

**ZONING BOARD OF APPEALS
WINDHAM, CT**

MINUTES

September 4, 2008

The Windham Zoning Board of Appeals held its meeting on September 4, 2008 in the Meeting Room of Town Hall. Chairman Bob Coutu called the meeting to order at 7:01 P.M. Members in attendance: Susan Fiegel-Rapp, Bob Coutu, Al Beaulieu, Rene Harris, Jerry Hart, Charlie Krich, Jose Cruz and Steven Edelman. Voting members are Beaulieu, Fiegel-Rapp, Krich, Coutu and Edelman. Also present were Town Planner James Finger and Code Enforcement Officer Matthew Vertefeuille.

- 1) **Christopher J. Beaudoin, 22 Abbe Street, Windham** – request for a variance of the setback rules under Section 21.4 for existing outdoor wood-burning furnace, and future carport, also Special Exception to create an accessory apartment above the garage.

Planner Finger's staff report dated 8/29/08 explained that the owner didn't realize that he was into the setback area when the outdoor wood furnace was built, but 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, but didn't realize that he was too close to the side property line. In addition, he is seeking a Special Exception to create an accessory apartment above the garage.

Mr. Beaudoin said the wood burning furnace and the proposed carport encroach into the setback area. I've had the furnace 3 ½ years and I didn't realize that it encroached, he said. He said he had the plot plan redrawn, and you can see that it is about 5-6 feet into the setback of the Railroad line, which abuts his property. It also encroaches about 2 feet onto Mr. Lawrence's property for which he is seeking a variance. Chairman Coutu asked for the dimensions of the furnace. Mr. Beaudoin said it measures 6' X 4' and it encroaches almost the entire 6 feet. Chairman Coutu asked if the property is at the same level as the railroad tracks. Mr. Beaudoin said it is ½ way down the hill. Al Beaulieu referred to the encroachment (of the furnace) to the property line. What is the measurement from that slab to your property line, he asked. Mr. Beaudoin said it is 14 feet. The other side encroaches 2 feet onto Mr. Lawrence's property line, he added. Chairman Coutu asked if abutting property owners were notified of the public hearing. Mr. Beaudoin said the only person who failed to respond was Jerry Lawrence, a realtor in town. But he did contact me the next day and asked what I intended to do, said Beaudoin. Mr. Lawrence told me that he didn't have an issue with the carport or the apartment, but he was curious why I put the wood furnace where I did. I explained that location was where the prevailing winds were and it worked well for the rest of the neighbors because the smoke generally goes down the bank and follows the river, said Beaudoin.

Planner Finger said his concern is the position of the chimney relative to the windows of the proposed apartment because it looks like that is very close and smoke could get in there. The smoke generally goes down the embankment and down the railroad towards the river, said Beaudoin. Occasionally it does come up along the right side of the garage, but it is very infrequent that it does go this way, he said.

Since there were no other comments or questions from Board members, and no comments from the audience, the public hearing was closed. **Motion** by Al Beaulieu and seconded by Susan Fiegel-Rapp. The motion carried.

Al Beaulieu then made a **motion** to grant Mr. Beaudoin a variance of the setback rules under Section 21.4 for an existing outdoor wood-burning furnace and future carport. Susan Fiegel-Rapp seconded the motion. The motion carried unanimously.

The second part of this application is a request for a Special Exception to create an accessory apartment above the garage.

Mr. Beaudoin said he would like to build an accessory apartment to the right of the garage as you face it from the driveway. He said the apartment will have a separate entrance from the garage. There is a concrete stairway coming up about 5 feet off the ground to a door on the right hand side of the building, and then it goes up to the second floor. The floor plan basically shows a single bedroom, bath and a washer-dryer facility and a good-sized kitchen and living area. Charles Krich asked how big the proposed structure will be. Mr. Beaudoin said it would be 38 feet to the gable end. Planner Finger said he signed off on it because it looks like a barn and he felt it would fit in with the neighborhood. Jerry Hart referred to the septic tank. Mr. Beaudoin said the apartment will have its own septic tank. There is a proposed 1000-gallon tank coming off the left side of the garage and he plans to use the existing leaching field.

Since there were no other questions from Board members, and no comments from the public, the public hearing was closed. **Motion** by Al Beaulieu and seconded by Charles Krich. The motion was unanimous.

Al Beaulieu then made a **motion** to grant a Special Exception to Christopher Beaudoin, 22 Abbe Street, Windham, CT to create an apartment above the garage and Charles Krich seconded the motion. The motion carried unanimously.

- 2) **Enterprise Rent-a-Car, 1040 Main Street, Willimantic** – variance from the maximum limit on size of ground sign under Section 71.5.1.b – (no dimension greater than eight feet) in order to install a sign 10 feet long.

