

# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes April 25, 2006

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

### Lot #11-A-165, Case #20-2006

Applicant - Benchmark Engineering

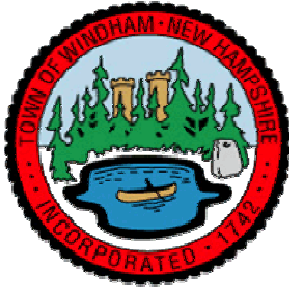
Owner - James Freda

Location - 4 Ledge Road

Zone - Limited Industrial

A variance is requested from Section 606.1.3 of the Zoning Ordinance to permit 2,000 square feet of retail space within the existing building where 500 square feet is allowed.

Mr. Pellegrini read the case into the record. Mr. Joe Maynard of Benchmark Engineering, representing the owner, advised the Board that there were two applications submitted one for a use variance and one for a dimensional variance. The application for the dimensional variance could not be located. Per Mr. Maynard's request the dimensional variance will be on the May 23, 2006 agenda. Mr. Freda is in the process of purchasing the property at 4 Ledge Road which is currently an existing refrigeration storage building for frozen foods. Mr. Freda's business at Route 111 is being displaced because of the widening of Route 111. Mr. Maynard read the supporting facts into the record. Mr. Maynard submitted two letters of support that were read into the record by Mr. Pellegrini. The letter from Ronald & Deborah St. Jean of 5 Ledge Road was marked as Exhibit A and the letter from Gerard & Donna Bowes, owners of Windham Outdoor Material Sales, was marked as Exhibit B. Mr. James Freda, owner of Freda Hardware, said that his current location has 2500 square feet. Mr. Gustafson said that he is trying to understand the 500 square foot restriction when under Section 606.1.10 restaurants are an allowed use. Mr. Tom Case said as he read that section of the ordinance he understood it to say building materials warehouses with a retail sales area attached to it. Where is the building materials warehouse? Mr. Maynard said that hardware has to do with building materials. The square footage of the building is 2,784. The addition will be used for the industrial portion of the business, not for retail. The Chairman closed the public portion of this case. Mr. Pellegrini motioned and Miss Webster seconded the motion to go into Deliberative Session. Passed unanimously 5-0.



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### **Deliberative Session, Case #20-2006**

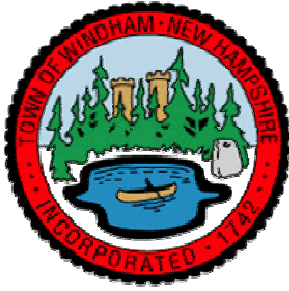
Mr. Samsel motioned and Mr. Pellegrini seconded the motion to grant Case #20-2006. Motion passed 4-1. Mr. Samsel, Mr. Pellegrini, Miss Webster and Mr. Gustafson voted for the motion and Mrs. Fallon voted against the motion.

### **Lot #3-B-262 & 352, Case #21-2006**

Applicant - Gerard L. Beique  
Owner - Gerard L. Beique  
Location - 20 Flat Rock Road  
Zone - Rural

A variance is requested from Sections 401, 501, 601.3, 601.4, 601.5, 200 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a single family dwelling with well & septic on an exiting lot of record. The 1.52-acre lot does not meet the lot sizing by soils requirements.

