



BOARD OF ADJUSTMENT

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

Windham Zoning Board of Adjustment Minutes November 13, 2007

Attendance

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

Seat Alternates

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

Lot #24-G-111, Case #71-2007

Applicant – Michael Mistretta
Owner – Michael & Gina Mistretta
Location – 3 Oxford Road
Zone – Residential A

A variance is requested from Section 702 Appendix A-1 of the Zoning Ordinance to permit a two-car garage, 34' X 26' with living area above, to be 22' from the side setback where 30' is required.

Mrs. Fallon read the case into the record. Mr. Mistretta presented his case and explained that he is using a rental container for storage because of the need for a garage and his property is the only one in the neighborhood without a garage. The living area above the proposed garage will be used in the future as living area. Mr. Mistretta read the supporting facts into the record.

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

Deliberative Session, Case #71-2007

Mr. Alosso motioned and Mrs. Fallon seconded the motion to approve an area variance from Section 702 Appendix A-1 to permit a two-car garage, 34' X 26', with living area above, to be 22-feet from the side setback where 30-feet is required. Motion passed 5-0.



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Lot #13-J-11, Case #72-2007

Applicant – Patrick Bower

Owner – Frederic & Tammy Baldassari

Location – 4 Allen Road

Zone – Rural

A variance is requested from Section(s) 401, 405.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the construction of a single family year round dwelling on an existing lot that has a seasonal dwelling with 55.62' of street frontage where 175' is required, with a 2.2' front setback (garage) where 50' is required and a 2' side setback (garage) where 30' is required, and a 5.8' side setback (dwelling) where 30' is required.

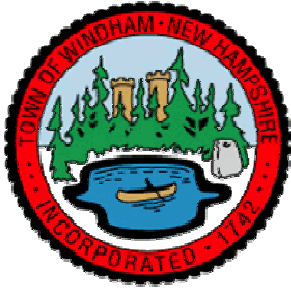
Mrs. Fallon read the case into the record. Mr. Patrick Bower, representing the owners, presented the case. The plan for the proposed house is 2-feet smaller than it was in the request made on August 21, 2007 and the lot coverage would be approximately 18%. The septic system would be 50' from the well where 75' is required. The proposed house is similar in size to the house at 5 Allen Road. The existing house, which is on piers, will be torn down. The Board discussed that relief was not issued from the WWPB and if it was found, the applicant would have to come back in front of the Zoning Board. Mr. Bower read the supporting facts into the record.

Mr. Peter Butler of 3 Allen Road spoke in opposition to this request. Mrs. Fallon read into the record two letters of opposition; one from the Windham Conservation Commission and one from Trudy Yukl of 5 Allen Road.

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

Deliberative Session, Case #72-2007

Mr. Tierney motioned and Mr. Murray seconded the motion to grant an area variance from Sections 401, 405.2 & 702 Appendix A-1 of the Zoning Ordinance per the plan submitted. Motion passed 3-2. Mrs. Fallon voted against the motion because of spirit and intent of the Zoning Ordinance. Mr. Alosso voted against the motion because there was no wetland delineation and the septic system would be too close to the well.



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Lot #7-A-900, Case #73-2007

Applicant – Sharon Pelletier

Owner – Sharon Pelletier

Location – 11 County Road

Zone – Rural

A variance is requested from Section(s) 401 & 702 Appendix A-1, of the Zoning Ordinance to permit the construction of a deck 42' from the front setback where 50' is required.

Mrs. Fallon read the case into the record. Ms. Pelletier presented her case and explained that their foundation collapsed and the existing deck had to be removed to repair the foundation. The house and the driveway are on two different plateaus. The deck would allow access to the side door. Ms. Pelletier read the supporting facts into the record.

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

Deliberative Session, Case #73-2007

Mr. Murray motioned and Mr. Alosso seconded the motion to grant an area variance from Sections 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a deck 42' from the front setback where 50' is required. Motion passed 5-0.

Lot #17-L-59, Case #74-2007

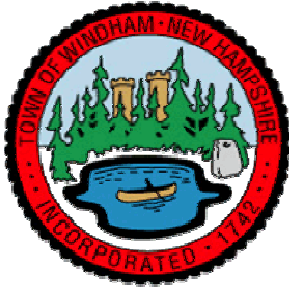
Applicant – Edward N. Herbert Associates, Inc.

