ZONING BOARD OF APPEALS
WINDHAM, CT
MINUTES

August 4, 2011

The Windham Zoning Board of Appeals held its meeting on August 4, 2011 in the Meeting Room, Town Hall. Chairman Robert Coutu called the meeting to order at 7:00 P.M. Members in attendance were Robert Wolf, Robert Coutu, Al Beaulieu, Roger Morin, Jose Cruz and Michael Desaulniers. Andrew Gibson and Mary Ann Daley were excused. Also present were Town Planner James Finger and Zoning Enforcement Officer Matthew Vertefeuille. Voting members this evening are Al Beaulieu, Robert Wolf, Robert Coutu, Roger Morin and Michael Desaulniers.

1) Continuation of Public Hearing from June 2, 2011.

Chairman Robert Coutu said this is a continuation of the public hearing from June 2, 2011. No meetings were conducted in July because a convenient date could not be found for the applicants. The applicants approved the continuation of tonight's meeting.

Chairman Coutu stated that Board members conducted a site walk on June 21, 2011. Members present were Michael Desaulniers, Al Beaulieu, Roger Morin, and Bob Coutu. Also present were Town Planner James Finger and ZEO Matthew Vertefeuille, the applicants and Mr. Hartigan. He said members present at the public hearing on June 2, 2011 were Mary Ann Daley, Robert Wolf, Michael Desaulniers, and Robert Coutu. Voting members this evening are Robert Coutu, Michael Desaulniers, Robert Wolf, Al Beaulieu and Roger Morin. Chairman Coutu said although Al Beaulieu was not present at the June hearing, he was present at the site walk. He also read the minutes and studied all the information and felt comfortable voting this evening.

The minutes of June 2, 2011 were amended as follows: Pg 1, Para 2 insert members – only 4 Board **members** here this evening, Pg 1, Para 4 under Public Hearing - asking for a variance from Section 27.6 on the **side yard** setback requirement, Pg 1 Para 7 correct applicant's name to read **Neal** Greenberg, Pg 3, Para 3 Correct word to **run,** and not rung as stated.

Commissioner Al Beaulieu said after reading the minutes and the application he noticed that the application stated Section 27.6 on the rear yard setback. Planner Finger said that is not how we advertised it. He said the variance is on the side property line.

2) Public Hearing

N&N Development, LLC for property at 89 Windham Road, Willimantic - seeking a variance from Section 27.6 on the side yard setback requirement of ten feet in order to permit a new staircase to be constructed closer to the property line that satisfies the State Building Code.

ZEO Matt Vertefeuille gave a history of the property. He explained that between 1978 and December 1992 these units were changed to apartments. Prior to this time, the units were classified as a room with a shared bathroom. Somewhere during that time period it was changed, and there were no permits taken out at the time of this conversion. Vertefeuille said when we find that things have been changed our normal plan of action is to make sure things were done to code and that everything was installed properly. But, after a 14 year period there is nothing that we can challenge and have it stand up in court, he said. At some point in time, these changes were made. When this building was changed to three apartments, they changed the egress on the structure upstairs because the rear apartment needed a means of egress. When Mr. Greenberg and Mr. Collier bought the property they inherited these issues. There was no true egress for that rear apartment. We noted that when we went into the structure 2 years ago because there were issues with the boiler. That is why they were making that change to the third floor; to add the second egress. This is not something that they created; they inherited it when they bought the building, said Vertefeuille. This is the right thing to do in order to bring it up to code.

Chairman Robert Coutu stated that the Board conducted a site walk on Tuesday, June 21, 2011 at 6:30 P.M. Members in attendance were Al Beaulieu, Robert Coutu, Mike Desaulniers, and Roger Morin. Also present were Town Planner James Finger, ZEO Matthew Vertefeuille, the applicants and abutting property owner Tim Hartigan.

Planner Finger urged everyone who went on the site walk, or went over to look at the property, to report their findings and observations for the record because we have no means of collecting information on a site walk.

