

ZONING BOARD OF APPEALS
WINDHAM, CT

MINUTES

Feb. 3, 2011

The Zoning Board of Appeals held its meeting on February 3, 2011 in the Meeting Room, Town Hall. Chairman Robert Coutu called the meeting to order at 7:00 P.M. Members present were Al Beaulieu, Andrew Gibson, Robert Wolf, Jose Cruz, Robert Coutu, Roger Morin and Maryann Daley. Voting members are Robert Coutu, Al Beaulieu, Andrew Gibson, Robert Wolf and Jose Cruz.

I) New Business

Public Hearings:

1) William Correll, 281-285 Walnut Street, Willimantic – seeking a Special Exception/Variance to create a rear lot at 285 Walnut Street behind the existing house. This is a continuation of the public hearing started in November.

Planner Finger's staff report explained that 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 in the hopes of creating a rear lot with a driveway to Chestnut Street. The property description refers to a proposed "extension of Chestnut Street", but we could not find a map of this. 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.

Mr. Correll gave an update as to what has transpired since the last meeting. He said at our first meeting in November there was a concern that the right-of-way that is included in our deed may have been expunged. After that meeting, our attorney (Steve Bacon) sent a letter to the Town Attorney expressing our title claim. The response that we received was that the title was unclear and needed to be searched so our public hearing was continued to the December meeting. Town Attorney Rich Cody, who determined that there was a question as to whether the people who sold the land that we are talking about in this application, and the right-of-way that is contained therein, actually owned the property, searched the title. To address that question we made a request of the State Library for probate records, said Correll. The question was whether or not George Buck et al had title to this property.

Mr. Correll then went on to review the history of the property. The first quick claim deed that was executed in 1925 included a description of Chestnut Street Extension. He referred to Volume 107, page 192 of the Windham Land Records which is the transaction from George Buck et al; a warranty deed for the property to John Harvey. There was an exception and a reservation for a 40-foot wide right-of-way over the described area to the land of Evelyn Harvey. Chestnut Street Extension is mentioned and is used as a boundary description. Edwin A. Buck then conveyed this land in question to Nasin. Mr. Nasin took title to the property and held it until some time later when the Town sued him for eminent domain and

took the property. Chestnut Street Extension is mentioned in the Nasin deed separately. I believe this is the right-of-way that was granted to John Harvey in the deed for the lot we are talking about. On August 14, 1966 a Lis Pendens is mentioned, but it does not mention Chestnut Street Extension. About a year goes by and this is settled. Volume 214, page 366 of the Windham Land Records, dated August 14, 1967 includes the judgment, but it does not mention Chestnut Street Extension. It is no longer part of the document. Nasin's deed mentioned it, but the property description doesn't mention it. The fact that the right-of-way is not mentioned in the Lis Pendens, or in the final judgment really doesn't have anything to say about the right-of-way itself. It is a stand alone, just as the land is a stand alone, just as Chestnut Street is a stand-alone.

Mr. Correll then referred to his deed as it stands right now. The language is verbatim from the language of the George E. Buck deed to John Harvey in 1927. We think the right-of-way (easement) has been expunged. It is not mentioned in the court records. There is no record of whether or not the court handled the question of this right-of-way. Without that proof, I don't know anyone who would say that we don't still have it. We have established who owned what and when, said Correll. I am not standing before you defending the right-of-way. I am standing before you defending my title. This isn't a court of law, but the point is that our application was made in good faith based on the title that was searched each time we refinanced our property, as well as when we purchased it originally. We made our application without ever expecting that any of this would occur. But, we have had two questions come up; an expungement, and did the people who sold the land actually own it. I think we have the title information. A title searcher has looked it at carefully. My surveyor has looked it at carefully. The point is whether or not this Board can act on our application based on whether or not the common driveway exists. We hold the title to a right; we do not hold title to the land. We don't have any additional information to show that this should be turned down based on the title, so my guess would be that this board doesn't have to worry about the title. The Town will worry about that. I can't build on the land until all parties are satisfied that we are doing the right thing. I would like to hear if there are any questions about whether or not we actually have a title to the land, and whether or not a driveway that is constructed on somebody else's land would, in its very nature, be a common driveway. We have established that the design is a good one, and that it works. I would like to know whether or not the Board feels that they are in a position to take action on this application.

