

ZONING BOARD OF APPEALS

WINDHAM, CT

December 7, 2006

Minutes

The Windham Zoning Board of Appeals held its meeting on December 7, 2006 in Town Hall. Chairman Ernest Eldridge called the meeting to order at 7:00 P.M. Members present were Gerald Hart, Al Beaulieu, Robert Coutu, Ernest Eldridge, Charles Krich, Jose Cruz and Donald Potter. Also present was Town Planner James Finger.

Members welcomed new member Jose Cruz to the Board. Chairman Ernest Eldridge excused himself from participation in tonight's meeting and asked Vice Chairman Robert Coutu to chair the meeting. Voting members for the first application are Gerald Hart, Robert Coutu, Charles Krich, Donald Potter, Steven Edelman and Al Beaulieu.

New Business

Stanley and Ellen Kornacki, 171 Babcock Hill Road, South Windham – seeking a variance from Sections 23.4, 21.2.8b, & 21.4 for reduction of the front yard building setback requirements to build a garage closer to the street line of East View Terrace.

Planner Finger's staff report dated November 30, 2006 explained that the existing configuration of the property, driveway, and house location create a practical difficulty to comply with the 30' front yard setback requirements on this corner lot which faces two streets. The existing attached garage will be converted to additional living space. He added that Town staff has no objections to this variance being granted.

Andrew Nelson (contractor) explained that the proposal is to build a detached garage on the property, and because their turn-around is on the corner lot they don't have enough room to back their cars in and out of the garage. We would like to reduce their setback 10 feet on the front and side. Notices of the public hearing were forwarded to abutting property owners said Nelson. Planner Finger asked why not just attach the garage to the house and then you wouldn't need a variance? Mr. Nelson said it would still affect it one way because of the way their driveway is right now. There are stonewalls on Babcock Hill, and there is a septic system in the back of the house. They presently have an attached garage that they want to convert to living space, said Nelson. The proposed garage will be facing the house. Ernest Eldridge asked if they would be able to save the trees on the property. Mr. Nelson said one tree would be saved, and one tree would have to be removed. Will you have ample room to turn the cars in the yard and eliminate the need to exit on East View Terrace, asked Bob Coutu? Mr. Nelson responded yes. Donald Potter asked, are you putting in a 3-car garage? Ms. Crista Pannorfi, daughter of the applicants, said they want the 3-car garage in order to be able to store their lawn mower, lawn furniture etc.

Bob Coutu read the names of the abutting property owners who were sent notices of the public hearing. There was no-one in the audience to comment on the application. Planner Finger said if any of the neighbors had any concerns they probably would have called him or would have come to the public hearing.

Al Beaulieu made a motion to close the public hearing and Gerald Hart seconded the motion. The motion carried unanimously.

Al Beaulieu made a motion to grant a variance from Sections 23.4, 21.2.8b and 21.4 for a reduction of the front yard building setback requirements to build a garage closer to the street line of East View Terrace and Gerald Hart seconded the motion. The motion carried unanimously.

Wanted Single & Multi Family Homes, LLC for 225 – 227 Jackson Street- appeal of a cease and desist order for sign violation in a residential area.

Members voting on this application are Gerald Hart, Steven Edelman, Donald Potter, Robert Coutu and Al Beaulieu.

Planner Finger's staff report explained this is a continuation of the hearing on the appeal of a cease and desist order for sign violation in a residential area that was sent to the original property owner. As you are aware, he changed the name of the owner as indicated. After considering the discussion at the last meeting, clearly there are some discrepancies, said Finger. First, the appeal against my cease and desist order was filed under the new ownership name, but it was not issued against the principal owner of the new business name. Secondly, Finger said he concedes that he did not cite the new owner of a similar violation, and he would have to do that first before this appeal would have any merit. However, he believes the original owner may still be in violation for other properties not identified on his appeal. In the meantime, he said he would examine the records, and his remaining properties to see if there is a continuing violation.

