

Town of Windham
ZONING BOARD OF APPEALS

DATE: **Thursday August 7, 2008**

TIME: **7:00 P.M.**

PLACE: **Windham Town Hall, 979 Main St., Willimantic**

A G E N D A

I. **Call to Order**

II. **New Business - DISCUSSION/POSSIBLE ACTION**

Public Hearings:

1. **United Social & Mental Health Resources, Inc. – 40 South St., Willimantic** – seeking variance from ten foot side yard setback to build fire escape closer to side property line than permitted in an NPR –2 District.

2. **71 Boulevard LLC – 71 Boulevard Rd. North Windham** – appeal of Town Planner/Zoning Administrator’s refusal to issue zoning approval to allow renovation of non-conforming house deemed to have been abandoned

III. **Routine Business - DISCUSSION/POSSIBLE ACTION**

1. Approval of Minutes

2. Correspondence

3. Miscellaneous

IV. **Adjourn**

Robert A. Coutu, Chair

Town of Windham

MEMORANDUM

TO: Windham Zoning Board of Appeals
FROM: James Finger, Town Planner
DATE: August 5, 2008
SUBJ: Planner's Report for next meeting

United Social & Mental Health Resources, Inc. – 40 South St., Willimantic This is an application seeking a variance from ten-foot side yard setback to build fire escape closer to side property line than permitted in an NPR –2 District. The application shows the distance at three feet for the finished staircase. Currently the staircase is located on the south side of the building where there is plenty of room. However, this staircase is not to code, and the interior layout works better to move it to the north side of the building where they will lose the existing paved driveway to the garage. The other issue they must resolve is the need for off-street parking for the building as there is an insufficient amount for the use.

Boulevard Rd. LLC – 71 Boulevard Rd. North Windham – This is an appeal of the Town Planner/Zoning Administrator's refusal to issue zoning approval to allow renovation of non-conforming house deemed to have been abandoned. The building office files show that the building was repeatedly boarded up from as early as August of 1991. According to a family member the grandfather who owned the property, died in about 1989 or 1990. The estate was just settled last year and this property was sold to the current owner for \$2,000. The Assessors office determined the fair market value of lots in 2005 at \$42,300 for the land and \$11,890 for the building – so the land was considered more valuable than the buildings; but the market evidently didn't value the property as highly as the Town Assessor's Office. The setting of the property is such that the old house sits near the street on a steep slope that empties into a wet valley, and is bordered by the old Airline Rail-Trail now owned by the DEP. The garage building appears to be newer as it has a concrete foundation surrounded by fill material.

As in the case with the Willimantic Camp Meeting Association properties, owners who wish to fix up buildings like this must secure a variance from the Board. However, the differences are that those buildings have public water, and share a septic facilities, which falls under supervision by the DEP. This property has no public water, and whatever septic system they might have used in the past has not been used in a long time, and is likely to cause pollution to the nearby wetlands. As the Town's Inland Town Planner who has responsibilities as the Zoning Administrator and Inland Wetlands Agent, I am concerned about using this building without addressing this issue.

The Board has the authority under section 92 of the regulations as follows:

- 92.1 **POWERS AND DUTIES:** The Board is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement or decision made by the official charged with enforcement of these Regulations; to authorize upon application in specific cases a variance from the terms of these Regulations where, owing to special conditions, a literal enforcement of the provisions of these Regulations would result in unnecessary hardship or an exceptional difficulty. ...
- 92.2 **APPEALS:** In reviewing any order, requirement or decision of the official charged with enforcement of the Zoning Regulations, the Board may reverse or affirm in whole or part, or modify any order, requirement, or decision from which such appeal is made. Further, the Board shall make such order, requirement, or decision as in its opinion should be made in the matter, and shall have all of the powers of the officer from whom the appeal shall be filed within thirty (30) days of the order or decision unless otherwise stated.
- 92.3 **VARIANCE:** A variance is not a personal exemption from the enforcement of the Zoning Regulations. It is the legal status granted to a certain parcel of realty without regard to ownership. Economic hardship of the individual such as financial loss or benefit is not a proper basis for a variance request. A variance from the terms of these Regulations shall not be granted by the Zoning Board of Appeals unless, and until, a written application for a variance is submitted in a form provided by the Board. The Board shall consider the following:
- a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. That literal interpretation of the provisions of these Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these Regulations;
 - c. That the special conditions and circumstances do not result from self-created actions of the applicant. Where the condition is due to one's own voluntary act, the Board is without the power to grant a variance;
 - d. That granting the variance requested would not confer upon the applicant any special privilege that is denied by these Regulations, to other lands, structures or buildings in the same district; and,
 - e. That granting the variance will not be harmful to the neighborhood and does not affect substantially the Town's Plan of Development or the spirit and intent of the Zoning Regulations.