Commissioner Robert Wolf asked whether any procedures should have been followed when they built the stairway. Was approval obtained before the stairway was built, he asked. Planner Finger said this is an important question and urged the board to consider Mr. Wolf's question later in the meeting.

Commissioner Al Beaulieu referred to the original fire escape that went to the second floor and came down to the original stairs landing. He said it went from 31 to 36" and there was no problem ending in the same foot path, but from what I can see looking at the photographs, when you came out the back of the house and went down that same side, in order to make the width of your landing you had to increase it, and by increasing the width of your landing you brought the exit stairway closer to the property line. Instead of being 6 or 8' away, now it is on top of it. In looking at the back of the building and looking at the photos, the stairway could have come off the left side of the building, and you could have done the same style staircase going down the left side of the house. There was plenty of room to put a stairway down that side of the building without increasing it, and without encroaching on the neighbor's property line. I am not a contractor, but I have been a Fire Marshall and Deputy Fire Marshall for the Town of Windham/City of Willimantic. This caused you to put in a larger ramp which pushed the stairway closer to the property line. My finding is that you could have gone off the other side with the stairway from the third floor only, but by tying them it caused everything to

be shifted over. I feel this could have all been avoided. Looking at the original plans it shows that the stairway was originally going to come down in the same footprint. When you saw that there was a drastic change that could affect property lines I would have stopped the construction at that point, and come back to the Town and asked what could be done to straighten this matter out without encroaching over to that other property line. That is my finding from the site walk, said Beaulieu.

Planner Finger referred to Mr. Beaulieu's serving in the Fire Dept. Mr. Beaulieu said he had been with the Fire Dept. for 37 years. He said he was the Deputy Fire Marshall for 11 years. ZEO Matt Vertefeuille said he did find reports that stated this building was inspected by Mr. Beaulieu at one point in time, almost 20 years ago.

Commissioner Roger Morin said this was built right on the line. I can understand Mr. Hartigan's concern that this staircase is 2" from his fence. He is concerned about people damaging his fence. Another concern is that his trees grow over the fence into the neighbor's property; how is he going to maintain that. It would have been a lot better if they had collaborated before building the staircase. He said the new State Regulations require that at every twelve steps there has to be a landing, so that caused it to get bigger and the width of the stairs had to be bigger, so I am not sure how they could satisfy all the State Regulations without shifting it over. It is not an easy thing, said Morin. I can understand both of their arguments. I can sympathize with the neighbor wanting his fence protected, but as far as someone ruining his property, I don't see that happening unless someone jumped off the steps and landed on the fence. Other than that I don't see the stairs are causing any harm where they are now. He said if you moved the stairs in the other direction to the third floor, it would land near the driveway, which is a mutual driveway. I don't see the stairs causing a problem. The neighbor did complain about some of the tenants living on the landings and partying, but that could happen even if the stairs were close to the house. That landing has to be where it is. He said he feels that the stairs are the best overall compromise he could come up with given the new State Regulations.

Commissioner Michael Desaulniers said he observed basically the same thing that Roger observed. The fence is right there. There is no room for maintenance of that fence without getting permission from the other landowner, true. He said putting the stairs coming off on the other side was a possibility, but looking at it from a contractor's perspective, you still need landings after a certain amount of steps which kind of puts you out there. In thinking about it in from that aspect, safety-wise, come winter time that driveway will be plowed etc and you are going to get snow pushed up against it which will mess with the integrity of the steps. As far as coming down from the second floor, you still are going to have to push the steps over, so we are talking a matter of 32 inches either way, said Desaulniers. It is not going to be that big of a difference. The steps are still going to be there. That second floor landing which seems to be the source of the complaint is still going to be in the same spot. He said he walked over on the other side and tried to get a view of the staircase from there, and you really have to try to see it. You have to pick it out. It is pretty well hidden by trees. There really doesn't seem to be

a major issue there, and I believe the stairs were probably put in the best spot that they could be put for safety purposes, and to meet code, he concluded.

