

# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes February 12, 2008

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

### **Lot #16-F-6, Case #3-2008 (Continued from the 1/22/08 meeting)**

Applicant – Spatharos Family Trust, John Spatharos, Trustee

Owner – Spatharos Family Trust, John Spatharos, Trustee

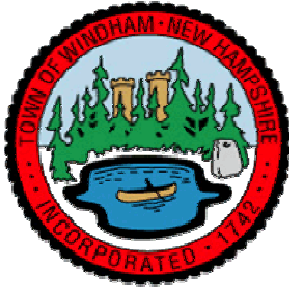
Location – 28 Ash Street

Zone – Residential A

A variance is requested to amend the conditions of a variance granted to the prior owners in April of 1980 to rescind the requirement that lots 16-F-5 and 16-F-6 be merged.

Mrs. Fallon read the case into the record. Attorney Mason, representing the owner, presented the case. On February 14, 2006 a variance was granted for remodeling and enlarging an existing dwelling. An issue came up regarding a 1980 variance that was granted to the previous owner. The condition of the 1980 variance was that two lots be merged. The properties were not merged. Attorney Mason submitted two assessors cards that were marked as Exhibits A & B and a letter dated February 22, 1986 that was marked as Exhibit C. A letter dated August 29, 2006, marked as Exhibit D, was sent to Attorney Campbell for review. Attorney Campbell replied that the Zoning Board of Adjustment can place conditions on variances but additional research needed to be done. Attorney Mason said that he did not know if that additional research was done. Attorney Mason also submitted a letter from Mr. Turner dated June 15, 2007, marked as Exhibit E, stating that the applicant must go before the Zoning Board to address the conditions of the 1980 variance. On September 11, 2007 the Zoning Board granted an equitable waiver to amend the conditions of the 1980 variance. In a letter, Attorney Campbell advised that the request could not be treated as an equitable waiver. According to zoning regulations two developed lots can not be merged and it was not allowed in 1980. Attorney Mason read the supporting facts into the record.

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



## BOARD OF ADJUSTMENT

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### **Deliberative Session, Case #3-2008**

Mr. Murray motioned and Mr. Tierney seconded the motion to deny Case #3-2008 as requested. Mr. Murray said that if the request is denied the equitable waiver will stand. Mr. Tierney said that the applicant can go to court for a decision. Attorney Mason said that he has a variance for this property. Mr. Murray withdrew his motion but Mr. Tierney did not withdraw his second. Mr. Murray amended his motion to deny without prejudice. Mr. Murray withdrew his motion. Mr. Tierney withdrew his second. Attorney Mason stated that he would withdraw the case. Mr. Murray motioned and Mr. Tierney seconded the motion to accept the withdrawal of Case #3-2008 without prejudice. Motion passed 5-0.

### **Lot #25-F-102, Case #81-2007 (Originally heard on 12/11/07)**

Applicant – Wayne Morris – Rock Pond Improvement Association

Owner – Michael Kennedy

Location – 29 Abbott Road

Zone – Residential A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on December 11, 2007.

Mrs. Fallon advised the Board that eight pages of additional information had just been received on February 12, 2008 for Case #81-2007 and that the Board might need time to review the information. Mrs. Fallon motioned and Mr. Murray seconded the motion to continue Case #81-2007 to the February 26, 2008 meeting in order to allow the Board time to read the additional information. Motion passed 4-1. Mr. Alosso voted against the motion because the case is on the agenda for February 12, 2008.

### **Lot #24-D-12, Case #8-2008**

Applicant – William Shisler

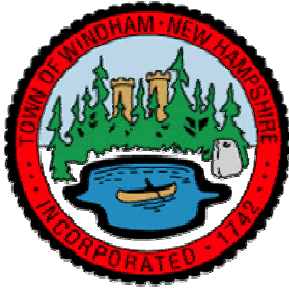
Owner – William Shisler

Location – 22 Patricia Street

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' from Moeckel Pond where 50' is required and 20' from the side setback where 30' is required.

Mrs. Fallon read the case into the record. Mr. Shisler submitted photos that were marked as Exhibits A, B & C and presented his case. Mr. Shisler would like to replace the shed that was demolished by a tree limb. The Board advised Mr. Shisler to contact NH Department of Environmental Services because he would need relief from their requirements before coming to



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the Zoning Board. Mr. Shisler withdrew his request. Mr. Murray motioned and Mr. Alosso seconded the motion to accept the withdrawal of Case 8-2008 without prejudice. Motion passed 5-0.

