

**ZONING BOARD OF APPEALS
WINDHAM, CT
June 5, 2014 MINUTES**

The Windham Zoning Board of Appeals held its meeting on June 5, 2014 in the Meeting Room in Town Hall. Chairman Robert Coutu called the meeting to order at 7:00 P.M. Members in attendance are Joseph Al Beaulieu, Robert Coutu, Roger Morin, Robert Wolf, John Vilella, and Mary Anne Daley. Voting member this evening are Robert Coutu, Mary Ann Daley, Joseph Al Beaulieu, Robert Wolf and John Vilella. Also present are Town Planner James Finger and ZEO Matt Vertefeuille.

I) Public Hearing

a) David John Savrine, 330 Beaver Hill Road, North Windham, CT – seeking a Special Exception to convert existing in-law dwelling to accessory apartment as provided in Section 21.2.2 & 92.

Mr. Savrine said he wishes to be able to list the apartment with a realtor and rent it for a maximum of two tenants. He said the apartment is totally handicap accessible. He added that he sent out notices of the public hearing to the abutting properties.

Planner James Finger explained that the applicant received a permit in 2006 to create an in-law dwelling, and at that time it was permitted by right. He said that he approved it as the acting Zoning Officer at the time. The applicant's mother has passed on, and since he doesn't have any other in-laws to use it he would like to take advantage of the other dwelling.

Mr. Finger said the Zoning Board of Appeals has the authority under Section 21.2.2 to allow the establishment of an accessory dwelling by Special Exception.

Chair Coutu said in looking at the diagram there is a door at the rear and another one in the front. He asked if the ramp starts at the rear of the house. Mr. Savrine said the ramp starts at the rear of the house and goes off to a side door. That is the only door on the opposite side of the property. My side of the property has a front door and a back door, said Savrine. The other side (my mom's property) has a side door and a back door. He added that it is totally handicap accessible. It has extra large doors, and handicap accessible bathrooms. There is one electrical box and one heat source for both units, he said. It is a one bedroom apartment and there is plenty of parking available, he added.

Board member Bob Wolf said he is looking at two conflicting issues; one is that it was built in 2006 and the handicap accessibility can be grandfathered in. On the other hand, the regulations are pretty clear that the exception cannot be granted for financial gain.

Planner Finger explained that the rules were changed in 2009, only with respect to the requirements for a Special Exception to establish or create an in-law dwelling. Mr. Savrine established his in-law dwelling in 2006 according to the regulations.

However the regulation had a provision that in order to convert an in-law dwelling into an accessory apartment it must come to this Board for review and approval. That part of the regulations has not changed, he added. He is properly before the board. There is no hardship requirement and there is no requirement to worry about financial gain. The hardship test is only on the basis of granting a variance. You cannot grant a variance for financial gain, added Finger.

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Audience Comments:

1) Paula Kegler said she lives right next door to the Savrines, saying that she has lived in the neighborhood since the early 80's. If they were just looking to rent she said she might struggle with it a little bit; but because they live on the property she said she was very confident that whoever lives there will abide by our quiet neighborhood standards. She said she was in support of Dave and Diane.

Planner Finger explained that in the past when there was a conversion from an in-law dwelling to an accessory apartment - typically the Board would stipulate that the property shall remain an owner-occupied dwelling. He said our goal is not to establish two separate family dwellings where both units are rented out and there is no property owner present. Planner Finger asked Mr. Savrine if that was a problem. Mr. Savrine said, no, they have no intentions of going anywhere.

As there were no further comments or questions, the Chairman closed the public hearing.

Al Beaulieu made a motion to grant David John Savrine of 330 Beaver Hill Road a Special Exception under Section 21.2.2 & 92 to convert an in-law apartment into an accessory apartment. He further stipulated that the property must remain an owner occupied property. He added that if the property is sold in the future it will remain an accessory dwelling. Mary Ann Daley seconded the motion. The motion carried unanimously.

b) Mat Olkin, 156 Ballamahack Road, Windham Center - Special Exception to erect a taller fence along the abutting property as allowed in Section 3.3.3 of the zoning regulations.

Planner Finger's staff report explained that the Zoning Board of Appeals is authorized to approve a taller fence in accordance with the procedures and criteria for Special Exceptions under Section 92 provided the increased height does not exceed the standard height by 50%.

Mr. Mat Olkin, 156 Ballamahack Road, Windham spoke to his request. He said he understands that this is an unusual application and asked for a littler more latitude in making his presentation. He said he feels it is important to be able to make the board aware that there are factors that make this application necessary. He said he submitted a letter with his application that explained some of the circumstances and asked to read that letter into the record.

Mr. Olkin said he and his wife love animals. In 2004 and 2005 we were looking for a place to move back to Connecticut. We found this property on Ballamahack Road and felt that it would be a good place for us to live with our animals. We thought this would be a good town, and it has been. We are happy to be here. We love living here. We need you to understand how we feel about our animals. Our animals are our family. We don't have children. We have chickens, and a couple of horses. We have two dogs and a puppy. We have two cats. We need you to understand that they are not just livestock. They are our pets. When they die, we will bury them and we will mourn them the same way that everyone on this board will mourn their loss.

