



# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes November 9, 2010

### Board Members

Mark Samsel – Chairman  
Tom Murray – Vice-Chairman  
Dianna Fallon – Secretary  
Elizabeth Dunn – Member  
Heath Partington – Member  
Jim Tierney – Alternate  
Mike Scholz – Alternate  
John Alosso – Alternate (Excused)

### Staff

Tim Corwin – ZBA/Code Enforcement Administrator  
Patricia Kovolyan – Administrative Assistant

### Lot 21-A-19, Case #58-2010

Applicant – Peter Caron  
Owner – Donald & Carolyn Caron  
Location – 3 Alpine Road  
Zone – Residence District A

A variance is requested from Section 603.1 of the Town of Windham Zoning Ordinance and Land Use Regulations to permit the keeping of up to twelve (12) chickens where the keeping of chickens is not permitted in the Residence District A.

Mrs. Fallon read the case into the record. Peter Caron, son of the owner, submitted a letter of support along with four photos and an article from the Eagle Tribune all marked as Exhibit A and presented the case. Mr. Caron's photos showed the view from the road and from the Lopez home, 5 Alpine Road.

- The coop will be 50' away from all neighbors.
- There will be 12 chickens and no roosters.
- Mr. Caron read the supporting facts into the record.
- The coop cannot be seen from the road because of a steep slope.
- The coop will be kept in the current location.
- Chickens required 2-1/2 feet of space for exercise and 121 square feet is provided.
- Coop measures 5' X 4'.



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- Mr. Caron did not contact the Health Officer.
- Waste is put into a compost bin.
- Mrs. Dunn explained the process of granting a variance.

Mr. Brian Hoag of 2 Woodland Road spoke in support of this request. Mr. Hoag's backyard abuts the applicant's backyard. The coop is over an acre away from Mr. Hoag's property, noise is not a problem and neighborhood children enjoy the chickens.

Mr. Caron asked for a petition to change the law. Mrs. Dunn explained that the Zoning Board of Adjustment is in charge of taking care of exceptions to the law. The drafting of the law is done by the Planning Board. If you wish to make a change you must deal with the Planning Board. There is no form; you must draft wording to make a change and present it to the Planning Board.

Mr. Corwin, ZBA/Code Enforcement Officer, said that the Planning Board is considering language to permit agriculture in the Residential A District.

Mrs. Fallon read into the record a letter of support from Ryan and Julie Lemire of 6 Woodland Road.

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

### **Deliberative Session, Case #58-2010**

The Board entered the Deliberative Session based on testimony provided and the five points as read into the record.

Mrs. Dunn went thru the criteria.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a variance from Section 603.1 to allow the keeping of up to 12 chickens on the property with the conditions that there be no roosters, certification by the Health Officer, submission of a plot plan showing the location of the coop and that the coop remain in its current location and current size. **Motion passed 5-0.**

### **Lot 16-R-185, Case #48-2010 (Request for Rehearing, Originally heard on 10/12/10)**

Applicant – Eric Grue

Owner – Eric Grue and Robert F. Grue

Location – 15 First Street

Zone – Residence District A

The applicant requests a rehearing of the decision made by the Zoning Board on October 12, 2010.



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Mrs. Fallon advised the Board that the applicant was requesting a rehearing regarding the timber frame roof structure for boat storage because there is more of a setback than originally stated.

Chairman Samsel read into the record a letter from Eric Grue requesting the rehearing. ...*The setbacks were misleading which I feel gave the board some misinformation. The structure would have a setback of an average of 4' off the property line abutting the road. However, the paved road of First Street doesn't start for another 12' from the structure. ...The footprint of the structure has been shortened to 16' X 16', however the roof would still maintain the 16' X 20' coverage...*

The Chairman said there were two issues with the location; one was the setback and the other was the relative position to the road. The Board has to determine whether the information received is new or is it a "second bite of the apple" or was the applicant incorrect in what he presented.

Mrs. Dunn asked if it was an identical bite or essentially a newer, altered proposal. Mrs. Dunn said that she did not remember the structure being 12' from the paved surface of First Street and that this is new information for her and is sufficient for a rehearing.

Mr. Partington said this is just a slight change of the original plan and the second part of the request (footprint of the structure has been shortened to 16' X 16') should be a new application.

Mrs. Dunn said that the Board considered the setback to be 1' from First Street and that is not correct.

Mr. Corwin said there are three issues to consider.

1. Concrete Pad is 4' off of the property line as opposed to 1'.
2. The road doesn't start at the property line but rather is 12' from the concrete pad.
3. Changing of plans was an accommodation of the Board's concerns.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to grant a rehearing of Case 48-2010. **Motion passed 3-1-1.** Mrs. Fallon voted against the motion and Mr. Murray abstained.

### **Zoning Board of Adjustment - Applicant for Alternate Position**

Mr. Jonathan Sycamore of 15 Cobbetts Pond Road has lived in Windham for 13 years and has taken an interest in how Windham is developing and would like to participate in the zoning and planning process. Currently Mr. Sycamore is an analyst for a water utility in Boston, Ma. Mr. Sycamore would take serving seriously and would take the time for training and education.



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Chairman Samsel asked Mr. Sycamore the difference between the Zoning and Planning Boards. Mr. Sycamore said the Planning Board makes the rules and creates the vision and the Zoning Board makes exceptions to help people.

