

ZONING BOARD OF APPEALS
WINDHAM, CT

MINUTE

July 3, 2014

The Zoning Board of Appeals held its meeting on July 3, 2014 in the Meeting Room, Town Hall. Chair Robert Coutu called the meeting to order at 7:00 P.M. Members present were Roger Morin, Robert Coutu, Al Beaulieu, Mary Ann Daly and John Vilella. Robert Wolf and Dennis Cronin were absent. Also present was Town Planner James Finger.

D) Continuation of Public Hearing for Mat Olkin, 156 Ballamahack Road, Windham Center – Special Exception to erect a taller fence along abutting property as allowed in Section 3.3.3 of the Zoning Regulations.

Matt Olkin addressed the board. He said before proceeding with his application this evening he wanted to address a procedural question. He said in a hearing such as this, where objections are raised, is it customary for the Board, when it issues a decision, to make an explicit finding as to the merits of the objections that were raised.

Planner Finger said the Board takes everything into account, and they weigh the objections as to the validity of the request, or application. We do allow cross presentation, not cross examination because this is not a court of law. He said this is a hearing to consider and address concerns. We do have a couple of letters, but I don't know if they were read into the record the last time. Also, the members who attended the site walk should report their findings and observations in the field so it becomes part of the public hearing record. Hopefully, we will be able to get everything on the table; all the questions and answers that evolved at the site walk.

Mr. Olkin said he was wondering more specifically when he receives the ruling from the board should he expect a full acceptance or denial, or will there be specific rulings on the merits of the objections that were raised.

Planner Finger said the Board will rule on whether to grant the Special Exception or not. They need four concurring votes to approve the Special Exception. If you fail to get four confirmed votes, then it fails because you did not receive a quorum vote which is required by state law. It is important that you have at least four board members who were present at the last meeting, and who can act this evening. The board may choose to simply close the public hearing tonight and take the allowed 65 days to rule on the request. They have the ability under state law to do that.

Mr. Finger said he was unable to attend the site walk, but he was on the site today with the chairman to look over the property and to review the observations from the site walk in order to verify what was found in the field.

Mr. Olkin said he would like to add something into the record. I forgot to bring this up last time, but with regards to the noise issue, my wife works from home. The noise is more than an annoyance with us. It interferes with her ability to perform her job functions. He said he did not reply to the objections that were raised at the hearing because he found them to be irrelevant, but he just wanted to add to the record that he disagreed with most of all that was said by Mrs. Kassman. He said I would also like to ask the board to amend my request. He said he would like the Board's permission to put the good side of the fence facing in. The original proposal had it facing out. That was, of course, before the existing (Kassman) fence was erected. Most of our fence, the first 6 feet of it, would be blocked by the existing fence.

ZEO Matt Vertefeuille's report on the site walk showed the area where the proposed fence was to be constructed on the Olkin property, as well as the existing fence along the Kassman's property. The Kassman's front was measured to be approximately 15 feet from the pavement. The measurement to the pole from the front property pin was found to be approximately 18 feet. Further measurement from the pole to the Kassman's existing fence showed it to be about 25 feet from the pole. The sight lines from Kassman's driveway and yard were observed, as well as the location. The direction of the house lights on Kassman's house were examined, but none appeared to be directed at the Olkin property. In addition, the location of the chicken pen area on the Olkin property was observed.

Chair Robert Coutu then asked board members who attended the site walk to report their findings.

Roger Morin felt that the new fence wouldn't block the view to the road. He also felt that the path wouldn't affect the wildlife in that area. Al Beaulieu said coming from their driveway and looking out towards the road you have a 10 foot opening between the bushes. You are looking over the stone wall. You cannot see the beyond the curve. You can see the house across the street. The Arborvitae trees block more than the fence. Whether it is a vehicle or a bus backing out of that driveway you have to get beyond that bush in order to see anything coming from around that curve. He said I would back into that driveway before I would take the chance of backing out onto the roadway, and I think it would be feasible to notify the bus company that comes to pick up Mrs. Kassman's brother to back into the driveway so that when they drive up they will be able to see. Mr. Beaulieu said in putting up the fence they would have to stay 30 feet from the pin of the property line. If I am not mistaken, from the pin to the pole there is another 4 or 5 feet. He asked if the stonewall, the bushes, the trees that are out there are on Town property.

