

Town of Windham  
ZONING BOARD OF APPEALS

**DATE:** **Thursday September 4, 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. **Christopher J. Beaudoin – 22 Abbe St., Windham**-request for variance of setback rules under Section 21.4 for existing outdoor wood-burning furnace, and future carport, also Special Exception to create accessory apartment above garage;
- 2. **Enterprise Rent-a-Car at 1040 Main St., Willimantic** – variance from maximum limit on size of ground sign under Section 71.5.1 b. – no dimension greater than eight (8) feet- in order to install a sign ten (10) feet long;
- 3. **71 Boulevard Rd. LLC – 71 Boulevard Rd. North Windham** – reconsideration of appeal regarding Town Planner/Zoning Administrator’s refusal to issue zoning approval to allow renovation of non-conforming house deemed to have been abandoned.
- 4. **Hieu Ta – HTA Motorsports – 1050 Main St., Willimantic** Application for Certificate of Location for Motor Vehicle Repairer’s license.

**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 29, 2008  
SUBJ: Planner's Report for next meeting

**Christopher J. Beaudoin – 22 Abbe St., Windham**- This is a request for variance from the setback rules under Section 21.4 for an existing outdoor wood-burning furnace, and future carport. The owner didn't realize that he was into the setback area when the out door wood furnace was built, but he found out when the property was recently surveyed. This portion of the property sits on a high embankment above the neighboring Railroad line, so there is no one who will be harmed by granting the variance. The owner also wants to build a carport on the south side of the existing barn, and didn't realize that he was too close to the side property line. In addition, he is interested in securing a Special Exception to create accessory apartment above garage, and the ZBA has the authority to approve this use.

**Enterprise Rent-a-Car at 1040 Main St., Willimantic** – This is an application for a variance from maximum limit on size of ground sign under Section 71.5.1 b. – no dimension greater than eight (8) feet. This variance request is to allow the applicant a waiver to install a sign ten (10) feet long. The existing sign is only eight feet long but is affixed horizontally to the pole. The new sign will run along the vertical line of the pole.

**71 Boulevard Rd. LLC – 71 Boulevard Rd. North Windham** – This is a reconsideration of the appeal of my refusal - as the Town Planner/Zoning Administrator's to issue zoning approval to allow renovation of non-conforming house deemed to have been abandoned. Evidently, I had erroneously made inferences about the building office files indicating that the building was repeatedly boarded up from as early as August of 1991, and assumed that the Town of Windham had completed the boarding – as there was nothing in the file as to indicate who did the work. Originally when I had asked the Building Official about the letters, I misunderstood his statements, as I thought he said: '... we had it boarded up a couple of times' with no other qualifying statements. I since learned that someone representing the estate did come in and had secured the building, but there was no mention of this in the file, and it seems that the Building Official is the only one left who would know this information.

Never the less, the zoning regulations state:

**3.10.6 Repair:** Nothing herein shall be deemed to prohibit the ordinary repair and maintenance of a non-conforming building or structure, or replacement of existing materials with similar materials.

**3.10.9 Abandoned Uses:** No non-conforming use which has been abandoned shall be re-established, and no building, lot or structure, or any in combination, formerly devoted to the non-conforming use shall be devoted to any use other than a permitted use. The term “abandon”, by itself or as a root, shall mean discontinuance of any use voluntarily. Any appeal of such determination may be made by application to the Zoning Board of Appeals as proscribed under Section 92. Any one of the following may constitute prima-facia evidence of a property owner’s intent to abandon a use voluntarily:

- a. Failure to take necessary steps to resume the non-conforming use with reasonable dispatch in any circumstances, including failing to advertise the property for sale, rent, lease or use;
- b. Discontinuance of the use for twelve (12) consecutive months, or for a total of eighteen (18) months during any three year period; or,
- c. In the case of where the non-conforming use is of land only, discontinuance of the use for 120 consecutive days or for a total of six (6) months during a one year period.

In this instance, I read the rules to mean that this application does not qualify for ‘Repair’ permits. Despite my error – for which I profusely apologize, I still feel that I these rules tell me that the building is ‘abandoned’. Moreover, since the Board had heard the original appeal, and had acted on the erroneous information, I felt that the matter should be returned to the Board for re-consideration. In addition, I could not convene a special meeting without advertising the matter, because I had already published a notice of the Boards decision for the August meeting, and therefore told the appellant that I would return the appeal to the Board at your next meeting at no additional fee.

As I reported last month, 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 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.

**Hieu Ta – HTA Motorsports – 1050 Main St., Willimantic** This is an Application for Certificate of Location for Motor Vehicle Repairer's license for a new business next to the existing motor vehicle dealership. The proposed business is for a general repairer's license that would install hi- tech modifications to customer's vehicles. As I understand the proposal, they do not intend to do any other type of general repairs, no collision damage repair work, or custom painting. If this is not correct, then we need to consider the fact that the property has limited area for storage of vehicles on-site.