



# BOARD OF ADJUSTMENT

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

## **Zoning Board of Adjustment Minutes** **October 24, 2006**

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

### **Seat Alternates**

The Chairman appointed Mr. Tierney to replace Mrs. Webster for this meeting.

### **Lot # 13-A-196A, Case #53-2006**

Applicant – Windham Cooperative Kindergarten  
Owner – State of New Hampshire  
Location – 12 Industrial Drive (formerly 5 Industrial Drive)  
Zone – Limited Industrial & Residential A

A variance is requested from Section(s) 603.1, 606.1, & 702.5 of the Zoning Ordinance to permit the construction of a school building for nursery and kindergarten students on a parcel of land situated within the Limited Industrial District and Residential A District where schools are not an allowed use and to permit the construction without the 50-foot wide vegetated buffer required when a non-residential use of land abuts a residential district.

Mr. Pellegrini read the case into the record. Attorney Peter Bronstein presented the case and submitted a site plan marked as Exhibit A-1, a land area and building chart marked as Exhibit A-2 and a summary plan marked as Exhibit A-3. The applicant was advised back in 1999 that the State of New Hampshire would be taking their current site for the Route 93 expansion. Lot 13-A-196A was created by the State of NH. The proposed 60' X 60' structure would hold two daily sessions for approximately 102 children. There would be a fenced play area on the 2.212 acre lot. Attorney Bronstein read the supporting facts into the record. Attorney Bronstein advised the Board that at the Planning Board meeting, Mr. Al Turner, Director of Planning & Development said that the Limited Industrial Zone was never updated to allow schools. as a use. Other commercial zones in town do allow private schools. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Passed unanimously 5-0.



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### **Deliberative Session, Case #53-2006**

Mr. Samsel motioned and Mrs. Fallon seconded the motion to grant Case #53-2006 a variance as requested from Sections 603.1, 606.1 and 702 appendix A-1 and that is for a use variance. Motion passed unanimously 5-0.

### **Lot #13-A-196A, Case #54-2006**

Applicant – Windham Cooperative Kindergarten

Owner – State of New Hampshire

Location – 12 Industrial Drive (formerly 5 Industrial Drive)

Zone – Limited Industrial & Residential A

A variance is requested from Section 702 Appendix A-1 of the Zoning Ordinance to permit a building lot situated partially in the Limited Industrial District and partially in the Residential A District which presently has 150' +/- frontage on Industrial Drive but will have 580' +/- frontage when road construction is complete by the State of New Hampshire.

Mr. Samsel motioned and Mr. Tierney seconded the motion to waive the reading of the abutters. Passed unanimously 5-0. Mr. Pellegrini read the case into the record. Attorney Bronstein, representing the applicant, explained that technically they do not have the accepted amount of road frontage (have 150') on the existing road. The state has installed the new road sooner than expected, so the lot has 580' of existing road frontage but the road has not been accepted as a town approved road. Attorney Bronstein read the supporting facts into the record. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

### **Deliberative Session, Case #54-2006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant an area variance for Case #54-2006 from Section 702 Appendix A-1. Motion passed unanimously 5-0.

### **Lot # 21-K-26A, Case #55-2006**

Applicant – Herbert Associates

Owner – Richard & Karen Coakley

Location – 70 Turtle Rock Road

Zone – Residential A

A variance is requested from Section(s) 401, 406.2, 406.4, 702 Appendix A-1 of the Zoning ordinance to permit the razing of an existing dwelling on said lot and the construction of a new dwelling on said existing lot having 50-feet of frontage and a front setback of 43-feet where 50-feet is required, a side setback of 9.3-feet where 30-feet is required, a setback from Cobbetts Pond of 48-feet and lot coverage in excess of 20%.



