

ZONING BOARD OF APPEALS
WINDHAM, CT

MINUTES

September 1, 2011

The Zoning Board of Appeals held its meeting on September 1, 2011 in the Meeting Room, Town Hall. Acting Chairman Al Beaulieu called the meeting to order at 7:10 P.M. Members in attendance were Jose Cruz, Robert Wolf, Joseph Al Beaulieu and Roger Morin. Robert Coutu was excused. Also present was Town Planner James Finger.

I) New Business

a) N&N Development, LLC for property located at 89 Windham Road, Willimantic – seeking variances from Section 27.6 on the side yard setback requirement of ten feet in order to permit a new staircase to be constructed closer to the property line. This is a continuation of the public hearing from August 4, 2011.

Planner Finger explained that he corrected the published notice reflecting the fact that the applicant is seeking variances from Section 27.6 on the side yard setback requirement of ten feet in order to permit a new staircase to be constructed closer to the property line than permitted in order to satisfy the State Building and Life Safety Codes.

He said he also sent a letter to the Fire Marshall regarding the revised plan for the staircase. The Planner explained that we are at the end of the public hearing period. After the close of the public hearing state law allows the board 65 days to act on the information submitted during the public hearing. He said if the board is not sure that it wants to vote tonight we can take additional information from the parties involved and enter it into the record. The board can choose to postpone any action tonight so that additional information can be forwarded to the other members who are not present, and perhaps at the next meeting you will have enough members to consider it. You can consider it tonight, but any variance requires 4 concurring votes, he said.

Neal Greenberg said if we cut the current staircase off, angle it, it will come down and leave a space from the end of the staircase to the fence. It was less than one foot before, and now it will be 79 inches, and will land on the old sidewalk. He said he spoke with the abutting neighbor, Tim Hartigan, and he found the revised plan to be acceptable. Mr. Greenberg said Mr. Hartigan asked for a couple of additional things that he has agreed to do. He said the biggest problem is that the stairs are too close to the fence, but we have pretty much solved that problem, he said.

Planner Finger said Mr. Greenberg mentioned that he agreed to other conditions to resolve the neighbor's concerns, and it might be good to outline those other issues. If the board is likely to condition approval with stipulations, we should know what those conditions are, said Finger.

Mr. Hartigan said that at the last meeting Planner Finger had suggested adding screening on the landing (which is staying at 42 inches) and the lighting which is important to us. Other changes include language changes. After talking with an attorney it was suggested that we put a covenant on the deeds, or some sort of language that protects both them and me if we are no longer the owners of these properties.

Planner Finger said all the conditions should be entered into the record so that if the board were to act, they would act with insight as to the conditions. This information would be added to the record for the Notice of Action which would be recorded in the Land Records, and then it would follow the property. He said the board could make stipulations pertaining to the location of the staircase, the screening, and lighting. With respect to having access to maintain the fence, there are statutory provisions that give you that right said Finger. Between the two of you, you could agree to have an easement to allow you to maintain your fence. The board could stipulate that the parties agree to allow the owner of the adjacent property a certain dimension of easement for access to the fence as long as the fence exists.

Mr. Hartigan said he is looking for language that binds everyone to this agreement. He said you may have answered that by saying that when it goes into the Land Records it is taken care of.

Planner Finger said, we could stipulate the dimensions and state that the staircase and the landing area not exceed those dimensions or some reasonable number. He addressed Mr. Hartigan and stated I don't know what legal language you are talking about; this is not going to be reviewed by an attorney. Mr. Hartigan said his concern is that it be part of whatever record there is so that any owners have to abide by it. Planner Finger said with respect to the screening, was there any discussion about a dimension or height? Mr. Hartigan said they had not talked about that.

