

# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes October 9, 2007

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

### Seat Alternates

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

### Lot #25-E-400, Case #57-2007

Applicant – Randy & Deborah Casey  
Owner – Randy & Deborah Casey  
Location – 25 Abbott Road  
Zone – Residential A

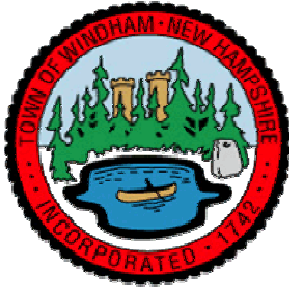
A variance is requested from Section(s) 401, 1200, 1200.1.3 & 702 Appendix A-1 of the Zoning Ordinance to permit conversion from seasonal to year round use.

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

Fire Chief Tom McPherson explained that he was not at the meeting to make a recommendation and advised the Board that he had made two trips to Abbott Road and met with the Applicant. Chief McPherson had the following concerns regarding Abbott Road.

- Road width.
- Steep grade onto Abbott Road from Woodbury Road.
- Large Pot holes on Woodbury Road.
- No turn around – enter and exit the same way.
- There would be a delayed response because hand jacks and portable pumps would need to be used.
- There would be preliminary preplanning.

Police Chief Gerald Lewis echoed the comments made by Chief McPherson and said that the condition of the road is a significant concern.



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Mr. Randy Casey submitted six site assessments and explained that a new septic system is in operation as of today, October 9, 2007. The Chairman marked the septic plan as Exhibit E. Mr. Casey maintained that this has been a year round property and there would be no expansion in the footprint. Mr. Casey reminded the Board that they had approved a year round use for the property next door. The following abutters spoke in favor of the request.

- Mr. James Kennedy of 29 Abbott Road, a resident since electricity came to Abbott Road in 1951, advised that the original owners lived their year round and that there are two more year round dwellings on Abbott Road.
- Mr. Mike Kennedy also of 29 Abbott Road.
- Mr. James Morgan who lives between Mr. Kennedy and Mr. Casey.

The following spoke in opposition to the request.

- Mr. Wayne Morris of 14 Jordan Road and Vice-President of the Rock Pond Improvement Association read into the record his letter that mentions safety concerns. Mr. Morris' letter was marked as Exhibit F. Mr. Morris submitted an audio tape, part of which was transcribed in his letter, that was marked as Exhibit G. Mr. Morris also submitted a copy of a 1981 document, marked as Exhibit H, that shows Lot 25-E-400 listed as a seasonal property.
- Susan McGuire of 17 Abbot Road said she was representing the pond and her Uncle Tom Furlong and stated that no one has lived year round on this parcel.
- Bob Bell of 31 Abbott Road.

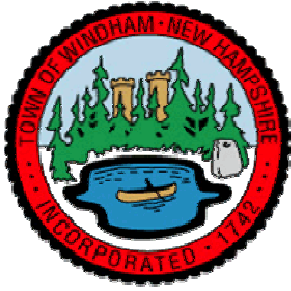
Mrs. Fallon motioned and Mr. Alosso seconded the motion to go into Deliberative Session. Motion passed 5-0.

### **Deliberative Session, Case #57-2007**

Mr. Alosso motioned to grant a use variance for case #57-2007 from Sections 401, 1200, 1200.1.3 & 702 Appendix A-1 to permit the conversion from seasonal to year round use. Mr. Alosso's motion did not get a second.

Mrs. Fallon motioned and Mr. Tierney seconded the motion to deny a use variance for case #57-2007 from Sections 401, 1200, 1200.1.3 & 702 Appendix A-1 to permit the conversion from seasonal to year round use because the hardship criteria and spirit and intent were not met. Motion passed 4-1. Request denied.

Mr. Alosso voted against the motion because there are people living there year round, the applicant has constitutional rights to that parcel, there was no clear delineation as to what seasonal is, the testimony was ambiguous and the safety concerns stand as to other approved roads in Windham.



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Mr. Murray asked that the following be noted in the minutes to further explain why he voted against the request. Mr. Murray felt that the request did not meet the New London test for legality changes in non-conforming uses.

### **Lot #14-A-1100, Case #64-2007**

Applicant – Cingular Wireless & SAI Communications.

Owner – Waterhouse Realty Trust, Kevin Waterhouse Trustee

Location – 18 Mammoth Road

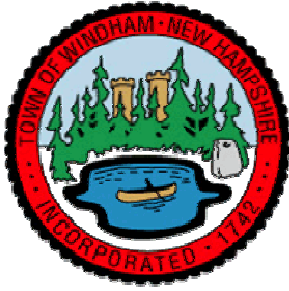
Zone – Neighborhood Business

A variance is requested from Section(s) 604.1 & 607.8 of the Zoning Ordinance to permit the construction, operation and maintenance of a multi-carrier wireless telecommunications facility within 51' +/- of the nearest property line. This is a resubmittal of a previously granted variance.