Owner – Windham Realty Limited Liability Company

Location – 17 Farmer Road

Zone – Residential A

A variance is requested from Section(s) 401, 405.2, 405.3, 405.5, 501, 702 Appendix A-1 & 702.1 of the Zoning Ordinance to permit an existing two-bedroom year round house on an undersized lot with frontage on a private road to be razed and replaced with a larger four-bedroom year round house located 55.5 feet from Cobbetts Pond, 13' from the southwest side setback where 30' is required, 10.4' from the northeast side setback where 30' is required and 39.2 feet from the front setback where 50' is required.



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Lot #17-L-60, Case #75-2007

Applicant – Edward N. Herbert Associates, Inc.

Owner – William P. Jr., & Kathleen M. Deluca

Location – 19 Farmer Road

Zone – Residential A

A variance is requested from Section(s) 401, 405.2, 405.3, 405.5, 501, 702 Appendix A-1, 702.1 & 1200.1.3 of the Zoning Ordinance to permit a pre-existing two-bedroom seasonal house on an undersized lot with frontage on a private road to be replaced with a larger four-bedroom year round house located 55' from Cobbetts Pond, with a 21' front setback where 50' is required, 8' from the northeast side setback where 30' is required and 9.6' from the southwest lot line where 30' is required.

Lot #17-L-61, Case #76-2007

Applicant – Edward N. Herbert Associates, Inc.

Owner – William P. Jr., & Kathleen M. Deluca

Location – 21 Farmer Road

Zone – Residential A

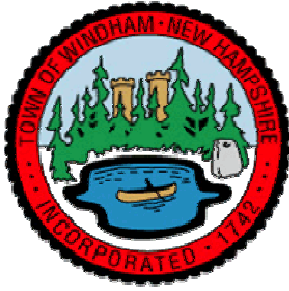
A variance is requested from Section(s) 401 of the Zoning Ordinance to permit an existing lot of 2.648 acres or 115,357 square feet on a private road to transfer 33,077 square feet of land to Lot #17-L-60 in order to make this lot more suitable for replacement of the existing house. Lot #17-L-61 has 97% of the area required for soils lot sizing under Appendix A-1 Note I. After the transfer, Lot #17-L-61 will have 68.1% of the soils area requirement and have an area of 82,280 square feet of 1.889 acres.

Mr. Zohdi asked to present Cases 74-2007, 75-2007 and 76-2007 at the same time. Mrs. Fallon read Cases 74-2007, 75-2007 and 76-2007 into the record. Mr. Zohdi presented the cases, submitted photos, lot size calculation overview, and plans and explained that all three are non-conforming lots and there is no septic system on two of the lots. Lot coverage is less than 20% on all three lots. The septic system, on lot 17-L-59, is being moved further away from the lake. Mrs. Fallon read the supporting facts for Cases 74-2007, 75-2007 and 76-2007 into the record.

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

Deliberative Session, Case #76-2007

Mr. Alosso motioned and Mr. Tierney seconded the motion to grant a variance from Section 401 of the Zoning Ordinance to permit an existing lot of 2.648 acres or 115,357 square feet on a private road to transfer 33,077 square feet of land to Lot 17-L-60 in order to make this lot more



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suitable for replacement of the existing house. Lot 17-L-61 has 97% of the area required for soils lot sizing under Appendix A-1 Note 1. After the transfer, Lot 17-L-61 will have 68.1% of the soils required and have an area of 82,280 square feet of 1.889 acres. Motion passed 4-1. Mrs. Fallon voted against the motion because the granting of this request is not consistent with the spirit and intent of the Ordinance.

