

WINDHAM PLANNING & ZONING COMMISSION
August 28, 2014 MINUTES

The Windham Planning & Zoning Commission held its meeting on August 28, 2014 in the Auditorium, Town Hall. Chair Paula Stahl called the meeting to order at 7:03 P.M. Members in attendance were Jean Chaine, Dan Lein, Claire Lary, Paula Stahl and Ed Pelletier. Scott Lambeck and Michael Graf were excused. Also present was Code Enforcement Officer Matthew Vertefeuille.

I) Approval of Minutes

a) The minutes of July 24, 2014 were approved. Motion made by Jean Chaine and seconded by Claire Lary. Voting in favor were Jean Chaine, Dan Lein, Claire Lary and Paula Stahl. Ed Pelletier abstained. The motion carried.

b) Action on the minutes of August 14, 2014 was deferred until the next meeting.

II) Public Hearing

a) Michael Rivera for 154 Jackson Street, Willimantic – (aka Assessor’s Map 14-3, Block 85, Lots 9 & 10) – Special Permit application for apartment conversion in accordance with Sections: 33.2.7 & 25.3.3.

Ed Pelletier recused himself from the meeting on this matter.

Michael Rivera is the owner of property on 154 Jackson Street; Lot #9. This property is presently listed as a single family home and he wishes to convert the property to a multi-family property. He submitted a narrative which outlined how he would like to reconfigure the property: Basement Unit - 154A Jackson Street. First Floor Unit – 154B Jackson Street, Second Floor Unit – 154C Jackson Street. He said the rear, detached building – 154F Jackson Street will be utilized for owner occupancy. Parking for all units will be designated on Lot #10.

Mr. Rivera said he purchased the property 6 months ago and he wishes to convert the existing single family home and barn into apartments. He said he also owns property located at 424 Pleasant Street. He said this is a big house, and all of the houses around it are multi-family homes. I do have the two biggest lots; lot 9 and lot 10, on the plot said Mr. Rivera.

Chair Paula Stahl explained that he actually owns 2 properties. She identified lot 10 which is legally a 1-family house (by town approval) which he wants to convert to a 3 family. She said there is another building in the back which is not an approved housing unit. He is actually proposing four units, with all the parking on lot 10 said Stahl. Commissioner Claire Lary said that what he is proposing to do is not going to meet the regulations. Chair Stahl agreed that it doesn’t meet regulations.

Chair Stahl said Mr. Rivera purchased what he thought was a 3-family with a 1-family building in the back. ZEO Matt Vertefeuille said the barn in the back was converted long

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before Mr. Rivera purchased the property. He said the barn was converted without any permits. It wouldn't have been allowed because it is right on the property line and doesn't meet the 15 foot setback. In addition, the regulations state that you cannot have two units on one property. So, it wouldn't have been approved as a residential structure, said Vertefeuille.

The previous owner of the property, Mr. Angel Diaz, converted the property without any building permits or zoning approvals. When this was discovered Town Planner James Finger issued a Cease & Desist Order. Mr. Vertefeuille said when he started working here he also sent Mr. Diaz an additional order, and we condemned the unit back there. Mr. Vertefeuille said there were times when we suspected someone was living there. We checked on it pretty regularly, and once in a while we would find people living there. Mr. Vertefeuille said all the utilities were done without permits, as well as the sewer line and the water line. The electrical was never inspected, so in order to allow it the electrical would have to be inspected. He would also have to put in a new water line.

A discussion ensued.

Chair Stahl said when we change how a property can be used, it goes forever, not just with the current owner. We also need to treat everyone who comes before us exactly the same. There was another landlord in town several years ago who wanted to do something like this and the Commission would not let him do it.

ZEO Matt Vertefeuille said the main house was a single family house, but at some point in time someone converted it into two apartments. A first floor apartment and a second floor apartment. At some point Mr. Diaz converted the basement into a very small apartment for his brother. Mr. Vertefeuille said he doesn't have a problem with the two apartments that are there upstairs. He said he doesn't know when they were created, but it certainly is beyond the time limit where we could take any action. Chair Stahl asked if they were inspected. Mr. Vertefeuille said we have done a lot of inspections. There are some small things that are missing and he would have to bring them up to code. He said the basement unit is a different issue. We don't allow cellar apartments. If the unit is more than 50% exposed to the sun then we would allow that. In addition, a 3-family house would require two forms of egress. So, if there was another unit there he would have to figure out how to put in a second egress. Another issue is that it is smaller than our minimum square footage requirement. There is extra room in the basement and the question is whether he could convert that. Another issue is the fire escape in the back is missing. These are things that we could work on with him to bring it up to code. My question is if you allow the basement unit, it doesn't meet the standard, but it is pretty close. Commissioner Claire Lary said how did we allow the basement in the first place. Chair Stahl said when a property is converted from 1 family to 3 families we always are concerned about all the work, including electrical, is inspected. Mr. Rivera said he is an electrician so the electrical would be brought up to code. There is one meter in the house, he added.

Commissioner Dan Lein asked if there is a way to have the 3 units. Chair Stahl said the basement and the first floor could be made into one apartment.

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Mr. Vertefeuille said we hear people say all the time that they have bought a house that has three apartments, but the assessor's card says it only has 2 apartments. The property has been converted at some point in time, because of time limits we are not able to require it be converted back. We have to allow it as long as you bring it up to code. Then it is changed on the property card. But, if it doesn't qualify as an apartment then we wouldn't allow it.

Commissioner Dan Lein said that building in the back cannot be used, is that correct.

