

Minutes of the Windham Zoning Board of Adjustment Public Hearing
on Randall and Mona DiStefano's Dimensional Waiver Request
August 2, 2022

Those attending in person at the Meeting House: Vance Bell, Dawn Bower, Alison and Chris Cummings, Bill Dunkel, Tom Johnson, Kate Wright, Randall and Mona DiStefano, John Boynton, Cathy Stover, Ellen and Phil McDuffie, Ruth Alden Wicker, Kord Scott, James Lawler, Bill Casey, Leila Erhardt, Claudia Holmes.

Those attending online via Zoom: Maureen Bell, Erin Kehoe, Pat McLaine, Kelly Wicker, Abby Pelton, Cathy Edgerly, Ginny Crittenden, David Cherry, George Dutton, Jack Beusmans and Sharon Guzik, Tom Widger, Michael Pelton, Crystal Corriveau, Russ and Joyce Cumming, Charlie Rockwell, Kathy and Keith Jungermann, Barbara Jean Quinn, Louise Johnson, Bob Fisher

Bill Dunkel, the head of the Windham ZBA, opened the hearing at 6:00 PM on Tuesday, August 22, 2022.

The other members of ZBA (Vance Bell, Dawn Bower, Chris Cummings, Tom Johnson and Kate Wright) introduced themselves. Bob Fisher, Windham's town attorney, outlined the process to be followed during the hearing. Bill Dunkel explained the order in which people would enter testimony, who was permitted to cross-examine presenters, and he urged everyone to behave in a civil manner.

Randall DiStefano testified first, saying that he submitted a photocopy of a portion of his septic plan, which showed the location of the house, to Ellen McDuffie, town clerk, with this application for a zoning permit. Ellen told him that he would hear from Alison Cummings, Windham's Zoning Administrator, if she needed any more information. He received a zoning permit signed by Alison on April 6. He said he thought everything was in order until the day the foundation was poured (July 6) which is when he first became aware that there was a problem. Mr. DiStefano admitted he made a mistake by not checking the setback requirements in the town zoning regulations. He said this was an unintentional error. He has made his living for decades doing 18th century-style interior restorations that do not require

him to consult zoning regulations. He does not build homes and is not a “house-flipper.”

Following Mr. DiStefano’s statement, members of the ZBA cross-examined him. He confirmed that he did not submit a sketch showing the location of the house and setbacks from property lines because he had given Ellen the photocopy of his septic plan, as noted above. He said he did not think he was submitting an incomplete application. He said he did not know he was in violation of Windham’s setback requirements until the day the foundation was poured.

Mr. DiStefano said that when he subdivided his property late last year it was his intention to build an 18th century style house on Wheeler Road. He wanted to build it close to the road, which is where old homes usually were sited. He had hoped to build it further downhill from Mr. Boynton’s property, but could not because of septic system constraints. When asked if he could have built his house elsewhere on his subdivided property, Mr. DiStefano maintained there was no other location where he could reasonably locate the kind of house he wanted to build. He wanted to access his house from Wheeler Road, not from Windham Hill Road, because traffic is much heavier on Windham Hill Road. Additionally, access from Windham Hill Road would have necessitated building and maintaining a long, expensive driveway. Building a bridge across Wheeler Brook so that he could have access to his home from Wheeler Road would have been extremely expensive.

Alison Cummings testified next and immediately admitted she had made a mistake by signing the Zoning Permit without seeing a sketch of the property and checking setback requirements. She apologized and said it was an honest mistake made with no intention to deceive anyone. She knew Mr. DiStefano’s application was incomplete and did not include a sketch, but she was able to go online and get a full copy of the wastewater permit. Once she had that, his application was technically complete. When it became clear on July 6 that the foundation was going to be too close to the road and to the Boynton property line, Ali told Mr. DiStefano that it was his decision whether or not to have the foundation poured. Alison said that he could apply for a zoning variance, but it was not clear if he would get it. Mr. DiStefano said he decided to have the foundation poured because

the concrete contractor said he would have to pay \$40,000 for the concrete whether or not it went into the foundation.

