

ZONING BOARD OF APPEALS
WINDHAM, CT

MINUTES

June 4, 2009

The Windham Zoning Board of Appeals held its meeting on June 4, 2009 in the Willimantic Police Classroom. Chairman Robert Coutu called the meeting to order at 7:00 P.M. Members present were Al Beaulieu, Susan Fiegel-Rapp, Gerald Hart, Steven Edelman, Renee Harris, Robert Coutu and new member Maryann Dailey. Board members extended her a warm welcome. Also present were Town Planner James Finger and Code Enforcement Director Matthew Vertefeulle.

New Business

1) Gina DeVivo-Brassaw, 194 South Park Street, Willimantic application for a Special Exception to convert an in-law dwelling into an accessory apartment adjacent to primary residence.

Planner Finger's staff report dated May 27, 2009 explained that last year the Board approved the in-law conversion of a former business use, and the owner was going to have elderly parents live there. After beginning the renovation work, much more of the building had to be renovated than first expected, and the in-laws decided not to move in. Now the owner would like to rent out the dwelling, but this requires approval from the Board as outlined in the regulations and the permit restrictions. The dwelling is in a separate building with its own utilities. Since the property had been used for business purposes in the past, and is adjacent to a convenience store, the proposed use is not anticipated to create unusual traffic, said Finger, and there is sufficient parking in the rear.

Gina DeVivo-Brassaw said the house was purchased about one year ago and contains a house and a building formerly used as a barbershop. When we purchased the property it was our sole intent to have my husband's parents move in, but during the renovations my in-laws decided against it. When we started the renovation process, we found out that we had to treat the apartment as an accessory dwelling; a dwelling standing on its own. It is a separate building and is not attached to the house. We followed all the zoning requirements and secured the necessary permits, she said. We would like to be able to rent to other people. She distributed photos showing the completed renovations.

Planner Finger said there was an error on the Notice of Action for the original conversion to the in-law apartment. He said he learned just today that under the Building Code there are no classifications for in-law dwellings. It states that each dwelling is a separate dwelling, said Finger. If the building was attached, and they were inter-connected, then it would be treated as a single family home. He said in cases where there are two separate buildings with 2 separate doorways, it is considered a 2-family dwelling. Under the zoning rules there is a classification for in-law dwelling, but this is limited to in-laws only. It is for family members

related by blood, adoption, marriage etc. The Board does have the authority to approve this conversion by granting a Special Exception, said Finger.

As there was no one in the audience to speak for or against the request and since Board members had no further questions, the public hearing was closed. Motion by Al Beaulieu and seconded by Susan Fiegel-Rapp. The motion carried unanimously.

Al Beaulieu made a motion to grant Gina DeVivo-Brassaw a Special Exception to convert an in-law dwelling to an accessory apartment. Gerald Hart seconded the motion. The motion carried unanimously.

2) Perception Programs, Inc., 215 & 219 Valley Street, Willimantic -continuation of the public hearing from May 7, 2009 seeking variances from building setback regulations to extend an enclosed walkway along the adjoining property line close to the property line, and also to connect the existing accessory structures on both properties.

Planner Finger's staff report explained that the applicant is requesting to convert one of the structures presently used as a garage and storage building in order to create a larger meeting and counseling area for the residents occupying both properties. Both properties are non-conforming because of their maximum lot coverage, lack of parking, and intensity of use, he said.

David Fowler, CEO of Perception Programs, Inc., referred to the recent site walk held by Board members. He said the Board had some questions with respect to connecting the two buildings and then dismantling the connection should we wish to separate the buildings in the future. The Board also questioned whether the site line as depicted is the actual property line for the walkway. Mr. Fowler said the measurements are based on the 2 property line pins, which they were able to find.

A discussion ensued.

Chairman Bob Coutu said the property line does come very close to the walkway. Steven Edelman said we really don't know if the walkway will encroach on the property line. Al Beaulieu said he noticed two flags indicating exactly where the property line is and it almost looks like the new walkway will be over the property line.

Bill Briggs (builder) said part of the proposed walkway is probably 6 inches from the property line, but the walkway could be adjusted so that it does not encroach on the property line.

Al Beaulieu said you are taking two non-conforming properties and making them more non-conforming. The applicant has indicated that they have an estimate as to the cost to remove the connector at a later date if they so choose, but the cost to do that could be different in the future, said Beaulieu. The cost could actually double. He asked are they willing to accept the fact that the cost to dismantle the connection could be almost double from their original estimate. Also, if they connect the two structures will they then become one or will they remain as single properties, asked Beaulieu.

