

**TOWN OF EAST WINDSOR – ZONING BOARD OF APPEALS
MINUTES OF REGULAR MEETING
MARCH 3, 2014**

The East Windsor Zoning Board of Appeals held a meeting on Monday, March 3, 2014 the East Windsor Town Hall, 11 Rye Street, Broad Brook, CT. The following members were present: Regular Members José Giner, Scott Morgan and Thomas Talamini; and Alternate Members Mystica Davis, Joe Sauerhoefer and Robert Yosky. Regular Member Dan Noble joined the meeting at approximately 7:30. Also present was Steve Dearborn, Board of Selectmen liaison to the ZBA, and Robin Newton, Zoning Enforcement Official. The meeting was called to order at 7:02 p.m. by Chairman José Giner.

ESTABLISHMENT OF QUORUM:

A quorum was established as 3 Regular Members and 3 Alternate Members were present. Mr. Giner noted that Mystica Davis would be sitting in for Nolan Davis and Joe Sauerhoefer would be sitting in for Dan Noble. Mr. welcomed the 2 new members Joe Sauerhoefer and Bob Yosky. He explained that alternates that are not sitting for a regular member may participate in the discussion but once the hearing is closed they may not participate in the deliberation. He said the alternates are encouraged to attend all meetings.

MOTION: To do the Pledge of Allegiance at the beginning of each meeting.
Morgan / Davis / Unanimous

Mr. Morgan read the legal notice as it appeared in publication.

NEW HEARINGS:

ZBA #2014-01 - Application of Noble East Windsor, LLC for property located at 7 Winkler Road, owned by Bernie Lavoie, for a variance of Section 501 *Bulk & Area Requirements – Business & Industrial Districts* to allow a proposed convenience store to be located less than the minimum 75 feet from the front property line; and to allow a vertical expansion of an existing building which is located in the buffer yard. [B-3 zone; Map 113, Block 24, Lot 2]

Jay Ussery of J. R. Russo & Associates represented the applicant. He presented the affidavit of the posting of the public hearing signs and noted that they placed one on North Road and one on Winkler Road. Mr. Ussery referred to plans and noted that the B-3 zone requires a 75 foot front yard setback. He pointed out that this property has frontage on two streets and therefore would require two front yard setbacks. They have to apply the 75 foot front yard setback to both sides. This proposal is for a convenience store with a gas station with canopies and pump islands.

They have a situation where they have pump islands and a canopy located in the front. They are not asking for a variance for the canopy. Mr. Ussery noted that the back corner of the building

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comes within 55 feet of the highway line of Winkler Road. They are looking for a variance to allow them to be within 55 feet of Winkler Road. This B-3 zone is a brand new regulation. It is the North Road corridor zone. Mr. Ussery said this is the only property that would have this situation. This is a hardship; they have two front yard setbacks to deal with. He noted that there has been a recent court case that said that Planning and Zoning Commissions shouldn't be granting waivers. When they wrote this B-3 regulation they put a waiver provision in it. They were thinking of larger parcels when they wrote this regulation. Mr. Ussery said in this situation it is just under two acres and it doesn't work well. He said it is a true hardship.

Ms. Newton referred to her memo dated February 25, 2014. She noted that they did the B-3 zone making each use as a Special Use Permit thinking that they could waive some requirements. Ms. Newton's memo stated that "this property having two front yard setbacks establishes a hardship and due to the increased front yard setback because of the way the zone was set up makes this property almost unusable without such variances."

Mr. Ussery pointed out that prior to the B-3 zone, the underlying zone was A-1 which had a 50 foot front setback. He explained the second variance they are seeking. He said there is an existing building on the easterly property line. It has been a warehouse building that was used for storage. The developer is renting office space and wants to add a second floor mezzanine for office space. Since the existing building is located within the 100 foot buffer yard, in order to expand it vertically they need a variance. Mr. Ussery pointed out that the building has been there about 50 years. It predates the B-3 zone. Mr. Talamini asked about parking for the office area. Mr. Ussery said there would be two employees on a daily basis. Mr. Ussery referred to a rendering of the proposed building.