Chairman Bob Coutu said the applicant has presented a lot of new information and perhaps the Board needs to study the information further. Planner Finger referred to Town Attorney Rich Cody's letter, and read it into the record. Attorney Cody points out that the problem is that there is nothing in the Correll title that would indicate that when his predecessors sold the property, of which this proposed division is a part of, and made the easement reference, they owned the land over which the easement was granted. There is no deed for the land, which is now claimed to be Chestnut Street Extension, and there are no maps that show Chestnut Street Extension. 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 against the Town's fee estate. In conclusion,

Attorney Cody states that the Board does not have the jurisdiction to resolve the title issue, and hence at the current time, the Town's legal position is that it owns the land free and clear of the easement claimed by the applicant, and that the Board cannot grant the application if access is proposed over the Town's school lands.

Chairman Bob Coutu explained that we are required to close the public hearing tonight, and should the Board take favorable action on the request, Mr. Correll would still have to work out the details of using the Town's land with the Town.

Board member Robert Wolf said he is uncertain as to the status of the Board in relation to this application. If there is a question about whether that right-of-way exists, that is a legal question; not a zoning question. If the right-of-way is judged not to exist, is the Board prepared to grant the right-of-way even though it doesn't exist in the legal document. If that right-of-way does exist, I'm not sure what our role is. It seems to me that we are being asked to make a legal decision about whether that right-of-way exists.

Planner Finger said if the right-of-way does exist, you are being asked for permission to identify it as a common driveway. Mr. Wolf said there seems to be a question whether or not it exists. I'm not sure what our role is in relation to a right-of-way that may or may not exist.

Maryann Daley asked if the ZBA has jurisdiction to allow a right-of-way over Town property. Should that come before this board, or another board in Town, she asked. Planner Finger said you don't have the authority to grant something that doesn't exist. In this case, the applicant asserts that he has a legal right-of-way and that it was overlooked. Mr. Correll responded and said you are not being asked to make a judgment about the deeds. That is always done in a court of law. It's not a legal matter yet, he said. What you are being asked to consider are the facts that have been presented to you. We are defining our right-of-way over Town property to be a common driveway, said Correll.

Audience Comments: Peter (inaudible) 300 Walnut Street. I live across the street from where this proposed structure is to be built. I have already gone on record that I am in favor of the request. But, I think it was imperative that Attorney Cody be here this evening, but he is not, and you can't postpone your decision any longer. It sounds like the title is encumbered. Since the Town hasn't used the property, I feel that Mr. Correll should be allowed to have a driveway to access the house. I do have some reservations though, he added. 1) The corner of Washburn and Chestnut Street slopes downward. All the water drains and stays in that corner. In my opinion, Mr. Dan Lein who just built a new house right there should have taken care of that drainage issue. In this instance, I feel that Mr. Correll should be required to mitigate the drainage problem at that corner. The Town has not addressed this. They have ignored it, he said. In addition, there is an existing right-of-way right now, a pathway, near the back gate that goes to the tennis courts. Students use this pathway to go to and from. I want to make sure that is maintained. I think if Mr. Correll can mitigate the drainage problems in that little narrow right-of-way, (pathway), I wouldn't have any problem with it. Basically, I am in favor of Mr. Correll's request; but I would like to have these drainage issues resolved.

Planner Finger went on to address some of the comments that were made. He said Mr. Cody was not invited to attend the meeting. He is quite a distance away, and we felt that his correspondence would be sufficient. We felt we didn't need him to be present. This is not a court case, and I hope that it won't be. I would like to address the comments made regarding Mr. Lein. When he built his house, he posted a substantial bond for the roadway opening. His house and driveway are actually below Chestnut Street, and his property is not contributing to the drainage problem. It existed already, said Finger. Certainly, we have concerns about the drainage issue, but we didn't focus on that because we were focused on the Town Attorney's comments that he felt there wasn't evidence that the Town had this easement or right-of-way in the deed. So, the question was, is there a legal right-of-way. Planner Finger then read Attorney Cody's second letter into the record. It states that he reviewed these documents (legal descriptions in the estate deed) and found them to be inconclusive. The property descriptions do not match up with the abutter's. It's possible that the parcel was excepted out sometime earlier, but without a full search of the Nasin property we cannot determine that, said Finger.