Planner Finger, in his staff report, explained the variance request is to allow the applicant a waiver to install a sign 10 feet long. The existing sign is only 8 feet long, but is affixed horizontally to a pole. The new sign will hang along the vertical line of the pole.

Kevin Kolstad, representing Enterprise Rent-a-Car, said we are proposing a new sign for 1040 Main Street. He said Enterprise is going through a transition with their signage, and are making changes to their sign. The existing free-standing sign is not very appealing, he said. We are looking at going to a larger sign lengthwise, but we will be encroaching further out onto the street risking the potential of the sign being hit by a truck etc. Currently the height of the sign is 13 feet and is occupying 28 square feet between the two sign boxes. The new sign will be 2X10. The actual square footage is 20 square feet, so it is smaller than the current sign. We are not looking for a larger sign; we are looking for a sleeker looking sign, he said. He then presented a colored rendering of the proposed sign. Chairman Bob Coutu asked if the sign would be illuminated, and Mr. Kolstad said it will be illuminated, as is the present sign. Mr. Coutu asked if they would put in a new post or use the existing post. Mr. Kolstad was not able to answer that question. He said he assumed that it would be a new post, but would be in the same location as the old post. Planner Finger suggested raising the sign up above the height of the vehicles to avoid any disturbances to the sign.

Since there was no one in the audience to speak for or against the application, and since there were no further comments from board members, Susan Fiegel-Rapp made a **motion** to close the public hearing and Al Beaulieu seconded the motion. The motion carried unanimously.

Susan Fiegel-Rapp made a **motion** to grant a variance from Section 71.5.1(b) to Enterprise Rent-a-Car to allow the applicant a waiver to install a sign ten feet long as proposed. Al Beaulieu seconded the motion. Voting in favor of the motion were Fiegel-Rapp, Beaulieu, Edelman and Coutu. Charles Krich voted against the variance. The vote was 4 votes in favor and 1 vote against so the motion carried.

- 3) **71 Boulevard Rd., LLC, 71 Boulevard Rd., No. Windham** – reconsideration of appeal regarding Town Planner/Zoning Administrator’s refusal to issue zoning approval to allow renovation of a non-conforming house deemed to have been abandoned.

Planner Finger excused himself from participation and Matt Vertefeuille assumed the Town Planner’s seat.

Planner Finger’s staff report explained that evidently, he had erroneously made inferences about the Building Office files, which indicated that the building was repeatedly boarded up from as early as August of 1991. He said he assumed that the Town of Windham had boarded up the structure, as there was nothing in the file to indicate who did the work. Originally when he asked the Building Official about the letters, he misunderstood his statements. He said he thought the Building Official said: “we had it boarded up a couple of times”, but there were no other qualifying statements. He said he has since learned that someone representing the estate had come in and secured the building, but again there was no mention of this in the file. Planner Finger then went on to review Section 3.10.6 – Repairs, and Section 3.10.9 - Abandoned Uses. He said he interpreted the rules to mean that the application did not qualify for Repair permits. He said he still interprets the rules to mean the building is

abandoned. He said since the Board heard the original appeal, and acted on erroneous information, he felt that the matter should be returned to the Board for re-consideration.

He said 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. He said 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 DEP.

Code Enforcement Matt Vertefeuille said the Board is re-hearing this application tonight because after the last meeting (August 7, 2008) new information came to light. In talking with Donald Shultz, the Building Official, he confirmed that he notified the property owner about the vacancy of the building. Mr. Shultz said he did not board up the building. The property owner, or person responsible for the property, actually went and boarded up the building on more than one occasion. He wanted to make sure that the record was corrected, and we thought it was fair to have Mr. Rich come in and plead his case based on the new information, said Finger.

Mr. Vertefeuille referred to a publication entitled "What's Legally Required" published in 2004 by Michael Zizka, a land use attorney. The section on "abandonment" talks about the cessation of a nonconforming use. He said he also reviewed this case with other officials, and they came to the conclusion that because there was no intention to change the use from residential to any other use, it could be considered there was no intention of abandoning the residential use on the property.

Planner Finger apologized for the error, however he said he still stands by his recommendation. He said he felt the property was abandoned based on information found in the town files. He said he questioned the Building Official regarding the status of the property, and he said the structure had been boarded up a couple of times, but he didn't clarify anything else. There was nothing in the record, nor was there any indication in the letters that the property owner had responded to the letters. He said from the time that he sent the letter out to Mr. Rich on July 9, 2008 to the date of the hearing, there was no-one who said his information was faulty, or that he had made incorrect inferences. He said if he had the new information he could have retreated on that basis. He said the taxes had been paid on the property so someone was paying attention; we just don't know who or how it occurred. Again, from the information found in the record there was no indication who boarded up the building, said Finger.