Code Enforcement Officer Matt Vertefeuille explained that if the Board is favorably inclined to grant their request, it would be granting two variances. And, if the connection was dismantled in the future, it would revert back to two properties.

Board members reported their observations on the site walk. Steven Edelman asked how the measurement was taken. Mr. Briggs said the measurements were taken from the pins. Mr. Edelman said he felt 6 inches to the property line is much too close. He said connecting the two structures could place a burden on someone in the future. He asked why they hadn't considered adding onto the garage, since it is the larger building of the two. Mr. Briggs said the applicant does not want to do that because the garage has been recently renovated. Mr. Edelman said we, as a board, have a legal obligation to enforce the zoning regulations. This certainly poses some legal challenges for the Board, said Edelman. Gerald Hart, Susan Fiegel-Rapp and Rene Harris concurred with Edelman. Bob Coutu said the proposed plan would make the properties more non-conforming. I don't feel comfortable doing that, he said. Perhaps the program is outgrowing these properties. Maybe they should consider moving to larger quarters, he added.

Mr. Fowler then referred to the issue of hardship. Our hardship is that we have to abide by our contract with the State of Connecticut, said Fowler. The hardship is not self-created. He then explained that connecting the garage to enlarge the counseling center and adding the walkway would be consistent with the properties given the size of the lots, and the fact that they are both owned by Perception Programs, Inc. The variance will not change the character of the program; in fact it will make it more efficient. He said strict compliance with the setback rules would prevent expansion of the counseling center's permitted use and added that joining the two buildings will not alter the character of the neighborhood. Mr. Fowler said at last month's hearing there were no objections to the proposal from the public. And, Janice Wilbur, an abutting property owner, spoke in support of the walkway adding that it would make the activity less disruptive, he concluded.

Bob Coutu referred to parking. He asked how many vehicles park there at the present time. Mr. Fowler said 2 cars park in the garage at 219 Valley Street. The two cars are case manager's cars so they come and go during the day. Chairman Coutu said you might lose those two parking spaces when you merge the buildings; how will that affect your parking, he asked. Mr. Fowler said we have other properties where we can park cars if needed. Chairman Coutu said, personally I feel the walkway is frivolous. How will it actually enhance the program, he asked. Without the proposed changes, your program is going to remain as effective as it is at the present time, he added.

Mr. Fowler said the purpose of the walkway is to provide covered access in clement weather.

Gerald Hart spoke about the possibility of making it one property. Mr. Coutu cautioned that once you combine the properties they can never be separated again. In the event that the program needed to move to other quarters, it would have to be sold as one property. Mr. Fowler said in order to maintain the integrity of the program, if we had to make it one property, we would be willing to do that.

The discussion then focused on joining the properties with a connecting wall and the possibility of dismantling it at a later date. Mr. Edelman advised the applicant to design the connecting wall for possibly dismantling in the future. He then referred to the cost for joining the properties together and then dismantling versus enlarging the existing garage. Mr. Briggs said he is pretty certain that it would cost more to renovate the garage. Mr. Edelman said if we combine the two lots by removing the internal property line, are we increasing the non-conformity, or will it be a wash.

Planner Finger said it probably would be a wash because they would no longer need a variance for the internal property line. They would still need a variance in terms of maximum lot coverage, parking and setbacks. He said if you eliminate the internal property line and merge the two properties into one property then the need for a variance for the enclosed walkway is a moot point. Mr. Briggs asked if we agree to join the properties how would we proceed with the variances. Do we have to join the properties and then reapply, he asked. You would simply state that it is your intent to merge the properties therefore the variance for the internal property line it is off the table, said Finger. The only thing remaining on the table would be the elimination of the two parking spaces in the garage area because they would no longer be there. The regulations require that you provide off-street parking. Right now you can park two vehicles in the garage and they will no longer be able to do that so you would need a variance from the provision to provide off-street parking. You will also be asking for a variance from the maximum lot coverage and setbacks, he said.

Al Beaulieu said I know they are saying that the program is here to stay, but we don't know if the economy is going to get better or worse, and if you make it all one parcel and later on decide to go to a bigger parcel these two lots would never be able to return to two separate pieces of property. Mr. Fowler said they would be willing to dismantle the connector no matter what the cost would be. Matt Vertefeuille cautioned the applicants and said once the variances are granted they stay with the property.