Acting Chair Al Beaulieu said at the last meeting it was suggested to add a piece of lattice fencing up there to prevent the tenants from tossing objects over the fence, but even if you did put a piece of lattice there, all they would have to do is to walk to the head of the stairs and they could still toss objects because it is only 3 ½ feet away from the fence. We can request it, and it can be put up, but we don't know how their tenants are going to react. That would be up to them as landlords to control that, said Beaulieu.

Planner Finger said he raised the point at the last meeting because Mr. Hartigan had expressed concern about activities, events, and people lingering on the landing area. He said he asked whether some screening might help to buffer or mitigate the sound and the lights. If there is an agreement to have screening to control the sound and also to control the lighting, you will need a variance for that, and the board has the power to grant you a variance, said Finger.

Planner Finger said he asked the Fire Marshall, Michael Licata, to address concerns that have occurred in other instances with outdoor staircase. He said he has asked Mr. Licata

to give the two options that are available to property owners in the case of outdoor staircases.

Michael Licata, Town of Windham Fire Marshall said because of our climate in some cases we have been requiring that staircases be covered because of snow and ice and people having a hard time getting down the stairs. There are two options; you can either cover it, or you can create a schedule with the Building Official and he would have to monitor it every so often to make sure that you have the staircase clean and safe to walk on. It is easier to cover it so that you don't have to maintain it, and it is taken care of. This is part of the Fire Safety Code, he added.

Planner Finger said the practice has been to require outdoor staircases to be covered. Mr. Collier said if you knew that why didn't you tell us that when we came in for a building permit. Planner Finger said he was not involved in reviewing the permits. He said that he had nothing to do with it until they filed for the variance. That is where I became involved, he said. I was aware that you were going to have to do more to this. I had the understanding that your biggest problem was that you needed a variance because the staircase was too close. Mr. Collier said everyone wants to be held blameless, but someone has to take responsibility. Planner Finger said he wanted to make sure that the board had the complete information so that they can grant the proper variance. He apologized to the applicants and said he understands their frustration. He said he can't remedy that other than to help them with this board. With respect to the Building Official he said he went out to do the pre-inspection and he hadn't been back since, added Finger.

Board member Jose Cruz asked who is responsible for this. They should have been able to get the correct information before they built the staircase. Planner Finger said we could lay blame in a lot of different areas. I am trying to see if these property owners have resolved their concerns and complaints. With respect to having a roof, or not having a roof, that is the owner's option as the Fire Marshall has pointed out.

Board member Roger Morin referred to adding the lattice. He said the stairs may get snow covered and slippery. Sunlight dries it up. The lattice will filter the sun so that the stairs won't dry out as quickly. I am questioning the need for lattice because it might encourage someone to lean on it, which it is not designed to do.

Al Beaulieu said it will be up to the board members to determine if they want the screening. He said it was brought up at the last meeting to put up some kind of a shield, or screening or lattice work around the porch, but that would be up to the board members to decide. He said right now we are focusing on moving the stairs (52 inch on the forward section of the deck and the 42 inches on the back section of the deck) The stairway would be roughly 6' 7" away from the fence. The property owners have agreed on access to make repairs to the fence, and if there is any damage to the fence caused by the tenants, it would be repaired by the applicants. Planner Finger said that could be a condition of approval. He said if you simply announce that they are permitted to do it I think that would cover any other issue that might come up. I had raised it as a possible solution. I left it to the property owners and the neighbor to resolve it among themselves.

It would be good to get the parties into agreement, he said. If they are not in agreement, is the board comfortable voting and stipulating certain conditions some of which the property owner has not agreed to. That is why I suggested keep the public hearing open to make sure the property owner agrees with the stipulations that you might make. If you are not going to include screening, that is your choice. Neil Greenberg said maybe the compromise is on the facing wall, or closer to Mr. Hartigan, to put up a piece of lattice. Noel Collier said we can put the lattice up there and we will maintain it.