Al Beaulieu said nothing in the town records indicates that the property owner boarded up the building. Had this been recorded by Mr. Shultz this would not be before this board this evening. Mr. Rich said he had spoken to Mr. Finger and told him that this should never have been before the ZBA. He said when doing a title search if any town official had gone out and boarded it up there would have been a lien on the property. When this title search was done nothing was indicated on the title. The property was never abandoned, said Rich. Matt Vertefeuille said he went over the records, and there was nothing in the record indicating that the property owner had done anything. But,

the absence of evidence is not evidence, he said. It seems there should have been some paper trail if that had happened, he said.

He went on to point out that there was an error in the advertisement of the hearing tonight. He said the board can proceed in one of two ways. 1) The board can vote to overturn the decision rendered by Planner Finger, but would need 4 out of 5 votes to do so. 2) If the board intends to uphold Planner Finger's decision you would probably have to continue this hearing until we could properly advertise it, said Vertefeuille.

The Chairman referred to comments made at the last meeting relating to the State Statutes. Steven Edelman said the Town's regulations have to accommodate the State Regulations. He said we need to focus on the evidence presented to us. We need to focus on the use regardless of the condition of the building. Charles Krich reviewed Section 3.10.6 and Section 3.10.9. Mr. Rich said the property has always been a residential use and was only non-conforming in terms of the setbacks. The property was part of an estate for the last 17 years, he added. Chairman Coutu said the property may have appeared to be abandoned, but in essence it was not abandoned. Matt Vertefeuille said the portions of the building outside of the setbacks are non-conforming. Mr. Rich said the property may be non-conforming as far as the setbacks, but not as far as the use. Al Beaulieu agreed that a portion of the property may not conform to today's rules, but the use remains the same.

As there were no other comments the public hearing was closed. **Motion** by Al Beaulieu and seconded by Steven Edelman. Unanimous vote to close the public hearing.

Al Beaulieu made a **motion** to approve Mr. Rich's appeal to overturn the decision of the Town Planner/Zoning Administrator to refuse issuing zoning approval to allow for the renovation of a non-conforming house deemed to have been abandoned. Steven Edelman seconded the motion. Charles Krich again cited Section 3.10.9 of the regulations. He said he does not find any evidence to support the appeal. It appears to me that it was an abandoned use, and I support the Town Planner's decision, he added. Steven Edelman said the regulations conflict with the wording in the Statutes. Mr. Krich said the regulations state that affirmative action must be taken regarding the property. There was no attempt to advertise the property etc. Mr. Edelman said the property was boarded up - it was not abandoned. Chairman Coutu said the estate did pay the taxes on the property.

Voting in favor of the motion to grant Mr. Rich the appeal were Al Beaulieu, Steven Edelman, Susan Fiegel-Rapp and Bob Coutu. Charles Krich voted against the motion. The motion carried.

4) Hieu Ta – HTA Motorsports, 1050 Main Street, Willimantic – application for Certificate of Location for Motor Vehicle Repairer's license.

This application is for a new business next to the existing motor vehicle dealership. The proposed application is for a general repairer's license to install hi-tech

modifications to customer's vehicles. They do not intend to do any other type of general repairs, no collision damage repair work, or customer painting.

Gus Loukas, owner of the property, said the applicant must get ZBA approval before he can go to the DMV. He said no vehicles will be stored outside. All vehicles will be stored inside. Mr. Loukas said they will specialize in doing work on foreign cars.

Planner Finger said my main concern was that they would be doing bodywork or collision work, but they have stated they will not. Mr. Finger said there is limited parking area, as the entire property will be used for motor vehicles. Mr. Loukas said Section C as shown on the plan will be used for storage and there will be a shared dumpster on the property.

As there was no one to speak for or against the application 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 approve the application for Certificate of Location for Motor Vehicle Repairer's License to Hieu Ta – HTA Motorsports with a stipulation that there be no body work or any painting of vehicles on site, and that all vehicles will be stored in the building. In addition, all vehicle parts and oil will also be stored in building C, and a dumpster located on the property will be shared with the property next door. Susan Fiegel-Rapp seconded the motion. The motion carried unanimously.

5) **Routine Business**

- A) The minutes of July 3, 2008 were approved. **Motion** by Al Beaulieu and seconded by Steven Edelman. Voting in favor of the motion were Al Beaulieu, Susan Fiegel-Rapp, Bob Coutu and Steven Edelman. Charles Krich abstained, as he was not present at that meeting. The motion carried.
- B) The minutes of August 7, 2008 were approved. **Motion** by Al Beaulieu, seconded by Susan Fiegel-Rapp. The motion carried unanimously.
- C) Al Beaulieu, on behalf of the ZBA, thanked Charles Krich for his past service to the ZBA and wished him well in his new endeavor as a member of the Board of Selectmen.

As there was no other business, the meeting was adjourned at 8:40 P.M. **Motion** by Al Beaulieu, seconded by Steven Edelman. Unanimous vote to adjourn.

Respectfully submitted,

Lillian Murray, Clerk