Planner Finger said if the Board is considering granting the variances as originally proposed you could add a condition stipulating that if they ever chose to sell the property they would have to dismantle the reconnection. This would be recorded as a condition of approval. He said if they make a declaration and put it in writing that they are withdrawing the request for a variance for the enclosed walkway along the internal property line it is moot point.

Linda Mastrianni, Executive Director for Perception Programs, asked if we want to do the walkway, would the board consider the variance so we could join the two structures in the back as long as we are willing to un-join them if and when we sell the properties. Board member Susan Fiegel-Rapp said given the state of the economy she still has concerns. Rick Fiddler said in joining the properties you are talking about 3 feet. The cost to join and dismantle the properties would be covered. This is a large company and there would be money coming in to cover the cost of dismantling. Susan Fiegel-Rapp said she works for a state agency and they are getting less and less money. Linda Mastrianni said we have 19 programs running so we have different funding available.

The board took an informal poll regarding the request and the majority of board members agreed they would be more favorably inclined to grant the variances if Perception Programs agreed to remove the internal property line and make the property one. Planner Finger said they have made a verbal declaration of what they are willing to do. They said they are willing to modify their application as suggested. You have alerted them that you are probably not favorably inclined to grant the variances as originally requested, but would be favorably inclined if they merged the properties together.

Linda Mastrianni said they are willing to modify their application to withdraw the request for a variance for the enclosed walkway and internal property line and agreed to merge the properties.

Steven Edelman made a motion to approve the plan as modified and grant the variances pertaining to maximum lot coverage, off-street parking and setbacks. Gerry Hart seconded the motion. The vote carried unanimously.

3) Kingdom Life Christian Church, 280 Jackson Street, Willimantic - application for variances from Section 33.5 to build an addition and a second floor on an existing non-conforming building for a new Church in a B-3 District.

Planner Finger's staff report explained that the Zoning Commission recently approved the use of the property as a Church, but not the construction of the addition and the second floor. The existing portion of the building to be expanded has been used for storage and as a garage, and is in serious disrepair. The building is very close to two properties, and the applicant wants to extend the building to the north closer to another neighbor's property – but they don't know where the property line is. They also want to extend the height to provide classrooms and office space on the second floor. The only way that I could imagine them doing this is to demolish the existing garage, and to build an entirely new structure, said Finger. They have room in the front portion of the property on Jackson Street where it wouldn't affect this neighbor on Carey Street, but I don't know if there is enough space, he added.

Pastor Daryn Ortiz, of Kingdom Life Christian Church said we are approximately a 2-year old Church that has been functioning in Willimantic. We have been meeting at the Windham Middle School on Quarry Street. The Church has not only taken care of the grounds; we have gone above and beyond fixing sound systems and other things that need services so we are a Church that serves the community. Most of our members are people who work in the community, he said. He then presented revised plans to the Board. Pastor Ortiz said the Zoning Commission recently approved the use of the building for a Church, but we need to return to that commission for site plan approval. Part of our plan is to not only be able to build the second floor, but to extend the garage to meet the other building. If you look at the plan you will see that we are encroaching on the Miner residence. Planner Finger asked, what is this "Right to Pass" note on the plan.

Tom Probert said that was a grant given to the garage (Miner Motors) that was previously there. It was on the Miner deed, he said.

Chairman Bob Coutu asked, when you applied to the Zoning Commission did the plan before them include a school. Jim Hasheem, from Kingdom Life Christian Church, said the classrooms are only for religious education. They are not classroom for public education.

Al Beaulieu said it was stated that you didn't know where the exact property lines are. He asked if the property has been surveyed. Pastor Ortiz said they based their measurements on deeds and on aerial photos. Mr. Beaulieu said how can we make a decision on this if we don't have a certified survey. Planner Finger said he was trying to help them identify where the property line is relative to the building and the Miner property. He said he gave them a copy of the 1934 aerial photo, which depicts the property and from that depiction it doesn't appear that they show the property line the same way I saw it on the aerial photo because it appears that the property line goes up to the corner of the building. Maybe the illustration on the aerial photo is not properly drawn. This is on a slope so it could throw off the measurement, said Finger. Steven

Edelman said this is an existing building, and we are not sure of the property lines. We should have some sort of a survey. Planner Finger recommended that the Board accept their submission on its basis. If you are favorably inclined to approve the application you could add a condition of approval that they submit a proper survey. But, you are not bound to accept their application. You could require them to go back and get a survey, but I think that you need to consider the overall request for the variances before you have them spend a lot of money on it. I think that is why they are here; to see if you will grant the variances before they spend more money, said Finger. He added that he is not sure about the "right to pass" note, but looking at the aerial photo of the Miner property, the measurement seems to indicate that there is an area for a "right to pass", but he is not sure to whom the right to pass was given.