### **Lot #25-E-400, Case #9-2008**

Applicant – Peter H. Bronstein, Esquire

Owner – Randy & Deborah Casey

Location – 25 Abbott Road

Zone – Residential A

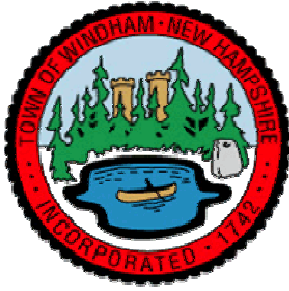
A variance is requested from Sections 401, 702 Appendix A-1 & 1200.1.3 of the Zoning Ordinance to permit the conversion of an existing dwelling from seasonal to year round use. The dwelling is 20' and 24' from the southwest side lot line where 30' is required and 28' from the rear to Rock Pond where 50' is required. All other requirements for conversion to year round use have been satisfied.

Mrs. Fallon read the case into the record. Attorney Bronstein, representing the owners, submitted a septic plan and tax map and presented the case. The 10,000 square foot lot predates zoning regulations. There are many residential uses on Abbott Road; at least five are classified as year-round. The proposed use is reasonable and allowed under the ordinance. Attorney Bronstein read the supporting facts into the record. There is a new house on 23 Abbott Road that received variances for a front setback of 16-feet and subsequently reduced to 15.41-feet, a side setback 14.5-feet where 30-feet is required and a side setback of 22-feet where 30-feet is required and a rear setback of 43-feet where 50-feet is required. This lot is 450' from the town maintained portion of Woodbury Road the last 150' of Woodbury Road is paved. The Town has a deeded easement over Abbott Road to a launching ramp that is almost to the end of Abbott Road. There is an organized Abbott Road Owners Association filed with the state and it is in the process of having plans drafted to improve both the steep portion of Woodbury Road and Abbott Road. Small improvements have been made since 2005.

The following residents spoke in favor of this request.

- Mr. Michael Kennedy of 29 Abbott Road.
- Mrs. Diane Ciccone of 45 Abbott Road.
- Mr. Gary Ciccone of 45 Abbott Road.
- Mr. Scott Cousins of 41 Abbott Road.

Mr. Alan Carpenter of 8 Glenwood Road gave information to provide clarity regarding his property at 23 Abbott Road. Setback relief was granted for a cottage that is functionally seasonal.



## BOARD OF ADJUSTMENT

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The following residents spoke in opposition of this request.

- Attorney Steven Whitley, representing the Rock Pond Improvement Association.
- Wayne Morris of 14 Jordan Road.
- Alan Decker of 35 Abbott Road.

Attorney Bronstein said that the new state of the art septic system installed by the owner in 2007 is probably the best on Rock Pond.

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

### **Deliberative Session, Case #9-2008**

Mr. Murray motioned and Mr. Alosso seconded the motion to grant an area variance from Section 702 Appendix A-1 of the Zoning Ordinance for the setbacks requested. Motion passed 3-2. Mr. Tierney and Mrs. Fallon voted against the motion because the applicant failed to meet fact #2, public interest.

Mr. Murray motioned and Mr. Tierney seconded the motion to deny a use variance for Case #9-2008 from Sections 401 and 1200.1.3 of the Zoning Ordinance. Motion passed 3-2. Mrs. Fallon, Mr. Tierney and Mr. Murray voted for the motion but against the request because the applicant has reasonable use of his property as a seasonal residence, the increased intensity of the use would relate to a situation contrary to public interest as a whole and would pose possible safety concerns. Mr. Tierney also felt that the expansion of use would increase use of the private road, fire, police and the condition of the hill on Woodbury Road in front of the property.

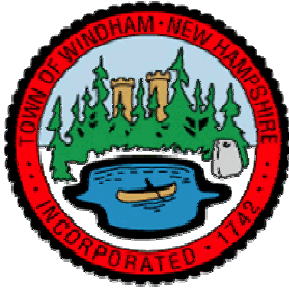
The Chairman granted a 5-minute recess.  
The Chairman called the meeting back to order.

### **Lot #21-V-230, Case #10-2008**

Applicant – Sandra J. Dewey  
Owner – Sandra J. Dewey  
Location – 8 Ash Street  
Zone Residential A

A variance is requested from Section 710 of the Zoning Ordinance to permit an existing 4' fence to remain in place where the regulations require a 3' fence.

Mrs. Fallon read the case into the record. Attorney William Mason, representing the owner, presented the case. This property has frontage on Fish Road, Ash Street and the pond. The installed fence is comparable to fencing located on abutting properties. Views of the surrounding



## BOARD OF ADJUSTMENT

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properties are not significantly affected by the current fencing height of 4-feet. Attorney Mason read the supporting facts into the record. A letter of support from Mr. & Mrs. Agnotovech of 9 Ash Street, marked as Exhibit A, was submitted.

### **Deliberative Session, Case #10-2008**

Mr. Tierney motioned and Mr. Murray seconded the motion to grant a variance for Case #10-2008 from Section 710 to permit a 4-foot fence as shown on the plan. Motion passed 5-0.

