

BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes August 26, 2008

August 26, 2008

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

Seat Alternates

The Chairman appointed Mr. Richardson to replace Mr. Tierney for this meeting.

Lot #17-M-47, Case #48-2008

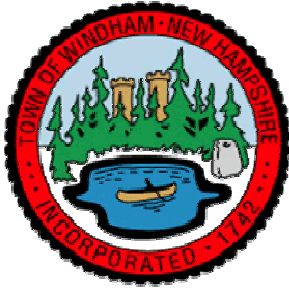
Applicant – Don & Doreen Klemm
Owner – Don & Doreen Klemm
Location – 4 York Road
Zone – Residential A

A variance is requested from Section(s) 401 & 702 Appendix A-1 of the Zoning Ordinance to permit an addition to a non-conforming structure on a non-conforming lot to be 34 feet from the front setback where 50 feet is required and 6.6 feet from the side setback where 30 feet is required

Mrs. Fallon read the case into the record. Mr. Don Klemm presented his case. The proposed addition is 9' X 9' to be used as a play room. Doreen Klemm read the supporting facts into the record.

Mr. Richard Pastene of 6 York Road did not oppose the addition but had concerns regarding the leach field.

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



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Deliberative Session, Case #48-2008

Mr. Alosso motioned and Mrs. Fallon seconded the motion to grant an area variance for Case #48-2008 from Sections 401 & 702 Appendix A-1 of the Zoning Ordinance to permit an addition to a non-conforming structure on a non-conforming lot to be 34 feet from the front setback where 50 feet is required and 6.6 feet from the side setback where 30 feet is required. Motion passed 5-0.

Lot # 11-C-1100, Case #49-2008

Applicant – NH Signs, Clifford Conti

Owner – Marie Hatton

Location – 25 Indian Rock Road

Zone – Business Commercial A

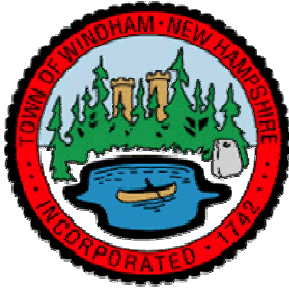
A variance is requested from Section(s) 501, 706.4.5 & 706.6 of the Zoning Ordinance to allow a 3' increase in height to the existing second free standing sign previously allowed by variance and add a 4' X 5' sign for additional tenant identification.

Mrs. Fallon read the case into the record. Mr. Clifford Conti of NH Signs presented a letter from Marie Hatton that was marked as Exhibit A. Mr. Conti read the letter into the record. In her letter Mrs. Hatton explained why she was not able to attend the meeting and also explained the reasons she is requesting to enlarge the signs at The Commons. Some of the tenants in the first smaller building have been complaining that their customers cannot find them. There have been many instances where UPS and Federal Express have not delivered packages because they could not find the tenants. The main sign, that lists all the tenants in the second larger building is not large enough to properly display the names of all the tenants in that building. Mr. Conti displayed a plan and explained that the sign for the smaller building would be 3 feet higher and 1 foot lower, after listings, and 20 square feet larger than the existing sign. The proposed sign would be similar in appearance to the existing sign. Mr. Conti read the supporting facts into the record. The photos submitted by Mr. Conti were marked as Exhibits B, C & D and the displayed plan was marked as Exhibit E.

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

Deliberative Session, Case #49-2008

Mr. Alosso motioned and Mrs. Fallon seconded the motion to deny the request for a variance for Case #49-2008 from Section(s) 501, 706.4.5 & 706.6 of the Zoning Ordinance to allow a 3' increase in height to the existing second free standing sign previously allowed by variance and add a 4' X 5' sign for additional tenant identification. Motion passed 4-1; request denied. The request was denied because it failed to meet Section B2 of the Boccia Analysis...the benefit sought by the applicant can be achieved by some other method reasonably feasible for the applicant to pursue... Mr. Richardson voted against the motion.



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Lot #16-L-1, Case #50-2008

Applicant – Edward N. Herbert Associates, Inc.

Owner – Cafua Realty LX LLC

Location – 30 Indian Rock Road

Zone – Village Center District

A variance is requested from Section(s) 612.3.1 of the Zoning Ordinance to permit less than the required 50-foot buffer between a residential use and a property located in the Village District.

