

**ZONING BOARD OF APPEALS
WINDHAM, CT
MINUTE**

Sept. 6, 2012

The Zoning Board of Appeals held its meeting on September 6, 2012 in Windham Town Hall. Chairman Robert Coutu called the meeting to order at 7:00 P.M. Members present were Roger Morin, Andrew Gibson, Robert Coutu, Joseph Beaulieu and Robert Wolf. Also present were Town Planner James Finger, Code Enforcement Officer Matthew Vertefeuille and Town Engineer Joseph Gardner. Mayor Eldridge was also present for the first part of the meeting.

1) New Business

a) Connecticut Department of Transportation, for property at 147-159 Windham Center Road, Windham, CT ó seeking a variance on lot requirements for existing non-conforming lots at subject property below current minimum of two acres with 200 feet of frontage for each lot.

Planner Finger's staff report dated August 30, 2012 explained that recently the property owner installed some trees on his property along the curve (Route 203) in order to provide some privacy to the family due to the large frontage open to the public along the public highway. This caused a lot of concerns among the driving public who found it difficult to see around the curve in the road. In fairness to the property owner, he did place the trees at about twenty feet away from the roadway and at a similar distance to other trees a little farther up along the north side of the property.

In consultation with the State DOT, it was learned that the property line actually extends into the street a few feet. So evidently the DOT had cut into the private property with paving. In order to correct the situation, the State is seeking to take a portion of the property and move the trees back another twenty feet to improve the sight line along the curve.

The application states that the State DOT is requesting the variance to allow a reduction in lot size from 40,200+- square feet to 39,086+- square feet (87,120 square feet required) under CT General Statute 48-24. It goes on to say that failure to grant the variance may result in the total acquisition of the property, thus denying the owner use and occupancy of the property through no fault of their own.

Planner Finger said the property owner installed the trees along the curve, a similar distance to the other trees, and it looked like it cleared visibility. He said the property owner planted the trees on his own property (the road is partly encroaching on one lot). The State DOT wants to buy a portion of the land so that they can move the trees back and improve the sight line.

Mr. Steven Degan, spokesman for CT DOT said we are before the board this evening seeking variances in conjunction with Connecticut General Statute 48-24. He said we are trying to acquire approximately 1,100 square feet of the public's property in order to reduce the lot sizes from 40,200+- to 39, 086+- square feet. He said many complaints were received regarding the obscured sight line caused by the trees. Mr. Egan said we surveyed the area and found that our right-of-way is actually on private property. The purpose of this hearing is to get the right-of-way back on state property. He added that the home owner will be compensated for this action.

Donald Aubrey, owner of Towne Engineering, speaking on behalf of the property owner gave a history of the property. He said in the 1970's a subdivision was proposed on this corner. The Town urged the developer to discuss giving additional right of way to the State to improve the curve. The developer approached DOT to discuss this, but the DOT refused to accept any land in that intersection. Then, in the early 1980's the State paved that area they cut into private property with their paving. Mr. Aubrey said the State did survey the monuments under the roadway and concurred that they had paved over the property bounds onto the property owner's property, and that he should be entitled to some settlement.

Mr. Aubrey said generally all applications that come before the ZBA require the owner's signature on the application. This application does not have the property owner's signature. He suggested that the board check with the Town Attorney to see if the State DOT can stand before this board without the owner's signature on the application.

Audience comments: 1) A petition signed by 5 individuals was submitted. The petition reads that Windham residents are concerned with a series of trees planted at the cross section of Windham Road (CT 203) and Jerusalem Road. As an individual that drives this route on a daily basis, the visual impairment created by these trees has made this a very dangerous area for drivers.

2) Kathy Pekarovic referred to the curve on Route 203. She said because of the poor sight line you almost have to come to a complete stop on that curve. The trees will fill in and block the sight line. She said this situation has become a public hazard. 2) Arlene Maclure was in total agreement. 3) Jennifer Kuscovitch said there is no sight line. She said there are a lot of kids walking on the street and her concern is with the children walking to and from school in that area. We do have a lot of people traveling in that area. You really have to hold your breath when you go around that curve.

