

## WINDHAM ZONING BOARD OF APPEALS

December 3, 2015 Minutes

The Zoning Board of Appeals met on December 3, 2015 in the second floor Conference Room, Town Hall 979 Main St., Willimantic CT. beginning at approximately 7:00 P.M. Members present were Roger Morin, Mary Ann Daley, Jose Cruz, William Powers, and Dennis Cronin. Martin Levin was excused. Also present were Town Planner James Finger and ZEO Matthew Vertefeulle.

- I. **Election of Officers.** Since Martin Levin was absent, the members present voted to have William Powers run the current meeting as Acting Chair. Election of Officers will occur at the next meeting.
- II. **General Orientation - question & answer session for Board members** - Town Planner James Finger and Code Enforcement Director Matt Vertefeulle led the orientation with a review of materials.

**Alternate Members** - Mr. Finger referred to the State Statutes relating to the Zoning Board of Appeals and alternate members. He explained that the practice has been that both full voting members and alternates participate in meetings and asking questions during hearings. After the hearing is closed, only voting members may participate in the discussion. However, if a full voting member was not present at a hearing, or chooses not to vote (possibly due to a conflict) an alternate is designated to vote. Mr. Finger pointed out that it is important for all members to attend the meetings including alternates as it is frequently necessary for them to be present to make up a quorum to conduct business, or to serve as a voting member.

### **Powers and Duties of the Board of Appeals**

The primary duty of the ZBA is to hear any appeal of the Zoning Officer's decision - which the applicant believes was made in error. Then the Board would consider the evidence or argument of improper action to deny a permit, possibly based on a different interpretation of the regulations. If the Board finds that there is no error, then the vote must be to deny the appeal. Another power is to consider Special Exceptions where the regulations delegate authority to the Zoning Board of Appeals to approve. These are Special Uses specifically written in the regulations that the Board may approve - such as In-law or Accessory dwellings. Finally, the Zoning Board is most often involved in hearing requests for variances from the regulations. In this case the applicant must demonstrate a practical difficulty or unique hardship that is not self created. It also cannot be for financial reasons or to increase the market value of property.

### **Applications**

Next the Board reviewed the application form, and the application fee - \$485 + mailing costs. The Board was advised that the practice has been to advertise the application prior to the Board taking receipt of the application. The application must be advertised at least ten days prior to the hearing date, and the Board has thirty days to conduct the hearing. In most cases, the Board closes the hearing after the first night, and acts on the application. However, if necessary, the State law allows the Board to hold the hearing open until its next regular meeting, and must take action within 65 days. If the Board isn't confident that it can close the hearing or act within the timelines, then it must seek an extension from the application. If the applicant refuses to grant an extension, then the Board must act on the information it has - which may not be favorable to the applicant.

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## Quorum Vote

The Statutes require that the Zoning Board of Appeals have four concurring votes to approve any application; this is a super majority of the voting members that is not common to other Boards. Mr. Finger referred to a memo from the previous Chairman that discussed this issue, and why it may be necessary to continue a hearing - or delay the vote if there are only four voting members present. Some may feel that it is up to the applicant to say whether they want to proceed even though there may be just four voting members. In most cases, the applicant is not aware that they must have all four voting members vote in favor of the application - otherwise it fails to get the required votes to be approved.

## Conflict of Interest

Mr. Vertefeulle handed out copies of the Ethics Ordinance, and advised board members of the provisions on Conflict of Interest. A Conflict of Interest is when a Board member may have a personal interest in an application or applicant - such as a family member. In this case, the Board member should exclude themselves from participating and designate an alternate, or the Chairman will.

## Ex-Parte communication

When an application is pending, Board members should refrain from discussing it outside the hearing to preserve the applicant's right to a fair and impartial hearing. If a Board member is confronted by someone who wants to talk about a matter while shopping, the Board member should say: 'Sorry, I can't talk about this outside the hearing, please contact the Town Staff to discuss your concerns - or come to hearing and submit your comments to the full Board'. The Board also must not discuss the matter among themselves outside the hearing - as this would violate the open meeting rules. If Board members have questions or are not sure about the regulations or the facts of an application, they should ask the staff for guidance.

## Minutes

Mr. Finger explained that the minutes are a summary of the discussion, and are not verbatim transcripts. So, the minutes may not report everything that was said, but is intended to give a summary of the discussion and the important highlights. The only time a transcript is written, is when necessary for a court case if someone appeals the Board's decision to the Superior Court.

III. **New Business** - none

IV. **Routine Business** - DISCUSSION/POSSIBLE ACTION

1. **Review of Minutes** - Mr. Finger referred to a few examples of minutes from past meetings, and explained that the minutes must be filed within seven days after the meeting. So if there are any errors to correct, the Board could file amended minutes.
2. **Miscellaneous - 2016 annual meeting schedule.** The Board members were advised of the past meeting schedule, and agreed to continue meeting on the first Thursday of each month - unless it was a holiday.

IV. **Adjourn** As there was no further business, the meeting was adjourned at 7:30 P.M.

Respectfully submitted, James Finger, Town Planner