We feel that we are under threat from our abutting landowners. I explained this in the letter that I submitted, said Olkin. He then went on to read his May 22, 2014 letter into the record. He said he and his wife would like to apply for a Special Exception permit to allow a division fence of a height which

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would exceed current zoning regulations. He said we are currently zoned R-1 which permits a 6' fence with exceptions granted up to 50% of the maximum height. We are seeking an exception to construct an 8-foot fence.

The fence would be located on the northern property line abutting the property of Ray and Carol Kassman at 166 Ballamahack Road. The fence would begin at least 20 feet in from Ballamahack Road, or whatever dimension that the board felt was appropriate, and would run easterly along the property line for roughly 400 feet. It would be a wooden stockade fence. We would place the new fence with the "good" side to the Kassman property.

The Kassmans recently had the property line surveyed and marked. We are willing to stipulate to its accuracy. We propose to construct the fence 2-feet inside the property line as marked.

We feel that an 8-foot fence is necessary, and that the granting of an exception would be proper in order to protect us from the abutting neighbor's ongoing efforts to disturb the quiet enjoyment of our property. Such efforts include threatening the safety of our animals. Carol Kassman has told us explicitly that she intends to retaliate against us for refusing to accede to her demands that we limit the use of our land to conform to her preferences. Her behavior (listed below) illustrates some of the ways in which she has made good on such threats.

1) This spring the Kassmans installed a large collection of bird feeders just off of the property line and very close to the outdoor pen where we keep our chickens. The bird feeders attract hawks which come to prey upon the birds at the birdfeeders and we fear for safety of our chickens. 2) Beginning last fall and continuing this spring Carol Kassman had regularly walked her German Shepard up and down the property line next to our chicken pen. On the days that she walks her dog next to the pen our chickens are stressed and lay fewer eggs. She has very little control over her dog and we cannot be confident that a 6-foot fence would be insurmountable for a dog of his size.

Other concerns include the Kassmans having outdoor speakers on their property. They play music so loudly that it is disturbing to us even when we are well within our property. They sometimes play the music past 8 o'clock. The Kassman residence also has multiple exterior lights that are aimed at our house and they are left on almost every night. They also cleared tree branches and brush from the property line abutting our pasture thus allowing their dog to see our dogs and horses from their enclosure which worries them.

Because Mrs. Kassman has demonstrated unacceptable behavior, we feel that an 8-foot fence would provide us greater protection against the noise, the glare from the lights, as well as the predators that are being attracted to her bird feeders. We are asking that the Town exercise it's discretion to allow us to defend ourselves as best we can.

We hope that you will agree that granting a variance for an 8-foot fence is warranted to protect us from these circumstances. Again, I want to emphasize that we are only trying to defend ourselves and our animals.

A general discussion ensued.

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Commissioner Robert Wolf asked if there is an existing fence. Mr. Olkin said there is, but at the time that he made out this application there was no fence, but since then there has been a fence constructed. The fence as it is constructed is not to the standards that ours will be. It is 2 feet shorter. It is not of the same quality. We feel it will not block effectively as the one that we propose to construct.

ZEO Matt Vertefeuille said to clarify what Mr. Olkin pointed out is that the property line is on the south side of the neighboring property and the north side of the Okin property. There is a bend in the property line. he added. Chair Coutu asked if the telephone pole is within 20 feet. Mr. Olkin said yes.

Commissioner Al Beaulieu asked, by putting up an 8-foot fence will that prevent the light or noise or anything else from coming over the top of your 8-foot fence which is presently coming in over the top of the 6-foot fence. Mr. Olkin said we feel that the additional two feet will block the glare from the light based on the angle of the light and its elevation.

Commissioner Al Beaulieu said in looking at the property, in order to prevent harassment as you have stated, you would almost have to box in your whole chicken area with an 8-foot fence and it would have to go almost down to the road. That would seem like a compound.

Mr. Olkin said he would invite commission members to come over any time to see his property. Mr. Beaulieu said he was there this morning to look at the property. Mr. Olkin said there is a fence in front of the chicken area. Mr. Beaulieu said it is a wire fence. Mr. Olkin said if the board approves our request we are planning to extend that wire fence (which is 4 feet high) another 10-15 feet to the corner of the new proposed fence and that would box in the area without creating a visible impediment.

Audience Comments: 1) Carol Kassman, 160 Ballamahack Road, Windham said an 8-foot fence (so close to the road) would be a safety hazard. She said she felt that a 6-foot fence is adequate. She said she has a mentally retarded cousin who lives with her. She said he moves slowly and with a high fence he may not be able to see a car coming down the road. She submitted a letter in which she rebutted the accusation made by Mr. Okin.

After more discussion, the board determined that a site walk would be appropriate to view the properties and get a better understanding of the situation.

After some discussion, it was decided to conduct a site walk to be held on June 12, 2014 at 6:30 P.M. at 156 Ballamahack Road, Windham. Mr. Finger cautioned everyone that during a site walk, no-one is allowed to ask 'why' questions, make comments, or answer question. The public hearing will be continued at the next meeting on July 2, 2014.

2) Approval of Minutes

Al Beaulieu made motion to approve the minutes of February 6, 2014. Robert Wolf seconded the motion, and all voted in favor.

The meeting was adjourned at 8:05 P.M. Motion by Al Beaulieu and seconded by Roger Morin. So voted.

Respectfully submitted, Lillian Murray, Clerk