Al Beaulieu said he has some concerns about adding the second story and encroaching on the property lines when you have the feasibility to go out the front.

James Winner, 254 Jackson Street (corner of Lewiston Avenue & Jackson Street) said his concern is with the proposed 2-story addition. There will be windows on the second story looking out onto my property. I previously erected a fence for privacy, but with the second story addition they will be looking right into my property.

Al Beaulieu listed his concerns: the addition will be too close to abutting properties and poses a fire/safety hazard. Adding the second floor you will be able to look over into your neighbor's property disrupting their privacy. Maybe it would be more feasible, instead of encroaching on the Miner's property, to go out front and up, said Beaulieu.

Mr. Probert, speaking for the Church, said because of the layout we didn't want to have people travel through the offices that are already there.

Pastor Ortiz added we also want to address the needs of the handicapped. The land where the garages are located is flush with the ground. If we put the addition in the front we would have to level that area in order to provide handicap accessibility.

Al Beaulieu said you still don't know whether you are going to have to tear those garages down and whether you have a foundation or a poured pad strong enough to support the second story.

Mr. Probert said we didn't feel it was necessary to invest the money in surveying it until we received the town's approval.

Planner Finger said with regards to grandfather rights and fire and casualty damage, you are entitled to repair with similar material for a similar use, but I doubt that you have the carrying capacity to build up. You would have to demonstrate that you have a unique hardship and that you have certain grandfather rights.

Al Beaulieu asked when you went before the Zoning Commission they gave you the okay to establish a Church. At that time did the approval include a second floor with classrooms? Mr. Probert said we submitted plans to them that are similar with this plan.

Mr. Miner presented a copy of his deed. Planner Finger reviewed the deed, which describes the "right to pass". This was an easement granted to the Miner property to gain access to the back of their property and to use the existing driveway that was on the subject property, added Finger.

Chairman Coutu said in order to be able to add a second story with the six classrooms I would think that they would have to demolish the building and start anew. If they do rebuild, will they lose the grandfather rights on the setback, he asked. Planner Finger explained that if they replace the structure they would lose the grandfather rights unless it was being rebuilt because of fire or casualty damage. You are allowed to repair and maintain a structure as long as you are maintaining it in a similar condition for a similar use. In this case they would have no basis to be grandfathered and the new structure would have to comply with the regulations. They would need a variance to continue the use for the setback as it is presently configured for the future building. If they cannot meet the requirements of the regulations then they would need to demonstrate a unique hardship and practical difficulty that is not related to financial considerations. They still need a variance, but they would be applying for a use of assembly versus storage.

Al Beaulieu asked how can we grant a variance without finding out if this section of the facility is strong enough to support a second story. If they tear it down will everything change? Beaulieu added I can't give you a definite answer without more detail. Code Enforcement Officer Matt Vertefeuille said the Board could request that the applicant provide a report detailing the additional information.

Planner Finger asked would that change your perception of their plan. Mr. Beaulieu said if I heard a structural engineer say that the building is structurally sound to support the second story or that it is not structurally sound and they are going to tear that whole section down changes everything. Planner Finger asked Board members if they would be receptive to the plan if the applicant's structural engineer determined that the structure will meet the

requirement of bearing capacity and demonstrate that the existing structure could support the second floor although they would still need a variance. Is that your only concern, he asked? Mr. Beaulieu said his other concern is being so close to the property line.

Planner Finger said basically you are asking for justification as to why they want a variance to continue an alignment, which is non-conforming. Beaulieu said especially when they can go to the front of the building without making the building encroach on three properties. I am also concerned with them going up a second story, thus affecting the neighbor's privacy.

Steven Edelman asked how many non-conformities are there.