Planner James Finger said when he visited the site with Chairman Coutu he took pictures of the property line pin. Kassman's front property line is approximately 15 feet from the

pavement. We checked the measurement to the pole from the front property line and found it to be approximately 18 feet. And, from the pole to the Kassman's fence is another 25 feet. He said it does look better since they trimmed the bushes. Looking at the site lines from the Kassman's driveway it is 10-12 feet in from Ballamahack Road.. He said looking at the photos it appears that the stone wall and the privet hedge are within the town right-of-way. So, that appears to be an encroachment, and it does impact visibility, said Finger.

Planner Finger said the regulations allow a property owner to have a 4 foot fence along the front and 6 feet along the side and back. He said the board may grant a Special Exception for the entire fence not to exceed 50% of the height allowed by right.

He said while I was out there the rooster on the Olkin property crowed pretty regularly, but maybe it was because we were there. But, the regulations do not allow you have a rooster on the property. He said in looking at the end of the fence, is it 15 feet from the road, or is it closer to the road than 15 feet. If it is, then the chicken coop might be encroaching on town property. Planner Finger said he didn't think it was, but it might be closer than 10 feet.

A general discussion ensued. Mr. Beaulieu referred to the enclosure for the chickens. Where do you house your chickens, he asked, in the back? Mr. Olkin said yes.

Mary Ann Daly said while on the site walk she noted the pin on the property. She said she walked along the fence and noted the bushes that needed cutting. She said she also observed some of the issues that were brought up including the bird feeders on the Kassman property. She referred to the safety issue of exiting the driveway.

Chair Robert Coutu asked, is it 25 feet to the pole? Planner Finger said it 18 feet from the pin to the pole plus another 25 feet.

Roger Morin said that in order to put up the fence Mr. Olkin will have to cut a lot of trees. He said it doesn't appear that t the fence will block the view. He said an 8 foot fence will be placed further in so it shouldn't block the view to the road.

Planner Finger said just to clarify what Roger Morin said about the fence. He asked if Mr. Morin was referring to the existing fence or the new one. Mr. Morin said he was referring to the new fence not blocking the sight line. Planner Finger said he agreed that the fence would not block the sight line at that point. He said the more critical issue is the sight line up by the road. He said he would be concerned about a 6 foot fence close to the roadway.

Chair Coutu said he did notice that the lights on the Kassman property were directed downward. Planner Finger said when somebody has lights on in a dark environment you might see illumination compared to the dark skyline. Mr. Coutu said it might be difficult to mow the grass in that area. Mr. Beaulieu said the fence is 3 feet in from the property line. You will have 2 ½ feet to mow. Who is going to do the mowing? Mr. Olkin said

he would mow that area as it is on his property. He said if there is any restriction the town wants to place as far as how I keep it up I would be agreeable to do so, said Olkin.

Planner Finger explained that in order to qualify for a Special Exception you have to be in compliance with the rules. That is stated in the regulations. The board can grant approval by Special Exception for the taller fence, but you must be in compliance with the regulations. The board could condition approval by stating that you must comply with the regulations with respect to poultry and sight lines issues. He added that the board is required to close the public hearing, and must render a decision within 65 days.

ZEO Matt Vertefeuille said the 8-foot fence would have to be 30 feet from the property line. The pole is 18 feet from the pin so you would have to go back another 12 feet to meet the setback. Planner Finger said if the board is considering granting the Special Exception to allow him to have the fence along the front 30 feet I would urge that you make sure they have good sight lines in the front.

