

**ZONING BOARD OF APPEALS  
WINDHAM, CT**

**June 2, 2011**

The Zoning Board of Appeals held its meeting on June 2, 2011 in the Meeting Room, Town Hall. Chairman Robert Coutu called the meeting to order at 7:20 P.M. Members present were Mary Ann Daley, Robert Wolf, Michael Desaulniers and Robert Coutu. Also present were Town Planner James Finger and Code Enforcement Officer Matthew Vertefeuille.

Chairman Coutu pointed out that there are only 4 board here this evening. He said since it takes four affirmative votes to approve an application, applicants have the choice of continuing the hearing until next month with five members present, or they can go forward with four members, but it will take all four votes to gain an approval.

Both applicants chose to move forward with their applications with only four members present.

**I) New Business**

**A) Public Hearings:**

**1) N&N Development, LLC** for property located at 89 Windham Road, Willimantic – seeking a variance from Section 27.6 on the rear yard setback requirement of ten feet in order to permit a new staircase to be constructed closer to the property line that satisfies the State Building Code.

Chairman Coutu asked the applicant if he had notified abutting neighbors of the public hearing. Mr. Greenberg said he did notify the neighbors and submitted receipts of the mailings.

Planner Finger referred to an illustration of the staircase that shows the detail and location of the staircase relative to the property line. He also referred to an aerial photo from 1954 as well. Chairman Coutu said they appear to be similar.

Leo Greenberg, a principal of the company, explained that the Town required them to rebuild an old staircase to the current standards of the building code. We did this, but in doing so the geometry of the staircase compelled the stairs to move from their previous location, said Greenberg. The old stairs were 24 inches wide. They were rotted and unsafe, and one of our units did not have a second means of egress. That is what spurred this whole thing, he said. The Fire Marshall inspected the building and gave us a long list of things to complete, and this is the very last item. We had hoped that the staircase would have been closer to the original footprint, but when you build to State standards, and you have a 7-inch rise and an 11-inch rung you end up with quite a few more stairs. The stairs are wider, and they needed to be moved over further, and that is exactly what

happened. We didn't do this by choice, he said. We would have rather that the staircase had stayed where it was, and it wouldn't have been necessary for us to be here tonight.

Mr. Greenberg said this is a life and safety issue. These stairs moved over 58 inches. There is no question that they are right next to our neighbor's fence, but there is no other place on the property to locate the stairs. When Code Enforcement Officer Matt Vertefeuille came to inspect the staircase, he noted that the staircase is not as it was shown on the original plan. Mr. Greenberg said there was no other way to make the stairs code compliant. The old stairs were also not compliant as they were closer than 10 feet from the fence line. They were about 6 feet. The new stairs are close to the fence, but they keep our tenants safe, and I think that is a more important issue, he added.

Board member Robert Wolf said you went from being about 5 feet away from the fence to about 2 ½ feet away. The entire staircase shifted 58 inches, and the stairs are now about one foot from the fence, he said.

Code Enforcement Officer Matt Vertefeuille distributed some photos of the property and the staircase. He said there is a 10-foot setback, so there should be 10 feet to the property line. Obviously, this is a non-conforming use. It was grandfathered. When they came in for their permit, they were to rebuild the staircase in its existing footprint, and not make it anymore non-conforming. My estimate is that the staircase is now within 6 inches of the fence. The original stairs came off the back and went down to a landing. (The third floor apartment did not exist). He said that for every 12 stairs you have to have a landing. He said he looked at different locations, but no matter what they did by the corner of the house they would be non-conforming. Currently they have ten parking spaces, which is what they need for that property, and I would hate to see them lose any of those parking spaces, he added. It would be very difficult to make it conforming, he said.

Vertefeuille said when he received a call from the neighbor, he went out to inspect the staircase and found it to be 90% complete. He said he told them to finish putting up the rail so that people living there had a second means of egress. I told them to finish the stairs, and then we would deal with the variance later, he said. So yes, the stairs are done. He said the old stairs had a 20-year life expectancy, and they were actually about 40 years old. They certainly exceeded their life expectancy, said Vertefeuille.

