

**TOWN OF EAST WINDSOR – ZONING BOARD OF APPEALS  
MINUTES OF REGULAR MEETING  
MAY 5, 2014**

The East Windsor Zoning Board of Appeals held a meeting on Monday, May 5, 2014 at the East Windsor Town Hall, 11 Rye Street, Broad Brook, CT. The following members were present: Regular Members José Giner, Nolan Davis, Scott Morgan and Thomas Talamini; and Alternate Members Joe Sauerhoefer and Robert Yosky. Also present was Steve Dearborn, Board of Selectmen liaison to the ZBA, as well as Richard Pippin and Kathy Pppin. The meeting was called to order by Chairman José Giner at 7:02 p.m.

**ESTABLISHMENT OF QUORUM:**

A quorum was established as four Regular Members and two Alternate Members were present. Mr. Giner noted that Mr. Sauerhoefer would be sitting in for Dan Noble.

The Pledge of Allegiance was recited.

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

**NEW HEARINGS:**

**ZBA #2014-03** 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 (Front Setback)* to allow a gas island canopy to be located less than the minimum 75 feet from the front property line at North Road; Section 600.2 *Landscaped Buffer Requirement* to allow a 50 foot buffer between a commercial and residential use where 100 feet is the requirement; and Section 601.3h.1. *Parking Lot Design*, to allow a driveway to be 20 feet from North Road where 25 feet is the minimum requirement. [B-3 zone; Map 113, Block 24, Lot 2]

Jay Ussery of J. R. Russo & Associates represented the applicant. He presented an Affidavit regarding posting of a public hearing sign. He also noted that the notices had been sent out to all of the abutting property owners. Mr. Ussery indicated that this property is located at the intersection of Winkler Road and North Road (Route 140), owned by Bernie Lavoie. Mr. Lavoie has a contract with a developer that is interested in putting a convenience store/gas station there.

Mr. Ussery explained that a few months ago they came before the ZBA asking for variances for front setbacks and for a vertical expansion of the existing building located on the east side of the property. They indicated at that time that the Planning & Zoning Commission was working on some text amendments to allow a decrease in the buffer in the B-3 zone and a new regulation to allow a gas station canopy in front of the setback line. It is taking a little longer than what they originally anticipated. He said it looks like July, August or even September before that happens.

Mr. Ussery said that the owner is under a contract and they would like to be open in the fall. He said one thing that happened in the last year or so was the MacKenzie case that came through the court system that said that Planning & Zoning Commissions can't grant waivers of any of the regulations. The B-3 zone was put into place over a year ago. At that time they realized that certain lots such as this one were a little small and would need some help in order to develop. They wrote waiver provisions into their regulations and now they can't use them. This particular lot is very difficult to develop due to the size.

Mr Ussery referred to plans of the property and explained that they were here to ask for variances that involve setbacks from the front property line on North Road for the proposed gas station canopy to be 44 feet back from the front property line. The current building line calls for 75 feet. They had a discussion about that the last time they were here. Mr. Ussery said they looked at other gas stations in town and found that most of them do not meet the front setback requirement. He said the PZC is aware of the situation and they are trying to write something in the regulations. He pointed out that South Windsor and Ellington both have these regulations. They are asking for a variance to allow this canopy to be 44 feet from the front to the highway line where 75 feet is the requirement.

Mr. Ussery noted that the other situation that comes into play is when you have a canopy you have traffic flow to get around the gas aisles. In this situation they show a paved driveway in front of the canopy at 22 feet back from the property line where the current regulation allows no paving other than the driveway entrance in and out within 25 feet. They are asking for a variance of 3 feet to allow the paving to come a little closer to the property line so that they can keep that traffic flow going around the gas island itself. One of the other things that is unique in this case is the fact that they have a highway line coming along and when they get to this property it jogs back and pushes the property line back even further. It is a little different and unique in that all of a sudden when you get in front of the property it bounces a little further out to the east so it is somewhat of a hardship. He said when you see the distance between the actual highway right-of-way line and the edge of pavement it is substantial. You actually get quite a bit of green space right now between the edge of the roadway and the highway line or property line. They are going to end up with almost 45 feet of green space highway.

Mr. Ussery indicated that the other thing that was written into the B-3 regulations is a buffer zone. They still have some residential uses in the B-3 zone. He pointed out on the plans that there were residential uses on either side of the property. On the east side it is 168 feet from the corner of the house to the corner of the diesel fueling station. On the west side it is 223 feet from the corner of the house to the corner of the pavement. They are asking for a variance to reduce that buffer from 100 feet to 50 feet on the east side. On the other side it is substantially more. The closest point is about 90 feet from the edge of the paving to the property line so it is only short about 10 feet. He said this is something that the PZC is looking to change in the

regulations to allow the applicant to come in and reduce the buffers. They have a developer that is under a contract and would like to get started. Mr. Ussery said after talking with staff they thought it would be appropriate to come back to request these variances. In terms of a hardship, Mr. Ussery said it was clear when the regulations for B-3 were put together they wrote something in the regulations to provide for situations like this and then came to find out that they can't grant waivers.