Chairman Coutu said he did climb the stairs and went up to the landing that overlooks the fence, and I can appreciate Mr. Hartigan's concerns, especially with people congregating and partying on the landing. It could be detrimental and noisy, and easy for people to throw things over onto Mr. Hartigan's property. He does have his rights. He wants peace and quiet. I observed that the stairs are extremely close to the fence. My thoughts were that the stairs on the third floor could have been directed to the left side of the building. My understanding was that the original permit was for a stairway to be constructed on the same footprint. I think if the stair had come down a few inches wider the board could have been comfortable with approving that and having the stairs go down the other way.

ZEO Matt Vertefeuille said he would like to respond to a couple of questions that were just asked. There are approvals and permits required to build a set of stairs like this and they obtained all the permits as required. On the application it said they were replacing the stairs within the same footprint. He said when someone says same footprint, we understand that the codes might be different. It might require the rise and the run of the stairs, as well as the height to be different. That factor always changes when the stairs land on the ground. When I say same footprint, it is the same footprint only with bigger shoes, he said. The stairs now have to be a little bit wider and a little bit longer. We understand that there is 12 inches of wiggle room in the length and 3, 4, or 6 inches in the width. Those things are understood and we wouldn't ask anyone to get a variance for those kinds of things and it is reasonable to consider them, said Vertefeuille.

As to the trees in the fence, there are no setbacks as far as fences go, or where trees go, or branches hanging over a fence. The neighboring property has the right to trim those branches if they are hanging over onto his property, said Vertefeuille.

Chairman Coutu asked if there were any other questions by board members.

Commissioner Al Beaulieu said when they saw that they couldn't end up in the same footprint because of the extension of the stairs, they could have come out to the back a little further, and built that one set of stairs without the platform directly to the second floor. When you saw that this wasn't going to fit into your footprint, was it stopped at that point and then brought back to the Building Official or whoever was in charge, he asked. Mr. Greenberg said we knew that we couldn't build it to State Code. He said with all due respect, you can't have it both ways. You can't build to State Code in a similar footprint and have it be safe. You can't come from that third floor apartment and come all the way down to the backyard.
Mr. Beaulieu said he had referred to the second floor, and not the third floor. The second floor stairway could have come down at a landing and finished off and you wouldn't lose any parking area in the back.

Mr. Collier said we did our best to fit the geometry. If we could have changed the rise to an 8" rise we could have done it. We came back to Town Hall and reviewed it with Town staff. We went to the building official and reviewed the paperwork. Initially the stairs were not compliant. Anyway you look at it, we need to have a balcony there and we can't legislate people going out there any partying. Mr. Hartigan bought the property; an 8-family tenement building. That was his choice. We tried to be responsible. We are trying to work with the Town. If we are dealing with 27 or 37 inches, is that going to change Mr. Hartigan's life, probably not. Will that change the fact that that there is going to be a platform back here and people might throw trash, probably not. We can't change that. The stairs are well constructed and are built to code. We are asking this board to consider this a hardship because we did try our best. We don't want to rip them apart. In the end, is it going to change Mr. Hartigan's life given the fact there are 35' trees and a 7' fence there.

Mr. Beaulieu referred to the variance for the spacing. If you had complied to building code there would not have been a problem, but when you saw that you were going to encroach on the neighbor's property by 6 inches I would have stopped the work right there and then. Mr. Collier said we did go back to the building official. We had the inspection. We had the building officials out there.