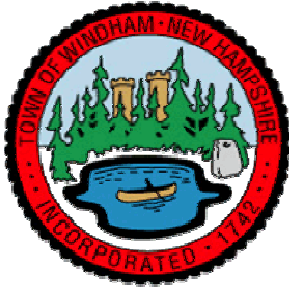
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Mr. Pellegrini read the case into the record. Attorney William Mason, representing the applicants, submitted 5 pages of plans marked as Exhibit A. The existing shed will be removed from the lot. Attorney Mason showed the location of the proposed well for the proposed two-bedroom home that will be centered on the lot. Attorney Mason said that his calculations show 1610 square feet of living space and 21-22% lot coverage. Mr. McGuire, Building Inspector for the Town of Windham, showed calculations of 2040 square feet of living space and 23-24% lot coverage. Mr. Tierney asked why relief wasn't requested from Section 405 of the ordinance, this is a replacement structure. Section 406.2 covers an expansion but Section 405 is for a replacement structure so the applicant would need to ask for relief from Section 405.2 an increase in volume. Mr. Murray said that this is a tear down and a knock down and relief should have been requested from Section 405; that is how the Department of Environmental Services looks at it and how the Town of Windham should look at it. It is clear that this is replacement of a pre-existing non-conforming structure. The small house will be knocked down; and a large house will be built so the applicant should be requesting relief from 405. Mr. McGuire explained his reasons for using Section 406.2, and said that Section 401 would have been sufficient. Attorney Mason said that nobody would be misled from the way the case was posted. The Board decided to proceed with the case as posted. The proposed house will be three levels. The garage will be on the street level and the pond side will show the three floors. Photos of abutting properties were submitted and the 7 pages were marked as Exhibit B. Attorney Mason read the supporting facts into the record. Mr. Richard Coakley, owner, and Mr. Walter Scanlon of 72 Turtle Rock Road spoke in favor of this request. Mr. Pellegrini read into the record a letter of opposition from the Conservation Commission. The Conservation Commission could not support this request. The proposed house is too large for the lot and exceeds the 20% lot coverage. The Conservation Commission's letter stated that the house should be scaled appropriately for the lot and the commission did not view this footprint reduction as a hardship. Mr. McGuire explained that he did not include the boat house in his lot coverage calculations. The boat house would add an additional 260 square feet causing the lot coverage to be 28%. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mrs. Fallon seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

### **Deliberative Session, Case #55-2006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant an area variance for Case #55-2006 as requested from Sections 401 and 702 appendix A-1. Mr. Samsel amended his motion and added that the applicant does not need the 48' relief from Cobbetts Pond. Mr. Pellegrini seconded the amended motion. Motion passed 3-2. Mrs. Fallon and Mr. Gustafson voted against the motion.



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### **Lot # 25-C-1A, Case #56-2006**

Applicant – MJP Building & Development

Owner – Tom & Kathleen O'Brien

Location – 30 Rock Pond Road

Zone – Residential A

A variance is requested from Section(s) 401, 406.2, 702 Appendix A-1, Note 12 of the Zoning ordinance to permit the construction of a 14' X 24' addition to an existing house 35-feet from the rear setback where 50-feet is required from the reference line and a side yard setback of 25-feet where 50-feet is required from the reference line.

Mr. Pellegrini read the case into the record. Mrs. Fallon advised the Chairman that although she is not an abutter she lives on Rock Pond Road and there is no relationship with the applicant. Mr. Michael Provencher of MJP Building & Development in Merrimack NH, representing the owner, presented the case and explained that he did receive a Shoreland Waiver #2006-01268 from the NH DES for the proposed 14' X 24' addition. The waiver allows construction of the project within the primary building setback. The waiver is subject to 14 conditions that are listed in the letter from NH DES. Mr. Provencher advised the Board that the existing screened porch will be removed. Mr. Provencher read the supporting facts into the record. The Chairman closed the public portion of this case. Mrs. Fallon motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

### **Deliberative Session, Case #56-2006**

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to grant Case #56-2006. Motion passed unanimously 5-0.

### **Lot # 24-B-2, Case #57-2006**

Applicant – George Ingram

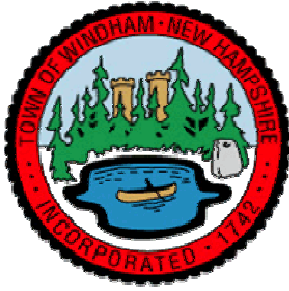
Owner – Carol Ingram

Location – 3 Rock Pond Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning ordinance to permit the placement of a shed 25-feet from the side setback where 30-feet is required and 30-feet from the front setback where 50-feet is required.

Mr. Pellegrini read the case into the record. Mrs. Fallon advised the Chairman that although she is not an abutter she lives on Rock Pond Road and there is no relationship with the applicant. Mr. George Ingram presented his case and submitted 6 photos and a plan that was marked as Exhibit A. The photos showed the area where Mr. Ingram would like to place the shed. The trees and shrubs that will surround the shed will prevent abutters from viewing it. Mr. Ingram read the supporting facts into the record. The Chairman closed the public portion of this case.



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

### **Deliberative Session, Case #57-2006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant an area variance for Case #57-2006. Motion passed unanimously 5-0.

### **Lot # 19-A-400, Case #58-2006**

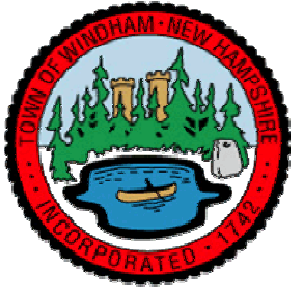
Applicant – Frederick Ford  
Owner – Ford Family Trust  
Location – 70 Mammoth Road  
Zone – Rural

A variance is requested from Section(s) 602.1 of the Zoning ordinance to operate a business at this location with one employee.

