

BOARD OF ADJUSTMENT

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

Windham Zoning Board of Adjustment Minutes November 27, 2007

Attendance

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

Seat Alternates

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

Lot #20-E-270, Case #67-2007 (Originally Listed on 10/23/07 Agenda)

Applicant – Monomoy Development
Owner – Mark Widdison
Location – 44 Lowell Road
Zone – Rural

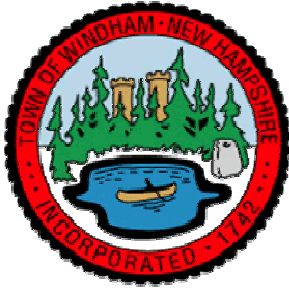
A variance is requested from Section(s) 602.1 & 706.6, of the Zoning Ordinance to permit a new building and signage to be constructed and utilized pursuant to the permitted uses in the Business Commercial District A but constructed on land in the Rural District.

Lot #20-E-270, Case #68-2007 (Originally Listed on 10/23/07 Agenda)

Applicant – Monomoy Development
Owner – Mark Widdison
Location – 44 Lowell Road
Zone – Rural

A variance is requested from Section(s) 405.2, 405.3, 602.2 & 702.5 of the Zoning Ordinance to permit the replacement of a pre-existing non-conforming structure with a new larger building setback 65' from the front lot line and 34' from the side lot line, has a parking area 20' from the front lot line and 10' from the side lot line and has a buffer of 10' where 50' is required. Lot 20-E-270 is to be merged with Lot 20-E-260.

Mr. Alosso recused himself from Case #67-2007 and Case #68-2007. The Chairman appointed Mr. Richardson to replace Mr. Alosso.



BOARD OF ADJUSTMENT

PO Box 120
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Mrs. Fallon read the case into the record. Attorney Mason, representing the owner, submitted a letter of authorization and explained that the owner has the opportunity to purchase this property that has been used for a variety of businesses such as water testing, a Laundromat etc. and combine it with his existing property. One variance request deals with an expansion of a pre-existing non-conforming use and the other deals with the use in terms of dealing with signage and setbacks in the Commercial A District.

Mr. Richardson said the first request (Case #67-2007) is unclear and sounds as if the applicant wants a zone change. Attorney Mason said they want to discuss an area variance first then discuss treating it as Commercial District A. They want to expand the commercial use and in doing that they want to get relief in regard to setbacks.

Mr. Zohdi of Herbert Associates, also representing the owner, asked that both cases #67-2007 & 68-2007 be heard at the same time and explained that currently there are two lots and the two owners decided to combine their properties. The existing building would be torn down, the proposed building would be moved back and it would tie in with the property next door and they would comply with commercial setbacks. The sign would comply with the requirements in a Commercial A District.

Mr. Tierney said that the request before the Board should be for an expansion of the non-conforming under Section 401. It is already being used as a commercial property. The property is pre-existing prior to commercial zoning. Section 602.1 is not correct; it should be Section 401 as part of an expansion of the non-conforming use because it is structure and land not just structure. The intensity may be changing but not the use.

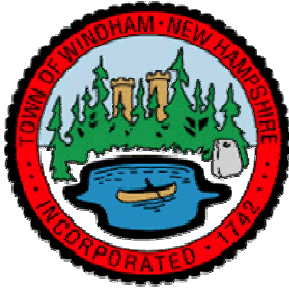
Mr. Richardson said according to the wording in the application you are allowing them to use the property in any way they want. That is a change of zone not a specific use.

Mr. Paul Chicklis of 2 Wilson Road spoke in favor of the request.

Mr. Tom Case of 7 Mountain Village Road suggested that the property be re-zoned to commercial.

After a long discussion regarding Section #401 Mr. Zohdi withdrew Case #67-2007 and asked that Case #68-2007 be moved to the first Zoning Board meeting in January.

Mr. Tierney motioned and Mr. Murray seconded the motion to accept the withdrawal of Case #67-2007. Motion passed 5-0.



BOARD OF ADJUSTMENT

PO Box 120
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Mr. Tierney motioned and Mr. Murray seconded the motion to continue Case #68-2007 to the first meeting in January. Motion passed 5-0.