Attorney Panciocco withdrew Case #50-2008 because of the August 26, 2008 letter written by Michael McGuire, Building Inspector, stating that relief from Section 612.3.1 is not required.

Mr. Murray motioned and Mr. Alosso seconded the motion to accept the withdrawal of Case #50-2008. Motion passed 5-0.

Lot #16-L-1, Case #51-2008

Applicant – Edward N. Herbert Associates, Inc.

Owner – Cafua Realty LX LLC

Location – 30 Indian Rock Road

Zone – Village Center District

A variance is requested from Section(s) 601.3 of the Zoning Ordinance to permit the construction of a permitted building with parking in the WWPD District.

Lot #16-L-1, Case #52-2008

Applicant – Edward N. Herbert Associates, Inc.

Owner – Cafua Realty LX LLC

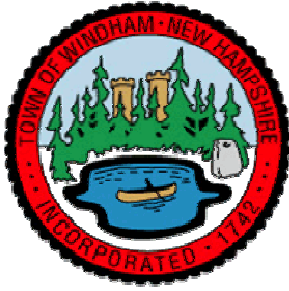
Location – 30 Indian Rock Road

Zone – Village Center District

A variance is requested from Section(s) 612.2 of the Zoning Ordinance to permit an eating & drinking establishment where a certain portion of the owner's product will be taken off site for consumption.

Mrs. Fallon read cases 51-2008 and 52-2008 into the record. Mr. Peter Zohdi of Herbert Associates, Attorney Patricia Panciocco of Mcland, Graf, Raulerson & Middleton and Mr. James Gove of Gove Environmental each took part in the presentation of cases 51-2008 & 52-2008.

Mr. Zohdi explained that after attending a site walk with the Conservation Commission the length of the proposed building was reduced from 125 feet to 100 feet. In the August 26, 2008 letter from the Conservation Commission it states *...new plans showed a majority of the proposed building removed from the WWPD. A small portion of the proposed building remains in the WWPD. Based on new information and the fact that the prior building was substantially in the WWPD the Commission found the plan to be acceptable.* Mr. Zohdi explained the items



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contained in the booklet he presented i.e. maps, letters, drainage study etc. The Chairman marked the booklet Exhibit A. A substantial portion of the existing paved driveway, parking area and the original leach field remain on the property within the WWPD overlay. The proposed use will:

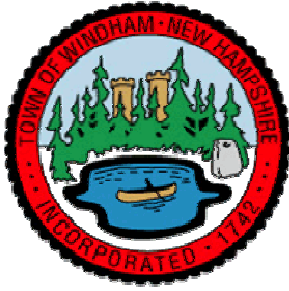
- Reduce the existing WWPD encroachments by approximately 300 square feet.
- The old leach field will be removed from the WWPD.
- Natural vegetation areas will be added to areas previously occupied by asphalt pavement.
- The existing drainage and storm water management will be improved by controlling and filtering the flow before it reaches the wetland.

Attorney Panciocco read the supporting facts into the record.

Mr. Gove said that this is a poorly drained forested wetland. The runoff enters a wetland that is associated with Collins Brook. Collins Brook flows southwest from the wetland to join with Golden brook after it exists Cobbetts Pond. The driveway, parking area and leach field are all located within the WWPD with a footprint of 5,335 square feet within the 100-foot buffer zone to the forested wetland. The proposal will reduce the amount of impervious surface within the WWPD with a proposed footprint of 5,030 square feet within the 100-foot buffer. The proposed storm water system has no direct discharges to the wetland without first pretreatment, storage, infiltration and then discharge at a measured rate to avoid negative downstream impacts. All storm water will flow to swirl separators located within the catch basins. Storm water from Route 111 will be directed to a swirl separator. The swirl separators have the ability to remove about 70% of the sand size fraction of the storm water runoff. The flow from the swirl separators enters a large detention basin on the northern side of the property. A weir structure is located at the outlet of the detention basin, which will measure out the volume of storm water leaving the basin. The flow from the basin will then be directed to a stone bermed level lip spreader which will spread the out flow over an upland area before the runoff enters the wetland. The proposal will treat flows from Route 111 prior to discharge into the wetland. The proposed leach field will be located approximately 200 feet from the edge of the forested wetland. The sewage system and well will be private and on site. There is a reduction in impervious surface, a restoration of plantings in the area of the old impervious surface and a storm water system to be put in place. The proposal is actually improving the site conditions in the WWPD.