Mr. Pellegrini read the case into the record. Mr. Ford presented his case and explained that on his 10-acre parcel there is a residence and a six stall horse barn. Approximately 5 acres are open pasture land. In the spring at least two acres will be fenced for open grazing and equestrian field exercises. By granting the request the applicant will be able to afford to continue to maintain their property and make rural improvements. Providing horse care and riding instructions on a fee basis is a commercial activity in the broad sense of the word. The proposed activity will not increase the level of activity. Except for charging a fee all activity will remain substantially the same with only a modest increase in the potential number of people benefiting from the activity. There will be a day camp with 4-5 students. Mr. Ford submitted 6 photos marked as Exhibit A. Mr. Ford read the supporting facts into the record. Mrs. Dawn Enwright (daughter of the applicant) spoke in favor of this request. The Chairman closed the public portion of this case. Mr. Samsel motioned and Mr. Pellegrini seconded the motion to go into Deliberative Session. Passed unanimously 5-0.

### **Deliberative Session, Case #58-2006**

Mr. Samsel motioned and Mr. Tierney seconded the motion to grant a use variance for Case #58-2006 from Section 602.1 to allow Equine Grooming, Boarding and a Riding Academy business and to include one employee. Motion passed unanimously 5-0.



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### **Lot # 13-K-37A, Case #59-2006**

Applicant – Salem Radiology Real Estate & Equipment Co.

Owner – Salem Corporate Park Associates, Inc. c/o Robert Hannon

Location – 2-8 Doiron Road

Zone – Rural

A variance is requested from Section(s) 401, 601.4.2 of the Zoning Ordinance to permit the construction of a 4-bedroom single-family dwelling within the 100-foot WWPD buffer.

Mr. Pellegrini read the case into the record. The Chairman questioned the Building Inspector, Mr. McGuire regarding the using of Section 601.4.2 in the posting rather than 601.3. Mr. Karl Dubay presented the case temporarily until the arrival of Mark Gross. Of the 7.9 acres only 1-1/2 acres are dry land. Mr. Dubay submitted lot size calculations that were marked as Exhibit A. The septic system was reviewed by the Health Department and will be located outside the WWPD. Gove Environmental marked the wetlands and soils. The proposed 3400 square foot house has been reduced to 2368 square feet. The impact to the WWPD will be 9500 square feet. Mr. Mark Gross of MHF Design arrived and read the supporting facts into the record. The Board advised Mr. Gross of the posting asking relief from 601.4.2 the regulation Section and whether relief is needed from 601.3, uses permitted in that overlay district. Mr. Gross said that unfortunately he based his variance application on the Building Department's permit denial. After discussing Sections 601.4.2 and 601.3 it was decided that a new permit denial should be issued and the case would be withdrawn. Mr. Samsel motioned and Mrs. Fallon seconded the motion to accept the withdrawal and properly post the case at the Town's expense. Motion passed unanimously 5-0.

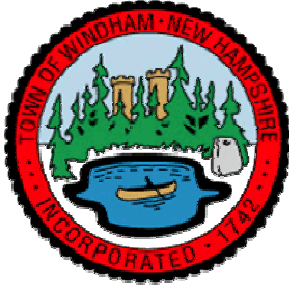
### **Approval of October 10, 2006 Minutes**

The October 10, 2006 minutes will be reviewed at the November 14, 2006 meeting.

### **Other Business**

The Members discussed planning the Christmas party.

Mrs. Fallon asked if the Board should send the Garrison v. Town of Henniker case to Attorney Campbell for an interpretation. The Chairman said that as Attorney Campbell said during their workshop it depends on the court; some will think like he does and others will not. Mr. Tierney said the notice at the top of the page of the court decision states that *this opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the NH Reports etc.* The Chairman said that Land Use Law is constantly evolving and case law is part of that.



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Mr. Gustafson said that at the last ZBA meeting there was a memo from the Conservation Commission requesting information pertinent to the issue of buildable lots versus lots of record. Mr. Gustafson said to give Law Lecture Series #3 to the Conservation Commission.

### Mail

- October 2006 Issue of *Town & City*.
- NH Local Government Center announcement of the release of the 2006 Municipal Law Lecture Series publication.
- NH Local Government Center 2006 Annual Conference scheduled for November 15-17, 2006.

At 11:30 PM Mr. Pellegrini motioned and Mr. Tierney seconded the motion to adjourn. Passed unanimously 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for November 14, 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.