Planner Finger said the property is non-conforming with respect to the two existing property lines on the south and the west. Another non-conformity would be the proposed encroachment to the north on the Miner property. Mr. Probert said if the existing building cannot support the second floor then we would have to redesign this in order to bring the traffic flow to the front.

Audience comments: 1) Ted Swol, 16 Carey Street, said I am asking you to consider how this will impact the rest of the neighborhood. Parking is a problem. Pastor Daryn Ortiz said they are negotiating with Temple B'Nai Israel to see if there is a possibility that overflow cars could park on their property and then we would shuttle them over to our site. 2) Leana McCollum said during services we could have a capacity of 120 to 130 people. 3) Kurt Miner, 12 Carey Street, representing his mother who is ill, said the original site showed our property line at 12 feet off the back of our house, but it appears that has been corrected. It appears that that piece of it has been resolved. My other concern is parking, but if parking can be organized it might be okay, although you cannot control who parks here. In the winter months when we have parking bans in place you won't have 37 parking spaces for your services on Sunday. Many of the residences around that property have no off-street parking and they have many more cars than they can handle. It is not unusual in the winter months to wake up and find 20 cars there. 4) Mike Rivera said he is confused. Is parking actually being considered this evening? Isn't that handled by the Zoning Commission, as part of the site plan review, he asked. Planner Finger said it is because we have to make sure there is enough parking. He said I am only talking about the parking in terms of what the regulations require irrespective of the Church or the use of assembly. The building would require more parking spaces if they want to expand it, said Finger. The Board has to consider that in terms of the overall variances. 5) James Leonard, 274 Jackson Street, said his concern is with the 2-story addition having windows overlooking his property. Code Enforcement Officer Matt Vertefeulle said because of the use of assembly the Fire Marshall will want a second means of egress. They may also need to reconfigure the stairs because they need to be remote of each other. 6) Aaron Vega, a member of the Church, and also a builder said perhaps they could shorten the last classroom by 3 feet which would shorten the encroachment. Planner Finger said this will be in the easement area and the Board cannot violate the easement area. Board member Steven Edelman asked if there would be a sprinkler system. Mr. Probert said no because it is not required. Edelman asked if the plan includes a fire escape from the second floor. Planner Finger said it is shown on the plan, but it appears to be in the easement area. It looks like there is a 1 ½' encroachment into the easement area. Mr. Beaulieu said you cannot have open windows or doors under the fire escape.

After some further discussion, the Board agreed to extend the public hearing to the next meeting on July 2, 2009 to allow the applicant the opportunity to secure an engineered report especially as it pertains to the structural soundness of the building, load bearing capacity, fire escape from the second floor and the location of the exterior stairs. The Board also agreed to conduct a site walk on June 13, 2009 at 9:00 A.M.

Routine Business

- a) The minutes of May 7, 2009 were approved. Motion by Al Beaulieu and seconded by Susan Fiegel-Rapp. The motion carried unanimously.
- b) Correspondence
 - Letter dated June 4, 2009 from Hieu Ta of HTA Motorsports asking for clarification of some of the provisions/conditions of their permit specifically the stated wording specifically “ All motor vehicles shall be serviced and stored inside the building **at any given time** because of the limited space outside”.

George Hernandez of the Merchants Association said we work with the local small businesses to help them be successful. He reviewed the letter from Hieu Ta of HTA Motorsports. Mr. Hernandez said it has come to our attention that we are not in compliance with some of the conditions of the Use Permit Deed Ref – Vol. 982, Page He said this is not on tonight’s agenda, and they would like to request a mutually agreeable time when all parties concerned can meet to discuss this before the next meeting of the ZBA. What would be helpful to him in complying would be to clarify the conditions which states all motor vehicles shall be serviced and stored in the building at **any given time** because of the limited space outside.

Planner Finger suggested that they request a modification of the permit conditions. I don’t think it is appropriate for us to negotiate at my level because this is a board condition. In any case, just to clarify the point, you cannot have junk cars or motor vehicle parts in front of your business. That is prohibited. The applicant agreed that they wouldn’t have other businesses operating at the same time. Taste of the Island is operating there and they have picnic tables in the front. Mr. Finger said I would suggest that your client come before the Board and ask for some modification of the permit conditions.

As there was no further business the meeting was adjourned at 9:50 P.M. Motion by Al Beaulieu and seconded by Susan Fiegel-Rapp. The motion carried.

Respectfully submitted,

Lillian Murray, Clerk