Mr. Giner opened up the hearing to the public.

Steve Dearborn, 144 East Road, Broad Brook, and citizen of East Windsor, said he didn't know why this didn't happen at the last meeting. They had to come back here twice. He said they are holding up these guys. They didn't know they were on a time constraint but somebody should have told these people what they need to get done so they didn't waste their time. Mr. Dearborn said talk about hardship, this town overall is in a hardship. He said this is going to be a busy station. This is the beginning of the new sewer line. When it is built others will follow. This should be approved as fast as possible to get this thing moving forward. He said we have to get things changed and not make it so difficult for people to come here and do business. You have a B-3, it went from 50 feet to 75 feet. They didn't need to go to 75 feet. They could have left it at 50 feet. He said when they put the sewer line in it didn't have to be that difficult.

Al Goff, 72 North Road, said he understood everyone's position and wanted to point out a couple of clarifications. He said when CT DOT took this in a taking, they took a piece from the Trolley Museum and from his property and widened the road. There were some drainage problems that the town was having on Route 140. At the time the DOT Commissioner came out and they decided in the interest of the town to give up their frontage. The owner of this property was involved here. It was a friendly taking for the town. He said in the meantime the B-3 zone was created that they all support.

Mr. Goff said it is this board's responsibility to remind the owner and the developer of the special conditions in the town's rules that say that \* "...the special circumstances constitute an exceptional difficulty or unusual hardship not of the applicant's making and are not solely a financial detriment;" \*(quoting from Zoning Regulations, Section 903.3 Variances). Mr. Goff said it has been shown in court cases that that special language was put in there to protect the public and the abutters. It is in the public interest that the variance should not be just carte blanche. He said the special circumstances that we just discussed absolutely relate solely to the special use of the property to this use. Because they want the setback for this particular reason, he and his neighbor have to endure a variance. Depending on the use of the property it might not be so onerous. Mr. Goff said there are a lot of special circumstances that are in play with the use of this property. At a time when we have one of the highest incidents of accidents at Winkler Road and Route 140, there could now be more accidents with this use. He said these are the

State requirements that the town has adopted. Court cases have shown that special circumstances if they relate specifically to the use don't apply. He said these issues on the 50 foot setback and the town's reluctance to just put it in place, there is a reason for that. It is because the town is trying to protect everyone's rights.

Mr. Goff (again quoting from Section 903.3) said "that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district." He said the gas station down the street that has been closed down is a perfect location for this type of use. He said he understands the applicant's needs but granting this particular variance is not supposed to "confer upon the applicant any special privilege of use that is denied by these Regulations to other lands, structures or buildings in the same district." He said not every business has to get a variance to do everything. He questioned whether the applicant would need similar variances for setbacks if he went up the street.

Mr. Goff pointed out that "the variance, if granted is the minimum variance that will make possible the reasonable use of the land, building, or structure." He said there are other reasonable alternative uses of the land that may not require a variance. If there are it doesn't meet the standard of care to grant the variance. Mr. Goff said regarding the criticism that this board just took about what they should have done, he wouldn't disagree in part but not in this case.

He noted that unless all of the points of Section 903.3 are met, the variance can't be issued. He said there haven't been any studies to show what is going to happen with traffic at the 140 intersection, with noise, air quality and other issues. He asked if this place would be open 24 hours a day. He said he thought there should be a traffic study. There are parcels in the B-3 zone that are perfect for this use but this may not be the best use of this parcel. Therefore, he is not in favor of it as it is currently laid out. He has a lot of problems with his own property. From an engineering standpoint there is no drainage. He is concerned about the drainage on Winkler Road getting worse.

Mr. Giner pointed out that drainage is not part of ZBA's purview. When they go before the Planning and Zoning Commission he assumes that the town requires that they demonstrate no net increase in runoff. Traffic studies are also something that will be submitted to the PZC. He said they will need a Special Use Permit and there will be a hearing before the Planning and Zoning Commission. DOT will have to weigh in on it because it is a curb cut on their road. Time of operation is something that the PZC will deal with. Mr. Giner said with respect to whether it is a hardship, we have already granted a variance. We have established that there is a hardship on this property because it is uniquely situated. It is a through lot. No other lot on Route 140 has another road behind it. The fact that you have 75 foot front yards pretty much squeezes it. They have already made the determination that there is a physical hardship on the lot. You can't go

back on that. Gas station/convenience store is a permitted use in that zone. The canopies are at the same level that everybody else has. Mr. Giner said they heard testimony that all the other gas stations in town have the canopies forward of the front yard and we are not going to be treating him differently. He said the issue becomes do we need this variance for the buffer. He noted that on one side they can get the same amount of parking and not require the buffer variance. He asked if they could redesign it to meet the buffer.