Planner Finger said he could understand the applicant's frustration and the fact that they were caught between a couple of different building officials. I also understand the board's frustration particularly because they have been criticized most recently for approving every variance that comes before them, so they are very sensitive to that and they have to be very careful. They have rules and procedures to follow. The procedure should have been that when you realized that you were going to be widely off the mark, the Zoning Officer should have been involved and you should have presented the new plan to him. He would have then directed you to this board and they could have reviewed the plan before you built so that you would not have created this hardship for yourself. One of our provisions states "don't create your own hardship". When I was out there I noticed that if you pushed that staircase, it would wiggle. I wondered about the weight load. If there are going to be a group of people standing on that landing area maybe it needs more strength to secure it. It also occurred to me that Mr. Hartigan has a fence on the property that he is entitled to have, and that he has trees with arbors that run up high. They don't spread that much and you are entitled to trim them back. But that doesn't help you, because it doesn't give you more room. If there is lighting on that landing area, that light could cause a nuisance to Mr. Hartigan and perhaps any lighting could be shielded so it was directed down and not cast out to Mr. Hartigan's property. Planner Finger said adding a fence along the side where the landing is might shield him from the noise. He said it seems like we are in a difficult situation because they are forced to try to make improvements that remedy the life safety issues. But, we are also supposed to observe the regulations as they are written. They do have a violation and they are asking for a variance. It is important that the applicants understand the predicament that they are putting the board in because they built it before getting permission. That is troublesome and the board is wrestling with that. Evidently you have a mixed board. Some feel there is no way to solve that other to just let it happen. There are other board members who

have been on the board for a longer time who worry about being labeled a “rubber stamp board”, said Finger.

Al Beaulieu said he has no problem granting the stairway coming down from the second floor if it needed a platform. You may have lost a parking space in the back, but I am for life safety and I feel life safety is more important than the parking space. He said I think it could have gone out the other side and down.

After some further discussion, Chairman Coutu asked the applicants if they had any meetings with Mr. Hartigan to discuss some of the things Mr. Finger pointed out such as possibly extending the fence or building some kind of shield. Have there been in discussions with him, he asked. Would you be willing to try to resolve this with Hartigan. It might put the board in a different position. He asked the Planner if this could be continued again in order for the applicants to try to accomplish that. Do you think that is do-able, he asked. Mr. Greenberg said they would be willing to meet with Mr. Hartigan regarding providing some shielding on the landing as suggested. ZEO Matt Vertefeuille said you could grant a variance for an alternative plan than what was built. That is within your right to do that. He asked the Planner if the hearing could be extended. Planner Finger said we cannot extend it without the applicant’s permission. We can ask the applicant for an extension of time and he may grant it providing the extension is not more than 65 days overall. He could grant an extension for another month.

Al Beaulieu said in the meantime they are using it as a second means of egress if an emergency comes up. ZEO Matt Vertefeuille said yes.

Board member Michael Desaulniers said no matter what you do here, if you take these stairs and build them off to the left, the second floor landing is still going to be there. You are still going to have a landing and you are only going to be pushed over maybe 37 inches so all it is going to do is to put whoever is standing on that landing 37 inches further than that fence.

Planner Finger asked if it was necessary to have the landing at that length. There is the walkway that travels in between, and you need to maintain the travel path. The other extenuating circumstance is in the event of an emergency you need to be able to get a stretcher between there, said Finger. By moving it farther away makes it easier for emergency people to get between the bracing and the top rail.

Mr. Hartigan said you could take the second back stairway that comes to the ground and move it all the way back over to the building, and have the third floor egress go off to the left to the back of the building. That stairway does not come down very far at all from the original pad. It is going to be a little wider and it is going to come out slightly farther He referred to pictures that he took the day he was there, and said you can see where that second floor landing is extended out towards the fence line which brings the stairs up to the fence line. If you eliminate the third floor egress completely from the picture and you move that stairway all the way over to the back of the building you can see that it would

come almost exactly on the pad where the original stairs were, he said. Planner Finger said you wouldn't have the second means of egress for the third floor. If the third floor egress came off to the left of the building and went down on that 22 foot lawn area on the opposite side we wouldn't be sitting here tonight, he said.

Chairman Coutu explained that the board has criteria to follow under Section 92.3.c, and criteria for approving a variance. He said if an applicant's special condition or circumstance is of the applicant's making, the Board is without the power to grant a variance. It might be considered that not coming back to the Building Dept right away could fall into that.