Next, Mr. Boynton testified briefly and said that when he was a builder he had to follow zoning regulations and that he felt Mr. DiStefno should have to follow them too. He said he thought Mr. DiStefano had no choice but to put the foundation where it is and that he believed Mr. DiStefano knew he was in violation of the setback requirements before the foundation was poured on July 6. He made it clear that he did not want Mr. and Mrs. DiStefano to get a dimensional waiver from the ZBA. He also stated that he felt Chris Cummings should recuse himself because of his relationship to Alison.

Cathy Stover, part owner of the Boynton property, stated that she was disappointed in the way this had been handled by the town and that she thought Windham was a place where the rules were followed.

Phil McDuffie made a detailed, extensive presentation, copies of which he distributed to the ZBA. Part of his presentation focused on his concerns about protecting Wheeler Brook and his interactions with the Agency of Natural Resources in that regard. Mr. McDuffie noted that Windham's zoning regulations prohibit development on slopes of 20% or greater (Sec. 207, #1). He presented calculations showing that the slope from the Boynton property pin to the high water mark of Wheeler Brook is 29.9%. He also measured the slope going across the primary leach field at an average grade of 18.8%. Mr. McDuffie claimed that the DiStefano's request for a dimensional waiver does not meet criteria 3 (conformity with the Town Plan), 4b (character and aesthetics of the neighborhood), 4d (public health and safety) and 4e (stormwater management) of Sec. 304A of the town's zoning regulations.

Charlie Rockwell, an experienced surveyor who serves on the Rupert Selectboard, noted that Rupert, Dorset, and Pawlet all calculate slope where development (as defined in a town's zoning regulations) actually occurs, not the overall slope of the entire property. Mr. Rockwell noted that he is John Boynton's cousin. He felt a surveyor should measure the slope of the land, not an engineer.

Mr. DiStefano stated that he spent extra money to install a silt fence at the house site. Mrs. DiStefano noted that because of the way the town has handled this issue, they have incurred extra expenses, including having to rent housing for longer than they had expected.

Ellen McDuffie testified and affirmed a number of facts that were discussed earlier, including that Mr. DiStefano submitted a photocopy of part of his septic plan but not a sketch of the site.

Ruth Alden Wicker, an abutting property owner who purchased a house and land from Mr. DiStefano when he subdivided his property, stated a number of complaints, including that she did not receive the amount of land she expected from him and that some of the materials he used when finishing the house were of poor quality. She questioned whether the town might face other problems, such as work not done up to code, if he is granted a dimensional waiver. Mr. DiStefano objected to Ms. Wicker's accusations and defended his previous actions.

Kathy and Keith Jungerman, also abutting property owners, attended the meeting via Zoom and said they had no particular comments they wished to make.

Sharon Guzik, an abutting property owner, expressed concern about the stream and about Mr. DiStefano taking what she characterized as a "build first, ask questions later" approach. She asserted that Mr. DiStefano should have thought things through before subdividing his property.

No other abutting property owners were present at the hearing, either in person or online.

Bill Casey, a Windham Lister, stated that he believed Mr. DiStefano had submitted an erroneous, false septic plan and should not receive a waiver.

Mr. Dunkel called a recess in the hearing so that the ZBA could discuss privately whether they needed more information before beginning to deliberate. When the ZBA returned, Mr. Fisher rejoined the hearing and noted that he had missed some testimony. Mr. Dunkel requested a private phone call with Mr. Fisher in order to

seek legal advice before resuming the hearing. When the hearing resumed after the call with Mr. Fisher, Mr. Dunkel said that the ZBA needed additional information, particularly about the slope of the land on which the foundation rests, before they could reach a decision. He asked Mr. & Mrs. DiStefano to provide this information by Wednesday, August 24, at 6:00PM, when the hearing would resume. Mr. Dunkel stated that Mr. and Mrs. DiStefano would be given an opportunity to present evidence regarding the slope of land on which the foundation rests, as well as any other testimony related to the issue of slope. Abutting property owners also would be allowed to present any new information related to slope. Other issues that were discussed this evening, and other issues unrelated to slope, will not be revisited when the hearing resumes.

The hearing was recessed at 9:32 PM.

Respectfully Submitted,

Bill Dunkel, ZBA Chairman