issue back in February, why didn't he make the appeal back then to the Zoning Board. Attorney Little said that she was not working on this case back then; Mr. Koutavas went forward pro se. The Court gave the Planning Board a chance to do it over again and they didn't. Mr. Samsel said that the court was specific in sending it back stating that you must go to the Zoning Board for that particular issue. Mr. Turner said that he did not have anything new to add regarding timeliness. Mr. Gustafson reviewed the following timeline with Mr. Turner:

- The original approval of the project was on February 15, 2006.
- Decision of the Pro Se Appeal – March 17, 2006.
- Appeal amended – April 2006.
- Planning Board conducts another hearing on August 2, 2006.



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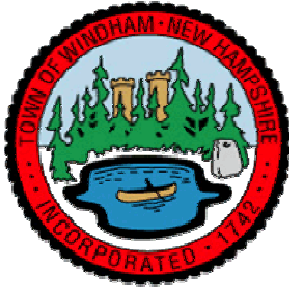
- August 31, 2006 an application for An Appeal of An Administrative Decision is submitted.

Mr. Turner stated that the Planning Board granted the Special Permit on August 2, 2006. This was a separate vote from the site plan approval. You do not need site plan or subdivision approval to get a special permit. Mr. Gustafson explained that the Zoning Board has purview over zoning issues not site plan or subdivision so he was trying to understand where the clock starts ticking and how to interpret it. Attorney Little said that Mr. Turner's interpretation of the untimeliness is the special permit; the applicants interpretation is the Planning Board's interpretation of the Zoning Ordinance whether they interpreted the concerned section correctly. Mr. Gustafson read from Attorney Campbell's letter dated September 15, 2006 which states *Pursuant to RSA 676:5 (I) whether or not Koutavas will be able to raise these issues with the ZBA depends on the time limit for filing such an appeal as determined by local ZBA rules.* Mr. McGuire said that a letter of authorization was not received for this case at this meeting. The Chairman said that this firm previously represented Mr. Koutavas. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mrs. Webster seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, Case #51-2006

Mr. Samsel motioned to deny the hearing of this appeal based on the untimeliness of the request given the board's timeline began on February 15, 2006. Motion passed 4-1; Mrs. Fallon voted against the motion.

Mr. Turner requested a point of order and said there were two other issues brought before the board in regard to Case 51-2006 and Mr. Turner would like a ruling on both the letter of authorization and the list of abutters. The Chairman said that the record is clear regarding those issues. The members discussed the issue of an authorization letter and decided that although there was no letter in the file they would proceed because this firm previously represented Mr. Koutavas. Attorney Thea S. Valvanis, representing Great Mountain View Estates, said if you are relying on a letter in the file from a previous case regarding representation the firm of Baldwin, Callen & Ransom withdrew from the previous case. On June 7, 2006 Judge Morrill granted a motion to withdraw as Counsel. The Chairman asked if the members wanted to proceed and discuss the issue of the abutters list or not because of the motion to withdraw as Counsel. Mr. Case said that if a person wants to appeal a decision of the Planning Board, then he has to apply and at that time the Code Enforcement Officer should say you can't do that it is untimely. Then the applicant would appeal the decision of the timeliness and abutters would not be notified. Attorney Little said it is her understanding that when Mr. Koutavas submitted his appeal on August 31, 2006 he had a conversation with whoever accepted the paperwork from him and he was told that he did not need an abutters list. Mr. Koutavas received a letter dated September 28, 2006 advising him that he did need to provide an abutters list as soon as possible because his application mentions a specific parcel. The abutters list was provided on October 10, 2006. Mr.



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Turner said that his understanding of what happened when Mr. Koutavas submitted his application is that he was told he needed an abutters list because he was appealing the Planning Board's decision on Great Mountain View Estates' property. Mr. Koutavas argued with the staff that he did not need to provide an abutters list and he would have to notify the entire town. Mr. Koutavas was then told to have his attorney review the issue of whether he needed an abutters list. In the file there is a letter from Mr. Koutavas' attorney stating that he examined the application and finds it in complete order. The Board could not find this letter in the file.

Mr. Pellegrini motioned and Mrs. Fallon seconded the motion that because there was no abutters list until October 10, 2006, the same day as the meeting, per regulations the Board would not hear the case. Motioned passed unanimously 5-0.