Audience comments: 1) Tim Hartigan said he lives at 103 Windham Road, which is the abutting property to the west. The fence they are talking about is my fence, he said. It was put up in 2007 along the line that had been surveyed when we bought the property. That fence is on a Class B surveyed line. He said, to say the least, I am not happy where these stairs ended up. I get a lot of trash thrown over the fence, and now they don't even have to throw it; all they have to do is walk up the stairs and drop it. He showed a picture of the fence which had recently been broken. For whatever the reasons, they get the profits and I pay the price, said Hartigan. I think that is blatantly wrong. The original permit stated that the stairs would be put up in the existing footprint. I understand that the new stairs had to be built wider etc, but if they were left roughly in the same configuration, they might have landed out farther into their backyard, but it wouldn't

impinge on my property line. I have put a lot into my property over the years, and this staircase is right on the line. The old staircase was much less intrusive because it was 8-10 feet farther away. I understand safety issues, and I agree there is a safety issue there, but I also think there is a safety issue with the new stairs because emergency personnel will have a difficult time getting by that side of the building. Mr. Hartigan said I am very unhappy about this. I get nothing out of this except conceivably more grief. I don't see anyone spending money to remove the garbage out of my yard, or spending money to fix my fence. Mr. Greenberg and Mr. Noel don't live there so they don't know what goes on on a regular basis. When you live in a mature neighborhood, you expect that it will stay relatively consistent, and now all of a sudden we have a structure less than a foot from my fence and the property line, and I think that is wrong, he said.

Chairman Coutu asked Mr. Hartigan what it would take to satisfy him. What can these people do to satisfy you, he asked. Mr. Hartigan said I get nothing out of this whole process. Perhaps they could put up a taller fence to help shield me because I have lost my privacy. I lost the little bit of security that the fence gave me because now people are up over it. Just this weekend there were people up on that staircase having a party, overlooking my yard. Again, I get nothing from this except more grief, and they end up with a money-making operation, which I pay the price for, he said.

Planner Finger explained the applicants were required to provide a secondary means of egress for the third floor apartment which did not exist before, and that contributed to the longer rung and the larger landing areas.

Commissioner Robert Wolf said if the fence were made taller in that section, would that help. Mr. Hartigan said any little bit of additional privacy would be appreciated. When we put the fence up, we put up a 6-foot fence because we thought that was adequate. If the proper planning had been done, even if the landings for those stairs had gone farther out into their backyard, they would have been able to go straight back instead of going straight over to the fence. I can't even get to the fence to maintain it because it is so close, said Hartigan

Planner Finger said given the comments from the neighbor and the unique situation of this property, he suggested that the Board continue the public hearing to the next meeting and hold a site walk so that Board members can go out and see the property. Perhaps we can recruit additional Board members to attend the site walk, he said. Basically, they are not prevented from using the staircase right now, they just don't have a C/O. He said they need four concurring votes, and I think there is a chance they may not get them. The Board might need to examine the property to get a better look at the situation and to make a determination as to the practical difficulty, the hardship they may suffer, as well as the complaint that the neighbor has. He said the proximity of the fence makes it convenient for people to drop trash or throw things over the fence. Mr. Hartigan has a legitimate complaint, he said.

Noel Collier, the other principal with N&N Development, responded to Mr. Hartigan's comments. Looking at the aerial photo you can see where the property line is and how

far away his home is. The trees that line this are three story high evergreens so the shielding of this staircase is not just in the summer time; it is always shielded with these evergreen trees. We wanted to construct this properly. We tried to build something attractive and code compliant. It is extremely well built he added.

Code Enforcement Officer Matt Vertefeuille said the staircase is very well built. We don't often see staircases built this well, he added.

Mr. Hartigan said I think it is a bogus argument to say that just because I built up my property and tried to give myself a buffer there, I shouldn't be concerned that somebody is now infringing upon my rights by putting this stair structure right on my property line. I think if this had been planned differently, if they had come in and met with Matt, and said we can't build what we had proposed for whatever reason, we need to sit down and figure a different way to do this, it could have been kept away from my fence, said Hartigan. They could have gone into their backyard. Their hardship in trying to meet the Fire Marshall's code should not be to my detriment, he said.

Mr. Wolf asked if there is any remedy to maintain the stairway and reduce the littering. Matt Vertefeuille said moving the stairs over 5 feet or 10 feet might change the littering problem, but it would not change the noise problem.

Mr. Hartigan said I think the fence should be repaired. Mr. Greenberg said they would be more than happy to repair the fence.