Mr. Olkin asked is there any way we can bring ourselves into compliance with respect to the rooster. Is there some sort of structure we could build on the property where it would be acceptable? A discussion followed. Mr. Olkin said he is trying to see how he can have the rooster and comply with the regulations. There must be a way to do it, and I am trying to find out how to do it.

Ray Kassman, abutting property owner said he never knew that you could complain about the rooster. He said we put up that fence for a reason; to try to down the noise coming from that rooster starting at 5:00 A.M. Had I known that I could have complained I could have saved myself \$5,000. on that fence. That is the reason we had it built. But, it is what it is. Do we have a complaint about that rooster? Oh, you bet we do! We put up the 6-foot fence, but it doesn't work.

Mrs. Kassman said she is worried not only about traffic coming in and out of her driveway, she is also worried about David (her mentally retarded brother) being in the driveway by the basketball hoops because now when you look you can see the road. With a fence there he is not going to be able to see the road. She said she is concerned closer to her home because that is where you won't be able to see a car coming because it will be blocked. Right now you can look and see if a car is coming. If you block that off another 10 or 20 feet you won't be able to see the road. She said the 8-foot fence two feet away from and parallel to her fence would become a direct path for deer and other wildlife. There is nothing to gain by adding yet another fence especially one that is 8 feet high. It would only result in the destruction of the natural barrier by cutting off the branches or the removal of some of the trees altogether. She said another reason why she opposes such a fence has to do with the character of the Town of Windham. She said 8 foot fences randomly placed within the town will destroy its character. She said a 6 foot fence is sufficient and does not harm the natural beauty of its natural surroundings. An 8 foot barricade type fence down the property line of a residential home is inappropriate and just plain distasteful. She referred to an article which appeared in the Hartford Courant recently regarding the height of fences in Connecticut. It states that 8-foot

fences are frowned upon because they look like barricades and they are “out of scale in residential areas”.

Planner Finger read two letters into the record. 1) Florence Selleck stated her concern with the 8-foot fence. She was concerned how it would affect her mentally retarded cousin who lives with Mrs. Kassman. He moves slowly and with the high fence he may not see a car coming and certainly cannot move quickly to get out of the way. 2) Jane Bentivengo expressed concern to having a fence that is higher than 6 feet and close (20 feet) to the road because there is already a 6-foot stockade fence along the same property line and that will create a narrow channel between the fences. My concern is for wildlife, especially deer that may enter this narrow corridor and will be forced to come out very close to the road with very little visibility or warning from vehicles driving by.

Mr. Olkin said they feel the 8-foot is necessary to protect themselves from the neighbor’s on-going efforts to disturb the quiet enjoyment of their property. Such efforts include threatening the safety of our animals.

After some additional discussion, Mr. Beaulieu said the board is not here to settle disputes between neighbors. Mr. Morin agreed. He said we cannot remediate any neighbor disputes.

Mr. Beaulieu made a motion to close the public hearing and Mary Ann Daly seconded the motion. The motion carried unanimously.

Al Beaulieu made a motion to grant the Special Exception and imposed a condition that the applicant must comply with the regulations pertaining to poultry and sight lines. Roger Morin seconded the motion. Voting in favor of the motion were Roger Morin, MaryAnn Daly and John Vilella. Al Beaulieu and Robert voted against granting the Special Exception and the motion failed.

2) Approval of Minutes

The minutes of June 5, 2014 were approved. Motion made by Al Beaulieu and seconded by John Vilella. The motion carried unanimously.

The minutes of the site walk held on June 12, 2014 were approved. The motion was made by Al Beaulieu and seconded by Mary Ann Daly. The motion carried unanimously.

The meeting was adjourned at 8:40 P.M. Motion made by Al Beaulieu and seconded by Roger Morin. The motion carried unanimously.

Respectfully submitted,

Lillian Murray, Clerk

