

# BOARD OF ADJUSTMENT

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

## Zoning Board of Adjustment Minutes October 14, 2008

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

Mr. Tierney recused himself from Cases 46-2008 and 39-2008. The Chairman appointed Mr. Richardson to replace Mr. Tierney for the two cases.

### **Lot #16-R-183B, Case #46-2008 (Continued from 7/22/08 & 8/12/08 & 9/9/08)**

Applicant – Donna & Martin Delaney, Jr.  
Owner – Donna & Martin Delaney, Jr.  
Location – 27 First Street  
Zone – Residential A

A variance is requested from Section(s) 702 of the Zoning Ordinance to permit the construction of a ground level deck encroaching 8 feet and 6 feet into the side setbacks where 30 feet is required.

Mrs. Fallon read the case into the record. Attorney Brian Germaine, representing the owner, presented the case. Attorney Germaine submitted two photos, copy of a tax card and other paperwork for a total of 7 Exhibits that were marked by the Chairman. On March 4, 2001 Mr. Delaney was granted a variance to construct a 12' X 26' second floor deck within the side setbacks of the property. The present request is to construct a deck underneath the existing deck on a 40' wide lot. A request for the ground floor deck was made in 2003. On August 26, 2003 the Windham Zoning Board approved a variance for the ground level deck. On September 25, 2003 the applicant obtained a building permit for the construction of the approved deck. After the building permit was issued the applicant was notified that a request for a rehearing was submitted. The applicant was already in the process of constructing the deck as permitted. On October 14, 2003 the Zoning Board granted the rehearing. On January 13, 2004 the Zoning Board denied the application. The applicant appealed the decision. The court vacated the Board's decision and remanded it back to the Board for review consistent with the standard set forth by Boccia. In 2001 the Zoning Board determined that a hardship existed, the home is located on a rocky slope. The applicant informed the Building Inspector in September 2003 that he intended to build a retaining wall to fill in underneath the proposed deck so that the deck would be at



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ground level. The applicant's plans were approved by the Building Inspector on September 25, 2003.

Attorney Germaine explained that because the Superior Court remanded this case back to the Zoning Board of Adjustment, to make a decision consistent with Boccia, his application requested the original side setbacks of 8-feet and 6-feet as applied for in 2003. The original application requested a variance for a 20' X 27' deck; the existing deck is approximately 21' X 27'. The owner would like a variance for what has been built. The existing setbacks are 1.3', 4.3' and 9.1'. The original request was for a 540 square foot deck the actual (already built) deck is 832 square feet. Attorney Germaine read the supporting facts into the record.

Mr. Dennis Root of 15 First Street spoke in support of the request.

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

### **Deliberative Session, Case #46-2008**

Mr. Richardson motioned and Mr. Alosso seconded the motion to grant an area variance for Case #46-2008 as requested except the side setbacks should be 8-feet and 6-feet. Motion passed 5-0.

### **Lot #16-R-183B, Case #39-2008 (Continued from 6/24/08, 7/22/08 & 8/12/08 9/9/08)**

Applicant – Donna & Martin Delaney, Jr.

Owner – Donna & Martin Delaney, Jr.

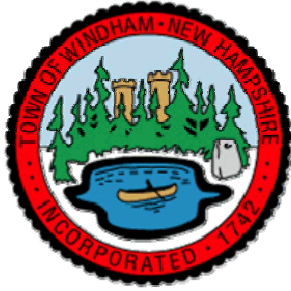
Location – 27 First Street

Zone – Residential A

A variance is requested from Section(s) 1200.1, 401 & 702 Appendix A-1 of the Zoning Ordinance to permit the conversion of a seasonal dwelling to year round use on a lot with 6,171 square feet of area where 50,000 square feet is required, 41-feet of frontage where 175-feet is required, side setbacks of 3-feet and 1-foot where 30-feet is required and a rear setback of 5-feet where 30-feet is required.