Lot # 14-A-762, Case #52-2006

Applicant – Geoffrey & Janis Pascoe

Owner – Geoffrey & Janis Pascoe

Location – 3 Twin Street

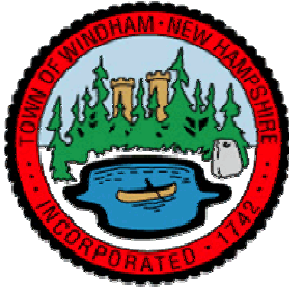
Zone – Rural

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the placement of a shed 8-feet from the side lot line where 30-feet is required.

Mr. Pellegrini read the case into the record. Mr. Jeffrey Pascoe presented his case and submitted a map that was marked as Exhibit A with 15 photos attached. The shed will be located at a substantial distance from any existing structure. The specific dimensions of the lot are irregular and the location of existing structures grade, trees and easements make alternate placement difficult. The rear of the lot is alternately wooded and occupied by an easement for a natural gas pipeline. Placement at the rear of the house without impinging on the existing leach field would require substantial removal of mature trees and site work to level the ground. Placing the shed parallel to the house and further forward on the lot would locate the shed closer to the lot line than the proposed 8-feet and would be in the direct path of an existing drainage pipe from the garage. Placing the shed toward the rear of the house on the other side of the leach field is infeasible because of the existence of an underground propane tank. Mr. Pascoe read the supporting facts into the record. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Mr. Samsel seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

Deliberative Session, 52-2006

Mr. Samsel motioned and Mrs. Webster seconded the motion to grant the variance as requested from Section 702 Appendix A-1. Passed unanimously 5-0.



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Deliberative Session – Requests for Rehearings

Lot #3-B-262, Case #48-2006 (Request for Rehearing originally heard on 9/12/06)

Applicant – Board of Selectmen

Owner – Gerard Beique

Location – 20 Flat Rock Road

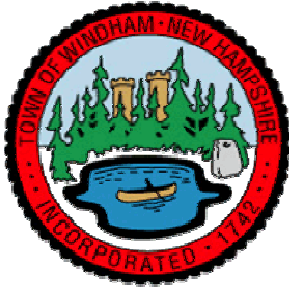
Zone – Rural

A variance is requested from Section(s) 200, 401, 501, 601.3, 601.4.6, 601.5, 702 Appendix A-1 & Note 1 of the Zoning Ordinance to permit the construction of a single family dwelling with a well & septic on an existing lot of record.

Mr. Pellegrini read the posting into the record. The Windham Selectmen respectively appeal the Zoning Board of Adjustment's decision to approve variances to allow a four bedroom house and a septic system in the Wetlands and Watershed Protection District. The Selectmen hereby request a rehearing to consider new information and correct procedure errors. The following is information submitted for the Boards review. This information will be present in detail if the rehearing is granted.

1. The information submitted to the ZBA by the applicant was not accurate and misleading.

- A. The abutter at lot 3-B-261, Michael and Diane Bradish, 16 Flat Rock Rd, were not notified of the meeting because the applicant did not include them on the submitted abutter list.
- B. The lot sizing chart in the file does not agree with the full scale plans dated 12/13/05 as to lot acreage but they do agree with the reduced no scale plans dated 9/12/06 as to lot acreage. The scaled full size plans indicate a lot size of 53,902 square feet while the lot sizing chart and the no scale small plan indicates a lot size of 66,013 square feet. It is not clear what plans the BOA used in its decision. Neither plan is stamped or signed by a registered surveyor, wetland scientist or soils scientist. This should be corrected at a rehearing.
- C. The more current, 9/12/06, not to scale plan, is not accurate as to the easterly WWPD district line. There appears to be a drafting error on this plan because the distance to the WWPD is not 75 feet. It is not clear in the record what plan the ZBA used to approve the disturbance of the Wetland Protection District. This should be corrected at a rehearing.
- D. The septic plan indicates that the proposed house is a four bedroom but the house plans indicate that the house is a three bedroom. Which house did the Board approve? This should be corrected at a rehearing.
- E. The Septic plans the ZBA used to make its decision clearly states in note 11. "This Plan does not constitute a Land Survey..." Where are the stamped survey



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- F. plans the ZBA relied upon and referred to in the minutes to make its decision to allow disturbance of the Wetland Protection Area? There are no stamped plans in the official record. This should be corrected at a rehearing.
- G. The Wetland Protection Area disturbance areas are not shown on any plans reviewed by the ZBA. The construction of the proposed large house in the Wetland Protection Area will require extensive tree and vegetation cutting, stump removal, top soil removal, excavation and equipment disturbance. There are no plans in the official record which indicate the extent or amount of this disturbance. This information is critical for the ZBA to evaluate the extent of the house and septic system construction impacts to the Wetlands and Protection Area. A detailed plan indicating all disturbed areas should be presented to the ZBA at a rehearing.

