



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

PO Box 120, Windham, New Hampshire 03087

(603) 432-3806 / Fax (603) 432-7362

[www.WindhamNewHampshire.com](http://www.WindhamNewHampshire.com)

**Approved Minutes Zoning Board of Adjustment  
March 8, 2016  
7:30 pm @ Community Development Office**

|                  |            |         |                 |           |         |
|------------------|------------|---------|-----------------|-----------|---------|
| Mike Scholz      | Chairman   | Present | Mike Mazalewski | Alternate | Present |
| Heath Partington | Vice Chair | Present | Kevin Hughes    | Alternate | Present |
| Mark Samsel      | Secretary  | Present | Jim Tierney     | Alternate | Present |
| Pam Skinner      | Member     | Present | Jay Yennaco     | Alternate | Excused |
| Bruce Breton     | Member     | Excused |                 |           |         |

**Staff:**

Dick Gregory, Code Enforcement Administrator  
Suzanne Whiteford, Minute Taker

**Meeting called to order at 7:30 by Chairman Scholz**

Mr. Hughes seated for Mr. Breton

Case #4-2016 read into the record by Mr. Samsel

**Lot 2-B-754, Case #4-2016**, continued from February 23<sup>rd</sup>

**Applicant/Owner** –Jeff Viens

**Location** – 29 Nottingham Road

**Zone** -Rural, Wetland & Watershed Protection District

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow a 26'x 22' attached family room built in 2002, with a building permit, to remain in the WWPD.

**Section 601.3** to allow the family room to remain in the WWPD where no building is allowed.

Robin Viens, applicant's wife, explained intent for variance and reviewed the 5 variance criteria.

Mr. Samsel asked Ms. Viens how she and her husband came to learn about the issue.

Ms. Viens explained they learned from their lawyer during closing that the variance had never been completed.

Mr. Partington asked Ms. Viens what is on the right side of the house. (opposite side of the addition)

Ms. Viens responded that there are not any structures; a grass yard exists on the right side of the house.

Chairman Scholz asked Ms. Viens about the slope in the front yard.

Ms. Viens responded the front yard is sloped enough to serve as a good sledding hill.

Approved ZBA minutes March 8, 2016

Mr. Tierney asked if there is a retaining wall for the septic system.  
Ms. Viens responded there is a small brick wall next to the septic system.

Jeff Viens, owner applicant, spoke in favor of the plan. Mr. Viens measured 95 feet from the start of the kitchen to the highest point of the water in the WWPD.

**Motion by Mr. Samsel to go into deliberation.**  
**Second by Mr. Hughes**  
**Vote 5-0-0**  
**Motion carries**

Mr. Samsel spoke in favor of granting the variance. Mr. Samsel stated he believes all 5 variance criteria are met, especially the hardship criteria is met.

Mr. Partington reviewed the 5 variance criteria and believes the plan meets all 5 criteria.

Chairman Scholz concurs the plan meets the 5 variance criteria.

**A motion was made by Mr. Samsel for Case #4-2016 to grant variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow a 26'x 22' attached family room built in 2002, with a building permit, to remain in the WWPD.**

**Section 601.3 to allow the family room to remain in the WWPD where no building is allowed.**  
**Second by Ms. Skinner**  
**Vote 5-0-0**  
**Motion carries**  
**Chairman Scholz informed the applicant there is a 30-day appeal period.**

Mr. Tierney seated for Mr. Breton

Mr. Samsel read Case #5-2016 and abutter list into the record

**Lot 17-L-53, Case #5-2016**

**Applicant/Owner-Kathleen Randall**

**Location-5 Farmer Road**

**Zone-Residence A and Cobbetts Pond & Canobie Lake Watershed Protection Ordinance.**

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to raze and reconstruct a garage.

**Section 401** to allow the new garage to be closer to the street than the existing one.

**Section 405.5** to allow the new garage to not conform to the required setbacks.

**Section 406.2** to allow an increase in volume and footprint and result in further non-conformance.

**Section 702, App. A-1** to allow a side setback of 2 ft. on one side and 24 ft. on the other side where 30 ft. is required.

Applicant Kathleen Randall explained the intended use of the new garage is the same as the existing garage which is boat storage. Ms. Randall reviewed the 5 variance criteria.

Mr. Samsel asked the applicant what are the dimensions and setbacks of the existing garage and when was it built.

Ms. Randall responded the existing garage was built in 1903, it measures approximately 4.5' X 20.5', and has an approximate 28 feet setback.

Mr. Partington asked Ms. Randall if she considered centering the new garage.

Ms. Randall responded that centering the new garage would eliminate space she is currently using for parking.

Mr. Partington asked Mr. Gregory if it is acceptable to place a garage in the front yard.

Mr. Gregory stated there is no problem with the location of the garage.

Mr. Partington believes a variance is needed to place a garage in the front yard.

Chairman Scholz read Section 703 of the town ordinance, accessory buildings and swimming pools.

