

**ZONING BOARD OF APPEALS
WINDHAM, CT**

MINUTES

Jan. 6, 2011

The Zoning Board of Appeals held its meeting on January 6, 2011 in the Meeting room, Town Hall. Vice-Chairman Al Beaulieu called the meeting to order at 7:00 P.M. Members present were Jose Cruz, Al Beaulieu, Andrew Gibson, Roger Morin and Mary Ann Daly. Robert Coutu and Robert Wolf were excused. Also present was Town Planner James Finger.

Public Hearings:

1) William Correll of 285 Walnut Street, Willimantic seeking a Special Exception/Variance to create a rear lot behind the subject property with a driveway off of Chestnut & Washburn Streets.

Planner Finger's staff report explained this is a continuation of the public hearing started in November. The applicant is seeking a Special Exception for a rear lot, and possibly a variance on the terms of "common driveway" of Section 78.3.2 to create a rear lot with a driveway to Chestnut Street. The property description refers to a proposed "extension of Chestnut Street", but a map showing this could not be found, nor does the survey (prepared for the Town for the High School) of the Nasin property reflect this proposed street extension. The matter was referred to the Town Attorney for his review and opinion.

Planner Finger said we are in receipt of two letters pertaining to this application. The first one is from Town Attorney Rich Cody dated January 5, 2011. Mr. Finger read Attorney Cody's letter into the record. Attorney Cody states that after doing a title search of the Correll property, we are unable to find a valid, private easement over the area that a surveyor is showing to be "Chestnut Street Extension". He then gave a history of the property going back to 1927. It appears from the Correll title that the reference to "Chestnut Street Extension", in the Buck to Harvey 1927 deed, is just that: a reference, one made in anticipation of subsequent conveyances to the Town to establish a street in the ordinary course. At about the same time, or shortly afterward, the land records show that deeds began to be delivered to the Town to establish other streets in the same area, such as Washburn Street. However, there is no deed for the land, which is now claimed to be Chestnut Street Extension. There is nothing in the Correll title that would indicate that when his predecessors sold the property, of which this proposed subdivision is a part, and made the easement reference, they owned the land over which the easement was granted. He said there is no deed for the land, which is now claimed to be Chestnut Street Extension, nor any maps, which show Chestnut Street Extension. Attorney Cody said we feel that the evidence of the Town's actions in the 1960s, where it had notice of

the possible easement by virtue of it being referenced in the lis pendens, but then nine months later after performing surveys and title searches, took judgment without any reference to the easement nor “subject to it”, suggests that this issue was considered carefully. It certainly is not conclusive, but it has weight.

It is possible that by searching the old Nasin property (now the High School) fully, an instrument can be discovered that will shed more light on the claim that there is a deeded easement over the Town’s land. However, the title search will be very expensive, and it is unreasonable for the Town to expend further sums to resolve this. It is the property owner’s burden to prove this if he claims title easement against the Town.

Attorney Cody said the Board does not have the jurisdiction to resolve the title issues. Hence, at the current time the Town’s legal position is that the Town owns the land free and clear of the easement claimed by the applicant, and that the Board cannot grant the application where access is proposed over the Town’s school lands.

Mr. Finger read the second letter from William Correll granting the Town a 35-day extension with the expectation that all outstanding issues will be resolved by then. Attorney Cody said until the Board is satisfied, it cannot take action.

Vice-Chair Al Beaulieu said we will grant the 35-day extension to allow Mr. Correll the time to research the matter further.

Public Hearing continued.

2) Town of Windham for Magnet School site 141 Tuckie Road, Windham Center seeking variances from Section 21.6 “Coverage and Bulk” of the Zoning Regulations on the 15% maximum impervious cover, and from Section 23.3 “Lot Area, Shape and Frontage” on the 200-foot minimum frontage requirement, which was increased from 125-feet in October 2009.

Planner Finger’s staff report explained that the property is part of a subdivision that had been approved under the old regulations. The proposed school will be built on a 20+ acre parcel, and includes one of the front lots for the driveway, but it is undersized under the current regulations. The other regulation that affects the development is the one on maximum impervious surface, which is geared for residential uses, but not for schools.

Tom DeVivo, Chairman of the School Building Committee, appeared before the Board stating variances are needed for the Magnet School project.

Vice-Chair Al Beaulieu relinquished his position on the Board citing a conflict of interest. This left only four members to act on the proposal. Planner Finger explained that the policy for approval is a minimum of 4 votes. It would require all four members to vote in favor of the application, he said. He said it might be in the applicant’s best interest to postpone its presentation until a full compliment of members is present.

Mr. DeVivo was disappointed, but agreed that with a number of Board members missing, it would be best to postpone the application until the next meeting. He will make a full presentation at the February meeting.

Public hearing postponed until the next meeting.

3) Approval of Minutes

The minutes of November 9, 2010 were approved. Motion by Roger Morin and seconded by Jose Cruz. Unanimous vote to approve the minutes.

The meeting was adjourned at 7:25 P.M. Motion by Roger Morin and seconded by Jose Cruz. So voted.

Respectfully submitted,

Lillian Murray, Clerk