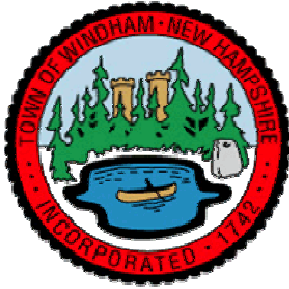
The Members discussed in detail paragraphs A thru F in Item #1. Mrs. Fallon had an issue with paragraph C.

2. The house as shown on the plans can be built on the lot without violating the Wetlands and Watershed District. A smaller house would have less impact on the Wetland Protection area.

- A. The house can be relocated further back on the lot without violating the Wetland Protection area or substantially moving the septic system. There was no documented information submitted such as test pits or soils information to indicate that this area is unbuildable.
- B. The test pit data submitted to the ZBA indicates that only one test pit was dug behind the proposed septic system location and the Zoning Board of Adjustment should have asked for detailed soils information from test pits or other documented data for the proposed house location and other non variance areas before granting variances in a Wetland and Watershed Protection area.
- C. The proposed house has four bedrooms. A smaller two bedroom or three bedroom houses would have less impact on the Wetland Protection area. A hardship could be relieved on this property with a smaller more carefully placed house. There is nothing in the record to indicate that this option was even explored or discussed.

The Members discussed in detail paragraphs A thru C in Item #2. No one had any issues with Item #2.

3. The septic system leaching field shown on the plans can be shifted slightly which results in no disturbance in the Wetland Protection area.



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- A. If the septic leaching field were turned at an angle to the Wetland Protected Area, the regrading and disturbance of the Wetland Protection area could be eliminated with a minor shift.
- B. The current septic leaching field location or a new slightly shifted location would not prohibit the house to be relocated farther back on the lot away from the wetlands on the site.

The Members discussed in detail paragraphs A and B in Item #3. No one had any issues with Item #3.

4. There is no record that the ZBA reviewed the purposes and intent of the Wetland and Watershed Protection District before granting the variances to allow a four bedroom house and septic leaching field in the Wetland Protection area. The rehearing testimony will include this information for the Board's review.

- A. Section 601.1.1 of the WWPD Ordinance states that the purpose of the wetland protection district is to, "Prevent the development of structures, or other land uses within the WWPD that would contribute to surface and ground water contamination or reduce surface and ground water supplies;" No testimony was given on how the development of the WWPD would impact this purpose.
- B. Section 601.1.2 Preserve Wetlands areas which provide flood protection, nutrient absorption and augmentation of stream flow during dry periods; No testimony was given or questions from the Board were asked on how this spirit of the ordinance would be met as stated in the ZBA's application, "Deviation from the strict requirements of the ordinance is consistent with the spirit of the Ordinance because"

The Members discussed in detail paragraphs A and B in Item #4. Mrs. Fallon had issues with paragraphs A & B.

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to deny the Request for a Rehearing of Case #48-2006, Lot #3-B-262 based on no new evidence or technical error. Motion passed 4-1; Mrs. Fallon voted against the motion.

Lot # 3-B-350, Case #49-2006 (Request for Rehearing originally heard on 9/12/06)

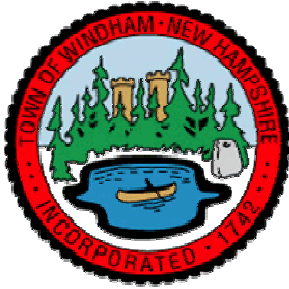
Applicant – Board of Selectmen

Owner – Tynco Realty

Location – 24 Flat Rock Road

Zone – Rural

A variance is requested from Section(s) 200, 401, 501, 601.3, 601.4.6, 601.5, 702 Appendix A-1 & Note 1 of the Zoning Ordinance to permit the construction of a single family dwelling with a well & septic on an existing lot of record.