Mr. Hartigan said we have had a number of incidents over the last 6 months where there has been lumber leaning against the fence, grills up against the fence, and tools up against the fence. That fence is my property, not the tenant's property, and I understand that these gentlemen cannot be there every minute, but on the other hand part of the lumber that was there was from their construction people. I would only ask that language be included that the fence be kept clear.

Planner Finger said if the fence is on the property line then you share the enjoyment of the fence. Even though it may have been your fence to begin with, now you share the possession of the fence on the property line. If they damage it they are responsible.

Al Beaulieu said we are here for a variance on the decking being too close, and the stairs being too close, but that has been moved over. We have a new plan, he said. If everyone in the audience has spoken then we can close the hearing. He said they moved the stairs; 52 inches on the forward section of the deck, and 42 inches on the back section of the deck. The stairway would be 6' 7" away from the fence. If he has to work on his fence or if there is any damage caused to the fence it would be repaired. They also agree to either cover the stairway or maintain the stairway, he added.

As there were no other comments, the public hearing was closed. Planner Finger polled the members as to whether they felt comfortable voting on the application. Bob Wolf said I am hearing an alteration of the plan which better conforms to the original zoning. He said he is not in favor of postponing action. It looks to me that they can proceed. Al Beaulieu said the variance would be for the deck and the stairs being too close. Planner Finger said you will be granting variances as shown on the revised drawing. Jose Cruz said he felt comfortable taking it to a vote. Planner Finger urged the board to outline their findings of facts. He said it appears that there is some resolution between the applicants and the neighboring property owner. He said the board concurs that the revised plan doesn't disturb the spirit and intent of the regulations, and that the application is approved with certain conditions.

Bob Wolf made a motion to grant a variance from Section 27.6. The variance is as outlined in the revised drawing dated 8/17/11, with an understanding that the parties involved have reached a consensus on other matters which are relative to the variance including the creation of a shield or screening on the side of the stairway that faces the abutting property, and to shield the lighting on the platform that faces the property line. Also, allow the property owner to erect a roof if they choose to do so as part of this variance. In addition, the landing should not exceed 42 inches from the abutting property

owner as indicated on the plan, and that the toe of the staircases are not closer than 79 inches. Roger Morin seconded the motion. The motion carried unanimously

II) Other Business

a) 699 Main Street LLC – Pending legal matter. Planner Finger’s staff report explained that an appeal was filed against the Zoning Board of Appeals from its decision to grant variances on this property. As it happens, the Planning & Zoning Commission had been working (at the same time) on changes to the regulations for the Downtown Area to allow the type of development that this applicant wanted to do, but they were not ready to proceed with the changes as quickly as the applicant wanted to proceed, so they came to the ZBA for a variance. Unfortunately, the appeal was taken. As a result of these events, the applicant has said they will abandon the variances, and let judgment enter voiding your decision to grant them. So, to accomplish this, the Town Attorney has proposed that an agreement be entered in court that will declare the variances null and void, with no costs to any party.

Planner Finger explained this was the variance granted in May for the 699 Main Street (Hurley Building/ H.C. Murray Building). An appeal was filed to prevent that from proceeding. The property owners and the applicant agreed to not move forward on the variances granted because it went to court. It is in court waiting for us to either return the record or announce that the variance is null and void. He said the Planning & Zoning Commission were working on similar kinds of regulations that would have allowed this development to proceed without variances, and those changes have now been implemented. The plan is moving forward irrespective of any variances. The Town Attorney asked that the board be briefed on this matter and asked if you would rule that the variances are now null & void. They failed to record any notice of action so they haven’t executed it and they don’t intend to execute the variance.

Bob Wolf made a motion to declare the variances granted in May 2011 relative to 699 Main Street, LLC null & void and Al Beaulieu seconded the motion. The motion carried unanimously.

2) Approval of Minutes

Action on the minutes of August 4, 2011 was postponed until the next meeting.

The meeting was adjourned at 8:00 P.M.

Respectfully submitted,

Lillian Murray, Clerk