



Town of Windham, Maine

Code Enforcement Department
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Zoning - Building Inspect ions

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Code Enforcement

**Draft Minutes
Town of Windham
Board of Appeals
Town Hall- Council Chambers
October 17, 2024**

Roll Call and Declaration of Quorum:

Call to Order- Jon Rioux -Official Quorum 4 Members- Chris McDonald-Jim Cobb- Raymond Batchelder and Francesco Farinella.

Chris McDonald called the meeting to order.

Approval of Minutes: September 5, 2024 – Motion made by Jim Cobb to approve and seconded by Raymond Batchelder. . **(Voted 4-0).**

Notice of Decision September 5, 2024 – Motion made by Raymond Batchelder to approve and seconded by Jim Cobb. . **(Voted : 3-0- 1).**

Public Hearing for:

24-002: James Elliot- Conditional Use application for auto repair service at 177 Roosevelt Tr Map 10 Lot 43 (Zone C-3)

Jim Elliot spoke about his business located at 177 Roosevelt Trail

Jon Rioux; Director of Code Enforcement spoke, that the Use is a Conditional Use permit with Board of appeals approval.

Chris McDonald asked if each question needed to be approved or disapproved one at a time.

Town Attorney says all conditional use questions needed to be asked and voted on one at a time. Performance Standards can be added as a condition of approval.

Chris McDonald, Chair opened Public Hearing: asked if anyone from the public would like to speak. No one spoke; Public Hearing was closed.

Chris McDonald proceeded with the Conditional Use questions.

(See attached answer sheet)

Conditional Use Questions

H. Review Criteria. The Reviewing Authority shall have the power and duty to approve, approve with conditions, or deny conditional use applications based on the following.
Standards:

1. Property Value. The proposed use will not depreciate the economic value of Surrounding properties.

Vote: All in Favor 4-0

2. Wildlife Habitat. The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.

Spoke about spillage plan in place.

Vote: All in Favor 4-0

3. Botanical Species. The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.

Vote: All in Favor 4-0

4. Potable Water

- (a) The proposed use has access to potable water,
- (b) The proposed use will not burden either a groundwater aquifer or public water System.

Vote: All in Favor 4-0

5. Sewage Disposal. The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either:

- (a) The existing sewage system has adequate capacity for the proposed use, or
- (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.

Vote: All in Favor 4-0

6. Traffic. The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules. Sec. 500 Performance Standards Land Use Ordinance Town of Windham 5 – 10

Vote: All in Favor 4-0

7. Public Safety. The proposed use will not overburden police, fire, and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.

Vote: All in Favor 4-0

8. Vibration. The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest “protected structure,” as defined by the Maine Department of Environmental Protection.

Vote: All in Favor 4-0

9. Noise. The proposed use shall meet the noise standards in Section 812.S. of the Site Plan Review Ordinance.

Vote: All in Favor 4-0

10. Off-Street Parking and Loading. The proposed use meets the parking and loading standards of Section 812.C. Site Plan Review.

Vote: All in Favor 4-0

11. Odors. The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries.

Vote: All in Favor 4-0

12. Air Pollution. No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property, or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted composed of any solid or liquid particles in concentration exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at any point.

Vote: All in Favor 4-0

13. Water Pollution. No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.

Vote: All in Favor 4-0

14. Erosion and Sediment Control. The proposed use will not cause water pollution, sedimentation, erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.

Jon Rioux spoke and indicated soil and erosion permit will be issued for the site.

Vote: All in Favor 4-0

15. Hazardous Material. No use shall for any period discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.

Vote: All in Favor 4-0

16. Zoning District and Performance Standards. The proposed use meets the applicable zoning district standards in Section 400 and the applicable performance standards of Section 500. Town of Windham Land Use Ordinance Sec. 500 Performance Standards 5 – 11

Jon Rioux Director of Code Enforcement indicated that the Conditional Permit stays with the land.

Vote: All in Favor 4-0

17. Solid Waste Management. The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

Spoke about dumpster on site emptied by local company. Metal is disposed of properly.

Vote: All in Favor 4-0

Chris McDonald, Chair asked for a motion to approve the Conditional Use application –

24-002: James Elliot- Conditional Use application for auto repair service at 177 Roosevelt Tr Map 10 Lot 43 (Zone C-3).

Town Attorney for Board members read into record the approval standards that are required for Auto Repair Service with **Conditions of Approval:**

The following standards shall apply to all automobile repair services:

§ 120-507Automobile repair services.

[Amended 7-8-2014 by Order 14-164]

A.

The sale of gasoline or other petroleum products shall not be allowed as an accessory use (see definition of "automobile gas station" in Article 3).

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

B.