Mr. Correll said: "I live here, and I pay taxes here, and I don't feel like I was well served by having the minimal done in terms of reviewing the documents that I worked on, that my associate worked on, as well as several people at the State Capitol at the Library. They got this done in one day because they realized there was an important issue at stake. He said I don't think we have seen the same type of energy on both sides of this equation and I find that troubling. Attorney Cody does not dispute that there is a right-of-way. The question is whether or not the people who granted it actually owned the land at that time. There is a question that the right-of-way might have been expunged. We are confident that there is a right-of-way. We also think that if Attorney Cody were to take the appropriate amount of time, he would come to the same conclusion that we have. He has chosen not to up to this point, and I am not sure why. I am not asking you to decide on the right-of-way. The right-of-way exists. I am asking the board to work within its parameters to consider a rear lot variance with access to a common driveway."

Board member Al Beaulieu said I did work with the Public Works Dept. when it was the City of Willimantic. The water (drainage) problem existed back in the 1960's. Alex Caisse used to send us up there to dig a trench through that right-of-way, and at that time he called it the extension to the street. For the 7-1/2 years that I worked for Public Works it was always known as "the extension".

Ed Pelletier, Datum Engineering & Surveying, said he did a lot of the title search for this project. This Board is actually not being asked for a variance under the Zoning Regulations. This Board is charged with granting rear lots. As long as we can meet the Zoning Regulations, this Board is obligated to grant a rear lot. Planner Finger said he had included the variance because he wasn't sure about the term of the common driveway. The Special Exception is for the granting of the rear lot, and the Board has the power to grant that. The question is on the definition of common driveway, and whether a variance is necessary, but it was advertised just in case. Planner Finger said the Board has to take a look at the definitions because the Rear Lot Provisions (amended about 1 year ago) required that a rear lot include the right-of-way.

Town Manager Neal Beets said he is new to this situation and new to the particular problem that has arisen. My view is as reflected in the letter from the Town Attorney because in my judgment it is a legal question dealing with deeds, conveyances, court cases, and title searches, said Beets. We delegate that responsibility to the Town Attorney to provide us with legal advice. Mr. Beets said he is not aware whether Town Attorney Cody has seen the most recent batch of material that was distributed tonight. He said he spoke with Attorney Cody recently, and asked if his position today is the same as set forth in the materials shared with the Board, and he said it was. Mr. Beets asked, should the Board make a judgment subject to the legal question about the title being resolved later, or should the title be resolved first and then the Board acts, I don't know the answer. Mr. Cody's letter states that at the current time the Town's legal position is that it owns the land free and clear of the easement claimed by the applicant, and that the Board cannot therefore grant the application where access is proposed over the Town's school way. He said I read that to say that if this application proposes to orient an access over the Town's school ways that the Board cannot grant that application until the legal question is resolved about the title to the land.

Planner Finger said the Board has to close the public hearing tonight. It can consider any and all new evidence and testimony, so it is important to get any new information into the record. The Board is not obligated to act tonight. You have 65 days to act after the close of the public hearing. We can send this information to Mr. Cody and ask him to clarify the information presented during the public hearing record and that we have new information to present for his examination. Upon his review, hopefully he will have a chance to offer us a revised opinion or maybe a different opinion that could be presented to the Board in response to the additional information that was presented.

Chairman Bob Coutu said Attorney Cody basically said that it is up to Mr. Correll to bring new information in, and this is what he has done. Mr. Coutu said he feels that this right-of-way was lost when the Town took the land from Nasin.

Al Beaulieu asked, can this Board grant the rear lot, and deal with the right-of-way at a later time. This is what it is advertised as, he said. Planner Finger said yes, the Board is empowered to approve rear lots. The question relates back to the right-of-way and I can't answer that. I included it as a variance because I thought they would need a variance on the terms of the right-of-way for the rear lot. Mr. Beaulieu said we can grant him the exception for the rear lot, and when it comes to the right-of-way that will be between him and the Town, he said. Planner Finger said it was presented as a complete plan, and you discussed the details of the plan particularly as it relates to drainage and other issues pertaining to the right-of-way. It is difficult to separate the two. I do believe that he does qualify for the rear lot though.

Mr. Correll asked the Board to approve the rear lot. He said we have more than one way to resolve this. We have other buildings on the property, which are historic in nature because of the age of the house; however, if we were to go ahead and build on this lot, we could create an easement for a 20-foot common driveway.

Planner Finger said, if Mr. Correll can meet the test of the regulations, he is entitled to do it. If he finds a different way to gain access, that is between him and whatever party may be involved in that. It is up to him if he chooses to exercise that. But, it does satisfy the rules. Planner Finger said although this does qualify, he may need a variance from the barn, but if it is just an easement it is not a setback issue. He can qualify under the terms of the regulations for the revised plan, dated February 3, 2011, added Finger.