Deliberative Session, Case #74-2007

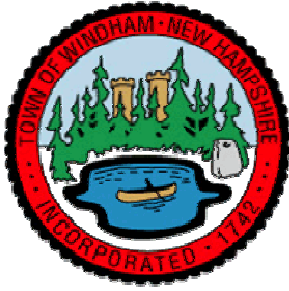
Mr. Alosso motioned to grant a variance for Lot #17-L-59, Case #74-2007 from Sections 401, 405.2, 405.3, 405.5, 501, 702 Appendix A-1 & 702.1 of the Zoning Ordinance to permit an existing two-bedroom year round house on an undersized lot with frontage on a private road to be razed and replaced with a larger four-bedroom year round house located 55.5 feet from Cobbetts Pond, 13' from the southwest side setback where 30' is required, 10.4' from the northeast side setback where 30' is required and 39.2' from the front setback where 50' is required. Mr. Alosso amended his motion and Mr. Tierney seconded the amended motion to grant a variance for Lot #17-L-59, Case #74-2007 from Sections 401, 405.2, 405.3, 405.5, 501, 702 Appendix A-1 & 702.1 of the Zoning Ordinance to permit an existing two-bedroom year round house on an undersized lot with frontage on a private road to be razed and replaced with a larger four-bedroom year round house located 55.5 feet from Cobbetts Pond per the plan submitted. Motion passed 4-1. Mrs. Fallon voted against the motion because of #3B in *Supporting Facts*, denial of the variance would not result in unnecessary hardship because the benefit sought by the applicant can be achieved by some other method.

Deliberative Session, Case #75-2007

Mr. Tierney motioned and Mr. Murray seconded the motion to grant an area variance from Sections 401, 405.2, 405.3, 405.5, 501, 702 Appendix A-1, 702.1 & 1200.1.3 of the Zoning Ordinance to permit an existing two-bedroom seasonal house on an undersized lot with frontage on a private road to be replaced with a larger four-bedroom year round house located 55' from Cobbetts Pond per the plan submitted. Motion passed 4-1. Mrs. Fallon voted against the motion because of #3B in *Supporting Facts*, denial of the variance would not result in unnecessary hardship because the benefit sought by the applicant can be achieved by some other method.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.



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Lot #20-E-104, Case #77-2007

Applicant – Francine & Thomas Smith

Owner – JCD Landholdings, LLC

Location – 80 Lowell Road

Zone – Rural

A special exception is requested from Section(s) 602.1.6, of the Zoning Ordinance to permit the operation of a single chair, appointment only, hair salon.

Mrs. Fallon read the case into the record. Mrs. Francine Smith presented her case and explained that she will have adequate parking in her 40' X 60' driveway, she is in compliance with the NH Department of Environmental Services and her clients will be by appointment only.

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

Deliberative Session, Case #77-2007

Mr. Murray motioned and Mr. Tierney seconded the motion to deny without prejudice Case #77-2007 because a Use Variance is needed. Mr. Murray amended his motion. Mr. Murray motioned and Mr. Tierney seconded the motion to deny without prejudice Case #77-2007 because a Use Variance is needed and because a hair salon is not a listed use. Motion passed 5-0.

Lot #25-E-400, Case ##57-2007 Request for Rehearing (Originally heard on 10/9/07)

Applicant – Attorney Peter H. Bronstein

Owner – Randy & Deborah Casey

Location – 25 Abbott Road

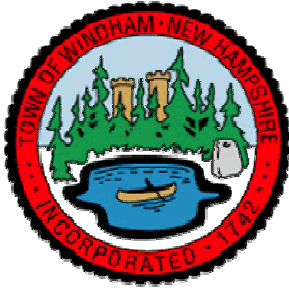
Zone – Residential A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on October 9, 2007.

Mr. Alosso motioned and Mrs. Fallon seconded the motion to move Case #57-2007 to the November 27, 2007 meeting to give the Members sufficient time to review the request. Motion passed 5-0.

Approval of October 23, 2007 Minutes

Mr. Alosso motioned and Mrs. Fallon seconded the motion to approve the October 23, 2007 minutes. Motion passed 4-0-1. Mr. Murray abstained because he did not attend the October 23, 2007 meeting.



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Other Business

None

Mail

- October 31, 2007 Letter from Attorney Campbell regarding 28 Ash Street.
- Notice from Donahue, Tucker & Ciandella regarding the November 29, 2007 Seminar on Consequences of Land Use Policy.
- Reminder from RPC regarding the November 14, 2007 Legislator's Forum scheduled for November 14, 2007.
- November/December Issued of *NH Town and City*.

Mr. Murray motioned and Mr. Tierney seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for November 27, 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.