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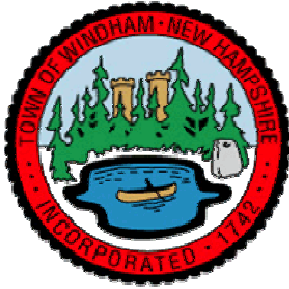
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The Windham Selectmen respectively appeals the Zoning Board of Adjustments decision to approve variances to allow a four bedroom house and a septic system in the Wetlands and Watershed Protection District. The Selectmen hereby request a rehearing to consider new

information and correct procedure errors. The following information is submitted for the Boards review. This information will be present in detail if the rehearing is granted.

1. The information submitted to the ZBA by the applicant was not accurate and misleading.

- a. The lot sizing chart in the file does not agree with the full scale plan dated 1/11/06 as to lot acreage nor do they agree with the reduced no scale plan dated 9/12/06 as to lot acreage. The plans indicate acreage of 27,885 square feet and the Lot Sizing Chart indicates a lot size of 43,605 square feet. It is not clear what information the BOA used in its decision. Neither plan is stamped or signed by a registered surveyor, wetland scientist or soils scientist for accuracy. A rehearing should be granted to correct these discrepancies.
- b. The more current, 9/12/06, not to scale plan, are in conflict with a third plan that indicates the on site wetland is larger than what was shown to the ZBA. The older surveyor stamped and signed plan dated 5/16/06 indicates a larger wetland than the unstamped unsigned plans. The stamped signed plan's larger wetland would make the proposed disturbances closer to the wetland. It is not clear in the record what plans the ZBA used to approve the disturbance of the Wetland Protection District. A rehearing should be granted to correct these discrepancies.
- c. The septic plan indicates that the proposed house is a three bedroom but the house plans indicate that the house is a four bedroom. Which house did the Board approve? A rehearing should be granted to correct these discrepancies.
- d. The Septic plans the ZBA used to make its decision clearly state in note 11. "This Plan does not constitute a Land Survey..." Where are the stamped survey plans the ZBA relied upon and referred to in the minutes to make its decision to allow disturbance of the Wetland protection area? There are no stamped plans in the official record. A rehearing should be granted to correct these discrepancies.
- e. The Wetland Protection Area disturbance areas are not shown on any plans reviewed by the ZBA. The construction of the proposed large house in the Wetland Protection Area will require extensive tree and vegetation cutting, stump removal, top soil removal, excavation and equipment disturbance. There are no plans in the official record which indicate the extent or amount of this disturbance. This information is critical for the ZBA to evaluate the extent of the house and septic system construction impacts to the Wetlands and Protection Area. A rehearing should be granted to allow the applicant to submit a detailed plan indicating all proposed disturbance areas for the ZBA evaluation.



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The Members discussed in detail paragraphs A thru E in Item #1. Mrs. Fallon had issues with Paragraphs D and E.

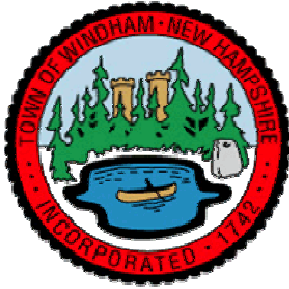
2. **The house as shown on the plans has an addition on the back of it that could be eliminated to minimize the impacts to the Wetlands and Watershed District. A smaller house would have less impact on the Wetland Protected area.**
 - a. The wetland behind the house is closer to the house than the applicant indicated on the septic plans. The addition off the back of the house can be reduced or eliminated to minimize the impacts to the Wetland Protection area. A rehearing should be granted to correct the wetland boundaries as per the rules established by the NHDES with a certified wetland scientist.
 - b. The proposed house plans indicate four bedrooms. The septic plans indicate a three bedroom house. A smaller two bedroom or three bedroom houses would have less impact on the Wetland Protection area. There is nothing in the record to indicate that this option was even explored or discussed. A rehearing should be granted to correct these discrepancies.

The Members discussed in detail paragraphs A and B in Item #2 and no one had any issues.

3. **The septic system leaching field shown on the plans can be moved toward the front property line another 10 feet to minimize the disturbance in the Wetland Protection area.**
 - a. If the septic leaching field were moved forward and turned parallel to the Wetland Protected Area, the regrading and disturbance of the Wetland Protection area could be minimized.