Mr. Pellegrini read the case into the record. Mr. Mike McGuire said that there are a lot of issues with this request and the Planning & Development Department asked that the applicant be allowed the opportunity to be denied without prejudice or to withdraw. The plans submitted are not the plans used for the denial letters. These are not pre-existing lots of record because there are substantial lot changes to be done. Attorney William Theroux and Mr. James Lavelle presented the case for the applicant. There are three lots of record that will have lot line changes and the lot in the center will be eliminated. Before going forward to the Planning Board for a lot line change, we need to know if we can build on these lots. These lots were subdivided originally as building lots. Mr. McGuire said that information has been requested but not received and there are issues regarding a closed road. The Planning Department has the same issues with all three cases, 21-2006, 22-2006 and 23-2006. Mr. Gustafson said that his concern is if the variance is granted on what is proposed and then it goes to the Planning Board and there are issues the applicant will have to come back to the Zoning Board again. Mr. Gerard Beique said that he met with the Planning Department many times and the plan displayed shows the changes suggested by Mr. Turner and Mrs. Hebert. He is following the direction of the Planning Department. Mr. McGuire said that the plan shown is not the plan used for the denial. Mr. McGuire went on to say by virtue of changing lot lines this is no longer a lot of record and therefore loses its protection. Mrs. Fallon asked if a wetland specialist reviewed the plan. Mr. Lavelle replied that a wetland specialist did review the plan. The applicant submitted soil type information for all three lots. The three lots of record do not meet soil requirements. When the middle lot is eliminated the lots still come in just a little under the requirement. Mr. Gustafson asked the applicant what relief he needs. Relief is needed from lot sizing by soil type and setbacks to the WWPD. The house is completely within the WWPD.



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The Chairman granted a five-minutes recess.

The applicant is seeking relief from Section 200, Definition of a Building Lot and Section 702 Appendix A-1, lot sizing by soil type. Mr. Lavelle read the supporting facts into the record. Mr. Salvo of 137 Rockingham Road spoke in favor of the change in the building lot size. Mr. Case said the condition of the road is suspect. 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 #21-2006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to deny without prejudice Sections 401, 501, 601.3, 601.4 and 601.5 of the Zoning Ordinance and to grant relief from Sections 200 and 702 lot sizing by soil type. Mr. Samsel amended his motion. Mr. Samsel motioned and Mr. Pellegrini seconded the motion to deny without prejudice Sections 401, 501, 601.3, 601.4 and 601.5 of the Zoning Ordinance and to grant relief from Section 200 definition of a building lot and Section 702 Appendix A-1 lot sizing by soil type. Motion passed 4-1. Miss Webster, Mr. Pellegrini, Mr. Samsel and Mr. Gustafson voted for the motion. Mrs. Fallon voted against the motion.

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to hear Case #23-2006 before Case #22-2006. Passed unanimously 5-0.

### **Lot #3-B-350 & 352, Case #23-2006**

Applicant - Tynco Trust

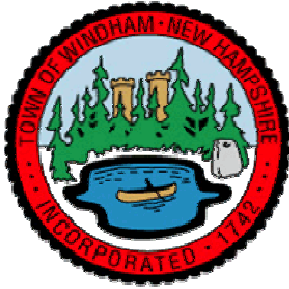
Owner - Tynco Trust

Location - 22 Flat Rock Road

Zone - Rural

A variance is requested from Sections 401, 501, 601.3, 601.4, 601.5, 200 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a single family dwelling with well & septic on an existing lot of record. The 1-acre (43,603 square feet) lot does not meet the lot sizing by soils requirements.

Mr. Pellegrini read the case into the record. Mr. James Lavelle and Attorney Theroux presented the case. If this request is granted it will allow the construction of a dwelling on an existing non-conforming lot of record. The septic system will be located in the front of the lot. There is no way to increase the size of the existing lot. Mr. Lavelle read the supporting case into the record. Mr. Salvo of 137 Rockingham Road spoke in opposition. The Chairman closed the public



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

### **Deliberative Session, Case #23-2006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion regarding Case #23-2006 to deny without prejudice Section 401, to deny without prejudice Section 501, to deny without prejudice Section 601.3, 601.4, and 601.5 and to grant relief from Section 200, regarding the definition of a building lot and Section 702 Appendix A-1 to grant relief from lot sizing by soil type requirements. Motion passed 4-1. Mr. Pellegrini, Miss Webster, Mr. Samsel and Mr. Gustafson voted for the motion. Mrs. Fallon voted against the motion.