Board member Robert Wolf said this avoids having to rule on granting a right-of-way over property that conceivably isn't owned by the Correll's. I am pleased with this approach, he concluded.

The public hearing was closed. Andrew Gibson made a motion to approve the application submitted by William Correll for a Special Exception to create a rear lot and Al Beaulieu seconded the motion. The motion carried unanimously.

The meeting was recessed at 8:12 P.M.
The meeting reconvened at 8:17 P.M.

The agenda was amended to address the application of Mary LeBlanc.

2) **Mary LeBlanc, 455 Main Street, Willimantic**- seeking a Special Exception from the separations requirements to apply for a restaurant liquor license as provided under Section 73.1.2, and a variance from the parking requirements.

Mrs. LeBlanc said she would like to open a bar and restaurant establishment at the former location of Liberty's Bar & Grill, and most recently the location of Las Palmas Bar. She said she is aware of the bar's bad reputation and that it was closed for approximately one year. She said she would like to open a restaurant that is family owned and run. She originally applied for a restaurant liquor license, but changed it to a café liquor license.

Planner Finger asked Mrs. LeBlanc if she has spoken to the Health Dept. regarding her proposal for the restaurant in terms of their requirements. She said she hasn't done anything other than starting with the ZBA for the simple reason she was afraid she might be denied, or that there might be something else that she needs to do in order to get a liquor license.

Planner Finger said the restaurant is not subject to this hearing; it is not subject to this Board's approval. The restaurant is something that she can do; she doesn't need a Special Exception or variance for that, he said. She is not restricted from applying to the Health Dept. for the restaurant license. Mrs. LeBlanc said she would like to open it as a whole. When Mario Pawlino owned it in the 1990's, Mr. Pawlino had a great rapport with the Police Dept., and I believe with the Town, she said. As far as the restaurant, I would like to be able to bring back the culture and the food that was being served there. She said the other approval that she needs is for parking. There is no parking in this area and I am asking for a waiver on that, she said.

Planner Finger said she is seeking a variance for parking because they have no parking for the restaurant. There is parking in the back, but it is for the residents that live upstairs.

Chairman Coutu asked about the hours of operation. Mrs. LeBlanc said she would like to open at 9:00 AM to prepare lunch. There will be mainly a lunch and dinner menu. The bar will close according to the liquor laws (2:00 AM). She said she is planning to be open 5 or 6 days a week and probably be closed on Sunday and Monday. Al Beaulieu asked if the old liquor license was still active, or has that all expired. It has expired, she said.

Zoning Enforcement Officer Matt Vertefeuille said the last liquor permit for that location was established 6/20/09. It was actually revoked by myself on 11/7/09, but would have lapsed on 6/19/10. It has been lapsed for more than six months, and our regulations under Section 73.4 say that if a liquor permit is lapsed for more than 90 days you are basically starting from square one if you want a liquor permit.

Board member Al Beaulieu referred to the lack of parking in that area. There is virtually no parking, he said. Mr. Vertefeuille said Mrs. LeBlanc is seeking a variance from the parking regulations. Based on 2200 square feet of patron space, she would need 44 parking spaces, said Vertefeuille. There is no parking for that side of the building. There is some parking for the apartments on the top side. There is some street parking. Al Beaulieu said parking is going to be tough. It is going to be a problem, he said. Roger Morin referred to a building that burned down on Clark Street. He asked if that space might be available for parking. Mr. Vertefeuille said that hasn't been presented. That property is privately owned and tied up in litigation right now with the bank and the insurance company, he said.

Are there any Churches in the area, asked Beaulieu? Is there a distance requirement for Churches, he asked? Mr. Vertefeuille said there are several Churches in the area. The regulations require that a liquor-serving establishment must be located 500 feet from a Church, a public park and another liquor serving establishment. There is a Church that recently opened on Union Street directly behind the property, but the Church leases that property, they don't own it. They do have services there for the kids; they run a youth center, and have a Sunday school there. In our regulations the separation requirements cover playgrounds, schools and religious institutions that are owned by that institution. There is also a park across the street (Bridge of Flowers).

Chairman Coutu asked if the applicant notified abutting property owners. Planner Finger presented the Board with a list of all property owners within a radius of 500 feet of this property. Mrs. LeBlanc said she does understand the importance of children and young people, but as she stated this will be a family owned business.