Board member Roger Morin questioned if a traffic light or a stop sign would help. Or, maybe the road should be realigned, he said. Ms. Kuscovitch said *if* a stop sign or traffic light is going to be considered, there would definitely have to be notification of the approaching stop sign.

Town Engineer Joseph Gardner said you would probably create more accidents with a stop sign. With regards to a road realignment, he said you would have to rebuild the

entire intersection. He said this is a state road so they would have to come up with the funding to improve the sight line.

Mr. Morin asked if a warning light would be helpful. Board member Al Beaulieu suggested putting up a huge stop sign with warnings. Speed could also alleviate part of the problem, he said. Town Engineer Joseph Gardner felt that drivers would slow down and then speed up to make up the lost time. Mr. Beaulieu said that area has had many accidents over the years even without the trees planted there.

4) Kim Sweet said the situation might be worse if you have to come to a complete stop. There is no doubt the intersection has to get fixed in some way. 5) Corrine King agreed that adding a stop sign could actually create a bigger problem. She said the State needs to come up with a long-term solution. 6) Frank Wilson said this is a dangerous intersection. He said his car was rear-ended while driving in this area. 7) Jane Haney said another problem occurs when they have parties and they park on both sides of the street. She said when these trees grow, they will grow right into the roadway. 8) Mayor Ernie Eldridge said this is a very bad corner and the State needs to address the problem. The trees are there, and they are on his property. 9) Michael Licata said before the trees were there it was tedious at most. This is a bad corner and the State DOT should have made improvements to this intersection a long time ago. This is definitely DOT's issue and they should make amends to the property owner. 10) Judith Senkbeil outlined the issues as you attempt to go around that curve. She said perhaps the state should widen the road and make it into two lanes.

Al Beaulieu said the road is wide enough so that they could T that road. You would have a 3-way stop. They could come into that T with one lane turning right onto Jerusalem Road, and the other lane would be turning left. They could do it vice versa from the other way also. Planner Finger tried to clarify what Ms. Senkbeil said explaining that as he understood her suggestion, that people making a left turn onto Jerusalem Rd would drive past the first turn and go instead to the second driveway just west of the triangle and make a hairpin turn to get back and go south on Jerusalem Road.

Mr. Beaulieu said he felt that would cause more accidents because drivers coming from Windham Center wouldn't see the car stopped to make a left hand turn. I think we are likely to have more casualties that way than if they made it into a T, or a 3-way stop. He said he agreed with everyone who has spoken - that this has been a problem for years. He said the State should have taken the bull by the horns and straightened it out many years ago and we wouldn't be here tonight feeling the way we feel because we don't want to stop somebody from doing what they want to do on their property.

11) Ed Chan voiced similar concerns with the intersection. 12) Sherri (inaudible) said I live on Jerusalem Road. I travel that area every day and I have to come home every night. I understand that everyone has the right to do things on their own property, but there have been many accidents there, and I have almost been rear-ended. A 3-way stop might actually work. 13) Doug Bardell said I live on Jerusalem Road. I have lived there for 24 years. I was out there this afternoon, and the trees that are blocking the sight line

(in my opinion) are not the new trees. They are trees that have been there since I bought my property 24 years ago. The new trees are really not in the way. 14) Janet Hillaire echoed the concerns cited regarding the sight line. I have come this close to getting hit on that corner.

Board member Robert Wolf said the problem seems to be coming from multiple locations. He said the property owner acted properly, but the state did not. I have been on the ZBA for two years and I don't know how long this has been a problem. I think the question is whose rights are being violated, said Wolf.

Chairman Coutu asked the representative from DOT (Steven Degan) if he had any other information to add.

Mr. Degan agreed that there definitely is an issue. Most property owners go by what their realtor tell them as to where the property lines are - and generally speaking they are 5 or 10 feet off the road. So, he probably had no idea what was going on. He acted within his rights. There is a problem out there. Maybe it could be T&U up. Whether that is a project that is coming up for the state is anybody's guess. My suggestion is that the town go to the Regional Planning Agency, and ask the Regional Planning Agency to push harder for this to be looked at. Letters could also be sent to the DOT engineers. This has to come through the town, and I can bring your opinions back. My suggestion is that the town, as well as the Regional Planning Agency really push hard. It appears that there is an issue that has been there for a long time. The property owner absolutely did nothing wrong.