Planner Finger said he had spoken to the applicant last week and that he would concede that they are technically correct in that he did not issue a cease & desist order under the current owner's name. There is no cease & desist pending under the new name. Planner Finger said when they filed the appeal he had the idea that they were filing it because he had issued the cease & desist order. He did file the appeal in a timely manner, but he didn't file it properly citing the name for whom Finger had issued the cease & desist. Planner Finger said he still feels that his cease & desist order should be upheld. He did not appeal it in a proper way; identifying it by name as the person who received the cease & desist order for the sign violation. Planner Finger said he examined the land records and found that Mr. Hartling had transferred almost all his properties into the new name. However, he found one property that appears to be still in his current name or in his own personal name. He does have the new sign of this business on the property, said Finger and he would have to examine that further. Mr. Hartling is not here tonight, and I don't know why he decided not come. But, I told him that he still has the opportunity to meet and talk with the board, and to continue his argument on his appeal to overturn my cease

& desist order, said Finger. Since he is not here, I think the entire issue is moot with respect to his appeal because it was on the wrong party. He filed it under "We Buy Single and Multi-family Homes, LLC" as the applicant. That name was not subject to the cease & desist order, said Finger. Mr. Michael Hartling is the party who was subject to the cease & desist order. He is the one to whom the cease & desist order was issued. He did change the name, although I feel that this is a supervention of the rule. Technically the rules do allow you to post the owner's name and address on a sign. As it happens, the new owner's name is "We Buy Single & Multi-Family Homes".

A discussion ensued.

Board member, Al Beaulieu, said the original cease & desist was under the old name and not under the present LLC. He said his opinion is that under Section 72.7 of the Zoning Regulations Mr. Hartling wasn't in compliance and the cease & desist should stay. Planner Finger said unfortunately he is not here tonight to explain why he thought he was immune from the rule. Planner Finger said Mr. Hartling argued that he was entitled to have a sign since he owns the property. I explained to him that he may own the property and that he could have a sign "For Sale by Owner", said Finger. I also told him that he didn't qualify under the Home Occupation rules because he did not have a permit for a Home Occupation, and secondly he doesn't live there. Thirdly, they are all multi-family homes, which also makes the Home Occupation rule inapplicable. Al Beaulieu said he changed the name to "Wanted Single & Multi-Family Homes", LLC and to me that is not a "For Sale" sign. He can call his business anything he wants and maybe under the LLC it is alright now. I don't know, added Beaulieu. Ernest Eldridge said he felt that it was somewhat of a non issue except that the original cease & desist was issued against the name of Michael Hartling and that his signs were incorrect. Instead of putting Michael Hartling on the sign he put "Wanted Single & Multi-Family Homes", LLC. When he changed the name to the LLC, and when he changed all the properties to the LLC I felt that he knew he was not in compliance so he tried to make himself in compliance by doing this. He himself, I think, said that he knew he was not in compliance so he changed everything over to the new name. The Planner has not gone against the "Wanted Single & Multi-Family Homes, LLC at all, said Eldridge. I feel that the cease & desist should stand. Charles Krich said the cease & desist order is with the old name. The new company is the same as the old company. I feel that the cease & desist order should stay, said Krich. Ernest Eldridge said the original cease & desist order was against Michael Hartling, not against "Wanted Single & Multi-Family Homes, LLC". His name was not on the sign and if your name is not on the sign you are not in compliance. I feel the original cease & desist order should stand because it was against Michael Hartling and not against the other name. It had nothing to do with the other name and I feel that we should uphold the finding of the Zoning Enforcement Office because the sign was not in compliance at that time.

After additional discussion, Steven Edelman made a motion to uphold the cease & desist order against Michael Hartling and Donald Potter seconded the motion. The motion carried unanimously.

Routine Business

Action on the minutes of November 2, 2006 was deferred to the next meeting in January, 2007.

There was no correspondence.

As there was no other business to come before the board, the meeting was adjourned at 7:45 P.M. Motion by Beaulieu and seconded by Potter. So voted.

Respectfully submitted,

Lillian Murray, Clerk