The Members discussed in detail Paragraph A in Item #3 and no one had any issues.

4. **There is no record that the ZBA reviewed the purpose and intent of the Wetland and Watershed Protection District before granting the variances to allow a four bedroom house and septic leaching field in the Wetland Protection area. The rehearing testimony will include this information for the Board's review.**
 - a. Section 601.1.1 of the WWPD Ordinance states that the purpose of the wetland protection district is to, " Prevent the development of structures, or other land uses within the WWPD that would contribute to surface and ground water contamination or reduce surface and ground water supplies;" No testimony was given on how the development of the WWPD would impact this purpose.
 - b. Section 601.1.2 Preserve Wetlands areas which provide flood protection, nutrient absorption and augmentation of stream flow during dry periods; No testimony was given or questions asked from the Board on how the spirit of the ordinance would be met as stated in the ZBA's application, "Deviation from the strict



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requirements of the ordinance is consistent with the spirit of the Ordinance because...”

The Members discussed in detail Paragraphs A and B in Item #4 and Mrs. Fallon had issues with both Paragraphs A and B.

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to deny the Request for a Rehearing of Case #49-2006, Lot #3-B-350 based on no new information presented to the Board and no technical error in the Board’s decision. Motion passed 4-1; Mrs. Fallon voted against the motion.

Lot # 3-B-352, Case #50-2006 (Request for Rehearing originally heard on 9/12/06)

Applicant – Board of Selectmen

Owner – Tynco Realty

Location – 22 Flat Rock Road

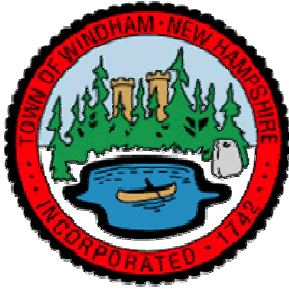
Zone – Rural

A variance is requested from Section(s) 200, 401, 501, 601.3, 601.4.6, 601.5, 702 Appendix A-1 & Note 1 of the Zoning Ordinance to permit the construction of a single family dwelling with a well & septic on an existing lot of record.

The Windham Selectmen respectively appeals the Zoning Board of Adjustments decision to approve variances to allow a two bedroom house with seven rooms and a septic system in the Wetlands and Watershed Protection District. The Selectmen hereby request a rehearing to consider new information and correct procedure errors. The following information is submitted for the Boards review. This information will be present in detail if the rehearing is granted.

1. The information submitted to the ZBA by the applicant was not accurate and misleading.

- A. The lot sizing chart (ZBA exhibit 50-6) in the file does not agree with the full scale plans dated 2/20/06 (ZBA exhibit 50-6) as to lot acreage nor do they agree with the reduced no scale plans dated 9/12/06 as to lot acreage. The plans indicate acreage of 27,830 square feet and the Lot Sizing Chart indicates a lot size of 66,013 square feet. It is not clear what information the BOA used in its decision. Neither plan is stamped or signed by a registered surveyor, wetland scientist or soils scientist for accuracy. A rehearing should be granted to correct these discrepancies.
- B. The more current, 9/12/06, not to scale plans, are in conflict with a third plan that indicates the on site wetland is smaller than what was shown to the ZBA. The newer plan dated 9/12/06 indicates a larger wetland than the stamped and signed plans. The unstamped unsigned plans smaller wetland would make the proposed disturbances farther away from the wetland. The conflicting plan and lot data requires a new hearing to sort out the accurate information for a clear hearing on



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the facts of this case. It is not clear in the record what plans the ZBA used to approve the disturbance of the Wetland Protection District. A rehearing should be granted to correct these discrepancies.

- C. The septic plan indicates that the proposed house has two bedrooms but the house plans indicate that the house is a four bedroom. The house plans have hand written, unsigned cross outs. Two of the bedrooms on the proposed house have been crossed out, one handwritten as an office the other as a den. Which house did the Board approve? This needs a rehearing to sort out the facts from the statements made at the hearing.
- D. The Septic plans the ZBA used to make its decision clearly state in note 11. "This Plan does not constitute a Land Survey..." Where are the stamped survey plans the ZBA relied upon and referred to in the minutes to make its decision to allow disturbance of the Wetland Protection area? There are no stamped plans in the official record. A rehearing should be granted to correct these discrepancies.
- E. The Wetland Protection Area disturbance areas are not shown on any plans reviewed by the ZBA. The construction of the proposed large house in the Wetland Protection Area will require extensive tree and vegetation cutting, stump removal, top soil removal, excavation and equipment disturbance. There are no plans in the official record which indicate the extent or amount of this disturbance. This information is critical for the ZBA to evaluate the extent of the house and septic system construction impacts to the Wetlands and Protection Area. A rehearing should be granted to allow the applicant to submit detailed plans of all the disturbed areas for the ZBA evaluation.