Planner Finger said it was the Zoning Officer's responsibility to review that. The Zoning Officer is supposed to approve all changes, and somehow he was left out of that. If they had a discussion with the Building Office the Building Official should have pulled in the Zoning Officer. ZEO Matt Vertefeuille said the Building Inspector did go out and do the inspection, but he is only looking to see if the piers are at the right depth, etc. He went out there on April 20, 2011, and it was about 5 days later that I got the call and went out there to look at it myself.

Board member Al Beaulieu said when the Building Official went over, wouldn't you say right then and there as a Building Official that they were going to be too close according to zoning. Planner Finger said he doesn't know the zoning rules. He knows building. Planner Finger said he feels we are responsible for the zoning and he is responsible for building, so he only focuses on his specialty. Al Beaulieu said if there were proper communications we wouldn't be here tonight.

Board member Robert Wolf said when looking at the application for the Building Permit, the first issue is zoning. Al Beaulieu said looking at the plan it is not the footprint called for. Mr. Wolf said if the parties involved are interested in trying to work out an amenable solution and is the applicant is willing an additional 30 days, I would be in favor of them coming up with a plan which we could then vote on. Planner Finger said you need to decide if you want to continue the hearing in order to try to resolve some issues.

Mr. Hartigan said if we are willing to sit down and talk to each other, I have no problem with that, but I would like to get my lawyer involved because when we write something up I want it not only to apply right now, I want it to apply to that property henceforth so if they sell the property… ZEO Vertefeuille explained that a variance runs with the property forever. Planner Finger said we don't want to enter into a private negotiation, but if you wanted to have an agent represent you in any conversation that would be acceptable. Mr. Hartigan said I don't really know what to ask for. Planner Finger said it is up to the applicant whether he wants to grant an extension for the board to extend the hearing another month, and that gives you enough time to try to work out some solution. This would be your private agreement and if you came to some solution or resolution and presented it to the board, then the board would be in a better position. This board can impose conditions that might not be otherwise be permitted, but in order to safeguard the

neighbor's property and to protect the public in general, the board can impose conditions which may require you do things that ordinarily would not be permitted.

ZEO Matt Vertefeuille said the next meeting will be held on September 1, 2011, and if you folks can meet and come up with a plan and possibly get back to us by August 25, 2011 so that plan can be reviewed by the board members. That way we can figure out what kind of an exception we would have to make and move forward. Planner Finger urged the applicants to consult with the Building Official also because if you are going to add more weight to the structure you are going to have to beef it up. The board could stipulate conditions of approval which may involve other variances or other resolutions such as screening on the landing, he said.

Al Beaulieu said the second means of egress is a fire escape, and it wasn't built to be a recreation area, party area. If you notify the tenants not to party out there, I think that would eliminate a lot of problems.

After a lengthy discussion, the Board encouraged the applicants to meet with Mr. Hartigan to see if they could reach a suitable compromise to the situation. Planner Finger said this would require continuing the public hearing, and in order to do so the applicants would have to agree to the continuance in writing. Mr. Greenberg said. they would be willing to meet with Mr. Hartigan to see if they could come to an agreeable solution. The public hearing was continued for another 30 days.

3) Routine Business

a) The minutes of May 5, 2011 were approved. Motion by Robert Wolf and seconded by Jose Cruz. The motion carried unanimously.

b) The minutes of June 2, 2011 were approved as revised. Motion by Al Beaulieu, seconded by Robert Wolf. The motion carried unanimously.

c) Planner Finger stated that the Planning & Zoning Commission have revised several sections of the Zoning Regulations. He said these changes can be found on the town web site. He said the ZBA will no longer be the reviewing body for motor vehicle applications. These applications will now be before the P&Z commission.

d) Board members expressed their condolences to Mary Ann Daley on the recent passing of her father.

There being no further business, the meeting was adjourned at 8:29 P.M. Motion by Al Beaulieu and seconded by Robert Wolf. The motion carried unanimously.

Respectfully submitted,

Lillian Murray, Clerk