Chairman Scholz agrees with Mr. Partington that a variance is needed to build a garage in a front yard.

Chairman Scholz asked the applicant if the proposed garage is a single story structure.

Ms. Randall responded that she would like to have a loft area for storage of tools.

Mr. Tierney asked the applicant if the roof orientation will be the same as the current pitch.

Ms. Randall responded she does not know if the roof orientation will be the same.

Mr. Tierney stated he believes changing the orientation of the roof could cause some runoff and erosion problems for the neighbors.

Mr. Tierney asked the applicant what the height will be of the proposed garage.

Ms. Randall does not know what the proposed elevation will be.

Mr. Tierney asked what the foundation will be.

Ms. Randall does not know what the foundation will be. Ms. Randall has not yet consulted a contractor.

Chairman Scholz stated he would like to know if the new garage could be built with less infringement on the lot line and bring it into conformation. Chairman Scholz would like to know definitively what the existing lot lines are now and what will the proposed lot lines be?

Mr. Mazelewski stated he drove past the site yesterday and it is staked out and goes over the lot line into the neighbor's property.

Mr. Partington believes that based on Section 703 of the town ordinance the case needs to be continued and abutters notified properly.

Chairman Scholz asked the applicant if 2 weeks is enough time for her to gather information and return to the Board if the case is continued.

Ms. Randall responded that 2 to 4 weeks is enough time for her to gather additional information and return to the Board.

Chairman Scholz opened the case for public comment.

Kim Oliveira, 7 Farmer Rd. spoke in favor of replacing the existing structure. She is concerned about the setbacks because the existing structure goes into her property.

Nancy Charland, 3 Farmer Rd, spoke in favor of replacing the existing garage. She is concerned about the height of the proposed garage exceeding the height of the existing garage. Ms. Charland presented pictures of neighboring structures with regards to existing heights and entered the pictures into the record as Exhibit A.

Ms. Randall would like to take the public and board's comments into consideration and resubmit a new plan.

Mr. Samsel read a letter dated 2/23/16 from conservation commission requesting a sketch with measurements of the existing garage and the size of the proposed garage.

**A motion was made by Mr. Samsel to continue Case #5-2016 to April 12, 2016 and include Section 703 from the town ordinance in the re-notice.**

**Second Mr. Tierney**

**Vote 5-0-0**

**Motion carries**

Mr. Mazelweski seated for Mr. Breton

Mr. Samsel read the request for rehearing of Case #4-2013 into the record.

**Request for Re-hearing Lot 21-G-600, Range Road**

**Applicant/Owner-Janet and Stanley Balise**

A request for a re-hearing on a decision made by the Zoning Board of Adjustment on January 26, 2016 for **Case # 4-2013**.

Chairman Scholz reviewed the outcome of NH Supreme Court Case of Hussey v. Barrington with regards to how it applies to Case# 4-2013 and the request for rehearing.

Chairman Scholz brought two technical errors to the Board's attention and requested the members to weigh in on these points. Technical point #1. The original posting of the case and whether the abutters were properly notified. 2. Concern around the jurisdiction allowed the board based on RSA 676.7

Since the last hearing, Chairman Scholz has done research and believes the Board has received clarity on RSA 674.33 I (a) which is a new RSA and no cases under this RSA have been before a ZBA. Chairman Scholz believes the board made a technical error under RSA 676.7.

After review of the 21 points listed in the petition brought forward to the ZBA Mr. Partington and Mr. Samsel agree on the 2 technical points addressed by Chairman Scholz.

**A motion was made by Mr. Partington to grant the rehearing request for Case Lot 21-G-600 for the variance extension case related to Case #4-2013 on March 22, 2016 as the ZBA made 2 technical errors: 1. The ZBA did not properly notice the case for public hearing or take public input per RSA 676.7**

**2. The decision was contrary to the ZBA authority to extend a variance for good cause which is a separate and independent right available to variance holders regardless of whether a local ordinance permits an extension per RSA 674.33 IA**

**Second Mr. Samsel**

**Vote 5-0-0**

**Motion carries**

Chairman Scholz addressed two attendees that arrived late after the polls on the status on one of the evening's cases.

Chairman Scholz stated in the future, he believes the ZBA should not meet on the same day as town elections.

**Review and approval of draft minutes**

11-10-2015: Suzanne will review the minutes and submit grammar, and spelling corrections with tracking for the ZBA to review

1/12/2016, 1/26/2016 draft minutes were submitted with corrections and will be reviewed at the next scheduled meeting.

A motion was made by Mr. Partington to approve December 22, 2015 minutes as amended

Second by Mr. Samsel

Vote 5-0-0

The minutes of 2/23/2016 were reviewed and amended. The amended minutes will be reviewed at the next scheduled ZBA meeting

**Motion by Ms. Skinner to adjourn**

**Second by Mr. Samsel**

**Vote 5-0-0**

**Minutes revised by Dick Gregory ZBA /Code Enforcement Administrator**