Upon completion of all repair work, as requested by the customer, no more than two registered automobiles shall be left on-site more than 45 cumulative days each in a calendar year. (See definition for "automobile graveyard" in Article 3.) The storage of automobiles more than this standard shall not be allowed as an accessory use for automobile repair services established after August 7, 2014 (see standards for automobile storage. lot⁽¹⁾).

[1]

Editor's Note: See § 120-508.

Automobiles shall be kept on the lot for no more than 45 cumulative days in a calendar year.

C.

Automobiles may not be displayed for sale, or sold, on the premises, unless retail sales, automobile sales are a permitted use or a conditional use in the applicable zoning district.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

D.

Repair of Commercial Trucks repair on the property should be limited to the gross weight of equal too or less than 26,000 pounds.

Board grants Conditional Use permit approval of . **24-002: James Elliot-** Conditional Use application for auto repair service at 177 Roosevelt Tr Map 10 Lot 43 (Zone C-3) with the above conditions.

Chair Chris McDonald asked for a motion to grant the Conditional Use application with the four conditions that were read into the record.

Motion made by Jum Cobb and seconded by Francesco Farinella – All in Favor 4-0

24-003: Keith Bearce- Administrative Appeal for the replacement home building permit # 24-000549 issued to 38 Clairmont Rd (Zone LD)

Appeal has been presented, to stop the building process.

Keith Bearce gave handouts to the Board members. Explains that there is an unpermitted deck on the property and believes there is a nonconforming enclosed porch and deck replacing it. 1989 the deck was non existing, and a new one was built without the necessary permits. No assessment records for the existing deck.

Chuck Daigle , Deputy Director of Code Enforcement spoke and explain that part of the deck is more nonconforming. The property owners were contacted, and they will be reconfiguring the footprint so that it meets the criteria. Chuck explains from the survey what needs to be corrected. Owners will have to reconfigure the building on the property. Height is acceptable for the building.

Board members are asking questions about the property. Chuck explains the shoreland expansion rules. Jeff Kalinich from DEP was also contacted and the project was discussed. Chucks talks about total footprint of the existing house and the setbacks.

Jim Cobb asks questions about the expansion.

Chuck Daigle explains the expansion and setbacks. And refers to the deck on the survey.

Francesco Farinella ask questions about the deck and Chuck explains that the existing deck was not permitted. Explained he had e mailed Jeff Kalinich from DEP with questions. They spoke about the location of existing and the footprint of the structure.

Jon Rioux, Director of Code Enforcement explained the house has been demolished but the construction of the new house has not been started yet.

Chris McDonald commented on the expansion.

Keith Bearce approaches the microphone again. Discuss size of existing structure and setbacks and the layout and refers to the site plan.

Board member Jim Cobb discusses the 30% expansion from 75 feet to 100 feet.

Keith Bearce indicates they are closer, and the deck was never permitted and speaks about nonconformity.

Board members continue to discuss expansion in the 75' to 100' section and discusses the height of the structure.

Chuck Daigle returns to speak further about the project. Explains what they are allowed to do.

Board members have further discussion about the setbacks and expansions.

Town Attorney Ben McCall speaks about the project amending the project. The appeal is from original permit.

1. The new building is too large.
2. Expansion is going closer to the water.
3. Reconfiguration of the plan should be done.
4. If not withdrawn, then a decision can be made.
5. Appellant has a right to appeal if he does not agree.
6. If proposing replacement, the structure cannot go closer to the water, but the footprint can be expanded.
7. Refers to Sec 185-12C-1.
8. What was there January 1, 1989?
9. Board should decide what needs to be done with this appeal.

Jon Rioux, Director of Code enforcement explains about what needs to happen to move forward with the project and want the structure to conform.

Town Attorney Ben McCall speaks about the project. The appeal is from original permit. The Board can render a decision on this permit, would our decision go with that permit or once the permit, has been amended? We know the permit will change.

Town Attorney speaks on the permit that was issued. A new permit will be issued, and it will be another decision of the Code Office once the submission has been amended.

Chris McDonald asks questions before rendering a decision, if amended. Discusses possibility of making a decision with a butler, Keith Bearce and Board Members. Chris explains the process further to the abutter about his appeal.

Town Attorney speaks on the waiting period for an appeal. -Gave advice on what to do with this appeal.

Chris McDonald opens the public hearing and ask if anyone would like to speak?
No one spoke - public hearing was closed.

Chair asked for a motion to table the Appeal-Motion made by Jim Cobb - Seconded by Francesco Farinella.
All in favor 4-0

4. New Business- none- Jim Cobb motion to close - seconded by Francesco Farinella.
All in favor 4-0

5. Training – Jon Rioux, Director of Code Enforcement; asks if there are any questions on the procedures. Town Attorney discusses dos and don'ts about the procedures of Board of Appeals.

6. Adjournment Chair asked for a motion to adjourn – Motion made by Ray Batchelder – seconded by Jim Cobb - **All in favor 4-0**