### **Lot #16-P-190, Case #11-2008**

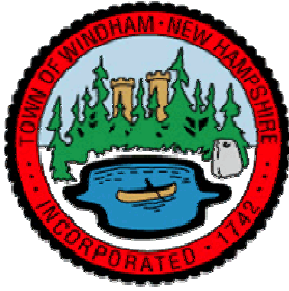
Applicant – Mary Ann Breen  
Owner – Breen Irrevocable Trust  
Location – 25 Second Street  
Zone – Residential A

A variance is requested from Section(s) 401, 405.2 & 702 Appendix A-1, of the Zoning Ordinance to permit the construction of a new dwelling on a 7000 square foot non-conforming lot where 50,000 square feet is required with street frontage of 40', 177' & 40' where 50' is required and a side setback of 3' where 30' is required and a rear setback of 24' where 30' is required. The existing structure will be removed.

Mrs. Fallon read both Case #11-2008 and 12-2008 into the record. Mr. Joseph Maynard, representing the owner, presented the case. There were two letters of support one from Joanne B. Gunter owner of lot 16-P-201A and one from Michael & Charlotte McDonough owners of lot 16-P-801. There is an existing approved septic system. The property has three frontages, 40' on 3<sup>rd</sup> Street, 177' on B Street and 40' on 2<sup>nd</sup> Street. The existing dwelling will be razed and a new dwelling constructed. The lot is approximately 7000 square feet. Mr. Maynard read the supporting facts into the record.

### **Deliberative Session, Case #11-2008**

Mr. Alosso motioned and Mr. Tierney seconded the motion to grant an area variance to permit the construction of a new dwelling on a 7000 square foot non-conforming lot where 50,000 square feet is required with street frontage of 40', 177', and 40' where 50' is required and a side setback of 3' where 30' is required and a rear setback of 24' where 30' is required. The existing structure will be removed. Motion passed 4-1. Mrs. Fallon voted against the motion because the owner has reasonable use.



## BOARD OF ADJUSTMENT

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### **Lot #16-P-190, Case #12-2008**

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

A variance is requested from Section(s) 1200, 1200.3 & 1200.4 of the Zoning Ordinance to permit the conversion of a new dwelling to year round on a non-conforming lot.

This case was read into the record with Case #11-2008. Mr. Joseph Maynard, representing the owner, submitted a photo that was marked as Exhibit A and presented the case. The owners would like to use this property year round. The existing dwelling is 25' X 30" and the proposed dwelling would be 30' X 28'. The existing dwelling is one story and the proposed dwelling will be one and a half stories. The deck area will be decreased. Lot coverage is under 20%.

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

### **Deliberative Session. Case #12-2008**

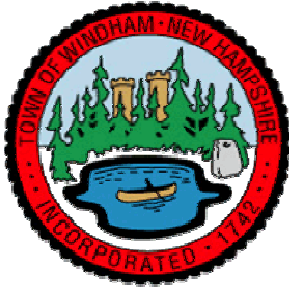
Mr. Alosso motioned and Mr. Murray seconded the motion to grant a Use Variance for Case #12-2008 to permit the conversion of a new dwelling to year round on a non-conforming lot. Motion passed 3-1-1. Mrs. Fallon voted against the motion because in her opinion it is contrary to public interest and Mr. Tierney abstained because he felt the applicant did not need to request this variance.

### **Approval of January 22, 2008 Minutes**

Mr. Alosso motioned and Mr. Tierney seconded the motion to accept the January 22, 2008 minutes. Motion passed 5-0.

### **Mail**

- January 24, 2008 Letter from Attorney Campbell regarding conditions attached to variances.
- January 28, 2008 Letter from Meghan O'Flynn of the Town of Hooksett notifying the Town of Windham of a Zoning Board meeting on February 12, 2008 at 7:00 PM regarding Omni Point Communications/T-Mobile to permit the erection of a 180' tall structure to provide telecommunications facility.
- January 29, 2008 Letter from David Sullivan regarding H&B Homes/Benchmark Engineering. Any Zoning Board fees associated with the recreational parcel being deeded to the Town were waived by the Board of Selectmen at their January 28, 2008 meeting.
- January 29, 2008 Letter from David Sullivan regarding Zoning Board fees being waived by the Board of Selectmen for Lot 16-P-190.



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- Copy of a February 1, 2008 Letter from Attorney Campbell to Attorney Mason regarding 28 Ash Street.
- Copy of a February 4, 2008 Letter from Attorney Campbell to Al Turner regarding 2 Woodvue Road.

At 11:55 PM 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 February 26, 2008 at 7:30 PM in the Planning & Development office.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.