The property owner will be compensated, but our typical process is not to make offers prior to the ZBA's decision. Your decision will affect where we are going and what we are doing, but at this time there is no roadway construction planned other than whether the bushes are going to be cut down or relocated. The general principle is if we come before the Zoning Board of Appeals on an acquisition for a roadway project we need the property owner's signature. If it is not signed we couldn't come before you asking for an appeal. Our process is that applications come in, they get zoned, and we request a zoning variance. Once the hearing is done and a decision is made, that is when we acquire these properties.

Member Al Beaulieu said we are here because the state didn't do something about this many, many years ago. Now because the property owner has planted some trees, and yes they are going to get bigger, we have complaints about it; and yes the town and state has to do something about it. But this problem could have been alleviated many years ago and it still can be without the property owner losing his property. There are ways that this can be done and not as costly to the taxpayers.

Member Andrew Gibson said he would like to see the state enter into negotiations with the property owner before we are forced to take a vote. Planner Finger said (as Mr. Degan has explained) because of State Statutes they have to seek a variance before they can enter into any negotiations with the property owner. He said the board is not

obligated to grant the variance. It is in the public's interest to see the intersection improved and whatever way it takes form.

In conferring with Mr. Vertefeuille, the zoning enforcement officer, he talked with the Town Attorney Rich Cody and he asked that we continue the public to allow him the time to research this matter, because he has concerns about the issue of standing as well. Planner Finger suggested that the board take no action other than to continue the hearing to next month. Member Al Beaulieu said in the meantime the state should put flashing lights there and possibly stop signs before somebody gets killed on that intersection. Mr. Egan said he would submit that request.

Kathy Roberts said something has to be done. Something should have been done 30 years ago. Stop signs might help.

Murphy Sewell explained his experience with the intersection as he lives right at the outside of the curve, and has had a lot of people in his driveway. He said the immediate problem is safety at that intersection. It is a very dangerous intersection and it needs to be addressed quickly.

Chairman Bob Coutu said he has lived in Windham Center since 1964 and has traveled that curve many times realizing that it is a very sensitive area; but said he hadn't realized how many people had so many close calls there. He thanked everyone who came to the meeting and letting the town know the situation. He said he thought the town has gotten the message and understands the problem - and the state has too. Also, in taking into consideration what Mr. Aubrey said about the application not being signed by the property owner, he said he would ask the board to continue the public hearing.

Al Beaulieu made a motion to continue the public hearing until October 4, 2012 to allow the town ample time to check with the Town Attorney on the application. Andrew Gibson seconded the motion. The motion carried unanimously. The public hearing will be continued on October 4, 2012.

2) Review of Proposed Zoning Regulations

Planner Finger explained that the Planning & Zoning Commission is continuing the revisions to the zoning regulations that affect business and commercial businesses to encourage the expansion of business development. These include changes to the General District.

Chair Bob Coutu said one of the things that they want to do is take authority from the ZBA and give authority to them on certain regulations. They also are changing the zones on West Main Street from Town Hall to the highway. They also are changing properties on Route 32 in South Windham, and properties on Boston Post Road, and drastically changing the regulations from what they are now. It limits businesses from being able to grow. My business is on Route 32 on West Main Street, said Coutu. If they pass these regulations as proposed I would not be able to expand my business.

Planner Finger reviewed the proposed changes. Among the changes, Section 3.10.7 will revise and clarify the process to expand a non-conforming building and changes the approval process from the ZBA to the PZC to be consistent with other non-conforming proposals.

Member Al Beaulieu expressed his displeasure with the changes. He said he does not want to see this happen. We are not here to chase businesses away from this city. We are here to bring businesses back and get our taxes lowered by bringing businesses into Town. Other board members also voiced concerns with the proposed changes.

Planner Finger went on to review the other changes to the regulations, and added that he mailed notices out to all the properties affected, and they are posted on-line for the public to see.

3) Approval of Minutes

Al Beaulieu made a motion to approve the minutes of August 2, 2012 and Bob Wolf seconded the motion. The motion carried unanimously.

The meeting was adjourned at 8:50 P.M. Motion by Al Beaulieu and seconded by Bob Wolf. The motion carried unanimously.

Respectfully submitted,

Lillian Murray, Clerk