Planner Finger said the property owner is entitled to have a fence along the property line not exceeding 7 feet above grade. The Board has the authority to grant approval of a taller fence. You do have the authority to approve a taller fence if that should be warranted. I would just urge the Board go out and take a look at the property, and take a look at the conditions and the surroundings. I think Mr. Hartigan has legitimate complaints, said Finger. The applicant has the duty to present a case for hardship that is unique to the property, and it cannot be financial, concluded Finger.

Mr. Hartigan said the old staircase wasn't code compliant. If the new one was built wider, and went down the same way into the backyard, they would have been code compliant and they would not have had to come toward my fence. The other issue they had was getting something up to the third floor. In doing that they infringed upon my property when they could have done something off to the other side in the back and kept it all on their property. I'm not saying that it wouldn't be difficult, but anything is possible, he said.

The Board agreed to continue the public hearing until the next meeting on July 7, 2011, and will conduct a site walk on June 21, 2011 at 6:30 P.M. at the site.

**2) Gordon Gueutal of 37 Laurel Lane, Windham Center** - seeking a variance from Section 21.4.4 on the side yard setback of twenty feet to permit an addition to be constructed within twelve feet of the property line.

Planner Finger's staff report explained that the house was built eleven years before zoning was adopted for this rural part of Town. Most of the properties in this neighborhood have a similar pattern of development, he said.

Gordon Gueutal, 37 Laurel Lane, Windham presented his plan to build an addition onto his home. He said the reason they are doing this is that his step-son and daughter-in-law have moved in with them. They are expecting their first child to be born in October, and we need the additional floor space. He said he has lived in Town since 1975 and owned his home since 1985. We would like to remain in Town, and to add this addition to make life more comfortable for us, he said.

He said he notified his abutting neighbors on the side and across the street, and agreed to provide the receipts of mailing. He said the addition would be built on the southeast side of the property. The roofline would be approximately 6 inches lower on the addition from where it is now. We would like to add a master bedroom and a three-quarter bathroom. That would give us about a 12-foot setback, which is approximately the distance of the neighbor's house. It would not look out of proportion, he said.

Board member Mary Ann Daley asked if this would be like an in-law dwelling. Planner Finger said he asked Mr. Gueutal if he wanted to apply for a Special Exception for an in-law dwelling, and he said no, he just wanted to add to the single-family dwelling.

Code Enforcement Officer Matt Vertefeuille said Board member Mike Desaulniers lives in the neighborhood, but lives about 9 houses away. He does not know Mr. Gueutal so there would not be a conflict of interest. Commissioner Desaulniers said the houses are close. If there is 12 feet from my garage to my neighbor's house, I would be surprised. Most of the houses are very close. Even with the addition, there will be quite a distance between the next house. They are set back quite a way off the line.

As there was no one in the audience to speak to the application and there were no other comments or questions by Board members, the public hearing was closed.

Robert Wolf made a motion to grant a variance from Section 21.4.4 on the side yard setback of 12 feet to Gordon Gueutal, 37 Laurel Lane, Windham Center, to permit an addition to be constructed within 12 feet of the property line adding that it is consistent with the rest of the neighborhood. Mary Ann Daley seconded the motion. The motion carried unanimously.

### **3) Approval of Summary Minutes.**

Chairman Coutu said there was a lot of evidence presented at the May 5, 2011 hearing that is not included in the summary minutes. Planner Finger said unfortunately the tape did not record the meeting. He said we did summary minutes because a notice of action must be filed in the Town Clerk's office within 7 days to meet FOI. Michael Desaulniers also pointed out that Jose Cruz did not vote on the 699 Main Street LLC application. He

said he voted on the motion along with Andrew Gibson, Robert Wolf, Robert Coutu, and Al Beaulieu. Planner Finger said he would make a note of it. Action on the summary minutes for May 5, 2011 was deferred to the next meeting.

4) Bob wolf made a motion to go into executive session to discuss a legal issue at 8:35 P.M. Executive session ended at 8:40 P.M.

5) Planner Finger advised that the PZC will be holding a public hearing on June 23, 2011 on revisions to the Zoning Regulations dealing with parking, home occupations, B-1 District, to make the North Windham section more business friendly and to give the ZEO more latitude in approving minor deviations, and also to revoke permits that are in violation of the terms and conditions of approval.

As there was no other business, the meeting was adjourned at 8:50 P.M.

Respectfully submitted,

Lillian Murray, Clerk