Mrs. Fallon read the case into the record. The existing non-conforming structure has been brought into compliance with the Windham Zoning Regulations by installing a clean solutions system. Attorney Germaine read the supporting facts into the record. The building permit for this home was approved in 1999 for 1250 square feet. The septic requirements have been met to convert from seasonal to year round.

Mr. Dennis Root of 15 Third Street and Mr. Tom Case of 70 Mountain Village Road spoke in support of this request.



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### **Deliberative Session, Case #39-2008**

Mr. Richardson motioned and Mr. Alosso seconded the motion to grant an area variance for Case #39-2008 as requested except the side setbacks should be 8-feet and 6-feet.

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

### **Lot #1-C-700, Case #56-2008**

Applicant – Carl & Mary Heinzl

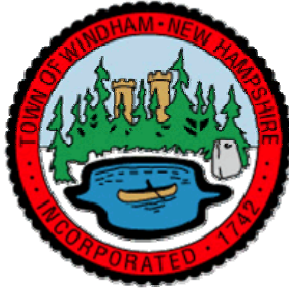
Owner – Carl & Mary Heinzl

Location – 110 Kendall Pond Road

Zone – Rural

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit an addition to the existing building within 14-feet of the side setback where 30-feet is required.

Mrs. Fallon read the case into the record. Attorney Patricia Panciocco and Mr. Tom Huot of Bedford Design presented the case. Attorney Panciocco provided background information. The owner came before the Zoning Board on May 27, 2008 to request an area variance. The contractor prepared and submitted the application which had few facts to support the requested relief. In addition to not satisfying the five prongs of the test, the application did not include a survey to show the impediments to the Heinzl's proposed family room expansion which was the reason a variance was requested. The contractor advised the Heinzl's that the Zoning Board's approval of their variance was all but certain so he began the garage construction before the public hearing. Since the variance was denied the Heinzl's now have a partially constructed garage and a contractor that is nowhere to be found. The Chairman asked what the difference was between this plan and the plan that was heard a few months ago. Attorney Panciocco replied that there were no facts in the application and no argument, the application was filled with innuendo and opinions. There was nothing for the Board to work with. This application is materially different compared to what was submitted last spring. Mr. Alosso asked if the plan was the same. Attorney Panciocco replied that it was not substantially different. Mrs. Fallon said that the side setbacks were different. The original request was for 16 feet; this request is for 14-feet. The Heinzl's now have a professionally prepared survey that fully illustrates the impediments to its family room enlargement. The Heinzl's retained Bedford Design Consultants, Inc. to assist them in resolving the issues. The Heinzl's are requesting that their family room be expanded to accommodate their son's extra curricular activities, not to run a home business. Photos of the activities were submitted. The Heinzl's have secured retail space to accommodate their new business and it includes offsite storage space, therefore, there should be no concern that large trucks will be delivering legos to the Heinzl home and signs that were posted have been removed. Due to the existing permanent improvements on the property, the family room's



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expansion is not reasonably feasible on three sides of the existing dwelling.

Mr. Tom Huot of Bedford Design explained that the proposed addition cannot be placed elsewhere on the lot.

Attorney Panciocco submitted eleven photos that were marked as Exhibit A and two letters of support marked as Exhibits B & C, one from Ted Maravelias of 34 Mockingbird Hill Road and one from Mike & Celine Hammar of Pelham that were read into the record by Mrs. Fallon. Attorney Panciocco read the supporting facts into the record. The proposed family room would be 20' X 61.3'.

The following residents submitted information and photos that were marked as Exhibits and spoke in opposition to the request.

- Mr. Marc Cobery of 112 Kendall Pond Road
- Mr. Rick Bogdanowicz of 107 Kendall Pond Road
- Mr. Gordon Campbell of 111 Kendall Pond Road
- Mr. Philip Barber of 106 Kendall Pond Road

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

### **Deliberative Session, Case #56-2008**

Mr. Murray motioned and Mr. Tierney seconded the motion to deny Case #56-2008 as requested because it did not meet Section 2-B of the Boccia analysis. *The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.* Motion passed 5-0, request denied.