Mr. Ussery said with respect to some of Mr. Goff's concerns, this is just an application for a variance. When they go to the PZC for a Special Use Permit drainage studies will be required and a traffic study will also be required and it will be reviewed by the DOT and by the town staff. All of those things will be addressed. It is not the ZBA's purview. He said on the west side of the property if the ZBA is not comfortable granting a variance they may be able to eliminate three spaces and with a redesign could maintain a 100 foot buffer on that side. He said he feels this is a legitimate hardship. Since the court case came down the Planning and Zoning Commission can't grant waivers. When the B-3 was created the regulations had provisions to make this work. It is a unique situation with two front setbacks. There should be times when they can modify the buffer.

Mr. Giner asked if the three parking spaces are needed to meet the requirements. Mr. Ussery replied that they are not necessary to meet the requirements. The developer wanted to use the existing building to put a mezzanine on the second floor for office space. It is himself, his secretary and one staff person. Once a month they would have a meeting there for all the members of the stores and that parking was put there to provide parking in that situation.

Mr. Giner asked if there were any more questions.

Mr. Goff said the regulations for granting variances were put in there years ago to protect against a casual use of a variance and this particular land with the existing building it appears that it is a financial problem. They could have many different business uses without needing a variance. He said this particular one is financial.

Mr. Giner said every variance has some financial consideration. It can't be just financial. He said we have already determined that they have something that no one else has which is two fronts. They have a very small area on which to build. They have to have reasonable use of the property. We have already voted for this plan with the understanding that they were going back to the PZC. Prior to the court case they could have waived the various requirements.

Mr. Giner referred to a memo from Robin Newton dated May 5, 2014, which states in part: "The applicant's request for a variance of the front yard setback to allow a gas island canopy to be located within 44 feet of the front property line is in conflict with the Front Yard Setback

regulation for the B-3 zone. However, when you look at the Town as a whole and the location of the gas canopy in relation to the front property lines will actually still be located at a greater distance than those which currently exist. The average setback to the gas canopy in town is approximately 25-30 feet from the front property line.

The second request for a variance is to the required landscape buffer between commercial and residential uses. The applicant is requesting that the buffer be reduced to 50'. The property boundary is located approximately 52' to the diesel fueling station. The home associated with the property is located within 168' of the diesel pumping station.

The third request concerns the location of the driveway as it relates to the gas canopy / fueling area. The applicant is asking for a reduction to 20'. Again this is consistent with other fueling stations throughout town. Most have less than the required distance."

Mr. Giner said it appears that Robin Newton is in the same understanding that for the buffer, the west side is not mentioned.

**MOTION:** To close the hearing on **ZBA #2014-03**.  
Morgan / Sauerhoefer / Unanimous

**MOTION:** To approve **ZBA #2014-03** – 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 (Front Setback)* to allow a gas island canopy to be located 44 feet from the front property line at North Road where 75 feet is the minimum required; Section 600.2 *Landscaped Buffer Requirement* to allow a 50 foot buffer between the commercial and residential use on the east side of the property where 100 feet is the requirement; and Section 601.3h.1. *Parking Lot Design*, to allow a driveway to be 20 feet from North Road where 25 feet is the minimum requirement. Approved in accordance with the plans submitted. Approved with the understanding that they are not approving a buffer variance on the west side of the property. [B-3 zone]  
Morgan / Davis

**Discussion & Vote:**

Mr. Talamini agreed that they shouldn't put a variance on the west side. They can make it work on the west side. Mr. Morgan and Mr. Sauerhoefer agreed. Mr. Giner said they have read the staff memo that enforces the issue that almost every gas station in town has a canopy that is forward of the front property line. They don't have walls. He said it makes no sense to have gas pumps without canopies and gas pumps don't have setbacks. He said that because of the unique geometry of the lot with two 75 foot front setbacks and the State right-of-way appears to grow at this lot. With respect to the buffer on the east side it

appears that there is already a building within that. The variance for the buffer will not affect the adjacent property owner.

**In Favor: Unanimous**

**PUBLIC PARTICIPATION**

No one requested to speak.

**APPROVAL OF MINUTES:**

**MOTION:** To approve the minutes of April 7, 2014.

Morgan / Sauerhoefer / Unanimous

**ADJOURNMENT:**

**MOTION:** To adjourn.

Sauerhoefer / Morgan / Unanimous

The meeting was adjourned at 7:55 p.m.

Respectfully submitted,

Marlene Bauer  
Recording Secretary