The Chairman replaced Mr. Richardson with Mr. Alosso for the balance of the meeting.

Lot #25-C-11C & 25-D-154, Case #69-2007 (Originally Listed on 10/23/07 Agenda)

Applicant – Edward N. Herbert Associates, Inc.

Owner – Martin & Kristina Boermeester

Location – 34 & 17 Jordan Road

Zone – Residential A

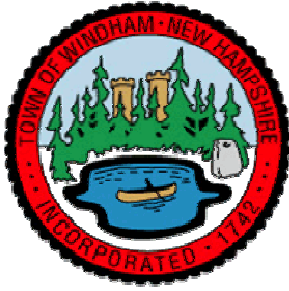
A variance is requested from Section(s) 401, 405.2, 405.3, 405.5 & 702 Appendix A-1, of the Zoning Ordinance to permit an existing seasonal cottage to be razed and replaced with a new year round two-bedroom house (28' X 40' with a deck) and a detached two-car garage (26' X 26') on a separate lot. The lots are proposed to be merged prior to construction. Both lots have 82+ feet of road frontage on a private road. The house is proposed to be 57' from the shore of Rock Pond and the deck is proposed to be 50' from the pond with only a landing and some stairs being 46' from the setback. The house is to be 21' from the street where 50' is required, 19' from the westerly sideline where 30' is required, 20' from the easterly sideline where 30' is required with the deck at 19' from the westerly sideline where 30' is required and 16.6' from the easterly sideline where 30' is required. The garage will have a front setback of 18' where 50' is required, an easterly side setback of 27' where 30' is required, a westerly side setback of 28' where 30' is required. The lot areas are currently 9,320 square feet for the house lot and 8,169 square feet for the garage lot totaling 17,489 square feet after the lot merger.

Mrs. Fallon read the case into the record. Mr. Wes Aspinwall of Herbert & Associates presented the case. This is an existing summer cottage 25' from Rock Pond built prior to 1950 and prior to zoning regulations. Mr. Aspinwall submitted 16 photos that were marked as Exhibit A. The existing house would be removed and a new year round dwelling constructed. This request will meet all State of NH septic and Shoreland Protection regulations. The existing building is 32' X 28 and the proposed would be 28' X 40'. Lot coverage is under 20%.

Attorney Mason read the supporting facts into the record.

Donna Szafran of 32 Jordan Road and William Doyle of 36 Jordan Road spoke in opposition to the request.

Mrs. Fallon read into the record a letter of opposition from Frank & Sue Burgess of 38 Jordan Road.



BOARD OF ADJUSTMENT

PO Box 120
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Mr. Murray motioned and Mr. Alosso seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #69-2007

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #69-2007, Lots 25-C-11C and 25-D-154 to replace the existing cottage with a new structure or deck not to exceed side setbacks of 20' and to allow the front setback (lake side) of 46.7' as shown on the plan 21.2' for Lot 25-C-11C and Lot 25-D-154 to remain per plan. Motion passed 5-0.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Lot #24-F-5100, Case #78-2007

Applicant – Paul Chicklis

Owner – Paul Chicklis

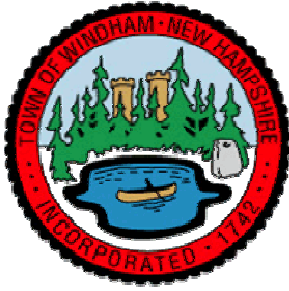
Location – 2 Wilson Road

Zone – Rural

A variance is requested from Section(s) 601.3, 601.4.1, 601.4.8 & 702 Appendix A-1, of the Zoning Ordinance to permit the finishing of a pool, shed and patio with a front setback of 40.4-feet where 50-feet is required (foundation) and a 28.5-foot front setback for the proposed shed where 50-feet is required, a side setback of 60-feet (foundation) where 100-feet is required and a side setback of 50-feet for the proposed shed where 100-feet is required.