At this time Mr. Giner opened up the hearing to the public,

Steve Dearborn of 144 East Road said that he was speaking as a citizen. He said the town spent money on the sewers and the reason is to get businesses to come to the area. He said this will look nice. It is the gateway to North Road. This will dress it up. He said those kind of stores look nice. He felt that this business will do well. He questioned why the zone was changed. Why did we make it difficult. Mr. Giner explained that the Planning and Zoning Commission decides that. He said this used to be an agricultural zone and that wouldn't have allowed a business. Mr. Dearborn said we want to get business on that road. If they turn it down it would be a slap in the face for the town. He said here is the first business coming in after the sewers. It will invite other businesses to come in. He said he wouldn't want to see the owner tearing down the building. He built it with his own hands. This will have tax revenue coming in. Mr. Dearborn said speaking as a citizen and speaking as a Selectman he thinks it should happen.

Mr. Giner asked about the canopies. Mr. Ussery said it will require a text amendment. He said many other towns recognize that this type of use (the canopies) don't meet the setback. He said

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they are proposing a text amendment to address the setbacks for canopies. Now they are just addressing the setbacks on the main building and the expansion of the existing building.

MOTION: To close the hearing on **ZBA #2014-01.**
Talamini / Davis / Unanimous

MOTION: To approve **ZBA #2014-01** - Application of Noble East Windsor, LLC for property located at 7 Winkler Road, owned by Bernie Lavoie, for a variance of Section 501 *Bulk & Area Requirements – Business & Industrial Districts* to allow a proposed convenience store to be located 55 feet from the front property line where 75 feet is the minimum required; and Section 600.2 *Landscaped Buffer Requirement* to allow a vertical expansion of an existing building which is located in the buffer yard - as shown on the submitted plans, not including any variances for the canopy. [B-3 zone]
Morgan / Talamini / Unanimous

Mr. Giner said he thought the applicant has pointed out what the hardships were. This seems to be unique. It is the only property situated in the zone like that. He said the intent of the zone was to maintain a streetscape on Route 140 and that is not the case here. Also the existing building is there. They just want to do a vertical expansion.

At this point in the meeting, Dan Noble joined the meeting. Joe Sauerhoefer was excused as a voting member.

ELECTION OF OFFICERS:

MOTION: To nominate Tom Talamini as Secretary.
Morgan / Noble / Unanimous

MOTION: To close nominations. Noble / Morgan / Unanimous

MOTION: To nominate Nolan Davis as Vice Chairman.
Morgan / Talamini / Unanimous

MOTION: To close nominations. Morgan / Noble / Unanimous

MOTION: To nominate Jose Giner as Chairman.
Morgan / Talamini / Unanimous

MOTION: To close nominations. Morgan / Noble / Unanimous

OTHER BUSINESS:

Mr. Giner noted for the new members that they had an issue last year where someone felt that ZBA members were talking during the break. He said when there is a hearing going on, the only time to discuss it is at the hearing. Mr. Giner passed out copies of an article entitled “Talking Behind the Public’s Back – The Ex-Parte Problem” which talks about this type of situation. Ms. Newton said as commission members, if someone asks them about an application you can direct them to call staff. They can look through the file and ask questions. She also brought up the issue of conflicts for the members, if they have a personal interest or a family member is involved. She said the appearance of a conflict is the same as having a conflict. If you question whether you have a conflict it is a good idea to discuss it with staff.

Mr. Giner explained that it takes four votes in favor to approve a variance rather than a simple majority. He said if only four members are present at a meeting he will ask the applicant if they want to continue. He noted that another type of application would be if the Zoning Enforcement Official makes a ruling that someone doesn’t agree with, they can make an appeal to the ZBA. That would also require four votes to approve. He said under State Statutes the ZBA is a delegation of the Motor Vehicle Department for used car repairs and sales and gas stations. We say whether it is a suitable location. It was noted that a simple majority is all that is required for approval in that situation. Mr. Yosky asked what the next step is if ZBA denies an application. Mr. Giner said the next step would be to go to the Superior Court.

PUBLIC PARTICIPATION:

No one requested to speak.

APPROVAL OF MINUTES:

Mr. Morgan pointed out two typographical errors.

MOTION: To approve the minutes of August 6, 2013, as corrected.
Talamini / Morgan / Unanimous

ADJOURNMENT:

MOTION: To adjourn

Morgan / Talamini / Unanimous

The meeting was adjourned at 7:56 p.m.

Respectfully submitted,

Marlene Bauer, Recording Secretary