Mrs. Fallon read the case into the record. Attorney Doug Wilkins of Anderson & Krieger, representing the applicant, explained that they are requesting the same variance that was granted a year ago because it expired. The same plans dated February 22, 2007 were presented. Mr. Samsel asked if there was any intent to abandon the variance. Attorney Wilkins replied that there was no intention to abandon the variance. Mr. Samsel said that unless it was abandoned, if there is intent to proceed, there is no need to re-apply for a variance. Attorney Wilkins said again that it was not abandoned and he would be happy to proceed. Mr. Kevin Waterhouse of 175 Haverhill Road explained that they have met with staff three times. The Planning staff has said that we are ready to go to the Planning Board. After discussion Attorney Wilkins and the Board decided to go forward with the request. Consistent with the initial application the Applicant proposes to construct, operate and maintain a wireless telecommunications facility at the site consisting of:

- A tower with a maximum height of 150' above ground level consisting of a monopole designed as a flagpole.
- A fenced equipment area at the base of the tower with capacity for Cingular's proposed installation, as well as an installation by Omnipoint Holdings, Inc. (T-Mobile).
- A 12' X 20' communications equipment shelter and other associated ground equipment at the base of the tower.
- Standard electric and telephone utilities to be run underground.

A report by Mr. Randy Howse, Cingular Radio Frequency Specialist, including coverage maps demonstrates the need for the proposed facility and the coverage that the facility will provide. A report prepared by Donald L. Haes, Jr., Ph.D., dated April 8, 2006 was submitted to demonstrate that the proposed facility complies with FCC regulations regarding radio frequency exposure guidelines. Also submitted was a real estate impact study prepared by Vern J. Gardner. Attorney Wilkins explained that the pole is 150-foot tall in order to have as many carriers as possible on one pole so as not to have a proliferation of poles. Attorney Wilkins read the supporting facts into the record.



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Ms. Karen Elgart, Secretary of Country Manor Condos, asked about property values, what kind of emissions will the public be exposed to, the height of the tower etc. Attorney Wilkins referred to the reports that were submitted and a copy of the reports were given to Ms. Elgart.

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

### **Deliberative Session, Case #64-2007**

Mr. Murray motioned and Mr. Tierney seconded the motion to grant a use variance for Case #64-2007 from Sections 604.1 & 607.8 of the Zoning Ordinance per the plan submitted. Motion passed 5-0.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

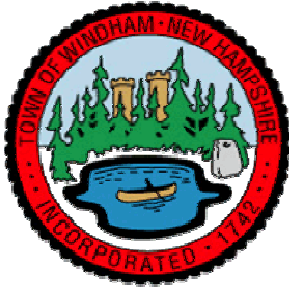
### **Lot #16-P-190, Case #65-2007**

Applicant – Mary Ann Breen  
Owner – Breen Irrevocable Trust  
Location – 25 Second Street  
Zone – Residential A

A variance is requested from Section(s) 401, 405.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the razing and replacement of a non-conforming structure on a non-conforming lot and change from seasonal to year round use and to have a 28-foot front setback on Third Street where 50-feet is required and a 7-foot front setback on B Street where 50-feet is required and a 104-foot front setback on Second Street and a 5-foot side setback where 30-feet is required.

Mr. Anthony Breen, brother of the owner, submitted photos of the dwelling that will be removed and explained that the proposed dwelling will be narrower and longer than the existing dwelling. There are 792 square feet in the existing house and 928 square feet in the proposed house. Ms. Susan Breen read the supporting facts into the record.

The Board requested that more engineering be done on the plan to show where the septic system is located. Because of the Board's request, the application was withdrawn. The applicant will submit another application after the requested engineering has been completed.



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Mr. Murray motioned and Mr. Alosso seconded the motion to accept the withdrawal of Case #65-2007 without prejudice. Motion passed 5-0.

A letter will be written to the Board of Selectmen requesting the fees for the re-submittal of this request be waived.

### **Approval of September 25, 2007 Minutes**

Mr. Alosso motioned and Mr. Murray seconded the motion to approve the September 25, 2007 minutes. Motion passed 4-0-1. Mr. Tierney abstained because he did not attend the September 25, 2007 meeting.

### **Other Business**

Mr. Tierney motioned and Mr. Alosso seconded the motion to correct the date made for the motion of Case #63-2007 to accurately reflect the actual hearing date of 9/27/07. Motion passed 5-0.

### **Mail**

Mrs. Fallon read into the record a letter dated October 4, 2007 from Mr. Bruce Richardson requesting an alternate position to the Zoning Board of Adjustment. The Chairman asked that Mr. Richardson be invited to attend the next Zoning Board meeting.

At 10:02 PM Mr. Tierney motioned and Mr. Alosso seconded the motion to adjourn. Motion passed 5-0.

The next meeting of the Zoning Board of Adjustment is scheduled for October 23, 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.