The Chairman granted a five minute recess.

The Chairman called the meeting back to order.

### **Lot #17-L-46, Case #57-2008**

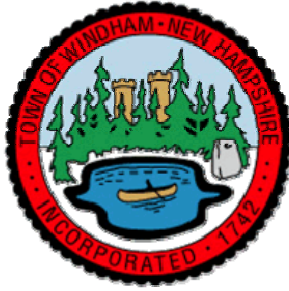
Applicant – Ed & Kelly Gallagher

Owner – Ed & Kelly Gallagher

Location – 4 Turtle Rock Road

Zone – Residential A

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit a 32 X 55 in ground pool with a rear setback of 15-feet where 30-feet is required.



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Mrs. Fallon read the case into the record. Mr. Mark Flannery, landscape architect, representing the owner, presented the case. The proposed pool would be 50-feet from the septic. Due to lot configuration the pool has been placed in the best location to relate to the residence. The supporting facts were read into the record.

The owner, Mr. Edward Gallagher, explained that this is a very private lot and additional landscaping will be added to ensure privacy.

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

### **Deliberative Session, Case #57-2008**

Mr. Tierney motioned and Mr. Alosso seconded the motion to grant a variance for Case #57-2008 from Section 702 Appendix A-1 per the plan submitted. Motion passed 5-0.

### **Lot #20-E-127, Case #53-2008 (Originally heard on September 23, 2008)**

Applicant – Marjorie Dastous

Owner – Marjorie & Steven Dastous

Location – 22 Bear Hill Road

Zone – Rural

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on September 23, 2008.

The Chairman replaced Mr. Murray with Mr. Richardson for Case #53-2008.

After reviewing the submitted information Mr. Richardson motioned and Mr. Alosso seconded the motion to deny the request for rehearing of Case #53-2008 because there was no technical error and no new evidence. Motion passed 3-2; request denied.

### **Lot # 11-C-1100, Case #49-2008 (Originally heard on August 26, 2008)**

Applicant – NH Signs, Clifford Conti

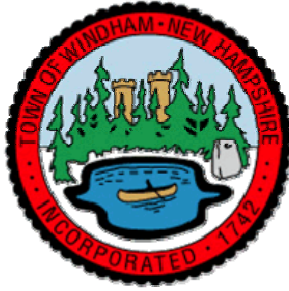
Owner – Marie Hatton

Location – 25 Indian Rock Road

Zone – Business Commercial A

A rehearing is requested regarding the decision made by the Zoning Board of Adjustment on August 26, 2008.

The Chairman replaced Mr. Richardson with Mr. Murray for Case #49-2008.



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After reviewing the submitted information Mr. Murray motioned and Mr. Alosso seconded the motion to deny the request for rehearing of Case #49-2008 because there was no technical error and no new evidence. Motion passed 4-1; request denied.

### **Approval of September 23, 2008 Meeting**

Mr. Alosso motioned and Mr. Tierney seconded the motion to accept the September 23, 2008 minutes as written. Motion passed 6-0.

### **Mail**

- October 2, 2008 letter from Attorney Campbell regarding 2 Woodvue Road
- September 23, 2008 letter from Attorney Campbell regarding Bauchman
- Revision of Right-To-Know Law.
- Zoning Notice Amendment Schedule
- Brochure from Granite State Gas
- Greater Nashua Habitat for Humanity
- RPC Planning Board forum scheduled for 10/21/08 and 10/24/08.

Mrs. Fallon motioned and Mr. Alosso seconded the motion to adjourn. Motion passed unanimously.

The next meeting of the Zoning Board of Adjustment is scheduled for October 28, 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.