

Minutes of Public Hearing of DiStefano Appeal for a Dimensional Waiver  
8/10/22

Those attending in person at the Meeting House: Vance Bell, Dawn Bower, Bill Dunkel, Tom Johnson, Kate Wright, Randall and Mona DiStefano, Phil and Ellen McDuffie, Frank Seawright, John Boynton, Charlie Rockwell, Cathay Stover, Kord Scott, Jim Lawler, Jack Beusmans

Those attending online via Zoom: Bob Fisher, Maureen Bell, Cathy Edgerly, Alison Cummings, Bill Casey, Barbara Jean Quinn, Keith and Kathy Jungermann, Sharon Guzik, Michael Pelton, Louise Johnson, Russ & Joyce Cumming, Sue Brown, George Dutton

Bill Dunkel opened the resumption of the hearing, which began on August 2, at 6:05PM. He noted that Chris Cummings had recused himself from the hearing due to his relationship to Alison Cummings, Windham's Zoning Administrator.

He indicated that the purpose of this part of the hearing was to get more information about the slope of the DiStefano property on Wheeler Road. We already have Phil McDuffie's calculation of slope from the Boynton property line pin to the high water mark of Wheeler Brook, and Phil's calculation of slope across the septic field.

Mr. DiStefano submitted a photocopy of a CAD image from Kevin Hollibeek, the septic engineer who designed the septic system. It shows slopes of 16.7% and 21.6% for the land upon which the foundation rests. Mr. Dunkel added clarifying information about how these calculations were made based upon a telephone conversation and numerous email exchanges he had with Mr. Hollibeek. Mr. Hollibeek confirmed that the average slope of the land on which the foundation rests is 19.15%. Mr. Hollibeek used lidar images which enabled him to calculate the slope of the land before any development had occurred.

Mr. Dunkel noted that the ZBA has now heard testimony about how to measure slope at three different locations on the DiStefano property:

- 1) The slope of the land from the Boynton pin to the high water mark of the brook, which Mr. McDuffie calculated to be 29.9%.
- 2) The slope across the primary leach field, which Mr. McDuffie calculated to be 18.8%.
- 3) The slope at two points of the foundation, calculated by Mr. Hollibeek to be 16.7% and 21.6%, respectively, for an average slope of 19.15%.

Mr. McDuffie then presented a fifteen page document with additional information about the flood in July of 2021 which washed out part of Wheeler Road and destroyed the culvert downstream from the DiStefano property. His presentation included information about several ways to measure slope, including imagery from Geospatial Information Software. He concluded that the area to be concerned about, which exceeds 20%, is “the entire area around the foundation down to the brook”. It’s the developed part of the hillside.” Mr. McDuffie also noted that civil engineers can minimize the risk of development on steep slopes by using retention ponds, terraced slopes and protective walls, but this could be quite expensive.

Mr. Seawright commented upon the watershed upstream from Wheeler Brook and how the convergence of more than one stream contributed to the floodplain Mr. McDuffie referred to. He expressed concern about creating a precedent which might ignore the prohibition of development on slopes of 20% or more.

Charlie Rockwell, an experienced surveyor, Chairman of the Rupert Development Review Board and a Selectman, said the key is deciding upon the definition of development and the criteria for measuring slope. He feels there is development on a slope greater than 20% on the DiStefano land. The question is how that relates to the current situation where the foundation already has been poured (“the horse is out of the barn”). Windham’s regulations do not prohibit development on a slope with an average grade of 20%; they prohibit it on a slope of 20% or greater.

Mr. Dunkel thanked everyone for their comments and said that the ZBA will take all of this information into account when deliberating. He closed the hearing at 7:05PM.