Mr. Partington asked if Mr. Sycamore could make it to the meetings. Mr. Sycamore said he usually makes it back to Windham around 6:30 or 7:00 PM.

In response to a question by Mrs. Dunn, Mr. Sycamore said he has attended Planning Board meetings to see how decisions are made. Mrs. Dunn asked how Mr. Sycamore would deal with the pressure of having to say *no* to a request with people in the audience expecting an ordinance to be enforced or a variance to be granted. Mr. Sycamore replied that as a commercial lender he had to say *no* to people sitting in front of him who had applied for a loan. There are laws to follow.

Mr. Partington motioned and Mr. Murray seconded the motion to appoint Mr. John Sycamore as an alternate to the Zoning Board of Adjustment for a two year appointment. **Motion passed 5-0.**

### Approval of Minutes

The October 12, 2010 minutes will be reviewed at the November 23, 2010 meeting.

Mrs. Dunn motioned and Mr. Partington seconded the motion to approve the October 19, 2010 minutes as amended. **Motion passed 5-0.**

Mr. Murray motioned and Mr. Partington seconded the motion to approve the October 26, 2010 minutes as amended. **Motion passed 5-0.**

Mr. Scholz arrived at 8:50 PM.

### Section 906 Duration of Approvals

Discussion of the changes to Section 906 of the Zoning Ordinance to lengthen the time that a variance or special exception is valid.

Mr. Tierney said that he attended a Planning Board meeting and wanted to clarify the language and have the ordinance state exactly when a variance would become invalid and that the variance was exercised as long as an applicant showed they were moving forward, such as submitting an application to the state for a Shoreland permit.

Mr. Murray said that the language should not read two or three years.



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Chairman Samsel said that he has never terminated a variance or special exception. The language should read *Any variance or special exception granted by the Board of Adjustment shall expire one (1) year from its issuance by the Board of Adjustment unless the variance or special exception granted has been exercised by the recipient.* The first renewal gives the tool to the Administrator and in the second renewal the Administrator is acting as the Zoning Board.

Mr. Tierney said there is good language in the Building Code (105-3-2) regarding time limits of an application and pursuing the application in good faith.

Chairman Samsel said he would like to weigh in on this ordinance as a resident not as a Board Member. Mr. Murray and Mr. Tierney agreed.

### **Bylaws**

Chairman Samsel read *Site Observation/Site Walks* into the record.

- Board members are encouraged to individually observe the applicant's property and/or GIS review of the case site prior to the scheduled board meetings.
- When the Board deems it necessary for the adequate consideration of an application, a site walk shall be scheduled.
- The Board shall refrain from making decisions on an application while on a site walk.
- Site Walk meeting minutes shall be taken and the Board shall disclose what they have learned/observed while on the site walk and record as such in the hearing minutes.

Mr. Tierney said he thought the Site Observation/Site Walk section should go at the bottom of page 3 or the top of page 4 under *General Rules* but before *Appeals*.

Mrs. Dunn said that it should be part of the *Meeting* section.

Chairman Samsel said the *Site Observation/Site Walks* Section should be listed as number 3 under *Meetings*.

Mr. Partington motioned and Mrs. Fallon seconded the motion to approve the first reading of *Site Observation/Site Walks*. **Motion passed 5-0.**

The Members discussed Mr. Partington's two versions of *Applicant Withdrawal*, *Applicant Postponement*, *Applicant Continuance* and *Board Initiated Meeting Changes*. Mr. Partington said the only difference between the two versions is whether or not there is a newspaper posting of continuances and postponements. There has been some discussion with Laura Scott, Director of Community Development, regarding the cost of posting and how to bill the applicant.



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Chairman Samsel said he thought the Board was in agreement to have continuances posted in the newspaper, but abutters would not be re-noticed. The posting in the paper should be presented in agenda format. If bylaws are going to be discussed, it should be included in the agenda in the paper. The font used for the newspaper can be changed; this is a public service and the incremental cost will not break the bank. Chairman Samsel asked the Board if they want the legal notice to be in agenda format and do they want continuances in the legal notice. After a discussion regarding continuances and postponements the Board decided that they would like to have both included in the newspaper notice and would like it to be in agenda format.

Mr. Tom Case said that there is no reason to spend money putting the agenda in the paper because it can be found on the internet and not everyone receives a copy of the *Windham Independent*. Mrs. Fallon responded by saying the Board has been told by staff that the agenda may or may not get onto the internet so we can't use that as a posting site. Mr. Case said that the reading of the bylaws was not on the agenda, so how would the public know about the first reading; information to the public is important.

Mr. Scholz said that cost can be reduced by simplifying the format and have it be consistent with the agenda.

Mr. Tierney said that the Board needs to take into consideration what is in the best interest of the Town. Administration will have to adopt what is in the bylaws.

There was discussion as to whether there would be many changes to the language of the bylaw drafts submitted by Mr. Partington.

The Board requested changes to Zoning Board of Adjustment application forms be listed on the next agenda.

Mr. Murray motioned and Mrs. Fallon seconded the motion to have the Public Hearing Notice in agenda format including continuances and postponements to begin with the December 14, 2010 meeting. **Motion passed 5-0.**



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### Adjournment

Mr. Murray motioned and Mrs. Dunn seconded the motion to adjourn. **Motion passed unanimously.**

The next meeting of the Zoning Board of Adjustment is scheduled for November 23, 2010 at 7:30 PM in the Community Development Department.

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