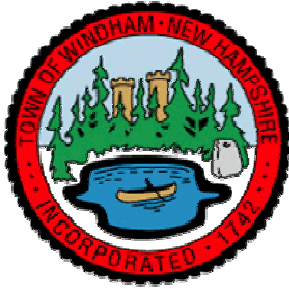
The Members discussed in detail Paragraphs A thru E in Item #1 and Mrs. Fallon had issues with Paragraphs D and E.

2. The house as shown on the plans indicates two bedrooms but the house plans indicate something different. Why does a two bedroom house have to have five additional rooms to relieve a hardship for a variance? A smaller house would have less impact on the Wetland Protection area.

- a. The proposed house plans indicate four bedrooms. The Septic plans indicate a two bedroom house. A smaller two bedroom house would have less impact on the Wetland Protection area. There is nothing in the record to indicate that this option was even explored or discussed. A rehearing should be granted to correct these discrepancies.

The Members discussed in detail Paragraph A in Item #2 and no one had any issues.

3. The septic system leaching field shown on the plans can be moved toward the front property line another 10 feet to minimize the disturbance in the Wetland Protection area.



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- a. If the septic leaching field were moved forward and turned parallel to the Septic Setback area as shown on the submitted plan, the regrading and disturbance of the Wetland Protection area could be minimized.

The Members discussed in detail Paragraph A in Item #3 and no one had any issues.

4. There is no record that the ZBA reviewed the purpose and intent of the Wetland and Watershed Protection District before granting the variances to allow a four bedroom house and septic leaching field in the Wetland Protection area. The rehearing testimony will include this information for the Board's review.

- a. Section 601.1.1 of the WWPD Ordinance states that the purpose of the wetland protection district is to, " Prevent the development of structures, or other land uses within the WWPD that would contribute to surface and ground water contamination or reduce surface and ground water supplies;" No testimony was given on how the development of the WWPD would impact this purpose.
- b. Section 601.1.2 Preserve Wetlands areas which provide flood protection, nutrient absorption and augmentation of stream flow during dry periods; No testimony was given or questions asked from the Board on how the spirit of the ordinance would be met as stated in the ZBA's application, "Deviation from the strict requirements of the ordinance is consistent with the spirit of the Ordinance because..."

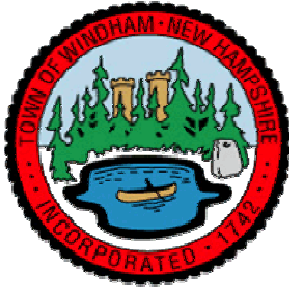
The Members discussed in detail Paragraphs A and B in Item #4 and Mrs. Fallon had issues with Paragraphs A and B.

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to deny the Request for a Rehearing of Case #50-2006, Lot #3-B-352. The Board believes no new evidence was presented and there was no technical error in the Board's decision. Motion passed 4-1; Mrs. Fallon voted against the motion.

Approval of August 22, 2006 and September 12, 2006 Minutes

Mr. Samsel motioned and Mrs. Fallon seconded the motion to accept the August 23, 2006 minutes as written. Passed unanimously 5-0.

Mrs. Webster motioned and Mr. Samsel seconded the motion to accept the September 12, 2006 minutes as written. Passed unanimously 5-0.



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Other Business

None

Mail

- September 2006 Issue of *Town and City*.
- September 21, 2006 letter from Attorney Campbell regarding Recent Court Decision involving the Town of Chester.
- September 26, 2006 letter from Dr. Finn of the Conservation Commission regarding Lot 13-K-37A, Doiron Road.
- September 15, 2006 confidential legal communication from Attorney Campbell regarding Koutavas.

At 11:59 PM Mr. Pellegrini motioned and Mr. Samsel seconded the motion to adjourn. Passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for October 24, 2006 at 7:30 PM in the Planning & Development Office.

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