Chair Stahl said her concern is that we have a house that could be a 2-family (it is being used as a 2-family), but it doesn't have sufficient parking on that lot. Commissioner Jean Chaine said the lowest level of the building doesn't qualify as a basement. It is more of a cellar that has an apartment; is that apartment currently occupied? He asked are we in the three year rule that results in us not being able to enforce the fact that that is undersized. Chair Stahl said we are not. Mr. Vertefeuille said as a 2-family house that lot does have enough parking for a 2-family house. That driveway is big enough.

Commissioner Dan Lein said when you came in and talked to town staff, did you know at that time that a 3-family would not be permitted. Mr. Rivera said yes. Mr. Lein asked Mr. Rivera if he put in the request before he talked to the town or after. When you came in and talked to James, or whomever, did you know that a 3-family would not be permitted. Chair Stahl said everybody has a right to submit an application. Mr. Lein said if you know that in all likelihood it does not fit the regulations then I recognize you need a special exception and you are hoping that the special exception will be granted.

Chair Stahl said the regulation that Planner Finger referred to is Section 84.7 which is on clustered multi-family development, but that also requires a 50-foot setback and five acres. So, it doesn't meet that at all.

Commissioner Jean Chaine said why wasn't this short-circuited before it got here.

ZEO Matt Vertefeuille said he did talk to Mr. Rivera before he closed on the property and again when he had a meeting with the Water Dept. He told him that although we considered it a single family house and we considered the 2-family status, but we didn't know about the basement and that the rear barn would not be considered as a livable unit because it didn't meet the requirements. I was pretty clear about it at that time, said Vertefeuille. I don't know if James found a way around this; I don't know what James did.

Chair Stahl said the requested change doesn't meet the zoning regulations. Commissioner Claire Lary said there are two sets of regulations that you have to meet. You have to meet the zoning regulations and then you have to meet the building code. Chair Stahl said the zoning regulations require that all dwelling units be at least 15 feet from the property line; the barn is not. The regulations do not permit a dwelling unit in a cellar; this lower floor is a cellar.

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Commissioner Jean Chaine said how much empathy should we be considering for this particular owner who appears to have purchased a property that he thought had three apartments regardless of the regulations. Was it implied that we were going to force the new owner to vacate the lower level apartment because it does not comply. Mr. Chaine said I am really annoyed that it has gotten to this point. It should have all been clarified before it got to this point. It makes us look like we are holding back, when in reality the problem is with the regulations. Those regulations should have been put on the table at the time that the feelers went out on this property.

Mr. Rivera asked if he could put the basement and 1st floor apartment together as one unit. ZEO Matt Vertefeuille said yes he could.

Because the driveway would require tenants to back onto Jackson Street at a difficult spot, Chair Stahl asked if Mr. Rivera would provide an easement on his other lot for parking.

As there were no audience comments, and the members indicated they had sufficient information to render a decision, Chair Stahl closed the public hearing.

After further discussion, Chair Paula Stahl made a motion to approve Michael Rivera's property known as Assessor's Map 14-3, block 85, lot 9 for two dwelling units in the main building contingent that an easement for parking for three vehicles shall be provided on the adjoining property identified as Assessor's map as Map 14-3, block 85, lot 10 for the benefit of lot 9. Commissioner Dan Lein seconded the motion. The motion carried unanimously.

III) New Business

Jordan Herrick for property at 261 Windham Center Road, Windham Center –
Preliminary subdivision plan for an 18+ acre parcel.

ZEO Matt Vertefeuille recused himself from the meeting on this matter because the applicant is Mr. Vertefeuille's cousin's son.

Chair Stahl said the regulations require that for any piece of property that is 18 acres or larger that it be designed as a flexible design sub-division unless there is a reason on a particular property that that would not work.

Mr. Herrick submitted a preliminary plan to subdivide the 18+ parcel located at 261 Windham Center Road into three lots. He said 7.4 acres of the property is developable. He said the plan is for two front lots and one rear lot based on the road frontage.

Mr. Herrick said originally this was a 20+ acre that was divided multiple times. He said there will be 2 front lots and 1 rear lot based on the road frontage. Right now it is an 18 acre parcel with two garages on one of the properties and that will be the front lot on Mullen Hill. There will be a shared driveway for the two rear lots. The wetlands are not affected at all. There is nothing happening on the wetlands at all, said Herrick.

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Chair Stahl said she felt it would better going under the flexible design regulations because it might be a little easier with the frontage. We will have to look at the flexible design regulations as far as the frontage because it allows us to be a little more flexible.

Mr. Herrick said we are basically creating three odd shaped lots. Chair Stahl said I don't know if lot 3 could be more square and lot 2 a little bigger. She said the flexible design subdivision may work better. I think there is a way to create 3 nice lots with usable space and not long and skinny space that you cannot do anything with.

Chair Stahl said we need to review the regulations to see if this plan could be considered a Flexible Design Subdivision.

IV) Other Business

Chair Stahl said we have focused the zoning revision on the commercial and manufacturing areas, and now need to turn our attention to residential. There are two sides, the districts themselves that specifies dimensional requirements and permitted uses - and then there is the descriptions of various unique uses such as camp grounds, horse farms, in-law units, etc. There is also the B3 zone that we decided to look at when we did the residential uses.

As there was no further business, the meeting adjourned at 8:25 P.M. Motion made by Ed Pelletier and seconded by Jean Chaine. The motion carried.

Respectfully submitted,

Lillian Murray, Clerk