### **Lot #3-B-250, Case #22-2006**

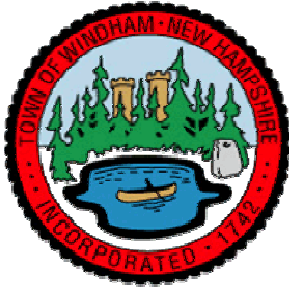
Applicant - Carso Realty Trust  
Owner - Carso Realty Trust  
Location - 135 Rockingham Road  
Zone - Rural

A variance is requested from Sections 200 & 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a single family dwelling with well & septic on an existing lot of record. The 1.18-acre lot does not meet the lot sizing by soils requirements. The proposed dwelling is 42-feet from the rear property line where 50-feet is required.

Mr. Pellegrini read the case into the record and a March 29, 2006 letter of denial from Rebecca Hebert, Code Enforcement Administrator. Attorney Theroux and Mr. James Lavelle presented the case. This is the existing lot of record, no lines will be moved. Mr. Gustafson asked the applicant why he needs a variance; this lot was conforming when it was subdivided, it is not as though a new non-conforming lot is being created. Mr. Pellegrini motioned and Mr. Samsel seconded the motion to waive the reading of the supporting facts. Passed unanimously 5-0. Mr. Salvo of 137 Rockingham Road spoke in opposition to this request. 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, Case #22-2006**

Mr. Pellegrini motioned and Miss Webster seconded the motion to grant Case #22-2006. Motion passed 4-1. Miss Webster, Mr. Samsel, Mr. Pellegrini and Mr. Gustafson voted for the motion. Mrs. Fallon voted against the motion.



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## **Deliberative Session**

The Chairman appointed Mr. Murray, who originally sat on Case #12-2006, to replace Mrs. Fallon for this case.

### **Lot #17-J-109, Case #12-2006 (Rehearing Request)**

Applicant - Jeffrey Gallant

Owner - Brian Harvey

Location - 14 Rocky Ridge Road

Zone - Residential A

A rehearing is requested on the decision made by the Zoning Board of Adjustment on March 14, 2006.

For the benefit of the new board members the Chairman read part of page 44 from the 2006 Zoning Board Handbook explaining the rehearing process. Mr. Pellegrini read the rehearing request into the record. After reviewing the submitted request Mr. Samsel motioned and Mr. Murray seconded the motion to deny the request for a rehearing of Case #12-2006 because no new information was submitted and there was no technical error. Passed unanimously 5-0.

### **Approval of April 11, 2006 Minutes**

Mr. Pellegrini motioned and Miss Webster seconded the motion to approve the April 11, 2006 minutes with the added clarification. Passed unanimously 5-0.

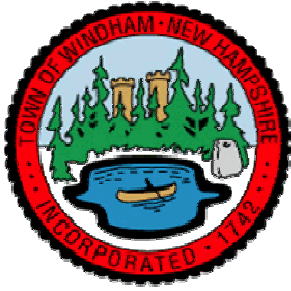
## **Other Business**

### **Fees**

The members compared the Town of Windham's Zoning Board fees with those of surrounding towns. The members would like Mr. Turner, Director of Planning & Development, to advise whether Windham's fees are covering the costs of processing Zoning Board applications.

### **By-Laws**

Mr. Pellegrini motioned and Mr. Samsel seconded the motion to accept the second reading of the By-Laws. Passed unanimously 5-0.



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### **Form #006**

Mr. Samsel motioned and Mr. Pellegrini seconded the motion to amend form #006 as presented with *variance* being replaced by whatever the request is and *Section* reading *Section(s)*. Passed unanimously 5-0.

Mr. Gustafson will talk with the IT Director, Eric DeLong, regarding the posting of Zoning Board minutes and agendas on the town website.

To commemorate National Volunteer Week (April 23 through April 29) Mr. Gustafson presented Certificates of Appreciation provided by the Town of Windham to the Board Members.

### **Mail**

- 2006 Volunteer Recognition Awards

At 11:00 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 May 23, 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.