

TOWN OF WINDHAM
ZONING BOARD OF APPEALS

AMENDED NOTICE OF DECISION

Appellant: Anthony Requia, 285 Middle Road, Falmouth, ME 04105

Property Owner: Anthony Requia and Daniel McNutt

Property: 119 Trails End Road, Unit #2, Map/Lot 73/4/2, Town of Windham

Zoning Classifications: Limited Residential (“Limited Residential Shoreland Zone”) and Farm Residential (“FR Zone”)

Introduction

1. Appellant filed a timely notice of appeal of the Code Enforcement’s (“CEO”) issuance of a Notice of Violation and Stop Work Order (“NOV”) dated June 3, 2024 for building permit #24-000582 (“Permit”) in relation to the Property.
2. On September 5, 2024, a *de novo* hearing was held by the Zoning Board of Appeals (“Board”). Members present and voting were Christopher McDonald, Jim Cobb, Mike McGuigan and Raymond Batchelder, Jr. The Board received testimony from the Appellant, Code Enforcement Officer (“CEO”) and members of the public. The Board voted unanimously to deny the appeal.
3. Appellant filed an administrative appeal in the Cumberland County Superior Court (Docket No. AP-24-47) under Rule 80B of the Maine Rules of Civil Procedure. By order dated June 25, 2025, the Court remanded the matter to the Board (“Remand Order”) to make findings of fact and conclusions of law regarding the Property’s lot size and frontage.
4. In accordance with the Remand Order, the Board met on August 6, 2025. At that meeting the Board heard oral arguments from counsel for the CEO and Appellant and began its deliberations. By agreement of legal counsel, the complete Windham Land Use Ordinance and Shoreland Zoning Ordinance were entered into the administrative record of this remand proceeding; otherwise, no additions were made to the administrative record.

5. The Board continued its deliberations at a second meeting on August 14, 2025 and voted to approve the amended findings of fact and conclusions of law set forth below. The same Board members who were present and voting as at the initial meeting on September 5, 2024 voted on the amended findings of fact and conclusions of law.

Amended Findings of Fact and Conclusions

Minimum Lot Size

1. Under the Windham Land Use Ordinance (“LUO”), the FR Zone requires a minimum lot size of 50,000 square feet (LUO, §120-407 E). The Property is a split lot for zoning district purposes – meaning that it is divided by two zoning district lines. It contains a total of 100,300 square feet with 77,846 square feet in the LR district and 22,493 SF in the FR district. There is an existing single-family dwelling located entirely in the LR portion of the Property. The proposed second dwelling would be located entirely in the FR district.
2. Even though the Property is part of a two unit condominium it is still considered a separate lot under the definition of “lot” contained in the LUO (§300) as it is “a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.”
3. §120-404 of the LUO states the following regarding split lots: “the regulations applicable to the less restrictive portion of the lot may not be extended more than 50 feet into the more restrictive portion of the lot” except with a variance approved by the Board. Such a variance has not been sought. Applying an extra 50 feet from the LR to the FR portion of the lot would only gain an additional 10,000 square feet which added to the 22,493 does not make enough area to satisfy the 50,000 required minimum lot size.
4. The Board’s conclusion that the lot size is insufficient for a second dwelling is based upon the plain language of the sections cited in the LUO and is consistent with Maine case law such as *White v. Kittery*, 435 A. 2nd 405 (1981) and *Grimes v. Town of Wells*, 2000 Me. Super. LEXIS 132 which stand for the principle that “the development of each portion of the ‘split lot’ must comply with the restrictions imposed upon the zone in which the development is located. Simply stated, the Board concluded that borrowing from one zone to another is not permitted. (Voted 3-0)

Lot Frontage

5. § 120-407 E (3) (a) of the LUO requires minimum street frontage of 150 feet. § 120-301 defines “frontage” as “the length of the front line measured at the street right of way.”

6. § 120-301 defines “front lot line” (“lot line, front”) as “the lot line separating a lot from a street right-of-way or the portion of a lot that abuts a street right of way.”
7. “Street” is defined under §120-301 to mean: “public or private roads or ways such as alleys, avenues, boulevards, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access **other than driveways**” (emphasis added). The definition of the term “driveway” in §12-301 states: “A driveway shall not be used to provide frontage.”
8. LUO street standards for “private roads used for the purpose of providing frontage for, and access to, individual lots of land” require a 50 foot right of way and 18 feet for a graveled travel way. §120-911 M(5)(a)(5), Appendix B, Table 3 and a backlot requires a 50 foot right of way. §102-533 B (1)(A)(1), §120-555.
9. The survey contained in the administrative record shows a right of way approximately 15-20 feet wide over the land of abutters Kenyon R. Clark and Eileen Clark. This width is insufficient to meet the above street standards and therefore the Board concluded that it is a driveway which cannot be used for frontage. (Voted 3-0)

Nonconforming Status

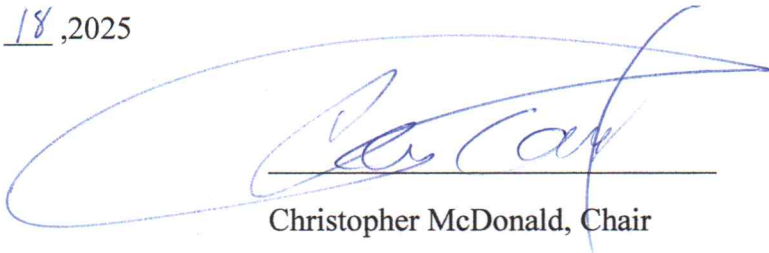
10. Under the sections of the LUO cited above, the existing home is lawfully nonconforming as to frontage and access, but the proposed second dwelling (Unit #2) is not. Under § 120-204 it does not qualify as a “lot record” because frontage, as a dimensional requirement, cannot be met and no variance as been sought or obtained. Under this provision regarding nonconforming lots of record, the Appellant cannot maximize the use of the Property by adding a second dwelling. (Voted 3-0)

Decision on Appeal

Based upon the amended findings of fact and conclusions of law set forth above, the Board voted to reaffirm its previous denial of the administrative appeal. (Voted 3-0).

The Board voted to authorize the Chair to sign this decision. (Voted 3-0).

Dated: August 18, 2025



Christopher McDonald, Chair