Audience comments: 1) Police Chief Lisa Maruzo-Bolduc said the police are not in favor of a Special Exception being granted for 455 Main Street. We don't feel there is adequate parking there. The building is actually on a curve in Main Street and is dangerous for pedestrians and vehicles. We have had nine accidents there in the past 1-½ years. We don't need another bar/restaurant at this location. There are a lot of bar/restaurants within the immediate area, she said. In addition, there is no parking. There are Churches and parks

located in that area. I know Mrs. LeBlanc has the greatest intentions, but I can tell you historically that bar has been a problem for us for 20+ years. It had its liquor license suspended at least three times prior to it being closed. We have had under-aged drinking violations there, she said. The bar has been a notorious problem for us. I also have an issue with parking. I have an issue with pedestrians going through there. The police are not in favor of this variance, she concluded. 2) Neal Beets, Town Manager, said he also opposes the application as it pertains to the bar. He said he could support a restaurant, and might be in favor of granting a variance for the parking for the restaurant in order to create opportunities for additional business, but as the Police Chief has noted, the history of liquor establishments at that location is notorious. This is a fragile neighborhood that needs our support, and in my judgment another bar is not the support it needs. It is close to the Garden on the Bridge where we have had enforcement issues. Another bar will not help that situation, but will only make it worse. He said while he supports the restaurant, and might even support a parking variance, he cannot support the exception for the bar. 3) Matt Vertefeuille said we have been struggling with this neighborhood for a long time. We have managed to develop a thriving Church on Dunham Street right around the corner from that address. Their 50-60 members have come out on our town wide cleanup day to clean up that neighborhood. They have really shown their support, said Vertefeuille. In addition, Pastor Dan Ortiz has established a Church on Union Street and has been doing outreach programs for kids there. They are really trying to make a difference in this struggling neighborhood that has had a lot of issues. I don't feel having another liquor establishment in this neighborhood is a good idea. Also, it is not consistent with the Windham Plan of Conservation & Development, with its close proximity to the park. That location serves as a gateway to the community. There is a really big issue with the lack of parking there. We have seen a lot of accidents on that corner. It is a blind corner. I'm very fearful that somebody is going to get hurt there, concluded Vertefeuille.

Mrs. LeBlanc said she could understand each and every opposition that she is facing. Regarding the Police Chief's concerns, she said her intentions are very honest. As for any accidents, or any other problems that have been there, this establishment has been closed for almost a year, so I don't see that as being part of the problem. Maybe something needs to be done to make the area is safer. I am just looking to have a nice restaurant with liquor and dancing. All I am asking for is an opportunity, she said.

Chairman Coutu agreed that there is a lack of parking. I have driven that way for probably 50 years. Since it has changed (the structure of the road, the rotary has gone away, we have the Bridge of Flowers) there is a very sharp turn there. In the evening and late nights there are cars parked on both sides of the road. When you have traffic going both ways, it is very tight. It is a dangerous area to navigate. I agree that parking is definitely a problem.

Mayor Ernest Eldridge said the regulations state that when you have a restaurant you can have a service bar, but not a stand up bar. That may be something that the Board might want to consider if it is so inclined. The Board could stipulate that she could not serve drinks at a bar, and that one would have to sit down and have a drink with a meal. I think that could make a difference.

As there were no other comments from the audience and the Board, the public hearing was closed.

Al Beaulieu made a motion to approve the Special Exception from the separation requirements of Section 73.1.1 for a cafe liquor license. The motion failed for lack of a second.

Al Beaulieu made a motion to deny the Special Exception from Section 73.1.1 for a café liquor license because of the lack of parking, close proximity to Churches, and because of the fact there have been many problems with the previous liquor establishments at that location. Robert Wolf seconded the motion. The motion carried unanimously.

Al Beaulieu made a motion to deny the variance for parking as the area already is very congested, and this establishment would make the problem worse. Robert Wolf seconded the motion. The motion carried unanimously.

3) Town of Windham for the Magnet School site at 141 Tuckie Road, Windham Center – seeking variances from Section 21.6 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 this is part of a subdivision that had been approved under the old regulations. The 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.

Board member Al Beaulieu excused himself from discussion and voting on this application citing a conflict of interest. Roger Morin was appointed to replace Beaulieu on this application.