Mrs. Fallon read the case into the record. Mr. Paul Chicklis presented his case and explained that he applied for and was given a permit to build the pool. It is more than 50' from the patio to the road; 80' from the center of the culvert to the corner of the pool. The shed has a permit and was moved because of the pool construction. Mr. Chicklis intended to move the shed back to its original location after construction. Mr. Peter Schauer, Certified Wetland Scientist, from Schauer Environmental Consultants was hired by Mr. Chicklis. The following observations were recorded during Mr. Schauer's investigation and listed in a letter dated 8/27/06 from Mr. Schauer to Mr. Chicklis:

- *An existing path, used as an avenue to reach the ball fields behind this lot, was in place prior to any disturbance by Mr. Chicklis.*
- *The stream at the rear of the property contained a culvert.*
- *Existing fill piles had been regarded within the wetland buffer and a boulder wall constructed to allow the lot to be leveled in that location.*
- *There were footings constructed for the existing shed located at the rear of the property to be moved to the location.*



BOARD OF ADJUSTMENT

PO Box 120
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- *The pool and appurtenant structures were within the 75-foot wetland buffer to the wetland but this buffer had already been disturbed with the existing path and lawn area that existed prior to its construction.*
- *No wetlands were filled by Mr. Chicklis, but areas have had fill piles removed within the back wetland and regarded along the wetland buffer. Both of these areas had been loamed and seeded, especially west of the existing lot and adjacent to the fall fields.*

The following actions were recommended by Mr. Schauer to mitigate the construction of the pool and the grading within the wetland buffer:

- *The proposed location of the shed is abandoned and the shed shall remain where it is presently located.*
- *An access west the pool area be allowed in the wetland buffer to give access into the back yard for present and future maintenance of the septic leach field, fire protection and general access to the area behind the house. This access is limited on the east side of the property.*
- *The area west of the proposed shed site and a swath approximately 10-20 feet wide along the west side of the site be loamed and seeded and left unmowed allowing an opportunity for shrubs to become established to hold the soils materials in that location. This action will protect the wetland buffer form sediment transfer off the access road, gravel path and back yard.*

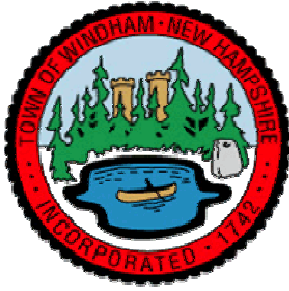
Dr. James Finn, Chairman of the Conservation Commission spoke in opposition to this request and said there are discrepancies between the Wetland Scientist hired by Mr. Chicklis and the inspection done by the NH DES. Dr. Finn went on to say that this 40' encroachment into the WWPD is serious and asked how to prevent this from happening again. There is a need for more enforcement.

The pool permit was issued on December 2, 2005; a stop work order was issued on June 30, 2006. Mr. Alosso asked why a pool permit was issued when there was an inspection done on September 29, 2005. Following are the findings of that inspection:

- Dumping of yard waste in wetlands.
- Tracked vehicles entering wetland.
- Possible disturbance of wetland area
- Parking of vehicles in ROW

There is no signature on the 12/29/05 inspection request.

The NH Des issued a letter of deficiency to Mr. Chicklis on October 3, 2006. Personnel from the NH DES conducted an inspection of the property on September 13, 2006. During the inspection the following deficiencies were documented:



BOARD OF ADJUSTMENT

PO Box 120
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- *An area of 600 square feet of fill was noted at the northwest side of the property immediately adjacent to the pool. Wetland flags were present.*
- *Two 12' culverts were laid within the bed of a perennial stream to create an unauthorized crossing. Erosion and siltation were noted in the adjacent areas of the crossing.*
- *Continuing northwest from deficiency #2, an area of approximately 750 square feet of fill within jurisdiction was noted.*
- *All terrain vehicle ruts were present within wetlands approximately 50' in length.*
- *Grass clippings and yard debris was dumped in a wetland area adjacent to Wilson Road.*

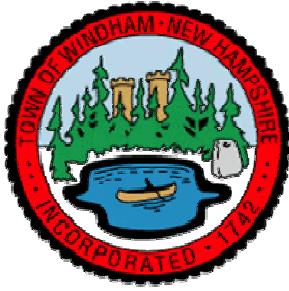
The NH DES requested the following actions be taken:

1. *Immediately retain qualified professionals to develop and implement remediation plans as specified below.*
2. *By November 3, 2006 submit a wetland restoration plan prepared by a qualified wetland consultant.*
3. *By November 3, 2006 submit documentation showing that the unpermitted crossing is removed and a plan to restore the disturbed area on or after-the-fact application to retain said crossing.*
4. *Execute the restoration plan immediately upon receipt of approval of the restoration plan by the NH DES Wetlands Bureau.*

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

Deliberative Session, Case #78-2007

The Board would like to see the order from Judge McHugh and requested that Mr. McGuire obtain the order. Mr. Alosso motioned and Mr. Tierney seconded the motion to continue Case #78-2007 to the December 11, 2007 meeting. Prior to that date the Members will make a site visit on individual basis to look at the decking at 2 Wilson Road and a copy of the court order issued by Judge McHugh following the attachment hearing of August 21, 2007. Motion passed 5-0.



BOARD OF ADJUSTMENT

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Lot #17-M-11, Case #79-2007

Applicant – Andrew C. Marion
Owner – Andrew C. & Donna M. Marion
Location – 23 Armstrong Road
Zone – Residential A

A variance is requested from Section(s) 401, 406.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the expansion of a deck and stair platform to be 5-feet from the front setback where 50-feet is required and the addition of a second set of stairs.

Mrs. Fallon read the case into the record. Mr. Marion presented his case and explained that he would be over the 20% lot coverage by 80 square feet. Mr. Marion 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 #79-2007

Mr. Alosso motioned and Mrs. Fallon seconded the motion to approve a variance for case #79-2007 from Sections 401, 406.2, & 702 Appendix A-1 of the Zoning Ordinance to permit the expansion of a deck and stair platform to be 5-feet from the front setback where 50-feet is required and the addition of a second set of stairs per the plan submitted. Motion passed 5-0.

Lot #25-E-400, Case ##57-2007 Request for Rehearing (Originally heard on 10/9/07 and moved from the November 13, 2007 meeting)

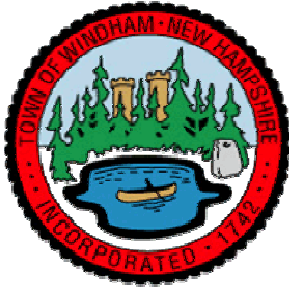
Applicant – Attorney Peter H. Bronstein
Owner – Randy & Deborah Casey
Location – 25 Abbott Road
Zone – Residential A

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

Due to the lateness of the meeting Mr. Murray motioned and Mr. Tierney seconded the motion to continue Case #57-2007 Request for Rehearing to the December 11, 2007 meeting. Motion passed 5-0.

Approval of November 13, 2007 Minutes

Mr. Murray asked that the following sentence be added to Case #72-2007. *The Board discussed that no relief was issued from the WWPD and if it was found, the applicant would have to come back in front of the Board.* Mrs. Fallon motioned and Mr. Murray seconded the motion to approve the November 13, 2007 minutes as amended. Motion passed 5-0.



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Other Business

Mr. Samsel read a portion of a November 15, 2007 letter from Mr. Turner to John Spatharos of 28 Ash Street. The Board decided that the appeal process was not followed and recommended a meeting with Attorney Campbell. Mr. Tierney motioned and Mr. Murray seconded the motion that the Chairman request a meeting with Town Counsel to discuss the November 15, 2007 letter and up coming cases. Motion passed 4-0-1. Mr. Samsel abstained.

The Chairman discussed with the Board Mrs. Webster's letter of resignation. The Chairman recommended that Mr. Murray replace Mrs. Webster until the next election. Mr. Alosso motioned and Mrs. Fallon seconded the motion upon Tom's resignation as an alternate to the Zoning Board, subsequent to his resignation make a separate motion to appoint him to fill Gail Webster's seat till next March. Mr. Alosso withdrew his motion. Mr. Tierney motioned and Mr. Alosso seconded the motion to appoint Mr. Murray under RSA 673:12 Par. I to be the successor till the next regular election. Motion granted 5-0. Mr. Murray accepted the position as a full board member and resigned as an alternate.

Mail

- Copy of November 15, 2007 letter from Mr. Turner to John Spatharos regarding 28 Ash Street.
- November 27, 2007 e-mail letter of resignation from Gail Webster.

At 12:05 AM on November 28, 2007 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 December 11, 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.