Mr. Kevin Scannell of 37 Sharon Road spoke against this request.

Mrs. Fallon read into the record a letter dated August 20, 2008 from Linda Brown-Jenkins of 32 Indian Rock Road, an abutter. Mrs. Brown-Jenkins listed the following 9 concerns regarding the proposed plan:



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1. *Product taken off site is not allowed in the Village Center District. The majority of their business is take-out food and drink. This request would be for commuters, not just for the convenience of Windham residents. This will also increase the traffic flow. Traffic will back up on the Dunkin Donuts site due to slow entry onto Rt. 111.*
2. *Can the site handle the delivery of goods by a tractor-trailer? There does not seem to be enough room on the property.*
3. *As we know from the previous Dunkin Donuts location, tractor-trailers park on the side of Rt. 111 to purchase items from Dunkin Donuts. Will there be enough room on site for these tractor trailers, or will they still park on the side of the road which is a dangerous condition?*
4. *The size of the property is not conducive to multiple tenants. With a single business on the site, they would not require the variance into the setbacks, which would also solve the parking limitations and the WWPDP protected area.*
5. *The building is proposed to be 37' from the lot line. I am more concerned with the two traffic lanes that flow behind the building. My concerns include the car noise, car fumes, car lights, and the noise from the speaker at the drive up window being so close to my home especially during the early morning hours. A fence and/or thick evergreen buffer needs to be established to take care of these issues. Or maybe the speaker could be moved to the other side of the building away from my home.*
6. *I'm concerned with the hours of operation because of lighting potentially spilling over to my property. The fence and or thick evergreen buffer would help in this matter.*
7. *Could the dumpster be located on the other side of the building rather than next to my property?*
8. *Will there be a set of lights at the exit of Dunkin Donuts and the intersection of Church Road? The traffic in this area is very heavy during peak hours.*
9. *Will there be a left turn lane into Dunkin Donuts?*

Mr. Zohdi submitted a *Dunkin Donuts Drive-Thru Service* report that was marked as Exhibit B.

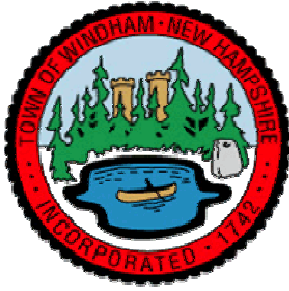
The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Mrs. Fallon motioned and Mr. Alosso seconded the motion to go into Deliberative Session.

Deliberative Session, Case #51-2008

Mr. Alosso motioned and Mr. Murray seconded the motion to approve a variance for Case #51-2008 from Section(s) 601.3 of the Zoning Ordinance to permit the construction of a building with parking in the WWPDP District. Motion passed 5-0.



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Deliberative Session, Case #52-2008

Mr. Alosso motioned and Mr. Richardson seconded the motion to grant a use variance from Section(s) 612.2 of the Zoning Ordinance to permit an eating and drinking establishment where a certain portion of the owner's product will be taken off site for consumption in the Village Center District. Motion passed 4-1. Mrs. Fallon voted against the motion because the proposed plan is contrary to public interest.

Lot #25-E-400, Case #40-2008 Request for Rehearing Originally heard on 7/8/08

Applicant – Rock Pond Improvement Association

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 July 8, 2008.

After reviewing the request for a rehearing Mr. Alosso motioned and Mr. Murray seconded the motion to deny the request for a rehearing of Case #40-2008 originally heard on July 8, 2008. Motion passed 4-1. The request was denied because there was no technical error and no new information. Mrs. Fallon voted against the motion.

Approval of August 12, 2008 Minutes

Mr. Murray motioned and Mr. Alosso seconded the motion to approve the August 12, 2008 minutes as amended. Motion passed 4-0-1. Mrs. Fallon abstained because she was not at the August 12, 2008 meeting.

Mail

- August 5, 2008 Letter from Attorney Campbell regarding Bauchman ZBA appeal.
- LGC Schedule for the 33rd Annual Law Lecture Series.

Mr. Alosso motioned and Mr. Murray seconded the motion to go into Non-Public Session per RSA 91-A:3 to discuss repudiations. Motion passed 5-0 on a roll call vote.

The next meeting of the Zoning Board of Adjustment is scheduled for September 9, 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.