Tom DeVivo, Chairman of the Magnet School Building Committee, said we are here seeking variances because the property does not meet the Town’s regulations. We have a hardship with the frontage requirement due to the regulations changes. We are also seeking a variance for lot coverage.

Will Walter, Project Engineer with BSC Group, the Town’s engineering consultants on this project, said we are seeking relief from two requirements of the zoning code. Section 23.3 lot, area, shape and frontage. This current regulation requires 200 feet minimum frontage, and the project currently has 150 feet of frontage; also Section 21.6, coverage and bulk. The current regulations require 15% maximum impervious cover on the site, and the project, as currently designed, has 20% impervious coverage. When they talk about impervious coverage they are talking about bituminous blacktop, concrete sidewalks, rooftops and things like that, said Walter.

He then went on to give a little background of the project. In July 2009, the Planning Commission, on the recommendation of the Building Committee, approved the Tuckie Road site as appropriate for the Magnet School. At the time of that approval, the Zoning Regulations required 125' frontage in this zone for this use. In October 2009, the Planning Commission modified the zoning code, and two of the changes included: 1) increasing the required frontage from 125' to 200', and 2) decreasing the maximum impervious cover from 20% to 15%. I want to make it clear that if the Zoning Regulations had been changed after the Planning Commission approved this site the project would not require these two variances, and we would not be before you tonight requesting relief from these two items.

He then identified the site and surrounding properties. We are showing the main entrance drive off Tuckie Road. The buses are going to continue around to the north and there will be a dedicated bus turn area where the students will be dropped off. The parents will have a separate curbside drop off. We have configured the parking to work with the slopes on the property, said Walter. We have 2 ball fields. One is a multi purpose field where they can play soccer, football and things like that. That will be accessible from the school. We will also have a baseball softball field. That is also handicap accessible from the school. We have incorporated a lot of sustainable and no impact features into this site. We are going to engineer some wetlands near a detention pond and have included water flow swales and rain gardens. The rain gardens will be placed in the courtyard and will provide a learning environment for the children. We are going to be incorporating a nursery where the children who are in first grade can plant a tree, continue to raise it and harvest it when they leave. They will be able to take it and plant it at their home.

As far as site utilities, we will have a private water lateral going over land with an easement, said Walter. This will be a private lateral and not available for the public to tap into. As far as sanitary, we have gravity down to a manhole in the right-of-way. There is an existing gravity sanitary system on Old Mansfield Road that we will be able to tap into without going across anyone's property, he added.

The first variance I want to talk about is for the frontage. As the property sits right now we have a little over 150' of frontage on Tuckie Road. We also have 50' of frontage at the connector for the Carriage Lane right-of-way, which is more than 200'. The Zoning Regulations clearly state that the 200' has to be a continuous 200'. But, again, when this property was bought we met the requirements, he said. The Zoning Regulations changed after this was decided upon. The second variance we are requesting is from Section 21.6, and that is the 15% maximum impervious area. The intent of the 15% maximum impervious requirement is to mitigate storm water peak flow from flooding neighboring properties, as well as to improve the water quality by limiting the amount of parking and drive areas, which is the biggest factor affecting water quality, or storm water runoff when it is not treated after it falls on the impervious area. We have scrutinized the design to limit impervious area as much as we felt was possible, and adhering to sound engineering practices. Along with the fact that the regulations were changes after this site was approved, the hardship exists in part because the 15% is designed for a residential zone and not a school, although a school is allowed by right in a residential zone.

In order to function correctly, the school program requires the following site amenities: approximately 84,000 square feet of building footprint. The size of the building has been minimized as much as possible to fit into the state reimbursement requirements, which are based on student population. There is a long drive entrance, which separates the parking. Due to the configuration of the site and surrounding roads, the entrance drive connecting Tuckie Road to the main site is approximately 500 linear feet. We could come in off Carriage Lane for a main entrance and significantly reduce the impervious footprint, but we wanted to be sensitive to the neighbors who live on Carriage Lane who have made it clear they do not want the main entrance of the school off of their street. Based upon the needs of the school staff and visitor parking, the site will require a minimum of 100 parking spaces, as well as room for overflow parking for events at night. This design has incorporated overflow parking and a bus turn around so additional impervious coverage is not required to support the need for overflow parking.

As a safety feature, the bus drop off which requires a bus turn-around and parent drop off has been completely separated. The large majority of students coming to the site will be bussed to school so a large area for a bus turn-around and cueing was required. As a method of reducing impervious cover, we strongly considered utilizing pervious pavement for large portions of the parking area. We ultimately decided against this option because we felt the town would not have the budget or the manpower to maintain pervious pavement, which is basically pavement that rainwater actually infiltrates through. This requires a lot of maintenance; otherwise it is going to fail.

We have utilized emergency paths for the emergency access drive up Carriage Lane, as well as a rear building access, as required by the Fire Chief, and we will either use gravel or reinforced turf. Even though we require trucks to go over that area we have not placed blacktop in that area in our efforts to minimize as much as possible the impervious area. Although we can't meet the 15% maximum impervious requirement, the project meets and exceeds the intent of the regulations, said Walter.

Regarding the storm water peak flow, the design that we have before you will significantly reduce storm water peak flow from where it is going right now, both to the north residential properties, as well as down to Carriage Lane to the south. Based upon discussions with neighbors and the town engineer this is a problem that currently exists. This design will help alleviate flooding in both those areas. Peak flows to Tuckie Road and towards the west are being maintained and slightly reduced under the proposed conditions. Our design significantly exceeds town requirements for peak flow mitigation and has been reviewed and approved by the Town Engineer.

Regarding storm water quality, our design includes construction of engineered wetlands, water quality swales, rain gardens and detention basins, as well as open bottom dry wells in lieu of traditional catch basins. These have all been designed to promote infiltration of storm water back to the ground, as well as provide treatment to improve the water quality of the storm water before it exits the site.

He then went on to review Section 9.2.3a, 9.2.3b, 9.2.3c, 9.2.3d and 9.2.3e. As stated previously this is unique because the entrance drive has to be located so far away. The regulations are designed for residences. This is for a school use. Again, it is allowed by right; but it is a different use than a residential use. We can't meet the literal interpretation of the regulations, but I believe that we not only meet, but also exceed the intent of the regulations. Basically these conditions were imposed on us because the regulations were changed after the Planning Commission approved the site. We feel that we meet the criteria that you must consider when you decide our variances, and we respectfully request relief from these sections of the regulations.

Planer Finger agreed that there are practical difficulty standards that this application meets and that is another standard for which the Board has consideration. Not simply hardship, but practical difficulties, he said.

Audience Comments: 1) Tony Fantoli, 179 Tuckie Road, (his property abuts the school) said if any of the retention measures fail we are going to get washed out due to all the blacktop. He said the regulations changed, but their plan did not change. They are trying to put a school in a residential area, and they should have to go by the residential code. Other changes could be made to make it more pervious so we don't have to worry so much about runoff. If the detention pond overflows, it is going to go onto my property. The only way for that to go across Tuckie Road is through a small culvert that drains into my pond, he said. Regarding the road frontage issue, the land beside this site is still for sale and could be acquired to allow the frontage to be met. He said the sight lines are terrible, and additional frontage would help. 2) William Baldasty, 14 Carriage Lane (his property abuts the proposed school), said the Magnet School was a good idea, but putting it on the Tuckie Road location was the worst idea they could come up with. This is the second building committee trying to force this down our throat. The first committee realized that Carriage Lane wasn't such a great idea. They knew what a terrible piece of property this was. We already have a lot of water in the area. All that does is to breed mosquitoes. He concluded by saying we don't want the school there at all. It doesn't belong there. 3) Dennis (inaudible), 247 North Street said he endorses the plan as it is shown. I thought the idea of putting the nursery with the trees on the property and having the kids grow them was a good idea, but I would suggest that you use those trees to create water retention. More trees, more water retention. My suggestion would be to create a bigger barrier of trees to adsorb the water, but I think the plan is a great plan. 4) Mayor Ernest Eldridge said he hopes the Board acts favorably on this application. They didn't create the hardship. They did everything in good faith and the hardship just happened. You can't look at this in terms of whether you like it or you don't like it. You have to look at the application. You have to look at what is in front of you, and use that as your judgment. 5) David Walencewicz, 6 North Windham Road, Windham Center, and located approximately 5 1/2 miles from the site. I am also on the Magnet School Committee, so I might be considered a biased speaker. I got on the Magnet School Committee for a specific reason. I have been pretty much a lifetime resident of this town. I went to school in the Windham school systems, and I am at a point with my children where I am looking for alternatives to the Windham school system. Magnet Schools have worked in other communities, he said. It is very difficult when you live in this town, and you have gone to school here, and you are looking at moving your business, moving your family away from here because of the schools.

The meeting was recessed at 9:36 P.M.
Meeting reconvened at 9:40 P.M.

Mr. Walencewicz said I hope this board will look at this from the standpoint of the greater good, and is it going to degrade from the neighborhood. That is what you have to consider when you make your decision tonight. 6) Nancy Tinker, 17 Peru Street, Willimantic said she is on the Building Committee, but she is also Director of Facilities at Eastern. Before that, I was Director of Planning at the Ohio State University and I also worked at Georgia Tech. I have been involved in large projects where we have had to be mindful of the neighbors and how we were going to impact them. The methods that they are using for drainage; the swales, the detention ponds and the creative use of the water runoff are methods that work. In 30 years I have never seen one fail, she said. 7) Town Manager Neal Beets said this is not a perfect project, but no project is. He said the project has been designed to be sensitive to the neighbors as well as the site. They have minimized to the greatest possibility the use of impervious surface. They have created, through the use of bio-swales, rain gardens and additional areas where we can capture and infiltrate water before it goes off site. You have heard the engineer say that the drainage will be better after this project is constructed than it is now, and has been in the past. It is not a perfect project and it is not a perfect site, but they have done everything within reason to create a powerful project for this town that will demonstrate that we value educational excellence in this community. We are committed to that, and we are committed to the values of protecting our environment and sharing those values with our children. I think their request is well founded and I urge you to support it. 8) Joe D'Auteuil, Walnut Street, Willimantic, said this is a tough project. We need the school, but is this the right place for it. We voted for this back when the money was good, but now times have changed. Is this the last chance. We didn't have a chance to vote again, and I think that was the biggest roadblock we let go by.

Tom DeVivo said we have done our best to lay out a good plan and hope you will see this as a reasonable request.

Board member Roger Morin said he has concerns about the drainage. According to your plans the flooding should be reduced, but if your drainage doesn't work, who is responsible to get that corrected, he asked. Mr. Walter explained that the regulations state that whatever is going off site right now you cannot allow that to increase. We have designed a lot of measures within the site that as the water is going along it is getting a chance to pool and go into rain gardens and infiltrate in those rain gardens. Instead of using catch basins we are connecting dry wells essentially. As the water goes in it is infiltrating before it leaves the property. We are digging a large hole in the ground so it cannot possibly fail. It is basically a large hole in the ground with a lot of landscaping around it. We have designed it to the extent possible to mimic existing conditions except to significantly reduce the amount of flow that is going off. We have used standard engineering practices in designing the drainage system. I have designed a lot of these and have never heard of one failing. We know there is a flooding problem under current conditions, said Walters. We are not required to fix that, but we try to take steps to improve that situation both to the north and to the south. We have designed this system for the 100-year storm, said Walters.

Tony Fantoli said the zoning regulations are put in place to protect the character and integrity of the neighborhood. I am asking you to help maintain that. There are ways that they can bring this down to the 15%, which will reduce the risk of issues down the road for flooding. You probably have ten acres of land that you are going to drain into and if that overflows, it's going directly downhill to my property. When it overflows I am the one who is going to end up with the issues. I really ask that you deny the variance on the impervious cover. They can get it down to where they need to be and they need to reduce the risk to the neighborhood.

Mr. Walter said the parking areas are designed as impervious pavement. The issue with pervious pavement is that you have to maintain it because sand and salt and organic debris get in and clog it up. The only way that you can maintain it is to vacuum it out a couple of times a year. We have been told by town staff that the maintenance department is over stressed and doesn't have the equipment to maintain what is currently there. Our fear is that if we design this as pervious pavement the town is not going to have the resources to maintain it.

Chairman Coutu said you make it sound as though it would be worse to have the pervious pavement surface because it would have to be maintained. Board member Robert Wolf said a real problem would be requiring the pervious surfaces and not maintaining it.

As there were no other comments from board members and the audience the public hearing was closed. Robert Wolf said I understand there is an engineering choice to be made, either impervious or pervious.

After further discussion, Andrew Gibson made a motion to approve the application as presented. Robert Wolf seconded the motion. The motion carried unanimously.

II) Routine Business

The minutes of January 6, 2011 were approved on a motion by Andrew Gibson and seconded by Roger Morin. The motion carried unanimously.

As there was no other business the motion was adjourned at 10:07 P.M.

Respectfully submitted,

Lillian Murray, Clerk